

SECTION II
RULES GOVERNING COMPETITION

RFP OSI 2046
RULES GOVERNING COMPETITION

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The purpose of competitive bidding is to secure public objectives in the most value-effective manner and avoid the possibilities of graft, fraud, collusion, etc. Competitive bidding is designed to benefit the State 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 value-effective solution to the State's requirements, as determined by the evaluation criteria contained in the Request for Proposal (RFP).

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A. IDENTIFICATION AND CLASSIFICATION OF RFP REQUIREMENTS

Section II of this RFP describes the entire procurement process. Specific guidelines for the submission of this RFP response are found in Section VIII, "Proposal Format".

1. MANDATORY REQUIREMENTS

The State has established certain requirements with respect to proposals to be submitted by prospective Bidders¹. The use of "shall," "must," or "will" in this RFP indicates a requirement or condition which is mandatory. A deviation, if not material, may be waived by the State. A deviation from a requirement is material if the response is not in substantial accord with the RFP requirements, provides an advantage to one Bidder over other Bidders, or has a potentially significant affect on the delivery, quantity or quality of items bid², amount paid to the Bidder, or on the cost to the State. Material deviations cannot be waived.

2. DESIRABLE ITEMS

The words "should" or "may" in this RFP indicate desirable attributes or conditions, but are non-mandatory in nature.

¹ For the purposes of the instructions of this RFP, all entities that have identified their intent to be a Bidder to the Procurement Official are called Bidders until such time that the Bidder withdraws or other facts indicate that the Bidder has become nonparticipating.

² The word "bid" as used throughout this document is intended to mean "proposed," "propose" or "proposal" as appropriate.

B. PROPOSAL REQUIREMENTS AND CONDITIONS

1. GENERAL

This RFP, the evaluation of responses, and the award of any resulting contract shall be made in conformance with current competitive bidding procedures as they relate to the procurement of information technology goods and services by the State of California. A Bidder's Final Proposal is an irrevocable offer for 180 calendar days following the scheduled date for Contract Award in the Key Action Dates specified in Section I, "Introduction and Overview of Requirements". A Bidder may extend the offer in the event of a delay of Contract Award.

2. RFP DOCUMENTS

This RFP includes the State's requirements and instructions, which prescribe the format and content of proposals to be submitted. The State's contract has been identified in Appendix A.

If a Bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Bidder shall immediately notify the Procurement Official identified in Section I, "Introduction and Overview of Requirements", of such error in writing and request clarification or modification of the document. Modifications will be made by addenda issued pursuant to Section II.B.6, "Addenda". Such clarifications shall be provided to all parties that have identified themselves as bidders to the Procurement Official for this RFP, without divulging the source of the request. Insofar as practicable, the State will give such notices to other interested parties, but the State shall not be responsible therefore.

If this RFP contains an error known to the Bidder, or an error that reasonably should have been known, the Bidder shall propose at its own risk. If the Bidder fails to notify the State of the error prior to the date fixed for submission of proposals, 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 this 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 are listed in Section V, "Administrative Requirements", and Section VI, "Statement of Work".

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4. QUESTIONS REGARDING THE RFP

Bidders requiring clarification of the intent or content of this RFP or on procedural matters regarding the competitive proposal process may request clarification by submitting questions, in an email or envelope clearly marked "Questions Relating to RFP OSI 2046" to the Procurement Official listed in Section I, "Introduction and Overview of Requirements". To ensure a response prior to submission of the proposals, questions must be received by the Procurement Official, in writing, by the scheduled date(s) in the Key Action Dates paragraph specified in Section I, "Introduction and Overview of Requirements". If a Bidder submits a question after the scheduled date(s) the State will attempt to answer the question but does not guarantee that the answer will be prior to the proposal due date. Question and answer sets will be provided to all Bidders. The State will publish the questions as they are submitted including any background information provided with the question; however, the State at its sole discretion may paraphrase the question and background content for clarity.

5. REQUEST TO CHANGE THE REQUIREMENTS OF THE RFP

If the Bidder believes that one or more of the RFP requirements is onerous, unfair, or imposes unnecessary constraints on the Bidder in proposing less costly or alternate solutions, the Bidder may request a change to this 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 Procurement Official by the date specified in the Key Action Dates specified in Section I, "Introduction and Overview of Requirements", for requesting a change in the requirements.

6. ADDENDA

The State may modify the RFP prior to the date fixed for Contract Award by issuance of a notification to all Bidders that are participating in the procurement process at the time the addendum is issued that an addendum has been issued, unless the amendments are such as to offer the opportunity for nonparticipating Bidders to become participating, in which case, the addendum will be sent to all Bidders that have identified their intent to be a Bidder to the Procurement Official. Addenda will be numbered consecutively. If any Bidder determines that an addendum unnecessarily restricts its ability to propose, the Bidder is allowed five (5) working days to submit a protest to the addendum according to the instructions contained in Section II.D.1, "Protests".

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7. BONDS

Each agency reserves the right to require a performance bond. If a performance bond is required for this procurement, it will be specified in Section V, "Administrative Requirements".

8. 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.

9. FOLLOW-ON CONTRACTS (PCC 10365.5, PCC 10410, AND PCC 10411)

No person, firm, or subsidiary thereof who has been awarded a consulting services contract, or a contract which includes a consulting component, may be awarded a contract for the provision of services, delivery of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the consulting services contract. Therefore, any consultant who contracts with a State agency to develop formal recommendations for the acquisition of IT products or services is precluded from contracting for any work recommended in the formal recommendations (formal recommendations include, among other things, feasibility studies). The following are the known firms that are precluded from participating in this acquisition: Eclipse Solutions Inc., and San Jose State University.

10. 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 (e.g., service contract, Original Equipment Manufacturer (OEM) agreements, re-marketing agreements) that may foreseeably 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.

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C. BIDDING STEPS

1. PREPARATION OF PROPOSALS

Exhibit II-A, “Competitive Bidding and Proposal Responsiveness”, located at the end of Section II, emphasizes the requirements of competitive bidding and contains examples of common causes for rejection of proposals. Bidders are encouraged to review this exhibit.

Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of the Bidder’s compliance with 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.

Before submitting each document, the Bidder should carefully read the Proposal for errors and adherence to the RFP requirements.

2. BIDDER’S INTENTION TO SUBMIT A PROPOSAL

Bidders that want to participate in the RFP steps are encouraged to submit a notification of intention to propose on this procurement in order to receive notifications. Only those Bidders that submit a letter stating that they intend to submit a proposal for this RFP will receive notifications regarding this procurement. The letter should identify the contact person for the solicitation process, plus their phone and fax numbers and e-mail address. The State is responsible for notifying one contact person per prime contractor. Information related to a Bidder will be given to the designated contact person. It shall be the Bidder’s responsibility to immediately notify the Procurement Official, in writing, regarding any revisions to the information. The State shall not be responsible for proposal correspondence not received by the Bidder if the Bidder fails to notify the State, in writing, of any revisions.

Bidders who wish to participate are asked to return the Letter of Intent to Respond (may be found in Section V, Exhibit V-A, “Letter of Intent to Respond”) to the Procurement Official listed in Section I, “Introduction and Overview of Requirements”, to ensure they remain on the State of California’s official list of participating Bidders. If the letter is not submitted by the date as specified in the Key Action Dates specified in Section I, “Introduction and Overview of Requirements” or the Bidder does 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 Procurement Official and indicate that they would like further correspondence.

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3. DRAFT PROPOSALS

Submission of a Draft Proposal is strongly recommended so that the Bidder may obtain the benefit of the two-step procurement process. However, Bidders are not required to submit a Draft Proposal. If Draft Proposals are submitted, Bidders must submit them by the date and time in the Key Action Dates specified in Section I, "Introduction and Overview of Requirements". The Draft Proposals must be complete in all respects except that dollar cost information must be replaced by XXXs. At the sole discretion of the State Evaluation Team may evaluate each Draft Proposal received by the Draft Proposal submission date in the Key Action Dates specified in Section I, "Introduction and Overview of Requirements" unless the Draft Proposal is so defective that the State does not believe that its time to evaluate the Draft Proposal would result in the Bidder being able to correct the deficiencies prior to the Final Proposal due date, or the Bidder has placed conditions on the Draft Proposal that are unacceptable to the State. For Draft Proposals that are evaluated the Bidder will be notified of any defects the State has noted. Draft proposals received late may be reviewed if the Procurement Official believes there is enough time and resources to do so. Notifying the Bidder of defects is intended to minimize the risk that the Final Proposal will be deemed non-compliant; however, **the State will not provide any warranty that the Draft Proposal will be evaluated even if accepted for review, or that any or all defects in the Draft Proposal have been detected. Notification of defects in the Draft Proposal will not preclude rejection of the Final Proposal, if undiscovered defects contained in the Draft Proposal are later found in the Final Proposal.**

4. CONFIDENTIAL DISCUSSIONS

The State may conduct confidential discussions with Bidders submitting Draft Proposals that have been reviewed by the State. At the confidential discussion, the State will identify areas of the Bidder's Draft Proposal that may not be fully compliant with the requirements of the RFP and areas that are confusing to the State Evaluation Team. Oral statements made by either party during confidential discussions shall not be binding.

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5. FINAL PROPOSAL

a. Submission of Final Proposal

Proposals must be complete in all respects as required by Section VIII, "Proposal Format". A Final Proposal 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 Proposal shall be rejected if any such defect or irregularity constitutes a material deviation from the RFP requirements. The Final Proposal must contain all costs required by Section VII, "Cost", and Section VIII, "Proposal Format". Cost data, including any electronic copies (as identified in Section VIII, "Proposal Format") must be submitted under separate, sealed cover. If the cost data are not submitted under separate sealed cover, the proposal may be rejected. This section describes specific guidelines applicable to the submission of the Final Proposal to the RFP and is applicable to the new Final Proposal if all original Final Proposals are declared flawed by the Evaluation Team.

1. Bidder's Costs

Costs for developing Proposals are entirely the responsibility of the Bidder and shall not be chargeable to the State.

2. Completion of Proposals

Proposals must be complete in all respects as required by the RFP Section VIII, "Proposal Format". A Final Proposal 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 Proposal shall be rejected if any defect or irregularity constitutes a material deviation from the RFP requirements. The Final Proposal must contain all costs required by the RFP sections on Cost and Proposal Format. Cost data, including any electronic copies, must be submitted under a separate, sealed cover.

EXHIBIT II-A, "COMPETITIVE BIDDING AND PROPOSAL RESPONSIVENESS", emphasizes the requirements of competitive bidding and contains examples of common causes for rejection of proposals. Bidders are encouraged to review this exhibit.

3. False or Misleading Statements

Proposals 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 sole

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

4. Signature of Proposals

A cover letter (which shall be considered an integral part of the submission) 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 Proposal shall be rejected.

If a Draft Proposal is submitted it must also contain the cover letter, similarly prepared, including the title of the person who will sign, but need not contain the signature.

5. Delivery of Proposals

The Draft Proposal and Final Proposal must be submitted no later than the date and time specified in the Key Action Dates in Section I, "Introduction and Overview of Requirements". If mailed, proposals must be received by the Department of General Services on or before the specified date and time. Mail or deliver proposals to the Department of General Services Procurement Official listed in Section I, "Introduction and Overview of Requirements". If mailed, it is suggested that you use certified or registered mail with return receipt requested as delivery of proposals is done at the Bidder's own risk of untimely delivery, lost mail, etc.

Proposals must be received in the number of copies stated in Section VIII, "Proposal Format". Proposals must be received no later than the dates and times in the Key Action Dates specified in Section I, "Introduction and Overview of Requirements". One (1) copy must be clearly marked "Master Copy". All copies of proposals must be under sealed cover, which is to be plainly marked "FINAL PROPOSAL for RFP OSI 2046". Final Proposals not received by the date and time in the Key Action Dates specified in Section I, "Introduction and Overview of Requirements", will be rejected.

As required in Section VIII, "Proposal Format", all cost data must be submitted under separate, sealed cover and clearly marked "COST DATA for RFP OSI 2046". If cost data is not submitted separately sealed, the proposal may be rejected.

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Proposals submitted under improperly marked covers may be rejected. If discrepancies are found between two or more copies of the proposal, the proposal may be rejected. However, if not rejected, the Master Copy is the basis for resolving discrepancies.

6. Withdrawal and Resubmission/Modification of Proposals

A Bidder may withdraw its Final Proposal at any time prior to the proposal submission date and time in the Key Action Dates specified in Section I, "Introduction and Overview of Requirements", by submitting a written notification of withdrawal signed by the Bidder authorized in accordance with Section II.C.5.a.4, "Signature of Proposals". The Bidder may thereafter submit a new or modified proposal prior to such proposal submission date and time. Modification offered in any other manner, oral or written, will not be considered. Clarifications of Final Proposals shall not be considered to be modifications. Final Proposals cannot be changed or withdrawn after the date and time designated for receipt, except as provided in Section II.C.7.c, "Errors in the Final Proposal".

b. Clarification of Final Proposals

During the evaluation of the Final Proposal, the State Evaluation Team may ask the Bidder to clarify their submitted information but will not allow the Bidder to change their proposal.

c. Flawed Final Proposals

At the State's sole discretion it may declare all Final Proposals to be Draft Proposals in the event that the State Evaluation Team determines that Final Proposals from all Bidders contain material deviations. Bidder may not protest the evaluation team's determination that all proposals have material deviations. If all proposals are declared noncompliant, the State will issue an addendum to the RFP and confidential discussions will be held with Bidders who are interested in submitting a Final Proposal. Each Bidder will be notified of the due date for the submission of a new Final Proposal to the State. This submission must conform to the requirements of the original RFP, and as amended by any subsequent addenda. The new Final Proposals will be evaluated as required by Section IX, "Evaluation and Selection".

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d. Confidentiality

Final Proposals are public upon opening. The contents of all Final Proposals, including correspondence, agenda, memoranda, or any other medium which discloses any aspect of a Bidder's Final Proposal will be held in confidence by the State, but only until the notice of intent to award has been issued.

Bidders should be aware that marking any portion of a Final or Draft Proposal as "confidential", "proprietary" or "trade secret" shall exclude it from evaluation or consideration for award, unless specifically approved by the State in writing prior to submission of the Final or Draft Proposal. Even providing such Proposal is accepted for evaluation by the State, such markings in a Proposal will not keep that document, after notice of intent to award, from being released as part of the public record, unless a court of competent jurisdiction has ordered the State not to release the document. The content of all working papers and discussions relating to the Bidder's Draft Proposal, if retained, 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 or the evaluation of the proposal. Any disclosure of State confidential information by the Bidder is a basis for rejecting the Bidder's proposal and ruling the Bidder ineligible to further participate.

Maintaining the confidentiality of information that is designated as confidential by the State is paramount; it cannot be over emphasized.

6. SEALED COST OPENINGS

Final Proposals will not have their sealed cost envelopes opened until the State has evaluated and scored the technical and administrative submission. Cost Proposals will only be opened for responsive proposals from responsible Bidders. On the date of the cost opening, the State will post a summary of the points awarded to each Bidder. This summary will be provided to all the Bidders and the public in attendance at the cost opening as well as persons who request the summary.

7. REJECTION OF PROPOSALS

The State may reject any or all proposals and may waive any immaterial deviation or defect in a proposal. 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.

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a. General

Final Proposals will be evaluated according to the procedures contained in the Section IX, "Evaluation and Selection".

b. Evaluation Questions

During the evaluation and selection process, the State may require a Bidder's representative to answer specific questions and provide clarification, as long as the answers and clarification is in writing.

c. Errors in the Final Proposal

An error in the Final Proposal may cause the rejection of that proposal; however, the State, in its sole discretion, may retain the proposal and make certain corrections. In determining if a correction will be made, the State will consider the conformance of the proposal to the format and content required by the RFP, and any unusual complexity of the format and content required by the RFP.

The State, in its sole discretion, may correct obvious clerical errors.

The State, in its sole discretion, may correct discrepancy and arithmetic errors on the basis that, if intent is not clearly established by the complete proposal submittal, the Master Copy shall have priority over additional copies; the Proposal Master Copy narrative shall have priority over the cost sheets. If necessary, the extensions and summary will be recomputed from the lowest level of detail, 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.

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 proposal, or in its sole discretion, re-compute such costs based on instructions contained in the RFP.

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 (as determined by the State) is not clearly established by the complete proposal submittal.

1. If an item is described in the narrative and omitted from the cost data provided in the proposal for evaluation purposes, it will be

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interpreted to mean that the item will be provided by the Bidder at no cost.

2. If an item is not mentioned at all in the proposal, the proposal will be interpreted to mean that the Bidder does not intend to supply that item.
3. If an 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 will be the responsibility of the State.

It is absolutely essential that Bidders carefully review the cost elements in their Final Proposal.

In the event an ambiguity or discrepancy between the general requirements described in Section III, "Current System", and the specific functional and technical requirements set forth in Section VI, "Statement of Work", is detected after the opening of proposals, Section VI, "Statement of Work", and the Bidder's response thereto, shall have priority over Section III, "Current System" and the Bidder's response thereto.

8. CONTRACT AWARD

Award of contract, if made, will be in accordance with Section IX, "Evaluation and Selection", to a responsible Bidder whose Final Proposal complies with the requirements of the RFP and any addenda thereto, except for such immaterial defects as may be waived by the State. Award, if made, will be made within 180 calendar days after the scheduled date for the Contract Award as set forth in the Key Action Dates in Section I, "Introduction and Overview of Requirements", unless a protest is received. If a protest is received, the Award, if made, will be made within 180 calendar days after the protest is resolved.

The State reserves the right to modify or cancel in whole or in part its RFP prior to contract award.

9. DEBRIEFING

A debriefing will 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 Proposal. A debriefing is not the forum to challenge the RFP specifications or requirements.

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D. 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 Section II.B.4, "Questions Regarding the RFP" and Section II.B.5, "Request to Change the Requirements of the RFP", to resolve any outstanding issues between the Bidder and the State. This procurement procedure is designed to give the Bidder and the State adequate opportunity to submit questions and discuss the requirements before the Final Proposal 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 are two types of protests, requirements 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 Final Proposal which it believes to be totally responsive to the requirements of this RFP and to be the proposal 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, the Bidder may submit a protest of the selection as described below. Protests regarding selection of the successful Bidder will be heard and resolved by the Victims Compensation and Government Claims Board, whose decision will be final.

All protests must be made in writing, signed by an individual who has contractual authority to bind the bidding company, and contain a detailed written statement of the reasons 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

Deputy Director
Department of General Services
Procurement Division
707 3rd Street, Second Floor
West Sacramento, Ca 95605

Mailing Address

Deputy Director
Department of General Services
Procurement Division
P.O. Box 989054
Sacramento, Ca 95798-9054

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All protests of 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 specified in Section I, "Introduction and Overview of Requirements", for such protests. Protests concerning the evaluation, recommendation, or other aspects of the selection process (award protests) 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 specified in Section I, "Introduction and Overview of Requirements", for such protests or the respective date in 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. NEWS RELEASES

News releases or any publications relating to a contract resulting from this RFP shall not be made without prior written approval of the Procurement Official listed in Section I, "Introduction and Overview of Requirements".

3. DISPOSITION OF PROPOSALS

All materials submitted in response to this RFP upon submission are 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 Proposal shall be retained for official files and will become a public record after the Notification of Intent to Award as specified in the Key Action Dates specified in Section I, "Introduction and Overview of Requirements". However, materials the State considers in its sole opinion to be confidential information (such as confidential financial information submitted to show bidder responsibility) will be returned upon the request of the Bidder.

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COMPETITIVE BIDDING AND PROPOSAL RESPONSIVENESS

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. The RFP must provide a basis for full and fair competitive bidding among Bidders on a common standard, free of restrictions that would tend 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 be considered a valid proposal, the proposal must respond and conform to the invitation, including all the documents, which are incorporated therein. A proposal which does not literally comply may be rejected.
4. In order for a bid to be rejected for a deviation, the deviation must be deemed to be of a material nature.
5. State agencies usually have the express or implied right to reject any and all proposals in the best interests of the State. Proposals cannot, however, be selectively rejected without cause.
6. Proposals cannot be changed after the time designated for receipt and opening thereof. 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 the answers.
7. A competitive proposal, once opened, 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 proposals become public documents.
8. Proposals 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 RFP includes a provision, to be incorporated in the contract awarded, providing for such amendment.

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Exhibit II–A, (Continued)
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Since competitive procurement became the required method for securing certain IT goods or services, the State has received a number of proposals which were deemed to be non-responsive to the Request for Proposals (RFP) or which could not be considered as valid proposals within the competitive bidding procedures. Non-responsive proposals or proposals which contain qualification statements or conditions 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 proposals. These examples are listed solely to assist potential Bidders in submission of responsive proposals, and should not be considered an exhaustive list of all potential reasons for rejection.

1. A proposal stated, “The prices stated within are for your information only and are subject to change.”
2. A proposal stated, “This proposal shall expire ninety (90) days from this date unless extended in writing by the _____ Company.” (In this instance award was scheduled to be approximately 90 days after the proposal submittal date.)
3. A proposal 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 proposal stated, “This proposal is not intended to be of a contractual nature.”
6. A proposal contained the notation “prices are subject to change without notice.”
7. A proposal was received for the purchase of IT equipment with unacceptable modifications to the Purchase Contract.
8. A proposal 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 proposal 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 proposal was delivered to the wrong office.
11. A proposal was delivered after the date and time specified in the RFP.
12. An RFP required the delivery of a performance bond covering 50 percent of the proposed contract amount. The proposal offered a performance bond to cover “x” dollars which was less than the required 50 percent of the proposed contract amount.
13. A proposal did not meet the contract goal for Disabled Veterans Business Enterprise (DVBE) participation and did not follow the steps required by the proposal to achieve a “good faith effort”.

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Exhibit II–A, (Continued)
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14. A proposal appeared to meet the contract goal for DVBE participation with the dollars submitted, but the Contractor had miscalculated the proposal costs. When these corrections were made by the State, the Contractor's price had increased and the dollars committed for DVBE participation no longer met the goal. The Contractor had not followed the steps to achieve a good faith effort".