

123:5-1-13 Biobased Products bid preference policy.

(A) The Department of Administrative Services, other state agencies and state institutions of higher education must procure biobased products that fall within the designated item categories list compiled by the United States Department of Agriculture, as maintained by the Department of Administrative Services. State agencies must procure equipment, materials, and supplies in accordance with procedures set forth in section 123:5-1-14.

(B) Requests for proposal and invitations to bid will contain a statement that biobased products may be considered and that a preference may be applied for those biobased products meeting the specifications set forth in the bidding document.

(C) The minimum content for the anticipated biobased purchase shall be derived from the United States Department of Agriculture's determination of minimum content for the designated item.

123:5-1-14 Biobased Products bid preference program procedure.

(A) For purposes of this section, 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": Biobased content shall be determined based on the amount of biobased carbon in the material or product as a percent 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 state agencies 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 Industry) or 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 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) nonbiobased

(F) The biobased category shall be reviewed to determine the following:

- (1) A bid or offer contains a designated item as defined in section 125.091 (D) of the Revised Code;
- (2) The designated item is listed in the United States Department of Agriculture catalog as a biobased product or the bidder or offeror provides a certification according to section 123:5-1-15; and
- (3) The percentage of biobased content.

(G) Those bids or proposals containing the highest percentage of biobased content and that contain all items listed in (F)(1) through (3) above 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 section (F) of this rule shall be solely relied upon in making the award.

(H) 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) 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) 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 section 125.092(C)(3)(a) of the Revised Code. 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 nonbiobased product by up to five percent.

If the bid or proposal offering the highest percentage of biobased content does not meet any one of (J)(1) through (3), 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 section in descending order beginning with the next highest percentage content of biobased material.

(K) If all biobased bids are excluded through the application of (J)(1) through (3) 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.

123:5-1-15 Bidder or Offeror Certification.

All invitations to bid and requests for proposals shall require the bidder or offeror to complete and attest the following:

I, _____ (name of certifier), am an officer or employee responsible for the performance of this contract and I hereby certify that biobased products (within the categories of items listed by the United State Department of Agriculture) to be used or delivered in the performance of the contract will comply with the applicable specifications or other contractual requirements.

I further certify that biobased products being offered have been tested by an ASTM/ISO compliant test facility using the ASTM International Radiosotope Standard Method D 6866 for testing and I can verify this testing upon request of the State of Ohio.

[Signature of the Officer or Employee]

[Date]

[Name of Company]