School Building Authority of West Virginia

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS

SBA Form 400

SBA Supplementary Instructions to AIA Document A701-2018
Instructions to Bidders

The following Supplementary Instructions modify the Instructions to Bidders, AIA Document A701-2018 Edition. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions shall remain in effect.

NOTE: THIS DOCUMENT SHALL BE PRINTED ON NON-WHITE PAPER TO BE DISTINGUISHED FROM OTHER SPECIFICATION PAGES.

Article 1 – Definitions

§1.1 Make the following changes to Section 1.1:

In the last sentence after "all other documents" add the phrase ", including all School Building Authority of West Virginia-required documents and forms,"

Article 2 – Bidder's Representations

§2.1 Add the following to Article 2.1 Bidder's Representation:

.7 the Bidder acknowledges that the failure to have official representation and official registration of attendance at the pre-bid meeting will disqualify contractors from bidding the project. The representative shall be an employee of the company being represented. Should it be determined that the representative is not employed by the company being represented, that company's bid proposal shall be rejected.

Article 3 – Bidding Documents

§3.4.4 Delete Section 3.4.4 in its entirety and replace with the following:

§3.4.4 Prior to submitting a bid, each Bidder shall ascertain that the Bidder has received all Addenda issued, and the Bidder shall acknowledge receipt of all Addenda in the bid using SBA Form 402-B. Failure to submit the formal Receipt of Addenda form shall result in disqualification of the bid.

Article 4 – Bidding Procedures

§4.1.2 Delete Section 4.1.2 in its entirety and replace with the following:

§4.1.2 All requested Bid Proposals and Alternate Bids shall be bid. If Bidder elects not to provide such Bid, write "no bid"

Add the following Section to Article 4.1

§4.1.9 Failure of the Prime Contractor to supply all required post bid documentation (including all information required to be submitted by the Prime Contractor's Subcontractors) to the Owner, Architect, and SBA within the stipulated time frame will result in disqualification of the bid and forfeiture of the bid bond.

§4.2.1 Add the following to section 4.2.1:

Pursuant to the requirements contained in W. Va. Code §5-22-1(c), All Bidders shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the County Board of Education and the School Building Authority of West Virginia. The bid bond must be submitted with the bid. The Bid Bond obligee shall be the County Board of Education.

.1 No Bid Bond is required for projects of $25,000 or less.

.2 An irrevocable Letter of Credit is not acceptable as a Bid Bond.

.3 A certified cashiers' check is not acceptable as a Bid Bond.

.4 Personal securities are not acceptable as a Bid Bond.

§4.3.1 Add the following to Section 4.3.1:

Bids shall be submitted using the three-envelope system.

§4.3.1.1 All of the following must be included and sealed in an opaque envelope labeled "Envelope #1":

.1 A valid Bid Bond

.2 SBA Addenda Acknowledgement & Bid Certification (SBA Form 402), completed and signed

.3 SBA List of Major Subcontractors (SBA Form 403-A), completed and signed

§4.3.1.2 The completed and signed bid form shall be sealed in an opaque envelope labeled "Envelope #2 Bid Form".

§4.3.1.3 Envelopes #1 and #2 shall be sealed inside of an opaque envelope addressed to the party receiving the bids, and shall be identified with the project name, the bidder's name and address and the designated portion of the work for which the bid is submitted.

§4.3.1.4 If the bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "Sealed Bid Enclosed" on the face thereof. Failure to provide any the required documentation will result in disqualification of the bid being submitted. Should the bid be disqualified under this provision, the required bid bond will be returned to the bidder.

§4.3.2 Delete Section 4.3.2 in its entirety and replace with the following:

§4.3.2 In accordance with W.Va. §5-22-2 (a), the public entity accepting bids shall designate the time and place the bids will be received. No public entity may accept or take any bid, including receiving a hand-delivered bid, after the time advertised to take bids.

Add the following Section to Article 4.4:

§4.4.4 Bids may not be withdrawn for a minimum period of thirty (30) days following the date of receipt of Bids without forfeiture of bid security as liquidated damages, not as a penalty. Should the actual bid documents indicate additional time for bid withdrawal, the bid documents shall prevail.

Article 5 – Consideration of Bids

§5.2 Delete Section 5.2 in its entirety and replace with the following:

§5.2 The Owner shall have the right to reject any or all Bids or to reject a Bid which has been deemed incomplete or irregular, in accordance with West Virginia Code §5-22-2 (b). Should the bid be considered erroneous, the bidder must provide indisputable evidence of the error. If upon receipt of evidence, the bid is determined to be erroneous, the required bid bond will be returned to the bidder.

§5.3.1 Delete Section 5.3.1 and replace with the following:

It is the intent of the Owner to award a Contract to the lowest qualified responsible Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available.

§5.3.2 Delete Section 5.3.2 and replace with the following:

The Bidder will note that Bids consist of the Base Bid and several related add or deduct Alternate items, all comprising items entering into the project and forming the contract as a whole. These several parts of the Proposal furnish the basis of arriving at the awarding of the contract. The Owner may award the contract on the basis of the Base Bid alone, or if and when conditions warrant, accept any such Alternate items appearing on the proposal, in a sequential prioritized order, thereby reducing or increasing the amount of the Base Bid.

Add the following Sections to Article 5.3:

§5.3.3 The contract shall be deemed as having been awarded when formal notice of award has been duly served upon the intended awardee (i.e., the bidder to whom the Owner contemplates awarding the contract) by an authorized individual representing the agency receiving bids. Terms of the contract shall not be deemed to have been perfected until a satisfactory surety bond equal to 100% of the contract sum has been furnished to the owner by the successful bidder, at his own expense as a guarantee of contract performance.

§5.3.4 Any bidder adversely affected by the intended decision of the Owner to award a contract or to reject all bids shall file a notice of protest and bond with the Owner within seventy-two (72) hours after the issuance of the intent to award. A formal written protest shall be filed with the Owner within ten (10) days after filing the notice of protest with the Owner, stating with particularity the facts and law upon which the protest is based.

§5.3.5 All notices of protest and formal protest shall be filed with the Owner.

§5.3.6 A protest is not timely filed unless both the notice of protest and the formal protest are received by the Owner within the required time limits. A written notice of protest which is filed by 4:00 p.m. on the date on which the seventy- two (72) hours expires is timely. If such a date is Saturday, Sunday, or a legal holiday, the period shall run until 4:00 PM of the next day that is not a Saturday, Sunday, or a legal holiday.

§5.3.7 The Owner has the sole authority to review the protest and render a decision. The LEA's Purchasing Director, or his/her designee, shall review the protest and issue a written decision. A hearing may be conducted at the option of the Director or assigned designee.

§5.3.8 If the bidder is not satisfied with the Owner's decision, the bidder may take appropriate legal action through the West Virginia court system

Article 6 – Post-Bid Information

§6.1. Delete Section 6.1 in its entirety and replace with the following:

§6.1 Qualification of Contractors

§6.1.1 A completed Contractor Qualification Statement (SBA 405) shall be submitted by the Contractor and all Subcontractors to the Owner, Architect, and the SBA for review by 4:00 PM Eastern Time on or before the third business day after the bids are received. This information will be used by the Owner, Architect, and the SBA for evaluation of the low bid contractors on the project to determine whether or not the provided information satisfies the intent of the form requirements.

§6.1.2 Pursuant to the laws of the State of West Virginia, bids must be awarded to only the lowest qualified responsible bidder. The Owner, Architect, and SBA shall use the information gathered on the Contractor Qualification Statement to determine the lowest qualified responsible bidder. No single criterion will be considered the controlling factor in determining the lowest qualified responsible bidder. The criteria on the statement used in the contractor evaluation shall include:

a. The relevant experience and years of experience the bidder has in the construction, renovation or building repair business.

b. The continuity, experience and skill of the bidder's work force and that of the bidder's designated subcontractors.

c. The bidder's performance on similar construction projects.

d. The bidder's ability to successfully complete projects within the proposed schedules and deadlines.

e. The bidder's history of compliance with Worker's Compensation and Unemployment Compensation laws.

f. The bidder's history of compliance with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) requirements.

g. The bidder's history of compliance with Federal Prevailing Wage as well as Fair Labor Standards and Wage Payment laws.

h. The bidder's subcontractors' compliance with state regulatory agencies.

i. The bidder's local hiring plan and history of compliance with the West Virginia Jobs Act, (W.Va. Code, Chapter 21, Article 1C) regarding use of the local labor market.

j. The bidder's participation as a party in any legal action where an awarded liability could negatively impact the ability of the bidder to complete this project.

k. Response from bidder's references and recommendations of other owners for whom the bidder has worked.

§6.2 Remove Section 6.2 in its entirety.

§6.3 Delete Sections 6.3.1 in its entirety and replace with the following:

§6.3.1 Submittal of Complete List of Subcontractors & Major Equipment / Materials Suppliers (SBA Form 403-B):

§6.3.1.1 The apparent low bidder as determined by the results of the bid opening shall submit SBA Form 403-B – Complete List of Subcontractors and Equipment / Materials Suppliers in order to meet the requirements of W.Va. Code §5-22-1(g). This information shall be provided to the Owner, Architect, and SBA within 24 hours after the completion of the bid opening. Bidding contractors are encouraged to be present at the bid opening or obtain bid results from the owner in order to determine the bid results and the apparent low bidder(s). For each category of work that requires a Subcontractor or Equipment / Materials Supplier that exceeds a value of $25,000, the bidder shall clearly and legibly list each Category of Work and the corresponding Subcontractor and Equipment/Materials Supplier's name and valid Contractor license number. The bidder shall not list multiple Subcontractors and Equipment/Materials Suppliers for the same category of work. The bidder shall not list a different Subcontractor than the Subcontractor listed on SBA Form 403-A that was provided at the time of bid.

§6.3.1.2 Each bidder is required to establish the reliability and responsibility of all Subcontracts and Equipment/Materials Suppliers being proposed to perform the work. Contractors, Subcontractors, and/or Equipment/Materials Suppliers that have had their right to bid suspended by the SBA or any other State entity are prohibited from bidding any SBA project for a period of at least one year from the date the Contractor is notified. It is the responsibility of any Contractor soliciting bids or quotes from Subcontractors to verify the eligibility of all proposed Subcontractors and Equipment/Material Suppliers being proposed to perform the work. A review of the proposed subcontractors and equipment/material

suppliers shall be conducted by the Architect/Engineer, Owner and representatives of the SBA. The bidder may be requested to change an unsatisfactory Subcontractor or Equipment/Material Supplier. Proposed Subcontractors or Equipment/Material Suppliers found to be unsatisfactory jointly by the Owner, Architect/Engineer or SBA and the Contractor, shall be replaced by an acceptable subcontractor or equipment/material supplier at no additional cost to the Owner, as the contractor has full responsibility for execution of the work.

§6.3.1.3 Prior to the award of the contract, the Architect/Engineer will make a preliminary review of the major equipment and materials lists submitted and advise the bidder through the Owner, of the acceptance thereof, and of such other actions as may be necessary in order to meet the requirements of the contract documents. Should it develop that any of the materials or equipment named in the list do not meet the requirements and intent of the specifications, the Contractor shall be required to furnish to the Owner other materials or equipment acceptable and fully complying with the specifications at no change in contract price. Preliminary review and acceptance of the listing provided shall not relieve the Contractor from furnishing equipment and materials in complete accordance with the specifications.

§6.3.1.4 Written approval shall be obtained from the Architect/Engineer covering any substitution of equipment or materials. Substitutions may be permitted in the following instances:

a. Failure to meet quality and intent of specification and/or

b. Failure of the supplier or manufacturer to meet delivery schedules or other conditions of the contract.

§6.3.1.5 During the 72 hours immediately following the bid opening, the Owner and SBA shall review the information provided on the required SBA Form 403-A and 403-B to determine if the provided information satisfies the form requirements. The Owner or the SBA reserves the right to reject the proposal of any bidder who fails to furnish all required equipment and material information necessary to meet the intent of the form.

§6.3.1.6 The SBA recommends that all Prime Contractors receiving quotations for bids require a scope of work letter from all Subcontractors be sent to the General Contractor receiving the quotation at least 24 hours before submission of the bid. The letter should identify the items being quoted, the scope of work included or not included in the price quotation that will be provided and most importantly, receive confirmation from the Subcontractor that they understand the requirements and constraints of the project schedule. The SBA will not allow a prime contractor or a subcontractor to change or alter the bid after the bid opening as a result of miscommunication between the General Contractor and Subcontractors or Supplier quoting the project.

§6.3.1.7 Each bidder acknowledges responsibilities for each of its Subcontractors, and thus accepts responsibility of those Subcontractors' ability to meet the project timelines established. Therefore, failure of the Prime bidder to take all available actions with regards to requiring the Subcontractor to meet the project schedule may result in disciplinary action on the Prime bidder and the Subcontractor by the SBA.

§6.3.2 Delete Section 6.3.2 in its entirety and replace with the following:

§6.3.2 In accordance with West Virginia Code §5-22-1, the lowest qualified responsible bidder submitting bid on SBA-funded projects must certify that all provisions within this code and any additional SBA requirements have or will be met prior to execution of the construction contract. Failure to comply with these provisions will result in the disqualification of the bidder and forfeiture of the required bid bond.

§6.3.3 Delete Section 6.3.3 in its entirety.

§6.3.4 Make the following changes to Section 6.3.4:

In both instances where "Owner and Architect" is listed, remove and replace with "Owner, Architect, and SBA"

§6.3 Add the following Sections to Article 6.3:

§6.3.5 Each Bidder must be registered with the West Virginia Department of Tax and Revenue prior to the time and date for Receipt of Bids in order for his Bid to be considered. If any Bidder is not registered with the Tax Department, an application should be made to the West Virginia State Tax Department Taxpayers Services Division at 1124 Smith Street, Charleston, WV, in the Albert T. Summers Center State Office Building and complete all required registration documentation so that a registration number may be assigned prior to the time and date for receipt of Bids.

§6.3.6 Contractor Licensing:
§6.3.6.1 All Contractors and Subcontractors doing business in West Virginia must be licensed to perform work in the State as required by West Virginia Code §21-11 – the West Virginia Contractor Licensing Act. In addition to the provisions as listed, the following applies to SBA-funded projects:

a. All Subcontractors must be licensed, and a copy of their current license number must be submitted with all quotations to the Prime Contractor. Pursuant to the Act, Prime Contractors are required to only accept quotations from and subcontract with Subcontractors licensed to perform work in West Virginia.

b. The Contractor shall submit to the Owner via the Architect a copy of all Contractors and Subcontractors valid West Virginia contractor licensing certificates within seventy-two (72) hours after the bids are received.

Add the following Sections at the end of Article 6:

§6.4 The successful low bid Prime Contractor and all Subcontractors performing Work on the project shall verify the legal status of all workers and shall comply with the provisions of West Virginia Code §21-1B. All Prime Contractors and their Subcontractors shall provide assurances to the Owner by submitting a completed SBA Form 400-B. This document acknowledges the Contractor has received assurances from Subcontractors (using SBA Form 400-C) that they are in compliance with applicable W.Va. Code and SBA Policy. These forms shall be submitted along with the contract for construction and the contract will not be fully executed until this provision has been satisfied.

§6.5 Additional State of West Virginia Forms Required:
§6.5.1 The Contractor shall submit to the Owner a completed and signed West Virginia Purchasing Affidavit for review within seventy-two (72) hours after the bids are received. This affidavit certifies that the Contractor and all Subcontractors under the Contractor's surety do not owe the state or any of its political subdivisions any debts which would preclude them from a Contract award. Contractors are encouraged to require this form from all Subcontractors under the Contractor's surety.

§6.5.2 The Contractor shall submit to the Owner a completed and signed West Virginia Drug-Free Workplace Affidavit for review within seventy-two (72) hours after the bids are received. This affidavit certifies that the Contractor shall maintain a written plan for a drug-free workplace policy and that such plan and policy are in compliance with West Virginia Code §21-1D. This plan must cover the workforce of the Contractor and all Subcontractors under the Contractor's surety.

§ 6.6 Notice of Post-Project Evaluation and SBA Power to Suspend Right of Bid
§ 6.6.1 Upon Project Final Completion and Closeout of the project, the SBA staff shall evaluate the Contractor's performance in regard to the following critical issues:

a. Completion within the time specified in the Contract Documents

b. Performance of the Work in conformance with the Contract Documents
c. Project Closeout in a timely manner in compliance with the Contract Documents

§ 6.6.2 If any of these issues fail to meet the requirements of the Contract Documents, the SBA staff will review the project documentation to ascertain the Contractor's responsibility for the failure(s). If this review finds that the Contractor's failure to comply with the conditions of the Contract and/or the Contractor's failure to perform the Work in conformance with the Contract Documents has been the major contributor to the Project deficiencies, the SBA may implement suspension procedures as outlined in the SBA's Policy & Procedures Handbook, Section 501.

Article 7 – Performance Bond and Payment Bond

Delete Article 7 in its entirety and substitute the following language:

§ 7.1.1 The Contractor to whom any contract is awarded, shall pay for, execute, and deliver to the Owner via the Architect before signing the Contract with the Owner a corporate surety Performance and Labor and Material Payment Bond that meets the following criteria:

a. The bond must be executed on AIA Document A312 (or equivalent form);

b. the Surety Company must have an A.M. Best, A- or better rating and must be listed on the most current Federal Register, Circular 570;

c. The Company must be authorized to do business in the State of West Virginia; and

d. The bond must be in the sum of one hundred percent (100%) of the amount of the contract, insuring the full and faithful performance of the work and payment in full for all materials, machinery, equipment, and labor, and covering all the guarantees called for in the specifications and all other obligations arising there under.

§ 7.1.2 All Prime Contractors performing work on SBA projects must be covered by a performance bond. The Owner will not accept responsibility for direct payments to subcontractors performing work on projects by way of consignment. No Performance Bond is required for projects of $25,000 or less.

§ 7.1.3 Should the successful Bidder fail or refuse to deliver the required bond and all other Contract Documents, properly executed after receipt of the Owner's letter of intent to award a Contract and prior to the execution of the Contract, the successful Bidder shall forfeit the security deposited with his Bid as liquidated damages, not as a penalty.

§ 7.1.4 Items that are NOT acceptable as a Performance Bond include, but are not limited to:

a. an irrevocable Letter of Credit
b. A certified cashiers' check
c. Personal securities

§ 7.1.5 Failure of a construction firm to satisfactorily perform the work specified in the contract documents will result in the owner executing their rights, pursuant to the conditions of the contract documents, to declare a construction contract default under the provisions of the AIA General Conditions of the Contract for Construction established for this project. If the construction firm's surety company is notified of their responsibility for the completion or remediation of incomplete or non-compliant work, said construction firm may no longer be eligible to bid future projects funded by the SBA.

Article 8 – Enumeration of the Proposed Contract Documents

(The Architect/Engineer shall list the contract documents that are to be included as Contract Documents for this Project, including all applicable SBA Forms.)