

## **SECTION 9 - BIDDING PROCEDURES AND DOCUMENTS**

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### **Relevant Law –**

- Annotated Code of Maryland, Education Article, Title 16 Community Colleges, Subtitle 3 Fiscal Matters, Chapter 16-311 Bids and Contracts

### **Critical Due Dates –**

- Not applicable

## **9.01 BIDDING PROCEDURES**

### **A. BIDDING FOR CONSTRUCTION CONTRACTS**

The bidding for construction contracts shall be conducted so as to achieve maximum competition among qualified bidders in order to obtain the most reasonable price for acceptable work. All procurements shall be competitive sealed bids and in accordance with Subsection §16-311 of the Education Article in the Annotated Code of Maryland.

### **B. ADVERTISING FOR BIDS**

Advertising for bids shall be accomplished in accordance with Subsection §16-311 of the Annotated Code of Maryland and any other regulations, State or local, that apply to the college. The advertisement for bids shall include the following:

1. Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of the bids and the address where bids are to be delivered.
2. Purchase description, delivery, or performance schedule and any special instructions necessary
3. Basis for award - whether award shall be made on the basis of the lowest bid price or the lowest evaluated bid price (If the latter basis is used, the objective measurable criteria to be used shall be set forth in the invitation for bids.)
4. Invitation for bids which requires the acknowledgment of the receipt of all amendments, addenda, and changes issued.

The advertisement for bids shall be placed in the legal notices section of appropriate newspapers and applicable trade newsletters. In addition, the advertisement may be mailed to industry reporting agencies, such as Blue Reports, Construction Data Corporation, Construction Market Data, Dodge Reports, the Maryland-Washington Minority Contractors Association, and eMaryland M@rketplace (<http://procurement.maryland.gov/>).

### **C. BID OPENING**

Bids shall be received and publicly opened by the college board of trustees or their designee (such as the chief business officer or procurement officer) at the time of the published notice. The DGS shall be duly notified of the date, time, and place of bid opening. Adequate documentation of the bid opening proceedings is required. The award shall be made to the qualified bidder submitting the lowest acceptable responsive bid.

The college board of trustees shall include, with the certified copy of the bid tabulation, an analysis of the bids by the A/E and the board's recommendations to MHEC and DGS for approval by the Board of Public Works prior to award of

contract.

#### **D SEPARATE OR ALTERNATE BIDS**

Where separate bids or alternate bids are taken on a State assisted project, which constitutes a portion of the total facility being constructed, the award of the contract may be made to the lowest bidder on the total facility even though this bidder may not be the low bidder on the State assisted portion of the project. State participation must be limited, however, to the lowest bid received on the State assisted portion of the project.

#### **E. ALTERNATES**

Alternate bids may be used if they do not impair the selection of a low responsible and responsive bidder under an equitable bid procedure. Alternates must be listed numerically in order of the priority in which the alternates will be selected. The award should be made to the responsible bidder submitting the lowest responsive aggregate bid for the base bid, plus the accepted alternates in the order of their numerical listing. Though DGS prefers add alternates, deduct alternates may be used provided that the college is consistent.

The acceptance of an add alternate may be skipped only when available funds are insufficient for accepting the alternate but sufficient for accepting a lower priority alternate.

The DGS should be notified as soon as possible should the number or scope of alternates change from what was submitted and approved in the Construction Document submission.

The bid package should stipulate that should the contractor determine that an add alternate can be provided at no additional cost, zero dollars (\$0.00) should be entered in the appropriate space on the bid form in lieu of "No Bid". Under certain circumstances "No Bid" could be determined to be non-responsive and result in disqualification.

#### **F. TANDEM PROJECT BIDDING**

On occasion, colleges may prefer to combine two or more projects under a single bid invitation. This includes combining State, non-State, as well as other projects. Except in extenuating circumstances, such a bidding practice is not encouraged because difficulty is often encountered in determining State participation under the various possible methods of award. The magnitude of construction under such bidding practice also reduces the number of responses since it often eliminates the smaller contractors.

In those instances where a college desires to include two projects under a single bid invitation, the college must have the approval of the Maryland Higher

Education Commission and the Department of General Services, prior to preparation of the bidding documents. Approval will be given on a case by case basis. Prior approval is necessary so that an acceptable bidding schedule and method of award can be developed to determine the State's participation and result in the lowest possible cost to the State while still allowing the college to make a competitive bid award.

If the projects to be included in the tandem bid are in the immediate vicinity of each other and outside work, such as grading, walks, utilities, are commingled, the scope of outside work related to each project should be defined clearly in the contract drawings by a work limitation line so the prospective bidders are fully aware of all work related to each project. If possible, separate bid prices for each portion of the work should be obtained.

#### **G. BID OVERRUNS**

If the bidding results in a bid overrun and the State considers that the bid amount represents a reasonable cost for the project, the State may concur in the proposed award providing the college has shown evidence that additional funds are available for financing the bid overrun. See Section 1.09 MHEC Community College Construction Grant Contingency Fund for further information.

If the State considers that the low bid amount represents an excessive cost for the project or the college cannot provide additional funds to cover the cost of the overrun, the problem shall be discussed to arrive at a joint agreement as to what course of action may be taken. Such action may mean a rejection of all bids, a redesign, and a rebid.

Should the bids received for a project be so far over the budgeted amount that a redesign and rebid is required, it will be necessary for the State to again evaluate and approve the new final design documents prior to the rebid.

#### **H. CONCURRENCE OF AWARD**

After bid opening, the college evaluates the bids and makes its recommendation for award to the college board of trustees. If the recommended award is within the availability of funds and there is no irregularity or controversy concerning the award, the college shall notify the MHEC in writing accompanied by all bidding backup information required and request that they recommend that the Department of General Services prepare a Board of Public Works agenda item for approval of award. See Section 6.06 Board of Public Works Approval for further discussion. Send award letters with full back up to MHEC. Send courtesy copies of the award letter to DBM and DGS. Send the award information to:

Original to: Finance Policy Analyst, Community Colleges

Maryland Higher Education Commission  
6 N. Liberty Street, 10th Floor  
Baltimore, MD 21201

One Copy to: Program Administrator for Community Colleges  
Department of General Services  
301 West Preston Street, Suite 1405  
Baltimore, MD 21201-2365

One Digital Copy to: Capital Budget Analyst for Community Colleges  
Department of Budget and Management  
301 West Preston Street, Suite 1209  
Baltimore, MD 21201-2365

## **9.02 BIDDING DOCUMENTS**

### **A. BIDDING PACKAGE**

The bidding package shall contain the following items:

1. Advertisement for Bids Form
2. Project Bid Form
3. Information for Bidders Form
4. Bid Bond Form
5. Contract Form
6. Performance and Payment Bond Form
7. Construction Contract General Conditions
8. Supplemental Construction Contract Conditions
9. Final Working Drawings
10. Final Technical Specifications

### **B. AMERICAN INSTITUTE OF ARCHITECTS (AIA) STANDARD FORMS**

The American Institute of Architects standard forms may be used for all bid and contractual requirements. Other bid and contractual forms may be used provided their usage is approved by the MHEC and DGS to assure that the forms will allow competitive award of the construction contract and will include all required State contract conditions.

**C. FINAL WORKING DRAWINGS**

Final working drawings shall be complete and adequate for bid, contract, and construction purposes. Drawings shall be prepared for the architectural, structural, mechanical, electrical, and other construction portions of the work as necessary.

The title sheet of the drawings shall contain the following professional certification signed by the architect and the names of the Board of Public Works:

*PROFESSIONAL CERTIFICATION*

*These plans and specifications were prepared under my supervision; and to the best of my knowledge, information, and belief comply with the requirements of the Building Code of Maryland and the State of Maryland Fire Prevention Code.*

/s/ \_\_\_\_\_

Date \_\_\_\_\_

Maryland Registration No. \_\_\_\_\_

**D. FINAL TECHNICAL SPECIFICATIONS**

Final technical specifications supplement the final working drawings to fully describe types, sites, capacities, workmanship, finishes, and other characteristics of all materials and equipment. It is recommended that the technical specifications format be based on the AIA Uniform System for Construction Specifications, Data Filing and Cost Accounting, Title One-Building.

Specifications should be developed along material and performance concepts using American National Standards Institute (ANSI) standards, American Society for Testing and Maintenance Standards (ASTM), Americans with Disabilities Act Accessibility Guidelines (ADAAG), and other industry standards and specification references. The ASTM specifications should be utilized to the maximum extent possible. Specifications should stress materials, reference standards, shop drawings, sample submissions, certifications, performance concepts, descriptive characteristics, finishes, workmanship, and installation.

Specifications also should be developed to ensure competitive bidding without proprietary sole-source restrictions. When it is necessary to identify a material or equipment by a manufacturer's name, trade name, or catalog number, it is preferable to identify the material or equipment by a single manufacturer's name or trade name. However, each such specification should list two or more other acceptable manufacturers or suppliers.

This method of developing specifications is not meant to give preference to any one manufacturer but is meant to establish a standard. Under the conditions of the contract, the contractor shall be allowed to furnish material or equipment of manufacturers other than those identified by name which are acceptable to the project A/E as being comparable to that specified.

**E. CASH ALLOWANCES**

The contract documents may include the provision for cash allowances established on specific items in the work. The use of a cash allowance shall be limited to those items for which a price cannot be established at the time of the bid. If cash allowances are included in the contract documents, items so obtained must be competitively bid by formal advertising. The appropriate contract is then adjusted by a plus or minus change order to reflect the competitively bid price. Allowances may be used for such items as hardware, steel inspection, soil compactness testing, and concrete testing. Allowances shall not be used for such items as kitchen equipment, stage equipment, furnishings, carpet, and the like.

**F. COMPLETION TIME**

The specifications must stipulate a time of completion, either in calendar days or fixed date, for each construction contract included in the project. This is an important item and is used, among other things, to assure that all bidders are competing on an equal basis.

**G. CURRENT WORKING CONSTRUCTION COST ESTIMATE**

The current working construction cost estimate shall be developed based on the final working drawings. This cost estimate should be included in the final Construction Document submission and prepared on the DGS Cost Estimate Worksheet.

**H. BONDING REQUIREMENTS**

The public recipient (State and local governments) shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds for construction contracts under \$100,000. For contracts exceeding \$100,000, the minimum requirements are listed below.

**Bid Guarantee** - A bid guarantee from each bidder equivalent to five (5) percent of the bid price is required. The bid guarantee shall consist of a firm commitment, such as a bid bond, certified check, or other negotiable instrument accompanying a bid, as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. The applicant should retain the bid securities of at least the three lowest bidders until award of the construction contract.

**Performance Bond** - A performance bond on the part of the contractor for 100 percent of the contract price is required. A performance bond is a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

**Payment Bond** - A payment bond on the part of the contractor for 100 percent of the contract price is required. A payment bond is a bond executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and materials in the execution of the work provided for in the contract.

**Bond Rating** – It may be prudent for the college to consult with a risk assessment specialist to evaluate the bond rating of the contractor.

## **I. CONTRACTOR'S INSURANCES**

### **Liability Insurance**

1. Contractors shall be required to purchase and maintain such insurance as will protect them from claims set forth below which may arise out of or result from the contractor's operations under the contract.
2. Claims under workman's compensation, disability benefits, and other similar employee benefit acts.
3. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employee.
4. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employee.
5. Claims for damages insured by usual personal injury liability coverage which are sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the contractor or by any person.
6. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from.
7. Adequate protection against special hazards.

## **J. CONSTRUCTION CONTRACT LIQUIDATED DAMAGES**

There is no State requirement for liquidated damages. The college should consider the need for the inclusion of a liquidated damages condition in the construction contract. When this condition is to be included, a specific dollar amount of daily damage should be stated in the condition for assessment against the contractor. The assessment should be specified for each calendar day that



construction extends beyond the stipulated contract completion date without reasonable acceptable justification. The daily assessment should be reasonable and adequate to cover appropriate fair damage costs to the applicant which will result from delay in occupancy beyond the contract completion date.

**K. PREVAILING WAGE RATES**

Projects estimated to cost \$500,000 or more and have 50% or more of State financial participation must contain a prevailing wage rate scale. This requires the A/E to apply to the Commissioner of Labor and Industry for a wage rate scale. Application must be made for wage rates 60-120 days in advance of the time the project goes to bid. The A/E must furnish sufficient information to permit complete listing of all crafts. A detailed table of contents from the specifications will normally be sufficient. Information about prevailing wage rates may be found on the Department of Labor, Licensing and Regulation web site [www.dlir.state.md.us](http://www.dlir.state.md.us).