

HENNEPIN COUNTY PURCHASING

INSTRUCTIONS TO BIDDERS

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1. DEFINITIONS

ADDENDA - Written instruments issued by the County prior to the date for receipt of Bids which modify or interpret the Bid Documents by addition, deletions, clarification or corrections.

AFFILIATES - Business concerns, organizations, or individuals are Affiliates of each other if, directly or indirectly, (1) either one controls or has the power to control the other, or (2) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a Contractor which has the same or similar management, ownership, or principal employees as the Contractor that was debarred, suspended, or proposed for debarment.

AS-IS, WHERE IS - Applies to the sale of Personal Property and means that the Personal Property is of the kind, quality, and locale represented, even though it may be in a damaged condition. It implies that the buyer takes the entire risk as to the quality of the Personal Property involved, based upon the buyer's own inspection. The County makes no implied and express warranties for the sale of Personal Property that is sold as "As-Is, Where-Is."

AWARDEE: The firm or individual who receives the Bid award for the subject real estate or Personal Property listed in the Bid Documents.

BID - A complete and properly signed Proposal to provide goods, commodities, services, or designated portions for the sums stated, submitted in accordance with the Bid Documents.

BID BOND - An insurance agreement in which a third party agrees to be liable to pay the County a certain amount of money in the event the Awardee does not execute the Contract Documents, furnish any required bond(s) or required insurance documents and proceed with performance. The Bid Bond, naming the Awardee as principal, is given to the County at the time of Bid submittal. (See Bid Security paragraph 3.9)

BID DEPOSIT - A guaranteed check furnished by a Bidder to and at the request of the County to guarantee that a Bidder awarded the contract will execute the contract, furnish any required bond(s) or required insurance documents and proceed with performance. The Bid Deposit is in lieu of a Bid Bond and is given to the County at the time of Bid submittal. (See Bid Security paragraph 3.9.)

BID SECURITY (GUARANTEE) - Includes a "Bid Bond" or "Bid Deposit".

BID DOCUMENTS – Consists of the Specifications, Proposal, and other County forms.

BIDDER - The person, firm, corporation or other entity submitting a Bid on items listed in the Bid Documents and thereby agreeing to meet the terms and conditions of the Specifications if awarded the contract.

CONTRACT DOCUMENTS - Consist of the aforesaid Bid Documents including those County forms which have been executed, executed Bid Bond, other executed documents (acknowledged in writing or signed by the County), other documents required by the Specifications or requested by the County (when determined by the County that any such document complies with such requirement or request), and all Modifications after execution of the contract.

CONTRACTOR (or Vendor) - The person or entity who is awarded the Bid ("Awardee") and enters into a contract with the County to furnish commodities or services.

COUNTY - The County of Hennepin, a political subdivision of the State of Minnesota.

MODIFICATION - A written amendment or supplement to the contract signed by the Contractor and the County.

NOTICE OF AWARD – Letter from the County to Awardee formally awarding the contract.

PERFORMANCE BOND - A form of security executed subsequent to award by a successful Bidder that guarantees the proper performance of the contract, the payment of debts to persons furnishing services or materials on account of the contract work, and the payment of certain other responsibilities of the Contractor. The bond is provided by the Contractor prior to contract execution by the County. (See Performance Bond paragraph 3.10)

PERSONAL PROPERTY: Personal property is property that is moveable.

PROPOSAL – Bidder's submission of firm pricing and payment terms for each item listed in the Proposal pages.

PURCHASE ORDER - The Purchaser's document used to formalize and/or initiate a purchase transaction with a Contractor. Hennepin County Purchase Orders include and are governed by the County's Standard Terms and Conditions.

PURCHASER - Hennepin County or any of its departments, boards, commissions or agencies, or members of the Hennepin County Cooperative Purchasing Program.

PURCHASING MANAGER – The position, pursuant to Hennepin County’s purchasing statute and Purchasing Rules, delegated the responsibility for most of Hennepin County’s purchasing tasks.

REAL ESTATE PROPERTY: Real Estate Property is land and improvements that are of a permanent nature over and under it.

SPECIFICATIONS - Consists of the Invitation for Bids, the Standard Terms and Conditions and any special terms and conditions, Proposal page(s), special provisions, equipment specifications, technical specifications, any drawings, any Addenda, and other parts which the County references and/or attaches hereto.

SUBCONTRACTOR – Hired by Contractor to perform work under contract upon prior written approval from the County.

SUCCESSFUL BIDDER - See “Awardee” or “Contractor”.

2. BIDDER'S PREBID DOCUMENT REVIEW

2.1. Availability of Documents

- a. After Bid opening, a Bid tabulation will be completed and made available for the public. All other Bid Documents are non-public until the Bid award process has been completed. After the Bid award process has been completed, all Bid Documents are public, except for trade secret data, and the documents will be available for public inspection, and copying (at requester’s expense) at the Hennepin County Purchasing office.

2.2. Interpretation or Correction of Specifications

- a. Bidders will not be allowed to take advantage of material errors, omissions, ambiguities or inconsistencies in the Specifications. Bidders shall promptly notify the Purchasing Manager of any material error, omission, ambiguity or inconsistency which they may discover upon examination of the Bid Documents.
- b. Bidders desiring clarification or interpretation of the Bid Documents shall submit a written request in a manner to be received by the Purchasing Manager at least seven (7) calendar days prior to the date and time for receipt of Bids.
- c. Interpretations, corrections and changes to the Bid Documents will be made by Addenda, which, shall be binding on all Bidders. Interpretations, corrections or changes made in any other manner will not be binding, and Bidders shall not rely upon such interpretations, corrections and changes.

2.3. Addenda

- a. Addenda will be posted on the County’s Purchasing website for public viewing or, at the County’s discretion, e-mailed or mailed to all potential Bidders who are specifically known by the Purchasing Manager to have received a complete set of Bid Documents.
- b. Copies of Addenda will be made available for inspection wherever Bid Documents are on file for that purpose.
- c. No Addenda shall be issued later than four (4) calendar days prior to the date and time for receipt of Bids, except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.
- d. Each Bidder shall ascertain prior to submitting a Bid that all Addenda issued have been received, and the Bidder shall clearly acknowledge their receipt of Addenda on the Proposal page. Notwithstanding anything to the contrary, if Bidder has not acknowledged an Addendum, the Purchasing Manager may: 1) allow the Bidder to acknowledge the Addendum after Bid opening with no change to the bid price, or 2) determine that the Addendum does not materially affect the Bid, or 3) reject the Bidder’s Bid for not acknowledging the Addendum, whichever is in the best interest of the County.

3. BIDDING PROCEDURE

3.1. Bid Form, Style, Prices

- a. Bids shall be written on the Proposal Pages or other form provided by Hennepin County.
- b. Appropriate blanks on the Bid form should be filled in by manually writing in black ink or by typewriting the requested information.
- c. Any interlineation, alteration or erasure shall be initialed by the signer of the Bid.
- d. Bidders shall not change the Bid form nor make additional stipulations on the Bid form. If a Bidder wishes to amplify or qualify its Bid, a statement that additional information is attached shall be clearly indicated on the Bid form and the amplifying or qualifying information on the Bidder’s letterhead shall be attached to the Bid form. The County, in its sole discretion, may reject amplified or qualified Bids.
- e. Where so indicated by the makeup of the Bid form, sums shall be expressed in both words and figures, and in case of discrepancy between the two, the amount written in words shall govern.

- f. In case of discrepancy between unit prices and the extended figures, the unit price shall govern. Unless otherwise provided elsewhere in the Specifications, the Bidder's prices shall remain firm throughout the contract period and in any contract extension period.
- g. Bidder's costs which are not identified in the Specifications or the Proposal will not be paid by the County.
- h. Prices quoted must remain the same for the term of the contract unless the Specifications permit a price adjustment pursuant to an escalation clause set forth in the Specifications. If Specifications allow for extension and a price adjustment, the adjusted price must be agreed to by the County in writing and remain constant for the extension period.
- i. The Bid shall include the legal name of the Bidder and a statement that the Bidder is a sole proprietor, a partnership, a corporation, or some other legal entity. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall give the state of incorporation.
- j. Bidders shall not include Minnesota Sales Tax or Federal Excise Tax in their Bids.

3.2. Brand Name or Equal

- a. Products proposed will be of the manufacturer(s) indicated or its equal, except where "No Substitute" is stated. "Brand name" means identification of products by manufacturer, make, and model name and/or number. If "brand name or equal" is indicated, the intent is: 1) to be descriptive, not restrictive; 2) to indicate the quality and characteristics desired; and 3) shall mean "brand name or equal". Failure to bid the quality specified may be cause for rejection of the Bid.

If proposing an equal product, the Bidder must state on the Bid form and submit information with the Bid that clearly identifies the manufacturer and brand name of the product proposed.

If proposing to modify a product to make it conform to the Specifications, the Bidder must submit with the Bid a clear descriptive statement of the proposed modifications and any descriptive material clearly marked to show the proposed modifications. Product modifications proposed after the bid opening will not be considered.

- b. Determination of equality will be made by the County at its sole discretion. It is the Bidder's responsibility to ensure that the County has sufficient information to make that determination. The Bidder must submit with their Bid all descriptive material specifically requested in order for the County to determine exactly what the Bidder proposes to furnish and whether the product proposed meets the Specifications. The information furnished may include specific references to information previously furnished or to information otherwise available to the County.
- c. Samples - If proposing a product other than that specified (i.e., an equal or modified product or a product that varies), the Bidder may be required to furnish descriptive literature and a sample of the product proposed. Failure to submit samples as required shall be cause for rejection of the Bid.

3.3. Quality Standards and Warranty

- a. The Contractor warrants to the County that all commodities and work: 1) shall be of good quality, 2) are free from faults and defects, 3) are in conformance with the Contract Documents, and 4) that commodities are of merchantable quality and fit for the purpose for which they are intended and sold. Contractor warrants further that, unless otherwise specified, commodities are new and the manufacturer's latest design of the commodity presently in production and sold to customers. This warranty is in addition to any manufacturer's standard warranty which may apply or any warranty provided by law. If required by the County, the Contractor shall furnish satisfactory evidence as to the kind and quality of commodities and work.
- b. Unless otherwise specified, the Contractor warrants that title to all commodities, materials and/or equipment covered by an application for payment will pass to the County upon receipt of payment by the Contractor, free and clear of liens, claims, security interests or encumbrances; and that no commodities, materials and/or equipment covered by an application for payment have an interest therein or an encumbrance thereon that is retained by the seller.
- c. Commodities bid must be compatible with the equipment and/or system in the environment in which it will be utilized.
- d. If a commodity not in current manufacture is specified by the County, Contractor warrants that such commodity shall be given the warranty which accompanied the commodity when it was in current manufacture. Contractor further warrants with respect to such commodity that Contractor, for at least five years (or such other period of time as may be specified by the County) from the date of the contract, shall keep and maintain a sufficient supply of parts, supplies, accessories, and all other items reasonably necessary to assure the high reliability and efficient operation of the commodity. Contractor further warrants that in the event the necessary parts, etc., are not available to maintain the commodity, Contractor shall, at no cost to the County, promptly replace the commodity with one which is in compliance with the Contract Documents and is Contractor's then current version.
- e. If Bidder's equipment, software and/or documentation do not comply with the technical and performance requirements of the Specifications, the County reserves the right to reject the Bid. Bidder must expressly state in their Bid any such noncompliance and specify which elements do not meet the Specifications. The County strongly discourages Bidders from taking exceptions to any portion of the Specifications, placing qualifications or conditions in their Bids, or substituting its procedures. The County reserves the right to reject a Bid with any such exception, qualification, condition or substitution.

3.4. Submission of Bids

- a. The Bid, the Bid Security, if any, and any other documents submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall 1) be addressed to Hennepin County Purchasing, A-1730 Government Center, Minneapolis, Minnesota 55487-0175; 2) bear the inscription: "Bid for (TITLE AND CONTRACT NUMBER SHOWN ON THE FACE OF THE BIDDING DOCUMENT)"; 3) state the Bidder's name and address; and 4) state the date and time for bid opening. If the Bid is returned to the Purchasing office by express mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.
- b. Bids shall be deposited at the designated location prior to the time and date for receipt of Bids indicated in the Invitation for Bids, or any extension thereof made by Addendum. Bids received after the time and date for receipt of Bids will be returned without being considered for award.
- c. The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.
- d. Oral, facsimile, or telephone Bids are invalid and will not receive consideration.
- e. Submission for Electronic Bidding: Bids submitted by electronic commerce shall be considered only if the Bid Documents specify an electronic method for submitting Bids.

3.5. Modification or Withdrawal of Bid

- a. Prior to the time and date designated for receipt of Bids, no Bids may be released or physically withdrawn. However, any Bid submitted may be modified or withdrawn from consideration by written notice to the Purchasing Manager at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder, must be received in the purchasing office prior to the date and time of bid opening, and shall be worded (if original Bid is modified) so as not to reveal the amount of the original Bid. Written withdrawal or cancellation by Bidder of the Bid prior to Bid opening will nullify the Bid and the Bid will not be opened. At the sole discretion of the County, the withdrawn or cancelled Bid may be physically returned to the Bidder.
- b. Withdrawn Bids may be resubmitted up to the time designated for the receipt of Bids, provided that they are then fully in conformance with the Instructions to Bidders.
- c. A Bid may not be modified, withdrawn or cancelled by the Bidder for a period of forty-five (45) days (unless a longer or shorter period is specified in the Specifications) following the time and date designated for receipt of Bids, and each Bidder so agrees by submitting a Bid.

3.6. Exceptions to Terms

- a. If a Bidder takes any exception to Hennepin County's Bid Documents, the Bid may be rejected.
- b. If a Bidder takes exception to Hennepin County's Bid Documents, Bidder must attach separate page(s) referencing the specific document and paragraph number to which they are taking exception, and offer specific alternative language. Submitting or referencing the terms and conditions of Bidder's company is not an acceptable method of taking exception or offering alternate language.
- c. If a Bidder transmits to the County a document, transmittal/cover letter, or any other written communication that includes terms that purport to subordinate, negate, qualify, or condition the Bid Documents to such terms, the Bid will be rejected.
- d. If the County determines that any language in any such agreement form, as aforesaid, "adds to" the provisions of the Specifications, the County may, in its discretion, accept such language as part of the contractual relationship if:
 - 1) The County determines that such language is beneficial and without cost to the County; or
 - 2) The County determines that such language merely supports--at no cost to the County--a part of a Bidder's customary business practice regarding product identification or location (exclusive of security interest issues); or
 - 3) Such language, without varying, conflicting with, changing or deleting in any manner the provisions of the Specifications and, in particular, the technical or performance requirements herein, is reasonably and technically necessary to the operation and/or maintenance of the hardware and/or software, as determined by the County, provided that the amount of any expenditures of money as determined by the County in connection with the County's compliance with such language shall be included in the evaluation of the relevant Bid.

3.7. Bidder's Representation

- a. By submitting a Bid, the Bidder represents that the Bidder has read and understood the Bid Documents and has bid in accordance therewith.
- b. Each Bidder for services further represents that the Bidder has assessed the local conditions under which the work is to be done and has correlated its observations with the requirements of the Bid Documents.
- c. Bidder represents that it and its subcontractors are not prohibited from doing business with either the Federal or State of Minnesota Governments as a result of debarment or suspension proceedings. This representation requirement shall apply to any and all subcontractors.

3.8. Statement of Non-Collusion

- a. I hereby swear (or affirm) under the penalty for perjury:
- b. That I am the Bidder (if the Bidder is an individual), a partner of the Bidder (if the Bidder is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the Bidder is a corporation);
- c. That the attached Bid or Bids have been arrived at by the Bidder independently and have been submitted without collusion.

3.9. Bid Security

- a. If so stipulated in the Invitation for Bids or other Bid Document, each Bid shall be accompanied by a certified check, cashier's check or Bid Bond in the amount specified and made payable to the Hennepin County Treasurer. Bonds shall be issued by corporations authorized to contract as a surety in the State of Minnesota.
- b. The County shall have the right to retain the Bid Security of Bidders to whom an award is being considered until either 1) the contract has been executed and bonds, if required, have been furnished, or 2) the specified time has elapsed so that Bids may be withdrawn, or 3) all Bids have been rejected.

3.10. Performance and Payment Bonds

- a. The Purchaser may require a Performance Bond and/or Payment Bond. The surety and any reinsurance company of the bond must be licensed to do business in the State of Minnesota. The bond form will be supplied by the Purchaser and the execution of the bond will be subject to approval by the County Attorney. Executed bonds must be returned to the Purchaser within the specified time period.

3.11. Failure to Execute Contract or Initiate Contract Performance

- a. Should the Bidder fail to begin performance, refuse to execute a written contract if required, or fail to furnish the Performance Bond if required, the amount of the Bid Security shall be forfeited to the County as liquidated damages, not as a penalty. The contract may then be awarded to the next lowest responsible Bidder, or the commodities and/or services may be re-advertised or otherwise performed as the County deems appropriate. In any lawsuit involving the assessment or recovery of liquidated damages, the reasonableness of the charge therefor shall be presumed.
- b. By submitting a Bid, the Bidder agrees that said liquidated damages shall cover only the damages sustained by the County from additional administrative costs, expenses of re-advertising and rebidding, and other similar damages sustained by the County as a result of failure of the successful Bidder to execute a written contract and/or a Performance Bond, when so required, but shall not preclude the County from claiming damages on account of delay, price changes, loss of other contracts, loss of income, inability of the County to fulfill other contracts, loss of other benefits of this contract, or other damages (including but not limited to cover damages), direct or consequential, arising out of breach of the contract or failure to perform same by the successful Bidder.

3.12. Material Data Safety Sheets

- a. If so stated in the Specifications, each Bidder may be required to submit to the purchasing office a completed Material Data Safety Sheet (or other acceptable data) for each item bid. Failure to submit this form upon request may result in rejection of the Bid.

4. CONSIDERATION OF BIDS

4.1. Opening of Bids

- a. The properly identified Bids which have been received on time will be opened publicly and will be read aloud. A tabulation of the Bids will be made available for public inspection or copying (at the requester's expense) in the County's purchasing office.

4.2. Rejection of Bids and Bid Award

- a. It is the intent of the County to award a contract to the lowest responsible Bidder meeting Specifications provided the Bid has been submitted in accordance with the requirements of the Bid Documents. The County reserves the right to determine the lowest responsible Bidder by using any denomination of items or by groups of items.
- b. If the Purchaser determines it is in its best interest, the Purchaser may 1) reject any or all Bids; 2) re-advertise for new Bids; 3) reject Bid submissions without the required Bid Security; 4) reject Bids which are incomplete or irregular in any way; 5) waive any minor defects or technicalities in any Bid or Bids received; 6) reject any Bid items; or 7) accept the Bid from the lowest responsible Bidder meeting Specifications.
- c. The County will reject all Bids from Bidders where there has been collusion.
- d. The award will be based on but not necessarily limited to, the following (where applicable):
 - 1) Adherence to all conditions and requirements of the Bid Specifications;
 - 2) Reputation and experience of the Bidder;

- 3) Total bid price including any discounts;
 - 4) Evaluation of the Bidder's ability to service the Purchaser;
 - 5) Financial ability of the Bidder to successfully meet the requirements of the contract;
 - 6) Prior knowledge of and experience with the Bidder in terms of past performance;
 - 7) Compatibility with existing commodities or systems;
 - 8) Environmental considerations of commodities when the requirements are set forth and defined in other portions of the Specifications or when otherwise included in applicable law.
- e. Unless otherwise indicated in the Invitation for Bids, the County reserves the right to award the contract in whole or in part, by item, by group of items or by section where such action serves the best interest of the County.
- f. Bids submitted on an "all or none" basis or similar basis will be evaluated against the total of the low Bids for the individual items.

4.3. Low-Tied Bids

- a. The Purchasing Manager will resolve low-tied Bids in a manner which in the Purchasing Manager's judgment, is in the County's best interests.

4.4. Ability to Perform

- a. The County may require the Bidder to provide information or product samples showing Bidder's ability to perform. The apparent low Bidder, and/or other Bidders, shall promptly furnish all such information for this purpose when requested by the County.

4.5. Sale of Personal Property or Revenue Bids

- a. For the County's sale of Personal Property or revenue Bids it shall be the intent of the County to award to the highest responsible Bidder. However, the County reserves the right to reject Bids if deemed to be in the County's best interests. Personal property that is sold by the County is sold As-Is, Where-Is.