

**FAP 220-05-00**

**SUBJECT: BIDDER INSTRUCTIONS FOR CONSTRUCTION SOLICITATIONS**

**1. DEFINITIONS**

- a. "Addenda" means written or graphic instruments issued by the purchasing agency prior to the execution of the contract that modify or interpret the bidding documents by addition, deletion, clarification, or correction.
- b. "Alternate" means an optional item stated in the bid the amount of which is to be added to or deducted from the amount of the base bid.
- c. "Architect or engineer" means the architectural or engineering firm that prepared the drawings and specifications.
- d. "Bid" means the sum stated in the Bid Response for which the bidder offers to perform the work described in the specifications and detailed on the plans.
- e. "Bidder" means one who submits a bid directly to the owner for the work described in the bidding documents.
- f. "Bidding documents" means the Solicitation, including Instructions to Bidders, General Conditions, Special and Supplemental Conditions, Forms for Response, plans, specifications, and Addenda issued prior to receipt of bids.
- g. "Bid Response" means a complete and properly signed document, offering to do the work or designated portion thereof, supported by data called for by the bidding documents.
- h. "Owner" means the Commonwealth of Kentucky.
- i. "Purchasing agency" means the Finance and Administration Cabinet, Department for Facilities and Support Services, Division of Engineering and Contract Administration.
- j. "Purchasing officer" or "contracting officer" means the director, Division of Engineering and Contract Administration, or an authorized representative of that individual.
- k. "Sub-bidder" or "subcontractor" means one who submits a bid to a prime bidder for materials or labor for a portion of the work described in the bidding documents.
- l. "Unit price" means an amount stated in the bid as a price per unit of measurement for materials or services as described in the bidding documents.
- m. "Using agency" means the state government entity that utilizes the work being contracted.

**2. BIDDER'S REPRESENTATIONS:** Each bidder, by submitting a bid, swears or affirms, under penalty of law, that:

- a. The bidder has read and understands the bidding documents and the bid is made in accordance with the bidding documents.
- b. The bidder has carefully examined the site of the proposed work and is familiar with the local conditions under which the work is to be performed.
- c. The bid is premised upon furnishing the work required by the bidding documents.

- d. The bid amount has been arrived at by the bidder independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with any other contractor, vendor of materials, supplies, equipment or services described in the solicitation, that is designed to limit independent bidding or competition.
- e. The contents of the bid have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder, or its surety on any bond furnished with the bid and will not be communicated to any such person prior to the bid opening.
- f. The bidder is legally entitled to enter into a contract with the Commonwealth and the award of a contract will not create any conflict of interest, including those set out in KRS 45A.330 to 45A.340, 45A.455 and 164.390.

### **3. BIDDING DOCUMENTS**

- a. A bidder, sub-bidder, sub-contractor, and others may obtain bidding documents in the manner and for the charge, if any, stated in the solicitation.
- b. A complete set of bidding documents shall be used in preparing bids. The Commonwealth assumes no responsibility for misinterpretations resulting from the use of incomplete sets of bidding documents.
- c. The Commonwealth, in providing bidding documents, does so only for the purpose of obtaining bids on the work and does not confer a license or grant for any other use.
- d. A bidder shall promptly notify the purchasing officer of any ambiguity, inconsistency or error, which they may discover upon examination of the bidding documents or of the site and local conditions.
- e. All questions regarding the meaning or interpretation of the bidding documents shall be directed in writing to the purchasing officer. Questions received less than ten (10) calendar days prior to the date for receipt of bids may not be answered.
- f. Any interpretation, correction or change of the bidding documents shall be made by an addendum issued by the purchasing agency. Interpretations, corrections or changes of the bidding documents made in any other manner shall not be binding and bidders shall not rely upon such interpretations, corrections or changes.
- g. Unless otherwise indicated in the bidding documents, the materials, products and equipment described or referenced by manufacturers' or vendors' names, trade names, and catalog numbers are intended to establish a standard of required function, dimension, appearance and quality. Unless otherwise stated, equal items may be furnished or used if approved by the purchasing officer in consultation with the architect.
- h. Addenda shall be published on the Commonwealth's eProcurement web site and may be mailed to all who are known by the purchasing officer to have been furnished bidding documents.
- i. Copies of addenda shall be made available for inspection wherever bidding documents are on file.
- j. No addenda of a material nature shall be issued later than seven (7) calendar days prior to the date for receipt of bids, except for addenda postponing the date for receipt of bids or withdrawing the solicitation.
- k. The bidder shall ascertain, prior to submitting a bid, that the bidder has received all addenda issued by the purchasing officer for the particular solicitation. The bidder shall acknowledge

receipt of all addenda on the Bid Response or by a separate letter to the purchasing officer, which shall be received at or prior to the hour and date specified for receipt of bids.

#### **4. BIDDING PROCEDURE**

- a. Bids shall be submitted on the Bid Documents provided by the purchasing officer.
- b. All blanks in the Bid Documents shall be completed and all required support data shall be furnished.
- c. If indicated in the bidding documents, sums shall be expressed in both words and figures. In the case of discrepancy between the two, the amount in words shall prevail.
- d. The authorized representative of the bidder who signed the Bid Response shall initial any alteration or erasure in ink.
- e. All alternates specifically called for by the owner shall be bid. Voluntary alternate bids or an alternate to a lump sum bid shall not be considered unless specifically permitted by the solicitation.
- f. The bidder shall make no stipulations on the Bid Response nor qualify the bid in any manner.
- g. A person legally authorized to bind the bidder to a contract shall sign the Bid Response. The Bid Response shall also include the legal name of the bidder and a statement indicating whether the bidder is a sole proprietorship, a partnership, a corporation, or other legal entity. A bid by a corporation shall also identify the state of incorporation and federal employer identification number.
- h. Bids shall be accompanied by a bid guarantee of not less than five percent (5%) of the amount of the base bid executed with a licensed resident or non-resident agent who represents insurance companies authorized to do business in Kentucky. This bid security secures the bidder's promise (1) to enter into a contract with the owner on the terms stated in his bid, and (2) if required, to furnish bonds covering the faithful performance of the contract and the payment of all obligations. If the bidder refuses to enter into a contract or fails to furnish the required performance and payment bonds, the amount of the bid security shall be forfeited to the owner as liquidated damages, not as a penalty.
- i. The purchasing officer may retain the bid security of bidders until either (1) the contract has been executed and performance and payment bonds have been furnished, or (2) the specified time has elapsed so that bids may be withdrawn, or (3) all bids have been rejected.
- j. The completed Bid Response, bid security, and required support data shall be enclosed in a sealed envelope. The envelope shall be addressed to the bid receipt clerk stated in the solicitation and shall identify the bidder's name and address, the invitation number stated in the bidding documents, closing date and hour. If the bid is sent by mail, the sealed envelope shall contain the notation "BID ENCLOSED" on the face thereof.
- k. Bids shall be received at the designated location prior to the closing time and date for receipt of bids indicated in the solicitation or any extension thereof made by addendum. Bids received after the closing time and date for receipt of bids may be considered for evaluation and award only if (1) no other bids were received within the legal advertisement period; (2) the readvertisement time delay would seriously affect the operations of the using agency; and (3) in the reasonable judgment of the purchasing officer, the bid was finalized prior to the official closing time and date for the receipt of bids.

- l. A bidder shall assume full responsibility for timely delivery at the location designated for receipt of bids.
- m. Oral, telephonic, facsimile or telegraphic bids or changes in bids by such methods are not permitted and shall not be considered.

## **5. MODIFICATION OR WITHDRAWAL OF BID**

- a. A bid may be withdrawn prior to the closing time and date for receipt of bids by (1) a properly identified representative of the bidder whose name appears on the bid envelope, or (2) written request by an authorized representative of the bidder, received by the receipt clerk stated in the solicitation prior to bid closing time.
- b. Withdrawn bids may be resubmitted up to the closing time designated for the receipt of bids.
- c. No bidder may withdraw, modify or cancel its bid for a period of thirty (30) calendar days following closing time and date for receipt of bids without the bid security being subject to forfeiture.

## **6. CONSIDERATION OF BIDS**

- a. Unless the bidding documents indicate otherwise, all properly identified, timely bids shall be publicly opened, read aloud, and listed on the official bid tabulation, which shall be made available to bidders upon request.
- b. The Commonwealth retains the right to cancel the solicitation, to reject any and all bids, and to waive technicalities and minor irregularities in bids, if such action is determined to be in the best interest of the Commonwealth.
- c. Grounds for the rejection of bids are stated in 200 KAR 5:306.
- d. Minor or technical deficiencies or irregularities in a bid may be waived by the purchasing officer on behalf of the owner if all of the following circumstances are present:
  - (1.) The purchasing officer determines that it is in the owner's best interest to do so; and
  - (2.) The technicalities or irregularities are mere matters of form not affecting the material substance of a bid, represent an immaterial deviation from or variation in the precise requirements of the solicitation, and have no more than a trivial or negligible effect on price, quality, quantity or delivery of supplies or performance of services being procured; and
  - (3.) The correction or waiver of the technicality or irregularity does not affect the relative standing of, or prejudice other bidders.

If the Owner does not waive the deficiency, the deficient bid shall be rejected.

## **7. ACCEPTANCE OF BID**

- a. A contract shall be awarded, after a reasonable bid evaluation period, in accordance with the solicitation, if the acceptable bid is within the amount budgeted by the agency.
- b. The owner reserves the right to accept or reject any alternate bid. If alternates designated by the owner are considered in the award, the alternates shall be accepted in the sequence in which they are listed on the Bid Documents and the lowest bid sum shall be computed on the basis of the sum of the base bid plus any alternates accepted.

## **8. QUALIFICATION OF CONTRACTORS**

- a. A bidder shall submit a statement of the bidder's qualifications as part of the bid response. The purchasing officer shall have the right to make such inquiry as deemed necessary to determine the ability of the bidder to perform the work in a prompt and efficient manner in accordance with the contract documents. The failure of a bidder to promptly supply information in connection with the purchasing officer's inquiry may be grounds for a determination that such bidder is nonresponsive.
- b. In determining the qualifications and responsibility of a bidder, the purchasing officer shall consider the bidder's experience, facility, previous work standing, financial standing, skill, quality and efficiency of construction plant, and equipment proposed to be utilized on the project.
- c. The owner may reject any bid if an investigation and evaluation of the bidder's qualifications give reasonable doubt that the bidder can perform the work in a prompt and efficient manner in accordance with the contract documents.

## **9. SUBCONTRACTOR, MATERIAL AND EQUIPMENT LISTING**

- a. A bidder shall, if requested in the solicitation, list the names of subcontractors proposed for each of the principal portions of the work, including those persons or entities who are to furnish material or equipment fabricated to a special design, in the designated place on the Bid Documents.
- b. A bidder shall establish to the satisfaction of the purchasing officer, the reliability and responsibility of the listed subcontractors. The bidder may be required by the purchasing officer to provide additional information regarding listed subcontractors.
- c. If, after due investigation, there is reasonable objection to the qualifications of a listed subcontractor, the bidder shall, upon written direction of the purchasing officer, submit the name of an acceptable substitute subcontractor with no change in bid price. The failure of the bidder to promptly comply with this requirement may be grounds for rejection of the bid.
- d. Any listed subcontractor to whom the purchasing officer does not make written objection prior to the giving of the Notice of Intent to Award shall be deemed acceptable to the owner.
- e. A bidder shall make no other substitution for any listed subcontractor without first receiving the approval of the purchasing officer in writing of the intended substitution and the specific reason for the substitution. A substitution may be disapproved if the purchasing officer has reasonable objection.
- f. Nothing contained in the bidding documents shall be deemed to create a contractual relationship between the owner and any subcontractor.

## **10. LIST OF MATERIALS AND EQUIPMENT**

- a. A bidder shall, if requested in the solicitation, submit a listing of major materials and equipment, including manufacturer's name, brand and catalog number. The materials and equipment listing shall be bound with the Bid Response or completed in the time period designated in Section 18.
- b. Prior to the acceptance of a bid, the purchasing officer shall make a preliminary review of the bidder's list of materials and equipment. The purchasing officer shall advise the bidder of the tentative acceptability of such materials and equipment, subject to satisfactory completion and approval of shop drawings, or direct such other action as may be necessary in order to meet the requirements of the contract documents. If any of the listed material or equipment is determined not to meet the requirements of the contract documents, the bidder shall be required to furnish

other material or equipment meeting those requirements at no change in bid price. Preliminary review and acceptance of the above list shall not relieve the bidder, as the contractor, of the obligation to furnishing equipment and materials in accordance with the contract documents.

## **11. UNIT PRICES**

- a. A bidder shall, if requested in the solicitation, submit with the bid a list of unit prices as designated on the Bid Documents, which shall include all necessary labor, materials, equipment, appliances, supplies, overhead and profit.
- b. Unit prices shall be used for the pricing of changes in the quantity of work from that indicated by the contract drawings and specifications, if the owner has authorized such changes in writing.
- c. Only one unit price shall be quoted for each designated item of work. The unit price shall be used to calculate price adjustments based on deductive as well as additive changes.
- d. Unit prices shall apply to all phases of the work whether the work is performed by the bidder or by the bidder's subcontractor.
- e. For unit prices of a lump sum bid contract, the owner reserves the right, prior to an award of contract, to evaluate the unit prices and adjust or reject any unit price that is determined by the purchasing officer to be unreasonable in amount.
- f. If a total sum bid is made by line item, and unit prices are quoted for estimated quantities of units of work, such unit prices are not subject to change. However, the purchasing officer reserves the right to correct mathematical errors in extensions and additions by the bidder. In the latter case, the purchasing officer's corrected bid sum total shall supersede the bidder's incorrect computed bid sum total.

**12. BID BONDS** - The Division of Engineering and Contract Administration or an agency may require a bid bond as surety that a bidder will hold his offer firm for a specified period of time. If the Solicitation requires a bid bond, a bidder shall file with the requesting agency a bid bond or certified check in the amount and form specified by the Solicitation. The bond shall be received either with the bid or prior to the bid closing, or the bid shall not be considered.

- a. The amount of the bond shall be specified in the Solicitation.
- b. In addition to signing the bid bond as principal, the bidder shall have the bond signed by a surety company authorized to do business in the Commonwealth of Kentucky. A list of surety companies may be obtained from the Office of Insurance. If the surety on a bond has its authority to do business in Kentucky revoked or, if for any reason it ceases to do business in the Commonwealth, the bidder shall promptly obtain another surety on the bond.
- c. The bond shall be conditioned on full performance of all obligations imposed on the bidder by the Solicitation, including the obligation to keep his price firm for as long a period as specified in the Solicitation, and the obligation to file a performance bond if required by contract. The bid bond shall provide that upon failure to perform an obligation, the Commonwealth of Kentucky may recover from the bidder and the surety, or either of them, any and all damages suffered because of the failure.
- d. A bidder may file a continuing bond for all bids made during a certain period of time up to a stated amount.
- e. If submitting an online bid response in the state's procurement system for a Solicitation that requires a bid bond, the bidder shall attach the scanned bond document to the formal bid or, if the bidder does not have access to a scanner, shall submit a hard copy of the bond document with a

copy of the online response. The vendor shall sign the hard copy of the online bid document in ink, attach the online bidding confirmation page, attach the bond document, and deliver the documents to the Commonwealth no later than the published date and time for bid opening. A successful bidder shall provide hard copies of all scanned bond documents prior to contract execution, in accordance with the terms of the Solicitation.

- f. If a bidder elects to submit a certified check in lieu of a bid bond, it shall be security for full performance of all obligations referred to in subsection c of this Section.
- g. If a bidder is not awarded a contract, the certified check shall be returned to that bidder promptly after the award is made. The successful bidder's check shall be returned after the contract is awarded or as soon as the bidder has filed a performance bond, if required. Checks may be returned by certified mail, return receipt requested. The return receipts shall be electronically attached or hard copies attached to each bidder's bid and filed in the bid folder.

### **13. PERFORMANCE AND PAYMENT BONDS**

- a. A bidder shall deliver the required bonds to the purchasing agency upon notification of intent to award, or, with the approval of the purchasing officer, within fourteen (14) calendar days after that date. Otherwise, the owner may at its option determine that the awardee has abandoned the contract and the proposal shall become null and void.
- b. Unless otherwise specified in the bidding documents, the bonds shall be written on the form bound in the bidding document in the number of copies to be specified by the purchasing officer.
- c. A bidder shall require the attorney-in-fact who executes required bonds on behalf of the surety to affix thereto a certified and current copy of his Power of Attorney. The date of the Power of Attorney shall not precede the date of the bonds. The bonds shall be executed with a licensed resident or non-resident agent who represents insurance companies authorized to do business in Kentucky.

### **14. AWARD OF CONTRACT**

- a. The issuance of an award of a contract is contingent upon (1) securing an acceptable bid that is within the amount of budgeted funds and (2) determining that the award of contract is in the best interest of the Commonwealth of Kentucky.
- b. Unless otherwise provided in the bidding documents, the Agreement Between Owner and Contractor shall be written on the standard form of agreement bound within the Solicitation.
- c. The Commonwealth's acceptant of the bidder's offer in response to the Solicitation, indicated by the issuance of a contract award, shall create a contract between the parties consisting of the following documents. In the event of a conflict between the provisions contained in the contract, the order of precedence shall be as follows.
  - (1.) Solicitation including any special conditions, plans, specifications, and addenda;
  - (2.) General Conditions;
  - (3.) Bid in response to the Solicitation; and
  - (4.) Written clarification concerning the bid.

## **15. LEGAL REQUIREMENTS**

- a. A foreign corporation submitting a bid shall be registered with the Kentucky Secretary of State and be declared in good standing prior to the issuance or receipt of a contract.
- b. A domestic corporation submitting a bid shall be in good standing in accordance with the requirements of the Kentucky Secretary of State.

## **16. TAXES**

- a. The winning bidder shall be liable for payment of Kentucky sales and use tax.
- b. The winning bidder is deemed the end user of all building materials used in construction projects for the Commonwealth of Kentucky.
- c. The winning bidder may not separately state Kentucky sales or use tax payable by the Commonwealth of Kentucky.

## **17. PLANHOLDER'S LIST**

- a. A request for plans and specifications for a particular project shall be regarded as showing intent to submit a bid. Unless the purchasing agency is otherwise notified, the names of all firms making such requests shall appear on the planholder's list showing all planholders, and all issued addenda.
- b. The published planholder and addenda listing is for general information purposes and the exclusion or inclusion of any firm in no way expresses or implies owner approval or disapproval of the qualifications of any listed bidder, subcontractor, or material or equipment supplier. If the bidder or planholder is not in receipt of any of the listed addenda, he shall obtain copies from the purchasing officer or review the addenda at any of the designated reporting agencies where bidding documents have been placed.

## **18. POST-BID REVIEW AND MATERIAL SUBMITTAL**

- a. A bidder may have an authorized representative at the bid opening for (1) submittal of the material and equipment listing and (2) post-bid review of the apparent winning bid.
- b. Unless otherwise provided in the bidding documents or authorized by the purchasing officer, the apparent winning bidder shall submit the material and equipment listing no later than one (1) hour after the close of the reading of the bids. The materials and equipment listing shall be that listing bound with the Bid Documents.
- c. After opening, bids shall be reviewed by representatives of the purchasing agency, the using agency, the architect or engineer, and the apparent winning bidder. Review shall be directed toward subcontractors, material listing, unit prices, and qualifications of the bidder.
- d. The bidder's representative shall have the authority and ability to respond to questions that arise during the review.

## **19. EQUAL EMPLOYMENT AND NONDISCRIMINATION**

- a. The Commonwealth of Kentucky is committed to a policy of providing equal job opportunities on public contracts and prohibiting discrimination based on race, creed, color, sex, age, religion, national origin, or disability in employment.

- b. The utilization of minority vendors and subcontractors is encouraged, whenever possible, on public works contracts. The bidder and contractor should make full efforts to locate minority businesspersons. For assistance in identifying vendors and subcontractors, bidders may contact the Small and Minority Business Division, Cabinet for Economic Development, Frankfort, Kentucky 40601, or Office of Equal Opportunity, Contract Compliance, Finance and Administration Cabinet, New Capitol Annex Building, Frankfort, Kentucky 40601.
- c. Unless exempted in accordance with KRS 45.590, the provisions of KRS 45.560 to 45.640, known as the Kentucky Equal Employment Act of 1978, shall be binding upon the declared successful bidder and the resulting contract shall contain the provisions set out at KRS 45.570(2).
- d. Any bidder not exempted from the affirmative action or reporting requirements of KRS 45.560 to 45.640 shall, within five (5) calendar days after being declared the apparent low bidder, submit to the Office of Equal Employment Opportunity, Contract Compliance, Finance and Administration Cabinet, through the purchasing agency, the information required by KRS 45.600, on forms provided by the purchasing agency, bound within the bid documents, and submitted in the manner prescribed on the forms.