

## **PUBLIC CONSTRUCTION BIDDING AND COVID-19 FAQs**

- How can awarding authorities meet the “public bid opening” requirement for construction bids?

Awarding authorities are not required to hold in-person bid openings. They may videotape the opening; livestream it or open the bids on public TV. The openings need not take place at a public office. However, there should be a witness to the opening. Audio-only recordings will suffice.

- How can bidders participate in a virtual bid opening?

Bidders should be invited to participate by conference call arranged by the awarding authority.

- What steps should the awarding authority take to publicize the opening if it is not livestreamed as it happens?

If videotape is used, it should be posted to the awarding authority’s website as soon as possible. The actual bids, except for confidential information such as Update Statements, should be scanned by the awarding authority and posted to its website.

- How should bidders submit bids if Town Hall is closed?

Bids should be submitted in a secure manner. For example, the awarding authority may set up a locked drop-box at Town Hall or direct bidders to mail bids to a post office box.

- Is it permissible for bidders to email or fax their bids?

No. Bids must be “opened” on the designated date and time. Bidders should be directed to upload their bids to the awarding authority’s website, if it is technically feasible. Otherwise, bidders should either mail their bids or drop them off to a secure location.

- How should bidders handle bid security if it is required?

Bidders should either scan their bonds or checks and upload to the awarding authority’s website. Cash bid security should be discouraged.

- Will the Attorney General's Office continue to hold Bid Protest Hearings?

Yes. Please visit <https://www.mass.gov/service-details/scheduled-bid-protest-hearings> for information on conference call-in numbers.

- What are the procedures for emergency procurements?

There are emergency provisions regarding building construction in G.L. c. 149, sec. 44J(6) and sec. 44A(4), both of which require a waiver from DCAMM. Here is the waiver procedure:

<https://www.mass.gov/how-to/emergency-waiver-request>

The emergency procedures for public works construction are found at G.L. c. 30, sec. 39M:

"In cases of extreme emergency: (1) caused by enemy attack, sabotage or other such hostile actions or (2) resulting from an imminent security threat explosion, fire, flood, earthquake, hurricane, tornado or other such catastrophe, an awarding authority may, without competitive bids and notwithstanding any general or special law, award contracts otherwise subject to this subsection to perform work and to purchase or rent materials and equipment, all as may be necessary for temporary repair and restoration to service of any and all public work in order to preserve the health and safety of persons or property; provided, that this exception shall not apply to any permanent reconstruction, alteration, remodeling or repair of any public work."

Note that DCAMM is not involved in public works emergency waivers - that decision is made by the awarding authority.

- Can an awarding authority issue an addendum indefinitely postponing any currently scheduled bid opening or RFQ submission?

Yes, prior to the due date such an addendum can always be issued.

- Does the Attorney General's Office have a recommendation on whether bid openings should be held off for all non-exigent work?

This is a policy decision that each awarding authority should make on its own.

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