

## **Bid Process (Required for Purchases Over \$25,000)**

### **OPENING OF BIDS**

Upon receipt, all bids will be time-stamped, showing the date and hour received. Advertised (sealed) bids received after the time set forth for the opening of bids will be returned unopened to the bidders. Advertised bids will be opened publicly and read aloud at the time and place established in the bid invitation. All original bids will be retained pursuant to M.S. 471 for public inspection.

Recording and tabulation of bids: The names of bidders, prices bid, and other pertinent data shall be recorded on a bid tabulation which shall be available for public inspection. This applies to bids only after an award has been made.

Rejection of bids: Any or all bids or portions thereof may be rejected. Bids shall be rejected for good and sufficient cause, including but not limited to, abandonment of the project by Minnesota State Colleges and Universities, or insufficient State funds.

A vendor whose sealed bid is rejected shall be given notice of the rejection and the reason(s) therefor.

Minnesota State Colleges and Universities reserves the right to waive minor deficiencies or informalities in bids. Minor informalities shall be waived if, in the judgment of the appropriate manager, the best interest of the system would be served without prejudice to the rights of the other bidders. Examples of minor deficiencies include, but are not limited to:

- a) Omission of the title of the signatory;
- b) Failure to furnish required descriptive literature;
- c) Minor detail omissions.

### **AWARD**

Award of the contracts shall be made in conformity with M.S. 471 with no material variance from the terms and conditions of the bid invitation.

### **TIE BIDS**

Tied bids under \$25,000 may be resolved at the buyer's discretion including calling all vendors involved in the tied bid, and giving them a chance to change prices, to break the tie.

Tie bids over \$25,000 shall be resolved through resubmission of bids.

Whenever a tie involves a Minnesota firm and one whose place of business is outside the State of Minnesota, preference shall be given to the Minnesota firm.

## VENDOR PERFORMANCE

Orders with successful bidders shall be placed using Minnesota State Colleges and Universities purchase orders.

Upon award, shipment shall be made in accordance with delivery instructions in the invitation to bid.

All delivers shall conform to specifications of the bid. Failure in this respect shall be cause for rejection of the goods.

Commodities that fail to comply with specifications, failure to conform to the vendor's sample, are not as provided on the purchase order, or arrive in an unsatisfactory condition shall be rejected.

Notice of rejection, based upon apparent deficiencies disclosed by ordinary methods of inspection, shall be given by Minnesota State Colleges and Universities to both vendor and the carrier within reasonable time after delivery. Revocation of acceptance for latent deficiencies or concealed damages that would make the items unsatisfactory for the purpose intended shall be given by the system within reasonable time after discovery. The contractor shall satisfactorily repair or replace such items within a reasonable period of time.

Minnesota State Colleges and Universities may require that the vendor permit inspection of the commodities prior to shipment at factory, plant, or establishment where produced, manufactured, or stored. Unless provision of inspection is made in the invitation to bid, costs thereby incurred will be paid by Minnesota State Colleges and Universities.

The vendor shall expeditiously and at his/her own expense remove any item rejected by Minnesota State Colleges and Universities. If the vendor fails to remove such an item, or to forthwith forward shipping instructions, Minnesota State Colleges and Universities may sell the item and remit the proceeds of sale, less the expense involved, in accordance with the law including but not limited to M.S. 336.2-603.

If the needs of Minnesota State Colleges and Universities do not permit time to replace rejected merchandise, or if deliveries are not made with the time specified in the contract, the system may:

- a) Buy on open market supplies of the nature required. The vendor shall be liable for all additional costs and the expenses incurred.
- b) If it is determined that an item does not conform strictly to specifications, but can be used satisfactorily, Minnesota State Colleges and Universities may adjust the price with written acquiescence of the vendor, and keep and use such part of the order when such action is required to sustain continued operation.

Minnesota State Colleges and Universities may direct that a laboratory analysis or other tests be made to determine the acceptability of the delivered product(s) and to ensure that product(s) meet specifications. In these instances, acceptance by Minnesota State Colleges and Universities shall not occur nor be deemed to have been made, and the discount time shall not begin, until testing is completed and affirmative results are obtained. Vendors shall be notified of satisfactory tests results.

Any situation not addressed above will be handled in accordance with guidelines and rules set forth in statutes, rules, and the Uniform Commercial Code.

#### FAILURE TO PERFORM

If a bidder who is awarded a contract fails to perform as specified, the bid security (where applicable) shall be retained by Minnesota State Colleges and Universities and deposited with the State Treasurer as liquidated damages. The vendor may also be determined not to be a responsible bidder. Minnesota State Colleges and Universities may also pursue all other remedies permitted or provided by law, including but not limited to collecting the difference between the awardee's bid and that of the next higher bidder who can perform. This is collected from the defaulting vendor.

If a bid bond was required, the bonding company shall be notified in writing of the default. A vendor who fails to enter into a contract that has been awarded to him/her may be determined not to be a responsible bidder, regardless of whether bid security was required. Minnesota State Colleges and Universities may seek further damages and shall not be limited by the absence or existence of a bond.

After the award of a contract, if the vendor fails to furnish satisfactory performance security, if required, the vendor shall be deemed in default and subject to the above provisions.

A vendor shall be held in default for failure to conform to bid specifications or to standard commercial practices including, but not limited to the following:

- a) Failure to make deliveries within the time specified in the contract; or
- b) Deliveries of goods or materials that do not conform to samples or specifications, and are not promptly replaced; or
- c) Delivery of goods or materials that are repeatedly rejected; or
- d) Misbranding or materially misrepresenting goods or materials purchased under the contract.

In all cases of default, the vendor may be determined not to be a responsible bidder.

## VENDOR SERVICE CONCERNS

When Minnesota State Colleges and Universities experiences a problem with a vendor, the following process shall occur:

- a) An attempt will be made to resolve the problem with the vendor.
- b) Whether the problem is resolved at this point or not, Minnesota State Colleges and Universities will prepare a memo on the vendor's performance and maintain it in a file on that vendor.
- c) Any course of action permissible under law will be pursued in order to resolve the situation.
- d) Any vendor who does not pay a default charge shall be suspended from doing business with Minnesota State Colleges and Universities for two years or until the problem is remedied.

## PURCHASE ORDER CANCELLATION

A purchase entered into under competitive bidding may be canceled under any one of the following conditions including, but not limited to:

- a) The contractor agrees to the cancellation;
- b) The contract has obtained the contract by fraud, collusion, conspiracy, or in conflict with any statutory or constitutional provision of the State of Minnesota.
- c) Failure to deliver as agreed.

## BIDDER ERRORS

Prior to the opening of bids, any bidder may withdraw the bid by notifying Minnesota State Colleges and Universities in writing of his/her desire to withdraw, by appearing in person and withdrawing the bid, or by telegraphic or facsimile.

Subsequent to the opening of bids, a bidder may withdraw the bid only upon showing that an obvious error exists in the bid. The showing and request for withdrawal must be made in writing to Minnesota State Colleges and Universities within a reasonable time after the opening of the bids and prior to the system's detrimental reliance on the bid.