

PRINCE GEORGE'S COMMUNITY COLLEGE

**MANDATORY
CONSTRUCTION
CONTRACT
CLAUSES**

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MANDATORY CONSTRUCTION CONTRACT CLAUSES

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PRINCE GEORGE'S COMMUNITY COLLEGE
MANDATORY CONSTRUCTION CONTRACT CLAUSES

MCC 1 Introduction

The following clauses are incorporated by reference within each invitation for bid, solicitation, purchase order and contract for the procurement of construction entered into by the Board of Trustees of Prince George's Community College (the "College"), except to the extent, if any, that the College specifies that any particular clause is inapplicable. In these clauses, the word "Contractor" includes "Bidder", where appropriate.

MCC 2 Non-Hiring of Employees

No employee of the College, the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Contract, shall, while so employed, become or be an employee of the party or parties hereby contracting with the College, the State of Maryland or any unit thereof.

MCC 3 Maryland Law Prevails

The provisions of this Contract shall be governed by the laws of Maryland.

MCC 4 Non-Discrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a) above, in any subcontract except a subcontract for standard commercial supplies or raw materials, and (c) to post and to cause Subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

MCC 5 Cost and Price Certification

The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for any change order or contract modification.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information, which, as of the date agreed upon between the parties, were inaccurate, incomplete, or not current.

MCC 6 Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement.

For breach of this warranty, the College shall have the right to annul this Contract without liability or, in its discretion, to deduct from the price or consideration, or otherwise recover, the full amount of such fee, or other consideration.

MCC 7 Multi-Year Contracts

If funds are not appropriated or otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the College's rights or the Contractor's rights under any termination clause in this Contract. The effect of the termination of the Contract hereunder will be to discharge both the Contractor and the College from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The College will notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

MCC 8 Incorporation by Reference

All terms and conditions under the invitation to bid (or solicitation), and any amendments thereto, are made a part of this Contract.

MCC 9 Tax Exemption

The Owner is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes, and transportation taxes. Exemption certificates shall be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply.

MCC 10 Conflict of Interest Laws

It is unlawful for any State or College officer, employee, or agent to participate personally in his official capacity through decision, approval, disapproval, recommendation, advice, or investigation in any contract or other matter in which he, his spouse, parent, minor child, brother or sister has a financial interest or to which any firm, corporation, association or other organization in which he has a financial interest or in which he is serving as an officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, is a party, unless such officer, employee, or agent has previously complied with the provisions of Article 40A, Section 3-101 et seq. of the Annotated Code of Maryland.

MCC 11 Site Investigation

The Contractor/Bidder acknowledges that he has investigated and satisfied himself as to the conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the Work. The Contractor/Bidder further acknowledges that he has satisfied himself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the College, as well as from information presented by the drawings and specifications made a part of this Contract. Any failure by the Contractor/Bidder to acquaint himself with the available information may not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the Work. The College assumes no responsibility for any conclusions or interpretations made by the Contractor/Bidder on the basis of the information made available by the College.

MCC 12 **Performance and Payment Bonds**

Before the award by the College of a construction contract exceeding \$25,000, the Contractor shall provide payment security and performance security in the amount of the Contract price, except that if the Contract is not greater than \$50,000, each security shall be in the amount of one-half of the Contract price.

1. Payment security or performance security shall be
 - a. a bond executed by a surety company authorized to do business in Maryland;
 - b. cash in an amount equivalent to a bond; or
 - c. other security that is satisfactory to the College
2. The required performance bond shall be in the form attached as PGCC-C3.
3. The required payment bond shall be in the form attached as PGCC-C4.
4. The form of payment security or performance security shall be approved for the College by its attorney.
5. The Contractor shall file the security or evidence of a trust account established as security, payable to the “Board of Trustees of Prince George’s Community College”, in the Office of Procurement and Contracting.
6. At the direction of the College, the Contractor may be required to increase the amount of the security if the Contract price is increased as the result of Contract modification or change order. The reasonable cost of such increase shall be an allowable cost in determining the increase in the Contract price.

MCC 13 **Mandatory Disclosure**

Contractors providing materials, equipment, supplies or services to the College, which is deemed an agency of the State for this purpose, herewith agree to comply with Article 41, Section 89A of the Annotated Code of Maryland which requires that every business that enters into contracts, leases or other agreements with the State and receives in the aggregate \$100,000 or more during a calendar year shall, within 30 days of the time when the \$100,000 is reached, file with the Secretary of State a list containing the names and addresses of its resident agent, each of its officers, and any individual who is a beneficial owner of 5 percent or more of the contracting business.

MCC 14 **Anti-Bribery**

Contractors are required to be aware of Article 21, Section 3-405 of the Annotated Code of Maryland, which requires that any person convicted of bribery, attempted bribery, or conspiracy to bribe based upon acts committed after July 1, 1971, in the obtaining of a contract from the State or any of its subdivisions, shall be subject to disqualification pursuant to Article 21, Section 3-405, Annotated Code of Maryland from entering into a contract with the State, or any county or other subdivision of the State, for the supply of materials, supplies, equipment, or services by the person. (For purposes of this clause, the College is deemed a subdivision of the State.)

MCC 15 **Registration**

Pursuant to Section 7-201 of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the State Department of

Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201, before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.

MCC 16 EPA Compliance

Materials, supplies, equipment, or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

MCC 17 Occupational Safety and Health Act

All materials, supplies, equipment or services supplied as a result of this Contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.

MCC 18 Patent Infringement

Contractor agrees to indemnify, protect and save harmless the College, its officers, agents, and employees with respect to any claim, action, cost or judgement for patent infringement, arising out of purchase or use of materials, supplies, equipment or services covered by this Contract.

MCC 19 Contractor's Invoices

Contractor agrees to include on the face of all invoices billed to the College, its Federal Tax Identification or Social Security Number.

MCC 20 Bid Security

Unless otherwise specified, the Bidder is required to submit bid security in an amount equal to 5 percent of the amount of the bid.

1. Bid security or evidence of the posting of bid security shall be submitted with the bid. If a Bidder fails to accompany its bid with the required bid security, the bid shall be deemed nonresponsive and rejected except as provided by Section 2.
2. If a bid does not comply with the security requirements of this clause, the bid shall be rejected as nonresponsive, unless the Contract Officer determines that the deficiency in the amount of security provided is insubstantial and acceptance is in the best interests of the College, and that:
 - a. Only one bid or proposal was received and there is insufficient time to rebid the contract;
 - b. The bid security became inadequate as a result of the correction of a mistake in the bid, or as a result of a modification in the bid in accordance with applicable regulations, and the bidder increased the amount of bid security to required limits within 48 hours after the correction or modification; or
 - c. After consideration of the risks involved and the difference between the lowest bid and the next lowest bid, fiscal advantage could reasonably be expected to accrue to the College from acceptance of the lowest bid.
3. If a Bidder is permitted to withdraw a bid before award because of a mistake in the bid or proposal, action may not be taken against the bid security. Otherwise, action may be taken against the bid security of a bidder that withdraws a bid.