

1S-2.004 Voting Machine Equipment Regulation/Purchase, Use and Sale.

(1) Purpose. It is the purpose of the regulations and procedures set forth in this section to give effect to the provisions of Section 101.5601, F.S., relating to the purchase, use and sale of new and used voting machines and voting machine equipment, including electronic and electromechanical voting systems and equipment, by governing bodies of political subdivisions of the State of Florida. The standards and specifications outlined herein shall be applied in accordance with Section 101.5601, F.S., to:

- (a) Promote efficiency and economy in the purchase, use and sale of voting machines and attendant equipment in the State
- (b) Provide a uniform program of accepted minimum requirements
- (c) Provide for the maximum of competition on a basis of fair and equal opportunity to persons, companies and corporations interested in the sale and purchase of voting equipment in the State; and
- (d) Serve as a guide to governing bodies and as information to suppliers, intended to portray good practices and procedures in governmental purchase, use and sale of voting equipment.

(2) Definitions. The following words and terms used in these regulations and procedures outlined herein are intended to have the following meanings:

(a) "Governing Body" means the legislative branch of the political subdivisions of this State which are empowered by general or special laws, or local ordinance, to authorize the purchase and sale of voting equipment by that political subdivision.

(b) "Voting Equipment" means new or used voting machines and materials, parts, or other equipment necessary for the maintenance or improvement of voting machines, the individual retail value of which is in excess of 1,000 dollars, or the combined retail value of which is in excess of 1,000 dollars. Voting equipment shall also include electronic or electromechanical voting systems, marking devices, and automatic tabulating equipment as defined in the Electronic Voting Systems Act, as well as materials, parts or other equipment necessary for the operation and maintenance of such systems and devices.

(c) "Purchase" means a contract for the purchase, lease, rental or other acquisition of voting equipment.

(d) "Sale" means a contract for the sale or disposition of voting equipment in return for a valuable consideration.

(e) "Division" means the Division of Elections of the Florida Department of State.

(f) "Bid List" means a current list of sources of supply for each classification of voting equipment purchase or sale.- 163

(g) "Responsible Bid" means an offer submitted by a responsible bidder in ink or typewritten form for the purchase or sale of voting equipment in conformity with the specifications, delivery, terms and conditions, and other requirements included in bid invitations.

(h) "Responsible Bidder" means one who submits a responsible bid and who has furnished, when requested, information and data to prove his financial resources, production or service facilities, and one whose service reputation and experience are adequate to insure delivery on which he bids, and one who has not violated any, or attempted to violate any, provisions of the statutes or regulations of the Division.

(i) "Regulations" means and includes the provisions herein.

(3) Bid Procedures and Regulations/Purchase and Sale.

(a) Competitive Bids, When Required – No purchase or sale of voting equipment may be made when the price thereof is in excess of \$1,000, unless made upon competitive sealed bids received and when the price is in excess of \$1,000, no purchase or sale shall be made unless competitive sealed bids are received after advertising in a newspaper of general circulation one time at least 10 days prior to the date on which bids are to be received provided, however, that the governing body agrees by vote that an emergency situation exists in regard to the purchase of such equipment to the extent that the potential benefits derived from competitive bids is outweighed by the detrimental effects of a delay in the acquisition of such equipment or if a majority of the governing body finds that there is only a single source from which suitable equipment may be obtained, then the governing body may make the purchase and the chairman of such governing body shall certify to the Division of Elections within 10 days the circumstances and conditions requiring an exception purchase to the competitive bidding requirements of this section.

(b) Data on Bid Furnished by Governing Body – All bid invitations shall indicate what is or is not wanted, by what governing body, the quantity, delivery time requested, and the specification or other description establishing the capability of such voting equipment, including compliance with the minimum requirement provisions of Section 101.5606, F.S. Also, included shall be any special conditions which bidders must meet. All bids shall be signed manually by a responsible officer of the company in ink or indelible pencil and returned to the governing body prior to the time and date set for the bid opening. Bids received after that time shall be returned to the sender unopened. The following information and any other necessary shall be in all calls for bids:

1. Name and address of governing body.
2. Date of issuance.
3. Time, place and terms of delivery.
4. Date, hour and place of opening bids.
5. Surety requirements, if any.
6. Quantity of voting equipment to be furnished under each item.
7. Any other general conditions or special provisions.

(c) Prior Approval by Division of Elections – Prior approval of the Division of Elections is required for all calls for bids and

purchases or sale of new or used voting equipment priced in excess of \$1,000. Bid invitations for such purchases or sale of equipment by a governing body shall be prepared as outlined in paragraph (b) and forwarded to the Division. Upon receipt, the Division shall examine those invitations for compliance with the procedures and regulations stipulated herein. All approved invitations will be returned to the governing body for bid purposes or other appropriate action. Each person engaged in the business of selling new or used voting equipment shall register with the Secretary of State by supplying the name and address of the seller and the name of the person responsible for such sales in the State of Florida.

(d) Formal Bids – Purchases or sales which are valued in excess of \$1,000 shall be based on competitive bids received. Bids on requirements which are \$1,000 or less may be procured in any one of three methods: by telephone inquiries to bidders; by return mail inquiry; or by formal bid procedure. In any event, all bids, tabulations of bids, and quotations related to bids shall be entered in a permanent record and maintained by governing body for inspection by the public or other appropriate authority.

(e) Bids Lists Maintained – The Division shall maintain a list of vendors whose voting equipment is certified for purchase by the respective governing bodies. The bid list shall be forwarded to the governing body upon approval, by the Division, of the bid invitations. At least two vendors on the bid list shall be solicited.

(f) How to Submit Bids – Bids shall be filled out and executed by each bidder in accordance with the instructions contained in the call for bids. Bids shall be submitted to the purchasing authority by mail or by delivery. In each instance, the bid shall be in a sealed envelope clearly identified by bid number, time, date of opening, and name of bidder.

(g) Discounts – Bidders shall clearly indicate in their bids any cash discounts and terms of discount provided the bid is accepted.

(h) Time of Submission – Bids shall be submitted in sufficient time to reach the designated office prior to the time set for the opening. Bids received after the time of the opening shall be returned to the bidder unopened.

(i) Modification or Withdrawal of Bids – Bids may be modified or withdrawn at any time prior to the date and time set for the opening thereof. After the opening of bids, no bid may be modified or withdrawn.

(j) Delivery and Receipt – Each bidder shall show the earliest date on which he can guarantee delivery or receipt of the items on which his bid is submitted. Where a specific date is required, the call for bids will so indicate. Except for this provision, all bidders shall bear in mind that early delivery or receipt is desirable. (k) Opening Bids – All bids received prior to the time of opening shall be opened publicly and read aloud (if requested) at the time and place established in the call for bids. All interested persons may attend bid openings. All original bids shall be retained in the office of the governing body and made available for inspection if requested.

(l) Tie Bids – In case of exact tie bids the decision for award shall be made by the purchasing authority. In making this decision, consideration shall be given to the bidder's past performance, reputation, time and potential service that can be rendered. All factors being equal, the decision may be made by drawing lots.

(m) Rejection of Bids – The right shall be reserved by the governing body to reject any and all bids and such reservation shall be indicated in all bid invitations and advertising. When bids are rejected and the projects or requirements are not abandoned, new bids may be called for. Bids which contain any alteration or erasure may be rejected. Otherwise, bids will be rejected only for good and sufficient cause, such as faulty specifications, abandonment of requirement, insufficient funds or other irregularities.

(n) Award of Contracts – All awards of purchases and sales for which competitive bids are received shall be made to the lowest responsible bidder in the case of purchases, and to the highest responsible bidder in the case of sales, taking into consideration quality, probability of performance and any other factors consistent with good business practices. In analyzing purchasing bids, officials must exercise careful judgment to insure that quality, performance, merit, utility and value are at least equal to that specified in the call for bids. Award of contracts shall be made with reasonable promptness by due notice to the bidder whose bid is deemed to be the best bid price, performance and other factors considered. Award shall be effected by a properly executed written document.

(o) Purchase or Sale Order; A Contract – The issuance by a governing body of a purchase or sale order or other written notice to a bidder regarding any or all of the items for which bids are submitted shall be a contract of purchase or sale as to the voting equipment at the prices, terms and conditions specified therein.

(p) Recording or Tabulation of Bids – The names of the bidders, the prices quoted and such other pertinent data as necessary will be entered on tabulation and attached to the bids when filed by the governing body and shall be made available for inspection by any interested party.

(q) Bids Prepared to Location – All bids received from bidders by a governing body for voting equipment shall include all costs for delivery, storage, freight and packing to the address on the bid invitation unless otherwise specified. Bid invitations shall clearly state delivery conditions.

(r) Deliveries – All deliveries shall be made to the point or points specified in the call for bids and in all instances, charges therefor shall be prepaid to the location of the governing body, except when expressly otherwise provided for in the purchase order and/or bid. All deliveries of purchased equipment shall be subject to inspection at time of delivery. Voting equipment that fails in any respect to meet specifications, or not in satisfactory condition when received by the governing body, may be subject to rejection by it.

(s) Notice of Rejection – Notice of any rejection, based on defects that would be disclosed by ordinary methods of inspection, will be given to the supplier and the carrier within a reasonable time after delivery of the item(s). Notice of latent defects which would make the items unfit for the purpose intended may be given by the governing body any time after acceptance.

(t) Exceptions – Should any conditions arise wherein an exception to the regulations is required, then the governing body shall forward a certification stating the conditions and circumstances along with the complete file to the Division for its review and approval.

(4) Use Procedures and Regulations. In the case of the purchase of any voting equipment, each governing body shall certify in writing to the Division, prior to such purchase, that the equipment shall be used either to comply with Section 101.33, F.S., which provides the number of machines to be used in an election or to replace existing election equipment. In the case of the sale of any voting equipment, each governing body shall certify in writing to the Division, prior to such sale, what disposition is to be made of the voting equipment, including the anticipated terms of the sale and the fact that such sale will not adversely affect its ability to comply with Section 101.33, F.S.

Specific Authority 101.294 FS. Law Implemented 101.292, 101.293, 101.294, 101.295 FS. History—New 12-20-73, Amended 1-19-74, Repromulgated 1-1-75, Amended 5-20-75, Formerly 1C-7.04, Amended 7-7-86, Formerly 1C-7.004.