

123:5-1-14

Biobased products bid preference program procedure.

(A) For purposes of this rule “biobased content” means the amount of biobased carbon in the material or product as a per cent of weight (mass) of the total organic carbon in the material or product., the following definitions apply:

(1) ~~“ASTM International” means the nonprofit organization that provides a forum for the development and publication of voluntary consensus standards for materials, products, systems, and services.~~

(2) ~~“Biobased Content” means the amount of biobased carbon in the material or product as a per cent of weight (mass) of the total organic carbon in the material or product.~~

(3) ~~“Fair Market Value” means a market price that is representative of the range of prices that a state agency would expect to pay for the item in the marketplace.~~

(4) ~~“ISO” means the international organization for standardization.~~

(B) The awarding of contracts under this section will be consistent with section 125.071 of the Revised Code for requests for proposals and section 125.11 of the Revised Code for invitations to bid.

(C) As applicable, when purchasing equipment, materials or supplies, first consideration must be given to the availability of such items in accordance with sections 5147.01 to 5147.26 (Ohio penal industries) or sections 125.60 to 125.6012 (community rehabilitation program) of the Revised Code. If both biobased and non-biobased products are available from these sources, state agencies shall consider purchasing purchase the biobased product ~~provided such meets the need of the state agency, is available within a reasonable period of time, and is at a reasonable price.~~

(D) When it is determined that either a biobased or non-biobased product would be acceptable and it is determined that both biobased and nonbiobased products are available, the request for proposal or invitation to bid for purchase of equipment, material or supplies will contain a biobased bid preference provision indicating the minimum acceptable percentage of biobased content as designated by the United States department of agriculture. This procedure is not required when the request for proposal or invitation to bid specifies that only a biobased product will be considered for award of a contract.

~~(E) Bids or proposals received will be segregated into categories as follows:~~

~~(1) Biobased~~

~~(2) Non-biobased~~

~~(F)~~(E) The bids or proposals containing biobased products~~biobased category~~ shall be reviewed to determine the following:

- (1) A bid or offer contains a designated item as defined in division (D) of section 125.091 of the Revised Code;
- (2) The offeror or bidder is listed in the current version of the United States department of agriculture catalog as maintained by the department of administrative services on its website as a company that is offering a designated item or the bidder or offeror provides a certification according to rule 123:5-1-15 of the Administrative Code; and
- (3) The percentage of biobased content.

~~(G)~~(F) Those bids or proposals containing the highest percentage of biobased content and that contain all items listed in paragraphs (F)(1) to (F)(3) of this rule will be evaluated first in accordance with section 125.071 of the Revised Code for requests for proposals and section 125.11 of the Revised Code for invitations to bid. The information furnished by the bidder or offeror as provided for in paragraph (F) of this rule shall be solely relied upon in making the award.

~~(H)~~(G) From among those bids or proposals offering non-biobased products, the department of administrative services or state agency will review the non-biobased bids in accordance with section 125.071 of the Revised Code for requests for proposals and section 125.11 of the Revised Code for invitations to bid.

~~(I)~~(H) In awarding the contract, the department of administrative services or state agency will compare the lowest responsive and responsible bid or the most advantageous offer for the non-biobased product to the lowest responsive and responsible bid or most advantageous offer for the biobased product containing the highest percentage of biobased content.

~~(J)~~(I) The department of administrative services or state agency may proceed with the award of the contract for the biobased product containing the highest percentage of biobased content unless:

- (1) The biobased product containing the highest percentage of biobased content is not available within a reasonable period of time;
- (2) The biobased product does not meet the performance standards set forth in the applicable specifications of the product; or

(3) The price of the biobased product is an unreasonable price as defined in division (C)(3)(a) of section 125.092 of the Revised Code. Where the preliminary analysis identifies the apparent low bid as one other than a bid offering biobased products, the director or the director's designee shall apply the following preferences:~~In determining if the biobased product is an unreasonable price, the biobased product price may exceed the price or fair market value of a substantially equivalent non-biobased product by up to five per cent.~~

(a) If the apparent low bid is one other than a bid offering biobased products, apply five percent to the price. For the purposes of the biobased products bid preference, an unreasonable price means the price of a biobased product exceeds the price or fair market value of a substantially equivalent nonbiobased product by more than five percent. If the biobased products bid preference is determined to be applied then the preferences under rule 123:5-1-06 (A) (2), (3), and (4) and 123:5-1-16 of the Administrative Code shall not be applied.

~~(K)~~(J) If the bid or proposal offering the highest percentage of biobased content does meet any one of paragraphs ~~(I)~~(J)(1) to ~~(I)~~(J)(3) of this rule, the department of administrative services or state agency may consider the other bids or proposals submitted that offer a lower percentage of biobased content and that meet all other requirements set forth in this rule in descending order beginning with the next highest percentage content of biobased material.

~~(L)~~(K) If all biobased bids are excluded through the application of paragraphs ~~(I)~~(J)(1) to ~~(I)~~(J)(3) of this rule or through the evaluation of the bid in accordance with section 125.071 of the Revised Code for requests for proposals and section 125.11 of the Revised Code for invitations to bid, the department of administrative services or state agency may consider an award of the contract to the other non-biobased product bids or proposals submitted that are the lowest responsive and responsible bid or the most advantageous offer.

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Certification

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Date

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