



MCTS Terms and Conditions for RFQs/RFBs

The following are Milwaukee County Transport System's ("MCTS") Terms and Conditions for Requests for Quotes ("RFQs") or Requests for Bids ("RFB"), collectively referred to as "**Bid(s)**". These Terms and Conditions apply regardless of the form of the resulting contract: A single Purchase Order ("PO") for one-time purchases, Price Agreements or POs allowing for repetitive purchases over a defined term, or professional services contracts.

Bid Posting: Solicitations are posted on [Bonfire \(https://ridemcts.bonfirehub.com/opportunities\)](https://ridemcts.bonfirehub.com/opportunities) and Bidders must submit their response by the deadline set forth therein. It is incumbent upon Bidders to check Bonfire for most recent addenda, forms, and information regarding the solicitation and to ensure all submissions are responsive. Electronic or digital signatures are acceptable, but subject to verification. Bidder will receive an email confirmation receipt with a unique confirmation number once the submission is finalized. Bidders may contact Bonfire at Support@GoBonfire.com for technical questions related to their submission. A help forum is found at <https://bonfirehub.zendesk.com/hc>. Note that if there are documents to be uploaded, uploading large documents may take significant time, depending on the size of the file(s) and your internet connection speed. The minimum system requirements: Internet Explorer 11, Microsoft Edge, Google Chrome, or Mozilla Firefox. Javascript must be enabled. Browser cookies must be enabled. The maximum upload file size is 1,000 MB.

Compliance with Bid Terms: Bidders acknowledge and agree they will comply with all Terms and Conditions for RFQs/RFBs set forth herein, as well as any terms and conditions set forth in the solicitation.

Method of Award: Award will be made to the responsive, responsible Bidder submitting the lowest cost based upon on the quantities provided in the solicitation. The solicitation sets forth the intended grouping of award, subject to MCTS' Reservation of Rights. Tied Bids will be resolved by randomly picking a Bidder's name from a random draw apparatus.

Method of Bid: The individuals or suppliers responding to the Bid (generically referred to as "**Bidders**") shall state Make and Model of Item(s) quoted or bid (generically referred to as "**bid**"). Bidders must submit a price for item(s) as specified within the solicitation. Prices listed must be in US dollars.

Communication: The sole point of contact regarding solicitations shall be through the Purchasing Agent listed on the solicitation document(s). (Found under "Contact Information" on Bonfire). Any communication initiated by Bidders related to a solicitation with other MCTS employees or representatives prior to the time of award may be grounds for Bid rejection, in the sole discretion of the MCTS. Bidders may only rely on written communication from the assigned Purchasing Agent in the form of a published Addendum.

Questions: Bidders may raise any questions they have concerning a solicitation via the "Ask a Question" toggle in Bonfire prior to the solicitation's deadline for questions. Bidders are expected to raise any issues regarding unduly restrictive specifications, scopes of work that violate local, state, or federal laws or regulations, any significant ambiguity, error, conflict, discrepancy, omission, necessary addition or other deficiency of the solicitation and request modification or clarification (collectively "Objections relating to Form and Content"). MCTS will post an addendum answering properly submitted questions, in its sole discretion. It is the responsibility of Bidders to check Bonfire for answers or addenda related to the Bid. Bidders must protest any Objections relating to Form and Content prior to the submission due date as more fully set forth in the Protest section. The failure to file a such Protest will constitute a waiver of the underlying issue in any subsequent Protest filed to the Notice of Intent to Award.

Addendum: An addendum or addenda will be issued to provide additional or clarifying information, to answer questions, or to revise any part of the Bid. Addenda will be distributed in the same manner as the underlying procurement. Bidders shall be responsible for checking for addenda pertaining to the Bid.

Pre-Bid Meeting: The solicitation document will set forth the date and time of any mandatory or optional Pre-Bid meeting. The purpose of this meeting is to assist Bidders in gaining a better understanding of the Bid and to assist MCTS in better understanding the marketplace or particular aspects of the procurement. Bidders may pose questions or request clarifications during the meeting. No answers furnished at the pre-bid meeting will be official until verified in writing by the Bid Administrator via an addendum.

Inspection of Premises: The solicitation will set forth the date and time of any mandatory or optional site visit or inspection of premises. It is incumbent upon Bidder to request an inspection if it would be necessary to prepare a bid response. Failure to request an inspection or adequately inspect shall not relieve the Bidder from the necessity of furnishing and installing, without additional cost to MCTS, any materials and equipment or performing any labor that may be required to carry out the intent of the contract.

Bid Opening: RFBs openings are public upon request. The names of the Bidders will be read aloud at Bid opening. Records will be available for public inspection after award of the contract. RFQ openings are not public.

MCTS' Reservation of Rights: If it is the best interest of MCTS, MCTS reserves the right to: (1) make a partial award by line item or items, make an aggregate award, make award to more than one Bidder, or make no award at all; (2) modify, cancel or re-publish the Bid at any time prior to award; (3) reject any or all Bids or any portion of any or all Bids; (4) waive minimum requirements; (5) waive minor irregularities and allow to be cured; (6) accept late Bids; and/or (7) negotiate with low Bidder regarding deliverables, all within the sole discretion of MCTS.

Responsiveness Review: The Procurement department will perform a responsiveness review of all Bid Submissions. Failure to submit all required documents or otherwise meet minimum specifications may result in rejection of the Bid as nonresponsive, subject to MCTS' Reservation of Rights herein. Note that Bids that contain irregularities, are incomplete, conditioned/qualified in any way, include alternate bids (if restricted) or are otherwise not in conformity with the law or with these instructions, may be rejected as nonresponsive.

Responsibility Review: Prior to Bid award, the Procurement Department will determine that the putative awarded Bidder(s) are Responsible, taking into account factors such as Bidders' past performance with MCTS or other entities; satisfactory record of integrity and business ethics; debarment or suspension status; compliance with affirmative action rules and Disadvantaged Business Enterprises ("DBE") or Targeted Business Enterprise ("TBE") requirements; possession of the necessary organization, experience, accounting, and operational controls, and technical skills to perform the work; compliance with applicable licensing and tax laws and regulations; financial resources; sufficient production, construction, and technical equipment and facilities to perform; and ability to meet the required delivery or performance schedule. *See* 49 U.S.C. § 5325(j). As part of this process, MCTS may request information on the Bidders' financial stability. Failure of Bidders to comply with verification requests may result in a finding that Bidder(s) are not Responsible.

Notice of Intent to Award: A Notice of Intent to Award will be issued prior to award of a RFB. No Notice of Award will be issued prior to the award of an RFQ. MCTS may negotiate all Contract terms, including the award amount, with the putative awardee. If Contract negotiations cannot be concluded successfully with the putative awardee, MCTS may negotiate a Contract with the next lowest Responsive, Responsible Bidder.

MCTS' PO/Contract: Upon Bid award, Bidders agree to accept and execute the applicable MCTS form contract, MCTS' PO, Price Agreement, or Professional Services, template versions of which are posted on MCTS' internet at <https://www.ridemcts.com/business-partners>. If the Bid is identified as a procurement funded by Federal Transit Administration ("FTA") funds, Bidders additionally agree to the inclusion of the mandatory federal terms, also posted on that site.

Quality: All items bid must be new (in the box) and unused unless otherwise specified in the specifications. No obsolete, discontinued, seconds, or defective materials or items may be used or furnished without the prior written approval of MCTS.

Minimum Specifications: All specifications are mandatory minimum requirements unless otherwise stated. Bids not meeting the minimum requirements specified will be rejected, subject to MCTS' reservation of rights.

Exclusionary or Discriminatory Specifications (49 U.S.C. § 5325(h)): MCTS does not use exclusionary or discriminatory specifications in its procurements, unless authorized by other applicable federal laws, regulations, or requirements. It is incumbent upon Bidders to bring to MCTS' attention any specification that Bidder believes discriminates against goods or services it offers. Failure to raise this issue will constitute waiver of appeal or administrative review rights based alleged discriminatory specifications.

Equal or Better: When specific manufacturer ("Brand Names") and model numbers are contained in the solicitation, they are to establish a design, type of construction, quality, functional capability and/or desired performance level. Alternatives are encouraged unless the solicitation document specifically provides for "no alternates." When alternates are bid, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. MCTS reserves the right to request full descriptive literature highlighting precise sections in the literature that demonstrate that all of the specifications meet the equal or better standard. MCTS shall be the sole judge of equivalency.

Deviations and Exceptions: Deviations and exceptions from original Bid text, terms, conditions, or specifications shall be described fully on the Bidder's letterhead, signed, and attached to the request. In the absence of such statement, the Bid shall be accepted as in strict compliance with all terms, conditions, and specifications and the Bidder shall be held liable. MCTS will not negotiate Deviations and Exceptions prior to submission deadline.

Bid Submission Binding if Awarded: MCTS may make award to a submitted Bid and create a binding contract without negotiation with the Bidder.

Conflict of Interest: Bidders certify by responding to the Bid that no MCTS or Milwaukee County employee, agent or representative or any of their immediate family member has a financial interest in Bidder or has participated in the preparation of the Bid.

Non-Collusion: Bidders certify by responding to the Bid that neither Bidders nor any persons or entities associated with the Bidders have, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a quotation; that the price set forth has been independently arrived at without collusion with any other Bidders, competitors or potential competitors; that the Bid submitted has not been knowingly disclosed to any other Bidder or competitor.

Amending a Submission: No Bid submission (generically referred to as "**Bid**" or "**Bid Submission**") may be amended after the solicitation deadline.

Withdrawal of Bid: Bids shall be irrevocable unless withdrawn. Bidders may withdraw Bids only prior to the closing date and time. After the Bid closing, MCTS' consent is necessary to withdraw the Bid Submission. Any request to withdraw the Bid after closing must be made in writing to the Purchasing Agent, detailing the reasons justifying Bid withdrawal. The determination whether to allow Bid withdrawal is in sole discretion of MCTS.

Pricing Held Firm for 90 Days: Unless an alternative time period is identified in solicitation document, all elements of the Bid Submission, including pricing, shall remain in full force and effect for 90 days.

Wisconsin Open Records Law: Bid Submissions are subject to disclosure pursuant to Wisconsin Open Records Law. Bidders' request to treat information as proprietary or confidential and withhold from disclosure must be submitted on a Request to Designate Information as Confidential and Proprietary Form with appropriate specificity and citation to statute of case law. Under Wisconsin law, pricing is not considered confidential. This document must be submitted as part of the original Bid Submission.

Certification re Legal Authority to Bind: Bidders certify that the individual signing the Bid has legal authority to bind the Bidder and further certify that all the statements, certifications, and assurances are truthfully and accurately under penalty of perjury.

Calculation of Time: The calculation of time shall be in days and hours and shall exclude Saturdays, Sundays and all holidays recognized by MCTS.

Bid Responses: All materials submitted in response to the Bid become the property of MCTS. Data contained in a Bid, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation and innovations become the property of MCTS. MCTS also reserves the right to use ideas presented in response to this Bid notwithstanding selection or rejection of Bids.

False Information: If MCTS determines that any Bidder purposefully or willfully submitted false information in response to this Bid, the Bidder will not be considered for an award and any resulting PO, Price Agreement, or Professional Services that may have been executed may be immediately terminated.

Certification re Government-Wide Debarment and Suspension: By responding to this Bid, Bidders certify that neither Bidders, their principals; their subcontractors or their principals (at any tier); or sub-recipients (if applicable) or their principals are debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or otherwise disqualified from participating in covered transactions of any federal department or agency pursuant to EO 12549 and 12689. 2 CFR Parts 180 & 1200. Bidders also certify that neither Bidders, their principals, their sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System (“EPLS”) maintained by the General Services Administration.

Bidders certify by responding to the Bid that their management has not within the preceding 3-year period been convicted of or had a civil judgments rendered against them or are presently indicted or criminally or civilly charged by any governmental entity with: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction; Violation of any Federal or State antitrust statute; or Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property. Bidders also certify that they have had one or more public transactions (Federal, State, or local) terminated for cause or default within a 3-year period and that if, at a later time, Bidders receive any contrary information, Bidders will promptly provide that information to FTA. Bidders certify they lower tiered contractors and subcontractors with commitments exceeding \$25,000, for audit services, or that otherwise require the consent of a Federal official. Bidders certify that they will provide a written explanation if it or any of its principals, or lower tiers are unable to certify compliance with these provisions.

Certification and Restrictions on Lobbying: By responding to an Bid in an amount of \$100,000 or more, Bidders certify that no appropriated federal funds have been paid or will be paid by on or their behalf to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress (or their employees), and officer or employee of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. Bidders certify that they will file a Standard Form LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions if any funds other than federal appropriated funds have been or will be paid, and covenants to include this provision at all tiers, including its subcontracts. Bidders acknowledge that 31 U.S.C. § 1352 imposes civil penalties of \$10,000-\$100,000 for failure to file such certifications (only fed over \$100k).

Single Bid: If only a single Bid is received, MCTS may require that the Bidder provide the necessary cost or pricing data to enable MCTS to perform a cost or price analysis to ensure that the Bid price is fair and reasonable. If requested, the Bidder shall provide the cost or price data within five (5) working days of the date requested.

Discrepancies: Any discrepancy between the unit price and the total price (obtained by multiplying the unit price and quantity) shall be re-computed by MCTS. The unit price shall prevail, and the total price shall be corrected. If the Bidder does not accept the final price based on MCTS' re-computation and correction of errors, the Bid will be rejected.

Bidder Costs: MCTS shall not be liable for any costs incurred by Bidders in preparing, submitting, or protesting a Bid, including but not limited to legal fees.

References: MCTS reserves the right to contact any party not listed as a reference that has previously used or is presently using Bidder's products or services. MCTS also reserves the right to use any available source to obtain or verify information about the proposed products and services.

Insurance: Bidders providing professional services agree to carry insurance naming MCTS and Milwaukee County, their officers, employees and agents as an additional insured at the coverage amounts posted on MCTS' internet (<https://www.ridemcts.com/business-partners>) if awarded the Bid.

Delivery: All pricing shall be FOB Destination, i.e. the price must reflect the "delivered pricing" with all transportation charges prepaid and borne by Awarded Bidder ("Contractor").

Firm Pricing: Pricing shall remain fixed for solicitations resulting in a single PO. Pricing shall remain fixed for the initial term of Price Agreements, multiple purchase POs, or Professional Services contracts. For renewal terms, price increases shall be at the rate reflected in CPI-U for the relevant time period listed in the solicitation. In the event a CPI-U is not included in the solicitation, any request for a price increase must be made in writing by Contractor to the Purchasing Agent listed on the PO at least sixty days in advance of the effective renewal date. Such request must be based on documented industry-wide changed market conditions beyond the control of the Contractor and verified by a letter from supplier and/or published price sheets. The price increase must be approved in writing by the Purchasing Agent prior to its effective date via a Contract/Purchase Order amendment. Contractor shall be obligated to treat industry-wide price decreases the same as industry-wide price increases and pass on such decreases onto MCTS.

Tax Exempt: MCTS is exempt from Federal Excise Tax and Wisconsin State Sales Tax. No such taxes shall be included in any solicitation response, nor will MCTS pay such taxes if included.

Governmental Pricing: MCTS is a Quasi-Governmental Instrumentality of Milwaukee County and is thus eligible for governmental contracting options available to your business (Vendor Net, SourceWell, Omnia, US Communities, NASPO, GSA, University of Wisconsin, National IPA or related State or Federal contracts).

No Minimums: Unless otherwise noted in the solicitation, MCTS will not agree to any guaranteed minimum purchases.

Shipments, Duplicates and Over Shipments: Upon notification by MCTS of a duplicated order or over shipment, the items identified must be removed at the Contractor's expense. If the duplicated or over shipment items are not removed within 30 days of written notification, MCTS reserves the right to dispose of them as its own property and shall not be held liable for any cost for the items.

Authorized Distributor: Bidders must be licensed/authorized to sell/distribute the product/item bid with authority to manufacture, warranty, and license agreements for MCTS.

Warranty: All items/services bid must be supported by the manufacturer's warranty and license agreements, both of which are available to MCTS. Proof of such from an authorized manufacturer's representative may be required before an award is confirmed. MCTS in its sole discretion may choose to use or incorporate any such agreements in the PO, Price Agreement, or Professional Services contract.

Quantities: MCTS reserves the right to vary (increase or decrease) the quantity of items in the Bid submission by up to a maximum twenty-five per cent of the total quantity, without any change in the unit price or other terms and conditions.

Cores: Core returns must be accepted up to 12 months after MCTS acceptance of delivery. The awarded Bidder(s) are responsible for the shipping costs to return the Core. MCTS is not responsible for damage during shipping.

DBE: Bidders and their subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of work awarded by the Bid. Bidders shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Federal Department of Transportation assisted contracts. Bidders' failure to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as MCTS deems appropriate.

Discontinued Products: In the event an item subject to this Bid is/has been discontinued by the manufacturer or is/has been replaced or upgraded, MCTS reserves the right to purchase the replacement and/or upgraded items at the same pricing structure as set forth in the Bidders' solicitation response.

Full and Open Competition: MCTS conducts all of its third-party procurements using full and open competition as provided in and as determined by FTA. 49 U.S.C. § 5325(a).

Non-Appropriation of Funds: Bidders acknowledge and agree that MCTS makes no guaranty as to the number of service hours or goods to be purchased under any resulting PO, Price Agreement, or Professional Services contract. Any commitments given are contingent upon federal grants and Milwaukee County funding continuing at their present levels. Should such funding sources terminate or be reduced, MCTS reserves the right, in its sole discretion, to terminate or revise the agreement to reflect any reduction in such funding.

Protests:

Protests as to Form and Content of Solicitation Documents. Bidders must protest any Objections relating to Form and Content of a solicitation document at least 5 days prior to the submission due date. Protests must be in writing, specifically state the reason for the protest, and be delivered via email to both the Purchasing Agent listed on the solicitation and the Procurement Director. The failure to file a such Protest shall constitute a waiver of the underlying issue in any subsequent Protest, i.e. in a Protest objecting to the Notice of Intent to Award.

The Procurement Director or their designee shall review protests and either deny the protest or grant to protest and modify the solicitation to address the concern. If the Bid is modified, an addendum and revised due date will be issued and publicized in the same manner as the original procurement. The protestor will be notified in writing of the decision. The decision of the Procurement Director is final and cannot be appealed.

Protests as to Responsiveness: Protests as to Responsiveness, whether due to failure to file all required documents or due to failure to pass the DBE/TBE requirements, must be filed within 2 business days (to the hour) of the issuance of the written notification to the Bidder of the determination of non-responsiveness. The protest must be in writing, specifically state the reason for the protest, and be delivered via email to both the Purchasing Agent and to the Procurement Director. The Procurement Director or their designee shall review protest(s) and issue a decision denying or granting the protest as soon as practicable. The decision of the Procurement Director is final and cannot be appealed.

Protests of the Notice of Intent to Award: Standing to protest a Notice of Intent to Award is limited to actual or prospective Bidders who would be aggrieved in connection with the award. Protests of a Notice of Intent to Award must be submitted within 3 business days to the hour of the issuance of the Notice of Intent. The protest must be in writing, specifically state the reason(s) for the protest and be delivered via email to both the Purchasing Agent listed in the solicitation and to the Procurement Director. A protest that is untimely or not sent to both the Purchasing Agent listed in the solicitation and the Procurement Director shall be determined to be invalid. The Procurement Director or their designee shall review the protest and either grant or deny the protest, notifying the

protestor of their determination in writing via email within 5 business days of receipt of the protest if possible, or as soon as practicable if not possible. No Bid award shall be made while a protest is pending. The decision of invalidity of a protest is final and cannot be appealed. The substantive decision of the Notice of Intent to Award may be appealed as set forth herein.

Appeal of Notice of Intent to Award: The substantive determination of the Procurement Director (but not the determination of invalidity) may be appealed to the Purchasing Appeals Committee (“Committee”). The Committee will be comprised of three members, including at least one representative of Milwaukee Transport Service’s Corporate Legal Counsel. The Procurement Director shall be a technical advisor to the Committee. Appeals must be in writing, clearly state the grounds upon which the appeal is based and be delivered via email to both the Purchasing Agent listed in the solicitation and the Procurement Director within 3 business days of the Procurement Director’s initial determination on the Protest of the Notice of Appeal. No award shall be made until the final disposition of the appeal.

The Committee or their designee shall notify all interested persons of the time and place of the hearing. The Committee shall affirm or reverse the initial determination on the Protest. Decisions shall be made with 10 Days of the hearing, if possible, or as soon as practicable if not possible. The determination of the Purchasing Appeals Committee is final administrative appeal.