



ARIZONA DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT OFFICE

TECHNICAL BULLETIN No. 047

TITLE **Conformance to Solicitation Terms and Conditions**
REVISION **Number 1**
DATE **8/22/14**

I. Authority

A. Applicable Statute

- A.R.S. § 41-2511 Authority of the Director
- A.R.S. § 41-2512 Delegation of Authority by the Director
- A.R.S. § 41-2534 Competitive Sealed Proposals
- A.R.S. § 41-2585 Contract Clauses

B. Applicable Administrative Code

- A.A.C. R2-7-201 State Procurement Administrator; Duties and Qualifications
- A.A.C. R2-7-202 Delegation of Procurement Authority to State Governmental Units
- A.A.C. R2-7-C301 Solicitation
- A.A.C. R2-7-C311 Determination of Not Susceptible for Award
- A.A.C. R2-7-C313 Clarification of Offers
- A.A.C. R2-7-C314 Negotiations with Responsible Offerors and Revisions of Offers
- A.A.C. R2-7-C315 Final Proposal Revisions
- A.A.C. R2-7-601 Contract Clauses
- A.A.C. R2-7-606 Terms and Conditions

II. Definitions

- A. Agency Chief Procurement Officer. The procurement officer within a state governmental unit, who is acting under specific, written authority from the state procurement administrator in accordance with R2-7-202 or any person delegated that authority, in writing, under R2-7-203. The term does not include any other person within a state governmental unit who does not have this written delegation of authority.
- B. Contract Clause. A distinct article, stipulation, or provision written within a contract that imparts a contractual obligation.



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- C. Uniform Terms and Conditions. Standard contract clauses usually mandated by statute or rule and required for all state contracts.
- D. Special Terms and Conditions. Specific contract clauses that address contract performance requirements throughout the life cycle of the Contract.
- E. State Procurement Office. An office that acts under the authority delegated to the State Procurement Administrator as defined in R2-7-101 (50).
- F. State Governmental Unit. Any department, commission, council, board, bureau, committee, institution, agency, government corporation or official of the executive branch of this state.

III. Policy

- A. Purpose. The purpose of this policy is to ensure the standardized review of offerors' conformance to those terms and conditions contained in a request for proposal solicitation for which the offer was submitted.
- B. Background. In accordance with A.R.S. §41-2585, A.A.C. R2-7-601, and A.A.C. R2-7-C301E, State governmental units (the State) are required to include contractual terms and conditions in the solicitation to ensure the State's interests are addressed. These terms and conditions or contract clauses will govern a resultant contract. Offerors are expected to comply with included terms and conditions however, they may take exception to the terms and conditions contained in a solicitation as provided in the Uniform Instructions to Offerors. Additionally, in accordance with A.A.C. R2-7-C301E, the State is also required to include any specific criteria for determining responsibility or susceptibility of an offer. These criteria may also have an impact on an offer containing exceptions to included terms and conditions.
- C. Conformance Review. State governmental units may consider an offeror's exceptions to terms and conditions. This review shall be conducted in accordance with susceptibility criteria contained in the solicitation and identified in A.A.C. R2-7-C311. The State may address an offeror's exceptions through negotiation and best and final offer opportunities as permitted by the Arizona Procurement Code. If the State and the offeror fail to agree upon term and condition language that ensures the State's interests are met or causes the offer to be less advantageous to the State, the offeror shall be determined not susceptible for award.



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- D. **Mandatory Language.** Attachment 1 to this Technical Bulletin shall be added to the Special Instructions to Offerors of each request for proposal solicitation. Section A, titled *Responsibility, Responsiveness and Susceptibility* and Section B, titled *Evaluation* shall be incorporated in request for proposal solicitations. Specifically, the following language shall be included after the evaluation factors as listed in their relative order of importance:

"In addition to the evaluation criteria, exceptions to terms and conditions, as stated in the Uniform Instructions Section C.3, may impact an Offeror's susceptibility for award."

IV. **Effective**

This Technical Bulletin is hereby authorized and effective this 22nd day of August, 2014, unless otherwise revised or repealed.

A handwritten signature in blue ink, reading "Barbara M. Corella", written over a horizontal line.

Barbara M. Corella
State Procurement Administrator

This publication is not intended or represented to be the official record of laws and regulations covered under statutes, A.R.S. 41-2501 et. seq., and administrative rules and regulations A.A.C. R2-7-101 et. seq., that constitute the Arizona Procurement Code ("Code"). In the event of a discrepancy between this publication and applicable statute and rule, statute and rule shall prevail.

Attachment 1 - Additions to Special Instructions to Offerors

A. Responsibility, Responsiveness and Susceptibility

In accordance with A.R.S. 41-2534(G), A.A.C. R2-7-C311, A.A.C. R2-7-C312 and R2-7-C316, the State shall consider, at a minimum, the following criteria when determining Offeror's responsibility, as well, as the proposal's responsiveness and susceptibility for contract award.

1. Whether the Offeror has had a contract within the last five (5) years that was terminated for cause due to breach or similar failure to comply with the terms of the contract;
2. Whether the Offeror's record of performance includes factual evidence of failure to satisfy the terms of the Offeror's agreements with any party to a contract. Factual evidence may consist of documented vendor performance reports, customer complaints and/or negative references;
3. Whether the Offeror is legally qualified to contract with the State and the Offeror's financial, business, personnel, or other resources, including subcontractors;
 - 3.1 Legally qualified includes if the vendor or if key personnel have been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.
4. Whether the Offeror promptly supplied all requested information concerning its responsibility;
5. Whether the Offer was sufficient to permit evaluation by the State, in accordance with the evaluation criteria identified in this Solicitation or other necessary offer components. Necessary offer components include: attachments, documents or forms to be submitted with the offer, an indication of the intent to be bound, reasonable or acceptable approach to perform the Scope of Work, acknowledged Solicitation Amendments, references to include experience verification, adequacy of financial/business/personal or other resources to include a performance bond and stability including subcontractors and any other data specifically requested in the Solicitation;
6. Whether the Offer was in conformance with the requirements contained in the Scope of Work, Terms and Conditions, and Instructions for the Solicitation including its Amendments and all documents incorporated by reference;
7. Whether the Offer limits the rights of the State;
8. Whether the Offer includes or is subject to unreasonable conditions, to include conditions upon the State necessary for successful Contract performance. The State shall be the sole determiner as to the reasonableness of a condition;
9. Whether the Offer materially changes the contents set forth in the Solicitation, which includes the Scope of Work, Terms and Conditions, or Instructions; and,
10. Whether the Offeror provides misleading or inaccurate information.

B. Evaluation

In accordance with the Arizona Procurement code A.R.S. § 41-2534, awards shall be made to the responsible Offeror(s) whose proposal is determined in writing to be the most advantageous to the State based upon the evaluation criteria listed below. The evaluation factors are listed in their relative order of importance.

1. Evaluation Criteria 1
2. Evaluation Criteria 2
3. Evaluation Criteria 3
4. Evaluation Criteria 4

In addition to the evaluation criteria, exceptions to the terms and conditions, as stated in the Uniform Instructions Section C.3, may impact an Offeror's susceptibility for award.