

00.21.00
INSTRUCTIONS TO BIDDERS
Projects \$150,000- \$10Mil

ARTICLE 1 - BIDDER'S REPRESENTATION

- 1.1** Each General Bidder or Sub-bidder (hereinafter called the "**Bidder**") by making a bid or sub-bid (hereinafter called "**bid**") represents that:
- .1** The Bidder has read and understands the Contract Documents and the bid is made in accordance therewith.
 - .2** The Bidder has visited the site and is familiar with the local conditions under which the Work has to be performed.
- 1.2** Failure to so examine the Contract Documents and site will not relieve any Bidder from any obligation under the bid as submitted.

ARTICLE 2 - GENERAL BIDDER'S AND FILED SUB-BIDDER'S CERTIFICATION

- 2.1** General bids shall be submitted with the following:
- .1** A Certificate of Eligibility on the appropriate form prescribed and issued by the Division of Capital Asset Management and Maintenance (DCAMM), showing that the Bidder is eligible to bid on projects of this size in the specified category of work; and
 - .2** A Contractor Update Statement, DCAMM Form CQ3.
 - .3** The Contractor Update Statement (CQ3) is not a public record as defined in DCAMM regulation 810 CMR 8.06 and will not be open to public inspection.
- 2.2** Advertised filed sub-bids shall be submitted with the following:
- .1** A Sub-Bidder Certificate of Eligibility on the appropriate form prescribed and issued by DCAMM showing that the sub-bidder is eligible to bid on public projects in the specified category of work; and
 - .2** A Sub-Bidder Update Statement on a form prescribed by DCAMM.
- 2.3** It is the Sub-Bidder's responsibility to obtain the necessary forms from DCAMM and make application in sufficient time for evaluation of the application and issuance of a Sub-Bidder Certificate of Eligibility prior to bid.
- 2.4** The Sub-Bidder Update Statement is not a public record as defined in DCAMM regulation 810 CMR 8.06 and will not be open to public inspection.
- 2.5** All employees who work on this construction site must have no less than 10 hours of OSHA-approved safety and health training.
- 2.6** The Contractor and all subcontractors on this project will be required to provide certification of compliance with the requirement of 2.5 above in accordance with the provisions of these Contract Documents.
- 2.7** The Contractor and all subcontractors shall be completely responsible for compliance with EPA Lead Renovator Requirements including EPA regulation 40 CFR 745.

ARTICLE 3 – MBE/WBE PARTICIPATION BENCHMARKS

- 3.1** Refer to the Advertisement for the applicability of this Article 3.

- 3.2** The participation benchmarks that must be contracted with minority-owned and/or women-owned enterprises is stated in the Advertisement. If the Advertisement does not include participation benchmarks, paragraphs 3.3 – 3.6 below and Section 00.73.39 shall not apply.
- 3.3** Letters of Intent (Form 00.73.39.02) are not required for filed Subcontractors. However, filed Subcontractors who are SDO-certified MBEs or WBEs should be listed on the Participation Schedule (Form 00.73.39.01.)
- 3.4** If the General Contractor wants to request a reduction in or waiver of the participation benchmarks stated in the Advertisement, it must do so via email to the EOHLC at david.mcclave@mass.gov. Such requests must be received no later than five (5) calendar days PRIOR to the General Bid opening date and time.
- 3.4.1** The submitted request should include the reason(s) for the request. If the EOHLC determines that compliance with participation benchmarks is not feasible, it has the discretion to reduce or waive these benchmarks. If the benchmarks are reduced or waived, an addendum to the project will be issued with the new participation requirements. Reductions or waivers that are granted will be granted for all General Contractors bidding on the project.
- .1** a time extension for the submission of its Participation Schedule & Letter(s) of Intent.
- 3.4.2** within **five (5)** calendar days **PRIOR** to the General Bid opening date and time:
- .1** a reduction in the participation benchmarks stated in the Advertisement; or
- .2** a waiver from the participation benchmark requirements.
- 3.4.3** The submitted request will be processed in the following manner:
- .3** **The Bidder must submit the reason for the waiver request, the sub-contractors and suppliers contacted from the SDO and the percentage of reduction being requested.** The EOHLC will review the request for reduction or waiver. If the EOHLC determines that compliance with participation benchmarks is not feasible, it has the discretion to reduce or waive these benchmarks. If the benchmarks are reduced or waived, an addendum to the project, 48 hours prior to the bid opening will be issued with the new participation requirements. Such reduction or waiver shall be granted only upon the General Contractors showing that good faith efforts have been made to comply with the participation benchmarks. Reductions or waivers that are granted will be granted for all General Contractors bidding on the project.
- 3.4.4** The completed Participation Schedule, Letters of Intent and, if necessary, requests for a reduction in participation benchmarks or a waiver from participation benchmarks may be sent electronically to: David.Mcclave@mass.gov. No hard copy is required.
- 3.5** [This Section Intentionally Blank]
- 3.6** Filed Sub-bidders are not required to submit a Participation Schedule. They may, at their option, submit a Letter of Intent with their bid if they are a SDO certified enterprise.
- 3.7** By submitting a Participation Schedule, the Bidder certifies that those firms listed on the Schedule will be supplying the goods and/or services that those firms are certified to supply.

ARTICLE 4 - REQUESTS FOR INTERPRETATION

- 4.1** Bidders shall promptly notify the Architect of any ambiguity, inconsistency, or error which they may discover upon examination of the Contract Documents, the site, and local conditions.
- 4.2** Bidders requiring clarification or interpretation of the Contract Documents shall make a written request to the Architect. The Architect will answer such requests if received seven (7) calendar days before the

date for receipt of the bids.

- 4.3** Interpretation, correction, or change in the Contract Documents will be made by written Addendum which will become part of the Contract Documents. Neither the Housing Authority nor the Architect will be held accountable for any oral interpretations, corrections, or changes.
- 4.4** Addenda will be mailed by the Architect by U.S Postal Service to every individual or firm on record as having taken a set of Contract Documents.
- 4.5** Copies of addenda will be made available for inspection at the locations listed in the Advertisement where Contract Documents are on file.

ARTICLE 5 - PREPARATION AND SUBMISSION OF BIDS

5.1 Forms and Bid Preparation

Bids shall be submitted on the "**Form for General Bid**" or the "**Form for Sub-Bid**", as appropriate, furnished at no cost by the Housing Authority. The forms enclosed in the Project Manual shall not be extracted or used. Additional forms are available at the location listed in the Advertisement.

- 5.1.1** All entries on the bid form shall be made by typewriter or in ink.
- 5.1.2** Sums shall be expressed in both words and figures in the space indicated on the bid form. Where there is a discrepancy between the bid sum expressed in words and the bid sum expressed in figures, the words shall control.
- 5.1.3** If the requirement of Performance and Payment Bonds for filed sub-contractors is left blank by the General Bidder on the Form for General Bid, the Housing Authority shall interpret this as a "yes". No increase in contract price will be allowed for providing these bonds.
- 5.1.4** Costs for subcontractor's bond premiums shall be paid for by the General Contractor in accordance with M.G.L. c.149 §44F.

5.2 Bid Deposits shall be:

- 5.2.1** at least five percent (5%) of the greatest possible bid amount, considering all alternates;
- 5.2.2** made payable to the **housing authority**;
- 5.2.3** conditioned upon faithful performance by the principal of the agreements contained in the bid; and
- 5.2.4** in the form of:
 - .1** cash,
 - .2** certified check, treasurer's or cashier's check issued by a responsible bank or trust company, or
 - .3** a bid bond issued by a surety company licensed to do business in the Commonwealth of Massachusetts.
- 5.2.5** retained until the execution and delivery of the Owner/Contractor Agreement if they represent the bid deposit of one of the three (3) lowest responsible and eligible General Bidders or one of the three (3) lowest Sub-bidders in a filed sub-bid trade, or a sub-bidder listed by one of the three (3) lowest General Bidders.

5.3 Delivery of Filed Sub-Bids

Sub-bids, including the bid deposit, DCAMM Sub-Bidder Certificate of Eligibility and a signed DCAMM Sub-Bidder Update Statement shall be enclosed in a sealed envelope with the following plainly marked on the outside:

Filed Sub-Bid for:

- q Name of Housing Authority and Project Number
- q Sub-bid Section Number
- q Trade
- q Sub-bidder's Name, Business Address, and Phone Number

5.4 Delivery of General Bids

General Bids, including the bid deposit, DCAMM Certificate of Eligibility and Update Statement (CQ3) shall be enclosed in a sealed envelope with the following plainly marked on the outside:

General Bid for:

- q Name of Housing Authority and Project Number
- q Bidder's Name, Business Address, and Phone Number

5.4.1 Date and time for receipt of bids is set forth in the Advertisement.

5.4.2 Timely delivery of a bid to the location designated shall be the full responsibility of the Bidder.

5.5 Sub-Trade Solicitations

- 5.5 .1** If the General Bidders are instructed to carry an amount for a given sub-trade listed under Item 2, General Bidder's shall list the sub-trade, and amount provided by the Housing Authority. The line under bonds required on the General Bid Form should be left blank or marked N/A in order for subparagraph 5.5.2.2 to be applicable.
- 5.5 .2** Upon solicitation of a subcontractor to perform the work required by the sub-trade as mentioned in subparagraph 5.5.1, the selected General Contractor's contract amount will be adjusted as follows:
- .1** The difference between the subcontract amount and the amount carried in the bid.
 - .2** The total cost of the subcontractor's bonds, if the selected General Contractor requires such bonds after the solicitation is completed and if the selected General Contractor complied with 5.4.1 above, and
 - .3** The resultant cost difference for General Contractor's Bonds premiums.
- 5.5.3** Overhead and Profit for supervision of the sub-trade in question shall be included by all General Bidders in its Item 1.
- 5.5 4** Additional overhead and profit is not allowed on the incremental difference as stated in M.G.L. c.149 §44F(4)(a)(2) nor on the costs for the additional bond premiums.

ARTICLE 6 - ALTERNATES

General Bidders

- 6.1** Each General Bidder shall acknowledge Alternates by listing the individual Alternate number in Section C on the Form for General Bid and enter the dollar amount of addition or subtraction necessitated by each Alternate listed in the corresponding space.
- 6.2** General Bidders shall enter on the Form for General Bid a single amount for each Alternate which shall consist of the Sub-bidders' amounts and the amount for work performed by the General Contractor.
- 6.3** In the event an Alternate does not involve a change in dollar value, the General Bidder shall so indicate by listing the individual Alternate number and acknowledge the Alternate by inserting "**No Change**", "**No Charge**", "**N/C**" or "**0**" in the corresponding space provided for the dollar value of that Alternate.
- 6.4** The Low Bidder will be determined on the basis of the sum of the base bid and the accepted alternates.

Filed Sub Bidders

- 6.5** Each Sub-bidder shall acknowledge Alternates by listing the individual alternate number in Section A on the Form for Sub Bid and enter the dollar amount of addition or subtraction necessitated by each Alternate listed in the corresponding space.
- 6.6** If an Alternate does not involve a change to a sub-trade's in dollar value the sub bidder shall so indicate by listing the individual alternate number in the space provided and acknowledge the alternate by inserting "**No Change**", "**No Charge**", "**N/C**" or "**0**" in the corresponding space provided for the dollar value of the alternate.
- 6.7** If the alternate does not affect the sub-trade category of work so indicate by writing "**N/A**". Sub-bidders are encouraged to list and acknowledge all alternates.

ARTICLE 7 - WITHDRAWAL OF BIDS

7.1 Before Opening of Bids

- 7.1.1** Any bid may be withdrawn prior to the time designated for receipt of bids upon written request. Withdrawal of bids must be confirmed over the Bidder's signature by written notice post-marked or sent by facsimile on or before the date and time set for receipt of bids.
- 7.1.2** Withdrawn bids may be resubmitted up to the time designated for the receipt of bids.

7.2 After Opening of Bids

Bidders may withdraw a bid, without penalty, any time up to the time of Award as defined in paragraph 8.1, and upon demonstrating, to the satisfaction of the Housing Authority, that a bona fide clerical error was made during the preparation of the bid. Failure to conclusively demonstrate a bona fide clerical error may result in forfeiture of the bid deposit.

- 7.3** In the event of a general bid withdrawal after opening of bids, the Housing Authority shall consider the bid from next lowest eligible and responsible bidder.

7.4 Sub-bid Withdrawal/Substitution

- 7.4.1 Selection** - Should a filed sub-bidder listed on the Form for General Bid of the selected General Contractor (per Article 8 of these instructions) withdraw its bid, be unable to provide performance and payment bonds as required by the selected General Contractor, or otherwise refuse to sign a subcontract with the selected General Contractor, the housing authority and the selected General Contractor shall consider the other sub-bids to which the housing authority and the selected General Contractor make no objection and substitute a new sub-bidder for such trade.
- 7.4.2 Process:** If the selected General Contractor:
- .1 required bonds (on the Form for General Bid) for the sub-bidder who withdrew** then the selected General Contractor's contract amount shall be adjusted to account for:
 - .1** the difference between the amount of the sub-bid listed on the Form for General Bid and the amount of the replacement sub-bid, and
 - .2** the incremental difference in the cost of the General Contractor bonds premiums, but
 - .3** there will be no compensation for additional subcontractor bond premiums
 - .2 did not require bonds (on the Form for General Bid) for the sub-bidder who withdrew** and now the selected General Contractor wants bonds from the replacement sub-bidder, then the selected General Contractor's contract amount shall be adjusted:
 - .1** to account for the difference between the amount of the sub-bid listed on the Form for General Bid and the amount of the replacement sub-bid,
 - .2** the amount for the new sub-bidder's performance and payment bonds, and

.3 the incremental difference in the cost of the General Contractor bond premiums.

7.4.3 There shall be no adjustment to the selected General Contractor's contract amount except as set forth in 7.4.2.1 and 7.4.2.2. Additional overhead and profit is not allowed on the incremental difference in the sub-bids or on the costs for the additional bond premiums.

ARTICLE 8 - CONTRACT AWARD

- 8.1** **Award** means both the determination and selection of the lowest, responsible and eligible bidder, by Housing Authority board vote.
- 8.2** The Housing Authority will award the contract to the lowest responsible and eligible bidder within thirty days, Saturdays, Sundays, and legal holidays excluded after the opening of bids in accordance with M.G.L. c.149 §44A.
- 8.3** The Contract will be awarded to the lowest responsible and eligible Bidder, except in the event of substitution as provided under M.G.L. c.149 §§44E and 44F, in which cases the procedure as required by said sections shall govern the award of the Contract.
- 8.4** The award of this Contract is subject to the approval of the Undersecretary of the Commonwealth of Massachusetts, Executive Office of Housing and Livable Communities (EOHLC) or its Designee. Contracts without EOHLC approval shall not be considered valid.
- 8.5** The Housing Authority reserves the right to waive any informality in or to reject any or all Bids if it be in the public interest to do so.
- 8.6** The Housing Authority also reserves the right to reject any sub-bid if it determines that such sub-bid does not represent the bid of a person competent to perform the work as specified, or if bid prices are not reasonable for acceptance without further competition and require a change in the scope of work.
- 8.7** As used herein, the term "lowest responsible and eligible bidder" shall mean the General Bidder whose bid is the lowest of those Bidders demonstrably possessing the skill, ability, and integrity necessary for the faithful performance of the work, and who meets the requirements for Bidders set forth in M.G.L. c.149 §44A-J and is not debarred from bidding under M.G.L. c.149 §44C; and who shall certify that they are able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.
- 8.8** Bidders' attention is directed to 01.11.00 for any additional selection criteria that may be a condition of Award of this project.

ARTICLE 9 - FORMS REQUIRED FOR CONTRACT APPROVAL

- 9.1** Upon Award, the General Bidder shall complete the following forms to ensure prompt contract validation. These forms will be provided to the selected General Bidder by EOHLC. Submit (3) originals of each.
- 9.2** **Owner/Contractor Agreement and Form of Corporate Vote.** (Form 00.53.00)
- 9.3.1** **Form of Performance Bond and Form of Payment Bond** must be submitted by the General Contractor on EOHLC's Forms 00.61.13 and 00.61.16, in accordance with Article 18 of the General Conditions. The dates on the bonds must coincide with the contract date, and a current Power-of-Attorney must be attached to each bond.
- 9.3.2** **Performance and Payment Bonds** must also be submitted for all filed subcontractors, if required by the General Bidder on its Form for General Bid, in the total amount of the subcontract payable to the General Contractor.
- 9.4.1** **Insurance Certificates** for the General Contractor and all **filed subcontractors** are required and must be submitted in accordance with Article 16 of the General Conditions.

9.4.2 General Contractors must indicate on Builders Risk insurance Certificate or installation floater if stored materials are covered.

9.5 Form of Contractor's Equal Employment Certification in accordance with Specification Section 00.73.36. (Form 00.73.36.01)

9.5.1 Form of Sub-Contractor's Equal Employment Certification in accordance with Specification Section 00.73.36. (Form 00.73.36.02)

9.6.1 Form of Subcontract for all filed subcontractors - executed and submitted on the statutory subcontract form. (Form 00.62.00)

9.6 Statement of Management on Internal Accounting Controls and a Statement prepared by a CPA expressing an opinion to the state of Management Controls, as required by M.G.L. c.30 §39R. This applies to the General Contractor only.

9.7 Evidence of Certification with 40 CFR part 745 Lead Renovation, Repair and Painting Program

ARTICLE 10 - CONTRACT VALIDATION

- 10.1** The Owner-Contractor Agreement shall not be valid until signed by the Undersecretary of the Executive Office of Housing and Livable Communities (EOHLC) or its Designee.
- 10.2** The Notice to Proceed for construction shall not be issued until the Owner/Contractor Agreement has been validated by the Undersecretary of the EOHLC or its Designee
- 10.3** Incomplete or unacceptable submissions of forms required by paragraphs 9.2 - 9.7 will delay the validation of the Owner/Contractor Agreement by the EOHLC.

**END OF 00.21.00
INSTRUCTIONS TO BIDDERS**