

INFORMATION FOR AND INSTRUCTIONS TO BIDDERS

DIVISION 00100

1. DEFINITIONS AND TERMINOLOGY

Article 1, Definitions, of the General Terms and Conditions of the Contract for Construction, Reconstruction, Installation, Demolition, Maintenance, or Repair of any City of Cambridge Public Building ("General Terms and Conditions") are incorporated by reference as if fully rewritten herein. In the event of a conflict between the within definitions and those found in the General Terms and Conditions, the former govern for the purposes of these Instructions only. All other terms which are not herein defined have their ordinary dictionary meaning.

ADDENDUM (ADDENDA, PLURAL)-An Addendum is a document issued by the City prior to the opening of the General Bids which clarifies, amends, or modifies the Bidding Documents.

ALTERNATE BID-An Alternate Bid (or An Alternate) is an amount that is either added to or deducted from the Base Bid depending on the designation on the Bid form.

BASE BID-A Base Bid is the sum proposed by a Bidder to perform the Work and does not include any Alternate Bids.

BID-A Bid is a proposal to do the Work for a specified sum and includes accompanying forms which are required to be submitted.

BIDDER-A Bidder is a person who or an entity that submits a Bid pursuant to M.G.L. c. 149, §§44E and/or F and thus includes Filed Sub-Bidders, except when specifically referred to as either General Bidder or Sub-Bidder. The pronouns "it" and "they" are used herein when referring to a Bidder or Bidders, respectively.

BIDDING DOCUMENTS-The Bidding Documents are comprised of the entire Project Manual, which includes, but is not limited to, the Invitation to Bid (advertisement), the Instructions to Bidders, all of the forms (e.g., Bid forms, sample Agreement form, bond forms), the wage rates, the General Terms and Conditions of the Contract, any supplementary terms and conditions thereto, the Plans, the Specifications, and all addenda.

BUSINESS DAYS-Business days are defined as all days of the week excluding Saturdays, Sundays, and those holidays for which the City offices are closed for observance.

FILED SUB-BID/SUB-BID-A Filed Sub-Bid, or Sub-Bid, is a Bid submitted pursuant to M.G.L. c. 149, §44F.

FILED SUB-BIDDER/SUB-BIDDER-A Filed Sub-Bidder, or Sub-Bidder, is a person who or an entity that has submitted a Sub-Bid pursuant to M.G.L. c. 149, §44F. The pronouns "it" and "they" are used herein when referring to a Filed Sub-Bidder or Filed Sub-Bidders, respectively.

GENERAL BID-A General Bid is a Bid that is submitted pursuant to M.G.L. c. 149, §§44E.

GENERAL BIDDER-A General Bidder is a person who or an entity that submits a General Bid pursuant to M.G.L. c. 149, §§44E. The pronouns "it" and "they" are used herein when referring to a General Bidder or General Bidders, respectively.

PURCHASING DEPARTMENT-The Purchasing Department refers to the City of Cambridge Purchasing Department located at 795 Massachusetts Avenue, Third Floor, Cambridge, MA 02139.

2. COPIES OF BIDDING DOCUMENTS

A Bidder may obtain one set of Bidding Documents without charge, except for a fully refundable deposit in an amount set forth in the Invitation to Bid, if the Bidding Documents, including all addenda, are returned to the Purchasing Department in good condition within thirty (30) calendar days from the date of the opening of the General Bids. The Bidder will forfeit the deposit if the Bidding Documents are not returned within this time period. Any Bidding Documents returned to the Purchasing Department by mail should require a signature evidencing the date of receipt by the City. In the event of a dispute as to whether the Bidding Documents were received by the City in a timely fashion, the only document which will be accepted as proof of timely delivery is the mail carrier's official receipt. The City is not responsible for any delays caused by the mail carrier service.

The City shall charge a Bidder a fee for each set obtained after the first set, in an amount set forth in the Invitation to Bid.

The City is not responsible for delays in mail service where a Bidder has requested that the Bidding Documents be mailed.

No partial sets of Bidding Documents will be issued.

The Contractor may retain the Bidding Documents; however, the Contractor shall request a refund of its deposit within ten (10) calendar days after the date of the Notice of Award. Otherwise, the deposit shall be forfeited.

It is the responsibility of the Bidder to insure that it has obtained a complete set of Bidding Documents. Complete sets of Bidding Documents shall be used in preparing Bids. Neither the City nor the Architect assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents in preparing the Bids.

Distribution of the Bidding Documents is for the sole purpose of obtaining Bids and does not confer a license or grant permission for any other use of the Bidding Documents.

Reference: M.G.L. c. 149, §44B(1).

3. LIST OF BIDDERS

A list of all persons who have requested a set of Bidding Documents are posted at the Purchasing Department and sent on a weekly basis to the Central Register and to such other publications as the Purchasing Department deems appropriate.

4. STATE WAGE RATE REQUIREMENTS

The minimum prevailing wage rates are included with the Bidding Documents and apply to this Project.

5. CITY EMPLOYMENT REQUIREMENTS

The requirements of the Minority Business Enterprise Program, the Cambridge Employment Plan, the Cambridge Responsible Employer Plan, and the Supplemental Equal Employment Opportunity Program are included with the Bidding Documents and apply to this Project.

Each Bidder must review the material provided herein carefully in order to understand the requirements that will be imposed for this Project.

6. QUESTIONS AND INTERPRETATIONS

All questions about the meaning or intent of the Bidding Documents shall be received in writing no later than the end of the business day seven calendar days before the date herein set for the opening of General Bids. Any questions received after such time will be answered at the discretion of the City. Questions may be mailed to the Purchasing Department or faxed to (617) 349-4008.

Written clarifications or interpretations will be issued by the Purchasing Department in the form of an Addendum. Only questions answered by an Addendum will be binding. Oral clarifications or interpretations will be without legal effect. Addenda will either be faxed or mailed to all persons having received Bidding Documents from the Purchasing Department.

Each Bidder shall be responsible for determining that it has received all Addenda issued.

7. THE BID

Bidder's Representations.

In submitting a Bid, the Bidder represents that:

- it has read and examined the Bidding Documents thoroughly;
- it understands the Bidding Documents;
- the Bid is made in accordance with the Bidding Documents;
- it has visited the site, has become familiar with the conditions of the site and the surrounding area, and has familiarized itself with local conditions that may in any manner affect cost, progress, or performance of the Work;
- it has correlated its own observations with the Bidding Documents;
- it has found no errors, conflicts, ambiguities, or omissions in the Bidding Documents, except for those that it has brought to the Purchasing Department's attention either orally at a pre-bid conference or in writing at least seven (7) calendar days prior to submitting its Bid;
- it is familiar with all of the applicable Massachusetts laws affecting its Bid, including, but not limited to, M.G.L. c. 149, §§44A-J, inclusive; M.G.L. c. 149, §§27, 27B and 29; and M.G.L. c. 30, §§39F, 39I, 39J, 39K, 39L, 39M, 39N, and 39O, is familiar with the applicable rules, procedures, and ordinances of the City, and is familiar with all applicable

Federal laws, rules, and regulations and its Bid is in conformity with those laws, procedures, and ordinances; and

- the Bidder has complied with every requirement of these Instructions and that the Bidding Documents are sufficient in scope and detail to indicate and convey an understanding of all terms and conditions for the performance of the Work.

Contents of a bid.

The checklists below are included for the bidders' convenience and in no way waive or abridge the City's right to reject any or all bids.

A general Bid must include:

- a completed General Bid form;
- a Bid deposit;
- DCAM Certification Form and Update Statement;
- MBE Forms 1 and 2 or Forms 3 and 4 (City of Cambridge form);
- MBE/WBE Forms 1 and 2 or Forms 3 and 4 (applies if the project is subject to Chapter 193, Acts of 2004)
- Projected Workforce Certification (City of Cambridge form);
- General Contractor's Certification (City of Cambridge form); and
- Cambridge Responsible Employer Plan General Contractor's Certificate (City of Cambridge form for projects over \$100,000 only).
- OSHA Certification Form
- CORI Compliance Form

A Filed Sub-Bid must include:

- a completed filed Sub-Bid form;
- a Bid deposit;
- DCAM Certification Form and Update Statement
- Sub-Contractor's Certification (City of Cambridge form); and
- Cambridge Responsible Employer Plan Subcontractor's Certificate (City of Cambridge form for projects over \$100,000 only, where filed sub-bid is over \$25,000).
- OSHA Certification Form
- CORI Compliance Form

Note to Filed Sub-Bidders: Every Sub-Bidder duly filing a Sub-Bid with the City shall be bound thereby to every General Bidder not excluded therein from the use thereof; and any variance from

such Sub-Bid communicated to a General Bidder shall be of no effect. *Reference: M.G.L. c. 149, §§44F(3).*

RIGHT TO WAIVE INFORMALITIES AND PERMIT CURATIVE MEASURES.

The City reserves the right to waive any Bid informalities. The City may permit bidders who fail to include all non-statutory, City of Cambridge forms to cure such omission(s) within five days of bid opening, subject to the City's discretion.

Bid Deposits: Every Bid must be accompanied by a Bid deposit in the form of a Bid bond, certified check on, or a treasurer's or cashier's check issued by, a responsible bank or trust company, payable to the City of Cambridge. The Bid bond shall be (a) in a form satisfactory to the City, (b) with a surety company qualified to do business in the Commonwealth and satisfactory to the City, and (c) conditioned upon the faithful performance by the principal of the agreements contained in the Bid. The Bid deposit shall be no less than five percent (5%) of the value of the Bid. *Reference: M.G.L. c. 149, §44B(2).*

Bids Forms. Each Bid shall be submitted on the Bid form included in the Project Manual. Bid prices must be stated in both dollar figures and words. In the case of a conflict, written amounts shall control over numbers. All blank spaces must be filled. Do not leave any blanks. Print "N/A" in any space not needed or used. The Bid form shall be completed in ink or by typewriter.

Acknowledgment of Addenda. Each Bidder is required to acknowledge the receipt of all Addenda (the numbers of which are to be filled in on the Bid form by the Bidder). The City, in its sole discretion, may deem a Bidder's failure to acknowledge any Addendum a minor informality.

Submission of a bid.

Prior to the deadline for receipt of Bids, each Bid must be submitted to the Purchasing Department in a sealed envelope which is plainly marked on the outside with the name and address of the Bidder, the title of the Project, the portion of the Work which the Bid represents, and the date and time of the Bid opening. A separate Bid must be submitted for each Filed Sub-Bid. Any hand delivered Bid received after the deadline will not be accepted. Any other Bid received after the deadline will be returned to the addressee. Any Bid submitted to any other office or department of the City and received by the Purchasing Department after the deadline for receipt of Bids will not be accepted. It is the responsibility of the Bidder to ensure that its Bid is received by the Purchasing Department in a timely fashion. The deadline for receipt of Bids can be extended by Addendum only.

Bids may not be submitted orally, by facsimile, by telephone, or by any other method except for the methods described above.

Modification of a bid.

A Bid may be modified only by submitting any such modification in the form of a document executed in the same manner as a Bid, delivered in a sealed envelope in the same manner as a Bid, designated as a modification to the original Bid and submitted to the Purchasing Department prior to the time designated for the opening of Bids.

Withdrawal of a bid.

Prior to Bid opening. A Bid may be withdrawn before the time designated for opening Bids. The Bidder requesting such withdrawal must make the request in writing and in a specific manner

designated by the City if the City so requires. Withdrawal of a Bid prior to the Bid opening time will not prejudice the right of a Bidder to resubmit a Bid. A Bid cannot be withdrawn after the Bid opening time except as provided by law.

After Bid opening. In the case of death, disability, bona fide clerical error or mechanical error of a substantial nature or other unforeseen circumstances affecting a Bidder, a Bidder may withdraw its Bid after the time designated for Bid opening, if within five (5) days of the date designated for opening its Bid, such Bidder submits a statement under the penalties of perjury to the Purchasing Department detailing the basis for withdrawal. The City will then make a determination as to whether such Bidder has satisfied both the statutory and City requirements for such withdrawal. If the City is satisfied, the Bid Deposit will be returned to such Bidder. *Reference: M.G.L. c. 149, §§44B(3) and (4).*

Bid opening.

All Bids received prior to the date and time designated for the Bid opening will be opened publicly and read aloud at a location designated by the Purchasing Department. *Reference: M.G.L. c. 149, §§44E(3) and F(3).*

Bidders list.

Sub-bidders. At least two (2) business days prior to the date for opening general Bids, the City shall mail to every person on record as having taken a set of plans and specifications a list of Sub-Bidders arranged by sub-trades and listing for each sub-trade the name, address and Sub-Bid price of every Sub-Bidder submitting a Sub-Bid thereon not rejected by the City and the names of the General Bidders excluded from using such Sub-Bid. A person shall not be named by a General Bidder as a Sub-Bidder for a sub-trade on the General Bid form unless such person is included for such sub-trade in said list. If a General Bidder not excluded in said list from doing so names as a Sub-Bidder for a sub-trade on the General Bid form a person included for such sub-trade in said list at the Sub-Bid price stated in said list, neither the General Bid of such General Bidder nor the general contract executed on the basis of such General Bid shall be invalid or rejected because of the invalidity of such Sub-Bid, or because of error on said list, nor shall such General Bid be rejected nor shall such general contract be invalid because of any invalid action taken by the City in connection with any Sub-Bid or Sub-Bids; but there shall be a substitution of Sub-Bidders and an adjustment of the contract price as if paragraph (c) of section forty-four F(4) were applicable. *Reference: M.G.L. c. 149, §44F(3).*

Public bid review and inspection.

Upon opening, all Bids become public records except for portions thereof that are not subject to public disclosure as a matter of law. *Reference: M.G.L. c. 149, §44D(2).*

Bids may be reviewed by the public in a manner set forth by the Purchasing Department.

Any Bidder who objects to a Bid may protest the Bid. In order to be considered, the protest must be received by the Purchasing Department within two (2) business days after the Bid opening date. The protest must be in writing, must state in detail the basis for the protest, and must be signed by the protester.

8. RESERVATION OF RIGHTS TO REJECT BIDS

General and Sub-Bids.

The City reserves the right to reject any or all general Bids, if it is in the public interest to do so. The City reserves the right to reject any Sub-Bid on any sub-trade, if it determines that such Sub-Bid does not represent the Sub-Bid of a person or entity competent to perform the Work as specified or that less than three such Sub-Bids were received and that the prices are not reasonable for acceptance without further competition. *Reference: M.G.L. c. 149, §44E(1).*

The City reserves the right to reject any or all Bids if it determines that the Bidder does not possess the qualifications to perform the Work specified in the Bidding Documents.

The City reserves the right to reject the Bid of any Bidder who the City has determined has not completed a prior project, whether with the City or elsewhere, because of the fault of the Bidder, its Subcontractors or employees; has been declared in default on a prior contract whether with the City or elsewhere; has failed to complete a prior project in a timely fashion whether with the City or elsewhere; based on its work record, is not capable of performing the within Contract whether due to lack of sufficient prior experience, as determined by the City, or any other reason; has a work record of its Subcontractors demanding direct payment from the City; has a work record of its Subcontractors, employees or material suppliers complaining to the City or other awarding authority regarding the Bidder's failure to pay them; has a record of complaints made to the City or other awarding authority by persons offended by the behavior of the Bidder, its Subcontractors or employees; or has a record of its failure to comply with the Commonwealth and/or City laws or requirements. "Work record" or "record" constitutes a minimum of one event in the work history of the Bidder.

Sub-Bids.

Within two business days after the Bid opening, the City shall reject every Sub-Bid which is not accompanied by a Bid deposit as prescribed in sub-section (2) of section forty-four B, or which otherwise does not conform with sections forty-four A to forty-four H, inclusive, or which is on a form not completely filled in, or which is incomplete, conditional or obscure, or which contains any addition not called for; provided, however, that the failure of the City to reject such Sub-Bid within such period shall not validate such a Sub-Bid nor preclude the City from subsequently rejecting it. No Sub-Bid shall be rejected because of the failure to submit prices for or information relating to any item or items for which no space is provided on the Sub-Bid form furnished by the City, but this sentence shall not be applicable to any failure to furnish prices or information required by section forty-four F to be furnished in the Form for Sub-Bid. *Reference: M.G.L. c. 149, §44F(3).*

General Bids.

The City shall reject every general Bid which is not accompanied by a Bid deposit as prescribed in sub-section (2) of section forty-four B, or which otherwise does not conform with sections forty-four A to forty-four H, inclusive, or which is on a form not completely filled in, or which is incomplete, conditional or obscure, or which contains any addition not called for. No such Bid shall be rejected because of the failure to submit prices form or information relating to any item or items for which no specific space is provided in the Bid form furnished by the City. No General Bid shall be rejected (1) because the sum of the prices for all work of the general contractor and Sub-Bids does not equal the General Bid price set forth on the Bid form for that purpose or (2) because of error in setting forth the name, the Sub-Bid price of a Sub-Bidder, or the total Sub-Bids as long as the Sub-Bidder or Sub-Bidders designated are clearly identifiable, or (3) because the plans and specifications do not accompany the Bid or are not submitted with the Bid. *Reference: M.G.L. c. 149, §44E(3).*

9. AWARD OF CONTRACT

The City shall award the contract to the lowest responsible (demonstrably possessing the skill, ability, and integrity necessary to faithfully perform the work called for by the Contract, based upon a determination of competent workmanship and financial soundness in accordance with the provisions of M.G.L. c. 149, §44D-see M.G.L. c. 149, §44A(1)) and eligible (able to meet all requirements for Bidders set forth in M.G.L. c. 149, §§44A-H and not debarred from bidding under §44C or any other applicable law, and who shall certify that it is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work-see M.G.L. c. 149, §44A(1)) General Bidder within thirty (30) Business Days after the date of the opening of the General Bids. If the Bidder selected as the general contractor fails to perform its agreement to execute a general contract in accordance with the terms of its Bid and furnish a performance bond and a labor and materials or payment bond as stated in its Bid in accordance with M.G.L. c. 149, §44E, an award shall be made to the next lowest responsible and eligible Bidder, subject to the provision of M.G.L. c. 149, §§44A-H, inclusive. The thirty-day time limit shall not be applicable to a second or subsequent award made after the expiration of the time limit with the consent of the next lowest responsible and eligible Bidder, and made because the original award made within the time limit was invalid, or because the Bidder failed to execute the Agreement or to provide a performance and labor and materials or payment bond.

Any General Bidder who fails to perform its agreement to execute a Contract and furnish a performance bond and a labor and materials or payment bond shall forfeit its Bid deposit which shall become the property of the City, but the amount forfeited shall not exceed the difference between its Bid price and the Bid price of the next lowest responsible and eligible bidder.
Reference: M.G.L. c. 149, §44B(3).

If a selected Sub-Bidder fails to perform its agreement to execute a sub-contract with the General Bidder selected as the general contractor, contingent upon the execution of the general contract, and, if requested to do so in the General Bid by such General Bidder to furnish a performance and payment bond as stated in its Sub-Bid in accordance with §44F(2), the Bid deposit of such Sub-Bidder shall become and be the property of the City as liquidated damages, provided that the amount retained shall not exceed the difference between its Bid price and the Bid price of the next lowest responsible and eligible Sub-Bidder. *Reference: M.G.L. c. 149, §44B(4).*

The City will notify the selected General Bidder and all other Bidders of the award.

The City will submit to the selected General Bidder a Notice of Award and at least four (4) unsigned copies of the Agreement between the City and the Contractor. The selected General Bidder will be required to return to the Purchasing Department within ten (10) business days of the date notice of award all of the copies of the Agreement between the City and the Contractor signed, its performance bond, its labor and materials or payment bond and all required certificates of insurance. Failure of the selected General Bidder to submit all of the required documents in a timely fashion may result in the withdrawal of the award. The City will return one fully signed copy of the Agreement to the Contractor. Time is of the essence in the performance of the Agreement.

10. COMPLETION TIME

Bidder must agree to commence work on or before **insert number** days following receipt of a written " Notice to Proceed" of the Owner and to fully complete the project within **insert term** calendar days from the date in the Notice to Proceed thereafter. Bidder must agree also to pay as liquidated damages the sum of **insert amount** for each consecutive calendar day thereafter that the work remains unfinished.

Cynthia H. Griffin, Purchasing Agent

