

TOWN OF ST. MICHAELS
INSTRUCTIONS TO BIDDERS

1. BIDS:

a. In these Instructions to Bidders and in the Town's General Conditions, (1) the term "bid" shall include the term "proposal", and vice-versa; (2) the terms "Invitations to Bidders" or "ITB" shall include the terms "Request for Proposals" and "RFP", and vice versa; and the term "Contractor" shall include the term "Consultant" or "Vendor".

b. Bids will only be accepted by the Town of St. Michaels, Maryland, if submitted in accordance with these instructions, the General Conditions and any other attached bid documents. A bid security in the amount of Five Percent (5%) of the bid amount (if the IFB contemplates a multi-year Contract, 5% of the total first year bid) in the form of the Bid Bond which is attached to this Instruction to Bidders, shall accompany this bid.

c. Bidders shall have all documents submitted to the Town signed in **BLUE** ink.

2. QUALIFICATIONS OF BIDDERS:

The Town may make such investigation as it deems necessary to determine the ability of the Bidder to furnish the services and the Bidder shall furnish to the Town all such information and data for this purpose that the Town may request. The Town reserves the right to reject any bid if the evidence submitted by the Bidder or an investigation of such Bidder fails to satisfy the Town that such Bidder is properly qualified to carry out the obligations of the contract.

3. RESERVATIONS:

The Town reserves the following rights, in addition to any otherwise available to it by law:

- a. To waive formalities or technicalities in bids as the interests of the Town may require;
- b. To waive minor differences in specifications provided these differences do not violate the intent of the specification or materially affect the operation for which the item is being acquired;
- c. To reject bids which show omission, irregularity, alteration of forms, or additions not called for, and conditional or unconditional, unresponsive bids or bids obviously unbalanced;
- d. To award contracts on a lump sum or an individual item basis or such combination thereof as the interests of the Town may require. The manner in which the award will be made is indicated on the Bid Summary Sheet;
- e. To purchase additional like units at the same unit cost as listed in the Line Item Bidding section of the Bidder's response to the solicitation in Bid Locker.
- f. To reject or accept any or all bids or portion thereof where such acceptance or rejection would, in the Town's sole discretion, be in its best interests ;
- g. To reduce or modify the scope of the Project in order to meet funding limits or budget and scheduling constraints; and
- h. To advertise for new bids.

4. REQUIRED ATTACHMENTS TO BIDS:

Each bid shall be accompanied by the following documents: Bid Certification Form (if required by the ITB, including the agreement template included therewith), Equal Opportunity Employer & Drug Free Workplace Certification, Affidavit of Public Contracting Eligibility, and Reference List as included with this ITB package.

5. WITHDRAWAL OF BIDS OR PROPOSALS; ACCEPTANCE OR REJECTION OF BIDS OR PROPOSALS:

Prior to the time of opening, bids may be withdrawn only upon written request received from Bidder. The Town will accept or reject bids within ninety (90) days of the date set for opening bids. No Bidder may withdraw its bid for a period of ninety (90) days after opening of the bids.

6. WAIVER OF WARRANTIES AND DAMAGES:

The Town will not accept contractual provisions that purport to waive implied warranties of merchantability or fitness for a particular purpose. The Town will not accept contractual provisions that purport to limit damages to amounts paid to the bidder under any contract formed in connection with this bid or to exclude a category of damages that would otherwise be available to the Town under Maryland law. By submitting a bid to the Town for the services or products that are the subject of this bid, the bidder agrees that any such provisions proffered shall be and are rejected and shall be inoperative with respect to any contract formed between the parties with respect to this bid.

7. NOTICE OF AWARD, SIGNING OF CONTRACT AND BONDS:

The bidder chosen for the contract award agrees to sign a contract in substantially the form included in the Invitation for Bids binding the bidder to the terms of this bid as set forth in the contract documents within seven (7) after notice of award. Failure of the Bidder to do so may result in the loss of its bid security and/or its award of bid.

8. ADDENDA:

Any addenda issued after the Invitation for Bid and before the opening of bids shall be acknowledged in the bid submission by submitting a signed and dated copy of the addenda as acknowledgement of receipt which shall become part of the bid.

9. BID DOCUMENTS:

Bidders must examine all bid documents and any specifications carefully. In case doubt shall arise as to the meaning or intent of anything shown in the bid documents or specifications, inquiry shall be made of the Town before the bid is submitted. The submission of a bid shall indicate that the bidder thoroughly understands the terms of the bid documents and any specifications.

10. BID PRICE SUBMISSION:

- a. The required Contract forms and attachments are included in the ITB package.
- b. With respect to contracts other than those for services only, bids in which the prices obviously are unbalanced may be rejected. Unbalanced prices shall be interpreted to mean that

the unit price for any item is such that it is unreasonable for that particular item when considered by itself and not considered in connection with the bid submitted on any other item or items.

- c. Bids shall be based on products, materials and methods named in the Bid Documents.
- d. The bidder assumes full responsibility for timely submission of its bid.
- e. Bids will be opened and read aloud at the date and time specified in the ITB.

11. EXECUTION OF THE AGREEMENT:

a. A copy of the form Agreement is included with the bid package. Changes may be made to the form Agreement in the sole discretion of the Town and the bidder should not rely on an expectation of changes in the Agreement. The bidder to whom the Contract is awarded shall return two copies of the Contract and such other documents as required by the Invitation for Bids properly executed to the Town within seven (7) days after the date of issuance of the Notice of Award.

b. Failure by the bidder to execute the Agreement and submit such other documents as required by the bid documents and file acceptable insurance certificates and bonds within the time established shall be cause for termination of the Award. The Agreement may then be awarded to the next lowest responsive and responsible bidder or the Work may be re-advertised and constructed under contract or otherwise, as the Town may decide. All additional costs incurred by the Town to reprocure the services shall be assessed against the bidder and/or its bid security.

c. Before submitting bids, prospective bidders should carefully examine the proposed contract documents, inspect the site of the proposed project, acquaint themselves with all governing Federal, state and local laws, ordinances, and regulations, and otherwise thoroughly familiarize themselves with all matters which may affect the performance of the project, including if applicable, grant requirements. The act of submitting a bid shall mean that the bidder has so familiarized itself and, therefore, no concession will be granted by the Town because of any claim of misunderstanding or lack of information. Bidders are expected to read and study the drawings and specifications with special care and to observe all their requirements. Discrepancies, ambiguities, errors, or omissions noted by bidders should be reported promptly to the Town's contract specialist for correction or interpretation before the date of the opening of bids.

13. BID SUBMITTAL LIMIT:

A bidder may submit only one bid for each Invitation to Bid. More than one Bid from an individual, firm or partnership, corporation, limited liability company or association under the same or different names will not be considered, and will be considered grounds for disqualification of the Bids involved, and rejection of the bids.

14. GRANT-FUNDED CONTRACTS:

This Agreement may be funded, in whole or in part, using federal or State grant funds and may therefore be subject to conditions imposed by regulations of the governmental entity providing

such funds. Such funding, if any, will be identified in the description of the Work or Services included with this Invitation for Bids. It is the bidder's responsibility to determine the scope and requirements of and to comply with the terms of any regulations relating to or governing the use of such grant funds. Such regulations may under certain circumstances include, but are not limited to, payment of prevailing wage rates, the purchase of materials manufactured in the United States, the maintenance of specific records for specific periods of time, and/or approval of subcontracts.

15. SUBMISSIONS ARE PUBLIC INFORMATION:

Procurement information, including responses to IFBs shall be a public record to the extent provided in the Maryland Public Information Act, Md. Ann. Code, General Provisions Article, Title 4, and shall be available to the public as provided in such statute. Bidders shall not make blanket assertions that the entirety of their submission is confidential. Rather, should a bidder contend that their bid or a portion thereof contains confidential information, they should clearly identify which portion of their bid should be treated as confidential and state the reason why it is confidential citing to the applicable provision(s) of the Maryland Public Information Act and decisions interpreting the Act. The Town reserves the right, within the parameters of the Act, to determine that an item does not meet the appropriate criteria to be considered a confidential item and will so inform the bidder in writing of its determination. Further, the affidavit required by Section 12 of these Instructions to Bidders shall also indicate the bidder's understanding that all documents, information and data submitted in its Bid shall be treated as public information unless otherwise indicated.

TOWN OF ST. MICHAELS

GENERAL CONDITIONS

1. CONTRACTOR PERFORMANCE:

The Town engages the Contractor to perform the Services based upon Contractor's stated experience in performing similar services. Accordingly, the Contractor is expected to be familiar with all applicable laws, codes and industry standards and to perform the Services in strict compliance therewith. The Contractor shall provide the Services in accordance with the standards to which an experienced and competent Contractor using the degree of care and skill ordinarily exercised by a reputable Contractor performing such services in Maryland customarily adheres. When approval by the Town is required, such approval is understood to be general approval only and does not relieve the Contractor of responsibility for complying with all applicable laws, codes and good practices. The Contractor shall diligently and competently render all Services necessary or advisable for the project.

2. DISPUTES:

In case of a dispute as to whether or not an item or service quoted or delivered meets the specifications, the decision of the Town shall be final and binding on both parties.

3. COMPLETION OF WORK:

a. **TIME IS OF THE ESSENCE.** The Contractor for this work will be expected to deliver the product within the number of calendar days stipulated in the bid documents.

b. If the Contractor is delayed at any time in the delivery of the services or products by any act or negligence of the Town, or by any act or negligence by separate Contractor employed by the Town, or that of any employee of either, or by any changes ordered in the materials or by strike, lockout, fires, unusual delays in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Town, the Town in sole discretion shall decide the permissible extent of such delay.

4. FAILURE TO DELIVER:

In the event the Contractor fails to deliver the services and materials covered by the Contract and in accordance with the delivery terms stipulated in the contract, then the Town will have the right to terminate the contract for default and purchase on the open market the services and/or materials covered in the Contract and shall have as damages the cost of obtaining such services and/or materials shall be assessed against the Contractor and/or its surety.

5. PERFORMANCE AND PAYMENT BONDS:

If required by the ITB package, including the agreement template included therewith, the Contractor will be required to give Performance and Payment Bonds or Letters of Credit acceptable to the Town within five (5) business days after the date of the fully executed contract.

¹ The term "Work" shall have the same meaning as the words "services" and "project".

The Performance Bond or Letter of Credit, if required, shall be one hundred percent (100%) of the contract price, conditioned upon the Contractor complying in all respects with the terms and conditions of its contract, and indemnifying the Town against and from all costs, expenses, damages, injury or loss to which said Town may be subjected by reason of any wrong doing, misconduct, want of care or skill, negligence or default upon the part of the Contractor in the execution or performance of this contract. The Payment Bond or Letter of Credit, if required, will be fifty percent (50%) of the contract price. These Bonds or Letters of Credit, if both are required by the ITB, including the agreement template included therewith, shall be executed with the same surety. Whenever the surety on the bonds or letters of credit so furnished shall be deemed by the Town to be insufficient or unsatisfactory, the Contractor shall, within ten (10) days after notice to that effect, furnish and deliver new bonds or letters of credit to the Town in the same penalty and on the same conditions, with surety satisfactory to the Town, and this duty shall continue on the part of the Contractor, whenever and so often as the Town shall require new bonds or letters of credit with a satisfactory surety. If the Contractor shall fail to furnish such bonds or letters of credit within ten (10) days after said notice is mailed to his address, the Town through its proper agent, may stop all further work under the Contract and re-let the unfinished work at the expense of the Contractor.

6. MAINTENANCE BOND:

A. If required by the ITB package, including the agreement template included therewith, the Contractor will be required to issue a Maintenance Bond in the amount of 5% of the Contract amount for a period of one year from the date of substantial completion. Such bond will designate the Town as the Obligee and the Contractor as the Principal. The Bond shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the State of Maryland. The expense of this Bond shall be borne by the Contractor.

B. If at any time a Surety on any such Bond is declared bankrupt or loses its right to do business in the State of Maryland, the Contractor shall, within 10 days after notice from the Surety Company, substitute an acceptable Bond in such form and sum and signed by such other surety or sureties as may be satisfactory to the Town. The premiums on such Bond shall be paid by the Contractor. No further payments shall be deemed due or shall be made until the new surety or sureties shall have furnished an acceptable Bond to the Town.

C. Should the Contract price be increased by 25% or more before Final Acceptance, the amount of the Maintenance Bond shall be increased accordingly.

7. INSURANCE:

Unless other amounts are specified in the ITB package, the Contractor shall maintain the following insurance coverages, and shall provide Certificates evidencing such insurance to the Town before beginning work. Certificates of Insurance shall be on an occurrences basis. The Contractor shall

name the Town as additional insured to the required insurance policy and will furnish a Certificate of Insurance or other acceptable evidence of insurance coverage to the Town upon signing the contract.

a. **Comprehensive Liability Insurance:** Limits of Coverage (Applies only to Contractors performing services in and/or for the Town; not for supply only Contracts) Limits of coverage for commercial general liability and broad form property damages coverage are to be no less than One Million Dollars (\$1,000,000.00) occurrence/Two Million Dollars (\$2,000,000.00) aggregate personal injury and death and Five Hundred Thousand Dollars (\$500,000.00) property damage/ One Million Dollars (\$1,000,000.00) aggregate, where insurance aggregates apply. If required by the ITB package, including the agreement template included therewith, property damage insurance shall include explosion, collapse, and underground damage (X, C, U).

b. **Automobile Liability Insurance.** Motor vehicle insurance meeting the requirements of Maryland law and covering every vehicle and driver involved in providing the services, in the following amounts:

(1) Bodily injury liability with limits of \$500,000.00 each person and \$1,000,000.00 each accident;

(2) Property damage liability with a limit of \$300,000 each accident.

c. **Workers' Compensation:** Contractor shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation.

8. **TAXES:** The Contractor shall pay all sales, consumer, use and other similar taxes required by applicable law to be paid with respect to the work performed or the materials or equipment furnished. The Town of St. Michaels is exempt from the payment of such taxes with respect to items purchased directly.

9. **INDEMNIFICATION:**

The Contractor will be required to indemnify, defend and hold the Town harmless in accordance with the sample agreement included with this Invitation for Bids.

10. **TESTING AND INSPECTION:**

For contracts other than services-only contracts, the Town has the right to inspect and test all services and materials called for by the contract, to the extent practicable at all times and places during the term of the contract. The Town shall perform inspections and tests in a manner that will not unduly delay the work. If any of the services and/or materials do not conform to contract specifications, the Town may require the Contractor to perform the service or again provide a replacement product in conformity with contract specifications, at no increase in contract amount.

11. **WARRANTY [NOT APPLICABLE TO CONTRACTS FOR SERVICES ONLY]:**

A. The Contractor hereby warrants its work performed on, and/or material furnished to the Work of this Project for the time period of one (1) year, unless specified otherwise. The work

and/or material is guaranteed to remain free from all defects and guaranteed to comply with all requirements of the Specifications and other Contract Documents governing the Work of this Project. Should there be any defects in the workmanship and/or materials requiring repair and/or replacement, the Town shall notify the Contractor in writing immediately upon discovery and must allow the Contractor to make the repairs and/or replacement to any of the Work performed under this Project by the Contractor within seventy-two (72) hours after notification by the Town.

B. In addition to other promises and warranties contained herein the Contractor specifically warrants to the Town that Materials and Equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirement of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by the Town's abuse, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Town, the Contractor shall furnish satisfactory evidence as to the kind and quality of Materials and Equipment.

c. Neither the final certificate of payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the Town shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any expressed or implied warranties or responsibility for faulty Materials or Equipment or workmanship. This Warranty will have no time limit except those prescribed by law. Nothing in this Section shall be construed to shorten any applicable statute of limitations or to limit any remedies available to the Town at law or in equity for any failure of the finished project to perform as intended due to any fault of the Contractor or its agents, employees, or subcontractors.