

# Instructions to Bidders

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# 1 Purpose

The purpose of these instructions to bidders is to explain the process and rules related to bidding for this Hennepin County contract, including how the County determines who is awarded a contract, how to prepare and submit a bid, and reasons that a bid may be rejected.

Bids are generally submitted in the county's electronic bidding system, [Supplier Portal](#). In order to submit a bid, you must first register with the Supplier Portal. **Register early to allow enough time to resolve technical issues which could cause you to miss out on this contract opportunity.** For more information on how to register, go to the [Supplier Portal help page](#).

# 2 How a contract is formed

## 2.1 What is a bid?

Any person or entity submitting a response to the County's solicitation is defined as a Bidder. Bidder's submission of firm pricing, responses to questions, and all documents and comments in response to the solicitation is defined as a Bid. Submitting a Bid is not an invitation to make an offer but is a definite enforceable offer to contract in and of itself. Bids will remain firm offers for a period of ninety (90) days after the end date of the solicitation. Bidder may not withdraw its Bid during this firm bid period.

## 2.2 How does the County award a contract?

The County may accept a Bidder's Bid by providing a notice of award letter. The County's acceptance of a Bidder's Bid forms a valid, binding and enforceable contract between Bidder and the County.

If the firm bid period has expired and the County desires to accept a Bidder's Bid, Bidder may continue to hold its Bid as a firm offer or Bidder may withdraw its Bid, thereby withdrawing its offer, by providing the County with written notice.

## 2.3 What are the contract requirements?

The following documents form the contract and contain the binding contractual requirements between the County and a Bidder whose Bid has been accepted, unless the County specified otherwise in the Bid Documents:

- The Bid Documents, defined as all of the documents in the Supplier Portal Event Package, which may include the following: these instructions to bidders, the sourcing event summary, the standard terms and conditions, the special terms and conditions and any specifications, drawings, exhibits, attachments, and addenda;
- Bidder's Bid;
- The County's notice of award letter sent to the Bidder; and

- Other County forms, as applicable.

## **2.4 If awarded the contract, what will happen if I refuse to honor my bid or perform?**

If the awarded Bidder fails or refuses to honor its Bid or to fulfill the agreed upon contract obligations, the County may:

- Take action against Bidder for breach of contract;
- Elect to exercise its right to retain any bid security in favor of the County as liquidated damages, not as a penalty; and/or
- Exercise any other right or remedy available to County under the contract, law, statute, rule and/or equity.

## **2.5 What happens next if the awarded Bidder refuses to honor their bid or perform?**

The County may then:

- Award a contract to a different Bidder;
- Reject all Bids;
- Resolicit the goods and/or services;
- Otherwise acquire the goods or perform the services; and/or
- Take other actions as the County deems appropriate.

# 3 How to review the Bid Documents

## **3.1 Where do I find the Bid Documents?**

The County's Bid Documents are available for public review in the [Hennepin County Supplier Portal](#) before the end date and time of the solicitation by clicking on "View Event Package".

## **3.2 What if I see errors or have questions after reading the Bid Documents?**

Bidders must study the Bid Documents and examine the site and local conditions if applicable. Bidders must promptly notify the County Purchasing representative of any errors, omissions, ambiguities or inconsistencies. Bidders must email the County Purchasing representative no later than seven (7) calendar days before the end date and time of the solicitation with any questions. Bidder must not take advantage of errors, omissions, ambiguities or inconsistencies in the Bid Documents.

### **3.3 Can the Bid Documents be changed?**

The County may make changes or clarifications to the Bid Documents by addenda. Addenda are binding on all Bidders. The County will post any addenda in the Supplier Portal for public review. At the County's discretion, the County may also email addenda to all potential Bidders who are specifically known by the County Purchasing representative to be interested in the solicitation, have accepted the solicitation, or have been invited to a solicitation. The County will not issue addenda within four (4) calendar days prior to bid opening, except an addendum cancelling the solicitation or extending the end date and time of the solicitation.

### **3.4 What do I need to do if there is an addendum?**

Bidder must acknowledge receipt of all addenda issued. Notwithstanding anything to the contrary, if Bidder has not acknowledged addenda, the County Purchasing Manager may exercise any of the following as determined by the County to be in the County's best interest:

- Allow Bidder to acknowledge addenda after Bids have been opened with no change to the Bid;
- Determine that addenda do not materially affect the Bid; or
- Reject Bidder's Bid as not responsive.

### **3.5 Can the solicitation be cancelled?**

The County reserves the right to cancel the solicitation.

## **4 Quality of your goods and/or services**

### **4.1 What are the quality standards?**

Bidder should be aware that, if the County accepts Bidder's Bid, the resulting contract will require the Bidder to represent and warrant that their goods and/or services, as applicable:

- Comply with the Bid Documents;
- Are fit for the purpose(s) for which they are intended;
- Are fit for merchantability;
- Are free from faults and defects;
- Are brand new and are not refurbished or used;
- Comply with applicable health and safety standards;

- Conform to ordinary standards of care;
- Reflect Bidder's assessment of the local conditions under which the contract work will be performed; and
- Are compatible with the equipment and/or system in the environment in which it will be utilized, as indicated in the Bid Documents.

#### 4.2 Can I submit an equal product instead of the brand name specified?

A brand name is the identification of products by manufacturer, make, model name and/or model number. If the County specified a brand name product in the Bid Documents, the County will, to promote free and full competition, also consider proposed equal products, unless otherwise specified in the Bid Documents. Bidders are encouraged to propose equal products when permitted. Equal products must comply with the specifications in the Bid Documents and must be equal in quality and characteristics to the stated brand name product. Whenever an item is identified by using a brand name, the intent is:

- To be descriptive, not restrictive; and
- To indicate the quality and characteristics desired.

See Section 5.1 for information on how to bid an equal product.

## 5 How to bid

### 5.1 How do I prepare my bid?

- Bidders registered with the Supplier Portal can bid on a solicitation by clicking on "Bid on Event". If opting to submit a printed bid in accordance with Section 5.3, Bidders can click on the relevant event in the Supplier Portal, click "View Event Package", and locate and print the "Sourcing Event Summary".
- Bidders must complete all general questions, all line item questions identified as "Respond to Bid Questions", if any, and input unit prices marked as required by the solicitation.
- The quantities specified for each item in the solicitation are estimated quantities for the contract term, unless otherwise specified in the Bid Documents. The County reserves the right to increase or decrease the actual quantity ordered with no change in the unit price.
- Bidders must not include federal, state, or local taxes in its Bids. Bidders must factor in all costs to provide the goods and/or complete the services in its bid prices, including but not limited to, delivery/freight to the destination designated in the Bid Documents, handling, installation, assembly, insurance, licenses, and royalties. If Bidder is awarded a contract, invoices containing any charge not specified in its Bid will be rejected.

- If Bidder is bidding an equal product, Bidder must state so on the Bid and clearly identify the manufacturer and brand name of the product proposed. Bidder must include descriptive material in its Bid in order for the County to determine exactly what Bidder proposes to furnish and whether the product proposed complies with the Bid Documents. It is Bidder's responsibility to ensure that the County has sufficient information to make that determination. Bidder may be required to furnish a sample of the proposed equal product. The County will determine equality at its sole discretion. The County reserves the right to reject a Bid if Bidder fails to bid the quality specified or comply with this Section.
- If Bidder is proposing to modify a product to make it comply with the Bid Documents, Bidder must attach to its Bid a clear, descriptive statement of the proposed modifications and any other supporting documentation to show the proposed modifications. Product modifications proposed after the end date of the solicitation will not be considered. The County reserves the right to reject a Bid for a product that has been modified.
- If any line item in a bid solicitation is based on a percent mark-up or percent discount from a manufacturer's price list, Bidder's retail price, or other price schedules, Bidder must provide the specified price schedule as requested by the County.

## **5.2 Do I need to include bid security with my Bid?**

Bid security is a deposit submitted with a Bid that may be forfeited if the awarded Bidder fails or refuses to honor its Bid or to fulfill the agreed upon contract obligations. If required by the Bid Documents, Bids must be accompanied by a bid security in the form and amount specified in the Bid Documents and made payable to the Hennepin County Treasurer. If a check is required, it must be a certified check. If a bid bond is required, it must be issued by a corporate surety authorized to do business in the State of Minnesota.

If bid security is required, Bidder must attach a photocopy of the bid security to its Bid. After the end date of the solicitation, the County may require Bidder to deliver bid security within three (3) business days to the Hennepin County Purchasing Office, A-1730 Government Center, Minneapolis, Minnesota 55487-0175.

The County has the right to retain the bid security of Bidders to whom an award is being considered until either:

- The contract has been awarded and payment and/or performance bonds, if required, have been furnished;
- The specified time has elapsed so that Bids may be withdrawn; or
- All Bids have been rejected.

## **5.3 How do I submit my Bid?**

Bidder is encouraged to submit its Bid via the Supplier Portal, unless the County specified otherwise. For bids submitted through the Supplier Portal:

- Because the Bid is an offer to enter a contract that, upon acceptance by the County, will form a valid contract, the Bid must be signed by the person or persons legally authorized to bind Bidder to a contract. The Bid is considered signed when Bidder clicks on "Sign Submission" in the Supplier Portal.
- The Bid is successfully submitted when "Sign Submission" is clicked no later than the end date and time of the solicitation. The official time is based on the time clock in the Supplier Portal. When the Bid is successfully submitted, Bidder will receive a successful bid confirmation email from the Supplier Portal, and the status is "Posted" in the Supplier Portal.
- Bidder uses the Supplier Portal at its own risk per the Hennepin County Supplier Portal User Agreement. Bidders are solely responsible for ensuring that any attached documents are not corrupted, are in an accessible format and are virus free.

Alternatively, Bidder has the option to print, complete and submit the sourcing event summary form in lieu of submitting a Bid via the Supplier Portal. For paper bids completed on the sourcing event summary form:

- Because the Bid is an offer to enter a contract that, upon acceptance by the County, will form a valid contract, the Bid must be signed by the person or persons legally authorized to bind Bidder to a contract.
- The Bid must be enclosed in a sealed opaque envelope. The following information must be on the envelope: (1) "Hennepin County Purchasing Office, A-1730 Government Center, Minneapolis, Minnesota 55487-0175"; (2) "Bid for (TITLE AND EVENT NUMBER)"; (3) Bidder's name and address; and (4) the end date and time of the solicitation. If the Bid is submitted to the Purchasing Office by express mail, the sealed envelope must be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.
- The Bid must be received in the Purchasing Office no later than the end date and time of the solicitation. The official time is based on the time clock in the Purchasing Office. Bids received after the end date and time of the solicitation will not be considered for award. Bidder must assume full responsibility for timely delivery.

Bids submitted verbally or through facsimile, email, telephone, or any other submission method not described above in this Section are invalid and will not receive consideration.

#### **5.4 Can I edit or withdraw/cancel my Bid?**

Bidder may edit, submit, resubmit and/or cancel or withdraw its Bid at any time before the end date and time of the solicitation. For instructions go to the [Supplier Portal help page](#)

## 6 How the County determines who is awarded a contract

### 6.1 How do I find out the bid results?

Bids which have been successfully submitted by Bidder and received by the County before the end date and time of the solicitation will be opened publicly, at which time the name of Bidder, total Bid price, and any discounts are read aloud. The County will post an unaudited tabulation of the Bids on the Supplier Portal or will make it available publicly in another manner.

All other data in Bidder's Bid are nonpublic until the award process has been completed. After the award process is complete, all Bids are public, except data or information clearly asserted by Bidder to be trade secret data and determined by the County to be private/nonpublic data in accordance with applicable law. Requests to obtain Bids can be made through Hennepin County's online [data request portal](#).

### 6.2 On what basis does the County make an award?

- It is the intent of the County to award a contract to the lowest priced responsible Bidder that submitted a responsive Bid.
- The County may make multiple awards if it is in the County's best interest.
- When there are multiple line items in a solicitation, the County reserves the right to award the contract in whole or in part, by item or group of items where such action serves the best interest of the County.
- If two (2) or more responsible Bidders submit responsive Bids with a low-tied Bid price, the County will award to the small business enterprise certified by the [Central Certification \(CERT\) Program](#). If the low-tied Bidders are both SBEs or there is no SBE, the County Purchasing Manager will resolve low-tied Bids in a manner which the County Purchasing Manager deems unbiased (e.g. coin toss or drawing out of a hat).

### 6.3 How is the bid price calculated?

The total Bid price includes any price discounts, including early payment discounts when such discounts are requested by the County in the Bid Documents. If there is a discrepancy between unit prices and any extended prices, the unit prices will prevail. If there is a discrepancy between a percent discount or mark-up and that percent is expressed in dollars, the stated percent discount or mark-up will prevail over the expressed dollars.

Bid prices must remain firm throughout the contract term and any contract extension period unless the Bid Documents allow a price adjustment according to an escalation clause. Bidder's percent mark-up or percent discount must remain firm throughout the contract term and any contract extension period. If the percent mark-up or percent discount is based on a price schedule, that price schedule will become part of the contract and must not change unless otherwise specified in the Bid Documents.



#### **6.4 Will I need to send additional information to the County?**

The County reserves the right to request additional information such as references or product samples. Bidder must comply with any request to provide the County additional information by the deadline established by the County. Failure to submit requested additional information will be just cause for eliminating Bidder from further consideration for award. All samples must be provided free of charge. Samples will be returned or picked-up at Bidder's expense with no liability to the County for any loss or damage. If Bidder fails to pick-up or arrange for the return of the samples within thirty (30) calendar days of the County's request to return the sample, they will be considered the County's property to use or dispose.

#### **6.5 For what reasons can a Bid be rejected?**

The County reserves the right to reject all bids. The County reserves the right to reject a Bid for the following reasons, in its sole discretion:

- The County deemed the bid non-responsive, for reasons to include, but not be limited to:
  - The Bid was incomplete;
  - Bidder took exceptions to the Bid Documents;
  - The Bid did not comply with the specifications;
  - Bidder did not acknowledge addenda;
  - The Bid included written communication to negotiate bid price(s) or terms and conditions;
  - Bidder's bid price(s) was excessively unbalanced either above or below reasonable bid price(s) as determined by the County;
  - Bidder did not comply with the County's request for additional information according to Section 6.4;
  - The Bid was not prepared in the Supplier Portal or on the sourcing event summary bid form provided by the County and therefore did not include a statement of noncollusion; or
  - The Bid included any other irregularity.

The County reserves the right to waive any non-material irregularities in any Bids received.

- The County deemed Bidder not responsible and unlikely to meet the requirements of the contract. The County's assessment may include, but is not limited to:
  - Experience of the Bidder;
  - Capability to successfully meet the requirements of the contract;
  - Financial ability of the Bidder to successfully meet the requirements of the contract;
  - Bidder's performance on previous County contracts; or
  - Bidder's performance with other governmental entities or businesses.

- Bidder colluded with competitors to fix prices, rig bids, or engage in other anticompetitive activity. Collusion is prohibited. Upon evidence that collusion exists among Bidders, none of the Bids of participants in such collusion will be considered and all involved Bids will be rejected.
- Bidder, its subcontractors, or its affiliates are barred from doing business with either the Federal or State of Minnesota Governments as a result of debarment proceedings. Persons or entities are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third party controls or has the power to control both. The ways to determine 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 which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.