

Entity Name: South Dakota State Government

Event Number: 8310

Event ID: 23IFB8310

Event Name: Mobile Brake Tester Trailer

Requested By: Scott Nelson

Created By: Scott Nelson

Due By Date: 01/18/2023 02:00 PM Central Time

Effective Start Date:

Effective End Date:

Q&A Cutoff Date: 01/03/2023 9:15 AM Central Time

Invitation Type: Invitation Only

Assigned Commodities: 055-68 Monitors, Computerized and Wireless (Including Equipment Utilization, Engine/Driver Performance, Brakes, Lights, RPM, Temperature, etc.)

Allow Supplier Terms and Conditions: No

Public Responses: No

Display Awardee: Display

Posting Board Status: Expired

Event Status: No Award

Section #: Name:

1 Section 1 - IFB

Please see file Event 23IFB8310 - Line Item List.xlsx

Terms and Conditions

ESM Sourcing Terms

None

General Terms and Conditions

None

Event Specific Terms and Conditions

**STATE OF SOUTH DAKOTA
OFFICE OF PROCUREMENT MANAGEMENT
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA 57501-3182**

STANDARD TERMS AND CONDITIONS FOR SEALED BIDS

NOTICE TO BIDDERS. The State of South Dakota acting through the Office of Procurement Management will receive sealed bids to the hour specified for the commodities described by the specification(s) stated herein. Unless otherwise stated the bids will be opened in the Office of Procurement Management.

READ CAREFULLY

unless otherwise instructed, bidders registered with the south dakota office of Procurement Management are asked to subMit their bids electronically through the electronic bid and response system which has been implemented by the State of South Dakota.

By signing and submitting their paper bid, or submitting a bid electronically, a bidder certifies that it has read the Solicitation, and the SD Vendor's Manual, understands the same, and agrees that acceptance by the State of South Dakota of the bidder's offer by issuance of a

purchase order, notice of awards or contract will create a binding agreement. Further, bidder agrees to fully comply with the provisions of SDCL 5-18A, and amendments thereto, the SD Vendor's Manual and with the specifications and other documentary forms herewith made a part of this specific procurement. **An on-line version of the South Dakota Vendor's Manual is available on the South Dakota Web Site located at https://boa.sd.gov/central-services/procurement-management/docs/SDVendorManual_12-21-2021.pdf.** Where the provisions stated in the solicitation differ or conflict with the South Dakota Vendor's Manual, the provisions stated in the solicitation will take precedence.

A. GENERAL PROVISIONS

A.1. BID SUBMISSION

A.1.1. Submitted bids shall be in strict conformity with the specifications and the "Special Provisions" and shall contain all completed forms or other documentation required by the solicitation.

A.1.2. **Paper Bids.** Bids submitted on paper must be in a sealed envelope **labeled as shown below**. The form on page 1 of this document must be signed and submitted along with the bid.

A.1.2.1. The United States Postal Service processes all letter size mail on OPTICAL CHARACTER READERS (OCR). Mail that is not in the proper format can be delayed. To prevent delays in receiving bids **the following seven (7) line address should appear exactly as displayed.**

PMB 01231
SOLICITATION # 23IFB8310
OPENING DATE January 18, 2023 – 2:00pm Central
PURCHASING SPECIALIST Scott Nelson
OFFICE OF PROCUREMENT MANAGEMENT
523 E CAPITOL AVE
PIERRE SD 57501-3182

A.1.2.2. All bids shall be legibly typed or written. Pencil bids will not be accepted. Telephone and fax quotations will not be accepted. Bids may be faxed to a third party and will be accepted if they are clearly readable and are delivered to the Office of Procurement Management in a sealed envelope, as indicated above, along with any required bonding.

A.1.3. **Electronically submitted bids.** Bids may be submitted electronically only by approved bidders registered with the State of South Dakota through electronic bid and response system (E-Procurement System) which has been implemented by the Office of Procurement Management.

A.2. SOLICITATION AMENDMENTS

A.2.1. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the solicitation. All amendments to the solicitation shall be made in writing by the Office of Procurement Management.

A.3. SOLICITATION SPECIFICATIONS

A.3.1. Any and all changes to the solicitation specifications by the bidder must be clearly and specifically noted either on the bid or on a separate sheet attached to the bid. **If no changes are indicated on the bid it will be assumed that the bidder is bidding as per the stated specification.**

A.3.2. If submitting a paper bid, the bidder need only return the specification pages for items you are bidding. It is not necessary to return the entire document if you are not bidding on every item. It is not necessary to submit a "no bid" response to this Solicitation.

A.4. BID WITHDRAWAL OR MODIFICATION

A.4.1. A bidder may request that their submitted bid be withdrawn in person, or by submitting a letter, email, or fax to the Office of Procurement Management prior to the bid opening date and time.

A.4.2. A bidder may submit a modification to a submitted bid by mail, facsimile, or electronic notice submitted to the Office of Procurement Management no later than the date and time set for the opening of bids. A modification may not reveal the bid

price but shall provide the addition or subtraction or the modification so that the final prices or terms will not be known to the Office of Procurement Management until the sealed bid is opened. A modification may not be withdrawn after the date and time set for the opening of bids. Each modification shall be confirmed in writing by the successful bidder before award of the contract. No bid made may be changed or altered by telephone.

- A.4.3. After bid opening, no bidder may withdraw their bid without written approval of the Office of Procurement Management. Withdrawal after bid opening will only be allowed when the Office of Procurement Management determines that the bidder has made an obvious mistake in their bid.
- A.4.4. The Office of Procurement Management may waive technical irregularities in the bid or proposal of the low bidder or offeror which irregularities do not alter the price, quality, or quantity of the services, or items of tangible personal property bid or offered.

A.5. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

By signing and submitting their paper bid, or by submitting a bid electronically, the bidder certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation, by any Federal department or agency, from transactions involving the use of Federal funds. Where the bidder is unable to certify to any of the statements in this certification, the bidder shall attach an explanation to their bid.

A.6. CERTIFICATION OF NON-DISCRIMINATION

The State of South Dakota requires that all contractors, vendors, and suppliers doing business with any State agency, department, or institution, provide a statement of non-discrimination. By submitting their bid, the bidder certifies they do not discriminate in their employment practices with regard to race, color, creed, religion, age, sex, ancestry, national origin or disability.

A.7. RESTRICTION OF BOYCOTT OF ISRAEL

For contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by submitting a response to this solicitation or agreeing to contract with the State, the bidder certifies and agrees that the following information is correct:

The bidder in preparing its response in considering bids submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of the bid, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel or its territories, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid submitted by the bidder on this project and terminate any contract awarded based on the bid. The successful bidder further agrees to provide immediate written notice to the contracting executive branch agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

A.8. NON-RESIDENT BIDDER PREFERENCE CERTIFICATION

- A.8.1. By submitting a bid, bidders whose principal place of business is located outside the borders of South Dakota certify that the bidder's home country, state, or province does not provide a preference for resident bidders.
- A.8.2. If the bidder's home country, state, or province does provide a preference for resident bidders, the bidder shall provide a statement with their bid explaining the nature and extent of that preference. If the bid is submitted electronically, the bidder may provide the statement as a document attachment or by using the "Response Notes" section of the online bid system.
- A.8.3. If a bidder submits a bid that falsely certifies that the bidder's home country, state, or province does not enforce a preference for resident bidders or that any preference is less than it actually is and if the false certification results in the bidder being awarded the contract, the contract will be canceled immediately and the State may award a contract to the next low responsive and responsible bidder.

A.9. ASSIGNMENT OF ANTITRUST CLAIMS

By submitting a response to this solicitation, the bidder agrees to convey, assign and transfer to the State of South Dakota all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States, 15 U.S.C.A. §1, et seq. (1973), and under the antitrust laws of the State of South Dakota, SDCL 37-1, and amendments thereto, relating to the particular goods, services and materials purchased by the State of South Dakota in connection with this bid.

A.10. BID OPENING

- A.10.1. Sealed bids shall be opened at the Office of Procurement Management Office, Foss Building, 523 E. Capitol Avenue, Third Floor, Pierre, South Dakota, 57501 at the bid opening date and time specified in the solicitation. Bidders and the public are invited, but not required, to attend the formal opening of bids.
- A.10.2. No decisions related to an award of a contract will be made at the opening. Purchasing Specialists will not communicate bid prices after the opening in response to a telephone request. After an award has been made the bid tabulation will be available to registered bidders through the e-procurement system. A copy of the bid tabulation will be sent to any bidder who requests it and who provides a fax number or email address or self-addressed, stamped envelope.

A.11. BIDS SUBJECT TO PUBLIC DISCLOSURE

Unless otherwise specified in SDCL 1-27, SDCL 5-18, or other applicable law, documents and information a bidder submits as part of or in connection with a bid are public records and subject to disclosure. Bidders claiming any portion of their bid as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. The State Procurement Director shall make the final decision as to whether the documentation or information is confidential.

A.12. LATE BIDS

Bids received after the response due date and time shall be deemed non-responsive and shall NOT be considered for any resultant award.

A.13. LEGAL CONTRACT

- A.13.1. Submitted bids are rendered as a legal offer and any bid, when accepted by the Office of Procurement Management, shall constitute a contract.
- A.13.2. The Contract resulting from this solicitation will consist of the following documents in order of preference: Contract award documents, including but not limited to the Purchase Order, Contract Modifications, required certification statements, affidavits, and change orders; the solicitation including any amendments; and the successful bid to the extent that the bid does not conflict with the requirements of the Contract award documents or solicitation or applicable law. In the event there is a conflict between any of the preceding documents, the Contract award documents prevail over the solicitation, and both the Contract award documents and the solicitation shall prevail over the successful bid.

A.14. PRICING

- A.14.1. Bids shall remain firm for a minimum of thirty (30) days from the solicitation closing date.
- A.14.2. Bidders guarantee unit prices to be correct.

A.15. MANUFACTURERS' NAME, BRAND NAME AND APPROVED EQUIVALENTS

- A.15.1. Unless otherwise specified in the solicitation, manufacturers' names, brand names, information and/or catalog numbers listed in a specification are for the purpose of describing the standard of quality, performance, and characteristics desired and not intended to limit competition. Bidder may offer any brand for which they are an authorized representative, which meets or exceeds the specification for any item(s). However, if bids are based on equivalent products, indicate on the bid form the manufacturer's name and number. Bidder shall submit sketches, descriptive literature, and/or complete specifications with their bid. Reference to literature submitted with a previous bid will not satisfy this provision. The bidder shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids that do not comply with these requirements are subject to rejection. **The State reserves the right to determine which products offered would best meet its requirements. Said determination will be made in the State's best interest and shall, therefore, be considered final.**

A.16. CLARIFICATION OF SOLICITATION REQUIREMENTS

Any request for clarification of the contents of this solicitation shall be directed to the Office of Procurement Management Purchasing Specialist specified in the Special Provisions section of the solicitation. Bidders or their agents may not contact any other state employee regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements. Bidders and their agents who have questions regarding this matter should contact the Purchasing Specialist identified.

A.17. REJECTION OF BIDS

The State reserves the right to reject any bids that do not comply with the requirements and specifications of the solicitation. A bid may be rejected when the bidder imposes terms or conditions that would modify requirements of the solicitation or limit the bidder's liability to the State. The State reserves the right to reject any or all bids as deemed to be in the best interest of the State of South Dakota.

A.18. USE OF RECYCLED OR BIOBASED MATERIALS

A.18.1. The Office of Procurement Management will endeavor to execute contracts with bidders who provide products containing biobased or recycled postconsumer materials defined as follows:

- A.18.1.1. "BIOBASED," composed wholly or in significant part of biological products including renewable agricultural materials or forestry materials;
- A.18.1.2. "RECYCLED," the quality of being manufactured from or consisting of, in whole or part, materials derived from solid waste;
- A.18.1.3. "POSTCONSUMER MATERIAL," products generated by a business or consumer that have served their intended end uses and that have been separated or diverted from solid waste for purpose of collection, recycling and disposition;
- A.18.1.4. "RECOVERED MATERIAL," material which is recovered or derived from solid waste.

A.18.2. South Dakota law provides that a preference may be given to materials and supplies manufactured from recycled or biobased materials. This preference is applicable only if the bids of the persons or manufacturing concerns supplying the recycled or biobased materials, or the prices quoted by them, do not exceed by more than five percent the lowest bid or prices quoted by persons and manufacturing concerns offering non-recycled or non-biobased materials.

A.18.3. By signing and submitting a paper bid or submitting a bid electronically, the bidder certifies that the product(s) being offered comply with the specifications of this Solicitation and the percentages of postconsumer material and recovered material stated in the bid.

A.18.4. If you are bidding products with recycled content, and wish to be considered for preference, you must provide a statement with your bid requesting preference and documenting the recycled content, including the percentage of postconsumer and recovered material contained in each applicable line item.

A.18.5. If you are bidding biobased products, and wish to be considered for preference, you must provide documentation of certification under the USDA Biopreferred Program, or provide other documentation as evidence that the product being offered meets the definition for biobased products.

A.19. AWARD OF CONTRACT

A.19.1. The State may waive technical irregularities in bid of the low bidder as long as such irregularities do not alter the price, quality, or quantity of the supplies or services offered.

A.19.2. The State may award the contract(s) by item or groups of items, or may award the contract on an "all or none" basis, whichever is deemed by the State Procurement Director to be in the best interest of the State of South Dakota.

A.19.3. The contract shall be awarded within forty-five days of the bid opening by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

- A.19.4. The successful bidder shall enter into a contract with the state within fourteen days after receiving notice of award, on such forms as shall be provided, to furnish the required supplies or services in accordance with the solicitation and specifications or in accordance with the bid or proposal as accepted.

A.20. CORPORATE REGISTRATION REQUIREMENTS AND COMPLIANCE CERTIFICATION

- A.20.1. All corporations, limited liability companies, limited liability partnerships, limited partnerships, cooperatives and business trusts, must comply with the corporate registration requirements of the **South Dakota Secretary of State** as outlined in SDCL Chapter 47, before transacting any business in the State of South Dakota. Forms for business corporations, limited liability companies, non-profit corporations, limited liability partnerships, limited partnerships, cooperatives, and business trusts are available at the Secretary of State's website at http://www.sdsos.gov/businessservices/corporations_forms.shtm.
- A.20.2. By submitting a bid, any vendor interested in doing business with the State of South Dakota as a result of this solicitation certifies that they are currently registered, or will be registered **with the Secretary of State before any contract is awarded**.
- A.20.3. **Any vendor that cannot certify registration with the Secretary of State, and is claiming exemption from the registration requirement, must provide a statement with their bid providing specific details supporting the exemption the vendor is claiming.** Exemptions to the corporate registration requirement can be found in SDCL 47-1A-1501.
- A.20.4. **It is the bidder's responsibility to determine what they must do to comply with this requirement through consultation with their own legal counsel.** SDOPM personnel may not give any advice or assistance to bidders for making a determination of exemption from the corporate requirements.

A.21. CONTRACT MODIFICATIONS

- A.21.1. Contracts are issued under the authority of the State Procurement Director who signs the contract(s). The contract(s) may be modified only through a written contract modification signed by the State Procurement Director.
- A.21.2. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Office of Procurement Management in writing, or made unilaterally by a supplier, is a breach of the contract. Unless otherwise specified by applicable law or rules, such changes, including unauthorized written contract modifications, shall be void and without effect, and the supplier shall not be entitled to any claim under the contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the contract.

A.22. DELIVERY, INSPECTION AND ACCEPTANCE

- A.22.1. Unless otherwise specified in the solicitation or awarding documents, all deliveries shall be F.O.B. Destination. The bidder(s) awarded the contract(s) shall prepay all packaging, handling, shipping and delivery charges and firm prices quoted in the bid shall include all such charges. All products and/or services to be delivered pursuant to the contract(s) shall be subject to final inspection and acceptance by the State at destination. "Destination" shall mean delivered to the receiving dock or other point specified in the purchase order. The State assumes no responsibility for goods until accepted by the State at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the supplier until accepted by the receiving agency. The supplier(s) awarded the contract(s) shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.
- A.22.2. Supplier(s) awarded the contract(s) shall be required to deliver products and services as bid, during normal working hours, on or before the required date. Deviations, substitutions or changes in products and services shall not be made unless expressly authorized in writing by the Office of Procurement Management. Deliveries shall be made at such time, place and in such quantities as shown on the Purchase Order.

A.23. INVOICING AND PAYMENT

- A.23.1. Unless otherwise specified, invoices will be paid after products have been delivered or services provided.
- A.23.2. The State will make payments to the contract, and interest on late payments will be governed by South Dakota Codified Law 5-26, "Prompt Payment Act".

A.24. TAX EXEMPTION

- A.24.1. State agency acquisitions are exempt from sales taxes and federal excise taxes. Bidders shall not include these taxes in price

quotes, except that State taxes will be included in bids for gasoline.

A.25. AUDIT AND RECORDS CLAUSE

- A.25.1. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any contract with the State, the successful bidder(s) agree any pertinent State or Federal agency will have the right to examine and audit all records relevant to execution and performance of the resultant contract.
- A.25.2. The successful bidder awarded the contract is required to retain records relative to the contract for the duration of the contract and for a period of three years following completion and/or termination of the contract. If an audit, litigation, or other action involving such records is started before the end of the three year period, the records are required to be maintained for three years from the date that all issues arising out of the action are resolved, or until the end of the three year retention period, whichever is later.

A.26. NON-APPROPRIATION CLAUSE

Any contract depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for the intended purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, the contract will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

A.27. GOVERNING LAW AND VENUE

This solicitation and any resulting contract shall be governed by and construed in accordance with the laws of the State of South Dakota. Venue for any action, claim, dispute or litigation pertaining to or affecting any contract shall be in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

A.28. TERMINATION FOR CAUSE

- A.28.1. The supplier may terminate the Contract for default or other just cause with a 30-day written request and upon written approval from the SDOPM. The State may terminate the Contract for default or any other just cause upon a 30-day written notification to the supplier.
- A.28.2. The State may terminate the Contract immediately, without a 30-day written notice to the supplier, when violations are found to be an impediment to the function of an agency and detrimental to its cause, when conditions preclude the 30-day notice, or when the State Procurement Director determines that an administrative error occurred prior to Contract performance.
- A.28.3. If the Contract is terminated, the State shall be liable only for payment for products and/or services delivered and accepted.

A.29. TERMINATION FOR CONVENIENCE

- A.29.1. The State may terminate the Contract, in whole or in part, for convenience if the State Procurement Director determines that termination is in the State's best interest. The State Procurement Director shall terminate the Contract by delivering to the supplier a Notice of Termination for Convenience specifying the terms and effective date of Contract termination. The Contract termination date shall be a minimum of 60 days from the date the Notice of Termination for Convenience is issued by the State Procurement Director.
- A.29.2. If the Contract is terminated, the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the supplier.

A.30. INSURANCE

The successful bidder(s) awarded the contract shall obtain and retain insurance, including workers' compensation, automobile insurance, medical malpractice, and general liability, as applicable, or as required by State or Federal law, prior to commencement of any work in connection with the contract. The supplier awarded the contract shall timely renew the policies to be carried pursuant to this section throughout the term of the contract and shall provide the State with certificates of insurance, and, when requested, the insurance policy involved.

A.31. EMPLOYMENT RELATIONSHIP

The Contract does not create an employment relationship. Individuals performing services required by the contract are not employees of the State of South Dakota or the procuring agency. The supplier's employees shall not be considered employees of the State of South Dakota nor of the procuring agency for any purpose, and accordingly shall not be eligible for rights or benefits accruing to state employees.

A.32. COMPLIANCE WITH APPLICABLE LAWS

The products and services supplied under the contract shall comply with all applicable federal, state and local laws, and the supplier shall maintain all applicable licenses and permit requirements.

A.33. SPECIAL PROVISIONS

Special Provisions set forth in SECTION B apply with the same force and effect as these General Provisions. However, conflicts or inconsistencies shall be resolved in favor of the Special Provisions.

B. SPECIAL PROVISIONS

B.1. PURCHASING SPECIALIST CONTACT INFORMATION

The SDOPM Purchasing Specialist listed below is the contact for all questions related to this solicitation.

Scott Nelson, Purchasing Specialist
Office of Procurement Management
Email: Scott.Nelson@state.sd.us
Phone: 605-773-4275
Fax: 605-773-4840

B.2. CONTRACT TERM

B.2.1. Award will be made through the issuance of a purchase order by the Office of Procurement Management.

B.3. BID BOND

B.3.1. No bonding is required.

B.4. PRICING/ESCALATOR CLAUSE

B.4.1. All prices quoted by the bidder shall be firm for the term of the contract.

B.4.2. Price decreases are acceptable on invoice(s) presented for payment. If the open market price of a specific contract item is under the vendor's price, the State reserves the right to purchase the lower priced product.

C. SOLICITATION SPECIFICATIONS

Specifications for specific line items are located in the line item notes, or as file attachments on the line item. For bidders submitting paper bids, any line item specification attachments will be attached to the bid form in line item order.

D. EVALUATION

Award will be made to the lowest responsive bid.

