

SOLICITATION INSTRUCTIONS TO VENDORS

1. **AUTHORITY TO PURCHASE:** The Administrator of the Division of Purchasing, Department of Administration or the Administrator's delegates are the only statutory agents authorized to execute Agreements for the procurement of goods and services, unless exempted pursuant to statute or rule. Pursuant to Idaho Code Section 67-5725, all agreements made in violation of the applicable purchasing statutes or rules shall be void and any sum of money advanced by the State shall be repaid.
2. **E-PURCHASING:** The State of Idaho, Division of Purchasing and some individual agencies utilize the Idaho e-Procurement System (IPRO), an electronic procurement system. Vendors will be sent e-mail notifications of acquisition opportunities on those Solicitations electronically posted.
3. **ELECTRONIC SIGNATURES:** IPRO processes all information electronically on the Internet. Signatures by both the Bidder and the State when using IPRO may be electronic and electronic signatures used with IPRO are as fully binding and legal for the State's purchasing process as a manually affixed signature. Any reference in these *Solicitation Instructions To Vendors* to "signed," "signature," "manually signed in ink," or equivalents will include electronic signature, if the Bidder is using IPRO.
4. **DEFINITIONS:** Unless the context requires otherwise, all terms not defined below shall have the meanings defined in Idaho Code Section 67-5716 or IDAPA 38.05.01.011.
 - A. Agreement – Any State written contract, lease, or Purchase Order, including Solicitation or specification documents and the accepted portions of the submission for the acquisition of property. An Agreement shall also include any amendments mutually agreed upon by both parties.
 - B. Bid – A written offer that is binding on the Bidder to supply Property in response to an Invitation to Bid.
 - C. Bidder – A Vendor who has submitted a Bid or Quotation.
 - D. Invitation To Bid – All documents, whether attached or incorporated by reference, utilized for soliciting formal sealed Bids.
 - E. Offeror – A Vendor who has submitted a Proposal.
 - F. Proposal – A written response, including pricing information, to a Request For Proposals that describes the solution or means of providing the Property requested and which Proposal is considered an offer to perform in full response to the Request For Proposals. Price may be an evaluation criterion for Proposals, but will not necessarily be the predominant basis for award.
 - G. Purchase Order – See also definition of Agreement. Typically used to acquire Property. A notification to the Bidder to provide the stated property, required material, equipment, supplies or services under the terms and conditions set forth in the Purchase Order. It may include the form of the State's acceptance of a Bidder's Proposal or Bid.
 - H. Quotation – An offer to supply Property in response to a Request For Quotation and generally used for small or emergency purchases.
 - I. Request For Proposals (RFP) – Includes all documents, whether attached or incorporated by reference, utilized for soliciting competitive Proposals and is generally utilized in the acquisition of services or complex purchases.
 - J. Request For Quotation – The document, form or method generally used for purchases solicited in accordance with small purchase or emergency purchase procedures.
 - K. Solicitation – An Invitation To Bid, a Request For Proposals or other document issued by the purchasing activity for the purpose of soliciting Bids, Proposals or offers to perform a contract.
 - L. State – The State of Idaho including each agency unless the context implies other states of the United States.

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M. Vendor – A person or entity capable of supplying Property to the State.

5. **AWARD METHOD:** Agreements may only be awarded to the "Lowest Responsible Bidder." The Lowest Responsible Bidder is defined by Idaho Code Section 67-5716(12) as "The responsible bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price." When deemed to be in the best interest of the State, and set forth in the Solicitation documents, additional consideration may be given to the elements of discounts, supply location, quality of products or previous service, delivery time, or other elements.
6. **ADMINISTRATIVE FEE:**
 - A. **Application of Administrative Fee:** In accordance with the State of Idaho Standard Terms and Conditions, the Successful Vendor shall pay an Administrative Fee of one point two five percent (1.25%) of the value of a Purchase Order (PO) or Contract Purchase Order (CPO) issued through IPRO after a competitive solicitation, unless the PO or CPO is exempted as described below. Subsequent renewals, amendments or change orders to the initial PO or CPO, which result in an increased Agreement value, will constitute an incremental or additional award for which an additional Administrative Fee will apply; however, regardless of the number of renewals, amendments, and/or change orders, the total aggregate Administrative Fee assessed per PO or CPO will not exceed one hundred thousand dollars (\$100,000). The State's IPRO Administrator, SicommNet, Inc. will invoice the Successful Vendor directly for the Administrative Fee, which will be due within thirty (30) days of receipt of invoice.
 - B. **Administrative Fee Exemptions:** Notwithstanding any language to the contrary, the Administrative Fee referenced in Section 6.A, above, will not apply to Blanket Purchase Orders (BPO) or Statewide Blanket Purchase Orders (SBPO); or to Agreements issued through IPRO without a competitive solicitation, e.g., Emergency Procurements (EPA), Sole Source Procurements (SSA), Exempt Purchases (EXPO), awards issued under Delegated Purchase Authority (DPA), and orders placed against WSCA/NASPO or other cooperative contracts (PADD) that are exempt from the requirements for competitive bidding. The State may also exempt a specific PO or CPO from the Administrative Fee requirement.
7. **DETERMINATION OF RESPONSIBILITY:** The State reserves the right to make reasonable inquiry about or from the submitting Vendor or from third parties to determine the responsibility of a submitting Vendor. Such inquiry may include, but not be limited to, inquiry regarding financial statements, credit ratings, references, potential subcontractors, and past performance. The unreasonable failure of a submitting Vendor to promptly supply any requested information may result in a finding of nonresponsibility.
8. **ADDENDA/AMENDMENTS:** It will be the Vendors' responsibility to check for any addenda/amendments prior to submitting a Bid, Proposal, or Quotation. In the event it becomes necessary to revise any part of the Solicitation documents, addenda/amendment will be made available. Information given to one Vendor will be available to all other Vendors if such information is necessary for purposes of submitting a Bid or Proposal or if failure to give such information would be prejudicial to uninformed Vendors.
9. **NOTICE OF EFFECTIVENESS:** No Agreement is effective until the authorized State purchasing official has signed (which signature may be electronic) the Agreement and the effective or award date has passed. The Vendor shall not provide any goods or render services until the Agreement has been signed by the State purchasing official and the Agreement has become effective. Furthermore, the State is in no way responsible for reimbursing the Vendor for goods provided or services rendered prior to the signature by the authorized State purchasing official and the arrival of the effective date of the Agreement.
10. **INCURRING COSTS:** The State is not liable for any cost incurred by Vendors prior to the effective date of the Agreement.
11. **ECONOMY OF PREPARATION:** If submitting a Proposal, please note that Proposals should be prepared simply and economically, providing a clear, complete and concise description of the Offeror's capabilities to satisfy the State's requirements.

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12. SPECIFICATIONS: Specifications describe the Property the State wants to acquire. If you are unsure of what the State wants, please present written questions within prescribed time periods to the designated purchasing official. See also paragraph 15 on Administrative Appeals. The State is prohibited from accepting Property that does not meet the minimum specifications pursuant to Idaho Code Section 67-5726(4) and Section 67-5736.

“No officer or employee shall conspire with a vendor or its agent, and no vendor or its agent shall conspire with an officer or employee, to influence or attempt to influence the award of a contract, or to deprive or attempt to deprive a vendor of an acquisition award. (Idaho Code Section 67-5726 [3]) Vendors may be disqualified for any of the following reasons: ... (b) Attempts by whatever means to cause acquisition specifications to be drawn so as to favor a specific vendor.” (Idaho Code Section 67-5730 [2])

13. CONFLICT OF INTEREST: No member of the legislature or officer or employee of any branch of the State government shall directly himself, or by any other person, execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the State of Idaho, if made by, through or on behalf of the agency in which he is an officer or employee or if made by, through or on behalf of any other agency unless the same are made after competitive Bids. (Idaho Code Section 67-5726[1]). No Vendor or related party, or subsidiary, or affiliate of a Vendor may submit a Bid to obtain a contract to provide Property to the State, if the Vendor or related party, or affiliate or subsidiary was paid for services utilized in preparing the Bid specifications or if the services influenced the procurement process. (Idaho Code Section 67-5726[6]) To prevent the perception of a conflict of interest, Vendors subject to Idaho Code Section 67-5726(6) will be prohibited from competing as a contractor or subcontractor for any project(s) that may result, directly or indirectly, from the implementation of recommendations made during a project.

14. LAWS: The laws governing the State’s purchases of goods and services are found in the Idaho Code Section 67-5714 through Section 67-5744 and IDAPA 38.05.01, both available on the Internet at <http://adm.idaho.gov/purchasing/purchasingrules.html>. It is the Vendor's responsibility to conform to **ALL** applicable federal, state and local statutes or other applicable legal requirements. The information provided herein is intended to assist Vendors in meeting applicable requirements but is not exhaustive and the State will not be responsible for any failure by any Vendor to meet applicable requirements.

15. PREFERENCE FOR IDAHO SUPPLIERS FOR PURCHASES: Idaho preferences are governed by Idaho Code Section 67-2349 (Reciprocal Preference) and Idaho Code Section 60-101 – 103 (Printing).

16. ADMINISTRATIVE APPEALS: The laws applicable to administrative appeals are set forth at Idaho Code Section 67-5733(1)(a) (Specification Appeals), Idaho Code Section 67-5733(1)(b) (Bid Rejection Appeals), Idaho Code Section 67-5733(1)(c) (Bid Award Appeal), and Idaho Code Section 67-5733(1)(d) (Sole Source Appeal).

17. SUBMISSION FORMS:

- A. Manual Submissions – For manually sealed and submitted Bids or Proposals, a submitting Vendor must use the State’s supplied signature page (or other binding document as specified) when submitting its Bid or Proposal. The signature page must be manually signed in ink by an authorized agent of the submitting Vendor and returned with the submission package. Manually submitted Bids or Proposals submitted without the signature page shall be found nonresponsive and will not be considered. Incomplete and/or unsigned documents will be cause for non-acceptance and a finding of nonresponsiveness. The signature page must contain an **ORIGINAL HANDWRITTEN** signature executed in **INK** and be returned with the relevant Solicitation documents. **PHOTOCOPIED SIGNATURES** or **FACSIMILE SIGNATURES** are **NOT ACCEPTABLE**. Submissions must be completed either in ink or typewritten. Forms or figures written in pencil are not acceptable. Mistakes should not be erased but may be crossed out and corrections inserted next to the errors and initialed **IN INK** by the person signing. **THIS INCLUDES BUT IS NOT LIMITED TO CORRECTIONS MADE USING WHITEOUT CORRECTION FLUID AND TYPEWRITER CORRECTION TAPE.**

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- B. Submission Forms – Manual Quotations – For manually submitted Quotations, the Bidder may use any response and submission form authorized by the Request For Quotation, including oral, telephonic, facsimile, e-mail, or regular mail.
- C. Submission Forms – Electronic – For Vendors using IPRO, proper completion of the electronic forms is required.
- D. Submission forms –Manual or Electronic – Regardless of Submission Form, Vendor warrants that it accepts the State of Idaho Standard Contract Terms and Conditions and the Solicitation Instructions to Vendors. Additionally, one or more of the following may be applicable:
1. If the Vendor is a corporation, partnership, sole proprietorship or other legal entity, and employs individual persons, by submitting its Bid, Proposal or Quotation, vendor warrants that any contract resulting from this Solicitation is subject to Executive Order 2009-10 [http://gov.idaho.gov/mediacenter/execorders/eo09/eo_2009_10.html]; it does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties up to five percent (5%) of the contract price, per violation, and/or termination of its contract; or
 2. If Vendor is a natural person eighteen (18) years of age or older,
 - a. by submitting its Bid, Proposal or Quotation, warrants that its Bid, Proposal or Quotation is subject to Idaho Code section 67-7903 [<http://www3.state.id.us/cgi-bin/newidst?sctid=670790003.K>] and, pursuant thereto, by submitting its Bid, Proposal or Quotation, attests, under penalty of perjury, that it is a United States citizen or legal permanent resident or that it is otherwise lawfully present in the United States pursuant to federal law; and
 - b. prior to being issued a contract, Vendor will be required to submit proof of lawful presence in the United States in accordance with Idaho Code section 67-7903.
 3. If this Request for Quotation, Invitation to Bid or Request for Proposals is for the acquisition of services or for the development, sale or lease/licensing of software to the State, it is subject to Executive Order 2007-09 [http://gov.idaho.gov/mediacenter/execorders/eo07/eo_2007_09.html]. Pursuant to Executive Order 2007-09, vendors must disclose (i) the location by country where services under or related to the contract will be performed; and (ii) the location by country where any subcontracted services under or related to the contract will be performed.

Unless it fits into an exception discussed below, no contract shall be awarded to any vendor that refuses to make such disclosure. Vendor shall complete and submit a completed form of Exhibit 1 to these Instructions (attached to the signature page) (or include a document identical in required substance) along with its Bid or Proposal. By submitting its Bid or Proposal, vendor warrants that it is subject to Executive Order 2007-09. Vendor further warrants that it must notify the Division of Purchasing in advance if, during the term of any contract awarded to it pursuant to this Invitation to Bid or Request for Proposals, it seeks to shift services or work that it has represented would be done inside the United States to outside the United States. Failure to obtain the consent of the Division of Purchasing for such shift constitutes a material breach.

Executive Order 2007-09 provides that the Division of Purchasing shall not award a service contract or a contract for the development, sale or licensing of software where related services shall be done outside the United States. There are EXCEPTIONS TO THIS PROHIBITION. Please use the form attached to the signature page (or include a document identical in required substance) to identify any of the exceptions that you believe apply to your Bid or Proposal. The Division of Purchasing reserves the right to inquire of you and independently as to the factual basis for any claimed exception. The Division of Purchasing shall determine if any exception applies.

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18. BID AND REQUEST FOR PROPOSAL SUBMISSIONS:

- A. Manual Submissions – The submission package or envelope must be **SEALED** and plainly marked in the **LOWER** left corner with the following: (i) the name of the item or service being sought; (ii) opening date and time; and (iii) the Solicitation number. This information is found in the Solicitation information. The submitting Vendor's return address must appear on the envelope or package. Any Bid sheets and the signature page containing an original authorized signature must be submitted in a sealed envelope or package. **(Do not respond to more than one Solicitation in the same envelope!)** A submission made using "Express/Overnight" services must be shipped in a separate sealed inner envelope/package identified as stated above, and enclosed inside the "Express/Overnight" shipping container or package. No responsibility will attach to the State, or to any official or employee thereof, for the pre-opening of, post-opening of, or the failure to open a submission not properly addressed and identified. **DO NOT FAX YOUR BID OR PROPOSAL.** Bids and Proposals must be submitted in writing. No oral, telephone, facsimile, telegraphic, or late submissions will be considered. All submissions must be received at the State's reception desk (or other designated depository) and time and date stamped prior to the closing date and time. It is the submitting Vendor's responsibility to timely submit its Bid or Proposal in a properly marked envelope, prior to the scheduled closing, for receipt in sufficient time to allow the submission to be time and date stamped.
- B. Bid Submissions – Electronic – For Bids submitted by means other than manual methods, Bidders using IPRO must complete all steps in the submission process prior to the scheduled closing date and time.
- C. Late Submissions – It is the Vendor's responsibility to ensure that its Bid, Quotation, or Proposal is delivered or electronically submitted to the place designated for receipt on or before the specified closing time. Late submissions will not be considered under any circumstances. Submissions may not be completed, amended or clarified on the face of the submission after the official opening time. The official time used in the receipt of manual submissions is the prevailing local time as evidenced by the automatic time/date stamp located in the State's purchasing office or other designated depository location. Electronic submissions will use IPRO's time to determine receipt time. No responsibility will be assumed for delays in the delivery of mail by the U.S. Post Office, private couriers, the intra-State mail system, or for the failure of any computer or electronic equipment. Bidders and Offerors should be advised the intra-State mail system may increase delivery time from Central Postal to the place designated for receipt and should plan accordingly. **LATE SUBMISSIONS WILL BE DECLARED REJECTED AND RETURNED TO THE SUBMITTING VENDOR. NO DEVIATIONS WILL BE ALLOWED.**

19. TABULATION INFORMATION:

- A. Manual/Electronic Opening – Electronic and manually distributed Solicitations will contain detailed information regarding closing/opening dates and times. Vendors may attend openings of manually submitted Solicitations at the place, date, and time specified on the Solicitation. At that time, for Bids, the names of Bidders and Bid amount will be announced. For Proposals, only the name of the Offerors will be announced. No other information will be disclosed at that time. Persons may request tabulation information when it becomes available. Depending upon the complexity of the Solicitation, tabulations may take as long as thirty (30) days. No tabulation information will be given over the phone.
- B. Tabulation Information – Electronic Openings – Unless otherwise noted in the Solicitation documents, electronic Solicitations will close at 5:00 p.m. By 10:30 a.m. the following business day, Vendors may, except for RFP's, view a preliminary price tabulation on the Internet.

- 20. TERMS AND CONDITIONS OF ENSUING AGREEMENT:** Any ensuing Agreement will be governed by the *State of Idaho Standard Contract Terms and Conditions*, any applicable Special Terms and Conditions and, if applicable, any negotiated provisions, all as specified in the Solicitation documents. No additional or supplemental terms and conditions submitted by the Bidder as part of its response shall be evaluated or considered. Any and all such additional terms and conditions shall have no force and effect and shall be inapplicable to this Solicitation and any ensuing Agreement. If additional or supplemental terms and conditions, either intentionally or inadvertently appear separately in transmittal letters, specifications, literature, price lists or warranties, it is understood and agreed that the general and **ANY** special conditions in this Solicitation are the only conditions applicable to this Solicitation and any ensuing Agreement and the

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Bidder's authorized signature affixed to the signature page form attests to this. If you condition your Bid or Proposal on such additional terms and conditions, your Bid or Proposal will be deemed nonresponsive. **IF YOU HAVE QUESTIONS OR CONCERNS REGARDING THE STATE'S TERMS AND CONDITIONS, ADDRESS THEM IN WRITING TO THE DESIGNATED PURCHASING OFFICIAL WITHIN THE TIME PERIOD PRESCRIBED PRIOR TO THE SOLICITATION CLOSING DATE.**

21. PRE-OPENING SOLICITATION WITHDRAWALS OR MODIFICATION:

- A. Manual – Manual submissions may be withdrawn or modified only as follows: Bids or Proposals may be withdrawn or modified prior to the closing by written communication signed in ink by the submitting Vendor. Bids or Proposals may be withdrawn prior to closing in person upon presentation of satisfactory evidence establishing the individual's authority to act on behalf of the submitting Vendor. Bids or Proposals may be withdrawn or modified by telegraphic communication provided the telegraph is received prior to the closing. The withdrawal or modification, if done via telegraph, must be confirmed in writing, signed in ink. The written confirmation must be mailed and postmarked no later than the closing date. If the written confirmation of the withdrawal or modification is not received within two (2) working days from the closing date, no consideration will be given to the telegraphic modification. Any withdrawing or modifying communication, including a telegram, must clearly identify the Solicitation. A modifying letter or telegram should be worded so as **NOT** to reveal the amount. No other form of withdrawal or modification (e.g. telephone or facsimile) will be accepted.
- B. Pre-Opening Solicitation Withdrawals – Electronic – A submitting Vendor using IPRO may withdraw a previously submitted Solicitation response at any time prior to the closing by submitting another response with a zero unit price for each affected line item of the Solicitation and inserting the words "NO BID" in the comments field for each affected line item.
- C. Pre-Opening Solicitation Modification – Electronic – A submitting Vendor using IPRO may modify or change a previously submitted Solicitation response at any time prior to the closing by submitting another Solicitation response which modifies the affected line items. Each additional response or submission has the effect of canceling the previous response and replacing it with the submitting Vendor's most current Solicitation response.

22. REJECTION OF BIDS AND PROPOSALS AND CANCELLATION OF SOLICITATION:

- A. Prior to the issuance of an Agreement, the Administrator of the Division of Purchasing shall have the right to accept or reject all or any part of a Bid or Proposal or any and all Bids or Proposals when: (i) it is in the best interests of the State; (ii) the Bid or Proposal does not meet the minimum specifications; (iii) the Bid or Proposal is not the lowest responsible Bid or Proposal; (iv) a finding is made based upon available evidence that a Bidder or Offeror is not responsible or is otherwise incapable of meeting specifications or providing an assurance of ability to fulfill contract requirements; or (v) the item offered deviates to a major degree from the specifications, as determined by the Administrator (minor deviations, as determined by the Administrator, may be accepted as substantially meeting the Solicitation requirements of the State). Deviations will be considered major when such deviations appear to frustrate the competitive Solicitation process or provide a Bidder or Offeror an unfair advantage.
- B. Prior to the issuance of an Agreement, the Administrator of the Division of Purchasing shall have the right to reject all Bids, Proposals, or Quotations or to cancel a Solicitation or Request For Quotations. Cancellation may be for reasons that include, but are not limited to: (i) inadequate or ambiguous specifications; (ii) specifications have been revised; (iii) Property is no longer required; (iv) there is a change in requirements; (v) all submissions are deemed unreasonable or sufficient funds are not available; (vi) Bids, Proposals or Quotations were not independently arrived at or were submitted in bad faith; (vii) it is determined that all requirements of the Solicitation process were not met; (viii) insufficient competition; or (ix) it is in the best interests of the State.

- 23. SPECIAL BRANDS:** Special brands, when named, are only to indicate the standard of quality desired. Submitting Vendors may offer their equal, except when specifications require no substitution. Offerings on other brands, if their equal, may be considered, but brands or descriptions of the equal must be plainly stated. "Equal" means any other brand that is equal in use, quality, economy, and performance to the brand listed. If

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the submitting Vendor lists a trade name and/or catalog number, the State will assume the item meets the specifications, unless the submission clearly states it is an alternate, and describes specifically how it differs from the item specified. **MULTIPLE OR ALTERNATE BIDS WILL NOT BE ACCEPTED UNLESS SO STATED IN THE SPECIFICATIONS.**

- 24. BURDEN OF PROOF:** It shall be the responsibility and burden of the submitting Vendor to furnish, with its original submission, unless otherwise provided in the Solicitation document, sufficient data for the State to determine if the goods or services offered conform to the specifications.
- 25. DISCOUNTS:** Discounts, when applicable, shall be shown in a single net percentage figure (e.g. 57-1/4% instead of 50, 10, and 5 percent). **DISCOUNTS FOR PROMPT PAYMENT WILL BE ACCEPTED BUT CANNOT BE USED TO DETERMINE THE LOWEST BID.**
- 26. UNIT PRICES GOVERN:** Unit prices shall govern, but please extend the amount column, to avoid mistakes. **IMPORTANT:** Prices must be given in the "unit of quantity" asked for. Example: If the documents ask for an item by the "piece," bid by the "piece." If the documents ask for an item by the "foot," bid by the "foot."
- 27. FIRM PRICES:** The Bidder or Offeror agrees that its Bid, Quotation or Proposal shall be good and may not be withdrawn for a period of sixty (60) days after the scheduled closing date. No Bid, Quotation or Proposal will be accepted if marked "price prevailing at time of delivery," "estimated prices," "actual costs to be billed," or similar phrases. After the date and time of closing, no price increase will be allowed, unless otherwise stipulated by the State's Solicitation documents. All Bids, Quotations and Proposals must be in U.S. Dollars.
- 28. ORAL INFORMATION:** Questions concerning a Solicitation must be directed in writing to the designated purchasing official in the period of time prescribed in the Solicitation document. Bids, Proposals, or Quotations deviating from the specifications by any means other than an authorized written addendum will be subject to rejection. The State will not be responsible for any verbal or oral information given to Vendors by anyone other than an authorized purchasing official. Reliance on any oral representation is at the Vendor's sole risk. Unless otherwise provided in the Solicitation documents, questions will not be considered if received less than five (5) working days before the closing.
- 29. PAYMENT:** Unless otherwise specified in the Solicitation documents, payment will be made after acceptance of the conforming Property and after receipt by the requisitioning agency of a proper invoice. In general, no advance or progress payments will be made.
- 30. PACKAGING:** Submitting Vendors are to list their standard packaging for the items listed if other than specified.
- 31. GOVERNMENTAL USE ONLY:** Unless otherwise noted in the Solicitation documents, all purchases made pursuant to the Solicitation documents are for the internal use of government only and will not be resold to the general public at retail. Upon request, the State will issue a certification that all purchases made pursuant to the Solicitation documents are intended for the internal use of government and will not be resold to the general public at retail.
- 32. PUBLIC RECORDS:** The Idaho Public Records Law, Idaho Code Sections 9-337 through 9-348, allows the open inspection and copying of public records. Public records include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used, or retained by a State or local agency regardless of the physical form or character. All, or most, of the information contained in your response to the State's Solicitation will be a public record subject to disclosure under the Public Records Law. The Public Records Law contains certain exemptions. One exemption potentially applicable to part of your response may be for trade secrets. Trade secrets include a formula, pattern, compilation, program, computer program, device, method, technique or process that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons and is subject to the efforts that are reasonable under the circumstances to maintain its secrecy. If you consider any element of your Bid or Proposal to be a trade secret, or otherwise protected from disclosure, you **MUST** so indicate by marking **EACH PAGE** of the pertinent document. Include the specific basis for your position that it be treated as exempt from disclosure. Marking your entire Bid or Proposal as exempt is not acceptable or in accordance with the Solicitation documents or the Public Records Law and

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WILL NOT BE HONORED. In addition, a legend or statement on one (1) page that all or substantially all of the response is exempt from disclosure is not acceptable or in accordance with the Public Records Law and **WILL NOT BE HONORED.** Prices quoted in your Bid or Proposal are not a trade secret. The State, to the extent allowed by law and in accordance with these Solicitation Instructions, will honor a designation of nondisclosure. You will be required to defend any claim of trade secret or other basis for nondisclosure in the event of an administrative or judicial challenge to the State's nondisclosure. Any questions regarding the applicability of the Public Records Law should be addressed to your own legal counsel – **PRIOR TO SUBMISSION.**

- 33. PRIOR ACCEPTANCE OF DEFECTIVE BIDS OR PROPOSALS:** Due to the limited resources of the State, the State generally will not completely review or analyze Bids or Proposals that appear to fail to comply with the requirements of the Solicitation documents or that clearly are not the best Bids or Proposals, nor will the State generally investigate the references or qualifications of those who submit such Bids or Proposals. Therefore, any acknowledgment that the selection is complete shall not operate as a representation by the State that an unsuccessful Bid or Proposal was responsive, complete, sufficient, or lawful in any respect.
- 34. LENGTH OF CONTRACT:** Pursuant to Idaho Code Section 67-5717(9), the State may enter into contracts, including leases and rentals, for periods of time exceeding one (1) year provided that such contracts contain no penalty to or restriction upon the State in the event cancellation is necessitated by a lack of financing for any such contract or contracts.
- 35. LEASE-PURCHASE OPTIONS:** Idaho Code Section 67-5721 reads, in part, as follows: "Any exercise of an option to acquire (goods, services, parts, supplies and equipment), or any other procedure which shall serve to pass title to the state where no passage of title existed before, shall be deemed to be a new acquisition and prior to execution all applicable provisions and procedures of this chapter [67-5714 through 67-5744] shall be exercised." (**NOTE:** This provision is **NOT** applicable to time purchase or installment purchase contracts).