

INSTRUCTIONS TO BIDDERS

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INSTRUCTION TO BIDDERS

ENGINEERING DIVISION

CITY OF EDEN PRAIRIE, MINNESOTA

1. CONTRACT DOCUMENTS

The “Contract Documents” applicable to this project are listed in GC 1-02. They may be obtained for the Contractor’s individual use by applying to the City Engineer, City Center, 8080 Mitchell Road, Eden Prairie, Minnesota 55344-2230, Phone 952-949-8300, or as otherwise indicated in the Notice to Contractors, and by depositing the amount indicated in said Notice.

The Contractor should note that the Eden Prairie Standard Detail Specifications were most recently revised in 2020. Where the Specifications reference MnDOT specifications, the reference is to the most current edition of the Minnesota Department of Transportation (MnDOT) Standard Specifications for Construction, unless another edition is specified in the Special Conditions. All references to the American Association of State Highway and Transportation Officials (“AASHTO”), American National Standards Institute (“ANSI”), and American Waterworks Association (“AWWA”) are intended to refer to the most current standards for testing, equipment, and procedures specified by those organizations unless modified in the Specifications. Throughout the Contract Documents, all pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons or the context may require.

For purposes of these Instructions to Bidders, the terms “proposal” and “bid” will be used interchangeably and will mean the written or electronically submitted offer of a bidder to perform the work described by the Contract Documents.

2. BIDDER’S KNOWLEDGE

Bidders must familiarize themselves with all local, state, and federal ordinances and statutes pertaining to public improvements, examine and determine for themselves the location and nature of the proposed work, the amount and character of the labor and materials required therefore, and the potential difficulties which may be encountered while performing the proposed work. It is the bidder’s responsibility to determine that it is using a complete set of Contract Documents in the preparation of a bid. The bidder assume sole responsibility for any errors or misinterpretations resulting from the use of or reliance on incomplete documents by the bidder or by its prospective subcontractors and suppliers.

Bidders shall acquaint themselves with the Specifications and the required methods, procedures, policies as may be set forth in the Contract Documents.

If any person contemplating the submission of a bid for the proposed Contract is in doubt as to the true meaning of any part of the Plans, Specifications, or other Contract Documents, he or she may submit to the City Engineer a written request for an interpretation thereof at least 7 days prior to the bid deadline. Any interpretation of the Contract Documents will be made only by an Addendum issued by the City and the City will deliver a copy of such Addendum to each person who originally received a set of Contract Documents. The City will not be responsible for any other explanation or interpretation except in accordance with this process.

All proposals shall be made and received with the express understanding that the bidder accepts the terms and conditions contained in these instructions and the Plans and Specifications, General Conditions, contract and

bond forms, and any other Contract Documents.

If, after the bid proposals have been submitted, any difference of opinion shall arise as to the true intent or meaning of any part of the Specifications, the decision of the City Engineer shall be final, conclusive, and binding on all parties.

3. BIDDER'S QUALIFICATIONS

If requested, bidders must submit evidence that they have successful experience in performing the particular type of work bid upon, that they have the financial resources to complete the proposed work, and they are familiar with the class of work specified, and that they are provided with the necessary capital, tools, machinery and other equipment necessary to conduct the work and complete the improvement within the time specified in the bid proposal, in a good and workmanlike manner and to the entire satisfaction of the City Engineer and the City Council of the City of Eden Prairie, Minnesota.

The object of the request for the bidder's qualifications is to make it possible for the City to have exact information of the financial ability, personnel available and experience of the bidder in order to reduce the hazards involved in awarding a Contract to a party apparently not qualified to perform it, and to select only those bidders qualified to properly complete the work.

Failure on the part of a bidder to carry out previous contracts satisfactorily or its lack of experience necessary for the satisfactory and timely completion of this project may be deemed sufficient cause for disqualification of a bidder. The bidder must submit on the Bidder Questionnaire all requested information that will assist the City in determining whether the bidder is adequately prepared to fulfill the Contract.

The City reserves the right to reject any proposal where an investigation of the available evidence or information does not satisfy the City that the bidder is qualified to carry out the terms of the Contract. The City's decision as to qualifications of the bidder is final.

The bidder agrees that it is as fully responsible to the City for the acts and omissions of any of its proposed subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by the bidder.

Before any subcontractor may commence work, the successful bidder must file with the Engineer and the City satisfactory certificates, in duplicate, from the involved insurance companies, showing insurance coverage to the same extent and the amounts as required by the successful bidder. (See GC 6-22)

No subcontractor will be permitted to commence work until authorization by the Engineer to proceed is received in writing by the Contractor.

Unless otherwise specifically provided in the specifications for the improvements, bids must be made upon each and every item shown on the blank Proposal Form/Bid Worksheet, including all alternate items.

4. RESPONSIBLE CONTRACTOR

To be eligible to be awarded this contract, each bidder must submit a signed statement, under oath, verifying that it is a "responsible contractor" as that term is defined in Minnesota Statutes § 16C.285, subdivision 3. To be a "responsible contractor," a contractor must be in compliance with the following minimum statutory criteria:

- (1) the contractor:

- (i) is in compliance with workers' compensation and unemployment insurance requirements;
 - (ii) is in compliance with Department of Revenue and the Department of Employment and Economic Development registration requirements if it has employees;
 - (iii) has a valid federal tax identification number or a valid Social Security number if an individual; and
 - (iv) has filed a certificate of authority to transact business in Minnesota with the secretary of state if a foreign corporation or cooperative;
- (2) the contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated Minnesota Statutes sections 177.24, 177.25, 177.41 to 177.44, 181.13, 181.14, or 181.722, and has not violated the United States Code, title 29, sections 201 to 219, or United States Code, title 40, sections 3141 to 3148. For purposes of this clause, a violation occurs when a contractor or related entity:
- (i) repeatedly fails to pay statutorily required wages or penalties on one or more separate projects for a total underpayment of \$25,000 or more within the three-year period, provided that a failure to pay is "repeated" only if it involves two or more separate and distinct occurrences of underpayment during the three-year period;
 - (ii) has been issued an order to comply by the commissioner of labor and industry that has become final;
 - (iii) has been issued at least two determination letters within the three-year period by the Department of Transportation finding an underpayment by the contractor or related entity to its own employees;
 - (iv) has been found by the commissioner of labor and industry to have repeatedly or willfully violated any of the sections referenced in this clause pursuant to section 177.27;
 - (v) has been issued a ruling or findings of underpayment by the administrator of the Wage and Hour Division of the United States Department of Labor that have become final or have been upheld by an administrative law judge or the Administrative Review Board;
 - (vi) has been found liable for underpayment of wages or penalties or misrepresenting a construction worker as an independent contractor in an action brought in a court having jurisdiction; or
 - (vii) has been convicted of a violation of section 609.52, subdivision 2, clause (19).

Provided that, if the contractor or related entity contests a determination of underpayment by the Department of Transportation in a contested case proceeding, a violation does not occur until the contested case proceeding has concluded with a determination that the contractor or related entity underpaid wages or penalties;

- (3) the contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated Minnesota Statutes section 181.723 or chapter 326B. For purposes of this clause, a violation occurs when a contractor or related entity has been issued a final administrative or licensing order;
- (4) the contractor or related entity has not, more than twice during the three-year period before submitting the verification, had a certificate of compliance under Minnesota Statutes section 363A.36 revoked or suspended based on the provisions of section

363A.36, with the revocation or suspension becoming final because it was upheld by the Office of Administrative Hearings or was not appealed to the office;

- (5) the contractor or related entity has not received a final determination assessing a monetary sanction from the Department of Administration or Transportation for failure to meet targeted group business, disadvantaged business enterprise, or veteran-owned business goals, due to a lack of good faith effort, more than once during the three-year period before submitting the verification;
- (6) the contractor or related entity is not currently suspended or debarred by the federal government or the state of Minnesota or any of its departments, commissions, agencies, or political subdivisions that have authority to debar a contractor; and
- (7) all subcontractors and motor carriers that the contractor intends to use to perform project work have verified to the contractor through a signed statement under oath by an owner or officer that they meet the minimum criteria listed in clauses (1) to (6).

Any violations, suspensions, revocations, or sanctions, as defined in clauses (2) to (5), occurring prior to July 1, 2014, shall not be considered in determining whether a contractor or related entity meets the minimum criteria.

Any prime contractor, subcontractor, or motor carrier that does not meet the minimum criteria in Minn. Stat. § 16C.285, subd. 3, fails to verify compliance with any one of the required minimum criteria, or makes a false statement under oath verifying compliance is not a “responsible contractor” and is not eligible to be awarded a contract for the project or to perform work on the project.

A false statement under oath verifying compliance with any of the minimum criteria may result in termination of a contract awarded to a prime contractor, subcontractor, or motor carrier that submits a false statement.

A prime contractor or subcontractor shall include in its verification of compliance a list of all of its first-tier subcontractors that it intends to retain for work on the project. Prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the apparent successful prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with Minn. Stat. § 16C.285, subdivision 3, clause (7). Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor. If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verification of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors.

A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to Minn. Stat. § 16C.285, subd. 3(7).

A Responsible Contractor Verification form is provided with the bid documents. Each bidder must submit the form with its proposal.

5. SUBMISSION OF BIDS

Sealed bids will be received by the City of Eden Prairie, Minnesota, up to the date and hour as specified in the Notice to Contractors at the Office of the City Engineer, City Center, 8080 Mitchell Road, Eden Prairie, Minnesota 55344-2230 . Bids received after the time specified shall be returned unopened.

Bids shall be submitted upon the Proposal Form provided. **The Proposal shall be submitted in a sealed envelope plainly marked as to Title of Project and date of bid opening.** All proposals must be made in ink upon the Proposal Form and should give price for each item and aggregate amount for the work, and must be signed and acknowledged by the Bidder in accordance with the directions in the Proposal Form.

Each proposal must contain the full name or names and post office address of the bidder or bidders, and any person signing a proposal as agent of another, or of a firm or business entity, must furnish legal evidence of its authority to do so. A business entity bidder must name the state in which it is organized. In addition, partnerships must give the full names and addresses of all partners.

In case a corporation submits a proposal, the proposal must be signed in the name of, and under the seal of, the corporation by a duly authorized officer or agent of the corporation and their address given. Such officer or agent must present legal evidence that he/she has a lawful authority to sign said proposal. In the event that any corporation organized and doing business under the laws of a foreign state is the successful bidder, such corporation shall present evidence that it is authorized to do business in the State of Minnesota before the Contract is executed.

More than one proposal from an individual, firm, partnership, or corporation under the same or different names will not be considered. Evidence that any bidder is interested in more than one proposal for the same work will be considered sufficient cause for the rejection of all bids so affected.

A party who has quoted prices to a bidder is not thereby disqualified from quoting prices to other bidders, or from submitting a direct bid on their own behalf.

Telegraphic/facsimile bids will not be considered. Modifications to bids already submitted will be allowed if submitted by telegraphic/facsimile prior to the time specified in the Notice of Contractors. Modifications shall be submitted as such, and shall not reveal the total amount of either the original or revised bids.

Whenever alternate bids are called for, specifying the use of several different classes of material or types of improvement for the same work, all bidders are requested to submit prices for use of each of the several classes of material or type of improvement as specified. The material to be used or the type of improvement to be adopted will be selected by the City after the proposals have been opened and read.

6. PROPOSAL GUARANTY

Each proposal shall be accompanied by a Proposal Guaranty in the form of a certified check or bid bond, payable to the order of the City of Eden Prairie, in an amount not less than five percent (5%) of the total amount of the bid. No proposal will be considered unless accompanied by the Proposal Guaranty.

In case alternate bids are called for, providing for the use of several different classes of material or types of improvement for the same work, one Proposal Guaranty in the amount of five percent (5%) of the total amount of the highest bid will be sufficient for all proposals.

As soon as a Contract is awarded, all Proposal Guaranties shall be returned to the bidders, except that of the successful bidder and second and third lowest bidder, which shall be retained until the Contract has been signed and the bonds of the Contractor have been filed, approved, and accepted, which shall be within ten days of notice of award of the Contract.

If the successful bidder fails to enter into such contract in accordance with its accepted Proposal, or fails to furnish the required Performance and Payment Bond within ten (10) days after notice of award, its Proposal Guaranty shall be forfeited to the City of Eden Prairie as liquidated damages.

The next lowest responsible bid submitted by a qualified bidder, shall then, at the discretion of the City Council, be considered for award of the Contract.

7. WITHDRAWAL OF BIDS

After a bidder has submitted a proposal, it may not withdraw or cancel such proposal until 60 days after the opening of bids. The bidder's Proposal Guaranty may be held by the City for said 60 days until all proposals submitted have been canvassed, a Contract awarded and executed by the successful bidder, and the required bonds and insurance furnished and approved.

8. EVALUATION OF BIDS

Only bids from qualified bidders will be considered for the contract award. The bids from each qualified bidder will be considered on the basis of the total amount, as shown on the Proposal Form, and awarded according to the lowest total reflecting the correct summation of all items extensions shown or as otherwise described in the Special Conditions.

The City reserves the right to reject any or all Proposals or to accept the Proposal deemed in the best interest of the City. Without limiting the generality of the foregoing, any Proposal which is incomplete, obscure, or irregular may be rejected; any Proposal having erasures or corrections in the price sheet may be rejected; any Proposal which omits a bid on any one or more items in the price sheet may be rejected; any Proposal in which unit prices are obviously unbalanced may be rejected; any Proposal accompanied by an insufficient or irregular Proposal Guaranty may be rejected; any Proposal which omits acknowledgement of the receipt of addendums may be rejected.

9. MATERIAL SOURCES

After the bids have been received, when requested by the Engineer, each bidder shall give information in writing concerning the quantity, composition and the previous use of the materials or equipment they have bid upon as may be known to them; and samples of such materials shall be furnished when required.

10. EXECUTION OF CONTRACT

The acceptance of the Proposal will be a notice in writing signed by a duly authorized representative of the City of Eden Prairie. The acceptance of the Proposal shall bind the successful bidder to execute the Contract within ten (10) days and to be responsible for liquidated damages for failure to execute the Contract. The rights and obligations provided for in the Contract shall become effective upon the parties only with its formal execution by the City of Eden Prairie.

Following action by the City Council awarding the Contract, a "Notice of Award" letter will be mailed to the Contractor together with the prepared Construction Contract Agreement for its signature and return. The Notice of Award letter will specify that the Contractor submit affidavits or copies of insurance coverage, a Payment Bond and a Performance Bond. The required amounts are indicated in GC 6-22 and GC 5-09. No Contract will be executed by the City until the required affidavits and bonds are submitted and have been approved.

The Notice of Award letter is not an order to proceed. The Contractor will have no authority to perform work under this Contract until all Contract Documents, as indicated above, are properly completed and placed on file at the City Offices.

A Letter to Proceed with the work under this project will be mailed to the Contractor upon satisfaction of the above indicated requirements. A preconstruction conference will be scheduled thereafter.