

Engineering & Architectural Services Policy No. 5.11

Supplemental Bidder Responsibility Criteria

Applies To: Department of Engineering & Architectural Services employees

Authorizing Sources: [RCW 39.04](#)

Information Contact: Engineering & Architectural Services

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Approved By:

/s/

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Purpose

The purpose of this policy is to clarify the requirements and ensure consistent application of Supplemental Bidder Responsibility Criteria in accordance with the Supplemental Conditions. The E&AS PM, the A/E consultant, and the client agency representative will work cooperatively to create responsibility criteria that is specific to the project scope and program. Areas of the criteria that should be addressed and can be customized to the project needs are: comparable dollar value of previous projects, specific type of project or construction technology, years or number of projects of similar type or complexity, size and cost, experience of superintendent and project manager(s) in similarly complex projects, etc.

Definitions

A/E means Architect/Engineer.

E&AS means Engineering & Architectural Services.

E&AS APM means E&AS Assistant Program Manager.

E&AS PM means E&AS Project Manager, DOC Project Manager, and/or DSHS Project Manager.

FPS means Facility Professional Services.

Forms mean Supplemental Bidder Responsibility Forms 1 through Form 6.

MACC means Maximum Allowable Construction Cost. The Maximum Allowable Construction Cost (MACC) is defined as the total sum available to the general contractor for construction purposes, including all alternates. The MACC excludes Washington state sales tax, professional fees, project contingency funds, or other charges that may not be under the scope of the general contractor.

Owner means the state agency, institution, or its authorized representative with the authority to enter into, administer, and/or terminate the Work in accordance with the Contract Documents and make related determinations and findings.

PM means Project Manager.

Policy

A. Requirements

Supplemental Bidder Responsibility Criteria shall be developed by the PM, consultant, and client agency for all Public Works construction projects with a MACC of \$1,000,000 or more unless approved by the FPS Assistant Director.

Supplemental Bidder Responsibility Criteria may be used on Public Works projects under \$1,000,000 if the client agency deems appropriate and contingent upon approval of the E&AS APM.

The Supplemental Bidder Responsibility Checklist and Forms shall be used in evaluating the criteria and placed in the project folder upon completion.

B. Creating Supplemental Bidder Responsibility Criteria for your Project

It is the intent to award a contract to the low responsive, responsible bidder. In determining the bidder's responsibility, the Owner shall consider an overall accounting of the items listed below. A potential bidder may request modifications to the supplemental bidder responsibility criteria. Requests are to be in writing and submitted at least seven (7) days before the bid opening day.

Only the apparent low bidder must submit the supplemental bidder responsibility criteria to demonstrate that they meet the listed criteria.

The apparent low bidder will be evaluated on five (5) criteria that are specific to the project.

1. Experience of the contractor
2. Experience of key personnel
3. Their diverse business inclusion plan (not required for projects with a MACC less than \$1M)
4. Compliance with apprenticeship requirements on previous public works projects (not required for projects with a MACC less than \$1M)

5. References

As a good practice, the E&AS PM should document the reasons for selecting the criteria and include them in the project folder.

The following as customized to the project shall be included in Division 00 of the Bid Document. This shall be reviewed by the APM prior to advertisement.

1. **Required Information/Criteria.** This criterion describes the scope of the project in terms of the major areas of work and is used to define the experience requirements with “similar types of work”. For example, experience with large paving projects is not “similar type of work” as repairing a large roof.
2. **Experience of the Contractor.** The E&AS PM and client agency representative shall describe the minimum experience required to perform the work in terms of the number of projects successfully performed within a given time frame. *Include Form 1 in Division 00 for the contractor to submit the required information.*
 - a. Number of projects. The number of projects is used to evaluate the contractor’s experience with respect to the technical proficiency of the contractor performing similar type of work. The number of projects should be reasonable. Requiring too many projects could limit the number of contractors bidding on the project.
 - b. Project size. The project size (quantified by dollar value) is used to define the desired experience level with respect to size and complexity of the project. Large and/or complex projects typically require contractors with more experience than simple projects; specifically experience in the areas of managing subcontractors of different trades, schedules, administrative requirements, and budgets. Requiring experience managing projects significantly larger than your current project may limit the number of potential bidders.
 - c. Time frame. The time frame is used to quantify a window of time when the contractor is required to have performed similar type of work. Specialized and/or very large projects may require a longer time frame than smaller and/or common construction projects. Conversely, requiring the contractor to provide project information about projects completed long ago requires additional research on the contractor’s part and may not be relevant to your current project or listed references may not be available. The PM should also consider the construction market conditions when establishing the time frame. For example, contractors may have had fewer opportunities during a sluggish economy which may necessitate using a longer time frame.
3. **Experience of Key Personnel.** The E&AS PM and client agency representative shall describe the minimum experience requirements of the Contractor’s Project Manager and Superintendent. For larger and/or more complex jobs, the E&AS PM may want to evaluate the experience of other key positions, *if* those positions are essential to the success of the project. *Include Form 2 in Division 00 for the contractor to submit the required information.*

Much like the criteria used to evaluate the experience of the contractor, the number of projects and time frame should be tailored to each specific project. The contractor shall use Form 2 to submit the information for the Experience of the Project Manager, the

Experience of the Superintendent, and the Experience of other Key Personnel (when required in the project specifications).

4. **Diverse Business Inclusion Plan.** Required for projects with a MACC over \$1M. Washington (WA) state goals are: MBE 10%, WBE 6%, WA Small Business 5% and WA Veterans 5%. The contractor shall identify their anticipated participation goals, the subcontractors anticipated to be used on this project, a list of diverse businesses near the project, the project's diverse expert, and past performance using diverse businesses. *Include Form 3 in Division 00 for the contractor to submit the required information (not required for projects with a MACC below \$1M).*
5. **Apprenticeship.** Required for projects with a MACC over \$1M. The contractor shall list apprenticeship utilization rates on public works projects requiring apprenticeship within the last 3 years. *Include Form 4 in Division 00 for the contractor to submit the required information (not required for projects with a MACC below \$1M).*

C. Evaluating Supplemental Bidder Responsibility Criteria

After the bid opening, the Contracts Specialist will perform a review of the Mandatory Bidder Responsibility Criteria to identify the apparent low bidder.

After the Contracts Specialist has identified the apparent low bidder, the E&AS PM will contact the apparent low bidder and request the required information on the Supplemental Bidder Responsibility Forms. The apparent low bidder shall provide the information within two (2) business days of being requested from the E&AS PM.

After receiving the information, the E&AS PM shall evaluate the apparent low bidder against the Supplemental Bidder Responsibility Criteria by following the steps below.

1. **Experience of the Contractor (Form 1).** If the contractor meets (or exceeds) the experience requirements with respect to successfully completing the required number of projects, of similar type, of the required dollar value, and within the specified timeframe; the contractor shall be scored as a "Pass".
2. **Experience of Key Personnel (Form 2).** If the Contractor's Project Manager and Superintendent meet (or exceed) the experience requirements with respect to successfully completing the required number of projects and within the specified timeframe; they shall be scored as a "Pass".
3. **Diverse Business Inclusion Plan (Form 3).** Required for projects with a MACC over \$1M. The criteria in Form 3 is divided into four (4) distinctive categories; Anticipated Certified Diverse Participation, Subcontracting Team, Diverse Expert, and Past Performance.

When evaluating the Anticipated Certified Diverse Business Participation Goal category, the apparent low bidder is required to submit anticipated participation goals; and zero percent (0%) is not a goal. The apparent low bidder shall complete the percentages of Anticipated Percent of Contract Amount. Plans with zero percent (0%) goals in all subcategories shall result in a score of "Fail".

When evaluating the Subcontracting Team category, the apparent low bidder shall fill out the table and attach a list of OMWBE certified contractors in that geographic area from the OMWBE website. Properly completing this section is required to receive a score of "Pass".

The apparent low bidder shall complete the Diverse Expert category by providing a name and contact information of the Diverse Expert. If another company is managing the Diverse Business Inclusion participation for the apparent low bidder, then the name of that firm should be identified as well. Completing this category is required to receive a score of "Pass".

The category for Past Performance is not a scored category of the Prime Contractor Diverse Business Inclusion Plan, however, it is a tool for the PM to gauge the level of engagement that may be required to manage the contractor throughout the duration of the contract.

4. Apprenticeship Utilization (Form 4). Required for projects with a MACC over \$1M. The PM may contact previous owners to validate the information provided by the bidder, consider whether the goals were mandatory or voluntary, and the validity of any explanation of extenuating circumstances.

Apprenticeship utilization is currently not a scored category due to limitations with tracking apprenticeship utilization data, however it may become a scored area in the future.

5. References (Form 5). Within two (2) business days of receiving the submittals from the apparent low bidder, the PM shall contact A/E's, client agency representatives, and PMs who worked with the apparent low bidder on previous projects and ask them to use Form 5 to evaluate the performance of the apparent low bidder's company, superintendent, and/or project manager. The PM may use the projects provided by the apparent low bidder in Forms 1, 2, and 4 to identify references. The number of references used will vary depending on the size and complexity of the project. The PM will typically contact more references for larger and/or more complex projects. Note: the PM is **not** limited to contacting references for projects listed on Forms 1, 2, and 4; and may contact A/E's, client agency representatives, and PMs from other projects.
6. Score Sheet (Form 6). The client agency representative and E&AS PM shall evaluate the information and references submitted by the apparent low bidder within five (5) days of receiving the completed information. The Score Sheet is divided into five (5) categories which correspond to the five (5) Supplemental Bidder Responsibility Criteria Forms. A passing score for categories one (1) through four (4) and an average score of three (3) or higher for category five (5) is required to meet the Supplemental Bidder Responsibility Criteria.

If the bidder meets the Supplemental Bidder Responsibility Criteria, the E&AS PM shall forward the completed Supplemental Bidder Responsibility Criteria forms and checklist to the Contracts Specialist to award the bid.

If the bidder does not meet the Supplemental Bidder Responsibility Criteria requirements or if the submittals were incomplete, the PM shall contact the bidder and request the missing information and/or request clarification.

If the PM makes the preliminary determination that the bidder does not meet the Supplemental Bidder Responsibility Criteria and is not responsible, the PM shall notify and forward the completed forms to the APM. The APM, in consultation with the Contracts Manager, shall review the completed forms and if in agreement with the PM's

recommendation, shall notify the apparent low bidder of the preliminary determination in writing.

D. Bidder Appeal Process

Upon receiving the notification of the preliminary determination, the apparent low bidder may withdraw the bid or request a hearing within three (3) days of receiving the preliminary determination. If requested, the hearing shall be scheduled within five (5) days of the request.

If a hearing is requested, the PM shall prepare for the hearing.

1. Gather all supporting information and prepare packages for the hearing attendees.
 - a. Completed Supplemental Bidder Criteria Forms.
 - b. All relevant correspondence with the bidder and references (emails, letters, notes from telephone calls, etc.) and arrange in chronological order. An outline of the events may be helpful in documenting the chain of events and support the determination.
 - c. Written explanation of the PM's determination. Reviewing a written explanation of how the determination was made is an objective method of ensuring that all concerns are identified at the hearing and provides the bidder an opportunity to address those concerns rather than issues which aren't relevant to the determination.
 2. The PM shall also prepare the agenda for the hearing. A well prepared agenda ensures that all topics are presented in an organized and objective manner; and that all parties stay focused on the issue(s) which led to the preliminary determination.
 - a. Ensure that the hearing is scheduled and that the required attendees are invited. At a minimum, the apparent low bidder, E&AS PM, Client Agency, E&AS APM, and FPS Assistant Director should attend the hearing.
 - b. Discuss the roles and responsibilities of the participants so the contractor understands the individual roles of E&AS, the client agency, and how they apply to the contract.
 - c. Discuss the rationale behind the PM's preliminary determination.
 - d. Provide the contractor an opportunity to present additional information on why he/she believes they meet the Supplemental Bidder Responsibility Criteria.
 3. The FPS Assistant Director will make a determination within five (5) business days after the hearing.
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Procedures and required forms

- **Procedure:**
 - Supplemental Bidder Responsibility Checklist
 - Responsibility Criteria Flow Chart
 - **Forms:**
 - Form 1 Contractor Experience
 - Form 2 Resume of Key Personnel
 - Form 3 DBB Prime Contractor Inclusion Plan
 - Form 4 Apprenticeship Utilization
 - Form 5 Reference Evaluation
 - Responsibility Criteria <\$1M
 - Responsibility Criteria DBB
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History

Amended:

- Amendment July 2016 – Retirement of E&AS Internal Practice 5.11 Supplemental Bidder Responsibility Criteria dated June 15, 2012.
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Need a copy of a prior version of this policy? E-mail jack.zeigler@des.wa.gov