

DOCUMENT 100
INSTRUCTIONS TO BIDDERS

1. Defined Terms.

Terms used in these Instructions to Bidders shall have the meanings assigned to them in the General Conditions. The term "Successful Bidder" means the lowest, qualified, responsible Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

2. Copies of Bidding Documents.

2.1. Complete sets of the Bidding Documents in the number and for the purchase sum, if any, stated in the Invitation may be obtained from the office designated in the Invitation to Bid.

2.2. Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Design Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.3. Owner and Design Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

3. Qualifications of Bidders.

To demonstrate qualifications to perform the Work, the apparent low Bidder must be prepared to submit within five days of Owner's request written evidence of the types set forth in the General or Supplementary Conditions, such as financial data, previous experience and evidence of authority to conduct business in the jurisdiction where the Project is located. Any information furnished pursuant to this section shall be deemed confidential and will not be disclosed by the Owner. Each Bid must contain evidence of Bidder's qualification to do business in the State of Kansas or covenant to obtain such qualification prior to award of the contract.

4. Examination of Contract Documents and Site.

4.1. Before submitting a Bid, each Bidder must (a) examine the Contract Documents thoroughly, (b) visit the site to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work, (c) familiarize himself with federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the Work; and (d) study and carefully correlate Bidder's observations with the Contract Documents.

4.2. Reference is made to the Supplementary Conditions for the identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which have been relied upon by Engineer in preparing the Drawings and Specifications. Owner will make copies of such reports available to any Bidder requesting them. These reports are not guaranteed as to accuracy or completeness, nor are they part of the Contract Documents. Before submitting his Bid each Bidder will, at his own expense, make such additional investigations and tests as the Bidder may deem necessary to determine his Bid for performance of the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

4.3. On request Owner will provide each Bidder access to the site to conduct such investigations and tests as each Bidder deems necessary for submission of his Bid.

4.4. The lands upon which the Work is to be performed, rights-of-way for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Supplementary Conditions, Specifications or Drawings.

4.5. The submission of a Bid will constitute an incontrovertible representation by the Bidder that he has complied with every requirement of this Article 4 and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms, and conditions for performance of the Work.

5. Interpretations.

All questions about the meaning or intent of the Contract Documents shall be submitted only through the City of Topeka's e-Procurement System at least 10 calendar days prior to the opening of Bids. All questions and answers will be posted to the Bid Event. Questions and answers that result in a material change to the scope of work or quantities will require issuance of an addendum. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6. Bid Security.

6.1. Bid Security shall be made payable to Owner, in an amount of five percent of the Bidder's maximum Bid price (including alternates) and in the form of a certified or cashier's check or a Bid Bond issued by a Surety meeting the requirement of paragraph 5.1 of the General Conditions. All forms of Bid Security must be delivered in original form. Facsimile transmission of Bid Security documents will not be accepted.

6.2. The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required Contract Security, whereupon it will be returned; if the successful Bidder fails to execute and deliver the Agreement and furnish the required Contract Security within 10 days of the award of contract, Owner may annul the award and the Bid Security of that bidder will be forfeited to the Owner.

The Bid Security of any Bidder whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the seventh day after the "Effective date of the Agreement" (which term is defined in the General Conditions) or the forty-sixth day after the Bid opening, whichever is earliest. Bid Security of other Bidders will be returned within seven days of the Bid opening.

7. Contract Time.

The number of days within which or the date by which the Work is to be completed (the Contract Time) is set forth in the Agreement.

8. Liquidated Damages.

Provisions for liquidated damages are set forth in the Agreement.

9. Substitute Material and Equipment.

The Contract, if awarded, will be on the basis of material and equipment described in the Drawings or

specified in the Specifications without consideration of possible substitute or "or equal" items.

Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the "Effective date of the Agreement". The procedure for submittal of any such application by Contractor and consideration by Engineer is set forth in paragraphs 6.7.1, 6.7.2 and 6.7.3 of the General Conditions which may be supplemented in the Specifications.

10. Subcontractors, etc.

10.1. Bidder must submit to Owner, as part of their Bid Form, a complete list of all Subcontractors and other persons and organizations (including those who will be furnishing the principal items of material and equipment) proposed to be used by the bidder to complete this project. Failure by the Bidder to provide this list with his bid shall render the bid nonresponsive. If requested by the Owner, the Successful Bidder shall submit to the owner, in writing, an experience statement with pertinent information as to similar projects and other evidence of qualifications for each such Subcontractor, person and organization listed on the Bid Form. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, other person or organization, either Owner or Engineer may before giving the award of contract, request the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid Price. If the apparent Successful Bidder declines to make any such substitution, the contract shall not be awarded to such Bidder, but his declining to make any such substitution will not constitute grounds for sacrificing his Bid Security. Any Subcontractor, other person or organization so listed and to whom Owner or Engineer does not make written objection prior to the giving the award of contract, will be deemed acceptable to Owner and Engineer. Substitutions to this list of acceptable Subcontractors and other persons and organizations after the apparent Successful Bidder has been awarded a contract by the Owner will not be allowed without the written approval of the Owner or Engineer.

10.2. No Contractor shall be required to employ any Subcontractor, other person or organization against whom he has reasonable objection.

10.3. No Subcontractor who is on the Owner's "List of Suspended Contractors" as of the date of the opening of Bids may be employed by the Contractor on the project. A current list of suspended contractors may be obtained from the Contracts and Procurement Division.

10.4. The amount of the Work performed by Subcontractors in aggregate shall not exceed seventy (70) percent of the Total Bid in accordance with paragraph 6.8.3 of the General Conditions. A contract will not be awarded to a bidder not in compliance with this requirement.

11. Bid Form.

11.1. The Bid Form is included in this Project Manual. The Project Manual will be posted to the electronic Bid Event.

11.2. Bid Forms must be completed in the electronic Bid Event.

11.3. Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address shall be shown below the signature. Signature pages shall be submitted

electronically as instructed in the Bid Event.

11.4. Bids by partnerships must be executed in the partnership name and signed by a partner whose title must appear under the signature and the official address of the partnership must be shown below the signature. Signature pages shall be submitted electronically as instructed in the Bid Event.

11.5. All names must be typed or printed below the signature, unless instructed in the electronic Bid Event.

11.6. The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form). Signed Addenda forms shall be uploaded to the Bid Event by the bidder.

11.7. The address to which communications regarding the Bid are to be directed must be shown, if different than that required above.

12. Submission of Bids.

12.1. Bids shall be submitted only through the City of Topeka's e-Procurement System.

12.2. Bids shall be submitted at or before the stated time of closing. Bids received after the closing time indicated in the Invitation to Bid will be rejected.

The City attempts to maintain continuous access to the supplier portal. However, from time to time, Bidder understands that access may be interrupted or prevented due to maintenance, site problems, Internet problems, or problems experienced by the user due to Bidder's computer system. Bidder acknowledges that City makes no warranties that the supplier portal will be uninterrupted or error-free. Regardless of the source of any problem, Bidder acknowledges that it is Bidder's sole responsibility to ensure that its bid is timely received. Because of the discrepancies inherent in timing mechanisms (e.g. cell phone, computers, mobile devices), Bidder acknowledges that the bid time will be determined based upon the time indicated on the City server for the Strategic Sourcing application. If Bidder does not submit its bid at or before the time indicated on the City server for the strategic source application, the bid will be electronically rejected by the Strategic Sourcing application as untimely.

Bidder acknowledges that the City shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses resulting from: (i) the use or the inability to use the supplier portal; (ii) unauthorized access to or alteration of the user's transmissions or data; or (iii) any other matter relating to the supplier portal.

12.3. Bids will not be accepted from any Contractor who is on the Owner's "List of Suspended Contractors" as of the date of the Opening of Bids. Bids received from suspended Contractors will automatically be rejected and returned unopened.

12.4. Bids that do not conform to the Affirmative Action and Notification of MBE and WBE requirements shall be deemed non-responsive and will not be accepted in accordance with paragraphs 23 and 24 of this Instructions To Bidders.

13. Modification and Withdrawal of Bids.

13.1. Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

13.2. If, within twenty-four hours after Bids are opened, any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of his Bid, Owner may, at its sole discretion, allow that bidder to withdraw his Bid and the Bid Security will be returned.

14. Opening of Bids.

Bids will be opened publicly and read aloud.

15. Bids to Remain Open.

All Bids shall remain open for thirty (30) days after the day of the bid opening, but Owner may, in his sole discretion, release any Bid and return the Bid Security prior to that date.

16. Award of Contract.

16.1. Owner reserves the right to reject any and all Bids, to waive any and all informalities and to negotiate contract terms with the Successful Bidder within the limitations of the Code of the City of Topeka. Owner reserves the right to reject all nonconforming, nonresponsive or conditional Bids. Discrepancies in the indicated multiplication of unit prices and quantities shall be resolved in favor of the correct multiplication based on the unit prices indicated. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

16.2. In evaluating Bids, Owner shall consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements and alternates and unit prices if requested in the Bid forms. It is Owner's intent to accept alternates (if any are accepted) in the order in which they are listed in the Bid form but Owner may accept them in any order or combination.

16.3. Owner may consider the qualifications, experience and financial ability of Subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the Work as to which the identity of Subcontractors and other persons and organizations must be submitted as provided in the General Conditions. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by Owner.

16.4. Owner reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to Owner's satisfaction.

16.5. If the contract is to be awarded it will be awarded to the lowest Bidder whose evaluation by Owner indicates to Owner that the award will be in the best interests of the Owner.

16.6. If the contract is to be awarded, Owner will notify the Successful Bidder within thirty days after the day of the Bid opening.

17. Performance and Other Bonds.

Paragraph 5.1 of the General Conditions sets forth Owner's requirements as to performance and other Bonds. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by the required Contract Security.

18. Signing of Agreement.

When Owner notifies the Successful Bidder of the award of contract, it will be accompanied by at least three unsigned counterparts of the Agreement and all other Contract Documents. Within ten days thereafter Contractor shall sign and deliver all counterparts of the Agreement to Owner with all other Contract Documents attached. The Contractor shall also submit certificates of insurance in accordance with paragraph 2.1 of the General Conditions and an estimated construction schedule in accordance with paragraph 2.6 of the General Conditions with the executed Agreement. Within ten days thereafter Owner will deliver all fully signed counterparts to Contractor.

19. Sales Taxes.

19.1. For all projects, payment of Kansas State Sales Tax or Compensating (Use) tax is not necessary and should not be included in unit prices bid for materials to be incorporated in the work. The City of Topeka will furnish an exemption certificate (including exemption certificate number) obtained from the Sales and Compensating Tax Division of the Department of Revenue of the State of Kansas to the Contractor, Subcontractor or repairmen making purchases of any tangible personal property to be incorporated in this project. The Contractor, Subcontractor or repairmen must furnish all suppliers with a copy of the properly executed exemption certificate secured for this project. He may reproduce as many copies of the certificate as he may need.

20. State Registration of Out-of-State Contractors.

Bidders are advised that K.S.A. 79-1008, 79-1009 requires the registration of out-of-state contractors with the Director of Revenue for collection of tax.

21. Non-Resident Bidders.

Attention is directed to Section 16-113 and 16-114 of the Kansas Statutes Annotated which requires that any Non-Resident Contractor who undertakes the construction of any public improvement to be paid for out of public funds, must appoint in writing and file with the Kansas Secretary of State, some person (resident in Shawnee County, Kansas) on whom service may be had in any civil action which may arise out of such contractual relation.

22. Equal Employment Opportunity.

It is the policy of the City of Topeka, Kansas to require that all contracts of the City and its agencies include specific provisions to ensure equal employment opportunity and that all Contractors provide evidence of the adoption of an affirmative action program. To comply with these requirements, all persons wishing to enter into a contract with the City shall abide by the following conditions:

22.1. Comply with K.S. A. 44-1030 requiring that:

- a. The Contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin or ancestry;
- b. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;

- c. If the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the Owner;
- d. If the Contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the Owner; and
- e. The Contractor shall include the provisions of paragraphs (a) through (d) inclusively of this subsection 22.1. in every sub-contract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.

22.2. Guarantee that during the performance of any City contract or agreement the Contractor, Subcontractor, vendor, or supplier of the City shall comply with all provisions of the Civil Rights Act of 1964, The Equal Employment Opportunity Act of 1972, Executive Order 11246, Age Discrimination in Employment Act of 1967, Part 20 Title 41 of the Code of Federal Regulations, Rehabilitation Act of 1973, City Ordinance No. 14218 and/or any laws, regulations or amendments as may be promulgated thereunder.

23. Affirmative Action Program.

All persons seeking to enter into a contract with the City of Topeka shall submit in writing to the Contracts and Procurement Division-Contract Compliance an affirmative action program. Such program shall be approved and on file with the Contracts and Procurement Division-Contract Compliance prior to the bid opening. Failure to maintain an approved affirmative action program on file prior to the bid opening shall deem the bid non-responsive and it will not be accepted.

An Affirmative Action program means a positive program designed to ensure that a good faith effort will be made to employ applicants and to treat employees equally without regard to their race, sex, religion, color, national origin, age, ancestry or handicap. An affirmative action program shall include, where applicable, but not be limited to, the following: recruitment, recruitment advertising, employment, upgrading, promotion, demotion, transfer, lay-off, termination, rates of pay, other terms or conditions of employment, selection for training, and apprenticeship. It shall include goals, methodology and a timetable for implementation of the program, when appropriate. Goals for participation on City projects shall be 9% minority and 6.9% female. All Subcontractors performing work to fulfill all or any part of a General Contractor's obligation are subject to these affirmative action provisions. General Contractors shall be responsible for ensuring compliance by their Subcontractors.

Any person who so desires may file an affirmative action program annually which shall apply to all bids which such person shall make during the calendar year next succeeding the date of such filing. However, annual submission of the affirmative action program shall not excuse any person from submission of a work force analysis or other requirements for utilization of minority and/or female employees in a work force either concurrently with or prior to any contract bid or proposal. Any annual submission shall be subject to review by the Contracts and Procurement Division-Contract Compliance and shall be amended at such time and in such manner as the Contracts and Procurement Division-Contract Compliance may require.

24. Notification of Minority Business Enterprises (MBE) and Women Business Enterprises (WBE). It

is the policy of the City of Topeka that minority and women business enterprises shall have the opportunity to participate in the performance of contracts and subcontracts. The Contractor shall take the necessary steps, as herein established, to ensure that MBE's and WBE's have the opportunity to compete for and perform subcontract work. In this regard, the Contractor shall demonstrate a good faith effort by any one of the following methods:

- a. Complete and submit the Notification of Available Subcontract Work form, Document No. 840, ten (10) days prior to the bid opening.

If a portion of the work on this project is to be subcontracted, the bidder shall submit the Notification of Available Subcontract Work form so as to be received by the Contracts and Procurement Division-Contract Compliance, City Hall, 215 E. 7th Street, Topeka, Kansas 66603, ten (10) days prior to the bid opening date. A bidder shall certify the timely delivery of the form either by hand delivery or by fax signed by an authorized employee of the Contracts and Procurement Division-Contract Compliance. Once the Notification of Available Subcontract Work forms are received by the Contracts and Procurement Division-Contract Compliance, they will be mailed to interested minority and women owned businesses as notification of subcontracting opportunities.

- b. Demonstrate a good faith effort to offer minority and women business enterprises an opportunity to compete for subcontracts.

A bidder may satisfy the requirements of this section by presenting documentation that demonstrates good faith efforts to notify MBE's and WBE's of available subcontracting opportunities on the project being bid. Such documentation may include, but not be limited to the following: advertisement in general circulation, trade associations, or minority focus media of subcontracting opportunities, written notice to MBE's and WBE's soliciting their participation in the contract, and evidence of efforts to negotiate with MBE's or WBE's to perform work under this contract.

- c. Demonstrate participation by minority and/or women business enterprises as subcontractors on the project.

A bidder may satisfy the requirements of this section by submitting documentation of MBE and/or WBE participation as subcontractors on the project comparable to the known availability of qualified MBE's and WBE's.

For purposes of assessing this section, the successful contractor shall be required, upon request, to submit names and addresses of minority owned and women owned businesses that are subcontractors, a description of the work to be performed, and an aggregate dollar amount of participation by each named MBE and WBE subcontractor.

25. Wage Rates.

The Wage Rate Determination included in this Project Manual, Document No. 850, will be applicable to the project *only if state or federal law requires payment of wages higher than the minimum wage. If Document No. 850 Wage Rate Determination is not included in the Project Manual, then Davis Bacon wages shall not be required for the project.* These wages must be paid unconditionally to each class of worker for the duration of the project, unless they are changed by Addendum. The Wage Rate Determination shall be accounted for when preparing the bid. If your company pays fringe benefits to approved plans, funds or programs, it is necessary that verification of payment of these benefits be made to the Contracts and Procurement Division-Contract Compliance with the first payroll. Any company not affiliated with an approved plan, fund or program must pay both the base pay and all

fringe benefits to each employee in cash. Any worker who works more than 40 hours a week must be paid 1 ½ times the base pay plus all fringe benefits.

Certified payrolls must be submitted on a weekly basis by the prime contractor and all his subcontractors to the Contracts and Procurement Division-Contract Compliance. Failure to do so will result in any payment being withheld until the prime contractor and all his subcontractors are in compliance with this section. A report must be submitted for every week until the job is complete even if no work is performed, fill out a payroll report, sign it and write across it "No Work Performed This Week".

Final payment on this project will not be released until all information has been correctly submitted to the Contracts and Procurement Division-Contract Compliance. The Contractor shall be responsible for the submittal of all Subcontractors' wage determination information.

26. Standard Technical Specifications.

This project shall be subject to the applicable sections of the "Standard Technical Specifications" of the City of Topeka, Kansas, latest edition with any addenda thereto, except as modified or supplemented by specifications contained in this Project Manual.