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## SECTION 2 RULES GOVERNING COMPETITION

### 2.1. IDENTIFICATION AND CLASSIFICATION OF RFP REQUIREMENTS

#### 2.1.1. Requirements

The DDTP has established certain requirements with respect to proposals to be submitted by prospective vendors. The use of “shall,” “must,” or “will” (except to indicate simple futurity) in the RFP indicates a requirement or condition from which a deviation if not material may be waived by the DDTP. A deviation from a requirement is material if the deficient 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 proposed, amount paid to the vendor, or on the cost to the DDTP. Material deviations cannot be waived.

#### 2.1.2. Desirable Items

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

### 2.2. BIDDING REQUIREMENTS AND CONDITIONS

#### 2.2.1. 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 proposal is an irrevocable offer for 18 months following the scheduled date for contract award specified in Section 1.7., with the exception that CCS bidders may decline awards if their projected call volume, as determined or verified by the DDTP, will initially be ten percent or less of the total CRS call volume (see RFP section 2.5.9.(5).) A bidder may extend the offer in the event of a delay caused by a protest of the intended award or other administrative circumstance.

#### 2.2.2. RFP Documents

This RFP includes, in addition to an explanation of the DDTP’s needs that must be met, instructions, which prescribe the format and content of proposals to be submitted and the model(s) of the contract(s) to be executed between the DDTP and the successful bidders.

If a bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, they shall immediately notify the DDTP of such error in writing and request clarification or modification of the document.

When the word “bid” is used, it is intended to mean “propose” or “proposal” as appropriate. When the word “bidder” is used, it is intended to mean a firm or entity intending to submit, or has submitted, a Final Proposal. The term “vendor” is generally intended to mean a bidder who has been awarded a contract for services. The terms “bidder” and “vendor” are not meant to exclude the role of a firm’s subcontractors and other parties, nor does inclusion of such subcontractors or other parties reduce or remove a firm from its overall ultimate responsibility to comply with the provisions of the RFP, contract or proposal.

Modifications to the RFP will be made by addenda issued pursuant to paragraph 2.2.7., Addenda, below. Such clarification shall be given by written notice to all parties who have been furnished an RFP for proposing purposes, without divulging the source of the request for same. Insofar as practicable, the DDTP will give such notices to other interested parties, but the DDTP shall not be responsible therefor.

If a vendor fails to notify the DDTP prior to the date fixed for submission of bids, of an error in the RFP known to them, or an error that reasonably should have been known to them, they will respond at their own risk; and if they are awarded a contract, they will not be entitled to additional compensation or time by reason of the error or its later correction.

### **2.2.3. Examination of the Work**

Prospective vendors should carefully examine the entire RFP and any addenda thereto, and all related materials and data referenced in the RFP or otherwise available to them. Each prospective vendor should become fully aware of the nature and location of the work, the quantities of the work, and the conditions to be encountered in performance of the work. Specific conditions to be examined may be listed in the RFP Section 5, Administrative Requirements.

### **2.2.4. Questions Regarding the RFP**

Vendors 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, with envelope clearly marked "Questions Relating to the DDTP’s CRS RFP” to the DDTP’s Procurement Official listed in Section 1.5. To ensure response, questions must be received in writing by the scheduled date given in Section 1.7 (Vendor Key Action Dates.) Question and answer sets will be provided to all bidders without identifying the submitters.

A bidder who desires clarification or further information on the content of the RFP, but whose questions relate to the proprietary aspect of their proposal and which, if disclosed to other bidders, would expose their proposal, may submit such questions in the same manner as above, but also marked “CONFIDENTIAL,” and not later than the schedule date specified in Section 1.7 (Vendor Key Action Dates) to ensure response. The bidder must explain why their questions are sensitive in nature. If the DDTP 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 DDTP does not concur with the proprietary aspect of a 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 their belief and reasons for making the recommended change. Such request must be submitted to the DDTP Official by the date specified in Section 1.7. (Vendor Key Action Dates) for submitting a request for change.

#### **2.2.5. Vendor’s Conference**

A Vendor’s Conference will be held during which vendors will be afforded the opportunity to meet with DDTP personnel and discuss the content of the RFP and the procurement process. Notification of the time and place of such conference will be made to all vendors receiving an RFP for purposes of submitting a proposal. Written questions received prior to the cutoff date for submission of such questions, as noted in Section 1.7, will be answered at the conference without divulging the source of the query.

The DDTP may also accept oral<sup>1</sup> questions during the conference and will make a reasonable attempt to provide answers prior to the conclusion of the conference. A transcript of the discussion, or those portions that contain the questions and appropriate answers, will be transmitted within approximately ten (10) working days to all vendors furnished the RFP for submitting a proposal. If questions asked at the conference cannot be adequately answered during the discussion, answers will be provided with the transcribed data. Oral answers, including oral answers in a captioned written transcript, shall not be binding on the DDTP.

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<sup>1</sup> The term “oral” used throughout this RFP and resulting contract shall include American Sign Language (ASL), as well as live captioning and other assistive means to live communication.

### **2.2.6. Vendor's Intention to Bid**

Vendors who have been furnished copies of the RFP for purposes of responding are asked to state their intention by the date specified in Section 1.7., Vendor Key Action Dates, with respect to submission of proposals. The DDTP is also interested as to a vendor's reasons for not submitting a bid; as, for example, requirements to which they cannot be responsive or unusual terms and conditions which arbitrarily raise costs. Each vendor is asked to categorize his or her intent as follows:

- 1) Will submit a proposal and has no problem with the RFP requirements.
- 2) Intends to submit a proposal, but has one or more problems with the RFP requirements for reasons stated in their response.
- 3) Does not intend to submit a proposal for reasons stated in their response, and has no problem with the RFP requirements.
- 4) Does not intend to submit a proposal because of one or more problems with the RFP requirements for reasons stated in their response.

If vendors have indicated significant problems with the RFP requirements, the DDTP will examine the stated reasons for the problems and will attempt to resolve any issues in contention, if not contrary to the DDTP's interests, and will amend the RFP if appropriate. All vendors who have been furnished copies of this RFP and have declared their intent to submit a proposal will be advised by the DDTP of any actions taken as a result of the vendor's responses. If after such actions, a vendor determines that the requirements of the RFP unnecessarily restrict their ability to submit a proposal, they are allowed five (5) working days to submit a protest to those RFP requirements or the DDTP's action, according to the instructions contained in paragraph 2.9.1. of this section.

Hereafter, for the purposes of the instructions of this RFP, all vendors who have indicated their intent to submit a proposal are called bidders until such time that the bidder withdraws or other facts indicate that the bidder has become nonparticipating.

### **2.2.7. Addenda**

The DDTP may modify the RFP prior to the date fixed for submission of a Final Proposal by issuance of an addendum to all parties 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 vendors to become participating, in which case the addendum will be sent to all parties receiving the RFP for bidding purposes.

Addenda will be numbered consecutively. If any vendor determines that an addendum unnecessarily restricts their ability to bid, they are allowed five (5) working days to submit a protest to the addendum according to the instructions contained in paragraph 2.9.1. of this section.

### **2.2.8. Bonds**

The DDTP reserves the right to require a faithful performance bond or other security document as specified in the RFP from the vendor(s) in an amount not to exceed the estimated amount of the contract.

### **2.2.9. Joint Proposals**

A joint proposal (2 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 bidder 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 DDTP assumes no responsibility or obligation for the division of labor or revenues among the joint bidders.

## **2.3. BIDDING STEPS**

### **2.3.1. General**

The procurement process to be used in this acquisition is composed of two phases of proposal development:

- 1) Conceptual Proposal
- 2) Draft and Final Bid.

There is always a final phase, which includes the Draft and Final proposal. Prior to the final phase, there is a Compliance Phase. In this case, the Compliance Phase refers to a Conceptual Proposal. A description of these phases and their steps follows.

### **2.3.2. Compliance Phase**

The Compliance Phase is an iterative, conversational mode of proposal and contract development. It requires the DDTP, working together in confidence with each bidder, to assess and discuss the viability and effectiveness of the bidder's proposed methods of meeting the DDTP's needs as reflected in the RFP. It is a radical departure from the rigid "either accept or reject"

philosophy of traditional competitive bidding, yet it is highly competitive in nature. It provides the flexibility needed for the bidder to test their solution prior to formal submittal of their Final Proposal, and it facilitates correction of defects before they become fatal to the proposal. The steps include the submission of a Conceptual Proposal by the bidder, Confidential Discussions of the bidder's proposal(s), and written Discussion Memorandum as to the correction of defects and the DDTP's acceptance of such changes.

The Conceptual Proposal may be included for the purpose of allowing each bidder to provide a general concept of their proposal with just enough detail to enable the evaluators to determine if the bidder is on the right track toward meeting the functional requirements as stated in the RFP; and if not, where the bidder must change their concept. This step invites the bidder to be as innovative as the RFP requirements allow in eliminating unnecessary constraints.

Upon receipt of the Conceptual Proposal, the evaluation team will review each proposal in accordance with the evaluation methodology outlined in the RFP Section 9 on Evaluation for the purpose of identifying areas in which the proposal is nonresponsive to a requirement, is otherwise defective, or in which additional clarification is required in order that the DDTP may fully understand the ramifications of an action proposed by the bidder. As a result of this evaluation, the evaluation team will prepare an agenda of items to be discussed with the bidder and will transmit the agenda to the bidder approximately three working days before the scheduled meeting. The agenda may also include, in addition to the identification of discovered defects, a discussion of the bidder's proposed vendor support, implementation plans, validation plans, demonstration plans, and proposed contracts, as appropriate.

In accordance with the discussion agenda, the evaluation team will meet with each bidder for the purpose of discussing their Conceptual Proposal in detail. The bidder may bring to the discussion those persons that may be required to answer questions or commit to changes. As the first order of business, the bidder may be asked to give a short presentation of their proposal. To the extent practical, the bidder shall address the major concerns of the evaluation team, as expressed in the Discussion Agenda, and should be prepared to answer any questions that may arise as a result of their presentation. The participants will then proceed to discuss each of the agenda items.

The DDTP will not make counter proposals to a bidder's proposed solution to the RFP. The DDTP will only identify its concerns, ask for clarification, and

express its reservations if a particular requirement of the RFP is not, in the opinion of the DDTP, appropriately satisfied. The primary purpose of this discussion is to ensure that the bidder's Final Proposal will be responsive.

If any contractual items have a bearing on, or are affected by, the content of the proposal, such matters may be discussed in an effort to reach agreement. (As a separate activity, the bidder and the DDTP will work together to negotiate the proposed contract(s) which will become operative if the bidder's Final Proposal is accepted by the DDTP.) Further discussion of the contractual aspect of this procurement is contained in paragraph 2.8. et seq., Contractual Information.

Throughout the Confidential Discussion a written record will be kept of all items discussed, their resolution, and any changes the bidder intends to make in their proposal and the DDTP's acceptance of such changes. If the bidder's proposal with the agreed-to-changes is acceptable to the DDTP, such acceptance shall be noted. If agreement has not been reached on all matters during the initial discussion, such will be noted with a specific plan for resolution before the next step. These resolutions and agreements will be prepared in final form as a Discussion Memorandum (which will be the official DDTP documentation of the discussion) and will be mailed to the bidder within two workdays of the discussion. If the discussion is not completed in one meeting and is continued in subsequent meetings, the Discussion Memoranda will follow the meeting at which the discussion is concluded. If a bidder discovers any discrepancy, omission, or other error in the memorandum they shall immediately notify the DDTP of such error in writing and request clarification or correction. Oral statements made by either party not recorded in the Discussion Memorandum shall not obligate either party.

If after full discussion with a bidder the DDTP is of the opinion that the bidder's Conceptual Proposal cannot be restructured or changed in a reasonable time to satisfy the needs of the DDTP, and that further discussion would not likely result in an acceptable proposal in a reasonable time, the bidder will be given written notice that their proposal has been rejected and that a Final Bid submitted along such lines would be nonresponsive.

If at the conclusion of the Confidential Discussion, the DDTP determines that required and agreed-to changes can only be fully confirmed through the submission of an amended Conceptual Proposal, the DDTP may require the submission of an addendum consisting only of those pages that were in doubt or a complete resubmittal. Similarly, if the bidder wishes confirmation that the changes they intend to make in the Conceptual Proposal, in accordance

with the Discussion Memorandum, are acceptable to the DDTP, they may request and receive permission, if the time permits, to submit such addendum within a reasonable time after the conclusion of the Confidential Discussion. In either event, the DDTP will advise the bidder as to the acceptability of the amended Conceptual Proposal, or may schedule another discussion period, if in the DDTP's opinion, such a discussion is desirable.

### **2.3.3. Final Phase**

The purpose of the Final Phase is to obtain bids that are responsive in every respect. This phase includes a Draft Proposal and a Final Proposal as described below:

#### **(1.) Draft Proposal**

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

The Draft Proposal must correspond to submittals and agreement of the Compliance Phase and must be complete in every respect as required by the RFP Section 8, Proposal Format, with "XXX's" replacing cost figures or percentage rates related to bid costs. The inclusion of cost information in the Draft Proposal is a basis for rejecting the bid and notifying the bidder that they may not participate further in the procurement.

*REVIEW OF THE DRAFT PROPOSAL BY THE DDTP IS NOT INTENDED TO INCLUDE ANY ASSESSMENT OF ITS RESPONSIVENESS TO THE TECHNICAL REQUIREMENTS OF THE RFP.* The DDTP will notify the bidder of any defects it has detected in the Draft Proposal, or of the fact that it did not detect any such defects. Such notification is intended to minimize the risk that the Final Proposal will be deemed defective; however, the DDTP will not provide any warranty that all defects have been detected and that such notification will not preclude rejection of the Final Proposal if such defects are later found.

#### **(2.) Final Proposal**

The Final Proposal must be complete, including all cost information, required signatures, contract amendments agreed to in the

Discussion Memorandum and corrections to those defects noted by the DDTP in its review of the Draft Proposal. Changes that appear in the Final Proposal, other than the correction of defects, increase the risk that the Final Proposal may be found defective.

The DDTP reserves the right to consider telegraphic bids, received prior to the closing time specified, if promptly confirmed in writing.

## **2.4 CONFIDENTIALITY**

*FINAL PROPOSALS ARE PUBLIC UPON OPENING; HOWEVER, THE CONTENTS OF ALL PROPOSALS, DRAFT PROPOSALS, 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. THE CONTENT OF ALL WORKING PAPERS AND DISCUSSIONS RELATING TO THE BIDDER'S PROPOSAL SHALL BE HELD CONFIDENTIAL 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 PROPOSAL. ANY DISCLOSURE OF THIS SUBJECT BY THE BIDDER IS A BASIS FOR REJECTING HIS PROPOSAL AND RULING HIM INELIGIBLE TO FURTHER PARTICIPATE. ANY DISCLOSURE BY DDTP STAFF IS A BASIS FOR DISCIPLINARY ACTION, INCLUDING DISMISSAL FROM EMPLOYMENT, AS PROVIDED BY GOVERNMENT CODE SECTION 19570 ET SEQ. TOTAL CONFIDENTIALITY IS PARAMOUNT; IT CANNOT BE OVER EMPHASIZED.*

## **2.5 SUBMISSION OF PROPOSALS**

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

Bidders may submit proposals for any or all of the component CRS services (Network Services, Call Center Services, and/or Network Management Services) identified in this RFP. However each proposal for each component CRS service must be separately proposed and submitted without reference to any other proposal or submission, and shall be available for award as a binding offer independently of the award status of any other proposal, except that a firm awarded the Network Management Services component shall not also be awarded either the Network Services component or a Call Center Services component.

### 2.5.1. Preparation

Proposals 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 discussed above, the DDTP's evaluation of the Conceptual Proposal is preliminary and the review of the Draft Proposal is cursory. Therefore, bidders are cautioned to not rely on the DDTP, 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.

### 2.5.2. Bidder's Cost

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

### 2.5.3. Completion of Proposals

Proposals must be complete in all respects as required by the RFP Section 8, 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 must 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 the RFP Sections 7 and 8, Cost and Proposal Format. Draft proposals must contain all information required of the Final Proposal except that "xxx's" must replace cost figures and percentages related to bid costs.

Exhibit 2A at the end of this Section 2 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.

#### **2.5.4. False or Misleading Statements**

Proposals that contain false or misleading statements, or that provide references that do not support an attribute or condition claimed by the bidder, may be rejected. If in the opinion of the DDTP such information was intended to mislead the DDTP 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.

#### **2.5.5. Signature of Proposal**

A cover letter, which shall be considered an integral part of the Final Proposal, shall be signed by an individual who is authorized to bind the bidding firm contractually. The signature must indicate the title or position that the individual holds in the firm.

An unsigned Final Proposal shall be rejected. A Final Proposal may be signed by an agent of the bidder only if he is an officer of a corporate bidder authorized to sign contracts on behalf, a member of a partnership bidder, or is properly authorized by a power of attorney or equivalent document. Such authorization must be submitted to the DDTP prior to the submission of proposals or with the proposal. The name and title of the individual signing the proposal must be typed immediately below the signature.

The Draft Proposal must also contain the cover letter, similarly prepared, including the title of the person that will sign, but need not contain the signature. The Conceptual Proposal need not contain this cover letter.

#### **2.5.6. Delivery of Proposals**

Mail or deliver proposals to the DDTP Official listed in Section 1.5. If mailed, use certified or registered mail with return receipt requested.

Proposals must be received in the number of copies stated in the RFP Section 8, Proposal Format, and not later than the dates and times specified in Section 1.7 and in the individual schedules provided the bidders. One copy must be clearly marked "Master Copy." All copies of proposals must be under sealed cover, which is to be plainly marked "DDTP CRS RFP," and "CONCEPTUAL PROPOSAL," "DRAFT PROPOSAL," or "FINAL PROPOSAL" "for XXX" where XXX is replaced with either "NETWORK SERVICES," "CALL CENTER SERVICES," or "NETWORK MANAGEMENT SERVICES." The sealed cover shall also be clearly marked "CONFIDENTIAL" and shall state the scheduled date and time for

submission. Proposals not submitted under sealed cover will be returned for sealing. Final Proposals not received by the date and time specified in Section 1.7, or not sealed, will be rejected. 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 so rejected, the Master Copy will provide the basis for resolving such discrepancies. If one copy of the Final Proposal is not clearly marked "Master Copy," the DDTP may at its sole option select, immediately after the opening of the proposals, one copy to be used as a Master Copy.

#### **2.5.7. Withdrawal and Resubmission/Modification of Proposal(s)**

A bidder may withdraw their Conceptual Proposal or Draft Proposal at any time by written notification. A bidder may withdraw their Final Proposal at any time prior to the bid submission time specified in Section 1.7 by submitting a written notification of its withdrawal signed by the bidder or agent authorized in accordance with paragraph 2.5.5., Signature of Proposal. The bidder may thereafter submit a new or modified proposal prior to such proposal submission time. Modification offered in any other manner, oral or written, will not be considered. Final Proposals cannot be changed or withdrawn after the time designated for receipt, except as provided in paragraph 2.5.9.4. of this section.

#### **2.5.8. Rejection of Proposals**

The DDTP may reject any or all proposals and may or may not waive any immaterial deviation or defect in a bid. The DDTP's waiver of an immaterial deviation or defect shall in no way modify the RFP documents or excuse the bidder from full compliance with the RFP specification if they are awarded a contract.

#### **2.5.9. Evaluation and Selection Process**

##### **(1.) General**

Proposals will be evaluated according to the procedures contained in RFP Section 9, Evaluation. Special instructions and procedures apply to Conceptual Proposals and Draft Bids.

**(2.) Evaluation Questions**

During the evaluation and selection process, the DDTP may desire the presence of a bidder's representative for answering specific questions, orally and/or in writing.

**(3.) Demonstration**

The DDTP may 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 proposal, corroborate the evaluation of the bid, and confirm that the bidder is responsible and has the resources to provide the services proposed. In such a case, prior notice will be given. The bidder must make all arrangements for demonstration facilities at no cost to the DDTP. The DDTP will pay for its own travel and expenses to attend the demonstration. The DDTP reserves the right to determine whether or not a demonstration has been successfully passed. See Section 10 on Demonstrations for additional information.

**(4.) Errors in the Final Bid**

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

In determining if a correction will be made, the DDTP will consider the conformance of the bid to the format and content required by the solicitation document, and any unusual complexity of the format and content required by the solicitation document.

- a) If the bidder's intent is clearly established based on review of the complete Final Bid submittal, the DDTP may at its sole option correct an error based on that established intent.
- b) The DDTP may at its sole option correct obvious clerical errors.
- c) The DDTP 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 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.

- d) The DDTP may at its sole option correct errors of omission, and in the following four situations, the DDTP will take the indicated actions if the bidder's intent is not clearly established by the complete bid submittal.
- 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.
  - 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.
  - 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.
  - If a major item is omitted, and the omission is not discovered until after the contract award, the bidder shall be required to supply the item at no cost.
- e) If a bidder does not follow the instructions for computing costs not related to the contract (e.g., DDTP personnel costs), the DDTP may reject the bid,

or at its sole option, recompute such costs based on instructions contained in the RFP.

If the recomputations or interpretations, as applied in accordance with this section, 2.5.9.4., 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 their bid.

*IT IS ABSOLUTELY ESSENTIAL THAT THE BIDDER CAREFULLY REVIEW THE COST ELEMENTS IN THEIR FINAL BID, SINCE THEY WILL NOT HAVE THE OPTION TO CHANGE THEM AFTER THE TIME FOR SUBMITTAL.*

- f) In the event an ambiguity or discrepancy between the general requirements described in Section 4 (Proposed Services) and the specific technical requirements set forth in Section 6 (Technical Requirements) is detected after the opening of proposals, Section 6, and the bidder's response thereto, shall have priority over Section 4, and the bidder's response thereto. Refer to Paragraph 2.2.2. regarding immediate notification to the DDTP contact when ambiguities, discrepancies, omissions, etc. are discovered.
- g) The DDTP may declare all Final Proposals of any biddable component (NS, CCS or NMS) to be an additional Draft Proposal in the event that the DDTP Evaluation Team determines that Final Proposals from all Bidders of the component contained material deviations and that it is in the best interest of the DDTP to continue the bid process. If this occurs, the DDTP will issue an addendum to the RFP and a Confidential Discussion will be held with each Bidder that submitted a flawed Final Proposal and any other Bidder that requests a Confidential Discussion. Each Bidder will be instructed of the due date for the submission of a new completed Final Proposal to the DDTP. This submission must conform to all of the requirements of the original Final Proposal as amended by any subsequent addenda. During the evaluation of the new Final Proposal, the DDTP Evaluation Team may request the Bidder to clarify any area of the Proposal that the DDTP Evaluation Team determines to be unclear. However, this request for clarification will not be an opportunity for the Bidder to change its proposal.

**(5.) Confirmation of Acceptance of Potential Awards**

After final evaluation of proposals, including demonstrations if any, any CCS bidder that is forecast to receive ten percent or less of the total CRS traffic and that as a result of the final evaluation will be recommended to the DDTPAC and

the CPUC to be offered a contract for CCS services, will be contacted and given an opportunity to accept or decline such potential contract offer. Such notice from the DDTP will include the estimated initial percentage of CRS traffic as determined by the DDTP, but will not include the names of the other potential CCS awardees. The CCS vendor shall respond in writing within three working days (i.e., Monday through Friday excluding National Holidays) to indicate if it will accept or reject an award if offered by the DDTPAC and the CPUC. If the CCS vendor does not respond, the vendor will be deemed to accept the offer if and when made, and the CCS vendor's Final Proposal will be binding. If the CCS vendor declines, they will not be recommended to the DDTPAC for award, and the DDTP may contact the next most responsive potential CCS bidder who will be given an opportunity to accept or decline such potential contract offer, etcetera.

## **2.6. AWARD OF CONTRACT**

Award of contracts, if made, will be in accordance with RFP Section 9, Evaluation, to responsible bidder(s) whose bid(s) comply with all the requirements of the RFP documents and any addenda thereto, except for such immaterial defects as may be waived by the DDTP.

Written notification of the DDTP's Intent to Recommend Awards (vendor key action date item #20 in RFP section 1.7.) will be made to all bidders submitting a Final Proposal.

## **2.7. 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 Bid. A debriefing is not the forum to challenge the RFP specifications or requirements.

## **2.8. CONTRACTUAL INFORMATION**

### **2.8.1. Specific Terms and Conditions**

The Agreements (or contracts) to be awarded are included in this solicitation document in their final form, and any alteration by a bidder may result in rejection of its bid.

## **2.9. OTHER INFORMATION**

### **2.9.1. Protests**

Before a protest is submitted regarding any issue other than selection of the "successful vendor," the bidder must make full and timely use of the procedures described in this Section 2 to resolve any outstanding issue(s) between the bidder and the DDTP. The procurement procedure is designed to give the bidder and the DDTP 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 DDTP after exhausting these procedures. In such cases, a protest may be submitted according to the procedure below. Protests regarding any issue other than selection of the “successful vendor” will be heard and resolved by the Executive Director of the DDTP or her or his designee whose decision will be final.

If a bidder has submitted a proposal which the bidder believes is totally responsive to the requirements of the RFP and is the best value to the DDTP according to the evaluation procedure in Section 9 on Evaluation and believes the DDTP 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 vendor” will be heard and resolved by the Director of the Telecommunications Division of the California Public Utilities Commission, whose decision will be final.

All protests must be made in writing, signed by an individual authorized under paragraph 2.5.5., Signature of Bid,. Protests must be mailed or delivered to:

Ms. Shelley Bergum, Executive Director  
The Deaf and Disabled Telecommunications Program  
505 14<sup>th</sup> Street, Suite 400  
Oakland, California 94612  
  
(510) 302-1100 (Voice)  
(510) 302-1101 (TTY)  
(510) 302-1130 (Fax)

All initial filing of protests to the RFP or protests concerning the evaluation, recommendation, or other aspects of the selection process must be received by the Executive Director of the DDTP as promptly as possible, but not later than the respective times and dates specified in Section 1.7 for such protests for the respective date of the Notification of Intent to Recommend Awards, whichever is later. Within five (5) days after the initial filing, the protesting bidder must file a full and complete written statement specifying the grounds for the protest, citing the law, rule, regulation, or procedures on which the protest is based. The protester must provide facts and evidence to support the bidder’s claim. Certified or registered mail should be used unless delivered in person, in which case the protester should obtain a receipt of delivery.

### **2.9.2. News Releases**

Any publications or news releases relating to a contract resulting from this RFP shall not be made without prior written approval of the DDTP Official listed in Section 1.5, who shall also be provided with the material in final form.

### **2.9.3. Disposition of Proposals and Bids**

All materials submitted in response to this RFP will become the property of the DDTP and will be returned only at the DDTP's option and at the bidder's expense. The Master Copy shall be retained for official files and will become a public record after the date and time for final CPUC approval as specified in Section 1.7, Vendor Key Action Dates. However, confidential financial information submitted in support of the requirement to show bidder responsibility will be returned upon request.

### **2.9.4. Contacts for Information**

Bidders may contact the Procurement Official listed in Section 1.5 for any additional information. The DDTP may provide specifically requested information to any or all bidders, as it deems appropriate. The DDTP reserves the right to charge to defray expenses incurred in producing the requested information.

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

## Exhibit 2A, Competitive Bidding and Bid Responsiveness

The California Public Utilities Commission has required that all acquisitions of the DDTP be conducted within the guidelines of the State of California for public procurements. This Exhibit provides additional information about those guidelines.

The purpose of competitive bidding is to secure public objectives at the lowest practical cost and avoid the possibilities of graft, fraud, collusion, etc. Competitive bidding is designed to benefit the public body (the DDTP, 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 DDTP specifications, and acceptance by the DDTP of the most responsive bid(s) submitted by responsible bidder(s).

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:

- a. Requests 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. RFP's must be so specific and detailed as to provide an environment where all competitors are bidding on the same end objectives.
- b. The DDTP may modify the RFP prior to the date fixed for submission of final proposals, by issuance of an addendum to all parties who have been furnished the RFP for bidding purposes.
- c. 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.
- d. 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. To have competition, the bids must be for the same thing. Bids which prevent such competition or, in other words, variations which could significantly affect the amount of the bid or could provide an advantage or benefit not allowed other bidders, cannot be accepted. If such a potential effect exists, the deviation is material.
- e. State agencies, and the DDTP, have the express or implied right to reject any and all bids in the best interests of the DDTP. Bids cannot, however, be selectively rejected without cause.

- f. Bids 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.
- g. 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.
- h. Bids cannot be accepted "in part", unless the invitation specifically permits such an award.
- i. Contracts entered into through the competitive bidding process cannot later be amended, unless the Request for Proposal includes a provision, to be incorporated in the contract awarded, providing for such amendment.

Since competitive procurement became the required method for securing certain goods or services, the State has received a number of bids which were deemed to be nonresponsive to the Request for Proposals or which could not be considered as valid bids within the competitive bidding procedures. Nonresponsive or bids that contain qualifications must be rejected. Many of the causes for rejections arose from either an incomplete understanding of the competitive bidding process or administrative oversight on the part of the bidders. The following examples are listed to assist potential bidders in submission of responsive proposals.

- 1. A bid contained a statement, "This proposal contains proprietary information of the \_\_\_\_\_ Company, and neither this proposal, nor said proprietary information shall be published, reproduced, copied, disclosed or used for any purpose other than consideration of the duly authorized representative of the \_\_\_\_\_ Company."
- 2. A bid stated, "The prices stated within are for your information only and are subject to change.
- 3. A bid stated, "This proposal shall expire thirty (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.)
- 4. A bid for lease of equipment contained lease plans of a duration shorter than that which had been requested in the RFP.
- 5. A bid for lease of equipment contained a contract which differed in substance from that previously approved by the State as being acceptable.

6. 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 and we are sure that the State will carry out its responsibilities in an attempt to achieve the earliest practical ..."
7. A bid stated, "This proposal is not intended to be of a contractual nature."
8. A work plan contained in a bid was overprinted with "SAMPLE ONLY".
9. A bid contained the notation "prices are subject to change without notice".
10. A bid was submitted which had not been signed by a properly authorized individual.
11. A bid was received for the purchase of equipment with modifications to the General Provision of the Purchase contract.
12. A bid was received for the purchase of equipment with Rider B, "Equipment List, Prices, Installation Dates and Allied Information" not submitted.
13. A bid was received for the purchase of equipment with exceptions taken to Rider A "Terms and Conditions Applicable to Purchase of Systems and Equipment".
14. A bid for lease of equipment contained lease plans of a duration longer than that which had been requested in the RFP with no provisions for earlier termination of the contract.
15. A bid for lease of equipment contained the signatures of three joint bidders when the RFP allowed only two.
16. A bid for lease of equipment contained multiple cost sheets for parts of the bid equipment with no information to explain how to interpret the actual intentions of the bidder. The actual equipment to be supplied (and the attendant costs) could not be determined without contacting the bidder for clarification. This has the effect of asking for an amended bid after the bid opening, which is contrary to public competitive bidding rules.
17. A bid for lease of equipment stated, "... this proposal is preliminary only and the order, when issued, shall constitute the only legally binding commitment of the parties.

18. A bid, which would have been lowest, was rejected because it mistakenly listed a fewer number of terminal devices than was required by the RFP.
19. A bid was received in an unsealed condition.
20. A bid was delivered to the wrong office.