

II. RULES GOVERNING COMPETITION

A. *Identification and Classification of RFP Requirements*

1. Requirements

The State has established certain requirements with respect to bids to be submitted by prospective contractors. The use of "shall," "must," or "will" (except to indicate simple futurity) in the RFP, indicates a requirement or condition which is mandatory. A material deviation exists when the Bidder's 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 bid,* amount paid to the supplier, or on the cost to the State. Material deviations cannot be waived.

2. Desirable Items

The words "should" or "may" in the RFP indicate desirable attributes or conditions, but are non-mandatory in nature. Deviation from, or omission of, such a desirable feature, even if material, will not in itself cause rejection of the bid¹.

B. *Bidding Requirements and Conditions*

1. General

This RFP, the evaluation of responses, and the award of any resultant contract shall be made in conformance with current competitive bidding procedures as they relate to the procurement of goods and services by public bodies in the State of California. A Bidder's Final Bid is an irrevocable offer for 180 days following the scheduled date for contract award specified in Section I. A Bidder may extend the offer in the event of a delay of contract award.

2. RFP Documents

This RFP includes, in addition to an explanation of the State's needs, which must be met, instructions which prescribe the format and content of bids to be submitted and the model(s) of the contract(s) to be executed between the State and the successful bidder(s).

If a Bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Bidder shall immediately notify the Department Official identified

¹ If this solicitation document is an RFP, the word "bid" as used throughout is intended to mean "proposed," "propose" or "proposal" as appropriate.

in Section I of such error in writing and request clarification or modification of the document.

Modifications will be made by addenda issued pursuant to Paragraph B-7, Addenda, below. Such clarifications shall be given by written notice to all parties who have identified themselves as Bidders to the Department Official identified in Section I, without divulging the source of the request for same. Insofar as practicable, the State will give such notices to other interested parties, but the State shall not be responsible therefore.

If the RFP contains an error known to the bidder, or an error that reasonably should have been known, the bidder shall bid at its own risk. If the bidder fails to notify the State of the error prior to the date fixed for submission of bids, and is awarded the contract, the bidder shall not be entitled to additional compensation or time by reason of the error or its later correction.

3. 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 to the bidder, 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. Specific conditions to be examined may be listed in the RFP section on ADMINISTRATIVE REQUIREMENTS and/or the section on TECHNICAL REQUIREMENTS.

4. Questions Regarding the RFP

Bidders requiring clarification of the intent or content of this RFP or on procedural matters regarding the competitive bid process may request clarification by submitting questions, in an email or envelope clearly marked "Questions Relating to RFP RDS-2660-421", to the Procurement Official listed in Section I. To ensure a response, questions must be received in writing by the scheduled date(s) given in Section I. Question and answer sets will be provided to all bidders without identifying the submitters. At the sole discretion of the State, questions may be paraphrased by the State for clarity.

A bidder who desires clarification or further information on the content of the RFP, but whose questions relate to the proprietary aspect of that bidder's proposal and which, if disclosed to other bidders, would expose that bidder's proposal, may submit such questions in the same manner as above, but also marked "CONFIDENTIAL," and not later than the scheduled date specified in Section I to ensure a response. The bidder must explain why any questions are sensitive 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 proprietary aspect of the question, the question will not be answered in this manner and the bidder will be so notified.

If the bidder believes that one or more of the RFP requirements is onerous, unfair, or imposes unnecessary constraints to the bidder in proposing less costly or alternate solutions, the bidder may request a change to the RFP by submitting, in writing, the recommended change(s) and the facts substantiating this belief and reasons for making the recommended change. Such request must be submitted to the Department Official by the date specified in Section I for submitting a request for change. **Oral answers shall not be binding on the State.**

5. Bidders' Conference – NOT APPLICABLE FOR THIS RFP
6. Supplier's Intention to Submit a Bid

Suppliers who want to participate in the bidding process are asked to state their intention by the date specified in Section I, with respect to submission of bids. The State is also interested as to a supplier's reasons for not submitting a bid; as, for example, requirements that cannot be met or unusual terms and conditions, which arbitrarily raise costs. Suppliers are asked to categorize their intent as follows:

- a. Intends to submit a bid and has no problem with the RFP requirements.
- b. Intends to submit a bid, but has one or more problems with the RFP requirements for reasons stated in this response.
- c. Does not intend to submit a bid, for reasons stated in this response, and has no problem with the RFP requirements.
- d. Does not intend to submit a bid because of one or more problems with the RFP requirements for reasons stated in this response.

If a supplier intends to submit a bid, the letter should include additional information identified in Section I. If suppliers have 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 interest, and will amend the RFP if appropriate. All suppliers who have submitted an intention will be advised by the State of any actions taken as a result of the suppliers' responses. If after such actions, a supplier determines that the requirements of the RFP unnecessarily restrict its ability to bid, the supplier is allowed five working days to submit a protest to those RFP requirements or the State's action, according to the instructions contained in paragraph E.1 of this section.

Hereafter, for the purposes of the instructions of this RFP, all suppliers who have indicated their intent to submit a Final Bid are called bidders until such time that the bidder withdraws or other facts indicate that the bidder has become nonparticipating. Should a bidder not participate in a bid step, the State reserves the right to drop them from the participating bidder list and they will not receive any further correspondence until they contact the Department Official to indicate that they would like further correspondence.

7. Addenda

The State may modify the RFP prior to the date fixed for Contract Award by issuance of an addendum to all bidders who are participating in the bidding process at the time the addendum is issued, unless the amendments are such as to offer the opportunity for nonparticipating bidders or supplies that submitted an intention to become participating, in which case the addendum will also be sent to those parties. Addenda will be numbered consecutively. If any supplier determines that an addendum unnecessarily restricts its ability to bid, the supplier is allowed five working days to submit a protest to the addendum according to the instructions contained in Paragraph E.1 of this section.

8. Plastic Trash Bag Certification Violations

Public Resources Code Section 42290 et seq. prohibits the State from contracting with any supplier, manufacturer, or wholesaler, and any of its divisions, subsidiaries, or successors that have been determined to be noncompliant to the recycled content plastic trash bag certification requirements. This includes award of a State contract or subcontract or renewal, extension, or modification of an existing contract or subcontract. Prior to award the State shall ascertain if the intended awardee or proposed subcontractor is a business identified on the current California Integrated Waste Management Board noncompliant list(s). In the event of any doubt of the status or identity of the business in violation, the State will notify the Board of the proposed award and afford the Board the opportunity to advise the State. No award will be made when either the bidder or a subcontractor has been identified either by published list or by advice from the Board, to be in violation of certification requirements.

9. Bonds

The State reserves the right to require a faithful performance bond or other security document as specified in the RFP from the supplier in an amount not to exceed the amount of the contract. In the event a surety bond is required by the State, which has not been expressly required by the specification, the State will reimburse the supplier, as an addition to the purchase price, in an amount not exceeding the standard premium on such bond.

10. Discounts

In connection with any discount offered, except when provision is made for a testing period preceding acceptance by the State, time will be computed from date of delivery of the supplies or equipment as specified, or from date correct invoices are received in the office specified by the State if the latter date is later than the date of delivery. When provision is made for a testing period preceding acceptance by the State, date of delivery shall mean the date the supplies or equipment are accepted by the State during the specified testing period. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing the State warrant or check.

Cash discounts offered by bidders for the prompt payment of invoices will not be considered in evaluating offers for award purposes; however, all offered discounts will be taken if the payment is made within the discount period, even though not considered in the evaluation of offers.

11. Joint Bids

A joint bid (two or more bidders quoting jointly on one bid) may be submitted and each participating bidder must sign the joint bid. If the contract is awarded to joint bidders, it shall be one indivisible contract. Each joint contractor will be jointly and severally responsible for the performance of the entire contract, and the joint bidders must designate, in writing, one individual having authority to represent them in all matters relating to the contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint contractors.

12. Air or Water Pollution Violations

Unless the contract is less than \$25,000 or with a non-competitively bid contractor, 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.

Prior to an award, the State shall ascertain if the intended awardee is a person included in notices from the Boards. In the event of any doubt of the intended awardee's identity or status as a person who is in violation of any state or federal air or water pollution law, the State will notify the appropriate Board of the proposed award and afford the Board the opportunity to advise the Department that the intended awardee is such a person.

No award will be made to a person who is identified either by the published notices or by advice, as a person in violation of state or federal air or water pollution control laws.

13. Fair Employment and Housing Commission Regulations

The California Government Code Section 12990 requires all State contractors 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 contractors to ensure their compliance with the law. DFEH periodically disseminates a list of suppliers who have not complied. Any supplier so identified is ineligible to enter into any State contract.

14. Exclusion for Conflict of Interest

No consultant shall be paid out of State funds for developing recommendations on the acquisition of information technology (IT) products or services or assisting in the preparation of a feasibility study, if that consultant is to be a source of such acquisition or could otherwise directly and/or materially benefit from State adoption of such recommendations or the course of action recommended in the feasibility study. Further, no consultant shall be paid out of State funds for developing recommendations on the disposal of State surplus IT products, if that consultant would directly and/or materially benefit from State adoption of such recommendations.

15. Seller's Permit

This RFP is subject to all requirements set forth in Sections 6452, 6487, 7101 and 18510 of the Revenue and Taxation Code, and Section 10295 of the Public Contract Code, requiring suppliers to provide a copy of their retailer's seller's permit or certification of registration, and, if applicable, the permit or certification of all participating affiliates issued by the State of California's Board of Equalization. Unless otherwise specified in this RFP, a copy of the retailer's seller's permit or certification of registration, and, if applicable, the permit or certification of all participating affiliates, must be submitted within five State business days of the State's request. Failure of the supplier to comply by supplying the required documentation will cause the supplier's bid to be considered non-responsive and the bid rejected.

16. Disclosure of Financial Interests

Proposals in response to State procurements for assistance in preparation of feasibility studies or the development of recommendations for the acquisition of IT products and services must disclose any financial interests (i.e., service contract, Original Equipment Manufacturer (OEM) agreements, remarketing agreements, etc.) that may potentially allow the individual or organization submitting the proposal to materially benefit from the State's adoption of a course of action recommended in the feasibility study or the acquisition recommendations. If, in the State's judgment, the financial interest will

jeopardize the objectivity of the recommendations, the State may reject the proposal.

17. Unfair Practices Act and Other Laws

Bidder warrants that its bid complies with the Unfair Practices Act (Business and Professions Code Section 17000 et seq.) and all applicable State and Federal laws and regulations.

C. Bidding Steps

1. General

The procurement process to be used in this acquisition is composed of at least one phase of bid development. **REFER TO SECTION I TO DETERMINE WHICH PHASES AND STEPS ARE INCLUDED IN THIS RFP. REFERENCES IN THIS SECTION II TO STEPS NOT INCLUDED IN SECTION I ARE NOT APPLICABLE TO THIS RFP.** There is always a Final Phase, which may include a Draft Bid and revisions, and will always include a Final Bid. Prior to the Final Phase, there may be a Compliance Phase. The possible steps of the Compliance Phase are a Conceptual Proposal, Detailed Technical Proposal and revisions of either or both. A description of these phases and their steps follows.

The Final Bid is a mandatory step for all bidders; all other steps are optional. However, all bidders are strongly encouraged to follow the scheduled steps of this procurement to increase the chance of submitting a compliant Final Bid. **Cost submitted in any submission other than the Final Bid may preclude the bidder from continuing in the process.**

2. Compliance Phase – NOT APPLICABLE FOR THIS RFP

3. Final Phase

The purpose of the Final Phase is to obtain bids that are responsive in every respect. This phase may include a Draft Bid and will always include a Final Bid, as described below:

a. Draft Bid

The purpose of the Draft Bid is to provide the State with an "almost final" bid in order to identify any faulty administrative aspect of the bid which, if not corrected, could cause the Final Bid to be rejected for ministerial reasons.

The Draft Bid should correspond to submittals and agreements of the Compliance Phase, if required, and must be complete in every respect as required by the RFP section on PROPOSAL FORMAT, except cost. **The**

inclusion of cost information in the Draft Bid may be a basis for rejecting the bid and notifying the bidder that further participation in the procurement is prohibited.

REVIEW OF THE DRAFT BID BY THE STATE MAY INCLUDE CONFIDENTIAL DISCUSSIONS WITH INDIVIDUAL BIDDERS AND WILL PROVIDE FEEDBACK TO THE BIDDER PRIOR TO SUBMITTAL OF THE FINAL PROPOSAL. IF NO SUCH DISCUSSION STEP IS INCLUDED IN THE KEY ACTION DATES THEN THE REVIEW OF THE DRAFT BID DOES NOT INCLUDE ANY ASSESSMENT OF THE BID'S RESPONSIVENESS TO THE TECHNICAL REQUIREMENTS OF THE RFP. Regardless of the inclusion of a confidential discussion, the State will notify the bidder of any defects it has detected in the Draft Bid, or of the fact that it did not detect any such defects. Such notification is intended to minimize the risk that the Final Bid will be deemed defective; however, THE STATE WILL NOT PROVIDE ANY WARRANTY THAT ALL DEFECTS HAVE BEEN DETECTED AND THAT SUCH NOTIFICATION WILL NOT PRECLUDE REJECTION OF THE FINAL BID IF SUCH DEFECTS ARE LATER FOUND.

If the State finds it necessary, the State may call for revised Draft Bid submittals, or portions thereof. The bidder will be notified of defects discovered in these submittals as well. Again THE STATE WILL NOT PROVIDE ANY WARRANTY THAT ALL DEFECTS HAVE BEEN DETECTED AND THAT SUCH NOTIFICATION WILL NOT PRECLUDE REJECTION OF THE FINAL BID IF SUCH DEFECTS ARE LATER FOUND.

b. Final Bid

The Final Bid must be complete, including all cost information, required signatures, contract language changes agreed to in writing and corrections to those defects noted by the State in its review of the Draft Bid. If required in the RFP section PROPOSAL FORMAT, cost data (as identified in the above referenced section) must be submitted under separate, sealed cover. CHANGES THAT APPEAR IN THE FINAL BID, OTHER THAN CORRECTION OF DEFECTS, INCREASE THE RISK THAT THE FINAL BID MAY BE FOUND DEFECTIVE.

4. Confidentiality

FINAL BIDS ARE PUBLIC UPON OPENING; HOWEVER, THE CONTENTS OF ALL PROPOSALS, DRAFT 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.

BIDDERS SHOULD BE AWARE THAT MARKING A DOCUMENT "CONFIDENTIAL" OR "PROPRIETARY" IN A FINAL BID MAY EXCLUDE IT FROM CONSIDERATION FOR AWARD AND WILL NOT KEEP THAT DOCUMENT FROM BEING RELEASED AFTER NOTICE OF INTENT TO AWARD AS PART OF THE PUBLIC RECORD, UNLESS A COURT HAS ORDERED THE STATE NOT TO RELEASE THE DOCUMENT. THE CONTENT OF ALL WORKING PAPERS AND DISCUSSIONS RELATING TO THE BIDDER'S PROPOSAL SHALL BE HELD IN CONFIDENCE INDEFINITELY UNLESS THE PUBLIC INTEREST IS BEST SERVED BY AN ITEM'S DISCLOSURE BECAUSE OF ITS DIRECT PERTINENCE TO A DECISION, AGREEMENT OR THE EVALUATION OF THE BID. ANY DISCLOSURE OF CONFIDENTIAL INFORMATION BY THE BIDDER IS A BASIS FOR REJECTING THE BIDDER'S PROPOSAL AND RULING THE BIDDER INELIGIBLE TO FURTHER PARTICIPATE. ANY DISCLOSURE OF CONFIDENTIAL INFORMATION BY A STATE EMPLOYEE IS A BASIS FOR DISCIPLINARY ACTION, INCLUDING DISMISSAL FROM STATE EMPLOYMENT, AS PROVIDED BY GOVERNMENT CODE SECTION 19570 ET SEQ. TOTAL CONFIDENTIALITY IS PARAMOUNT; IT CANNOT BE OVER EMPHASIZED.

5. Submission of Proposals and Bids

The instructions contained herein apply to the Final Bid. They also apply to the Conceptual Proposal, Detailed Technical Proposal, and Draft Bid, except as noted.

a. Preparation

Proposals and bids are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. EMPHASIS SHOULD BE CONCENTRATED ON CONFORMANCE TO THE RFP INSTRUCTIONS, RESPONSIVENESS TO THE RFP REQUIREMENTS, AND ON COMPLETENESS AND CLARITY OF CONTENT.

As stated above, the State's evaluation of Conceptual and Detailed Technical Proposals is preliminary, and the review of Draft Bids is cursory. Therefore, bidders are cautioned to not rely on the State, during these evaluations and reviews, to discover and report to the bidders all defects and errors in the submitted documents. Before submitting each document, the bidder should carefully proof it for errors and adherence to the RFP requirements.

b. Bidder's Cost

Costs for developing proposals and bids are the responsibility entirely of the bidder and shall not be chargeable to the State.

c. Completion of Proposals and Bids

Proposals and bids must be complete in all respects as required by the RFP section on PROPOSAL FORMAT. A Final Bid may be rejected if it is conditional or incomplete, or if it contains any alterations of form or other irregularities of any kind. A Final Bid must be rejected if any such defect or irregularity constitutes a material deviation from the RFP requirements. The Final Bid must contain all costs required by the RFP sections on COST and PROPOSAL FORMAT, setting forth a unit price and total price for each unit price item, and a total price for each lump sum price item in the schedule, all in clearly legible figures. If required in the RFP section PROPOSAL FORMAT, cost data (as identified in the above referenced section) must be submitted under separate, sealed cover. Draft Bids must contain all information required in the Final Bid **except cost.** Exhibit II-A entitled COMPETITIVE BIDDING AND BID RESPONSIVENESS emphasizes the requirements of competitive bidding and contains examples of common causes for rejection of bids. Bidders are encouraged to review this exhibit.

d. False or Misleading Statements

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 State, such information was intended to mislead the State in its evaluation of the bid, and the attribute, condition, or capability is a requirement of this RFP, it will be the basis for rejection of the bid.

e. Signature of Bid

A cover letter (which shall be considered an integral part of the Final Bid) and Standard Agreement Form 213 (if directed in Appendix A, CONTRACTS TO BE SUBMITTED IN THE PROPOSAL), or a Bid Form shall be signed by an individual who is authorized to bind the bidding firm contractually. The signature block must indicate the title or position that the individual holds in the firm. An unsigned Final Bid shall be rejected.

The Draft Bid must also contain the cover letter and Form 213, or Bid Form, similarly prepared, including the title of the person who will sign, but need not contain the signature. The Conceptual Proposal and Detailed Technical Proposal need not contain the cover letter and Form 213, or Bid Form.

f. Delivery of Proposals and Bids

Mail or deliver proposals and bids to the Department Official listed in Section I. If mailed, it is suggested that you use certified or registered mail with return receipt requested as delivery of documents is at the bidder's own risk of untimely delivery, lost mail, etc.

Proposals and bids must be received in the number of copies stated in the RFP section on PROPOSAL FORMAT and not later than the dates and times specified in Section I and in the individual schedules provided the bidders. One copy must be clearly marked "Master Copy." All copies of proposals and bids must be under sealed cover which is to be plainly marked "CONCEPTUAL PROPOSAL," "DETAILED TECHNICAL PROPOSAL," "DRAFT BID," or "FINAL BID" for "RFP RDS-2660-421". Also, the sealed cover (envelope) of all submittals, except the Final Bid, should be clearly marked "CONFIDENTIAL," and shall state the scheduled date and time for submission. Bidders should be aware that marking the Final Bid "confidential" or "proprietary" may exclude it from consideration for award. Proposals and Draft Bids not submitted under sealed cover will be returned for sealing. Final Bids not received by the date and time specified in Section I, or not sealed, will be rejected.

If required in the RFP section PROPOSAL FORMAT, all cost data (as identified in the above referenced section) must be submitted under separate, sealed cover and clearly marked "COST DATA." If cost data is required to be submitted separately sealed, and is not submitted in this manner, the bid will be rejected.

Proposals and bids submitted under improperly marked covers may be rejected. If discrepancies are found between two or more copies of the proposal or bid, the proposal or bid 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 Bid is not clearly marked "Master Copy," the State may reject the bid; however, the State may at its sole option select, immediately after bid opening, one copy to be used as the Master Copy.

g. Withdrawal and Resubmission/Modification of Proposals and Bids

A bidder may withdraw its Conceptual Proposal, Detailed Technical Proposal or Draft Bid at any time by written notification. A bidder may withdraw its Final Bid at any time prior to the bid submission date and time specified in Section I by submitting a written notification of withdrawal signed by the bidder authorized in accordance with Paragraph C.5.e, Signature of Bid. The bidder may thereafter submit a new or modified bid prior to such bid submission date and time. Modification offered in any

other manner, oral or written, will not be considered. Other than as allowed by law, Final Bids cannot be changed or withdrawn after the date and time designated for receipt, except as provided in Paragraph 7.d. of this section.

6. Rejection of Bids

The State may reject any or all bids and may waive any immaterial deviation or defect in a bid. The State's waiver of any immaterial deviation or defect shall in no way modify the RFP documents or excuse the bidder from full compliance with the RFP specifications if awarded the contract.

7. Evaluation and Selection Process

a. General

Proposals and bids will be evaluated according to the procedures contained in the RFP section on EVALUATION AND SELECTION. Special instructions and procedures apply to Conceptual Proposals, Detailed Technical Proposals, and Draft Bids.

b. Evaluation Questions

During the evaluation and selection process, the State may desire the presence of a bidder's representative for answering specific questions, orally and/or in writing. During the evaluation of Final Bids, the State may ask the bidder to clarify their submitted information but will not allow the bidder to change their bid.

c. Demonstration

This procurement will require a demonstration of the bidder's response to specific requirements (including benchmark requirements) before final selection in order to verify the claims made in the bid, corroborate the evaluation of the bid, and confirm that the hardware and software are actually in operation. The date and location of the demonstration will be determined by Caltrans and prior notice will be given. The State reserves the right to determine whether or not a demonstration has been successfully passed. See Section X for additional information.

d. Errors in the Final Bid

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

In determining if a correction will be made, the State will consider the conformance of the bid to the format and content required by the RFP,

and any unusual complexity of the format and content required by the RFP.

- i. If the bidder's intent is clearly established based on review of the complete Final Bid submittal, the State may at its sole option correct an error based on that established intent.
- ii. The State may at its sole option correct obvious clerical errors.
- iii. 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 bid submittal the Master Copy shall have priority over additional copies, the bid 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.
- iv. 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 bid submittal.
 - (a) If an item is described in the narrative and omitted from the contract and cost data provided in the bid for evaluation purposes, it will be interpreted to mean that the item will be provided by the bidder at no cost.
 - (b) If a minor item is not mentioned at all in the Final Bid and is essential to satisfactory performance, the bid will be interpreted to mean that the item will be provided at no cost.
 - (c) If a major item is not mentioned at all in the Final Bid, the bid will be interpreted to mean that the bidder does not intend to supply that item.
 - (d) If a major item is omitted, and the omission is not discovered until after contract award, the bidder shall be required to supply that item at no cost.

The determination of whether an item is minor or major is the responsibility of the State.

- 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 bid, or at its sole option, re-compute such costs based on instructions contained in the RFP.

If the re-computations or interpretations, as applied in accordance with this section, subparagraph d, 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 bid.

IT IS ABSOLUTELY ESSENTIAL THAT BIDDERS CAREFULLY REVIEW THE COST ELEMENTS IN THEIR FINAL BID, SINCE THEY WILL NOT HAVE THE OPTION TO CORRECT ERRORS AFTER THE TIME FOR SUBMITTAL.

- vi. In the event an ambiguity or discrepancy between the general requirements described in Section IV and the specific technical requirements set forth in Section VI is detected after the opening of bids, Section VI, and the bidder's response thereto, shall have priority over Section IV, and the bidder's response thereto. Refer to Paragraph B.2 regarding immediate notification to State contact when ambiguities, discrepancies, omissions, etcetera are discovered.
- vii. At the State's sole discretion it may declare the Final Bid to be a Draft Bid in the event that the State determines that Final Bids from all bidders contain material deviations. Bidders may not protest the State's determination that all bids have material deviations. If all bids are declared noncompliant, the State may issue an addendum to the RFP. Should this occur, confidential discussions will be held with bidders who are interested in continuing to be considered. Each bidder will be notified of the due date for the submission of a new Final Bid to the State. This submission must conform to the requirements of the original RFP as amended by any subsequent addenda. The new Final Bids will be evaluated as required by Section IX.

8. Award of Contract(s)

Award of contract(s), if made, will be in accordance with the RFP Section IX, to a responsible bidder whose Final Bid complies with all the requirements of the RFP documents and any addenda thereto, except for such immaterial defects as may be waived by the State. Award, if made, will be made within 180 days after the scheduled date for Contract Award specified in Section I; however, a bidder may extend the offer beyond 180 days in the event of a delay of contract award.

The State reserves the right to determine the successful bidder(s) either on the basis of individual items or on the basis of all items included in its RFP, unless otherwise expressly provided in the State's RFP. Unless the bidder specifies otherwise in its bid, the State may accept any item or group of items of any bid. The State reserves the right to modify or cancel, in whole or in part, its RFP.

Written notification of the State's intent to award will be made to all bidders submitting a Final Bid. If a bidder, having submitted a Final Bid, can show that its bid, instead of the bid selected by the State, should be selected for contract award according to the rules of Paragraph C.7, the bidder will be allowed one working day to submit a protest to the Intent to Award, according to the instructions contained in Paragraph E.1 of this section.

9. 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 Bid. A debriefing is not the forum to challenge the RFP specifications or requirements.

D. Contractual Information

1. Contract Form

The State has model contract forms to be used by State agencies when contracting for information technology (IT) goods and services. The model contract(s) appropriate for the specific requirements of this RFP are included in the RFP.

2. Specific Terms and Conditions – NOT APPLICABLE FOR THIS RFP

3. Approval of Proposed Contract – NOT APPLICABLE FOR THIS RFP

4. Term of Contract

The State intends to retain the required goods and services for at least the period specified elsewhere in this RFP. Ideally, the term of the contract will be for the specified period. If the State requires the contract to be terminated during the contract period, such a requirement will be specified in the RFP Section V, Administrative Requirements. The State will accept a contract for a longer period than specified if, at the sole option of the State, the contract may be terminated at the end of the period specified with or without the payment of termination charges. Such termination charges, if any, must be included in the evaluated cost of the bid.

E. Other Information

1. Protests

Before a protest is submitted regarding any issue other than selection of the "successful bidder," the bidder must make full and timely use of the procedures described in this Section II to resolve any outstanding issue(s) between the bidder and the State. The procurement procedure is designed to give the bidder and the State adequate opportunity to submit questions and discuss the requirements, proposals and counter proposals before the Final Bid is due. The protest procedure is made available in the event that a bidder cannot reach a fair agreement with the State after exhausting these procedures. There two types of protests: requirements (initial) protests and award protests. A protest shall be

submitted according to the procedure below. Protests regarding any issue other than selection of the "successful bidder" are requirements protests and will be heard and resolved by the Deputy Director of the Department of General Services, Procurement Division, whose decision will be final.

An award protest is where a bidder has submitted a bid, which it believes to be totally responsive to the requirements of the RFP and to be the bid that should have been selected according to the evaluation procedure in the Section IX, Evaluation and Selection, and the bidder believes the State has incorrectly selected another bidder for award.

IMPORTANT NOTICE TO ALL BIDDERS: This solicitation/acquisition is being conducted under the provisions of the Alternative Protest Process Project (Public Contract Code Section 12125, et seq.) By submitting a bid or proposal to this solicitation, the Bidder consents to participation in the Alternative Protest Process Project, and agrees that all protests of the proposed award shall be resolved by binding arbitration pursuant to the California Code of Regulations, Title 1, Division 2, Chapter 5 (Exhibit II-B). The link to the regulations is:

<http://www.oah.dgs.ca.gov/Laws/bidprotestRegs.htm#1400>

During the protest period, any participating Bidder may protest the proposed award on the following grounds:

- a. For major information technology acquisitions – that there was a violation of the solicitation procedure(s) and that the protesting Bidder's bid should have been selected; or
- b. For any other acquisition – that the protesting Bidder's bid or proposal should have been selected in accordance with the selection criteria in the solicitation document.

Submit Notice of Intent to Protest to the Coordinator at:

Alternative Protest Process Coordinator
Dispute Resolution Unit
Department of General Services
Procurement Division
707 Third Street, 2nd Floor
West Sacramento, CA 95605
Voice: (916) 375-4652
Fax: (916) 375-4611

A Notification of Intent to Award for this solicitation will be publicly posted in the Procurement Division reception area, posted to the California State Contracts

Registry and sent via facsimile to any Bidder who made a written request for notice and provided a facsimile number.

A written Notice of Intent to Protest the proposed award of this solicitation must be received (facsimile acceptable) by the Coordinator before the close of business 5 p.m. PST/PDT on the 1st day following public posting. Failure to submit a timely, written Notice of Intent to Protest waives Bidder's right to file a protest.

Within seven working days after the last day to submit a Notice of Intent to Protest, the Coordinator must receive from the protesting Bidder, the complete protest filing to include the detailed written statement of protest, filing fee and deposit, or small business certification as applicable. Untimely submission of the complete protest filing waives the Bidder's right to protest.

Bidder is to send the detailed statement of protest to:

Alternative Protest Process Coordinator
Dispute Resolution Unit, Procurement Division
Department of General Services
707 Third Street, 2nd Floor
West Sacramento, CA 95605

This award is being made under the provisions of Public Contract Code Section 12125 et seq., the Alternative Protest Process, and is subject to protest after award. Under the terms of this contract, the State reserves the right to terminate the contract for convenience.

Protest bond requirement: Bond amount for this Alternative Protest Process Project shall be ten percent of the estimated contract value. See California Code of Regulations, Title 1, and Section 1418 in Exhibit II-B.

All protests must be made in writing, signed by an individual authorized under Paragraph C.5.e, Signature of Bid, and contain a statement of the reason(s) for protest; citing the law, rule, regulation or procedures on which the protest is based. The protester must provide facts and evidence to support the claim. Protests must be mailed or delivered to:

Street Address:

Jim Butler, Deputy Director
Procurement Division
707 Third Street, 2nd Floor
West Sacramento, CA 95605

Mailing Address:

Jim Butler, Deputy Director
Procurement Division
P.O. Box 989052
Sacramento, CA 95798-9052

All protests to the RFP requirements or procedures must be received by the Deputy Director of the Procurement Division as promptly as possible, but not

later than the respective time and date in the Key Action Dates in Section I for such protests. Protests concerning the evaluation, recommendation, or other aspects of the selection process must be received by the Deputy Director of the Procurement Division as promptly as possible, but not later than the respective time and date specified in Section I, Introduction and Overview of Requirements, for such protests or the respective date of the Notification of Intent to Award, whichever is later. Certified or registered mail should be used unless delivered in person, in which case the protester should obtain a receipt of delivery.

2. Disposition of Proposals and Bids

All materials submitted in response to this RFP will become the property of the State of California and will be returned only at the State's option and at the bidder's expense. At a minimum, the Master Copy of the Final Bid shall be retained for official files and will become a public record after the Notification of Intent to Award as specified in Section I, Introduction and Overview of Requirements – Key Action Dates. However, materials the State consider confidential information (such as confidential financial information submitted to show bidder responsibility) will be returned upon request of the bidder.

3. Contacts for Information

Bidders may contact the Procurement Official listed in Section I, for visits to the physical installation for purposes of familiarization and evaluation of the current processes. Visits shall be made by appointment only, during normal business hours, and will be limited to the Procurement Official or the Contact's designee. Visits shall be permitted to the extent that they do not unduly interfere with the conduct of State business.

Oral communications of department officers and employees concerning this RFP shall not be binding on the State and shall in no way excuse the bidder of any obligations set forth in this RFP.

4. Loss Leader

It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.

Exhibit II-A: Competitive Bidding and Bid Responsiveness

The purpose of competitive bidding is to secure public objectives in the most effective manner and avoid the possibilities of graft, fraud, collusion, etc. Competitive bidding is designed to benefit the public body (the State, in the present context), and is not for the benefit of the bidders. It is administered to accomplish its purposes with sole reference to the public interest. It is based upon full and free bidding to satisfy State specifications, and acceptance by the State of the most effective solution to the State's requirements, as determined by the evaluation criteria contained in the RFP.

Competitive bidding is not defined in any single statute but is more in the nature of a compendium of numerous court decisions. From such court decisions, the following rules have evolved, among others:

1. Request for Proposals must provide a basis for full and fair competitive bidding among bidders on a common standard, free of restrictions tending to stifle competition.
2. The State may modify the RFP, prior to the date fixed for Contract Award, by issuance of an addendum to all parties who are bidders.
3. To have a valid bid, the bid must respond and conform to the invitation, including all the documents which are incorporated therein. A bid which does not literally comply may be rejected.
4. For a variance between the request for bids and the bid to be such as to preclude acceptance (the bid must be rejected), the variance or deviation must be a material one.
5. State agencies usually have the express or implied right to reject any and all bids in the best interests of the State. Bids cannot, however, be selectively rejected without cause.
6. Bids cannot be changed after the time designated for receipt and opening thereof. Other than allowed by law, no negotiation as to the scope of the work, amount to be paid, or contractual terms is permitted. However, this does not preclude the State from clarifying the bidder's intent by asking questions and considering answers.
7. A competitive bid, once opened and declared, is in the nature of an irrevocable option and a contract right of which the public agency cannot be deprived without its consent, unless the requirements for rescission are present. All bids become public documents.

8. Bids cannot be accepted "in part," unless the invitation specifically permits such an award.
9. Contracts entered into through the competitive bidding process cannot later be amended, unless the Invitation for Bids includes a provision, to be incorporated in the contract awarded, providing for such amendment.

Exhibit II–A (Continued)

Since competitive procurement became the required method for securing certain IT goods or services, the State has received a number of bids which were deemed to be non-responsive to the Invitation for Bids or which could not be considered as valid bids within the competitive bidding procedures. Non-responsive bids or bids which contain qualifications must be rejected. Many of the causes for rejection arise from either an incomplete understanding of the competitive bidding process or administrative oversight on the part of the bidders. The following examples are illustrative of more common causes for rejection of bids. These examples are listed to assist potential bidders in submission of responsive bids.

1. A bid stated, "The prices stated within are for your information only and are subject to change."
2. A bid stated, "This proposal shall expire 30 days from this date unless extended in writing by the ____ Company." (In this instance award was scheduled to be approximately 45 days after bid submittal date.)
3. A bid for lease of IT equipment contained lease plans of a duration shorter than that which had been requested in the RFP.
4. A personal services contract stated, "in its judgment, believes that the schedules set by the State are extremely optimistic and probably unobtainable. Nevertheless, _ will exercise its best efforts..."
5. A bid stated, "This proposal is not intended to be of a contractual nature."
6. A bid contained the notation "prices are subject to change without notice."
7. A bid was received for the purchase of IT equipment with unacceptable modifications to the Purchase Contract.
8. A bid for lease of IT equipment contained lease plans of a duration longer than that which had been requested in the RFP with no provision for earlier termination of the contract.
9. A bid for lease of IT equipment stated, "...this proposal is preliminary only and the order, when issued, shall constitute the only legally binding commitment of the parties."
10. A bid was delivered to the wrong office.
11. A bid was delivered after the date and time specified in the RFP.
12. An IFB/RFP required the delivery of a performance bond covering 25 percent of the proposed contract amount. The bid offered a performance bond to

- cover "x" dollars which was less than the required 25 percent of the proposed contract amount.
13. A bid did not meet contract goal for DVBE participation and did not follow the steps required by the bid to achieve a "good faith effort."
 14. A bid appeared to meet contract goal for DVBE participation with the dollars submitted, but the supplier had miscalculated the bid costs. When these corrections were made by the State, the supplier's price had increased and the dollars committed for DVBE participation no longer met goal. The supplier had not followed the steps to achieve a "good faith effort."

Exhibit II-B: California Code of Regulations**Title 1, Division 2 Chapter 5. Procedures for Conducting Protests Under the Alternative Protest Pilot Project****Article 1. General Provisions****§1400. Purpose; Scope of Chapter.**

Protests under the Alternative Protest Pilot Project (AB 1159, Chapter 762 of 1997 Statutes, Public Contract Code Division 2, Part 2, Chapter 3.6 (sections 12125-12130)) shall be resolved by arbitration as defined and established by this chapter.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New chapter 5 (articles 1-3), article 1 (sections 1400-1404) and section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1402. Definitions.

- (a) Arbitration, as used in this chapter, means a dispute resolution procedure in which the Department of General Services, Office of Administrative Hearings provides a neutral third party who decides the merits of a protest and issues a binding decision to the Parties.
- (b) Awardee includes Proposed Awardee and means the person or entity that was a successful Bidder to a Solicitation and has been, or is intended to be, awarded the contract.
- (c) Close of Business, as used in this chapter, means 5p.m. Pacific Standard Time (PST) or Pacific Daylight Time (PDT), as applicable.
- (d) Contracting Department means either Procurement or the department which has applied and been approved by the Department of General Services to conduct the Solicitation under the Alternative Protest, Protest Project (Public Contract Code sections 12125-12130.).
- (e) Coordinator means the person designated as the Alternative Protest, Protest Project Coordinator by the Department of General Services, Procurement Division, to coordinate all aspects of the Solicitation under the Alternative Protest, Protest Project (Public Contract Code sections 12125-12130).
- (f) Estimated Contract Value means the value of Protestant's bid.
- (g) Frivolous means a protest with any or all of the following characteristics:

Exhibit II-B: California Code of Regulations (continued)

- (1) It is wholly without merit.
 - (2) It is insufficient on its face.
 - (3) The Protestant has not submitted a rational argument based upon the evidence or law which supports the protest.
 - (4) The protest is based on grounds other than those specified in section 1410.
- (h) Major Information Technology Acquisition means the purchase of goods or services, or both, by a state agency, through contract, from non-governmental sources, that has significant mission criticality, risk, impact, complexity, or value attributes or characteristics. Pursuant to subdivision (e) of Section 11702 of the Government Code, these purchases shall include, but not be limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications that include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.
- (i) OAH means the Department of General Services, Office of Administrative Hearings.
- (j) Party means the Procurement Division of the Department of General Services, the Contracting Department, the Awardee, and Protestant(s).
- (k) Procurement means the Procurement Division of the Department of General Services.
- (l) Protestant means a person or entity that was an unsuccessful Bidder to a Solicitation under the Alternative Protest, Protest Project (Public Contract Code sections 12125-12130) and that protests the award.
- (m) Small Business means a Certified California Small Business, pursuant to Government Code Division 3, Part 5.5, Chapter 6.5 (commencing with section 14835) and Title 2, California Code of Regulations, section 1896.
- (n) Solicitation means the document that describes the goods or services to be purchased, details the contract terms and conditions under which the goods or services are to be purchased, and establishes the method of evaluation and selection.
- (o) Solicitation File means the Solicitation and the documents used by the Contracting Department in the Solicitation process, including documents used to evaluate Bidders and select a Proposed Awardee. The Solicitation File shall

Exhibit II-B: California Code of Regulations (continued)

remain available to the public except information that is confidential or proprietary.

Authority cited: Section 12126, Public Contract Code. Reference: Section 11702, Government Code; and Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1404. Notice of Intent to Award Contract.

The Contracting Department shall post a Notice of Intent to Award Contract in a public place specified in the Solicitation, send rejection facsimiles to rejected Bidders, and send Notice of Intent to Award Contract facsimiles to any who made a written request for notice and provided a facsimile number. The Contracting Department shall indicate that the Solicitation File is available for inspection. The Contracting Department has the discretion to award a contract immediately, upon approval by the Director of the

Bidder

Department of General Services and, if the Solicitation was for a Major Information Technology Acquisition, the Director of the Department of Information Technology.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

Exhibit II-B: California Code of Regulations (continued)**Article 2. Protest Procedure****§1406. Notice of Intent to Protest; Service List.**

- (a) An unsuccessful Bidder who intends to protest the awarded contract pursuant to this chapter must inform the Coordinator. The Notice of Intent to Protest must be in writing and must reach the Coordinator within the number of days specified in the Solicitation, which shall be not less than 1 working day and not more than 5 working days after the posting of the Notice of Intent to Award Contract, as specified in the Solicitation. Failure to give written notice by Close of Business on that day shall waive the right to protest.
- (b) On the day after the final day to submit a Notice of Intent to Protest, the Coordinator shall make a service list consisting of those Bidders who did submit a Notice of Intent to Protest, the Awardee, and the Contracting Department. The Coordinator shall include addresses and facsimile numbers on this list and shall forward this service list to those Bidders who submitted a Notice of Intent to Protest.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New article 2 (sections 1406-1418) and section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1408. Filing a Protest.

- (a) A protest is filed by the submission of: the Detailed Written Statement of Protest and any exhibits specified in section 1412; a check or money order made payable to the Office of Administrative Hearings for the OAH filing fee of \$50; and the arbitration deposit as specified in subsection (c) or (d) to the Coordinator by the Close of Business on the 7th working day after the time specified in the Solicitation for written Notice of Intent to Protest under section 1406.

A copy of the Detailed Written Statement of Protest and exhibits must also be served on all Parties named in the service list as specified in section 1406. A Protestant who fails to comply with this subsection waives Protestant's right to protest.

- (b) Protestant(s) must provide a FAX (facsimile) number. Notification by facsimile is sufficient for service. If the Detailed Written Statement of Protest is sent to the Coordinator by facsimile, Protestant must:

- (1) Verify that the pages sent were all received by the Coordinator; and

Exhibit II-B: California Code of Regulations (continued)

- (2) Remit the required deposit and filing fee to Coordinator by any reasonable means.

If sending via carrier, the postmark date or equivalent shall be used to determine timeliness.

- (c) Each Protestant not certified as a Small Business shall make a deposit of the estimated arbitration costs, by check or money order made payable to the Office of Administrative Hearings, as determined by the Estimated Contract Value.

- (1) For contracts up to \$100,000.00, the deposit shall be \$1500.00.

- (2) For contracts of \$100,000.00 up to \$250,000.00, the deposit shall be \$3,000.00.

- (3) For contracts of \$250,000.00 up to \$500,000.00, the deposit shall be \$5,000.00.

- (4) For contracts of \$500,000.00 and above, the deposit shall be \$7,000.00.

- (5) Failure to remit a timely required deposit waives the right of protest.

- (6) Any refund to Protestant(s) shall be made per section 1436.

- (d) Each Protestant certified as a Small Business shall submit a copy of the Small Business Certification in lieu of the deposit specified in subsection (c). If Protestant is a Small Business and the protest is denied by the arbitrator, the Contracting Department shall collect the costs of the arbitration from Protestant. If Protestant does not remit the costs due, the Contracting Department may offset any unpaid arbitration costs from other contracts with Protestant and/or may declare Protestant to be a non-responsible Bidder on subsequent solicitations.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

Exhibit II-B: California Code of Regulations (continued)**§1410. Grounds for Protest.**

- (a) The Public Contract Code, at section 12126(d) provides: Authority to protest under this chapter shall be limited to participating Bidders.
- (1) Grounds for Major Information Technology Acquisition protests shall be limited to violations of the Solicitation procedures and that the Protestant should have been selected.
- (2) Any other acquisition protest filed pursuant to this chapter shall be based on the ground that the bid or proposal should have been selected in accordance with selection criteria in the Solicitation document.
- (b) The burden of proof for protests filed under this chapter is preponderance of the evidence, and Protestant(s) must bear this burden.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1412. Detailed Written Statement of Protest.

- (a) The Detailed Written Statement of Protest must include the grounds upon which the protest is made, as specified in 1410(a).
- (b) The Detailed Written Statement of Protest shall contain reasons why Protestant should have been awarded the contract.
- (1) For Major Information Technology Acquisition protests, the Detailed Written Statement of Protest must specify each and every Solicitation procedure which was violated and the manner of such violation by specific references to the parts of the Solicitation attached as exhibits and why, but for that violation, Protestant would have been selected.
- (2) For other acquisition protests, the Detailed Written Statement of Protest must specify each and every selection criterion on which Protestant bases the protest by specific references to the parts of the Solicitation attached as exhibits.
- (3) For all protests, Protestant must specify each and every reason that all other Bidders who may be in line for the contract award should not be awarded the contract.
- (c) The Detailed Written Statement of Protest must be limited to 50

Exhibit II-B: California Code of Regulations (continued)

typewritten or computer generated pages, excluding exhibits, at a font of no less than 12 point or pica (10 characters per inch), on 8 1/2 inch by 11-inch paper of customary weight and quality. The color of the type shall be blue-black or black. In addition to a paper copy, the arbitrator may request that a Protestant submit such information on computer compatible diskette or by other electronic means if the Protestant has the ability to do so.

- (d) Any exhibits submitted shall be paginated and the pertinent text highlighted or referred to in the Detailed Written Statement of Protest referenced by page number, section and/or paragraph and line number, as appropriate.
- (e) The Detailed Written Statement of Protest shall not be amended.
- (f) Protestant(s) may not raise issues in hearing which were not addressed in the Detailed Written Statement of Protest.
- (g) A Protestant who fails to comply with this subsection waives Protestant's right to protest.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1414. Review by Coordinator.

- (a) Within 2 working days after receipt of the Detailed Written Statement of Protest, the Coordinator shall notify the Contracting Department and the Awardee of a potential protest hearing.
- (b) The Coordinator shall review the Detailed Written Statement of Protest within 5 working days after receipt to preliminarily determine if the protest is Frivolous and notify Protestant of the option to withdraw or proceed in arbitration.
 - (1) If Protestant withdraws the protest within 2 working days after the notification by the Coordinator of a preliminary determination of Frivolousness, the Coordinator shall withdraw the preliminary finding of Frivolousness and refund Protestant's deposit and filing fee.
 - (2) If the Protestant previously filed two protests under the Alternative Protest, Protest Project preliminarily determined Frivolous by the Coordinator but then withdrew or waived them before the arbitration decision, the Coordinator shall make final the preliminary determination of Frivolousness for the Department of General Services.

Exhibit II-B: California Code of Regulations (continued)

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1416. Review and Response by Contracting Department and Awardee.

- (a) The Awardee shall have 7 working days after notification by the Coordinator to submit to the Coordinator and Protestant a response to the Detailed Written Statement of Protest.
- (b) The Contracting Department, in conjunction with the Coordinator, shall have 7 days after the filing of the Detailed Written Statement of Protest to send a response to Protestant and Awardee.
- (c) Responses shall follow the standards set forth in section 1412(c) and (d).

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1418. Bond Requirement.

- (a) If the Coordinator has determined that a protest is Frivolous and the Protestant does not withdraw the protest, the Protestant shall be required to post a bond in an amount not less than 10% of the Estimated Contract Value.
- (b) The percentage of the bond shall be determined by the Contracting Department and specified in the Solicitation.
- (c) Protestant shall post the bond, pursuant to Chapter 2 (commencing with section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, within 15 working days of the filing of the Detailed Written Statement of Protest or shall be deemed to have waived the right to protest.
 - (1) If the arbitrator determines that the protest is Frivolous, the bond shall be forfeited to Procurement and the Coordinator will impose Sanctions.
 - (2) If the arbitrator determines that the protest is not Frivolous, the bond will be returned to the Protestant and no Sanctions imposed.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 995.010 et. seq., Code of Civil Procedure; and Sections 12125-12130, Public Contract Code.

Exhibit II-B: California Code of Regulations (continued)

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

Exhibit II-B: California Code of Regulations (continued)**Article 3. Arbitration Procedure****§1420. Arbitration Process.**

Within 19 calendar days after the Notice of Intent to Award has been posted, the Coordinator shall consolidate all remaining protests under the Solicitation, and send to OAH:

- (a) a copy of all Detailed Written Statements of Protest;
- (b) OAH filing fees;
- (c) arbitration deposits, and/or notice that any Protestant is a Small Business;
- (d) Awardee responses;
- (e) Coordinator/Contracting Department responses;
- (f) the Solicitation File; and
- (g) notice to OAH whether interpreter services will be needed for any Protestant or Awardee. OAH shall arrange interpreter services which shall be paid by the Contracting Department.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New article 3 (sections 1420-1440) and section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1422. Selection of Arbitrator.

- (a) Within 2 working days after receipt of the protest from the Coordinator, OAH shall furnish the names of ten arbitrators to Protestant(s), the Awardee, and the Coordinator. The arbitrator list shall include administrative law judges who are employees of OAH and contract private arbitrators who are not employees of the State of California. Protestant(s), the Awardee, and the Coordinator may each strike two of the ten names and notify OAH within 2 working days. Protestant(s) may also indicate if they prefer a contract arbitrator or an OAH administrative law judge. OAH may then select as arbitrator any name not stricken and shall notify Protestant(s), the Awardee, and the Coordinator within 2 working days. If all names are stricken, the Director of OAH shall appoint an arbitrator.
- (b) A proposed arbitrator shall be disqualified on any of the grounds specified

Exhibit II-B: California Code of Regulations (continued)

in Section 170.1 of the Code of Civil Procedure for the disqualification of a judge.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1424. Authority of Arbitrator.

(a) Arbitrators are authorized to

- (1) Administer oaths and affirmations;
- (2) Make rulings and orders as are necessary to the fair, impartial, and efficient conduct of the hearing; and
- (3) Order additional deposits from Protestant(s) to cover additional estimated costs. If OAH does not receive the required deposit(s) in the time specified, the right to protest will be deemed waived.

(b) The arbitrator shall have exclusive discretion to determine whether oral testimony will be permitted, the number of witnesses, if any, and the amount of time allocated to witnesses.

(c) It shall be in the arbitrator's exclusive discretion to determine whether to

- (1) Conduct a pre-hearing conference; and/or
- (2) Permit cross-examination and, if so, to what extent; and/or
- (3) Review documents alone for all or part of the protest.

(d) It shall be in the arbitrator's exclusive discretion to determine whether additional responses and rebuttals are to be submitted, and the timelines and page limits to be applied.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

Exhibit II-B: California Code of Regulations (continued)**§1426. Decision Based in Whole or in Part on Documents Alone.**

Any Party may request that the arbitrator base the arbitrator's decision on documents alone. It shall be the arbitrator's exclusive discretion to do so.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1428. Pre-hearing Conference.

- (a) If the arbitrator determines that a pre-hearing conference is necessary, OAH shall set the time and place and notify Protestant(s), the Awardee, and Procurement at least 5 working days prior to the pre-hearing conference.
- (b) The pre-hearing conference shall be held to identify and define issues in dispute and expedite the arbitration. The parties should be prepared to discuss, and the arbitrator may consider and rule on, any of the following matters applicable to the protest:
 - (1) Clarification of factual and legal issues in dispute as set forth in the Detailed Written Statement of Protest.
 - (2) The extent to which testimony shall be permitted and the extent to which cross-examination will be allowed.
 - (3) Identity of and limitations on number of witnesses, need for interpreters, scheduling and order of witnesses, etc.
 - (4) Any other matters as shall promote the orderly and efficient conduct of the hearing.
- (c) At the pre-hearing conference, Protestant(s), the Awardee, and Procurement shall deliver a written statement which contains the name of each witness a party wishes to call at hearing along with a brief written statement of the subject matter of the witness's expected testimony. If the arbitrator, in his or her exclusive discretion, allows an expert witness to be called, the party calling the witness shall provide the name and address of the expert along with a brief statement of the opinion the expert is expected to give. The party shall also attach a statement of qualifications for the expert witness.

Exhibit II-B: California Code of Regulations (continued)

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1430. Scheduling the Hearing.

The arbitrator shall schedule the date, time, and place of hearing and notify all Parties.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1432. Discovery.

The arbitrator has exclusive discretion to issue subpoenas and/or subpoena duces tecum. There shall be no right to take depositions, issue interrogatories, or subpoena persons or documents.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1434. Attendance at Hearings.

The Arbitration hearings shall be open to the public unless the arbitrator, in his or her exclusive discretion, determines that the attendance of individuals or groups of individuals would disrupt or delay the orderly conduct or timely completion of the proceedings.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1436. Arbitrator's Decision.

(a) The final decision shall be in writing and signed by the arbitrator. It shall include a Statement of the Factual and Legal Basis for the decision, addressing the issues raised in the Detailed Written Statement(s) of Protest, and shall include an order upholding or denying the protest(s). The arbitrator's order shall not award a contract.

Exhibit II-B: California Code of Regulations (continued)

- (b) A copy of the decision shall be sent by regular mail to Procurement, the Contracting Department, the Awardee, and Protestant(s) within 45 calendar days after the filing of the first Detailed Written Statement of Protest. In the arbitrator's exclusive discretion, this timeline may be extended for an additional 15 calendar days. The arbitrator's failure to issue a decision within the time specified by this section shall not be a ground for vacating the decision.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1437. Costs.

- (a) For protests not determined Frivolous by Procurement:
- (1) If the arbitrator denies the protest, Protestant(s) will be liable for all costs of the arbitration.
 - (2) If the arbitrator upholds the protest, the Contracting Department shall pay for all costs of the arbitration and Protestant(s) will be refunded the deposit by OAH.
- (b) If Procurement determined that the protest was Frivolous and the arbitrator affirms that the protest is Frivolous, the bond shall be forfeited to Procurement, the protest will be denied, and Protestant(s) will be liable for all costs of the arbitration.
- (c) If Procurement determined that the protest was Frivolous and the arbitrator determines that the protest is not Frivolous, any bond(s) posted by Protestant(s) shall be returned.
- (1) If the arbitrator denies the protest, Protestant(s) shall be liable for half of the costs of the arbitration. The Contracting Department shall pay the remaining half of the arbitration costs.
 - (2) If the arbitrator upholds the protest, the Contracting Department shall pay for all costs of the arbitration and Protestant(s) will be refunded the deposit by OAH.
- (d) A Protestant who withdraws his or her protest before the arbitrator's decision has been issued will remain liable for all arbitration costs up to the time of withdrawal. These costs include, but are not limited to, the arbitrator's time in preparation, pre-hearing conferences, and hearing the protest. If Procurement deemed the protest Frivolous, any bond posted

Exhibit II-B: California Code of Regulations (continued)

shall be forfeited to Procurement.

- (e) Except as provided in (f), if any costs are determined to be payable by Protestant(s), that amount shall be subtracted from deposit(s) of Protestant(s) as ordered by the arbitrator. Any additional costs shall be billed to Protestant(s) and any refunds shall be sent to Protestant(s) by OAH.
- (f) If a Protestant is a Small Business, then the Contracting Department shall pay OAH all arbitration costs and collect the amount due from Protestant.

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1438. Judicial Review.

The grounds for judicial review shall be as set forth in Chapter 4 of Title 9 of Part III of the Code of Civil Procedure (commencing with section 1285).

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

§1440. Transcripts.

- (a) A party desiring a transcript of the proceedings shall contact the OAH Transcript Clerk to make arrangements to pay for preparation of the transcript. Prior to preparation of the transcript, a deposit equal to the estimated cost of the transcript shall be paid. Preparation of the transcript will be arranged by the OAH Transcript Clerk. The deposit shall be applied to the actual cost and any excess shall be returned to the party that submitted the request. Any balance due shall be paid by the party or a representative on behalf of the party requesting the transcript before the transcript is released to the requesting party.
- (b) Unless a record of a proceeding or any portion thereof was sealed, any person may request a transcript or a recording of the proceeding. If a record of a proceeding or any portion thereof was sealed, only parties to the proceeding may request a transcript of the sealed portions, and the sealed portions shall not be disclosed to anyone except in accordance with the order sealing the proceeding or subsequent order.

Exhibit II-B: California Code of Regulations (continued)

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).