

## Direct/Negotiated Contract Instructions for Bidders – July 18, 2024

For Washington State Facility Construction

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# DIRECT/NEGOTIATED CONTRACT INSTRUCTIONS FOR BIDDERS FOR WASHINGTON STATE FACILITIES CONSTRUCTION

## PART 0 – GENERAL CONDITIONS

### 1.01 EXPLANATION TO PROSPECTIVE BIDDERS

- A. In accordance with [RCW 39.04.380](#) effective *March 30, 2012*, the State of Washington is enforcing a **Reciprocal Preference for Resident Contractors**. Any public works bid received from a nonresident contractor from a state that provides an in-state percentage bidding preference, a comparable percentage disadvantage must be applied to the bid of that nonresident contractor.

A nonresident contractor from a state that provides a percentage bid preference means a contractor that:

1. Is from a state that provides a percentage bid preference to its resident contractors bidding on public works contracts.
2. At the time of bidding on a public works project, does not have a physical office located in Washington.

The state of residence for a nonresident contractor is the state in which the contractor was incorporated or, if not a corporation, the state where the contractor's business entity was formed.

All nonresident contractors will be evaluated for out-of-state Bidder preference. If the state of the nonresident contractor provides an in-state contractor preference, a comparable percentage disadvantage will be applied to their bid prior to contract award.

This section does not apply to public works procured pursuant to [RCW 39.04.155](#), [39.04.280](#), or any other procurement exempt from competitive bidding.

- B. Any prospective Bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must submit a request in writing to the Owner seven (7) calendar days prior to the requested bid date provided on the invitation to direct contract/negotiate.
- C. In accordance with the legislative findings and policies set forth in [RCW 39.19](#) the State of Washington encourages participation in all of its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this invitation or as a subcontractor to a Bidder. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the contract documents, no preference will be included in the evaluation of bids, no minimum level of MWBE participation shall be required as a condition for receiving an award, and bids will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.
- D. The State of Washington encourages participation in all of its contracts by Veteran-owned businesses (defined in [RCW 43.60A.010](#)) and located at <http://www.dva.wa.gov/program/certified-veteran-and-servicemember-owned-businesses> and Small, Mini and Micro businesses (defined in [RCW 39.26.010](#)) which have registered in WEBS at <https://pr-webs-vendor.des.wa.gov/>.

- E. In order to report payment detail, the Contractor must create an account in the DES Public Works Diversity Tracking & Management System powered by B2GNow or verify if an account

has already been created on behalf of the Contractor: <https://des.diversitycompliance.com>. The DES Public Works Diversity Tracking & Management System is designed to streamline and automate compliance reporting requirements, empowering vendors to maintain accurate contact information and submit contract payment details online.

- F. For account login or account creation details, go to the DES Public Works Diversity Tracking & Management System home page by clicking on the URL listed above and clicking on Information for Vendors.
- G. Every month for the duration of the contract, and while the contract is active in the DES Public Works Diversity Tracking & Management System, submit and accurately maintain the following payment information through the DES Public Works Diversity Tracking & Management System:
  - (1) Payments received by the prime contractor from the Agency.
  - (2) Payments paid to each first tier subcontractor.
  - (3) Payments paid to each first tier supplier.
- H. The Contractor must also ensure the following information is reported in the DES Public Works Diversity Tracking & Management System by first tier subcontractors and suppliers for the duration of the contract:
  - (1) Confirmation of payments from the prime contractor to the subcontractor.
  - (2) Payment reporting to each supplier.

## 2.01 PREPARATION OF A BID – DIRECT NEGOTIATE

- A. Bidders must be registered as a vendor through the DES Public Procurement Portal Bonfire (<https://deswa.bonfirehub.com>).
- B. All bidders for Small Works Projects must be currently registered on the MRSC Small Works Roster (vendor list) found <http://mrscrosters.org/>.
- C. Bidders must submit their bid on the Bid Form included with the Bid Documents established in the Invitation. Any bid received after the bid submission deadline will not be accepted or considered.
- D. Fill in Blanks: All blank spaces on the Bid Form must be filled in by the Bidder.
- E. The total bid amount shall be determined by the sum of the base bid plus Additives, Alternates and/or Deductives, in the order listed, that the OWNER decides, in its sole discretion, to include in the contract award.
- F. When bidding on items for which there is no charge, Bidder shall write “No Charge” “Zero” or “0.00” in the space provided on the Bid form. If Bidder fails to submit a bid price for any item, notes “no bid” or similar language for any item or does not fill in all blank spaces on the Bid Form, the bid may be rejected as non-responsive.
- G. Sign Bid Form: An authorized representative for the Bidder shall electronically sign the Bid Form.
- H. **Insurance and Bonds:** Bidder shall include in its bid the cost of all insurance and bond costs required by the Contract Documents to complete the base bid work and all additives and alternates.

## 3.01 BID GUARANTEE

- A. No bid security is required under a direct contracting opportunity.

- B. The Bidder will allow 30 days from bid submittal date for acceptance of its bid by the Owner.
- C. The Bidder will return to the Owner a signed contract, insurance certificate and bond or bond waiver within 15 days after receipt of the contract. If the bidder fails to sign all contractual documents or provide the bond and insurance as required or return the documents within 15 days after receipt of the contract, the Owner may terminate the award of the contract.
- D. In the event a Bidder discovers an error in its bid following the bid submittal, the Bidder may request to withdraw its bid under the following conditions:
- E. The Bidder must submit written notification of the withdrawal to the Owner within 24 hours following the bid submittal date.
- F. The Bidder provides written documentation of the claimed error to the satisfaction of the Owner within 72 hours following the bid submittal date.
- G. The Owner will approve or disapprove the request for withdrawal of the bid in writing. If the Bidder's request for withdrawal of its bid is approved, the Bidder will be released from further obligation to the Owner without penalty.

#### **4.01 ACKNOWLEDGEMENT OF ADDENDA**

Bidders shall acknowledge receipt of all addenda from the Owner in writing. Failure to do so may result in the bid being declared non-responsive.

#### **5.01 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK**

The Bidder acknowledges that it has taken steps necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to; (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and road; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during the work.

The Bidder also acknowledges that it has satisfied itself as to character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including exploratory work done by the Owner, as well as from the drawings and specifications made a part of this contract. Any failure of the Bidder to take the actions described and acknowledged in this paragraph will not relieve the Bidder from responsibility for estimating properly the difficulty and cost of successfully performing the work.

#### **6.01 BID AMOUNTS**

- A. The bid price shown for each item on the Bid Form shall include all labor, material, equipment, overhead and compensation to complete all of the work for that item.

B. The actual cost of building permit (only) and the public utility hookup fees will be a direct reimbursement to the Contractor or paid directly to the permitting agency by the Owner. Fees for these permits should not be included by the Bidder in the bid amount.

C. The Bidder agrees to hold the base bid price for thirty (30) days from date of bid submittal.

#### 7.01 TAXES

The bid amounts shall not include Washington State Sales Tax (WSST). All other taxes imposed by law shall be included in the bid amount. The Owner will include WSST in progress payments. The Contractor shall pay the WSST to the Department of Revenue and shall furnish proof of payment to the Owner if requested.

[NOTE: Contractor must bond for contract amount plus the WSST.]

#### 8.01 SUBMISSION OF BIDS

A. Bids must be submitted on or before the time as specified in the Bid Invitation.

B. The Bid shall be submitted electronically through email as specified in the Bid Invitation.

C. Prior to the bid submittal, the Owner's representative will designate the official bid clock. Any part of the Bid Form, or in the rare situation of a bid modification, not received prior to the times specified, per the designated bid clock, will not be considered and the bid will be notified by email by the Owner's representative.

D. A bid may be withdrawn electronically by email by a Bidder's authorized representative before the bid submittal date and time specified in the Bid Invitation.

E. People with disabilities who wish to request special accommodation, (e.g., sign language interpreters, braille, etc.) need to contact the Owner ten (10) working days prior to the bid submittal date.

F. In the event email is unavailable to all users at the bid submittal deadline, DES will contact the Bidders within 24 hours and DES will extend the bid submittal time.

G. DES cannot guarantee the availability of Internet connectivity or related telecommunication and hosting services and will not be liable or responsible if the Bidder and its representative(s) or designee(s) cannot connect.

#### 9.01 BIDDER RESPONSIBILITY CRITERIA:

A. **Mandatory Responsibility Criteria:** Before award of a public works contract, a Bidder must meet the following mandatory responsibility criteria under [RCW 39.04.350 \(1\) & \(2\)](#) to be considered a responsible Bidder and qualified to be awarded a public works project. The individual who has signed/submitted the Bid through the Bonfire Portal shall be the authorized designee responsible for bid submissions. The Bidder must:

1. At the time of bid submittal, have a certificate of registration in compliance with [RCW 18.27](#), a plumbing contractor license in compliance with [RCW 18.106](#), an elevator contractor license in compliance with [RCW 70.87](#), or an electrical contractor license in compliance with [RCW 19.28](#) as required under the provisions of those chapters.

2. Have a current state unified business identifier number.

3. If applicable, have industrial insurance coverage for the Bidder's employees working in Washington as required in [RCW 51](#); an employment security department number as required in [RCW 50](#); and a state excise tax registration number as required in [RCW 82](#).

4. Not be disqualified from bidding on any public works contract under [RCW 39.06.010](#), or [39.12.065\(3\)](#).
  5. Public Works and Prevailing Wage Training/Exemption. Bidders shall have received training on the requirements related to public works and prevailing wage under this chapter and chapter [39.12 RCW](#). The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The department of labor and industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its website. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption. <https://lni.wa.gov/licensing-permits/public-works-projects/contractors-employers/contractor-training>
  6. Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgement entered by a court of limited or general jurisdiction to have willfully violated, as defined in [RCW 49.48.082](#), any provision of [RCW 49.46](#), [49.48](#), or [49.52](#). A bidder shall submit a signed Contractor Certification form with the bid or within two (2) business days of request by Owner regarding this wage theft prevention responsible bidder criteria.
- B. Supplemental Responsibility Criteria:** In addition to the mandatory Bidder responsibility, the Owner may adopt relevant supplemental criteria for determining Bidder responsibility applicable to a particular project which the Bidder must meet ([RCW 39.04.350 \(3\)](#)).
1. If applicable, the Owner shall consider an overall accounting of the attached supplemental criteria for determining Bidder responsibility "DIVISION 00 SUPPLEMENTAL RESPONSIBILITY CRITERIA".
  2. At least seven (7) days prior to the bid submittal deadline, a potential Bidder may request that the Owner modify the supplemental responsibility criteria. The Owner will evaluate the information submitted by the potential Bidder and respond before the bid submittal deadline through email from the Owner. If the evaluation results in a change of the criteria, the Owner will issue an addendum to the bidding documents identifying the new criteria. The addendum will be sent via email from the Owner's representative.
  3. If applicable, the bidder must supply the requested responsibility information with the bid. Withholding information or failure to submit all the information requested within the time provided may render the bid non-responsive.
  4. If the Owner determines that the Bidder is not responsible, the Owner will notify the Bidder of its preliminary determination in writing.
  5. After receipt of the preliminary determination, the Bidder may withdraw its bid submission before the bid submittal deadline date on the bid invitation in writing and signed request. No bid will be received or considered after the time set in the Bid Invitation.
  6. If the Owner determines a Bidder to be not responsible, the Owner will provide, in writing, the reasons for the determination. If the final determination affirms that the Bidder is not responsible, the Owner will not execute a contract.

7. The Owner's Final Determination is specific to this project and will have no effect on other or future projects.

## 10.01 CONTRACT AWARD

- A. The Owner will evaluate bid responsiveness and responsibility.
  1. A bid will be considered responsive if it meets the following requirements:
    - a) It is received at the proper time and place.
    - b) It meets the stated requirements of the Bid Form.
    - c) It is submitted by a licensed/registered contractor within the state of Washington at the time of bid submittal and is not banned from bidding by the Department of Labor and Industries.
  2. A bid will be considered responsible if it meets the following requirements:
    - a) It meets the mandatory responsibility criteria established in [RCW 39.04.350](#) and an overall accounting of the supplemental responsibility criteria established for the project.
    - b) The bidder completes, signs, and submits the "Contractor Certification Wage Theft Prevention – Responsible Bidder Criteria" form with their bid or within two (2) business days of request by the Owner.
- B. The Owner reserves the right to accept or reject any or all bids and to waive informalities.
- C. The Owner may negotiate bid price adjustments with the Bidder, including changes in the contract documents, to bring the bid within the available funding per [RCW 39.04.015](#).

### **Subcontractors:**

The Contractor may subcontract as necessary to complete the Work. Subcontractors do not need to be registered on the statewide small works roster.

### **Non-Discrimination:**

- A. Discrimination prohibited by applicable laws: The Contractor and all Subcontractors shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.
- B. During performance of the Work:
  1. Protected Classes: Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability, Vietnam era veteran status, or disabled veteran status, nor commit any other unfair practices as defined in [RCW 49.60](#).
  2. Advertisements to state nondiscrimination: Contractor shall, in all solicitations or advertisements for employees placed by or for it, state that all qualified applicants will be considered for employment, without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.
  3. Contractor to notify unions and others of nondiscrimination: Contractor shall send to each labor union, employment agency, or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising

the labor union, employment agency, or workers' representative of Contractor's obligations according to the Contract Documents and RCW 49.60.

4. Owner and State access to Contractor records: Contractor shall permit access to its books, records, and accounts, and to its premises by Owner, and by the Washington State Human Rights Commission, for the purpose of investigation to ascertain compliance with this section of the Contract Documents.
5. Pass through provisions to Subcontractors: Contractor shall include the provisions of this section in every Subcontract.