

APPENDIX G

Clauses Available for Use in Solicitations for Bids or Proposals

Unless otherwise noted, the clauses are designed to be used under competitive sealed bidding procedures. To alter a clause so that it can be used under competitive negotiation procedures, change the terms *bid* and *bidder* to *offer* and *offeror*, *bid form* to *proposal form*, *invitation to bid* to *request for proposals*, and so forth. These clauses are discretionary and the agency is neither required to use them nor prohibited from using others which are not included in this appendix.

Additional Information

Questions about the contract portions of the bid document must be submitted in writing to *[name of contact person]* at *[address/fax machine number]*. Questions concerning the technical portions of the bid document should be directed to *[name of contact person]* at *[address/fax machine number]*. Bidders are cautioned that any statements made by the contract or the technical contact person that materially change any portion of the bid document shall not be relied upon unless subsequently ratified by a formal written amendment to the bid document.

Bid Acceptance Period

The original and *[number]* copies of the bid form, *[number]* copies total, shall be signed and submitted in a sealed envelope or package to *[place for receipt of bids]* no later than the time and date specified for receipt of bids. Timely submission of the bid form is the responsibility of the bidder. Bids received after the specified time shall be rejected and returned to the bidder unopened. The envelope or package shall be marked with the bid opening date and time and the number of the invitation to bid. The time and date of receipt shall be indicated on the envelope or package by *[department receiving bids]*. Each page of the bid form and all attachments shall be identified with the name of the bidder.

Failure to submit a bid on the bid form provided shall be considered just cause for rejection of the bid. Modifications or additions to any portion of the bid document may be cause for rejection of the bid. The *[agency]* reserves the right to decide, on a case-by-case basis, whether to reject a bid with modifications or additions as non-responsive. As a precondition to bid acceptance, the *[agency]* may request the bidder to withdraw or modify those portions of the bid deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

(Non-responsive portions of the bid that do not affect service quality, quantity, price or delivery may be, for example, clauses that specify the State in which litigation is to be brought or that provide for high interest charges for late payment.)

Bid Withdrawal

If the price bid is substantially lower than those of other bidders, a mistake may have been made. A bidder may withdraw its bid from consideration if certain conditions are met:

1. The bid is submitted in good faith.
2. The price bid is substantially lower than those of other bidders because of a mistake.
3. The mistake is a clerical error, not an error of judgment.
4. Objective evidence drawn from original work papers, documents, and other materials used in the preparation of the bid demonstrates clearly that the mistake was an unintentional error in arithmetic or an unintentional omission of a quantity of labor or material.

To withdraw a bid that includes a clerical error after bid opening, the bidder must give notice in writing to the *[agency]* of claim of right to withdraw a bid. Within two business days after the bid opening, the

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bidder requesting withdrawal must provide to the [agency] all original work papers, documents, and other materials used in the preparation of the bid.

A bidder may also withdraw a bid prior to the time set for the opening of bids by simply making a request in writing to the [agency]; no explanation is required.

A bidder may also withdraw a bid if the [agency] fails to award or issue a notice of intent to award the bid within [time period] after the date fixed for the opening of bids.

No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work for the person to whom the contract is awarded or otherwise benefit from the contract.

No partial withdrawals of a bid are permitted after the time and date set for the bid opening; only complete withdrawals are permitted.

Bidder Certification

The bidder agrees that submission of a signed bid form is certification that the bidder will accept an award made to it as a result of the submission.

Bidder Investigations

Before submitting a bid, each bidder shall make all investigations and examinations necessary to ascertain all site conditions and requirements affecting the full performance of the contract and to verify any representations made by the [agency] upon which the bidder will rely. If the bidder receives an award as a result of its bid submission, failure to have made such investigations and examinations will in no way relieve the bidder from its obligation to comply in every detail with all provisions and requirements of the contract documents, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever by the contract for additional compensation.

Certificates and Licenses

The Contractor shall provide notarized copies of all valid licenses and certificates required for performance of the work. The notarized copies shall be delivered to the [agency] no later than ten days after the Contractor receives the notice of award from the [agency]. Current notarized copies of licenses and certificates shall be provided to the [agency] within twenty-four hours of demand at any time during the contract term. Licenses and certificates required for this contract include, by way of illustration and not limitation, the following:

1. A business license valid in [agency].
2. A professional license or certificate in the field of [specialty area].
3. [Any additional licenses that may be required to be held by architects, health professionals, pesticide or herbicide application technicians, asbestos removal Contractors, etc.].

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Debarment

By submitting a bid, the bidder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State and that it is not an agent of a person or entity that is currently debarred from submitting bids for contract issued by any political subdivision or agency of the State.

Exceptions

Bidders taking exception to any part or section of the solicitation shall indicate such exceptions on the bid form. Failure to indicate any exception will be interpreted as the bidder's intent to comply fully with the requirements as written. Conditional or qualified bids, unless specifically allowed, shall be subject to rejection in whole or in part.

Expenses Incurred in Preparing Bid

The [agency] accepts no responsibility for any expense incurred by the bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the bidder.

Informalities and Irregularities

The [agency] has the right to waive minor defects or variations of a bid from the exact requirements of the specifications that do not affect the price, quality, quantity, delivery, or performance time of the services being procured. If insufficient information is submitted by a bidder with the bid for the [agency] to properly evaluate the bid, the [agency] has the right to require such additional information as it may deem necessary after the time set for receipt of bids, provided that the information requested does not change the price, quality, quantity, delivery, or performance time of the services being procured.

(Information requested may include, for example, a copy of business or professional licenses or a work schedule.)

Late Submissions

A bid received at the place designated in the solicitation for receipt of bids after the exact time specified for receipt will not be considered unless it is the only bid received or it is received before award is made and was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of bids. It must be determined by the [agency] that the late receipt was due solely to mishandling by the [agency] after receipt at the specified address.

The only acceptable evidence to establish the date of mailing of a late bid is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If the postmark does not show a legible date, the contents of the envelope or package shall be processed as if mailed late. *Postmark* means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable without further action as having been supplied and affixed by the U.S. Postal Service on the date of mailing. Bidders should request postal clerks to place a hand cancellation postmark (often called a bull's eye) on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the office identified for bid opening is the time and date stamp of that office on the bid wrapper or other documentary evidence of receipt used by that office.

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Nonconforming Terms and Conditions

A bid response that includes terms and conditions that do not conform to the terms and conditions in the bid document is subject to rejection as non-responsive. The [agency] reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid response prior to a determination by the [agency] of non-responsiveness based on the submission of nonconforming terms and conditions.

Pre-bid Conference (mandatory)

A *mandatory* pre-bid conference will be held at [time] on [date] at [location]. All interested parties are required to attend. The purpose of the pre-bid conference is to allow potential bidders an opportunity to present questions to staff and obtain clarification of the requirements of the bid documents. Because the [agency] considers the conference to be critical to understanding the bid requirements, attendance is mandatory in order to qualify as a bidder. Minutes of the conference [will/will not] be published.

Pre-bid Conference (optional)

An *optional* pre-bid conference will be held at [time] on [date] at [location]. All interested parties are urged to attend. The purpose of the pre-bid conference is to allow potential bidders an opportunity to present questions to staff and obtain clarification of the requirements of the bid documents. Minutes of the conference [will/will not] be published.

Qualifications of Bidders

The bidder may be required before the award of any contract to show to the complete satisfaction of the [agency] that it has the necessary facilities, ability, and financial resources to provide the service specified therein in a satisfactory manner. The bidder may also be required to give a past history and references in order to satisfy the [agency] in regard to the bidder's qualifications. The [agency] may make reasonable investigations deemed necessary and proper to determine the ability of the bidder to perform the work, and the bidder shall furnish to the [agency] all information for this purpose that may be requested. The [agency] reserves the right to reject any bid if the evidence submitted by, or investigation of, the bidder fails to satisfy the [agency] that the bidder is properly qualified to carry out the obligations of the contract and to complete the work described therein. Evaluation of the bidder's qualifications shall include:

1. The ability, capacity, skill, and financial resources to perform the work or provide the service required.
2. The ability of the bidder to perform the work or provide the service promptly or within the time specified, without delay or interference.
3. The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
4. The quality of performance of previous contracts or services.

Surety Required

1. Bid surety: A bid bond, cashier's check, or certified check in the amount of [percentage] of the amount of the bid made payable to the [agency] shall accompany each bid. The bid surety of all bidders shall be retained until after the award of the contract is made. The bid surety of the successful bidder shall be retained until the posting of a performance bond. The failure of the bidder to accept an award and file acceptable performance and payment bonds within fifteen days after award shall be just cause for cancellation of the award and the forfeiture of the bid surety to the [agency] as liquidated damages. Award may then be made to the next lowest responsive and responsible bidder.

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2. Performance surety: A performance bond in the amount of 100 percent of the bid shall be required of the successful bidder to ensure satisfactory completion of the work. The bond shall be a corporate surety bond issued by a surety company authorized to do business in the State of Mississippi.
3. Payment surety: A payment bond in the amount of 100 percent of the bid shall be required of the successful bidder to guarantee payment of all persons who have and fulfill contracts with the Contractor for performing labor or providing equipment or material in the performance of the work provided for in the contract. The bond shall be a corporate surety bond issued by a surety company authorized to do business in the State of Mississippi.
4. Alternative surety: A certified check for cash escrow deposit in the face amount of the contract such as a personal bond, property bond, or a bank or savings and loan association letter of credit may be tendered in lieu of a bid, payment, or performance bond subject to approval by the [agency] attorney.