

**CSU SOLICITATION PROVISIONS AND BIDDER CERTIFICATIONS
CRL 061**

INSTRUCTIONS

This form is provided to assist in the development of solicitations. This is not a mandatory form. Campuses may use their own form or procedure to transmit solicitation provisions and obtain the proper bidder certifications.

Campuses should modify this form as necessary, to comply with campus procurement procedures and the requirements of the solicitation.

The solicitation certifications below include all that have been identified as of the revision date. These certifications are those that are required at the time of bid submittal and do not include certifications required for contract execution.

I. SOLICITATION PROVISIONS

1. Definitions:

- (a) The Trustees of the California State University are referred to as “CSU” or “University.”
- (b) The terms “bid” and “proposal” are synonymous and means an offer made in response to a solicitation to perform a contract for work and labor or to supply goods at a specified price, whether or not it is considered a “seal bid” or results in award of a contract to a single or sole source.
- (c) “Bidder” or “Proposer” is used interchangeably and each shall apply to the business entity which submits a bid/proposal or is awarded a contract.

2. Preparation of Bids and Proposals:

- (a) Proposer shall carefully review all documents referenced and made a part of this solicitation to ensure that all information required to properly respond to the solicitation has been received or made available and all requirements are priced in the proposal. Failure to examine any document, drawing, specification, or instruction will be at the proposer’s sole risk.
- (b) All bids submitted, including electronic bids, must indicate unit prices for each separate line item quoted in addition to showing the totals. In case of discrepancy between the unit price and the extension set forth for the item, the unit price shall prevail; however, if the amount set forth as a unit price is ambiguous, unintelligible, or uncertain for any cause, or is omitted, the amount set forth in the "Extension" column shall be divided by the quantity for the item and the price thus obtained shall be the unit price. In case of discrepancy between the totals shown on the bid form and the actual sum of the item totals, the actual sum of all item totals shall prevail.

CSU SOLICITATION PROVISIONS AND BIDDER CERTIFICATIONS
CRL 061

- (c) Brand names: Any reference to brand names and numbers in the bid solicitation is intended to be descriptive, but not restrictive, unless otherwise specified. Bids on equivalent items meeting the indicated standards of quality will be considered, unless otherwise specified, providing the bid clearly describes the article offered and how it differs from the reference brands.

Unless the bidder specifies otherwise in the bid, it is understood that the bidder is offering a referenced brand item as specified in the bid solicitation. The CSU reserves the right to determine whether a substitute offer is equivalent to and meets the standards of quality indicated by the brand name references; the CSU may require a bidder offering a substitute to supply additional descriptive material and a sample.

- (d) Time of delivery (whether a commodity or a service) is a part of the bid and must be strictly observed. Time, if stated as a number of days, shall mean calendar days.
- (e) Bids shall be completed in all respects as required by this solicitation. A bid may be rejected if conditional or incomplete, or if it contains any alterations or other irregularities of any kind, and will be rejected if any such defect or irregularity could have materially changed the quality of the bid. Bids which contain false or misleading statements, or which provide references which do not support an attribute or condition claimed by the Bidder, may be rejected. If, in the opinion of the evaluation committee, such information was intended to erroneously and fallaciously mislead the CSU in its evaluation of the bid, and the attribute, condition, or capability is a requirement of this solicitation, the bid will be rejected. Statements made by a bidder shall also be without ambiguity, and with adequate elaboration, where necessary, for clear understanding.

The CSU reserves the right to request additional information which in the CSU's opinion is necessary to assure that the proposer's competence, experience, number of qualified employees, business organization and financial resources are adequate to perform according to contract.

3. Submission of Bids:

- (a) Whenever the CSU so designates, bids must be signed and sealed, with the bid number, bidder's name and address, and closing date, on the outside of the envelope.
- (b) Bids or partial bids, and modifications or corrections thereof received after the closing time specified may not be considered.

CSU SOLICITATION PROVISIONS AND BIDDER CERTIFICATIONS
CRL 061

- (c) The bidder is solely responsible for ensuring that the bid is delivered to the CSU prior to the date and time specified and in accordance with the solicitation requirements. The CSU shall not be responsible for any delays in mail delivery, including delay occasioned by the internal CSU mailing system, or transmission errors or delivery errors.
- 4. **Cancellation:** This solicitation does not obligate CSU to enter into an agreement. CSU reserves the right to cancel this solicitation at any time, should the project be canceled, CSU loses the required funding or it is deemed in the best interest of CSU. No obligation either expressed or implied, exists on the part of CSU to make an award or to pay any cost incurred in the preparation or submission of a bid.
- 5. **Bidder's Cost:** Costs for developing bids are entirely the responsibility of the bidder and shall not be chargeable to the CSU.
- 6. **Revisions in Bid Solicitation:** In the event a bidder believes that the CSU's bid solicitation is unfairly restrictive or has substantive errors or omissions in it, the matter must be promptly brought to the attention of the CSU's procurement office, either by telephone, telegraph, letter, or visit, immediately upon receipt of the bid solicitation, in order that the matter may be fully considered and appropriate action taken by the CSU prior to the closing time set for bids.
- 7. **Removal of Names from Bidders' List:** The CSU may remove the name of any vendor or contractor from its lists of potential bidders whenever the CSU has received no recent responses to its bid solicitations from that vendor or contractor.
- 8. **Award of Contracts:**
 - (a) Contracts will be made or entered into with (1) the lowest responsible bidder meeting specifications, (2) the bidder with the highest score attained at the end of a competitive evaluation process, or (3) as otherwise specified in the bid solicitation. The CSU reserves the right to determine the results of the prescribed evaluation process and the awardee.
 - (b) Where more than one item is specified in the bid solicitation, the CSU reserves the right to determine the low bidder either on the basis of individual items or on the basis of all items included in the bid solicitation.
 - (c) Unless the bidder specifies otherwise in the submitted bid, the CSU may accept any portion or group of items or services offered in the bid, or accept none of them at all.
 - (d) The CSU reserves the right to reject any or all bids and to waive informalities and minor irregularities in bids received.

**CSU SOLICITATION PROVISIONS AND BIDDER CERTIFICATIONS
CRL 061**

- (e) A CSU purchase order mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid solicitation results in a binding agreement without further action by either party. The binding agreement shall be interpreted, construed, and given effect in all respects according to the laws of the State of California.
9. Bid Evaluation Preferences: In evaluating bids, the CSU will give preferences in accordance with the law for suppliers who are a California certified Small Business. If the bidder claims preferences under the Enterprise Zone Act (EZA), Target Area Contract Preference Act (TACPA) and Local Agency Military Base Recovery Area Act (LAMBRA), the bidder must complete and return the appropriate forms incorporated in the solicitation. Preferences may also be given for bidders using recycle products in accordance with Public Contract Code Sections 10408 and 12150 et seq. Where multiple preferences are claimed, the CSU will verify eligibility for the preference(s) and evaluate and apply preference(s) in accordance with law and established procedures.
10. Disabled Veteran Business Enterprise Participation Requirement and Incentive: California state law requires that its state agencies achieve a goal of three (3) percent participation for disabled veteran business enterprises (DVBE) in state contracts. Failure of the Bidder to comply with the DVBE requirement will cause the Trustees to deem the bid nonresponsive and the Bidder to be ineligible for award of Contract. **[Note: the “Good Faith Effort (GFE)” is NOT an option to satisfy this requirement.]**
- (a) A “Disabled veteran business enterprise contractor, subcontractor, or supplier,” means any person or entity that has been certified by the Office of Small Business & DVBE Services and that performs a “commercially useful function,” in providing services or goods that contribute to the fulfillment of the contract requirements.
 - (b) In order to satisfy and be responsive to this requirement, the Bidder must meet the three (3) percent DVBE Participation Goal which is attained when:
 - (i) The Bidder is not a DVBE and is committed to use DVBEs for not less than three (3) percent of the Contract dollar amount; or
 - (ii) The Bidder is a DVBE and is committed to performing not less than three (3) percent of the Contract dollar amount with its own forces or in combination with those of other DVBEs.
 - (iii) Bidder has an approved CA State DVBE Utilization Plan on file with the CA State Department of General Services, Procurement Division.
 - (c) Documentation Requirements. The Bidder must document its satisfaction of the DVBE participation goal requirement on the forms in the Appendices. Final determination of DVBE Participation Goal Attainment by the Bidder shall be at the Trustees’ sole discretion.
 - (d) Use of Proposed DVBE. If awarded the Contract, the successful Bidder must use the DVBE suppliers and/or subcontractors proposed in its bid proposal unless it

**CSU SOLICITATION PROVISIONS AND BIDDER CERTIFICATIONS
CRL 061**

has requested substitution and has received approval of the Trustees in compliance with the Subletting and Subcontracting Fair Practices Act. See Article 4.04, Substitution of Subcontractors.

- (e) Trustees’ Reporting of DVBE Participation. Responsive to direction from the State Legislature, the Trustees are seeking to report increased statewide participation of DVBE in contract awards. To this end, the successful Bidder shall inform the Trustees of any contractual arrangements with subcontractors, consultants or suppliers that are certified DVBE.
- (f) Additional DVBE Information Sources. For more information regarding DVBE certification, copies of directories or for general DVBE information, contact:

State of California, Department of General Services, Procurement Division
 Small Business & DVBE Services Branch
 P.O. Box 989052, West Sacramento, CA 95798-9052 (mailing address)
 707 Third Street, First Floor, Room 400, West Sacramento, CA 95605 (physical address)
 Telephone number: (800) 559-5529 or (916) 375-4940
 Fax number: (916) 375-4950
 Email: osdchelp@dgs.ca.gov Internet www.pd.dgs.ca.gov/smbus.

- (g) Incentives: In accordance with Government Code section 14838(f), and Military and Veterans Code sections 999.5(a) and 999.5(d), the Trustees shall grant a bid incentive for bid evaluation purposes only to Bidders that exceed the three percent DVBE participation requirement. The level of DVBE incentive will correlate to the level of participation; that is, the more DVBE participation proposed, the higher the incentive. The combination of preferences (Small Business Preference, for example) with a DVBE incentive may not exceed ten percent or \$100,000, whichever is less. A non-small business cannot displace a California certified small business from the top ranked position due to application of preferences or incentive.

[Note to Campuses: The levels of DVBE Incentive are adjustable for individual solicitations, within allowed parameters—consult the campus DVBE Advocate. The following is standard, adjust as appropriate.]

DVBE Incentive Levels

The Trustees are granting a DVBE participation bid incentive for this project for bid evaluation purposes only. Bidder must exceed the three percent DVBE participation requirement in order to earn this incentive.

The bid incentives are as follows:

DVBE Participation	Incentive
4%	1%
6%	2%
8%	3%
10%	4%

CSU SOLICITATION PROVISIONS AND BIDDER CERTIFICATIONS CRL 061

For more information on DVBE participation for this solicitation, please contact:

[Note to Campuses: Insert Contact Information as Applicable; i.e., buyer, or the campus DVBE Advocate, etc.]

11. Financing of Acquisition: Bidder shall include within the contents of its bid or proposal the best financing alternatives it has to offer the CSU whenever the solicitation document expresses the CSU's desire to consider financing (including third-party possibilities) as an option.
12. Patent, Copyright, and Trade Secret Indemnity: A contractor may be required to furnish a bond to the CSU against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
13. Protests:
 - (a) Prior to Bid Opening - Potential bidders are afforded the opportunity to take exception to or "protest" the specifications and/or requirements of the bid solicitation. Such protests must be conveyed in writing to the CSU and also be resolved in writing by the CSU each within the timeframes specified, prior to the scheduled bid submittal deadline. However, any protests of specifications or requirements received after the deadline identified in the bid solicitation shall be considered untimely and shall be rejected. The CSU's decision on a protest is final.
 - (b) Prior to Contract award - If, prior to award of a contract, a protest is received in writing within the timeframe specified within the bid solicitation and filed on the grounds that the intended award is not in conformance with the specifications or requirements of the bid solicitation, the contract shall not be awarded until the protest has been withdrawn or a decision has been reached by the CSU. The CSU shall review the merits and timeliness of the protest and submit a decision in writing or otherwise furnish to the bidder the decision in such a manner as to ensure receipt. The CSU's decision on a protest is final.
14. Accommodations for the Disabled: It is the policy of the CSU to make every effort to ensure that its programs, activities and services are available to all persons, including persons with disabilities. Persons with a disability needing a reasonable modification to participate in the procurement process, or persons having questions regarding reasonable modifications for the procurement process may contact the buyer listed elsewhere in this solicitation.
15. Confidentiality: Final bids are public upon bid opening; however the contents of all proposals, drafts bids, correspondence, agenda, memoranda, working papers, or any other medium which discloses any aspect of a bidder's proposal shall be held in the strictest confidence until Notice of Intent to Award.

CSU SOLICITATION PROVISIONS AND BIDDER CERTIFICATIONS
CRL 061

The content of all working papers and discussions relating to the bidder's proposal shall be held confidential indefinitely unless the public interest is best served by an item's disclosure because of its direct pertinence to a decision, agreement or an evaluation of the bid.

II. BIDDER CERTIFICATIONS

By submitting a bid, the Bidder certifies to the following:

1. Americans With Disabilities Act (ADA): Contractor assures the CSU that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
2. Unfair Practices Act: Contractor warrants that its bid complies with the Unfair Practices Act (Business and Professions Code Section 17000 et seq.).
3. Violation of Air or Water Pollution Laws: Unless the contract is less than \$25,000.00 or with a sole-source provider, Government Code Section 4477 prohibits the State from contracting with a person, including a corporation or other business association, who has been determined to be in violation of any State or federal air or water pollution control law. By a proposal the Contractor warrants that the Contractor has not been found to be in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution district, or is subject to a cease and desist order not subject to review issued pursuant to Section 13310 of the Water Code for violation of waste discharge requirements or discharge prohibitions, or is finally determined to be in violation of provisions of federal laws relating to air or water pollution. By submitting a bid, the Bidder certifies that it has not been identified either by published notices or by Board notification as a person in violation of State or federal air or water pollution control laws.
4. Compliance with NRLB Orders: In submitting a bid or signing a contract the Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.
5. Assignment of Antitrust Actions: The bidder's attention is directed to the following provisions of Government Code Sections 4552, 4553, and 4554, which shall be applicable to the bidder:

CSU SOLICITATION PROVISIONS AND BIDDER CERTIFICATIONS CRL 061

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the procurement body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the procurement body pursuant to the bid. Such assignment shall be made and become effective at the time the procurement body tenders final payment to the bidder (Government Code Section 4552).

If an awarding body or public procurement body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery (Government Code Section 4553).

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action (Government Code Section 4554).

6. Noncollusion Affidavit: By submitting a bid, Bidder hereby certifies that the bid is not made in the interest of, or on behalf of, any undisclosed party; that the bid is genuine and not collusive, false, or sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid, and has not directly or indirectly agreed with any Bidder or anyone else to put in a false or sham bid, or to refrain from bidding; that the Bidder has not in any manner, directly or indirectly, sought to fix any overhead, profit or cost element of the bid, of that of any other Bidder, or to secure any advantage against the public body awarding the contract or anyone interested in the proposed contract.
7. Safeguards for confidential information: By submitting a bid, Bidder acknowledges Federal privacy laws such as Gramm-Leach-Bliley Act (Title 15, United States Code, Sections 6801(b) and 6805(b)(2)) applicable to financial transactions and Family Educational Rights and Privacy Act (Title 20, United States Code, Section 1232g) applicable to student records and information from student records. In the event that such information is required for the performance of the work specified, the Bidder hereby certifies that it has the appropriate safeguards in place as required by Title 16 Code of Federal Regulation Chapter 1 Section 314 et seq.
8. Covenant Against Gratuities: The Contractor shall warrant that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the CSU with a

CSU SOLICITATION PROVISIONS AND BIDDER CERTIFICATIONS
CRL 061

view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the CSU shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the CSU in procuring on the open market any items which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the CSU provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

9. **Public Contracts Code Restrictions For CSU Employees:** CSU employees and immediate past employees must comply with restrictions regarding contracting with the CSU. Bidder needs to be aware of the following provisions regarding current or former CSU employees. In submitting a bid, bidder certifies that the bidder is eligible to contract with the CSU pursuant to the Public Contracts Code (PCC) sections list below:

Current CSU Employees (PCC Section 10831):

- (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any CSU department through or by a CSU contract unless the employment, activity or enterprise is within the course and scope of the officer's or employee's regular CSU employment.
- (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any CSU department to provide goods or services.
- (c) This prohibition does not apply to officers or employees of the CSU with teaching or research responsibilities.

Former CSU Employees (PCC Section 10832):

- (a) For the two-year period from the date he or she left CSU employment, no former CSU officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any CSU department.
 - (b) For the twelve-month period from the date he or she left state employment, no former CSU officer or employee may enter into a contract with any CSU department if he or she was employed by that CSU department in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving CSU service.
10. In submitting a bid for electronic devices, as defined by the Electronic Waste Recycling Act of 2003, Part 3 Division 30 Chapter 8.5 of the Public Resource Code, the Bidder

CSU SOLICITATION PROVISIONS AND BIDDER CERTIFICATIONS
CRL 061

certifies that it, and its agents, subsidiaries, partners, joint venturers, and subcontractors for the procurement, have complied with the Electronic Waste Recycling Act of 2003 and any regulations adopted pursuant to the Act, or have demonstrated to the CSU that the Electronic Waste Recycling Act of 2003 is inapplicable to all lines of business engaged in by the bidder, its agents, subsidiaries, partners, joint venturers, or subcontractors. In addition the Bidder agrees to cooperate fully in providing reasonable access to its records and documents that evidence compliance with the Electronic Waste Recycling Act of 2003.