

BIDDER INSTRUCTIONS FOR COMPETITIVELY SEALED BID CONSTRUCTION SOLICITATIONS

1. **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 shall not create any conflict of interest, including those set out in KRS 45A.330 – KRS 45A.340; KRS 45A.455 and KRS 164.390.

2. **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. The bidder shall supply all information called for in the Solicitation. Failure to supply the specified information may be cause for determining the bid nonresponsive.
 - 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 it 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. Unless otherwise specified in the Solicitation, 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 or the director of DECA.

- h. Addenda shall be published on the Commonwealth's eProcurement web site, and shall be issued to all who are registered planholders with the contracted reprographics company or other distribution authorized by the director of DECA.
- 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.

3. 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 required in the bidding documents, sums shall be expressed in both words and numerical 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. The bid shall be firm in offer and conform substantially to the advertised terms, plans and specifications. Any qualifications or reservation imposed by a bidder in the bid retaining the option of accepting, modifying or rejecting an offered contract shall be cause to render the bid not firm and ineligible for consideration of award. Any offer in response to the Solicitation that includes terms contrary or in addition to those in the Solicitation may be considered non-responsive and may be rejected by the Commonwealth.
- f. All alternates specifically called for by the Commonwealth shall be bid. Voluntary alternate bids or an alternate to a lump sum bid shall not be considered.
- g. The bidder shall make no stipulations on the Bid Response nor qualify the bid in any manner.
- h. 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.
- i. The purchasing officer shall retain the bid security of bidders until:
 - 1. The contract has been executed and performance and payment bonds have been furnished;
 - 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 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.
- n. A competitively solicited contract shall be awarded from a bid evaluation in the state's eProcurement system or all bidders shall be notified of the award in writing.

4. Modification or Withdrawal of a Bid:

- a. A bid may be withdrawn prior to the closing time and date for receipt of bids by written request from an authorized representative of the bidder. The modification or withdrawal of a bid shall be received by the receipt clerk stated in the Solicitation prior to bid closing time to be considered valid.
- b. A withdrawn bid 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.

5. 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.

6. 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.
- c. The winning bidder may not separately state Kentucky sales or use tax payable by the Commonwealth.

7. Planholder's List: 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 Commonwealth approval or disapproval of the qualifications of any listed bidder, subcontractor, or material or equipment supplier.

8. Bid Bonds: Pursuant to KRS 45A.185, DECA or the using agency may require a bid bond as surety that a bidder will hold its 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 with the requesting agency. The bond shall be received either with the bid or prior to the bid closing to be considered.

- a. The bond shall be in an amount equal to at least five percent (5%) of the amount of the bid or as stated 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. A list of surety companies may be obtained from the Kentucky Department 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 the price firm for as long a period as specified in the Solicitation, obligation to enter into a contract with the Commonwealth, and the obligation to file a performance payment bond if required by contract. The bid bond shall provide that upon failure to perform an obligation, the Commonwealth may recover from the bidder and the surety, or either of them, any and all damages suffered because of the failure.
- d. 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.
- e. 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.

9. 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. Tabulations shall be made available to bidders upon written request to the FAC's Open Records Custodian.
- 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 disqualification of bids are stated in 200 KAR 5:306(4)(2).
- d. Minor or technical deficiencies or irregularities in a bid may be waived by the purchasing officer on behalf of the Commonwealth, if:
 - 1. The purchasing officer determines that it is in the Commonwealth's best interest to do so;
 - 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.
- e. If the Commonwealth does not waive the deficiency, the deficient bid shall be rejected.

10. 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 Commonwealth reserves the right to accept or reject any alternate bid. If alternates designated by the Commonwealth 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.

11. 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 Commonwealth 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.

12. Unit Prices:

- a. If requested in the Solicitation, a bidder shall submit a list of unit prices in accordance with the Bid Document instructions, which shall include labor, materials, equipment, appliances, supplies, overhead and profit, as applicable.
- 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 Commonwealth has authorized such changes in writing.
- c. Only one (1) 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 Commonwealth 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.

13. Subcontractor Listing:

- a. If requested, a bidder shall 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. When a listed subcontractor is proposed for a principal portion of the work as required in subsection a. above, and that subcontractor is not self-performing the work, but is subcontracting the work to lower tier subcontractor, each lower tier subcontractor shall be listed in parenthesis after the name of the main subcontractor. Without such listing of lower tier contractors, the main subcontractor must perform the work of that principal portion of the work with its own forces in its entirety.

- c. 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, including listed lower tier subcontractors.
- d. If, after due investigation, there is reasonable objection to the qualifications of a listed subcontractor or a listed lower tier subcontractor, the bidder shall, upon written direction of the purchasing officer, submit the name of an acceptable substitute subcontractor or lower tier 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.
- e. Any listed subcontractor or listed lower tier subcontractor to whom the purchasing officer does not make written objection prior to the award of the contract shall be deemed acceptable to the Commonwealth.
- f. A bidder shall make no other substitution for any listed subcontractor or listed lower tier 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. The purchasing officer may require a written agreement from the subcontractor being released.
- g. Any work performed by a lower tier subcontractor that is not listed on the form of proposal in the manner described above, where required by the purchasing officer, shall be deemed to have been installed at the risk of the general contractor and the Commonwealth reserves the right, at its sole discretion, to reject that portion of the work and require that the work be removed and installed by a listed subcontractor or that the Commonwealth otherwise be compensated by a credit change order for an amount determined by the Commonwealth as reasonable for acceptance of such work installed by a non-listed lower tier subcontractor.
- h. Nothing contained in the bidding documents shall be deemed to create a contractual relationship between the Commonwealth and any subcontractor.

14. Materials and Contractor Listing:

- a. If requested, a bidder shall submit a listing of primary 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 15.b. of this FAP.
- b. Prior to the final 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.

15. Post-Bid Review:

- a. A bidder may have an authorized representative at the bid opening for the submittal of the material and equipment listing and the 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, the scope of work bid by each bidder 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.

16. Equal Employment and Nondiscrimination:

- a. The Commonwealth 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. KRS 45.560 – KRS 45.640.
- 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 business persons. KRS 45A.610.
- c. Unless exempted in accordance with KRS 45.590, the provisions of KRS 45.560 – KRS 45.640 shall be binding upon the declared successful bidder and the resulting contract shall contain the provisions set forth in KRS 45.570(2).
- d. Unless a bidder is exempt under KRS 45.560 – KRS 45.640, the apparent successful bidder shall submit to the purchasing agency in the manner described and on the form(s) required, the information required by KRS 45.600 within five (5) calendar days of being declared the apparent low bidder. The form(s) shall be reviewed by the FAC Office of Equal Employment Opportunity and Contract Compliance.

17. Performance and Payment Bonds:

- a. Pursuant to KRS 45A.190 and KRS 45A.195, a bidder shall deliver the required performance and payment 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 Commonwealth may determine that the proposed awardee has abandoned the Bid Response and the bid 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/her 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.

18. Award of Contract:

- a. The issuance of an award of a contract is contingent upon securing an acceptable bid that is within the amount of budgeted funds and determining that the award of contract is in the best interest of the Commonwealth.
- b. Unless otherwise provided in the bidding documents, the Agreement between the Commonwealth and the contractor shall be written on the standard form of agreement bound within the Solicitation. The Commonwealth shall not be required to enter into or sign further agreements, leases, company orders or other documents to complete the Agreement.
- c. The Commonwealth's acceptance of the bidder's offer in response to the Solicitation, indicated by the issuance of a contract award, shall create a binding agreement between the parties consisting of the documents listed below. In the event of a conflict between the provisions contained in the contract, the order of precedence shall be in the same listing order as below.
 - 1. Solicitation including any addenda;
 - 2. Specifications;

3. Special Conditions;
4. General Conditions;
5. Technical provisions of the specifications;
6. Drawings/plans; and
7. Bid Response to the Solicitation.

19. Award of Construction and Construction-Related Contracts: Capital construction funded contracts require properly authorized Appropriation, Allotment, Revenue Budget, Project Management Master and Journal Voucher Transfer documents (SAS-5, SAS-14) for award of contract and allocation of construction funds. The issuing agency shall execute a construction contract using agency or general fund accounts on the basis of a duly signed agency Purchase Request.