

## **INSTRUCTIONS TO BIDDERS/OFFERORS**

### **1. COMPLIANCE WITH THE PROCUREMENT REGULATIONS**

The Commission's Procurement Regulations, WSSC Code of Regulations, Title 6, Chapter 6.15, are incorporated into this Solicitation and made a part of this Solicitation by reference. The Procurement Regulations can be viewed online at <https://wssc.district.codes/Code/6.15>.

### **2. DEFINITIONS**

Whenever the following words occur in these Instructions to Bidders/Offerors, they shall have the following meanings.

- (a) "Bidder" means any person submitting a bid in response to an invitation for bids ("IFB") or a request for quotations ("RFQ").
- (b) "Contract Documents" means all documents which are included, attached, or referenced in a Solicitation.
- (c) "Invitation for bids" ("IFB") means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (d) "Invitation for prequalification" ("IFP") means all documents, whether attached or incorporated by reference, utilized for prequalifying potential bidders.
- (e) "Offeror" means any person submitting a proposal to a request for proposals ("RFP) or invitation for prequalification ("IFP").
- (f) "Request for proposals" ("RFP") means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- (g) "Responsible" means a person who has the capability in all respects to perform fully the requirements stated in the invitation for bids and request for proposals, respectively, and the integrity and reliability which will assure good faith performance.
- (h) "Responsive" means a person who has submitted a bid or a proposal which fully conforms to the invitation for bids or request for proposals.
- (i) "Solicitation" means an invitation for bids, a request for proposals, a request for quotations, an invitation for pre-qualification, or any other document issued by WSSC for the purpose of soliciting bids or proposals to perform a WSSC contract.

### 3. WSSC'S SUPPLIER PORTAL SYSTEM

Bidders/Offerors are required to register in WSSC's Supplier Portal System in accordance with WSSC Code of Regulations, Title 6, Chapter 6.25, at the time of bid opening or proposal submission due dates. Failure to have an active supplier profile prior to this time may render the bid or proposal non-responsive. Information regarding the Supplier Portal System can be found online at <https://wssc.district.codes/Code/6.25> and [www.wsscwater.com](http://www.wsscwater.com).

### 4. EXPLANATION OF CONTRACT DOCUMENTS TO PROSPECTIVE BIDDERS/OFFERORS

Any prospective Bidder/Offeror must carefully examine the Solicitation. If a prospective Bidder/Offeror is unclear as to the meaning or intent of any of the Contract Documents included in the Solicitation, the prospective Bidder/Offeror shall request a clarification from the Procurement Office before its bid/proposal is submitted.

All questions about the meaning or intent, discrepancies, or omissions of the Contract Documents shall be submitted via electronic mail to the Procurement Officer identified in the Solicitation or in writing and addressed to the Procurement Office, 8th Floor, 14501 Sweitzer Lane, Laurel, Maryland 20707-5902. Replies, where warranted, will be issued by addenda electronically to all parties who have downloaded the Solicitation. **Questions received less than five (5) days prior to the date for opening of bids or due date for receipt of proposals may not be answered. Only questions answered by formal written addenda will be binding.** Questions received after this deadline may be addressed at the discretion of the Commission. Oral and other interpretations or clarifications will be without legal effect.

Any information given to a prospective Bidder/Offeror by the Commission will be furnished to all prospective Bidders/Offerors.

### 5. SECURITY CLEARANCE REQUIRED FOR ACCESS TO PLANS AND DRAWINGS

In order to receive plans and drawings related to the Solicitation, a prospective Bidder's/Offeror's representative must first be approved through a security background investigation. The Bidder's/Offeror's representative can obtain an application for a security clearance by contacting WSSC's Procurement Office by phone, (301) 206-8288. Requests for plans and drawings can only be fulfilled for representatives having successfully completed the security investigation. Multiple representatives may gain security clearance to request plans and drawings.

Additionally, plans and drawings may be accessed through E-Builder® ASP software. A user name and password is issued by the Procurement Officer upon request. To obtain a user name and password for access, a Bidder's/Offeror's representative must first obtain a security clearance.

### 6. SUBMISSION OF BIDS (COMPETITIVE SEALED BIDDING)

#### (a) Bid Forms

Bids shall be submitted in accordance with the instructions in the Solicitation and shall be filled out in typewritten or written ink. If changes and erasures are made, such changes and erasures shall be clear and legible, and shall be initialed by the person signing the forms.

The bid forms may provide for submission of a price or prices for one or more items, which may be lump sum bids, alternate prices, and scheduled items resulting in a bid on a unit of construction or a combination thereof, or other bidding arrangements. Unless specifically called for, alternate bids will not be considered.

Failure to submit a bid form or submitting an incomplete bid form with the bid may lead to the bid being deemed **non-responsive or non-responsible**.

#### (b) Bid Submittals

Bidders shall complete and submit any submittals required by the Solicitation with the bid. Failure to submit a submittal or submitting an incomplete submittal with the bid may lead to the bid being

deemed **non-responsive or non-responsible**.

**(c) Bid Bond**

If the Solicitation requires a bid bond and a Bidder fails to submit a bid bond with the bid, the bid shall be deemed **non-responsive**.

**(d) Multiple Unit Prices**

No Bidder will be permitted to offer more than one price for each item identified in a bid form even though it believes it has two or more products that will meet the specifications in the Solicitation. If a Bidder submits more than one price for any item, all prices for that item may be rejected at the discretion of the Chief Procurement Officer. Further, the bid may be deemed **non-responsive**.

**(e) Bid Submittal Limit**

A Bidder may submit only one bid in response to a Solicitation. If a Bidder submit more than one bid, the bids will be rejected and deemed **non-responsive**.

**(f) Alternate Bid**

Unless alternate bids are specifically requested in the Solicitation, they will not be accepted. Alternate bids will be rejected and deemed **non-responsive**.

**(g) Conditional Bids**

If a Bidder submits a bid that requires the Commission to accept changes or additions to the Contract Documents, the bid will be rejected and deemed **non-responsive**.

**(h) Bid Signing**

Signing of a bid shall comply with instructions in bid forms.

**(i) Bid Delivery**

Once completed, any required bid forms, submittals, and bid bond shall be detached from the Solicitation and submitted in a sealed opaque envelope.

A Bidder shall assume full responsibility for timely delivery at the location designated for receipt of bids in the Solicitation. If the bid is submitted by mail, the sealed envelope, containing the bid, shall be enclosed in a second envelope addressed to: Washington Suburban Sanitary Commission, Procurement Office, 8th Floor, 14501 Sweitzer Lane, Laurel, Maryland 20707-5902. Both envelopes shall state "BID ENCLOSED" and include the Bidder's name and address, Solicitation number, Solicitation title, bid opening date, bid due date, and bid opening time on the envelopes. Bidders must allow a reasonable amount of time for mailed bids to be delivered from the point of receipt (mailroom) to the location designated for receipt of bids in the Solicitation. Hand-delivered bids must be submitted to: Washington Suburban Sanitary Commission Procurement Office, 8th Floor, 14501 Sweitzer Lane, Laurel, Maryland 20707-5902.

Upon receipt by the Procurement Office, each bid shall be stamped with the time and date received; but it shall not be opened. The only acceptable evidence to establish the time of receipt is the time/date stamp on the envelope or other documentary evidence of receipt maintained by the Procurement Office. Each bid shall be stored unopened in a secure place until the time set for opening of bids.

Any bid received after the exact time for receipt will be deemed **non-responsive**. The bid will not be considered for award and will be returned to the Bidder unopened. However, an exception may be made when a late bid would have been timely but for the action or inaction of the Commission.

A Bidder assumes all risks for timely delivery of a bid.

**7. SUBMISSION OF PROPOSALS (COMPETITIVE SEALED PROPOSALS)**

**(a) Form And Content Of A Proposal**

The Solicitation will identify the required form and contents of a proposal. Failure to submit a proposal that meets the requirements of the Solicitation may lead to the proposal being deemed **non-responsive or non-responsible**.

**(b) Proposal Delivery**

The Solicitation will identify the time and manner in which a proposal shall be delivered to the Commission. Any proposal received after the exact time for receipt will be deemed **non-responsive**. The proposal will not be considered for award and will be returned to the Offeror unopened. However, an exception may be made when a late proposal would have been timely but for the action or inaction of the Commission. A Offeror assumes all risks for timely delivery of a bid.

**8. ACKNOWLEDGMENT OF AMENDMENTS TO THE SOLICITATION**

Each Bidder/Offeror shall acknowledge receipt of any amendment to the Solicitation in accordance with the instructions stated in the amendment or otherwise stated in the Solicitation. If a Bidder/Offeror fails to acknowledge the amendment prior to the deadline for submitting a bid or proposal, the bid or proposal may be deemed **non-responsive**.

**9. WITHDRAWAL OF A BID (COMPETITIVE SEALED BIDDING)**

Prior to the time and date set for bid opening, a Bidder may withdrawal a bid by providing written notice to the Procurement Office. The written notice must be received by the Procurement Officer prior to the time and date set for bid opening for it to be effective.

No Bidder may withdraw a bid within 120 days after the actual date of the opening of the bids. Negligence on the part of the Bidder in preparing the bid confers no right for the withdrawal of the bid after it has been opened. Should there be reasons why a contract cannot be awarded within the specific period, the time may be extended by mutual agreement between the Commission and the Bidder.

**10. BID MODIFICATION, MISTAKES, AND MINOR INFORMALITIES (COMPETITIVE SEALED BIDDING)**

**(a) Mistakes in Bids Discovered Before Bid Opening**

A Bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid.

**(b) Mistakes Discovered After Bid Opening but Before Award**

Mistakes in bids that are discovered after the time and date set for bid opening but before award shall be resolved as follows:

**(i) Minor Informalities.** Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, worker and/or public safety or other bidders; that is, the effect on price, quantity, quality, delivery, worker and/or public safety or contractual conditions is negligible. The Procurement Officer may waive such informalities or allow the bidder to correct them depending on what is in the best interests of WSSC.

**(ii) Mistakes Where Intended Correct Bid Is Evident.** If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn.

**(iii) Mistakes Where Intended Correct Bid Is Not Evident.** A bidder may be permitted to withdraw a low bid if:

1. A mistake is clearly evident on the face of the bid document but the intended correction is not similarly evident; or

2. The bidder submits objective proof which clearly and convincingly demonstrates that a mistake was made.

**(c) Mistakes Discovered After Award**

Mistakes shall not be corrected after award of the contract except where the Chief Procurement Officer makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

## **11. WITHDRAWAL OF A PROPOSAL (COMPETITIVE SEALED PROPOSALS)**

An Offeror may withdrawal a proposal by providing written notice to the Procurement Office. The established due date for the written notice is either the time and date stated in the Solicitation for receipt of proposals or receipt of modifications to proposals, if any; or if discussions have begun, it is the time and date by which best and final offers, must be submitted.

## **12. MISTAKES IN PROPOSALS (COMPETITIVE SEALED PROPOSALS)**

**(a) Mistakes Discovered After Receipt of Proposals But Before Award**

**(i) During Discussions – Prior to Best and Final Offers.** Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

**(ii) After Best and Final Offers.** If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:

1. The mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or
2. The mistake is not clearly evident on the face of the proposal, but the offeror submits objective evidence which clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.

**(iii) Withdrawal of Proposals.** If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:

1. The mistake is clearly evident on the face of the proposal and the intended correct offer is not;
2. The offeror submits objective evidence which clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or
3. The offeror submits objective evidence which clearly and convincingly demonstrates the intended correct offer, but to allow correction would be contrary to the fair and equal treatment of the other offerors.

## **13. BIDDER/OFFEROR QUALIFICATIONS**

**(a) Performance Capability**

A Bidder/Offeror shall be responsible and have the capability to properly perform the work described

in the Contract Documents, and shall have the necessary expertise, manpower, equipment, capacity and sufficient financial resources to execute the work described in the Contract Documents properly within the time specified.

The Commission, at its discretion, may make such investigations it deems necessary to determine the ability of a Bidder/Offeror to perform the work described in the Contract Documents, and the Bidder/Offeror shall furnish to the Commission such information and data for this purpose as the Commission may request. The Commission may visit any prospective Contractor's place of business, contracts in progress, or contact persons knowledgeable of the Bidder/Offeror's background to determine its ability, capacity, reliability, financial stability, or other factors necessary to perform the work described in the Contract Documents in a manner satisfactory to the Commission.

The Commission may determine a Bidder/Offeror **non-responsible** if the Commission determines the Bidder/Offeror does not have the capability, integrity, or reliability to perform the work described in the Contract Documents.

**(b) Maryland State Department of Assessments & Taxation Registration And Good Standing**

Before doing any business in the State of Maryland, all corporations and limited liability companies are required by Maryland law to be registered with the Maryland State Department of Assessments & Taxation and in good standing. This requirement is applicable to companies that are not Maryland entities. *See* MD Code, Corporations and Associations, § 7-202 and MD Code, Corporations and Associations, § 4A-1002. A Bidder/Offeror may be found **non-responsible** if it has failed to comply with all applicable Maryland statutes and regulations pertaining to registering with the Maryland State Department of Assessments & Taxation or if it is not in good standing.

## 14. BONDS AND INSURANCE

The Bidder/Offer to whom a contract is recommended for award shall submit any required bonds and insurance documents to the Procurement Office in accordance with the Procurement Office's instructions. Failure to submit the required documentation within the time period specified may be cause for deeming the bid or proposal **non-responsible**.

## 15. PROTESTS

Any protest concerning the Solicitation shall be decided by the Chief Procurement Officer in accordance with Procurement Regulations, WSSC Code of Regulations, Title 6, Chapter 6.15.530.

**(a) Right To Protest**

Any actual or prospective Bidder or Offeror who is aggrieved in connection with a Solicitation or an award of a Contract may protest to the Chief Procurement Officer. The protest shall be in writing and filed with the Office of the Chief Procurement Officer within seven (7) days after such aggrieved person knows or should have known of the facts giving rise to the protest. A protest shall be considered untimely if it is not received by the Office of the Chief Procurement Officer within the time period stated above. A Bidder or Offeror is aggrieved only if the Bidder or Offeror can demonstrate that, should the protest be sustained, the Bidder or Offeror may be eligible for the award.

**(b) Form Of Protest**

The written protest shall include, at minimum, the following: (a) name and address of the protestor, (2) Solicitation or Contract number, (3) statement of reasons for the protest, and (4) supporting exhibits, evidence, or documents to substantiate any claims.

**(c) Filing Fee**

The filing fee for a protest is **SEVEN HUNDRED AND SEVENTY DOLLARS (\$770.00)**. The filing fee shall be paid in the form of a check payable to the Washington Suburban Sanitary Commission. If the protest is sustained by the Chief Procurement Officer, the protester will be entitled to a refund of the filing fee. **A PROTEST SHALL BE CONSIDERED UNTIMELY IF THE FILING FEE IS NOT RECEIVED BY THE PROCUREMENT OFFICE WITHIN THE TIME LIMITATIONS TO FILE A PROTEST.**

**(d) Authority To Resolve Protests**

The Chief Procurement Officer, after consultation with the General Counsel's Office, shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved Bidder or Offeror concerning the Solicitation or award of a contract.

**(e) Award Of A Contract During A Protest**

In the event of a timely protest, the Commission shall not proceed further with a Solicitation or with the award of a contract until after a written decision on the protest has been issued by the Chief Procurement Officer, unless the Chief Procurement Officer, after consultation with the General Counsel's Office and the appropriate using department, determines in writing that awarding a contract without delay is necessary to protect the interests of the Commission.

**(f) Final Decision**

If the protest is not resolved by mutual agreement, the Chief Procurement Officer must adjudicate the protest on the record and issue a final written decision within twenty-one (21) days of receiving the protest. The decision must: (a) state the reasons for the action taken and (2) inform the Bidder or Offeror of its right to appeal the written decision.

**(g) Appeal To Court**

The aggrieved Bidder or Offeror may appeal the written decision of the Chief Procurement Officer to the Circuit Court for Montgomery County or the Circuit Court for Prince George's County under the Maryland Rules governing administrative mandamus actions.

**(h) Entitlement To Bid Preparation Costs**

If a protest is sustained by the Chief Procurement Officer and the protesting Bidder or Offeror should have been, but was not, awarded the contract under the Solicitation, the aggrieved Bidder or Offeror shall be entitled to the reasonable costs incurred in connection with the Solicitation, including bid preparation costs. The aggrieved Bidder or Offeror shall not be entitled to recover any attorneys' fees incurred in connection with the Solicitation or protest.

## **16. SOLICITATION CANCELLATION**

A Solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part when the Chief Procurement Officer deems it to be in the best interests of WSSC. Notice of such a decision must be made in writing and provided to all bidders or offerors.

## **17. CONTRACT AWARD**

**(a) Construction Contracts Or Design/Build Contracts (Competitive Sealed Bidding)**

Contracts for construction or design/build using a competitive sealed bidding procurement will be awarded in accordance with Md. Code Ann., Pub. Util. § 20-105(b).

**(b) Construction Contracts Or Design/Build Contracts (Competitive Sealed Proposals)**

Contracts for construction or design/build using a competitive sealed proposals procurement will be awarded in accordance with Md. Code Ann., Pub. Util. § 20-105(c).

**(c) Other Contracts (Competitive Sealed Bidding)**

Contracts that are not for construction or design/build using a competitive sealed bidding procurement will be awarded in accordance with Procurement Regulations, WSSC Code of Regulations, Title 6, Chapter 6.15.310.

**(d) Other Contracts (Competitive Sealed Proposals)**

Contracts that are not for construction or design/build using a competitive sealed proposals procurement will be awarded in accordance with Procurement Regulations, WSSC Code of Regulations, Title 6, Chapter 6.15.3120.

**18. EXECUTION AND ACCEPTANCE OF A CONTRACT**

A contract shall not be considered accepted by the Commission and binding upon the Commission until (1) a contract has been executed by the Chief Procurement Officer or an authorized designee acting within the scope of his/her authority **and** (2) a Notice to Proceed has been issued.

The Commission reserves the right to cancel a recommended award of a contract without liability to the Commission at any time prior to (1) a Contract being executed by the Chief Procurement Officer or an authorized designee acting within the scope of his/her authority **or** (2) a Notice to Proceed being issued. Upon cancelling a recommended award, a recommended award may then be made to the next ranked responsive and responsible Bidder/Offeror or the Solicitation may be cancelled and re-advertised.

Failure by a Bidder/Offeror to execute a contract, submit such other documents as required by the Contract Documents, or file acceptable insurance and bonds within the time directed shall be just cause for canceling the recommended award. Upon cancelling a recommended award, a recommended award may then be made to the next ranked responsive and responsible Bidder/Offeror or the Solicitation may be cancelled and re-advertised.

Subcontract plans must be entered and approved in the web-based compliance system in accordance with the Commission's directives. Failure by a Bidder/Offeror to comply with such directives shall be just cause for canceling a recommended award. Upon cancelling a recommended award, a recommended award may then be made to the next ranked responsive and responsible Bidder/Offeror or the Solicitation may be cancelled and re-advertised.

A Notice to Proceed will be issued after (1) a contract has been executed by the Chief Procurement Officer or an authorized designee acting within the scope of his/her authority, (2) upon receipt and acceptance by the Commission of a Bidder's/Offeror's insurance, bonds, any other designated documents, (3) upon verification of entry and acceptance of subcontracting plans in the web-based compliance system, and (4) upon approval of background investigations of employees to work on Commission property. The Notice to Proceed represents the final document required before a contract shall be considered accepted by the Commission and binding upon the Commission.

**19. MARYLAND PUBLIC INFORMATION ACT NOTICE**

The Commission is subject to the Maryland Public Information Act. Bidders and Offerors are strongly encouraged to specifically identify those portions of their bids or proposals, if any, which they deem to contain protected trade secrets, confidential commercial information, confidential financial information; or confidential geological or geophysical information pursuant to Md. Code Ann., General Provisions, §§ 4-335 and 4-336.