

**SBA Policy and Procedures**  
**APPENDIX J**

**(PART 1 – SBA SUPPLEMENTAL INSTRUCTIONS TO BIDDERS)**

**THE FOLLOWING SBA SUPPLEMENTAL CONDITIONS CHANGE, DELETE FROM OR ADD TO THE AIA A701-1997 INSTRUCTIONS TO BIDDERS AND SHALL BE INCORPORATED INTO THE PROJECT MANUAL UNDER THE INSTRUCTION TO BIDDERS. THIS DOCUMENT SHALL BE PRINTED ON NON-WHITE PAPER TO BE DISTINGUISHED FROM OTHER SPECIFICATION PAGES.**

**ARTICLE 2 – BIDDER’S REPRESENTATIONS:**

*Add the following to Article 2 Bidder’s Representation.*

*Add the following section:*

- 2.1.5** 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:**

*Add the following to Article 3 – Bidding Documents*

**3.3 Substitutions**

- 3.3.2** Delete the first sentence and add the following: “No substitutions will be considered prior to the receipt of Bids unless a written request for approval has been received by the Architect at least ten (10) days prior to the date for receipt of Bids.

**3.4 Addenda**

- 3.4.5** Failure to submit SBA Form 184 Certification of Receipt of Addenda shall result in disqualification of the bid.

**ARTICLE 4 – BIDDING PROCEDURES:**

*Add the following to Article 4 Bidding Procedures.*

**4.1 Preparation of Bids**

- 4.1.5** *Add the following sentence:*  
If no Alternate Bid is proposed by the Bidder, write “no bid”

*Add the following section:*

- 4.1.8** All requested Bid Proposals shall be bid. If Bidder elects not to provide such Bid, write “no bid”

**4.2 Bid Security**

*Add the following section:*

- 4.2.4**

- .1 Each Bid shall be accompanied by a Bid Bond payable to the Owner for five percent (5%) of the total Bid issued by a solvent surety company with a rating of A.M. Best, A- or better rated and listed on the most current Federal Register, Circular 570, and authorized to do business in the State of West Virginia. Should the Bidder refuse to enter into a contract with the Owner on the terms stated in the Bidding Document or fail to furnish bonds covering faithful performance of the Contract and all obligations arising there under, the full amount of the Bid Security shall be forfeited to the Owner as liquidated damages, not as a penalty. No Bid Bond is required for projects of \$25,000 or less.
- .2 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 Submission of Bids**

**4.3.1** *Delete Paragraph 4.3.1 in its entirety and replace with the following:*

Bids shall be submitted using the three envelope system. Valid bid bond, certification of receipt of addenda (SBA 184), Bid Certification Form (SBA157) and a copy of the bidder's valid WV Contractor's License, a copy of the WV Drug Free Work Place Affidavit (SBA 188) and the State of WV Purchasing Affidavit (SBA 185), shall be sealed in an opaque envelope labeled "Envelope #1". The completed and signed bid form shall be sealed in an opaque envelope labeled "Envelope #2 Bid Form". Envelopes #1 and #2 and the SBA bid checklist (SBA Form 183 ) 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. 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.

**4.3.2** *Delete this section in its entirety and replace with the following:*

In accordance with WV Code Section 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.

### **4.4 Modification or Withdrawal of Bid**

*Add the following section:*

- 4.4.5** 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:**

*Add the following to Article 5 – Consideration of Bids.*

**5.2 Rejection of Bids.** Delete paragraph 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 Section 5-22-2 (b) of the WV Code. Should the bidder claim their bid to be erroneous, the bidder must provide undisputable 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 Acceptance of Bid – (Award of Contract)**

**Revise 5.3.1** to read as follows:

It is the intent of the Owner to award a Contract to the lowest responsible Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to accept the Bid or Bids which, in his judgment, is in his own best interest.

**Revise 5.3.2** to read as follows:

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 no prioritized order, thereby reducing or increasing the amount of the Base Bid.

**Revise 5.3.3** to read as follows:

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.

Add the following:

- 5.3.4** Pursuant to the laws of the State of West Virginia, the School Building Authority of West Virginia must award bids only to the lowest qualified bidder. Therefore, when utilizing any portion of state funds for a project, county boards of education must consider the factors in SBA Criteria for Selection of Lowest Qualified Bidders, and the information from the Contractors Qualification Statement, when making a determination as to whether a contractor's bid is not only the lowest, but the most qualified.
- 5.3.5** 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 with 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.
- 5.3.6** All notices of protest and formal protest shall be filed with the Owner.
- 5.3.7** 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 p.m. of the next day that is not a Saturday, Sunday or a legal holiday.
- 5.3.8** The Owner has the sole authority to review the protest and render a decision. The Director of the County, 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.
- 5.3.9** If the bidder is not satisfied with the Owner's decision, they may take appropriate legal action through the West Virginia court system. Any bidder who files a notice of protest with the West Virginia Court System in a bid rejection or an award pursuant to this section shall post with the Owner, at the time of filing the notice of protest, a bond payable to the Owner in an amount equal to one percent (1%) of the lowest bid submitted, or \$5,000, whichever is greater.
- 5.3.10** All protest bonds shall be made payable to the Owner and shall be signed and sealed by the protestor and surety. The bonds shall bind the protestor and surety and be conditioned upon the satisfaction of any cost and charges included in any final order of judgment of appellate proceedings, in the event that the Owner prevails. In lieu of a bond, the protestor may submit a cashier's check or bank money order made payable to the Owner, the monies shall be held in trust by the Owner.

**5.3.11** If the protesting party prevails after completion of the protest and any appellate court proceedings, it shall be entitled to recover from the Owner all costs and charges included in the final order or judgment, excluding attorney's fees. If the Owner prevails it shall recover all costs and charges included in the final order or judgment excluding attorney's fees. Upon payment of such costs and charges by the protestor, the bond shall be returned. The entire amount of the bond shall be forfeited if the hearing officer determines that a protest was filed for a frivolous or improper purpose including, but not limited to, the purpose of harassing, causing unnecessary delay or causing needless expense for the Owner or successful bidder.

**5.3.12** The Owner shall be considered the prevailing party if the protestor withdraws the protest at any time before the entry of the final order.

## **ARTICLE 6 – POST BID INFORMATION**

*Add the following to Article 6 Post Bid Information*

**6.1 Contractor Qualification Statement.** Delete paragraph 6.1 in its entirety and replace with the following:

**6.1.1** A completed Contractor Qualification Statement (SBA 105) will be required of any Contractor and/or subcontractor to be submitted to the School Building Authority for review. This confidential information will be used by the SBA for evaluation of the low bid contractors on the project. Therefore, the SBA shall determine whether or not the provided information satisfies the intent of the required form. The contractor qualification statement will only be required once annually and updated documents will be required from low bid contractors once the current contractor qualification statement has expired. The Qualification Statement must be submitted 72 hours after the close of the bid opening and prior to the award of bids and will be used in the bid review process by the owner and SBA.

**6.1.2** The confidential reviewed financial statement section of this document shall be submitted to the SBA by the lowest qualified bidder (s) within 72 hours of the close of the bid opening and prior to the execution of contracts or agreements between the local board of education and the contractor(s). Review financial statements shall not be required of any subcontractor covered by the Prime Contractor's surety. The latest available financial information must be used. Minimum requirements for financial statements provided by lowest qualified bidder are:

- a. Accountants compilation report;
- b. Balance sheet;
- c. Income statement;
- d. Statement of changes in retained earnings;
- e. Statement of cash flows; and

f. Notes to the financial statement.

**6.1.3** In addition to the financial statement, the successful low bid contractor(s) shall submit a completed Affidavit of Debt Paid (SBA Form 177) to the owner and SBA within 72 hours of the close of the bid.

**6.1.4** Construction contractors or subcontractors or equipment/material suppliers who have demonstrated a pattern of poor and/or non-compliant work performance, failure to comply with the construction schedule and phasing plan established in the bidding documents which has been documented by the SBA, project administrators and/or designers, or whose infractions of the State Prevailing Wage Rate codes has been documented by multiple citations from the West Virginia Department of Labor or whose contract has been terminated for just cause as described in the latest SBA approved AIA Contract Document General Conditions, will be placed on for a minimum period of one year beginning at the time of probationary status. Such contractor may be removed from probationary status pending review of their continued work history performance by the SBA at the conclusion of their probationary period.

**6.1.5** In order to provide opportunity for any contracting, subcontracting or equipment/material firm cited for poor or non-compliant work to appreciably improve the quality of their performance prior to being placed on probation, the SBA staff will utilize the following procedure:

- d. The cited firm shall be noticed in writing of the SBA's concern, with appropriate documentation to illustrate the poor or non-compliant work, and the firm cited shall appear before the Executive Director of the SBA to present his reasons for failure to respond positively with improved performance after the initial notice.
- e. Continued failure to improve poor or non-compliant performance will result in the probation. The contractor will be invited to appear at the SBA meeting to discuss the citations and justify his uninterrupted participation.
- f. Probationary status of a firm may be revoked or continued by the SBA's Construction Committee upon review and deliberation of any SBA staff recommendation at the conclusion of the probationary period.

**6.3 Submittals:** Delete paragraph 6.3.1 thru 6.3.4 in their entirety and replace with the following:

**6.3.1 Submittal of Subcontractors and Major Equipment and Materials Suppliers**

- .1 The bidder(s) submitting the lowest qualified bid(s) as determined by the results of the bid opening shall submit a listing of all subcontractors and all major equipment and material suppliers proposed for each major branch of work itemized and described in the contract documents for the project. This

information shall be provided to the SBA office on SBA Form #123 within two hours after the completion of the bid opening. If the apparent low bidder is not evident at the close of bidding, all prime contractors must submit the completed SBA Form 123 to the SBA office within two hours of the completion of bids if they feel under any bidding combination their bid may be considered as the low bid. Bidding contractors are required to be present at the bid opening or obtain bid results from the owner in order to determine the bid results and

- .2 All Subcontractors listed on the SBA Form 123, provided by the apparent low bidder, shall provide a separate SBA Form 193 listing any subcontract agreements that the subcontractor may have relating to their work. This SBA form must be reviewed and signed by the Prime Contractor then submitted directly to the SBA office by the Subcontractor within 72 hours immediately following the receipt of bids.
- .3 Each bidder is required to establish the reliability and responsibility of all subcontractors and equipment/material suppliers being proposed to perform the work. Contractors, Subcontractors and/or equipment/material suppliers on SBA Probationary Status 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. Additionally, the list of SBA probationary contractors will be provided to the owner by the SBA and this information will be communicated by the owner to the contractors, when applicable. A review of the proposed subcontractors and equipment/material suppliers shall be conducted by the Architect/Engineer, Owner and representatives of the School Building Authority. 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 School Building Authority and the contractor, shall be changed to 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.
- .4 Failure to submit a list of subcontractors and major equipment and material suppliers to the SBA office as described on the SBA Form #123 within two hours after the completion of the bid shall result in disqualification of the bid.
- .5 Failure of any Subcontractor to submit their required SBA Form 193 within 72 hours immediately following the bids shall result in disqualification of that Subcontractor. The apparent low bidder will be required to replace the disqualified subcontractor with no additional cost to the owner.



- .6 A copy of all contractors and subcontractors licensing certificate must be submitted to the agency receiving bids for review prior to the award of construction contracts.
- .7 Prior to the award of the contract, the Architect/Engineer will make 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.
- .8 Written approval shall be obtained from the Architect/Engineer covering any substitution of equipment or materials. Substitutions are 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.
- .9 During the 72 hours immediately following the bid opening, the SBA shall review the information provided on the required SBA Form 123 to determine if the provided information satisfies the intent of the form. The Owner/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.
- .10 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.
- .11 Each bidder acknowledges responsibilities for each of its subcontractors, 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.

- .12 Each bidder further acknowledges that use of any Subcontractors other than those indicated on the SBA Form 123 without prior written approval of the SBA shall result in the bidder being placed on bidding probation by the SBA for a period of at least one year subject to review and recommendation of reinstatement by the Executive Director.

### **6.3.2 Bid Certification**

1. In accordance with West Virginia Code 5-22-1, Article 22, the lowest qualified responsible bidder submitting bid on SBA funded projects must certify that all provisions within this code and SBA provisions that supersede this code 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

### **6.3.4 Taxes: (Contractor Registration Certificate and Tax Releases)**

1. 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.
2. If any Bidder is not registered with the Tax and Revenue Department, application should be made to West Virginia Department of Tax and Revenue, Capitol Complex, Charleston, WV 25305, and complete Form 801, so that a registration number may be assigned prior to the time and date for receipt of Bids.

### **6.3.6 Contractor Licensing:**

- .1 All contractors doing business in West Virginia must be licensed to perform work in the state as required by the West Virginia Contractor Licensing Act. The ACT requires but is not limited to the following:
  - a. A contractor's license number shall be included in all contracting advertisements and all fully executed and binding contracts.
  - b. All approved subcontractors must be licensed and a copy of their current license number must be submitted with all quotations to the general contractor. Pursuant to the ACT, general contractors are required to only accept quotations from subcontractors licensed to perform work in West Virginia. Additionally, the SBA Form 123 requires the subcontractor's name and license number to be submitted to the SBA office within two hours of the close of bids and a copy of all general and subcontractors licensing certificates must be submitted to the agency receiving bids for review prior to the award of construction contracts. Failure to submit the properly completed SBA Form 123 to the SBA office within the two-hour time frame will result in disqualification of the bid.

## SBA Criteria for Selection of Lowest Qualified Bidders AWARD OF BIDS

Pursuant to the laws of the State of West Virginia, the School Building Authority of West Virginia must award bids only to the lowest qualified bidder. Therefore, when utilizing any portion of state funds for a project, county boards of education must consider the following factors, and the information from the Contractors Qualification Statement, when making a determination as to whether a contractor's bid is not only the lowest, but the most qualified.

1. The years of experience the bidder has in the construction, renovation or building repair business.
2. The bidder's participation in a drug program that meets the objectives, applicable laws and regulations for a drug free workplace including the use of tobacco and alcohol on school properties.
3. The continuity, experience and skill of the bidder's work force and that of the bidder's designated subcontractors.
4. The bidder's performance on similar construction projects.
5. The bidder's ability to successfully complete projects within the proposed schedules and deadlines.
6. The bidder's participation in a bonafide joint apprenticeship program that is approved by the US Department of Labor, US Bureau of Apprenticeship Training and is administered in compliance with the rules and regulations of the WV Department of Labor. [See DOL 42-7-3.1(i)]
7. The bidder's history of compliance with Worker's Compensation and Unemployment Compensation laws.
8. The bidder's history of compliance with OSHA requirements.
9. The bidder's history of compliance with Federal and State Prevailing Wage as well as Fair Labor Standards and Wage Payment laws.
10. The bidder's subcontractors compliance with state regulatory agencies.
11. The bidder's history of compliance with fringe benefit contributions, i.e., health insurance and pension benefits.
12. The bidder's local hiring plan and history of compliance with the WV Jobs Act, (WV Code, Chapter 21, Article 1C) regarding use of the local labor market.
13. The bonding record of the bidder.

14. 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.
15. The bidder's financial stability and its impact on the company's ability to complete the project.
16. The bidder can demonstrate it is not in default on a debt to the State or its political subdivision in aggregate more than \$1,000.
17. The bidder's history of change order requests.
18. Response from bidder's references and recommendations of other owners for whom the bidder has worked.

All of the above factors, as supported by the accompanying Contractors\_Qualification Statement, will be considered by the county board of education in determining the "best" most qualified bid. No single criteria will be considered the controlling factor in determining whether a bid is, or is not the "best" bid.

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