

002113 01 Instruction to Bidders

UNIVERSITY OF KENTUCKY
CAPITAL CONSTRUCTION PROCUREMENT SECTION
INSTRUCTION TO BIDDERS

TABLE OF CONTENTS

<u>ARTICLE</u> NO.	TITLE	PAGE
1.	DEFINITIONS	IB-2-3
2.	BIDDER'S REPRESENTATION	IB-3
3.	BIDDING DOCUMENTS	IB-3-5
4.	PREBID CONFERENCE	IB-5
5.	BIDDING PROCEDURES	IB-5
6.	CONSIDERATION OF BIDS	IB-7-8
7.	QUALIFICATION OF BIDDING CONTRACTOR	IB-8
8.	SUBCONTRACTOR AND MATERIAL LISTING	IB-8-9
9.	UNIT PRICES	IB-9-10
10.	PERFORMANCE BOND, LABOR & MATERIAL PAYMENT BOND	IB-10
11.	AWARD OF CONTRACT	IB-11
12.	PUBLIC WORKS ACT	IB-11
13.	BASIC LEGAL REQUIREMENTS	IB-11
14.	TAXES	IB-11
15.	PLANHOLDERS	IB-12
16.	POST BID REVIEW AND MATERIAL SUBMITTAL	IB-12
17.	EQUAL EMPLOYMENT, NONDISCRIMINATION, DIVERSE BUSINESS ENTERPRISES PARTICIPATION	IB-12-14
18.	ANTI-KICK BACK	IB-14
19.	COMPLIANCE WITH KENTUCKY'S COMPENSATION AND UNEMPLOYMENT INSURANCE LAWS KRS 45A.480	IB-14

002113 01 Instruction to Bidders

ARTICLE 1 - DEFINITIONS

- A. Addenda are written or graphic instructions issued by the University of Kentucky prior to the execution of the contract which modify or interpret the bidding documents by addition, deletions, clarification, or corrections.
- B. Alternate is an amount stated in the Bid Proposal to be added to or deducted from the amount of the base Bid if the corresponding change in project scope or materials or methods of construction described in the Bidding Documents is accepted. If the University designated Alternates are considered in the award, the Alternate(s) will be accepted in the sequence listed on the Bid form, and the lowest bid sum will be computed on the basis of the sum of the base bid and any Alternates accepted, within the budgeted amount.
- C. Bid is the sum stated in the Bid Proposal for which the bidder offers to perform the work described in the specifications and detailed on the drawn plans.
- D. Bidding Documents include the Notice to Contractors, Advertisement for Bids, Invitation to Bid, Instruction to Bidders, Bid Proposal forms, other sample bidding and contract forms and the proposed Contract Documents including General Conditions, Special Conditions, Plans and Specifications, any Addenda issued prior to receipt of Bids.
- E. Bid Proposal is a complete and properly signed document, proposing to do the work or designated portion thereof for the sums stipulated therein supported by data called for by the Bidding Documents.
- F. Consultant means the person or the entity, either Architect, Engineer or other Consultant, who is identified as such in the Contract Documents.
- G. Construction Manager - Means the person or entity employed by the owner under a separate contract, to provide professional and managerial services to the project.
- H. Foreign Corporation - refers to a corporation for profit, organized under the laws other than the laws of the Commonwealth of Kentucky.
- I. KRS References - means the "Kentucky Revised Statutes" adopted by the Commonwealth of Kentucky including all laws and related regulatory that may have been revised, amended, supplemented or new laws enacted.
- J. Bidder is one who submits a bid directly to the Purchasing Agency for the work described in the Bidding Documents.
- K. Subcontractor is a subbidder who submits a bid to a Bidder for materials or labor for a portion of the work.
- L. Owner is the University of Kentucky, a statutory body corporate existing pursuant to Sections 164.100 et seq. of the Kentucky Revised Statutes.
- M. Purchasing Agency is the University of Kentucky, Capital Construction Procurement Section, Room 373 Peterson Service Building, Lexington, KY 40506-0005.
- N. Purchasing Official is the University's authorized representative.

002113 01 Instruction to Bidders

ARTICLE 1 - DEFINITIONS (Continued)

- O. Responsible Bidder shall mean a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance. See KRS 45A.070(6).
- P. Responsive Bidder shall mean a person who has submitted a Bid which conforms in all material respects to the Invitation for Bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract. See KRS 45A.070(7).
- Q. Unit Price is an amount stated in the Bid as a price per unit of measurement for materials or services as described in the bidding documents.
- R. Diverse Business Enterprises (DBE) consist of minority, women, disabled, veteran and disabled veteran owned business firms that are at least fifty-one percent owned and operated by an individual(s) of the aforementioned categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled. MBE, WBE, Veterans, Disabled Veterans and Disabled make up Diverse Business Enterprises (DBE)

ARTICLE 2 - BIDDER'S REPRESENTATIONS

The Bidder by submitting a Bid represents and warrants that:

- i) The Bidding Documents have been read and understood and the Bid is made in accordance therewith.
- ii) The site of the proposed work has been visited and carefully examined and the Bidder is aware of and understands the local conditions under which the work is to be performed.
- iii) The Bid submitted is premised upon furnishing the work required by the bidding documents without exception.
- iv) That the plans and specifications contained in the Bid Documents have been carefully examined and determined by the Bidder to be accurate as well as adequate and sufficient from which to submit a Bid and from which to perform the Work.

ARTICLE 3 - BIDDING DOCUMENTS

- A. Availability of Bidding Documents. Bidders, Subbidders, Subcontractors, and others may obtain Bidding Documents from Lynn Imaging, in the manner and for the charge, if any, stated in the Advertisement or Invitation to Bid.

Complete sets of Bidding Documents shall be used in preparing Bids. The Purchasing Official assumes no responsibility for misinterpretations resulting from the use of incomplete sets of bidding documents.

The Purchasing Official, in making copies of the Bidding Documents available on the above terms, does so only for the purpose of obtaining Bids on the work and does not confer a license or grant for any other use.

002113 01 Instruction to Bidders

ARTICLE 3 - BIDDING DOCUMENTS (Continued)

- B. Accuracy of Bid Documents. The Bidding Documents are complementary and are issued for the convenience of the Bidders. The University of Kentucky assumes no responsibility for the correctness of said documents. Each Bidder should review the documents for errors or inaccuracies that may affect the scope of work implied.

All Bidders shall, upon examination of Bidding Documents promptly notify the University's Purchasing Official of any ambiguity, inconsistency or error that they may discover upon examination of the Bidding Documents and/or of the site and local conditions.

- C. Questions, Interpretations. All questions regarding the meaning or interpretation of the Bidding Documents shall be directed in writing to the Purchasing Official. Questions received less than ten (10) calendar days prior to the date for receipt of Bids may not be answered.

Any interpretation, correction or change of the Bidding Documents will be made by Addendum, issued by the Purchasing Official. Interpretations, corrections or changes of the Bidding Documents made in any other manner will not be binding and Bidders shall not rely upon such interpretations, corrections and changes.

- D. Materials, Equipment. The materials, products and equipment detailed, described or referenced to manufacturers' or vendors' names, trade names, catalogue numbers, etc., are intended to establish a standard of required function, dimension, appearance and quality. Material, article or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article or equipment so proposed is, in the sole opinion and judgment of the Consultant, of equal substance and function and approved by the Purchasing Official.

Bidders wishing to submit a request for consideration of an alternate under the provisions of Article 48.3 of the General Conditions to the Contract or to any article, device, equipment, product, material, fixture, patented process, form, method or type of construction, or by name, make, trade name, or catalog number shall submit a written request to the University prior to the official bid date of the Project including all necessary information and sufficient detail to allow evaluation by the Consultant and the University and, if the University determines the alternate is acceptable, an addendum will be issued allowing the change and advising all bidders of the option. If no addendum is issued to allow the requested change, the Bidder shall assume the request is not approved and shall prepare the bid on that basis.

- E. Addenda. Addenda will be mailed or delivered to all who are known by the Construction Procurement Division to have requested and were furnished Bidding Documents. Contractors that receive plans and specifications from other sources than Lynn Imaging must request a "Form of Proposal" from the University's Purchasing Representative to be registered as plan holders and to receive addendums.

Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

No Addenda of a material nature will be issued later than five (5) working days prior to the date for receipt of bids, except for postponing the date for receipt of bids or withdrawing the Invitation to Bid.

Each Bidder shall ascertain, prior to submitting his Bid, that he has received all Addenda issued by the Construction Procurement Division for the particular bid invitation. The Bidder shall acknowledge receipt of

002113 01 Instruction to Bidders

ARTICLE 3 - BIDDING DOCUMENTS (Continued)

all Addenda in the Form of Proposal, or by separate letter to the Purchasing Official which is received at or prior to the hour and date specified for receipt for Bids.

It shall be the sole responsibility of the Bidder who receives the Addendum, to insure that all of the appropriate Subbidders and Sub-contractors are notified in respect to the information contained in the Addendum.

ARTICLE 4 - PRE-BID CONFERENCE

A pre-bid conference and tour of the project area will be held approximately ten (10) days prior to receipt of bids. (Actual date of Pre-Bid Conference will be stated in the Invitation to Bid.) All contractors wishing to bid on this project should have a representative attend this conference. Items discussed at the Pre-Bid Conference will become part of the contract, and any contractor who doesn't attend the Pre-Bid Conference will still be held responsible for all items discussed.

ARTICLE 5 - BIDDING PROCEDURES

- A. FORM OF PROPOSAL. Bids shall be submitted by Bidders who have received Bidding Documents from the Capital Construction Procurement Section thereby listed on the Official Bidder's list and on the Bid submittal shall be made on the proposal form (Form of Proposal) provided by the Purchasing Official, Construction Procurement Section.
- i) Blanks. All blanks on the Form of Proposal shall be completed and all required support data shall be furnished.
 - ii) Sums. Where so indicated by the makeup of the Form of Proposal, sums shall be expressed in both words and figures, and in case of discrepancy between the two, the amount indicated by words shall govern.
 - iii) Modifications. Any interlineation, alteration, or erasure must be initialed in ink by the signer of the Bid or by an official designee of the signer of the Bid.
 - iv) Alternates. All alternates specifically called for by the Form of Proposal shall be bid. Voluntary alternate proposals or an alternate to a lump sum proposal will not be considered unless specifically permitted by the conditions of the Advertisement for Bids or the Invitation to Bid.
 - v) Qualifications. The Bidder shall make no additional stipulations on the Bid Proposal form or qualify the Bid in any other manner.
 - vi) Signatures. The Form of Proposal shall be signed by a person or persons legally authorized to bind the Bidder to a contract. The Form of Proposal shall include the legal name of Bidder and a statement indicating whether the Bidder is a sole proprietorship, a partnership, a corporation, or any other legal entity. A Bid by a corporation shall identify the state of incorporation including Federal I.D. number. A Bid submitted by an agent shall have a current signing authority attached certifying agent's authority to bind the Prime Bidder.

002113 01 Instruction to Bidders

ARTICLE 5 - BIDDING PROCEDURES (Continued)

B. **BID SECURITY.** Where specified in the Advertisement or Invitation to Bid, the Bidder shall furnish a Bid guarantee in the required form of not less than five percent (5%) of the Bid amount. This Bid security secures the Bidder's promise (i) to enter into a contract on the terms stated in the Bid proposal, and (ii) if required, to furnish bonds covering the faithful performance of the contract and payment of all obligations thereunder. Should the Bidder refuse to enter into a contract or fail to furnish the required performance and payment bonds, the amount of the Bid security shall be forfeited to the Owner as liquidated damages, not as a penalty.

The Purchasing Official will retain the Bid security of Bidders until either (i) the contract has been executed and bonds have been furnished, or (ii) the specified time has elapsed so that Bids may be withdrawn, or (iii) all Bids have been rejected.

The completed University Official Bid Document, the Bid Security, and any support data required to be submitted with the Bid shall be enclosed in a sealed envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Bidder's name and address, the sealed Bid invitation number, closing date and hour. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "BID ENCLOSED" on the face thereof.

C. **TIMELINESS OF BIDS.** Bids shall be delivered to Room 322, Peterson Service Building, prior to the official time and date for receipt of Bids indicated in the advertisement of Invitation to Bid, or any extension thereof made by Addendum. The "official time" refers to the time as indicated by the time date clock located in the reception area of Room 322.

D. **LATE BIDS.** Bids received after the official closing time and date for receipt of Bids may be considered for evaluation and award only if: (i) no other Bids were received within the legal advertisement period; and (ii) the readvertisement time delay would seriously affect the operations of the Owner; and (iii) in the judgment of the Purchasing Official, the Bid was finalized prior to the official closing time and date for receipt of bids.

The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of bids.

E. **BIDS NOT IN WRITING.** Oral, telephonic, or telegraphic Bids or changes in Bids by such methods are not permitted and will not receive consideration.

F. **BIDS WITHDRAWN.** Bids may be withdrawn prior to the closing time and date for receipt of Bids by: (1) a properly identified representative of the Bidder whose name appears on the Bid envelope, or (2) by written request by an authorized representative of the Bidder, received by the Capital Construction Procurement Section prior to the Bid closing date and time. Withdrawn Bids may be resubmitted up to the closing time designated for the receipt of Bids.

G. **BIDS REMAIN OPEN.** During the stipulated time period following the time and date designated for the receipt of Bids a Bid shall remain open for the Owner's acceptance. During this period the Bid may not be modified, withdrawn or canceled by the Bidder, without the Bid security being subject to forfeiture and the suspension of the Bidder's future bidding privileges.

002113 01 Instruction to Bidders

ARTICLE 6 - CONSIDERATION OF BIDS

- A. **BID OPENING.** Unless stated otherwise in the Advertisement or Invitation to Bid, all properly identified timely Bids will be publicly opened, reviewed (for conformance with Bid submittal requirements) and if properly executed and complete, read aloud. All Bids opened and read will be listed on the official Bid tabulation which will be made available to all Bidders upon request.

- B. **WAIVER OF IRREGULARITIES/REJECTION OF BIDS.** The right to cancel the Invitation to Bid, to reject any and all Bids, and to waive technicalities and minor irregularities in Bids is maintained and preserved in all Invitations for Bids issued by University of Kentucky, Capital Construction Procurement Section when such action is determined to be in the best interest of the University of Kentucky.

- C. **GROUND FOR REJECTION.** Grounds for the rejection of Bids include, but shall not be limited to:
 - i) Failure of a Bid to conform to the essential requirements of the Advertisement for Bids or Invitation for Bid.

 - ii) Any bid which does not conform to the specifications contained or referenced in any Invitation for Bids shall be rejected unless the invitation authorized the submission of alternate Bids and the items offered as alternates meet the requirements specified in the invitation;

 - iii) Any Bid which fails to conform to the delivery or completion schedule established in the Bidding Documents;

 - iv) A Bid imposing conditions or qualifications which would modify the terms and conditions of the Invitation for Bids, or limit the Bidder's liability to the Owner in a manner inconsistent with the provisions of the Bidding Documents;

 - v) Any Bid determined by the Purchasing in excess of funds available.

 - vi) Failure to furnish a Bid security in accordance with the requirements of the Advertisement for Bids or Invitation to Bid.

 - vii) For other cause as documented by the Purchasing Official pursuant to a written determination and finding.

 - viii) Bids received from Bidders determined by the Purchasing Official to be non-responsive bidders.

- D. **MINOR IRREGULARITIES.** Minor irregularities or technicalities in a Bid may be waived by the Purchasing Official on behalf of the Owner when all of the following circumstances are present:
 - i) The Purchasing Official determines that it will be in the Owner's best interest to do so; and the technicalities or irregularities are mere matters of form not affecting the material substance of a Bid;

 - ii) Represent an immaterial deviation from, or variation in the precise requirements of the advertisement for, Bids or Invitation to Bid, and have no effect on price, quality, quantity or delivery of supplies or performance of services being procured; and, the correction or waiver of the technicality or irregularity will not affect the relative standing of, or prejudice, other Bidders. If the Owner does not waive technical deficiencies and irregularities, the deficient Bid shall be rejected.

002113 01 Instruction to Bidders

ARTICLE 6- CONSIDERATION OF BIDS (Continued)

- E. **COMPETITIVE NEGOTIATION.** The University reserves the right to exercise the provisions of KRS 45A.090 regarding competitive negotiation when it is considered to be in the best interest of the University.

It is the intent of the Purchasing Official to award a contract in due course and after a reasonable Bid evaluation period to the Responsive and Responsible Bidder offering the best value to the University, provided the acceptable Bid sum is within budgeted funds.

- F. **Rejection of Alternate Bids.** The Owner reserves the right to accept or reject any or all alternate Bids if provided for in the Bid Documents. If alternates designated by the Owner are considered in the award, the alternate(s) will be accepted in the sequence in which they are listed on the Bid proposal form and the lowest Bid sum will be computed on the basis of the sum of the base Bid plus and/or minus any alternates accepted.

ARTICLE 7 - QUALIFICATION OF BIDDING CONTRACTOR

- A. **Bidder Responsibility.** All bidders may be required to supply the information requested on the Contractor/Bidder Determination Of Responsibility Questionnaire. The apparent low Bidder will be supplied this document at the post Bid review of the Bid submittal document. The information required by this document must be completed by the Bidder and returned to the University Purchasing Official within a reasonable time as determined by the University. In most cases the information should be completed and returned in no more than five (5) working days after the Bid submittal. The information provided will be used to determine whether the Bidder is "responsible" as defined by KRS 45A.070(6), and verify that the Bidder has the experience, qualifications and resources required to provide the quality workmanship, materials and services necessary to complete the project being Bid. In addition to the information required by the Questionnaire, the Bidder agrees to provide any additional information that may be necessary for determination of contractor responsibility, as defined by the Kentucky Model Procurement Code. The determination of contractor responsibility will not be made until the Bidder has provided a sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign laws of the Commonwealth and that the award of a contract to a Bidder or offeror will not violate any provision of the campaign finance laws of the Commonwealth. The sworn statement required is included in the Questionnaire to be completed by the apparent low Bidder.
- B. **Inquiries.** The Purchasing Official shall have the right to make any inquiry deemed necessary to determine the ability of the Bidder to perform the work in a prompt and efficient manner and in accordance with the contract Documents. The failure of a Bidder to promptly supply information in connection with the Purchasing Official's inquiry may be grounds for a determination that such Bidder is nonresponsive.
- C. **Rejection.** The right is reserved to reject any Bid where an investigation and evaluation of the Bidder's qualifications would give reasonable doubt that the Bidder could perform prompt and efficient completion of the work in accordance with the requirements with the Contract Documents.

ARTICLE 8 - SUBCONTRACTOR AND MATERIAL LISTING

- A. **List of Subcontractors.** The Bidder will list the names of subcontractors proposed for each of the principal portions of the work (including those persons or entities who are to furnish material or equipment fabricated to a special design) in the designated place on the Form Of Proposal. The Bidder will be responsible for establishing to the satisfaction of the Purchasing Official, the reliability and responsibility of the listed

002113 01 Instruction to Bidders

ARTICLE 8 - SUBCONTRACTOR AND MATERIAL LISTING (Continued)

subcontractors. The Bidder may be required by the Purchasing Official to provide additional information regarding listed subcontractors.

- B. **Objection and Required Substitution.** If, after due investigation, there is reasonable objection to the qualifications of a listed subcontractor the Bidder shall, upon written direction from the Purchasing Official, submit the name of an acceptable substitute subcontractor with no change in Bid price. The failure of the Bidder to promptly comply with this requirement may be grounds for rejection of the bid.
- C. **No Objection Prior to Notice of Award.** Any listed subcontractor to whom the Purchasing Official does not make written objection prior to the giving of the Notice of Award shall be deemed acceptable to the Owner.
- D. **Bidder Self Performed Work.** The Bidder shall not list himself as a subcontractor on the Form of Proposal Subcontractors List unless it can be demonstrated that Bidder actively participates in the trades required and has the expertise to complete that portion of the work.
- E. **Substitutions Not Optional.** The Bidder shall not substitute a subcontractor named on the Form of Proposal without prior notification and approval of the Purchasing Official. Any notification for a substitution of a listed subcontractor shall be in writing and the reason fully set forth therein. The reason shall demonstrate real cause and evidence good faith by the Bidder. This shall not be construed to waive the Bidder's rights to later substitute a subcontractor for the failure of that proposed subcontractor to accept a contract from the Bidder, failure to perform in a satisfactory manner per the requirements of the contract or any other legal rights of the Bidder to manage and coordinate subcontractors.
- F. **Bid Documents Not a Contract.** Nothing contained in the Bidding Documents shall be deemed to create a contractual relationship between the Owner and any subcontractor. However, it is the Bidder's responsibility to assure that the subcontractor listed has the required expertise and financial stability to complete that portion of the work.
- G. **List of Materials and Equipment.** The Bidder shall submit a list of major materials and equipment by the manufacturer's name, brand and/or catalog number in the form and manner specified in the Bidding Documents.
- H. **Preliminary Acceptance of Materials and Equipment.** Prior to the acceptance of a Bid, the Purchasing Official will make a preliminary review of the list of materials and equipment included with the Bid Proposal and advise the Bidder of the acceptance thereof, subject to satisfactory completion and approval of shop drawings, or direct other such action as may be necessary in order to meet the requirements of the Contract Documents. If any of the material or equipment named in the list are determined not to meet the requirements and standards of the specifications, the Bidder shall be required to furnish other material or equipment meeting the specifications at no change in Bid price. Preliminary review and acceptance of the submitted material and equipment list shall not relieve the Bidder from furnishing equipment and materials in complete accordance with the specifications, drawings, and Contract Documents.

ARTICLE 9 - UNIT PRICES

The Bidder shall submit with the Bid a list of Unit Prices as designated on Form of Proposal. Unit Prices are for the pricing of changes in the quantity from that indicated by the Contract drawings and specifications, where such changes have been authorized in writing by Owner. The Unit Prices submitted shall include all necessary labor, materials, equipment, appliances, supplies, overhead and profit. Only a

002113 01 Instruction to Bidders

ARTICLE 9 - UNIT PRICES (Continued)

single Unit Price shall be quoted for each designated item of work. The Unit Price shall be used to calculate price adjustments for either increasing or decreasing the amount of Work. Unit Prices shall apply to all phases of the Work whether the

Work be performed by the Bidder or by the Bidder's (contractor) Subcontractor. The Owner reserves the right, prior to an award of Contract, to evaluate the Unit Prices submitted and adjust and/or reject any Unit Price that is determined by the Purchasing Official to be unreasonable in amount.

ARTICLE 10 - PERFORMANCE BOND, LABOR & MATERIAL PAYMENT BOND

The successful Contractor shall furnish security bonds (form to be furnished) in an amount equal to one hundred percent (100%) of the Contract Price as security for the performance of the Contract established and for payment of all persons performing labor, including payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance Law, and furnishing materials, equipment, supplies, taxes, and other proper charges and expenses incurred or to be incurred in the performance of the contract. All bonds shall be executed by a surety company authorized to do business in the Commonwealth of Kentucky and the contract instrument must be countersigned by a duly licensed Kentucky resident agency representing the company. The bonds shall be valid after the final payment has been made on the Contract during the guaranty period and other periods limited only by statutes of limitation. If the furnishing of performance and payment bonds is required by the Bidding Documents, the bond premiums shall be paid by the Bidder. If the furnishing of bonds is not required by the Bid Documents, but required by the Purchasing Officer subsequent to the award of Contract, the successful Bidder shall procure the bonds and the Owner will reimburse the Bidder for the premium cost. The Owner reserves the right to require all bonds be provided by a surety company with a rating of "A" or better as listed in the A. M. Best-Key Rating Guide for Property and Casualty (current edition).

The Bidder shall execute the required performance and payment bonds for the Owner on the date of execution of the Contract Documents between the Owner and the Contractor, or, with the approval of the Purchasing Official, within ten (10) calendar days after that date. Unless otherwise specified in the Bidding Documents, the bonds shall be written on the bond form bound in the bidding documents and in the number of counterparts specified by the Purchasing Official.

Bonds shall be issued by a surety company authorized to underwrite bonds in the Commonwealth of Kentucky and be countersigned by licensed resident agent. The Bidder shall require the Attorney-in-Fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of their Power of Attorney. The date of the Power of Attorney shall not precede the date of the bonds.

ARTICLE 11 - AWARD OF CONTRACT

The issuance of an award of the Contract is contingent upon (i) securing an acceptable Bid that is responsive and from a responsible Bidder and is within the amount of budgeted funds and (ii) determining that the award of Contract will be in the best interest of the University of Kentucky.

Unless otherwise provided in the Bidding Documents, the Form of Agreement between the Owner and the Contractor will be written on the standard form of agreement bound with the Bidding Documents and executed in the number of counterparts specified by the Purchasing Officer.

002113 01 Instruction to Bidders

The Contract between the University of Kentucky and the Contractor will be final and binding when the parties have executed the Agreement between the Owner and Contractor.

Final award of Contract will be made on the basis of the lowest, responsive and responsible bid which offers the best value.

ARTICLE 11 - AWARD OF CONTRACT (Continued)

The University reserves the right to negotiate and award Contracts as allowed under KRS 45A.090 should all responsive Bids exceed available funds.

ARTICLE 12 - PUBLIC WORKS ACT

AS OF 1/9/2017, THERE ARE NO PREVAILING WAGE LAWS FOR UNIVERSITY PROJECTS

ARTICLE 13 - BASIC LEGAL REQUIREMENTS

- A. Forms Required. An Authentication of Bid, Statement of Noncollusion and Nonconflict of Interest documents are bound with and included as part of the Form of Proposal. The Bidder is required to sign that document and submit it as part of the Bid. Failure to comply with these requirements shall invalidate the Bid.
- B. Foreign Corporations. Foreign Corporations are defined as corporations that are organized under the laws other than the laws of the Commonwealth of Kentucky. Foreign Corporations doing business within the Commonwealth of Kentucky are required to be registered with the Secretary of State, New Capitol Building, Frankfort, Kentucky and must be in good standing.

The Foreign Corporate Bidder, if not registered with the Secretary of State at the time of the Bid submittal, shall be required to become registered and be declared in good standing prior to the issuance or receipt of a contract.

- C. Domestic Corporations. Domestic corporations are required to be in good standing with the requirements and provisions of the Office of the Secretary of State.

ARTICLE 14 - TAXES

- A. Not Tax-Exempt. Bidders are informed that construction contracts for the University of Kentucky are not exempt from the provisions of the Kentucky Sales and/or Use Tax. The Bidder shall include in the lump sum bid and the Contractor shall pay sales, consumer, use and similar taxes for materials, equipment and supplies incorporated into the Work unless otherwise specified in the Bid Documents.

The University of Kentucky, through the Commonwealth of Kentucky, is entitled to exemption from Federal Excise Tax. All Prime Bidders or Subbidders shall take this into consideration in their Bid.

- B. Liability for Employee-Related Taxes. The Bidder and Subcontractors will be required to accept liability for payment of all payroll taxes or deductions required by local, state and federal law, including but not limited to old age pension, social security or annuities. Worker's Compensation Insurance shall be carried to the full amount as required by Kentucky Statutes. The Bidder shall be in full compliance with KRS Chapters 341 and 342.

002113 01 Instruction to Bidders

ARTICLE 15 - PLANHOLDERS

- A. Intent to Submit a Bid. A request for Bid Proposal and Bid Documents will be considered as intent to submit a Bid. The Bidder's name will appear on the planholder's list showing all planholders and will be forwarded all Addenda issued. In the event the planholder elects not to submit a Bid, it is requested that notification of such fact be furnished to the University of Kentucky, Capital Project Management, Capital Construction Section, on or before five (5) days prior to the closing date for receipt of Bids.
- B. Planholder and Addenda Listing. The published planholder and Addenda listing is for general information purposes and the exclusion or inclusion of any firm in no way constitutes and/or implies approval or disapproval of the qualifications of any Bidder, Subcontractor, material or equipment supplier. If the Bidder or planholder notes nonreceipt of any of the listed Addenda, it shall be their responsibility to obtain missing copies from the Capital Project Management, Capital Construction Section or review same at any of the designated reporting agencies offering the Bid Documents for review.

ARTICLE 16 - POST BID REVIEW AND MATERIAL SUBMITTAL

The Bidder should have a responsible authorized representative at the bid opening. The Bidder's representative shall have the authority and be qualified to respond to questions that may arise about the Bidder's Bid submittal. The representative of the apparent low Bidder may be required to participate in the post Bid review of the apparent low Bid proposal, and if required by the Bid proposal, the completion and submittal of the material and equipment listing. The post Bid review will include representatives of the Consultant, representative of the apparent low Bidder and required University personnel. Preliminary review will be directed toward Subcontractor, material listing, Unit Prices, and qualifications of the Bidder. Failure to have a representative at the Bid opening may be cause for rejection of Bid.

ARTICLE 17 - EQUAL EMPLOYMENT, NONDISCRIMINATION, DIVERSE BUSINESS ENTERPRISE PARTICIPATION

- A. Discrimination Prohibited. The University of Kentucky is committed to a policy of providing equal job opportunities on public contracts and prohibiting discrimination based on race, creed, color, sex, age, religion, national origin, or disability in employment.
- B. Use of Diverse Business Enterprises (DBE). The utilization of Diverse Business Enterprises is encouraged in all construction and renovation projects at the University of Kentucky. All Contractors should make full efforts to locate and use DBE's in the bidding of this project. For assistance in identifying DBE vendors and subcontractors, the contractors may contact the Kentucky Office of Minority Business

Enterprises, 2329 Capitol Plaza Tower, Frankfort, Kentucky 40601, Telephone No. (502)564-2064, The Office of Equal Opportunity, Contract Compliance, New Capital Annex Building, Frankfort, Ky. 40601, Louisville Minority Business Development Center, 835 W. Jefferson Street, Suite #205, Louisville, Kentucky 40202, Telephone No. (502)589-7401 and Louisville Minority Business Development Center, The Bennington Corporation, 611 West Main Street, Louisville, Kentucky 40202, Telephone No. (502)589-6232.

- C. Equal Employment Opportunity. Bidders and subcontractors are required to comply with Federal Executive Order 11246 entitled "Equal Employment Opportunity" as amended.

The provisions of KRS 45.560 through 45.640, known as the Kentucky Equal Employment Act of 1978, hereinafter referred to as the Act, shall be binding upon the declared successful Bidder and any subsequent

002113 01 Instruction to Bidders

ARTICLE 17 - EQUAL EMPLOYMENT, NONDISCRIMINATION, DIVERSE BUSINESS ENTERPRISE PARTICIPATION (Continued)

contract awarded to the Bidder, except that a Contractor or subcontractor otherwise subject to the provisions of KRS 45.570 is exempt as to any affirmative action or reporting requirements if:

- i) The contract or subcontract awarded is in the amount of \$250,000.00 or less, and the amount of the contract is not a subterfuge to avoid compliance with the provisions of this Act.
- ii) The contractor or subcontractor utilizes the services of fewer than eight (8) employees during the course of the contract.
- iii) The contractor or subcontractor employs only family members or relatives.
- iv) The contractor or subcontractor employs only persons having a direct ownership interest in the business, and such interest is not a subterfuge to avoid compliance with the provisions of this Act.

All compliance reporting shall be directed to the University of Kentucky, Compliance Officer. It shall be the responsibility of the Contractor or subcontractor to comply with the provisions of KRS 45.560 through 45.640 unless exempted through the compliance officer.

D. Affirmative Action. The Bidder not otherwise exempted from the affirmative action or reporting requirements of the Act, shall within five (5) calendar days after being declared the successful low Bidder, submit to the University Official:

- i) A statement of intent to comply in full with all requirements of the Kentucky Equal Employment Act of 1978.
- ii) A breakdown of the Bidder's existing work force, within the Commonwealth of Kentucky, indicating the race, sex, age, position held, county and state of residence and date of employment of each employee.

The above reporting shall be on forms provided by the University of Kentucky Compliance Officer and submitted in the manner prescribed on the forms.

E. Equal Opportunity Compliance. Within ten (10) days after the receipt of this report, the University Official, through its office of Equal Employment Opportunity, Contract Compliance, will determine whether the Bidder's work force is reflective of the percentage of available DBE's in the areas from which the Bidder's employees are drawn. If a determination is made that the Bidder's work force is reflective of the percentage of available DBE's in this drawn area, the Bidder shall be "certified" and be thereby qualified for the contract and to Bid on any contract covered by this Act without filing additional data for a period of six (6) months.

If it is determined by the Official that the Bidder's work force reflects an underutilization of DBE's, the Bidder shall be so notified, and no certification be granted. The Bidder shall then have the option of filing with the University of Kentucky an affirmative action plan, indicating goals and timetables for recruiting and hiring DBE's throughout the contractor's work force. The Official shall be available, upon request of any contractor, to furnish technical assistance in fulfilling the requirements of the Act.

002113 01 Instruction to Bidders

ARTICLE 17 - EQUAL EMPLOYMENT, NONDISCRIMINATION, DIVERSE BUSINESS ENTERPRISE PARTICIPATION (Continued)

If the Bidder is subsequently awarded the Contract being sought, failure to comply with the goals and timetables set forth in the affirmative action plan shall be an unlawful practice under the Act and shall constitute a material breach of contract.

If the Official determines that the submitted affirmative action program does not fulfill the provisions of the Act, the Bidder shall be so notified, and no certification shall be granted.

If the Bidder's work force is not reflective of the percentage of minorities in the drawing area and he has complied with all other affirmative action requirements in the Act, he may certify by verified affidavit that he has made every reasonable effort to comply with said percentage requirements and he shall thereafter be entitled to all benefits of the Act.

Failure to comply with the requirements of the Act after contract award, may result in payments being withheld pending satisfactory fulfillment of contractual obligations.

ARTICLE 18 - ANTI-KICK BACK

All Bidders shall comply with the Copeland "Anti-Kick Back" Act (18 USC 874) as supplemented in the Department of Labor Regulations (29 CFR, Part 3). This Act provides that each Bidder, subcontractor or subgrantee is prohibited from inducing, by any means, any person employed in the construction, completion or repair of public work to give up any part of the compensation to which he is otherwise entitled.

ARTICLE 19 - COMPLIANCE WITH KENTUCKY'S COMPENSATION AND UNEMPLOYMENT INSURANCE LAWS KRS 45A.480

The successful contractor will be required to assure, by affidavit, that all contractors and subcontractors employed, or will be employed, under the provisions of the contract shall be in compliance with Kentucky requirements for Worker's Compensation Insurance according to KRS Chapter 342 and Unemployment Insurance according to KRS Chapter 341.

END OF SECTION