



STATE OF MARYLAND

Department of General Services Instructions to Bidders for Construction Projects

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The Department of General Services Instructions to Bidders for Construction Projects, dated July 1, 2022; are hereinto adopted by the Maryland Department of Natural Resources.

1. NOTICE TO BIDDERS:

A. GENERAL:

As provided in this document, references to “Bidder” shall be deemed to include “Offeror”, and references to “bid” shall be deemed to include “Proposal”, where appropriate. Provisions of State statutes and regulations are incorporated into the contract pursuant to COMAR (Code of Maryland Regulations) 21.03.01.05B.

B. PROJECT CLASSIFICATION:

The Department will estimate the cost of the contract and classify it as falling within one of the following cost groups:

<u>Estimate</u>	<u>Class</u>
Up to \$100,000	A
\$100,000 to \$500,000	B
\$500,000 to \$1,000,000	C
\$1,000,000 to \$2,500,000	D
\$2,500,000 to \$5,000,000	E
\$5,000,000 to \$10,000,000	F
\$10,000,000 to \$15,000,000	G
Over \$15,000,000	H

2. CONSTRUCTION BID REQUIREMENTS:

- A. The Construction Bid Form / Price Proposal Form is that form which is part of the contract documents and which sets forth the cost of the work, unit prices (if any), and alternates (if any).
- B. All bidders must comply with the following requirements:
- (1) Submit a price for each line item on the bid form. Failure to submit a price for each line item will result the bid being found non-responsive. Bidders shall not provide any comments on the bid form. If comments are provided, the bid may be found non-responsive.
 - (2) Submit a bid bond in accordance with the requirements in Section 5, below.
 - (3) Complete and submit all required attachments.
 - (4) Submit the necessary Minority Business Enterprise (MBE) documents in accordance with the requirements in Section 4, below.
 - (5) Carefully review the entire solicitation and applicable instructions.
 - (6) Bidders must read and truthfully execute a Bid/Proposal Affidavit and must submit it with the bid. The Contract Affidavit must be executed and submitted prior to the final award of the contract.
- C. Bids for construction projects being conducted by the Department are accepted solely online thru eMaryland Marketplace Advantage (“eMMA”) unless the contract/documents specifically direct otherwise.
- D. Any contractor calling itself a “joint venture” shall be, as between the contractor and the State, an ordinary partnership, whose partners are liable to the State as provided in Corporations and Associations Article, Title 9A, Subtitle 3 of the Annotated Code of Maryland.
- E. A bidder or contractor which is a partnership or joint venture must furnish the Department with a copy of the partnership or joint venture agreement prior to award.

3. COMPONENTS OF THE BID:

- A. Words not defined in these Instructions to Bidders but defined in the General Conditions shall have the meanings stated in the General Conditions as revised July 1, 2022.
- B. Definitions:
- (1) “Total Bid”: The Total Bid will include: (a) the Base Bid; (b) extended Unit Price calculations, (c) Allowances, and (d) Alternates (Add or Deduct). Alternates will be selected to be added (or deducted) in accordance with Section 17.E of these Instructions to Bidders.
 - (2) “Base Bid”: The Base Bid is the price submitted on the Bid Form and will include the total cost to complete all of the work specified in the contract documents, not referenced as Alternate work or as a Unit Price, which shall include without limitation, labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc.
 - (3) “Unit Price”: A Unit Price is the cost per unit of measure specified for materials and labor. An extended Unit Price is the Unit Price multiplied by an estimated quantity specified in the contract documents. This cost, or extended Unit Price, shall be included in the Total Bid amount. Actual usage of Unit Price items will be verified by the Owner or Owner's representative. Adjustment to the contract sum based on actual verified usage will be made by Change Order. Should the contractor be required to perform Unit Price work in excess of the estimated quantity specified, an equitable adjustment shall be made to the contract price, subject to Sections 3.06 and 3.07 of the General Conditions. Similarly, should the contractor perform Unit Price work less than that estimated, an equitable adjustment shall be made to the contract price, subject to Sections 3.06 and 3.07 of the General Conditions. In determining the amount of any such adjustment to the contract price, the amount of the increase to the contract price will be calculated using the Unit Price bid by the contractor, or a reasonable price, whichever is less. The amount of any credit due the State will be calculated using the Unit Price bid by the contractor or a reasonable price, whichever is greater. A Unit Price bid shall be the sum total price per unit for such items to include without limitation all work, labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc.
 - (4) “Allowance”: An Allowance is a specified dollar amount to be included in the Base Bid. Allowances are established in lieu of specific requirements and defer selection of materials and equipment to a later date when additional design and/or specifications can be developed. Further information regarding Allowances is in Section 9.01 of the General Conditions.
 - (5) “Alternate”: An Alternate(s) is for a specific scope of work or material. Alternates may Add or Deduct. The bid price for the Alternate shall represent only the amount bid for the work associated with the Alternate and shall be the sum total price to include without limitation all work, labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc. Any Completion Schedule accepted by the Department shall include all Alternate work awarded. The process for selection and award of Alternates is explained in Section 17.E of these Instructions to Bidders.

C. MINORITY BUSINESS ENTERPRISE REQUIREMENTS:

The following forms must be received by the Department with the bid:

MBE Attachment D-1A – Certified MBE Utilization and Fair Solicitation
Affidavit & Participation Schedule

Failure of the bidder to submit these properly completed forms shall result in the bid being rejected as non-responsive.

5. BID BONDS (For bids over \$100,000):

- A. When the sum of the total bid amount plus all add alternates, but excluding all deduct alternates, is in excess of \$100,000, a bidder must furnish, prior to the bid due date, a bid bond in an amount not less than five percent (5%) of the total bid amount plus all add alternates, but excluding all deduct alternates.
- B. DNR' preferred form of bid bond is part of the contract documents. Bid bonds must provide for minimum liability of the principal and surety in the amount provided in COMAR 21.06.07.09 D (2). Bonds shall be issued by a surety licensed by the Maryland Insurance Administration or by a surety that transacts business through an insurance agency licensed by the Maryland Insurance Administration. The contractor may not split its bid bond among multiple sureties or bonds.

- C. Forms of bid security other than bonds are not permitted.
- D. Bid bonds will not be returned to unsuccessful bidders.
- E. Bidder may submit paper or electronic bid bonds in accordance with applicable provisions of this solicitation, COMAR 21.06.07, and other applicable provisions of the law.
- F. **BID BONDS:**
 - (1) If a bidder is required to submit a bid bond, it must be submitted in accordance with this section. Bid bonds are also subject to Section 13-226 of the State Finance and Procurement Article of the Annotated Code of Maryland; COMAR 21.06.07; applicable provisions of Title 21 of the Commercial Law Article of the Annotated Code of Maryland; and other applicable laws.
 - (2) A copy of the bid bond must be uploaded to eMMA and submitted with the bid response.
 - (3) The bid bond must be accompanied by a properly executed power of attorney. The scanned copy of the bond and power of attorney attached to the bid and any electronic or printed copies of them shall be enforceable and admissible in evidence in all proceedings to the same extent as the original bond and power of attorney.
 - (4) Once a bid is submitted in eMMA with a bid bond attached to it, the bid bond shall be binding and enforceable against the principal and the surety until the contract award has been completed. Bid bonds may not be revoked, rescinded, or withdrawn by the bidder or the surety after bids are opened. Bidders and their sureties will have no liability on bid bonds after the contract is awarded, executed by the State, and sent to the successful bidder.
 - (5) The bid bond attached to the bid must reflect on its face that it has been executed on behalf of the principal and the surety with valid, authenticated, signatures. The power of attorney attached to the bid bond must reflect on its face that it has been executed on behalf of the surety by the requisite officer(s) and upon proper authorization. Powers of attorney must be submitted with a bid bond in PDF format. Authorization by the surety in a power of attorney of the use of facsimile seals or signatures shall constitute authorization by the surety of the attachment of the power of attorney to a bid bond by electronic means, including in PDF or other format.
 - (6) Nothing in these provisions changes requirements of the law concerning the responsiveness of bids. Bids accompanied by materially defective bid bonds or powers of attorney will be rejected as non-responsive.

6. PAYMENT TO CONTRACTORS:

Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

7. PAYMENT TO CONTRACTORS BY ELECTRONIC FUND TRANSFER (EFT) FOR AWARDS OVER \$200,000:

EFT applies to contracts over \$200,000 for which payments are made through the State Comptroller. For awards over \$200,000, EFT will be used by the State to pay the contractor unless the State Comptroller's Office grants Contractor an exemption. By submitting a response to this solicitation, the Bidder agrees to accept payments by EFT unless the State Comptroller's Office grants an exemption. After award of a contract, the selected bidder shall register with the Comptroller of Maryland using the forms required by the Comptroller. For further information go to:

<https://www.marylandtaxes.gov/divisions/gad/eft-program.php>

Note: Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form.

8. SITE INVESTIGATION:

See Section 3.02 of the General Conditions.

9. BID OPENING:

- A. Bids will be opened electronically in eMMA as soon as practicable after the deadline for receipt of bids in the solicitation.
- B. Competitive Sealed Bids not conducted electronically will be opened in public at the time and place stated in the solicitation.
- C. This subsection C applies only when a solicitation permits the submission of bids or any necessary bid documents by means other than electronic submission on eMMA. From time to time, unforeseen circumstances may cause the State Office Building (301 W. Preston Street, Baltimore MD) to be closed to the public. If in the event of such closure, if the State Office Building is not open to the public at least one (1) full hour immediately preceding the deadline established in the contract documents for receipt of bids or offers, the deadline for the receipt of bids or offers will be extended automatically, without further action or notice by the Procurement Officer being necessary, to the next regularly scheduled business day at the same time and location.
- D. Any bid received after the due date and time set in the solicitation is late and cannot be considered.

10. DOCUMENT SUBMISSION REQUIREMENTS AFTER THE BID OPENING:

- A. Upon notification by the Procurement Officer that the bidder is the apparent low bidder, that bidder shall fully complete and return to the Procurement Officer the Contractor Questionnaire and any other requested documentation. Failure to complete and return the required documents may result in a determination that the bidder is not responsible and bid rejection.
- B. If the State of Maryland or other regulatory body requires a license or certificate to perform the services required, a copy of the license or certificate shall be submitted to the Procurement Officer.

11. TIME FOR BID ACCEPTANCE:

Unless otherwise provided in the solicitation, bid prices are irrevocable for a period of one hundred twenty (120) days following bid opening. After opening bids, the Procurement Officer may request bidders to extend the time during which the State may accept their bids, provided that, with regard to bids, no other change is permitted.

12. ALL NON-RESIDENT BIDDERS

As set forth in §14-401 of the State Finance and Procurement Article of the Annotated Code of Maryland, a non-resident bidder submitting a bid shall attach to its bid a copy of the current statute, resolution, policy, procedure, or executive order of the resident State of the non-resident bidder that pertains to that state's treatment of non-resident bidders.

13. RIGHT TO REJECT BIDS AND WAIVE IRREGULARITIES/INFORMALITIES:

The State reserves the right to cancel a solicitation, to reject any and all bids, and to waive any minor irregularity in a bid in accordance with COMAR 21.06.02.

14. DISCREPANCIES:

Should a bidder find discrepancies in the contract documents, or should they be in doubt as to the meaning or intent of any part thereof, they must, prior to the bid opening: (a) request and receive clarification from the Procurement Officer (who will issue a written addendum if necessary); or (b) file a protest. Failure of the bidder to request clarification will constitute a waiver of any claim by the bidder for expenses or costs of complying with the Procurement Officer's interpretation of the contract documents after contract award. Only written addenda issued by the Procurement Officer are binding on the State. Oral or other written explanations from the State before bid opening will not be binding on the State.

15. MODIFICATIONS AND WITHDRAWAL OF BIDS:

- A. Withdrawal or modification of bids will be allowed only as provided in COMAR 21.05.02.09 and .10.

- B. Mistakes in bids may be corrected only as provided in COMAR 21.05.02.12.

16. PUBLIC INFORMATION ACT:

Bidders must identify those portions of their bids which they deem to be confidential or proprietary information or trade secrets and must provide, upon demand by the Department, justification for why such materials should not be disclosed by the State upon request under the Maryland Public Information Act, §§10-611, et seq., of the State Government Article of the Annotated Code of Maryland.

17. AWARD OF CONTRACT:

- A. Unless otherwise stated in the contract documents, the basis of award will be to the responsible bidder submitting the lowest responsive Total Bid including any alternates awarded.
- B. If notified by the Procurement Officer of the Department's intent to award, the bidder shall submit the following to the Department as directed by the Procurement Officer:
- (1) An executed contract (Blanket Purchase Order)
 - (2) Certificate of Insurance
 - (3) Contract Affidavit
 - (4) Performance and Payment Bonds, including Power of Attorney (if the total intended award value is in excess of \$100,000)

Failure to submit these documents within 10 days of the notification of "Intent to Award" may result in the rejection of your bid and the Department will not be responsible for bonding costs incurred by the bidder.

- C. The Department will not execute any contract unless, and until, all approvals required by law are obtained.
- D. The State reserves the right to apply, before or after award of the contract, any reciprocal preference for Resident Bidders as set forth in §14-401 of the State Finance and Procurement Article of the Annotated Code of Maryland, at no additional cost to the State. See also COMAR 21.05.01.04.
- E. If alternates are solicited, one or more alternates may be awarded at the discretion of the Department in the order in which the alternates are listed in the Solicitation; provided that in the event the State lacks funds for award of the base bid and any succeeding alternate, the State in its discretion may forego the award of the alternate for which funds are not available but may award one or more succeeding alternates for which funds are available.

18. EXECUTION OF CONTRACT:

- A. Upon the Department's notification of Intent to Award following a bid, the Procurement Officer may issue a Blanket Purchase Order ("BPO"), in a form to be determined by the Department. Both parties shall execute this document as the embodiment of the contract between the parties.
- B. In the event of a conflict between provisions of the solicitation documents and the BPO, the controlling provisions shall be, in the following order: the solicitation documents; the BPO; the General Conditions; and then the bid.
- C. As a prerequisite to execution of the contract, the bidder shall have furnished the following in the form and content required by the General Conditions: (1) Performance and Payment Bonds (if required); (2) Certificates of Insurance; (3) Contract Affidavit; and (4) all other documents required by the contract documents to be furnished by the contractor as a condition of award. For minimum insurance requirements under this contract please see Section 10 of the General Conditions.
- D. The Department will only execute the contract following and receipt of all approvals required by law. The Department will execute the contract within 90 days following the final approval required by law. After execution, the Department will forward the contractor a signed copy of the contract. In the event the Department fails to execute the contract within the 90-day period, the contractor will have, as its only remedy, the option: a) to declare the contract void without any liability or obligation by the State to the contractor, or b) to accept an extended period for execution by the State at no additional cost to the State.

19. CONTRACTOR'S FAILURE TO EXECUTE CONTRACT:

Failure of the contractor to execute the contract and submit all documents required within the time provided shall be just cause for the payment of the penal sum of the bid bond or other security to the Department. In the event that the damages sustained by the State exceed the amount of the bid security, the State reserves the right to proceed against the contractor for the balance of its damages, which shall include any and all costs of obtaining the work from another source, including additional administrative costs, architects' fees, and other costs and expenses. In the alternative, if the contractor executes the contract but fails to furnish other required documents, the State may treat the contractor's failure to furnish the required documents as a default of the contract and may terminate the contract for default under the General Conditions and avail itself of any other remedy provided by the contract.

20. PERFORMANCE AND PAYMENT BONDS:

- A. Performance and Payment Bonds are required when the amount of the contract, including the base bid and any alternates awarded, is in excess of \$100,000. Performance and Payment Bonds shall each be in the full amount of the contract price. Performance and Payment Bonds are subject to the applicable provisions of COMAR 21.06.07.
- B. Performance and payment security shall be in the form of bonds only - no other form of security will be permitted.
- C. The contractor may not split its performance or payment bonds among multiple sureties.
- D. Prior to the award of the contract, the State will provide the contractor with copies of the required Performance and Payment Bond forms (see COMAR 21.07.02.10). Submission of other forms is not acceptable. The bonds must be executed and returned to the Department. Premiums for the bonds shall be paid by the contractor.
- E. The Department may reject a bid on the ground that the bidder is not responsible if the bidder fails to furnish Performance and Payment Bonds from a surety which the Department determines has in the past responded diligently and in good faith to bond claims of the State or of subcontractors and suppliers.
- F. At the direction of the Department, the contractor may be required to increase the amount of the penal sum of Performance or Payment Bonds; for such increases, the contractor will be reimbursed by the State in the amount of the actual increased bond cost incurred by the contractor. Whenever the amount of the contractor's bonds is increased at the State's request, the State must receive proof of the increase in satisfactory form from the surety. The State will not be liable to the contractor for any increase in bonds not requested by the State.
- G. Performance Bonds:
 - (1) The State may declare the contractor to be in default, so as to obligate the surety to perform as required by the Performance Bond, with or without terminating the contract for default.
 - (2) If the State declares the contractor to be in default, the surety has no right to require the State to contract with a contractor of the surety's choosing. The surety must either: (a) complete the project or cure the default; or (b) allow the State to complete the project or cure or remedy the default, with the surety to remain liable to the State for excess completion costs and other damages incurred.
 - (3) If the State terminates the contract for default, the State has the right to prohibit the surety from using the terminated contractor to complete the work or any part of it.
- H. The contractor shall submit:
 - (1) *Two* original Performance Bonds
 - (2) *Two* original Payment Bonds
 - (3) If the business is registered in Maryland as Sole proprietorship, Partnership, or Limited Liability Company, *four* Powers of Attorney (one for each bond)
 - (4) If the business is registered as a corporation or Corporate Principal – *eight* Powers of Attorney (four for the surety and four for the corporate principal)

21. ARREARAGES TO STATE:

By submitting a response to this solicitation, a bidder represents that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract, if selected for award.