

Document 00 21 13 - Instructions to Bidders

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ARTICLE 1 - GENERAL INSTRUCTIONS

1.1 Applicable Law and Forum

- 1.1.1 The rights of any Bidder or any party to a subsequent Contract shall be governed by the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding related to the Bid or any subsequent Contract. The Bidder irrevocably consents to such jurisdiction.

1.2 Project Scheduling and Coordination

- 1.2.1 When the Contract Documents refer to a period of time by a number of days, it excludes the first day and includes the last day of the period. If the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted and the period shall end on the next day which is not a Saturday, Sunday, or legal holiday.
- 1.2.2 The time for completion of the Project indicated on the Bid Form is the time for Contract Completion applicable to the Bidder.
- 1.2.3 The State may assign all or any portion of its interest in a Contract with one or more of the successful Bidders to another successful Bidder as an agreed condition for an award of the Contract for the respective Bid. The assignment may include, without limitation, the duty to schedule, coordinate, and administer the Contracts.
- 1.2.4 The Lead Contractor, or Construction Manager if applicable, is responsible for scheduling the Project, coordinating the Contractors, and providing other services identified in the Contract Documents.
- 1.2.5 The award of separate Contracts for the Project requires sequential, coordinated, and otherwise interrelated Contractor operations and may involve interference, disruption, hindrance, or delay in the progress of any individual Contractor's Work. Each Contractor shall cooperate with the Lead Contractor, or Construction Manager if applicable, the Associate, the Contracting Authority, the Owner, and Separate Contractors to minimize interference, disruption, hindrance, or delay of the Project.
- 1.2.6 By submitting its Bid, the Bidder indicates its understanding that the Contract Sum, based on its Bid and as amended by Change Orders, includes all costs that the Contracting Authority owes the Bidder.

1.3 Written Notice

- 1.3.1 Notice under the Contract Documents shall be validly given if:
- .1 Delivered personally to a member of the organization for whom the notice is intended;
 - .2 Delivered, or sent by registered or certified mail, to the last known business address of the organization; or
 - .3 Sent by facsimile, email, or Web-based project management software, provided the original signed document is delivered within 3 business days after the date of the electronic transmission.

- 1.3.2 Notices provided to one Project Participant from another shall be simultaneously copied to the prospective Bidders, the Owner, the Contracting Authority, the Associate, and, if applicable, the Construction Manager.

ARTICLE 2 - BIDDING PROCEDURES

2.1 Examination of Contract Documents and the Site

- 2.1.1 Before submitting a Bid, the Bidder shall examine all Contract Documents, including, but not limited to, the Drawings, Specifications, and Addenda for all divisions of Work for the Project, noting in particular all requirements which may affect its Work in any way.
- 2.1.2 The Bidder's failure to become acquainted with the extent and nature of Work required to complete any portion of the Work in conformity with the requirements of the Contract Documents, shall not be a basis for additional compensation.
- 2.1.3 Before submitting a Bid, the Bidder should not only examine and evaluate the Site and related Project conditions where the Work will be performed, but shall also consider when the Work will be performed including, but not limited to, the following:
 - .1 The condition, layout, and nature of the Site and surrounding area;
 - .2 The availability and cost of labor;
 - .3 The availability and cost of materials, supplies, and equipment;
 - .4 The cost of temporary utilities required in the Bid;
 - .5 The cost of any permit or license required by a local or regional authority having jurisdiction over the Project;
 - .6 The usual weather conditions of the Project location;
 - .7 Conditions bearing upon transportation, disposal, handling, and storage of equipment, materials, and waste; and
 - .8 Subsurface and concealed physical conditions and related information provided in the Contract Documents.

2.2 Pre-Bid Meeting

- 2.2.1 The Bidder is encouraged to attend the pre-bid meeting, where the Associate, the Contracting Authority, and the Owner will receive questions regarding the Contract Documents. If not given in Document 00 10 00 – "Solicitation," the Associate shall issue notice of the time and place of any pre-bid meeting to each registered Plan Holder.
- 2.2.2 The Associate shall prepare minutes of the pre-bid meeting for the Project record. If questions raised by the prospective Bidders require changes to, or clarifications of, the Contract Documents, the Associate shall issue the changes by written Addendum, along with a list of pre-bid meeting attendees.
- 2.2.3 Additional compensation shall not be based upon the Bidder's failure to attend the pre-bid meeting, which results in the Bidder's incomplete knowledge and familiarity of the Project requirements.

2.3 Request for Interpretation

- 2.3.1 If the Bidder finds any perceived ambiguity, conflict, error, omission, or discrepancy within the Contract Documents, including the Drawings, Specifications, and Addenda, or

between any of the Contract Documents and Applicable Law, the Bidder shall submit a written Request for Interpretation ("RFI") to the Associate for an interpretation or clarification.

- .1 The Bidder is responsible for prompt delivery of the RFI.
 - .2 The Associate shall respond to RFIs received more than 7 days before the bid opening.
- 2.3.2 The Associate shall issue Addenda in response to RFIs that modify or clarify the Contract Documents. Any Addenda issued within 72 hours before any bid opening (excluding Saturdays, Sundays, and legal holidays) shall extend the bid opening date by 7 days pursuant to subparagraph 3.3.1.
- .1 The Addenda may be delivered via facsimile, posted to a Web or FTP site, or otherwise furnished to each registered Plan Holder.
- 2.3.3 Any interpretation or clarification of the Contract Documents made by any Person other than the Associate, in any manner other than a written Addendum, shall not be binding, and the Bidder shall not rely upon the interpretation or clarification.
- 2.3.4 The successful Bidder shall not be compensated for a claim alleging insufficient data, incomplete, ambiguous, conflicting, or erroneous Contract Documents or proposed Contract Documents, or assumed conditions regarding the nature, extent, or character of the Work, if the Bidder did not submit a related RFI prior to the bid opening.

2.4 Basis of Design and Acceptable Components

- 2.4.1 The Contract Documents may list components produced by specific manufacturers to denote kind, quality, or performance requirements.
- 2.4.2 The component listed first is the Basis of Design Component.
- 2.4.3 Other listed components are Acceptable Components.
 - .1 If the Bidder includes an Acceptable Component in its Bid, the Bidder is responsible for the costs of coordination and modification required, including changes to the design by the Associate.

2.5 Substitutions Prior to Bid Opening

- 2.5.1 If the Bidder proposes to use an article, device, material, equipment, form of construction, fixture, or item other than the Basis of Design or Acceptable Components named in the Specifications, the Bidder shall certify that the proposed item is equal in quality and all aspects of performance and appearance, to the item specified.
 - .1 If approval of a Substitution requires changes to the Contract Documents or affects the work of other trades, the Bidder is responsible for the additional costs.
- 2.5.2 The Bidder shall submit its request for Substitution to the Associate no later than 10 days prior to the bid opening, which must include:
 - .1 The name and complete description of the proposed Substitution, including Drawings, performance and test data, and other information necessary for a complete evaluation; and

- .2 A statement setting forth any changes that the Proposed Substitution will require in the Contract Documents or the Project.
- 2.5.3 If the Associate approves the Proposed Substitution, the Associate shall issue an Addendum .
- 2.5.4 If the Associate does not approve the Proposed Substitution, the Associate shall inform the Bidder of its decision, which is final. The Associate may reject a proposed Substitution because the Bidder failed to provide sufficient information to enable the Associate to completely evaluate the Proposed Substitution without causing a delay in the scheduled bid opening.
- 2.5.5 Proposed Substitutions received by the Associate less than 10 days prior to the bid opening shall not be considered.

2.6 Bid Form

- 2.6.1 Each Bid shall be submitted on the Bid Form and sealed in an envelope clearly marked as containing a Bid, indicating the Contracting Authority's Project number and name, construction trade of the Bid, and the date and time of the bid opening on the envelope. Refer to subparagraph 3.1.2 for requirements related to envelope markings.
 - .1 Any change, alteration, omission, or addition in the wording of the Bid Form shall cause the Bid to be rejected as non-responsive.
 - .2 All pages of the Bid Form, including a completed "Commitment to Participate in the EDGE Business Assistance Program" page, shall be submitted with the Bid. Failure to do so shall cause the Bid to be rejected as non-responsive.
 - .3 Unless the Bidder withdraws the Bid as provided in Article 4, the Bidder is required to comply with all requirements of the Contract Documents, regardless of whether the Bidder had actual knowledge of the requirements and regardless of any statement or omission made by the Bidder that might indicate a contrary intention.
- 2.6.2 The Bidder shall fill in all relevant blank spaces on the Bid Form by printing in ink or by typewriting, and not in pencil.
 - .1 The Bidder shall show all bid amounts in both words and figures. In the case of a conflict between the words and figures, the amount shown in words shall govern, where the words are not ambiguous. When the Bidder's intention and the meaning of the words are clear, omissions, or misspellings of words shall not render the words ambiguous.
 - .2 The Bidder shall initial alteration or erasure of items filled in on the Bid Form.
- 2.6.3 If the Bidder is a corporation, partnership or sole proprietorship, an officer, partner or principal of the Bidder shall print or type the legal name of the Bidder on the line provided, and sign the Bid Form. If the Bidder is a joint venture, an officer, partner or principal, as applicable, of each member of the joint venture shall print or type the legal name of the applicable member on the line provided, and sign the Bid Form on behalf of that member. All signatures must be original.

2.7 Allowances

- 2.7.1 If Allowances are provided on the Bid Form, the amount of each Allowance shall be included in the Base Bid amount. Allowances shall be used solely for the purpose of determining the adjustment to the Contract Sum for the difference between the amount of the Allowance and the actual cost of the related Work provided.

2.8 Unit Prices

- 2.8.1 If Unit Prices are requested on the Bid Form, the amount of the scheduled quantities shall be included in the Base Bid amount. Unit prices shall be used solely for the purpose of determining the adjustment to the Contract Sum for the difference between the estimated quantities on the Bid Form and the actual quantities provided.
- 2.8.2 Unit Prices shall include all materials, equipment, labor, delivery, installation, overhead, profit, and any other cost or expense, in connection with, or incidental to, the performance of that portion of the Work. The Bidder shall submit Unit Prices for all items listed.

2.9 Alternates

- 2.9.1 If an Alternate is listed on the Bid Form, the Bidder shall fill in the applicable blank with an increased or decreased bid amount and indicate which by circling the word "ADD" or the word "DEDUCT" as applicable. The Contracting Authority reserves the right to accept or reject any or all bid amounts for Alternates, in whole or in part, and in any order.
- .1 If no change in the bid amount is required, indicate "No Change" or "\$0."
 - .2 Failure to make an entry or an entry of "No Bid," "N/A," or similar entry on any Alternate shall cause the Bid to be rejected as non-responsive if that Alternate is selected.
 - .3 Failure to indicate a negative number by circling "DEDUCT," preceding the number by a minus sign, or enclosing the number in parentheses will indicate the Bidder's intent to increase the Base Bid by the amount entered in the applicable blank.
 - .4 If an Alternate is not selected, an entry as listed in subparagraph 2.9.1.2 on that Alternate shall not, by itself, render a Bid non-responsive.
 - .5 In a Combined Bid, a blank entry or an entry of "No Bid," "N/A," or similar entry on an Alternate shall cause the Contracting Authority to reject the Bid as non-responsive if that Alternate applies to the Combined Bid and that Alternate is selected.

2.10 Submittals with Bid Form

- 2.10.1 The Contracting Authority shall reject a Bid as non-responsive if the Bidder fails to submit the following with the Bid Form in a sealed envelope:
- .1 A Bid Guaranty as provided in Article 5, meeting the requirements of Ohio Revised Code ("O.R.C.") Sections 153.54 and 153.571.

- 2.10.2 If the apparent low Bidder does not submit a valid Power of Attorney of the agent signing for the Surety with its Bid, the Contracting Authority shall direct the apparent low Bidder to deliver a valid and appropriate Power of Attorney to the Contracting Authority within a period determined by the Contracting Authority. The Contracting Authority shall not enter into a Contract without a valid Power of Attorney.
- 2.10.3 The Bidder is encouraged to submit background information with its Bid using the Bidder's Qualifications form and including, but not limited to, the information listed in this paragraph 2.10. If the apparent low Bidder does not submit the Bidder's Qualifications form and related information with its Bid, the Bidder shall provide it upon request in accordance with subparagraph 3.5.4, including, but not limited to:
- .1 The overall experience of the Bidder, including number of years in business under present and former business names;
 - .2 A complete listing of all the Bidder's ongoing construction projects and a listing of construction projects which are similar in cost and type to the Project completed by the Bidder in the last 4 years. Include information of the scope of work and value of each contract and a project name/contact Person/address/phone number for the owner and architect for each project;
 - .3 A Certificate of Compliance with Affirmative Action Programs, issued pursuant to O.R.C. Section 9.47, by the Equal Opportunity Division of the Department of Administrative Services;
 - .4 A complete listing of any Prevailing Wage, EPA, OSHA, or other regulatory entity issues or violations in the last 4 years;
 - .5 A complete listing of judgments, claims, arbitration proceedings or suits pending or outstanding in the last 4 years;
 - .6 Upon request of the Contracting Authority, the apparent low Bidder shall submit the following information, which is not a public record under O.R.C. Section 149.43; and shall remain confidential, except under proper order of a court:
 - .1 An annual financial statement prepared within the 12 months prior to the bid opening by an independent licensed accounting firm; and the name, address, contact Person, and phone number of the bank normally used by the Bidder for its primary banking; or
 - .2 A financial report generated within 30 days prior to the bid opening from Standard and Poor, Dun and Bradstreet or a similar company acceptable to the Contracting Authority documenting the financial condition of the Bidder; and the name, address, contact Person, and phone number of the bank normally used by the Bidder for its primary banking;
 - .7 A description of the Bidder's relevant facilities and major equipment, whether leased or owned;
 - .8 A description of the management experience of the Bidder's project manager(s) and superintendent(s) and a comprehensive resume for each;
 - .9 To support a Bond, a current and signed Certificate of Compliance issued by the Ohio Department of Insurance, showing the Surety is licensed to do business as a surety in Ohio;

- .10 A current Ohio Workers' Compensation Certificate;
 - .11 If the Bidder is a foreign corporation not incorporated under the laws of Ohio, a Certificate of Good Standing from the Ohio Secretary of State; or, if the Bidder is a foreign person or partnership, evidence that the Bidder filed, with the Ohio Secretary of State, a Power of Attorney designating the Ohio Secretary of State as the Bidder's agent for the purpose of accepting service of summons in any action brought under O.R.C. Section 153.05 or under O.R.C. Sections 4123.01 to 4123.94, inclusive; and
 - .12 Any other data or information which the Associate may request concerning the responsibility of the Bidder, including a complete list of major Subcontractors with an estimated contract value of \$150,000 or more, which the Bidder proposes to employ on the Project.
- 2.10.4 Bidders shall be enrolled and in good standing, prior to submitting a Bid, in a Drug-Free Workplace Program ("DFWP") approved by the Ohio Bureau of Worker's Compensation ("OBWC"), provide on the Bid Form certain information relative to their enrollment in the program; and, if awarded a Contract, comply with other DFWP criteria described in the General Conditions.

2.11 Changes in the Bid Amount

- 2.11.1 Any change to a previously submitted Bid shall be in writing and received by the Contracting Authority before the time scheduled for the bid opening.
- 2.11.2 Changes shall provide an amount to be added to, or subtracted from, the bid amount, so that the final bid amount may be determined only after the sealed envelope is opened.
- 2.11.3 If the Bidder's written instruction reveals the bid amount in any way prior to the bid opening, the Contracting Authority may, in its sole discretion, reject the Bid as non-responsive.

ARTICLE 3 - BID OPENING AND EVALUATION

3.1 Delivery of Bid

- 3.1.1 The Bidder shall submit its Bid to the Contracting Authority at the location indicated in Document 00 10 00 – “Solicitation” prior to the time scheduled for the bid opening.
- 3.1.2 If the sealed bid envelope is enclosed in another envelope for the purpose of delivery, the exterior envelope shall also be clearly marked as containing a Bid with the Project name and Project number, construction trade of the Bid, and the date and time of the bid opening shown on the envelope.
- 3.1.3 Bids that arrive at the location designated in Document 00 10 00 – “Solicitation” after the time set for the bid opening shall not be opened or considered.

3.2 Bid Opening

- 3.2.1 Sealed Bids shall be received at the location designated in Document 00 10 00 – “Solicitation” until the time stated when all Bids shall be opened, read aloud, and the tabulation made public.
- 3.2.2 The public opening and reading of Bids is for informational purposes only and is not to be construed as an acceptance or rejection of any Bid submitted.
- 3.2.3 The contents of the bid envelope are public records and open for inspection, upon request, at any time after the bid opening, except for any information that is not defined as a public record under Ohio law.

3.3 Bid Opening Extension

- 3.3.1 If an Addendum is issued within 72 hours prior to the published time for the bid opening, excluding Saturdays, Sundays and legal holidays, the bid opening shall be extended 7 days. If the Contracting Authority approves, the bid opening may be extended for more than 7 days, and consideration for additional advertising may be recommended-
- 3.3.2 As part of issuing any Addendum earlier than 72 hours prior to the published time for the bid opening, excluding Saturdays, Sundays and legal holidays, only the Contracting Authority may approve a revised bid opening date or additional advertising.

3.4 Bid Evaluation Criteria

- 3.4.1 The Contracting Authority reserves the right to accept or reject any or all Bids, in whole or in part, and reserves the right to award the Contract to any remaining Bidder the Contracting Authority determines, in its sole discretion, to have submitted the lowest responsive and responsible Bid.
- 3.4.2 The Contracting Authority reserves the right to accept or reject any or all Alternates. Alternates may be accepted or rejected in any order.
- 3.4.3 If any Bidder has engaged in collusive bidding, the Contracting Authority shall reject that Bidder’s Bid as non-responsible for the Contract. A collusive bidder may also be debarred from future State Contracts.

- 3.4.4 The Contracting Authority reserves the right to waive, or to allow any Bidder a reasonable opportunity to cure a minor irregularity or technical deficiency in a Bid, provided the irregularity or deficiency does not affect the bid amount, or otherwise give the Bidder a competitive advantage. Noncompliance with any material requirements of the Contract Documents shall cause a Bid to be rejected as non-responsive.
- 3.4.5 If, in the opinion of the Owner, the award of the Contract to the lowest Bidder is not in the best interest of the State, with the written consent of the Contracting Authority, the Owner may accept, in its discretion, another Bid so opened, or the Contracting Authority may reject all Bids and advertise for other Bids. The advertisement shall be for the period, in the form, and in the publications directed by the Contracting Authority.

3.5 Bid Evaluation Procedure

- 3.5.1 The Contract shall be awarded to the lowest responsive and responsible Bidder as determined in the discretion of the Contracting Authority, or all Bids may be rejected in accordance with Applicable Law.
 - .1 In determining which Bid is the lowest, the Contracting Authority shall consider the Base Bid and the bid amounts for any Alternate, or Alternates, which the Owner decides, in its sole discretion, to accept.
 - .2 The total of the bid amounts for the accepted Alternate(s) shall be added to, or deducted from, the Base Bid, as applicable, for determining the lowest Bidder.
 - .3 If two Bidders submit the same bid amount and both are determined to be responsive and responsible, the Contracting Authority may select one Bidder by the flip of a coin, which shall be conducted in the presence of both Bidders and shall be final.
 - .1 If one of the Bidders refuses to participate in, or fails to be present at, the flip of a coin, the remaining Bidder shall be selected.
- 3.5.2 A Bidder for a Contract shall be considered responsive if the Bidder's Bid responds to the Contract Documents in all material respects and contains no irregularities or deviations from the Contract Documents that would affect the amount of the Bid or otherwise give the Bidder a competitive advantage.
 - .1 A Bid shall be rejected as non-responsive if the Bid contains a Bid Guaranty executed by a Surety not licensed in Ohio or a Bid Guaranty that is otherwise determined to be insufficient by the Contracting Authority.
 - .2 If the lowest Bidder is non-responsive, the Bidder shall be notified according to paragraph 3.6.
- 3.5.3 In determining whether a Bidder is responsible, factors to be considered include, without limitation:
 - .1 Preferences required by law, where applicable;
 - .2 The experience of the Bidder;
 - .3 The financial condition of the Bidder;
 - .4 The conduct and performance of the Bidder on previous Contracts, including compliance with Equal Employment Opportunity in the Construction Industry

Administrative Rules, OSHA and Prevailing Wage laws, and demonstration of good faith effort to participate in the EDGE Business Development program, or actual participation in the EDGE Business Development program, or both, as indicated in the O.R.C. and the Ohio Administrative Code;

- .5 The facilities of the Bidder;
 - .6 The management skills of the Bidder; and
 - .7 The Bidder's ability to execute the Contract properly, including past performance of the Bidder and the Subcontractors that the Bidder proposes to use on the Project.
- 3.5.4 The Associate shall obtain from the lowest responsive Bidder any information the Contracting Authority determines appropriate to consideration of factors showing responsibility. If the lowest responsive Bidder is responsible, the Contract shall be awarded to that Bidder, unless all Bids are rejected. The Bidder shall provide all requested information within 3 days of a request from the Associate, or a longer period, if the Contracting Authority consents in writing.
- 3.5.5 If the lowest responsive Bidder is not responsible, the Contracting Authority shall evaluate the next lowest Bidder according to the procedures set forth in this paragraph 3.5 until the Contract is awarded, all Bids are rejected, or all responsive Bidders are determined to be not responsible.

3.6 Rejection of Bid

- 3.6.1 If the lowest Bidder is not responsive or responsible, the Contracting Authority shall reject the Bid and notify the Bidder in writing by Certified Mail of the finding and the reasons for the finding.
- 3.6.2 Ten Percent Rule: If the total of the lowest responsive and responsible Bids for all Contracts Bid in a phase of the Project, including Base Bids and accepted Alternates if any, exceed an amount 10 percent greater than the published Estimated Construction Cost, the Contracting Authority shall reject all Bids except as follows:
- .1 If a phase of the Project includes multiple Contracts, the aggregate total price of all contracts awarded shall not exceed an amount 10 percent over the aggregate estimate of the contracts awarded, including the Base Bid and accepted Alternates, if any.
- 3.6.3 A Bidder notified in accordance with subparagraph 3.6.1 may object to its rejection by filing a written protest, which must be received by the Contracting Authority within 5 days of the notification provided pursuant to subparagraph 3.6.1.
- 3.6.4 Upon receipt of a timely protest, the Contracting Authority shall meet with the protesting Bidder to hear its objections. O.R.C. Chapter 119 administrative hearing requirements are not applicable to the bid protest meeting.
- .1 No Contract award shall become final until after the Contracting Authority has met with all Bidders who have timely filed protests and the award of the Contract is affirmed by the Contracting Authority.
 - .2 If all protests are rejected, the Contract shall be awarded to the lowest responsive and responsible Bidder, or all Bids shall be rejected.

3.7 Notice of Intent to Award

- 3.7.1 The Contracting Authority shall notify the apparent successful Bidder that upon satisfactory compliance with all conditions precedent for execution of the Contract, within the time specified, the Bidder shall be awarded the Contract.
- 3.7.2 The Contracting Authority reserves the right to rescind any Notice of Intent to Award if the Contracting Authority determines it issued the Notice of Intent to Award in error, or if the conditions precedent for execution of Contract set forth in Article 6 are not met.

ARTICLE 4 - WITHDRAWAL OF BID

4.1 Withdrawal prior to Bid Opening

- 4.1.1 A Bidder may withdraw a Bid after the Contracting Authority receives the Bid, provided the Bidder makes a request in writing and the Contracting Authority receives the request prior to the time of the bid opening, as determined by the Contracting Authority.

4.2 Withdrawal after Bid Opening

- 4.2.1 The Bid shall remain valid and open for acceptance for a period of 60 days after the bid opening; provided, however, a Bidder may withdraw a Bid from consideration after the bid opening if the bid amount was substantially lower than the amounts of other Bids, providing the Bid was submitted in good faith, and the reason for the bid amount being substantially lower was a clerical mistake, as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of Work, labor, or material made directly in the compilation of the bid amount.
- .1 Notice of a request to withdraw a Bid shall be made in writing filed with the Contracting Authority within 2 business days after the bid opening. The Contracting Authority reserves the right to request the Bidder to submit evidence substantiating the Bidder's request to withdraw the Bid.
 - .2 No Bid may be withdrawn under subparagraph 4.2.1 which would result in awarding the Contract on another Bid to the same Bidder.
- 4.2.2 If a Bidder withdraws its Bid under subparagraph 4.2.1, the Contracting Authority may award the Contract to the next lowest responsive and responsible Bidder, or reject all Bids and advertise for other Bids. In the event the Contracting Authority advertises for other Bids, the withdrawing Bidder shall pay the costs, in connection with the re-bidding, of printing new Contract Documents, required advertising, and printing and mailing of notices to prospective Bidders, if the Contracting Authority finds that these costs would not have been incurred but for the withdrawal.
- 4.2.3 A Bidder may withdraw the Bidder's Bid at any time after the 60 day period described in subparagraph 4.2.1 by giving written notice to the Contracting Authority.

4.3 Refusal to Accept Withdrawal

- 4.3.1 If the Contracting Authority contests the right of a Bidder to withdraw a Bid pursuant to subparagraph 4.2.1, a hearing shall be held within 10 days after the bid opening and the Contracting Authority shall issue an order allowing or denying the claim of this right within 5 days after the hearing is concluded. The Contracting Authority shall give the withdrawing Bidder timely notice of the time and place of the hearing.
- .1 The Contracting Authority shall make a stenographic record of all testimony, other evidence, and rulings on the admissibility of evidence presented at the hearing. The Bidder shall pay the costs of the hearing.

- .2 Pursuant to O.R.C. Section 119.12, the Bidder may appeal the order of the Contracting Authority required by subparagraph 4.3.1.

4.4 Refusal to Perform

- 4.4.1 In the event the Contracting Authority denies the request for withdrawal and the Bidder refuses to perform the Contract, the Contracting Authority may reject all Bids or award the Contract to the next lowest responsive and responsible Bidder.

4.5 Effect of Withdrawal

- 4.5.1 A Bidder, who is permitted to withdraw a Bid under subparagraph 4.2.1, shall not supply material or labor to, or perform a subcontract or other work for, the Person to whom the Contract is awarded; or otherwise benefit, directly or indirectly, from the performance of the Project for which the withdrawn Bid was submitted; without the Contracting Authority's prior written consent.

ARTICLE 5 - BID GUARANTY AND CONTRACT BOND

5.1 Bid Guaranty

- 5.1.1 The Bidder shall submit a Bid Guaranty with the Bidder's Bid, payable to the Contracting Authority, in the form of either:
- .1 The signed Bid Guaranty and Contract Bond contained in the Contract Documents for the amount of the Base Bid plus all additive Alternates; or
 - .2 A certified check, cashier's check, or letter of credit, for 10 percent of the Base Bid, plus all additive Alternates. A letter of credit shall expressly provide that it is revocable only by the Contracting Authority.
- 5.1.2 The Bid Guaranty shall be in form and substance satisfactory to the Contracting Authority and shall serve as an assurance that upon acceptance of the Bid, the Bidder shall comply with all conditions precedent for Contract execution, within the time specified by the Contracting Authority.
- 5.1.3 If the blank line on the Bid Guaranty and Contract Bond is not filled in, the penal sum shall be the full amount of the Base Bid plus all additive Alternates. If the blank line is filled in, the amount shall not be less than the full amount of the Base Bid plus all additive Alternates, stated in dollars and cents. A percentage is not acceptable. In the event the blank line is filled in for an amount less than the full amount of the Base Bid plus all additive alternates, the Bid shall be rejected as non-responsive.
- 5.1.4 An authorized agent must sign the Bid Guaranty and Contract Bond, and the Bidder shall provide a Power of Attorney from the Surety. A Surety authorized by the Ohio Department of Insurance to transact business in Ohio must issue the Bond.
- 5.1.5 The requirements of O.R.C. Section 3905.41 may be applicable requiring an Ohio resident agent countersign the Bid Guaranty and Contract Bond. The Bidder shall determine the applicability of this provision.
- 5.1.6 Bid Guaranties in the form of a certified check, cashier's check, or letter of credit shall be returned to unsuccessful Bidders 60 days after the bid opening. Bid Guaranties in the form of a certified check, cashier's check, or letter of credit shall be returned to the successful Bidder upon providing the Bond required by law in form and in substance, and from a Surety satisfactory to the Contracting Authority.

5.2 Bond Forfeiture

- 5.2.1 If for any reason, other than as authorized by subparagraph 4.2.1 or paragraph 5.3, the Bidder fails to execute the Contract Form, and the Contracting Authority awards the Contract to another Bidder, which the Contracting Authority determines is the lowest responsive and responsible Bidder:
- .1 The Bidder who failed to execute the Contract Form is liable to the State for the difference between its Bid and the Bid of the next lowest responsive and responsible Bidder, or for a penal sum not to exceed ten percent of the bid amount, whichever is less.

- 5.2.2 If the Contracting Authority then awards a Contract to another Bidder, which the Contracting Authority determines is the lowest responsive and responsible Bidder and that Bidder fails or refuses to execute the Contract Form:
- .1 The liability of the lowest responsive and responsible Bidder shall be the difference between the bid amount of the lowest responsive and responsible Bidder and another Bidder which the Contracting Authority determines is the lowest responsive and responsible Bidder, except as provided in paragraph 5.3, but not in excess of the liability specified in subparagraph 4.2.2;
 - .2 The liability on account of an award to the lowest responsive and responsible Bidder beyond the third lowest responsive and responsible Bidder shall be determined in like manner.
- 5.2.3 If the Contracting Authority does not award the Contract to another Bidder under subparagraph 5.2.2, but submits the Project for re-bidding:
- .1 The Bidder failing or refusing to execute the Contract Form is liable to the State for a penal sum not to exceed 10 percent of the Bidder's bid amount or the costs in connection with the resubmission of printing new Contract Documents, required advertising, and printing and mailing notices to prospective Bidders, whichever is less, except as provided in paragraph 5.3.

5.3 Exception to Bond Forfeiture

- 5.3.1 A Bidder for a Contract with the State costing less than \$500,000 may withdraw its Bid from consideration if its Bid for another Contract with the State for less than \$500,000 has already been accepted if:
- .1 The Bidder certifies in good faith that the total amount of its current contracts is less than \$500,000; and
 - .2 The Bidder's Surety certifies in good faith that the Bidder is unable to perform the subsequent Contract because such performance would exceed the Bidder's bonding capacity.
- 5.3.2 If a Bid is withdrawn pursuant to subparagraph 5.3.1:
- .1 The Contracting Authority may award the Contract to another Bidder which the Contracting Authority determines is the lowest responsive and responsible Bidder or reject all Bids and submit the Project for re-bidding; and
 - .2 Neither the withdrawing Bidder nor the Bidder's Surety shall be liable for the difference between the Bidder's Bid and that of the next lowest responsive and responsible Bidder for a penal sum, or for the costs of printing new Contract Documents, required advertising, and printing and mailing notices to prospective Bidders.

5.4 Contract Bond

- 5.4.1 Prior to signing the Contract Form, the Bidder shall provide the Bond required by law in form and substance satisfactory to the Contracting Authority, and from a Surety licensed to do business in the State of Ohio and satisfactory to the Contracting Authority.

- 5.4.2 The Bond must be in the full amount of the Contract to indemnify the State against all direct and consequential damages suffered by failure of the Contractor to perform according to the provisions of the Contract and in accordance with the Plans, Specifications, details, and bills of material therefore and pay all lawful claims of Subcontractors, Material Suppliers, and laborers for labor performed or materials furnished in performing and completing the Contract.

ARTICLE 6 - CONTRACT AWARD AND EXECUTION

6.1 Conditions Precedent for Execution of Contract

- 6.1.1 The successful Bidder must submit the items in this paragraph 6.1 to the Contracting Authority before executing the Contract Form.
- 6.1.2 Bond, and to support the Bond, a Certificate of Compliance issued by the Ohio Department of Insurance, showing the Surety is licensed to do business in the State
- 6.1.3 Ohio Workers' Compensation Certificate
- 6.1.4 Certificate of Compliance with Affirmative Action Programs, issued by the Ohio Department of Administrative Services, Equal Opportunity Division, an application form and instructions for completing the form are available on its Web site:
www.state.oh.us/das/eod/ccsubmitreportswitchboard.htm
- 6.1.5 Certificate of Insurance (ACORD form is acceptable) and copy of additional insured or loss payee endorsement. The Contracting Authority reserves the right to request and receive a certified copy of the Contractor's insurance policies
- 6.1.6 If a Bidder is a foreign corporation, e.g., not incorporated under the laws of Ohio, it must submit a Certificate of Good Standing from the Ohio Secretary of State showing the right of the Bidder to do business in the State
- 6.1.7 If a Bidder is an individual or partnership, nonresident of the State, it must submit a Power of Attorney designating the Ohio Secretary of State as the Bidder's agent for accepting service of summons in any action brought under O.R.C. Section 153.05 or under O.R.C. Sections 4123.01 to 4123.94, inclusive
- 6.1.8 Plumbing, electrical, hydronics, refrigeration, and heating, ventilating and air conditioning ("HVAC") Contractors must submit proof of current licensing by Applicable Law
- 6.1.9 Evidence that the Bidder is enrolled in, and in good standing in, a Drug Free Workplace Program approved by the Ohio Bureau of Workers' Compensation ("OBWC").
- 6.1.10 Bid Information Escrow:
 - .1 Scope and Purpose:
 - .1 The purpose of this requirement is to preserve, for any Contract of \$2,000,000 or more, the Bid Information as defined in subparagraph 6.1.10.2 of the successful Bidder for use by the Contracting Authority in any claim or litigation arising out of the Contract. The Bidder shall submit to the Contracting Authority a legible copy of all Bid Information used to prepare the Bidder's Bid for the Contract. The Contracting Authority shall place the documentation in escrow with a bonded storage facility.
 - .2 Bid Information:
 - .1 "Bid Information" as used in this section includes all writings, working papers, computer printouts, charts and any and all other documentation or data compilations which contain or reflect information, data and

calculations used by the Bidder to prepare or determine the Bid submitted by the Bidder for the Project. Bid Information includes, but is not limited to, the Bidder's equipment rates, profit margins, overhead rates, labor rates, efficiency or productivity factors, arithmetic extensions, and quotations from Subcontractors and Material Suppliers to the extent that the rates and quotations were used by the Bidder in determining its Bid. Bid Information also includes any manuals or computer programs used by the Bidder in determining its Bid. The manuals or programs may be included in the Bid Information by reference, which shall include the name and date of the publication, publisher, or program where the manuals or programs are readily available to the Contracting Authority. Bid Information shall not include anything provided by the Contracting Authority for use in submitting a Bid.

- .2 The Bidder agrees that the Bid Information constitutes all information used by Bidder in the calculation, preparation, or determination of its Bid. The Bidder agrees that it may not rely upon any other pre-bid information in making or pursuing claims. Bidder also understands and agrees that nothing in the Bid Information will change or modify the provisions of the Contract Documents.
- .3 Submittal of Bid Information:
 - .1 Within 3 business days of the Notice of Intent to Award, the successful Bidder for any Contract of \$2,000,000 or more shall submit its Bid Information to the Bid Information Escrow agent approved by the Contracting Authority sealed in a container or envelope. The Bidder shall address the sealed container or envelope to itself and in the upper left corner indicate "Bid Documentation," the date of submittal, and the Contracting Authority's Project Number. Failure to submit the Bid Information on a timely basis shall cause the Bid to be rejected and awarded to the next lowest responsive and responsible Bidder. The Bidder shall also attach the Bid Information Escrow Agreement and Affidavit signed by the Bidder to the outside of the container or envelope, attesting that the Bidder has personally examined the Bid Information and that it contains all the documentation used by Bidder in calculating, preparing and determining its Bid.
- .4 Duration and Use:
 - .1 The Contracting Authority shall not execute the Contract and the Bidder may not commence work until the Bid Information has been received. The Bid Information shall remain in escrow during the term of the Contract or until the Bidder files a claim or initiates litigation against the Contracting Authority related to the Contract. Receipt of the Bidder's claim, or of a complaint initiating litigation against the Contracting Authority, shall entitle the Contracting Authority to obtain the release and custody of the Bid Information for purposes of review. If no claim or litigation is received and the Bidder has otherwise released claims against the State, the Contracting Authority shall instruct the bonded document storage facility to release the sealed container to the Bidder.

.5 Refusal or Failure to Provide Bid Information:

- .1 Failure or refusal to provide the Bid Information within the approved time shall constitute a refusal to execute the Contract. If the Bidder refuses to execute the Contract, the Contracting Authority may enforce the Bid Guaranty and award the Contract to the next lowest responsive and responsible Bidder.

.6 Confidentiality of Bid Information:

- .1 The Bid Information in escrow is a trade secret if the Bidder certifies it as a trade secret in the Bid Information Escrow Agreement and Affidavit. The Bid Information shall remain the property of the Bidder, unless the Contractor certifies a claim or initiates litigation against the State. In the event of a claim or litigation, the Bid Information shall become the property of the Contracting Authority. The Contracting Authority shall keep the Bid Information confidential, to the fullest extent permitted by law. In the event any dispute arises with any other Person about whether the other Person should be given access to the Bid Information, the Contractor agrees to indemnify the Contracting Authority and the Owner against all costs, expenses, and damages, including attorney fees, incurred or paid due to the request for disclosure.

.7 Bid Information Escrow Agreement and Affidavit:

- .1 The Bidder shall sign the Bid Information Escrow Agreement and Affidavit provided with the Notice of Intent to Award, and attach it to the outside of the sealed Bid Information envelope. If the Bidder refuses to sign the agreement, the Contracting Authority may enforce the Bid Guaranty.

6.1.11 Required Notice of Unresolved Findings for Recovery:

- .1 By submitting its Bid, the Bidder warrants that it is not subject to an unresolved findings for recovery under O.R.C. Section 9.24. O.R.C. Section 9.24 prohibits the State from awarding a Contract to any Bidder against whom the Auditor of State has issued a finding for recovery if the finding for recovery is unresolved at the time of award. If the Contract is awarded to a Bidder subject to an unresolved finding for recovery under O.R.C. Section 9.24, the Contract is void on its face and the Contractor shall immediately repay to the Owner any funds paid under the Contract.

6.1.12 EDGE Program – Supporting Documentation Required:

- .1 The Bidder shall provide evidence acceptable to the Contracting Authority of the Bidder's participation in contracting with certified EDGE Business firms for the Project, evidence acceptable to the Contracting Authority of the Bidder's good faith effort to contract with certified EDGE Business Enterprise companies for this Project, or evidence acceptable to the Contracting Authority of both.

6.1.13 Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization ("DMA"):

- .1 The Contractor shall provide the Contracting Authority its completed DMA form as published by the Department of Public Safety, to certify that it does not

provide material assistance to any organization on the United States Department of State's terrorist exclusion list. The DMA form and the terrorist exclusion list are available at www.homelandsecurity.ohio.gov/dma.asp.

6.2 Non-compliance with Conditions Precedent

- 6.2.1 The award of the Contract and execution of the Contract Form require the Contractor to comply with:
- .1 All conditions precedent for execution of the Contract within 10 days of the date of the Notice of Intent to Award;
 - .2 The Bid Information Escrow required by subparagraph 6.1.10 within 3 business days of the date of the Notice of Intent to Award; and
 - .3 The Bidder's Qualifications form not previously provided within 3 business days of receiving the Contracting Authority's request.
- 6.2.2 Non-compliance with the conditions precedent for execution of the Contract within the timelines stated in subparagraph 6.1.1 following the date of the Notice of Intent to Award shall be sufficient cause to permit the Contracting Authority to cancel the Notice of Intent to Award, for the Bidder's lack of responsibility and award the Contract to another Bidder, which the Contracting Authority determines is the lowest responsive and responsible Bidder; or the Contracting Authority may re-bid the Work at its sole discretion.
- 6.2.3 The Contracting Authority may extend the time for complying with the conditions precedent for execution of the Contract for good cause. The extension is not a waiver of the conditions precedent for execution of the Contract.

6.3 Time Limits

- 6.3.1 The Contracting Authority's failure to award the Contract and execute the Contract Form within 60 days of the bid opening invalidates the entire bid process and all Bids submitted, unless the time is extended by written consent of the apparent lowest responsive and responsible Bidder and the Contracting Authority.
- .1 If the Contracting Authority awards the Contract within 60 days of the bid opening, increases in material, labor, and subcontract costs shall be borne by the Bidder.
 - .2 If failure to execute the Contract within 60 days of the bid opening is due to matters for which the State is solely responsible, the Contractor is entitled to a Change Order authorizing payment of verifiable increased costs in materials, labor, or subcontracts. This increase shall not exceed the difference in price between the successful Bidder and the price of the next lowest responsive and responsible Bidder.
 - .3 If failure to execute the Contract within 60 days of the bid opening is due to matters for which the Contractor is responsible, the Contracting Authority shall not grant a request for increased costs.

6.4 Notice to Proceed

6.4.1 The Contracting Authority shall issue a Notice to Proceed to the Contractor, which establishes the date for commencement and the calendar days allocated for Contract Completion. Within 10 days of the date of the Notice to Proceed, the Contractor shall furnish the following submittals to the Associate:

- .1 Schedule of Values
- .2 Preliminary schedule of Shop Drawings and other Submittals
- .3 Subcontractor and Material Supplier Declaration form
- .4 Qualifications of proposed project manager(s) and superintendent(s) and a comprehensive resume of each
- .5 Evidence that an authorization agreement for automatic deposit of state warrants has been submitted to the Auditor of the State of Ohio using the electronic funds transfer form provided on the Internet at <http://auditor.state.oh.us>

6.5 Wage Rates

6.5.1 The Bidder shall base its Bid upon the prevailing rates of wages as ascertained by the Ohio Department of Commerce, Wage and Hour Bureau for the Project as provided in O.R.C. Sections 4115.03 through 4115.14. Refer to Document 00 73 43 – “Wage Rate Requirements” for related information and the Project’s prevailing rates of wages.

6.5.2 Within 10 days of the date of the Notice to Proceed, the Contractor shall provide the Contracting Authority’s Prevailing Wage Coordinator with a schedule of dates during the term of the Contract when the Contractor shall pay wages to its employees for the Project.

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