

KUTZTOWN UNIVERSITY
PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION
INSTRUCTIONS TO BIDDERS, GENERAL INSTRUCTIONS

1. Responsibility of the Bidder

It is the responsibility of the bidder by careful personal examination of the Contract Documents to satisfy himself as to the nature and location of the work, as well as all environmental conditions that may affect performance of the work. All bidders should visit the site to thoroughly familiarize themselves with the existing conditions. If any discrepancies should be found between existing conditions and the Contract Documents, prospective bidders shall report these discrepancies to the System for clarification prior to submitting a bid. Requests for interpretation of the work to be performed shall be submitted in writing to the System or the System's designated representative. Failure of the bidder to visit the site, recognize and take into account in their bid site conditions that affect the work, shall not be considered sufficient cause for any increase in the agreed upon contracted amount.

2. Subsurface Drilling Reports

If subsurface drilling has been performed at the Project site, information resulting from evaluation of borings and provided to the System in forms and/or subsurface drilling reports will be made available to the Bidder by its inclusion with Rider A of the Contract Documents.

3. Incurring Costs

The System is not liable for any cost or expenses incurred by bidders or prospective bidders in the preparation of their bids or for attendance at any conferences, meetings, or site visits related to this Invitation for Bids (IFB).

4. Restriction of Contact

From the issue date of this IFB until a final contract award had been made, all contacts with Commonwealth personnel concerning this IFB must be made only through the Issuing Office or other specific representatives identified in the Special Instructions to Bidders.

5. Addenda to the IFB

If it becomes necessary to revise any part of this IFB, an addendum will be issued to all prospective bidders who received the basic IFB. If an addendum is issued, all terms and conditions that are not changed remain. Bidders shall acknowledge on the Bid Form receipt of any and all addenda, identified by the numbers and dates of those addenda.

6. Submission and Acceptance of Bids

One (1) copy of the Bid shall be submitted on the Bid Form provided elsewhere in this IFB. All entries on the Bid Form shall be in ink or typewritten. Signatures must be original signatures.

Each bid shall be submitted in a sealed envelope marked plainly on the outside with the contract number (including the separate prime contract suffix (.1,.2,.3, etc)) and the bid opening date and time, and shall be delivered not later than the bid due date and time to be considered as responsive to the bid requirements. Bidders submitting bids for more than one separate prime contract shall submit separate bids in separate sealed envelopes. The System will not be responsible for bids delivered to any location or to anyone other than those designated to receive bids on its behalf. The bid shall remain sealed until publicly opened, read, and tabulated.

Late submissions will not be accepted. Bidders may use any means of delivery, but it is the responsibility of the bidder to allow adequate time for delivery. If due to inclement weather, natural disaster, or for any other cause the University office location where bids are to be received is closed on the bid due date, the deadline for submission will be automatically extended until the next business day on which the University office is open, unless the contractor is otherwise notified by the University. The time of day for submission of bids shall remain the same.

To be considered, bids must be a complete response to the IFB, and must contain all elements required to be submitted with the bid. An omission of prices requested on the Bid Form may be sufficient cause for rejection of the entire bid as non-responsive.

Offerors may submit modifications to their bids at any time before the bid due date and time. Modifications to bids shall be provided by the bidder in the same delivery format(s) being accepted for the original bid, and shall be clearly marked as to the intent of the modification. Otherwise, all bids shall be unconditionally accepted without alteration or modification except as authorized in this IFB.

Bids may be withdrawn up to the time of bid opening provided a written request is received prior to the time specified for bid opening. Requests for withdrawal of bids after bid opening based on an erroneous bid and/or a mistake in the bid, in accordance with the Commonwealth Procurement Code (62 P.S. 512(f)), must be made within two (2) working days after the bid opening.

7. Bid Security

If a bid security is required, each bid must be accompanied by a certified check, bank cashier's check, or Bid Bond. Specific bid security required, and the type, for this solicitation is identified in the Special Instructions to Bidders. Failure to submit a bid security, if required, will result in the rejection of the Bid as non-responsive. If a check is allowed, it shall be drawn to the order of the University. If a Bid Bond is used as the security, it must be submitted on the System-furnished Bid Bond form, complete with all signatures, seals, and certificate of power of attorney. Failure to use the System Bid Bond form for a bid bond will result in rejection of the bid as non-responsive. The Bid Bond form is located elsewhere in this IFB. A Bid Bond shall be dated the same date or a later date than the date on the Bid Form. A Bid Bond dated earlier than the date on the Bid Form may result in the rejection of the bid as non-responsive.

The bid security will be forfeited if a bid or any part thereof is accepted by the System and the bidder fails to furnish approved performance and payment bonds, if required, and execute the contract within the time frame stated in the Instructions to Bidders. All bid security not forfeited, except for the two lowest responsive, responsible bidders, shall be returned on or before the thirtieth (30th) day after the Bid Opening. The bid security of the two lowest responsive, responsible bidders, except where forfeiture is involved, will be returned upon execution of the performance and payment bonds and the contract by the lowest responsive, responsible bidder. In the event no contract is awarded by the System, the bid security of the two lowest responsive, responsible bidders will be returned on or about sixty (60) days after the Bid Opening, unless an extension is agreed upon.

8. Submission of Business Certification Form

Offerors must submit with their bid a System Business Certification Form, certifying that the Contractor has a certificate to do business in the Commonwealth of Pennsylvania. The Business Certification Form is located elsewhere in this IFB. Information on business registration in the Commonwealth of Pennsylvania is available from the Pennsylvania Department of State, Corporation Bureau, 206 North Office Building, Commonwealth Avenue & North Street, Harrisburg, PA 17120, phone: (717) 787-1057, fax: (717) 783-2244, web site: www.dos.state.pa.us.

9. Submission of MBE/WBE Participation Information

Offerors must submit with their bid the required MBE/WBE participation information. The Instructions to Bidders, MBE/WBE Requirements, and the required MBE/WBE Solicitation Form, are located elsewhere in this IFB.

10. Selection for Award

The System intends to award a contract or contracts resulting from this IFB to the responsible bidder(s) who submitted responsive bid(s) which represents the lowest price to the System based on the bid evaluation plan.

If unit-priced bid items are included on the Bid Form, the System reserves the right to make an award on any item for a quantity less than the estimated quantity offered.

If the Bid Form includes multiple Bid Items, the System reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the University's best interest to do so.

The System may waive informalities and minor irregularities in bids received.

11. Tie Bids

When two or more low bids are equal in all respects, a recognized simple "game of chance" will be used to determine which equally eligible bidder is to be awarded the contract. For two equally eligible bidders, a coin flip or a drawing of straws or lots may be used. For three or more equally eligible bidders, a drawing of straws or lots will be used. Equally eligible bidders will have the opportunity to witness the process, if applicable.

12. Unbalanced Bids

The System may reject a bid as nonresponsive if it is materially unbalanced as to prices for the basic requirement, any unit prices, and/or any options. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more Bid Form line items is significantly overstated or understated. A bid may be rejected if the System determines that the lack of balance poses an unacceptable risk to the System.

13. Apparent Clerical and Other Mistakes on the Bid Form

For the purpose of initial evaluation of bids, the following will be utilized in resolving arithmetic discrepancies found on the face of the Bid Form as submitted by the bidder.

- a. Obviously misplaced decimal points will be corrected.
- b. Discrepancy between unit price and extended price, the unit price will govern.
- c. Apparent errors in extension of unit prices will be corrected.
- d. Apparent errors in addition of lump-sum and extended prices will be corrected.

In the case of a discrepancy between written words and numbers, the written words will govern. Requests for withdrawal of bids after bid opening based on an erroneous bid and/or a mistake in the bid, in accordance with the Commonwealth Procurement Code (62 P.S. 512(f)), must be made within two (2) working days after the bid opening.

14. System's Right to Reject Bids

In the event a bidder fails, refuses, or neglects to provide any requested information or documents within the time stated in this IFB or upon the System's request, the System will have the right to reject their bid as non-responsive.

The System reserves the right to reject at any time all bids received.

15. Anti-Bid-Rigging

The bids of any bidder or bidders who engage in collusive bidding shall be rejected. Any bidder who submits more than one bid in such manner as to make it appear that the bids submitted are on a competitive basis from different parties shall be considered a collusive bidder. The System may reject the bids of any collusive bidder upon bid openings of future projects. Nothing in this section shall prevent a bidder from superseding a bid by a subsequent bid delivered prior to bid opening which expressly revokes the previous bid.

16. Reciprocal Limitations Act Requirements

The Reciprocal Limitations Act (62 P.S. 107) is applicable to contracts of \$10,000 and greater.

The Reciprocal Limitations Act requires the System to give bidders a preference against a nonresident bidder from any state that gives or requires a preference to bidders from that state. The amount of the preference shall be equal to the amount of the preference applied by the state of the nonresident bidder. The following is a list of the states which have been found by the Commonwealth of Pennsylvania to have applied a preference for in-state bidders and the amount of the preference:

| | |
|---------------|--|
| Arizona | 5% (construction materials from Arizona resident dealers only) |
| Montana | 3% |
| West Virginia | 2.5% (for the construction, repair, or improvement of any buildings) |
| Wyoming | 5% |

The Reciprocal Limitations Act also requires the System to give preference to those bidders offering supplies produced, manufactured, mined, or grown in Pennsylvania against those bidders offering supplies produced, manufactured, mined, or grown in any state that gives or requires a preference to supplies produced, manufactured, mined, or grown in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular supply. The following is a list of states which have been found by the Commonwealth of Pennsylvania to have applied a preference for in-state supplies and the amount of the preference:

| | |
|------------|--|
| Alaska | 7% (applies only to timber, lumber, and manufactured lumber products originating in the state) |
| Arizona | 5% (construction materials produced or manufactured in the state only) |
| Hawaii | 10% |
| Louisiana | 10% (steel rolled in Louisiana) |
| | 7% (all other products) |
| Montana | 5% (for residents offering in-state goods, supplies, equipment, and materials) |
| | 3% (for non-residents offering in-state goods, supplies, equipment, and materials) |
| New Mexico | 5% |
| Oklahoma | 5% |

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| Washington | 5% (fuels mined or produced in the state only) |
| Wyoming | 5% |

The Reciprocal Limitations Act also requires the System to not specify, use, or purchase supplies which are produced, manufactured, mined, grown, or performed in any state that prohibits the specification for, use of, or procurement of such supplies in or on its public buildings or other works when such supplies are not produced, manufactured, mined, or grown, or performed in that state. The following is a list of the states which have been found by the Commonwealth of Pennsylvania to have prohibited the use of certain out-of-state supplies:

| | |
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| Georgia | forest products only |
| Indiana | coal |
| New Jersey | various products, to include but not limited to: chain link fence, portable sanitation units, glass, glazier supplies, carpet and cushion, shades, upholstery materials and supplies, room air conditioning, electrical supplies, plumbing supplies, hardware supplies, fasteners, lumber, building supplies, audio/visual equipment, fire extinguishers, fire hose, motor oils, fuel oil, Venetian blinds, and drapes |
| New Mexico | construction |

The above lists and amounts of preferences are those related to construction contracts only. The complete list of preferences for all contracts, supplies, and services is available from the Commonwealth of Pennsylvania Department of General Services.

17. Nondiscrimination

The State System of Higher Education is an equal opportunity employment agency with nondiscrimination/sexual harassment requirements. Specific nondiscrimination/sexual harassment and contract compliance requirements are in Rider B of the contract. The Commonwealth's nondiscrimination/sexual harassment clause, as found in Rider B, is hereby incorporated by reference.

18. Minority and Women Business Enterprises

It is the policy of the System to award and administer contracts for goods and services in a nondiscriminatory manner, to promote the affirmative participation of minority-owned and women-owned businesses in procurement activities and awards, and to integrate into procurement processes the necessary practices and procedures for the procurement of all goods and services for the System to effectively implement the policy.

Minority-owned and women-owned businesses shall be solicited proactively and encouraged to submit competitive written bids or quotes for System facilities projects by the System and for portions of the work by the prime contractors submitting bids for System facilities projects. Specific instructions related to this requirement are in the Instructions to Bidders, MBE/WBE Requirements, located elsewhere in this IFB. Failure to submit the MBE/WBE Solicitation Form and required supporting documentation with a bid, as described in the Instructions to Bidders, MBE/WBE Requirements, may result in the rejection of the bid as non-responsive.

19. Debarred Contractors

Contractors currently under suspension or debarment by the Commonwealth, any other state, or the Federal government, are not eligible for award of any contract for this project. Additionally, contractors shall not contract with or employ any subcontractors, suppliers, or individuals that are currently under suspension or debarment. A current list of suspended or debarred contractors is available by contacting the Department of General Services, Office of General Counsel, North Office Building Room 603, Harrisburg, Pennsylvania 17125, phone: 717-783-6472, fax: 717-787-9138.

20. Product Substitution

Any requests for product substitutions shall be submitted to the Professional a minimum of ten (10) calendar days prior to the date set for receipt of bids. Any product substitutions that are accepted will be published in an addendum. After bid opening, product substitutions will be considered only for those conditions listed in Technical Specification Section 01631, Product Substitutions.

21. Right to Protest

An actual or prospective bidder who is aggrieved concerning the solicitation or award of a contract may protest, as provided for in the Commonwealth Procurement Code, 62 P.S. 1711.1.

Protests shall be made in writing by submitting the protest to the Office of the Chancellor, Pennsylvania State System of Higher Education, 2986 North Second Street, Harrisburg, PA 17110. A copy of the protest shall be mailed simultaneously to the University Contracting Officer identified in the Special Instructions to Bidder.

All protests must be received within seven (7) calendar days after the bidder knows or should have known of the facts giving rise to the protest. If a protest is submitted by a protestant who did not submit a bid, the protest must be received prior to the bid opening time or the bid receipt date. If a bidder or offeror, a prospective bidder or offeror, or a prospective contractor fails to file a protest or files an untimely protest, the bidder or offeror, the prospective bidder or offeror, or the prospective contractor shall be deemed to have waived its right to protest the solicitation or award of the contract in any forum. Untimely filed protests will be disregarded.

A protest must state all grounds upon which the protestant asserts the solicitation or award of the contract was improper. The protestant may submit with the protest any documents or information it deems relevant to the protest.

Upon receipt and evaluation of the protest, the Office of the Chancellor will render a written decision.

22. Submission of Contractor Qualification and/or Financial Information

Upon request, or if specifically required by the terms of this IFB, the apparent low bidder may be requested to submit a contractor's qualification and/or financial statement within ten (10) calendar days of the bid date, with financial information current within twelve (12) months prior to the bid date, of which statements shall be certified to be true and correct by an affidavit sworn to or affirmed before a notary public or other officer empowered to administer oaths or affirmations.

23. Financial Requirements

To be deemed a responsible bidder, the bidder may be required to demonstrate, in relation to the bid price, adequate financial and other resources in order to be able to successfully prosecute the work. Additional information may be requested by the System whenever, in its judgment, such information is necessary to determine the responsibility of the bidder.

24. Award of Contract

The System may, solely at its own discretion, award a contract within sixty (60) days from the date of bid opening. A time extension may be made by written consent of the lowest responsive responsible bidder. Award will be consummated by a Notice of Award letter mailed to the Contractor.

The System contemplates award of a firm fixed price contract resulting from this IFB. The contract into which the parties are anticipated entering is the System's Standard Form of Agreement for Facilities Projects, located elsewhere in this IFB. The System will provide to the contractor the completed Agreement for signature with the Notice of Award letter. The Contract will not become effective until executed by all necessary Commonwealth officials as provided by law.

25. Notice to Proceed (NTP)

The System will endeavor to issue the NTP within 120 days of the bid opening. Any delays caused by the contractor's failure to provide any required documents within the specified time will cause an equivalent number of days to be added to this 120-day time frame.

26. Performance, Payment, and Maintenance Bonds

Should Performance, Payment, and/or Maintenance Bonds be required, the System will provide to the contractor with the Notice of Award letter the blank System Contract Bond Form. The Contractor must, within ten (10) days after the receipt of the Bond Form, sign it, have the Surety execute it, and return it to the System. Unless otherwise specified, two original copies of the completed and executed Bond are normally required. The Contractor's surety company must be authorized to do business in the Commonwealth of Pennsylvania and must successfully demonstrate in writing prior to award that the amount of bond or reinsurance or other security has been obtained in conformance with the Pennsylvania Insurance Company law of 1921, 40 P.S. 832. Failure of the Bidder to execute the required Performance, Payment, and/or Maintenance Bonds within the time specified will result in payment to the System their bid security, in the amount of the difference between their bid and the next lowest responsive responsible bid, or the bid security amount, whichever is less. The System shall have the right to award the contract to the next lowest responsive responsible bidder.

27. News Releases

News releases and media contacts regarding this contract and project will be made by the System only, unless the System directs otherwise in specific instances. In such instances, the System shall receive prior review and approval of such releases. In any case, Contractors shall not use the name of the System or the University for promotional or marketing purposes.

28. Right-to-Know Law

All responses to this procurement opportunity are subject to the Pennsylvania Right-to-Know Law, 65 P.S. §67.101 et seq., (Act 3 of 2008). The Right-to-Know Law permits any requestor to inspect and/or copy any record prepared and maintained or received in the course of the operation of a public office or agency that is not subject to the enumerated exceptions under the law. If your response to the procurement opportunity contains a trade secret or confidential proprietary information, you should include with your response a separate signed written statement to that effect. Should your response become the subject of a Pennsylvania Right-to-Know Law request, you will be notified by the procurement office to identify all trade secrets of confidential and proprietary information that is included in your response. The agency will then determine whether the claimed trade secret or confidential and proprietary information is subject to disclosure.

29. E-Verification

The Commonwealth of Pennsylvania enacted Act 127 of 2012, known as the Public Works Employment Verification Act ("the Act"), which requires all public work contractors and subcontractors to utilize the Federal Government's E-Verify system (EVP) to ensure that all employees performing work on public work projects are authorized to work in the United States.

The Department of General Services (DGS) Public Works Employment Verification Compliance Program is responsible for the administration, education, and enforcement of the Act. It provides contractors and subcontractors with educational outreach, conducts investigations when complaints are received, and conducts random audits to ensure compliance with the requirements of this Act. Contracts resulting from this solicitation will fall under the Act and the associated DGS compliance program.

Information on the Act and DGS program are available on this DGS website:

http://www.dgs.state.pa.us/portal/server.pt/community/construction_and_public_works/1235/public_works_employment_verification/1357211

Contractors will be required to sign and submit to the university, as a pre-condition of being awarded a contract, the Commonwealth of Pennsylvania Public Works Employment Verification Form.

Subcontracts between a public works contractor and its subcontractors shall contain notification of the applicability of the Act, information regarding the use of the EVP, and reference to DGS website at www.dgs.state.pa.us to obtain a copy of the required Commonwealth of Pennsylvania Public Works Employment Verification Form. Additionally, Contractors will require each of their subcontractors to sign and submit to the university, prior to that subcontractor performing work at the project site, the Commonwealth of Pennsylvania Public Works Employment Verification Form.

The Commonwealth of Pennsylvania Public Works Employment Verification Form is available on DGS' website and/or through the university.

Contractors will comply with all other requirements of the Act, and also require each of their subcontractors to comply, which includes maintaining documentation of continued compliance with the Act by utilizing the EVP for new employees hired throughout the duration of the public works contract.