



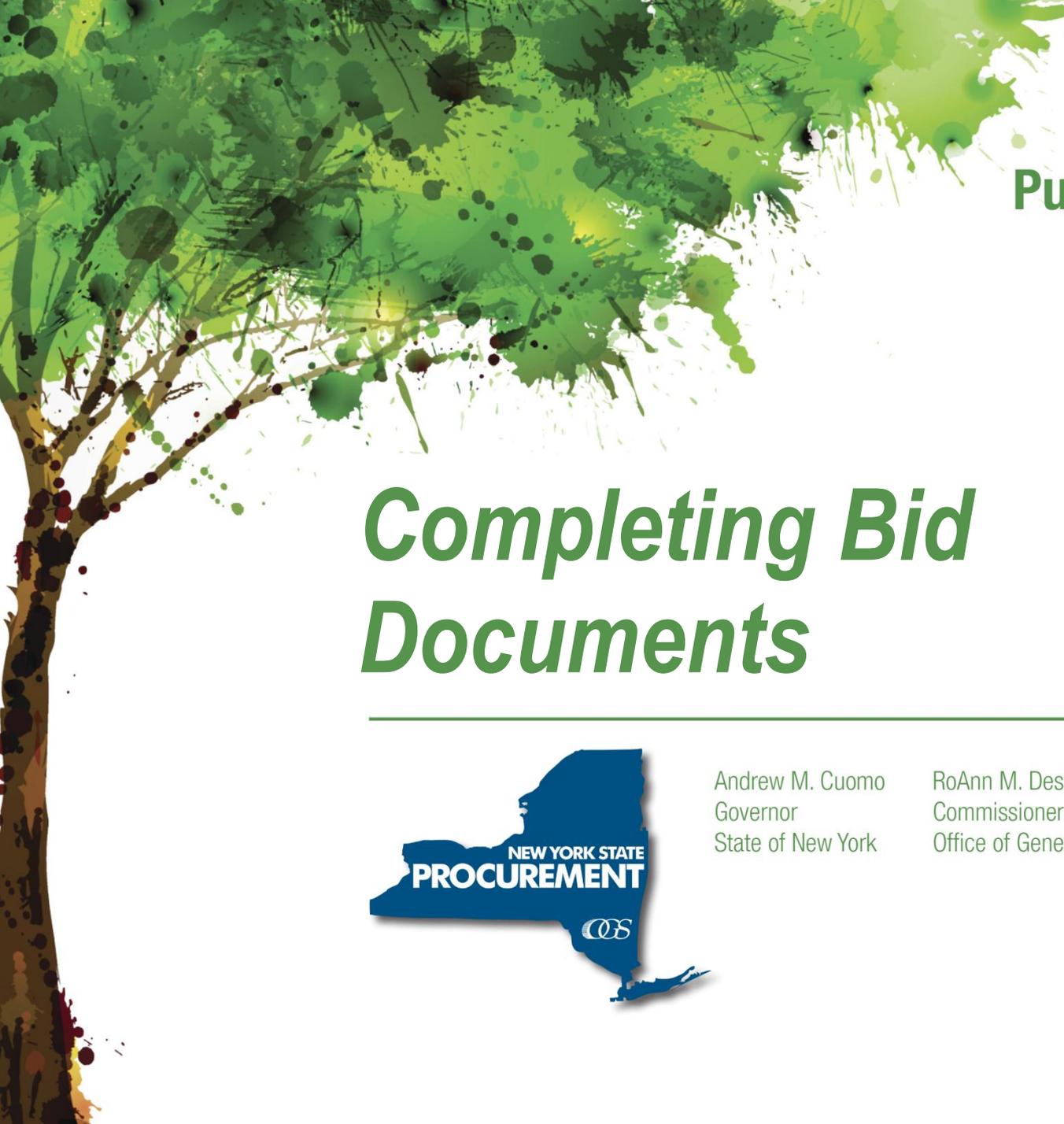
2014

Purchasing Forum & Trade Show *Planting Seeds Today for Tomorrow's Success*



Andrew M. Cuomo
Governor
State of New York

RoAnn M. Destito
Commissioner
Office of General Services



2014
**Purchasing Forum
& Trade Show**
May 14 & 15

Completing Bid Documents



Andrew M. Cuomo
Governor
State of New York

RoAnn M. Destito
Commissioner
Office of General Services

Overview/Purpose

- Why is it important to complete bid documents properly?
 - In a competitive solicitation, requirements are established in order to ensure fairness and open competition.
 - Failure to comply with stated requirements may result in disqualification from contract award.

Basic Principles of Competitive Bidding

Derived from State Finance Law Article 11, General Municipal Law Article 5-a, and Case law

- Fairness; level playing field
- Encouraging open competition
- Protection of taxpayer interests; prudent and economical use of public money
- Avoidance of favoritism, extravagance, fraud, waste and corruption

2014 Purchasing Forum & Trade Show

Planting Seeds Today for Tomorrow's Success



Responsiveness/Basis for Award

- Awards are generally made on the basis of lowest price (commodities) or best value (services) to a **responsive** and responsible offeror (S.F.L §163)
- What is “Responsiveness”?
 - “a bidder or other offerer meeting the minimum specifications or requirements as prescribed in a solicitation for commodities or services by a state agency.” S.F.L. §163(1)(d)

Responsiveness (cont'd)

- What is the significance of “responsiveness”?
 - Only "responsive" bids can be considered for award.
 - “Nonresponsive” bids must be rejected.
- To be responsive, a bid must comply with all essential requirements of the solicitation. Typically, this means any requirement that affects price, quality, quantity, delivery or any other elements deemed material or mandatory requirements of the solicitation.

Statutory, Regulatory & Policy Requirements

- There are many laws, regulations and policies that bidders are required to comply with when bidding on a State procurement.
- Procurement Lobbying Law (S.F.L. §139-j; §139-k)
 - Affirmation of understanding and agreement
 - Certification of compliance
 - Disclosure of prior non-responsibility determinations
 - Certification made by submitting bid, or separate form may be required

Statutory, Regulatory & Policy Requirements

- **Non-Collusive Bidding Certification**
 - Certification that prices were developed independently, without collusion, consultation, communication, or agreement with any competitors for the purpose of restricting competition (required by S.F.L §139-d).
 - Certification made by submitting bid, or separate form may be required.

Statutory, Regulatory & Policy Requirements

- Sales Tax Certification
 - Certification of registration to collect NYS sales and compensating use taxes if certain thresholds are met (required by Tax Law §5-a).
 - Certification made by filing two forms:
 - ST-220-TD: Filed with the Department of Taxation and Finance
 - ST-220-CA: Filed with the agency conducting the procurement

Statutory, Regulatory & Policy Requirements

- Workers' Compensation & Disability Insurance Requirements
 - Workers' Compensation Law requires the State or municipal agency to ensure that businesses applying for permits, licenses or contracts document that they have appropriate workers' compensation and disability benefits insurance coverage. (W.C.L. §57 & §220)
 - Failure to provide proof of such coverage or a legal exemption will result in a rejection of a bid.
 - Contract may automatically become void if Contractor does not provide and maintain coverage for all employees required to be covered under W.C.L. (S.F.L §142)

Statutory, Regulatory & Policy Requirements

- Other Insurance Requirements
 - Depending on the solicitation, successful bidders may be required to procure additional insurance policies with specified levels of coverage as a condition of contract award
 - Commercial General Liability
 - Comprehensive Business Auto
 - Professional Liability
 - Technology Errors & Omissions

Statutory, Regulatory & Policy Requirements

- MWBE/EEO Requirements
 - Executive Law Article 15-A
 - Policy Statement
 - Staffing plan (EEO 100)
 - Utilization report (EEO 101)
- Iran Divestment Act
 - Certification that Contractor is not on the prohibited entities list and agreement that Contractor will not use any entity on the prohibited entities list as a subcontractor (S.F.L. §165-a).

Statutory, Regulatory & Policy Requirements

- Encouraging Use of NYS Businesses
 - Identification of any New York State businesses proposed to be used as subcontractors in the bidder's performance of the contract.
- Consultant Disclosure
 - Disclosure of certain information regarding contracts for consulting services
 - Form A: Planned Employment
 - Form B: Annual Employment Report

Statutory, Regulatory & Policy Requirements

- Vendor Responsibility Questionnaire
 - Prior to contract award, agency is required to make determination that bidder is a responsible entity
 - Determination is based in part on bidder's responses to Vendor Responsibility Questionnaire
 - VendRep system administered by Office of State Comptroller (NYS Vendor ID required to enroll)
 - VRQ may be submitted online through the VendRep system (preferred) or via paper submission

Statutory, Regulatory & Policy Requirements

- Other (may be included within “NYS Required Certifications” document)
 - MacBride Fair Employment certification
 - Diesel Emissions Reduction Act
- Other (as applicable)
 - Executive Orders (EO-4 Green Procurement)
 - Use of Recycled or Remanufactured Materials
 - Mercury-Added Consumer products

Administrative Requirements

- Solicitations often include strict administrative requirements to protect the integrity of the competitive procurement. Noncompliance with these requirements may result in disqualification.
 - Packaging requirements (separately sealed and labeled)
 - Bid submission deadline

Administrative Requirements (cont'd)

- Format and content of bid submittal
- Number of electronic and hard copies
- Discrepancies between electronic and hard copies
- Bid solicitation updates
- Proper signature and notarization
- Using correct forms and versions
- General Bidder questions document
- Bid submittal checklist

Financial Proposals/Pricing Sheets

- Generally the most important part of your bid
- Price is always “material” and except in very limited circumstances, may not be changed, corrected or altered after bid submission.
- Carefully review pricing proposals prior to submission to ensure:
 - Fill out all required fields/cells
 - Use proper format (markup/discount, negative/positive, units of measure)
 - Take advantage of any built-in error messages to check for mistakes

Consequences of noncompliance

- General principle: omission of a material term or failure to meet a material requirement is not curable, i.e., the bidder must be disqualified.
- At the agency's discretion, minor technicalities or immaterial noncompliance may be waived, where the waiver would not disadvantage the State or provide a competitive advantage to the bidder.
- Noncompliance may also lead to challenges from other bidders (bid protests)

Examples of Bidder mistakes

- Late bids
- Blank CDs or thumb drives
- Intermingling technical and financial proposals
- Conflicting electronic and hard copies
- Missing forms
- Wrong versions of price sheets
- Omission of price
- Noncompliance with specifications

Examples of Bidder mistakes (cont'd)

- Wrong number of copies
- Improper labeling of bid packages
- Missing Vendor ID# or FEIN
- Failure to attend mandatory pre-bid conference
- Failure to file mandatory intent to bid
- Failure to provide required certification
- Improper bid delivery (email)

Tips for successful bids

- Participate in activities seeking bidder input, such as Requests for Information (RFIs) and Requests for Comment (RFCs)
- Participate in activities providing bidder instruction, such as Pre-Bid Conferences.
- Pay close attention to mandatory vs. discretionary requirements in the solicitation

Tips for successful bids (cont'd)

- Carefully review specifications, bid packaging and delivery instructions, and timelines/calendar of events
- Use tools provided in solicitations, such as question and answer periods and bidder checklists
- Monitor for solicitation updates and amendments

Tips for successful bids (cont'd)

- Don't wait until the last minute
- When in doubt, ask the designated contact(s)
- After unsuccessful bids, participate in bidder debriefings to learn from mistakes or improve bid for next reissuance of solicitation

Additional Resources

- NYS Procurement Guidelines:
<http://www.ogs.state.ny.us/procurecounc/pdf/doc/guidelines.pdf>
- NYS Comptroller's Vendor Guide:
<https://www.osc.state.ny.us/vendors/>
- NYS Contract Reporter:
<https://www.nyscr.ny.gov/>

2014 Purchasing Forum & Trade Show

Planting Seeds Today for Tomorrow's Success



- Questions?

Tyler.Feane@ogs.ny.gov

2014 Purchasing Forum & Trade Show

Planting Seeds Today for Tomorrow's Success

