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The Maryland State Highway Administration Launches Internet-Based Electronic Bidding

June 20, 2017

SHA is beginning to roll out its new electronic bidding services thanks to the work of its contractor, Info Tech, Inc. The first pilot project has already been advertised, and SHA expects to move all highway construction and maintenance projects to its electronic bidding platform by the end of this summer. SHA's Bid Express website is: <https://www.bidx.com/maryland/main>.

Contractors are required to register online and pay a subscription fee in order to submit bids. On its website, SHA warns that the registration process can take up to seven (7) business days, and SHA will not grant bid extensions for registration errors. You can register here: <https://www.bidx.com/site/registration>.

Electronic procurements are authorized by COMAR 21.03.05.01(A), and each solicitation must contain the information listed in COMAR 21.03.05.02(B). See: <http://www.dsd.state.md.us/comar/comarhtml/21/21.03.05.02.htm>.

Of course, there is always a possibility of error when attempting to submit any bid, including an electronic bid. One example is in Pennsylvania, where the low bidder on a construction project was asked to submit its DBE participation schedule electronically by 3:00 p.m. The information was uploaded to the website by 3:00 p.m., but the bidder's estimator forgot to hit "submit." The bid was rejected, and the court upheld the agency action on appeal: "We find that where governmental entities are at the beginning stages of implementing electronic bidding, determining the requisites for a proper bid should be left to the discretion of the agency, especially at this early stage." *See Glasgow, Inc. v. Dep't of Transp.*, 851 A.2d 1014, 1016 (Pa. Commw. Ct. 2004).

The absence of case law from the MSBCA in addressing errors in electronic bidding will make it difficult to predict exactly how the issue will be handled in the event of an appeal. To help avoid any such issues, the Frequently Asked Questions ("FAQ") page on the Bid Express website provides helpful information, especially in the event of an "error" message when trying to submit your bid. The FAQ link is: <https://www.bidx.com/site/static?page=faq>.