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## INFORMATION FOR BIDDERS

### 1.0 BID PREPARATION

#### 1.01 EXAMINATION AND RESPONSIBILITY

Bidders are directed to examine for themselves the drawings, specifications, estimated quantities and the location of the proposed work. They shall exercise their own judgment as to the scope and nature of the work; the difficulties to be encountered and the quantities that may actually be encountered in the work. Each bidder is fully responsible for having reviewed and understood these specifications previous to submitting his bid, that his bid covers and complies with **all** requirements of the Contract Documents, and shall not at any time thereafter assert any claim related to any misunderstanding of the nature or amount of work to be done.

#### 1.02 CONDITION OF WORK

Each bidder must inform himself fully of the conditions relative to the construction under which the work is now being or will be performed. Failure to do so will not relieve a successful bidder of his obligation to furnish all materials and labor necessary to carry out the provisions of the contract documents and to complete the contemplated work for the construction as set forth in his bid. The Contractor in the carrying out of his work must employ such methods or means that will not cause any interruptions or interference with the work of any other contractor (if applicable).

#### 1.03 OBLIGATIONS OF BIDDERS

At the time of the opening of bids each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the drawings and contract documents (including all addenda). The failure or omission of any bidder to receive or examine any form, instrument or documents shall in no way relieve any bidder from any obligations contained therein.

#### 1.04 ADDENDA, BID SPECIFICATION CHALLENGES AND INTERPRETATIONS

The Table of Contents indicates the number of pages of each section of the document. If any bidder finds that a page was miss-copied or is missing, please contact the Engineer. The page(s) will be faxed to the bidder. Issuance of any such pages will not be considered an Addendum to the contract or specifications.

No interpretations of the meaning of the drawings, specifications or other contract documents will be made to any bidder orally. Every request for such interpretation should be made in writing, addressed to the Engineer, and to be given consideration, must be received at least ten (10) days prior to the final date fixed for receiving bids. Any and all such interpretations and/or supplemental instructions will be in the form of written addenda to the specifications, which if issued, will be issued in accordance with applicable State Laws. Any bidder who wishes to challenge a bid specification shall file such challenges in writing with the Engineer no less than three business days prior to the opening of the bids. Challenges filed after that time shall be considered void and having no impact on the contracting unit or the award of a contract.

Failure of any bidder to receive any such addendum or interpretations shall not relieve any bidder from any such obligations therein under his bid submitted. All addenda so issued shall become part of the contract documents, and shall be attached to the bid form when submitted

#### 1.05 QUALIFICATIONS OF BIDDERS

The owner may make such investigation as is necessary to determine the responsibility of the bidder and/or the ability of the bidder to perform the work. The bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if evidence submitted by, or investigation of, such bidder fails to satisfy the Owner that said bidder is responsible or properly qualified to carry out the obligations of the contract and to complete the work therein contemplated.

Conditional bids will not be accepted. Bids which are incomplete or obscure may be rejected at Owner's option.

#### 1.06 DISCLOSURE STATEMENT

No corporation or partnership shall be awarded any contract nor shall any agreements be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with any public funds, by the State, County, Municipality or School District, or any subsidiary or agency of the State, County, Municipality or School District or by any Authority, Board or Commission which exercises governmental function, unless prior to the receipt of the bid of said corporation or said partnership, there is submitted a statement setting forth the name and addresses of all stockholders in the corporation or partnership who owns ten percent or more of its stock of any class or of all individual partners in the partnership who owns ten percent or greater interest therein, as the case may be. If one or more such stockholders or partner is itself a corporation's stock or the individual partners owning ten percent or greater interest in that partnership as the case may be, shall also be listed. The disclosure shall be continued until the names and addresses of every non-corporate stockholders and individual partner exceeding the ten percent ownership criteria established in this act has been listed. If the bidder is not a corporation, or partnership, it should so indicate on the disclosure statement.

#### 1.07 MANUFACTURED ARTICLES

In the specifications and on accompanying drawings, there are specified and shown certain pieces of equipment and materials, deemed most suitable for the service anticipated. This is not done, however, to eliminate other equipment and materials equally as good and efficient. When a bidder submits an equivalent, it shall be the responsibility of the bidder to document the equivalence claim. Failure to submit such documentation shall be grounds for the rejection of the claim of equivalence. The bidder shall prepare his bid on the basis of the particular equipment and materials specified or shown, and shall be responsible for the coordination, arrangement and location of all equipment and material incorporated in the work.

#### 1.08 BID SECURITY AND CONSENT OF SURETY

Each bid shall be accompanied by a Certified Check, Cashier's Check or Bid Bond duly executed by the bidder as principal, and having as surety thereon a Surety Company approved by the Owner, in an amount not less than ten percent (10%) of the amount bid. Any such Bid Bond shall be without endorsement or conditions. Bid shall also be accompanied with a certificate letter from a surety company stating that it will provide the bidder with the requisite completion performance and payment bonds, i.e. a Consent of Surety.

Such bid guarantee will be returned to all bidders, except to the three apparent lowest responsible bidders, within ten days after the formal opening of bids, Sundays and holidays excepted.

The bid guarantee will be returned to the remaining unsuccessful bidders within three days, Sundays and holidays excepted, after the Owner and the accepted bidder have executed the contract and the Owner has approved the Bidder's Performance Bond, or if no contract has been accepted within 60 days after the date of opening of bids, any bidder upon demand made after the expiration of said 60 day period, shall be entitled to the return of his bid guarantee, so long as he has not been notified by the Owner of the acceptance of his bid.

Any such bid guarantee shall be forfeited and become the property of the Owner if the bidder whose bid is accepted shall fail: to give a satisfactory performance bond and labor and material payment bond, or a combination performance and labor and material payment bond, and/or fails to execute a contract within ten (10) days after notice from the Owner to do so.

## 2.0 SUBMISSION OF BIDS

### 2.01 GENERAL

Bidder must submit their bid on the respective "Bid Form and Package" included hereto.

No bid will be accepted or opened if received after the designated time for receipt.

For each bid made, all blank spaces in the Bid Form must be filled in, in ink, with the unit prices of the item and its extension. All bid forms submitted will be checked for arithmetic accuracy.

Any bid may be submitted or withdrawn prior to the scheduled time for the opening of bids, or authorized postponement thereof. Any bid received after the time and date specified in the Notice to Bidders will not be considered. No bid may be withdrawn within 60 days after the actual date of opening thereof.

### 2.02 PRICE TO INCLUDE

The bid submitted must cover the entire cost of the contemplated construction and installation as illustrated on the drawings and in the manner and detail described in the specifications. The price bid for each item shall cover the entire cost of its installation, construction, and completion, including all materials, workmanship, and appurtenances necessary for its completion or as implied by illustration on the drawings, by description in the specifications, or to be reasonably inferred therefrom.

If there are minimum unit prices included in the bid form, those prices shall be the minimum acceptable unit price for the work. If bidder fails to propose the minimum unit price in his bid, the unit price will be set to the minimum price states on the bid form, with the appropriate increase to the extension of the unit price and total bid price.

### 2.03 REJECTION OF BIDS

The owner reserves the right to reject all bids, to reject any bid or bids not complying with the specifications, and to waive any informality in any bid or bids if such waiver be deemed by the Owner to be in the best interests of the Owner. Each bidder is instructed to be present in person or by representative at the time and place fixed for the opening of bids and at every subsequent meeting of the Owner at which the bidder is advised, or it has been publicly announced at the time of bids, that said bids shall receive further consideration or shall be acted upon, if said bidder desires an opportunity to be heard.

### 2.04 AWARD OF BID

The award of the contract will be made, subject to necessary monies to do the work being provided by the Owner either by Resolution, Ordinance, or in other lawful manner. The contract to be executed by the successful bidder will provide that it shall not become effective until the necessary monies to do the work have been provided by the Owner, either by Resolution, Ordinance or another lawful manner.

No contract shall be awarded to any contractor, subcontractor, or to any firm, corporation or partnership in which such contractor or subcontractor has an interest, who is debarred from public works. Bidder may be disqualified and his proposal or proposals rejected subject to conditions specified under DeIDOT "Bidding Requirements and Conditions".

## 3.0 CONTRACTS

### 3.01 DRAWINGS AND SPECIFICATIONS FURNISHED

The Engineer shall furnish, at no additional cost to the successful bidder, one executed contract set of drawings and specifications, and two copies of the specifications and drawings. All additional copies of the drawing and/or specifications shall be furnished to the contractor at the cost of reproduction plus handling.

### 3.02 PERFORMANCE, PAYMENT AND MAINTENANCE BONDS

The bidder whose bid is accepted shall furnish to the Owner, a performance bond and labor and material payment bond, or a combination performance and labor and material payment bond, and at the completion of the work, a two (2) year maintenance bond, each in the amount of 100% of the final contract price, with such sureties as shall be approved by the Owner and as detailed and described below.

All surety companies must be authorized to transact such business in Delaware. The surety must designate a Delaware agent on whom service of process can be made. The Contractor shall be responsible for updating the surety's expiration from the list or an agent change, to the Engineer or Owner. All surety companies must have the minimum capital and surplus or net cash assets required on the date of advertisement for the project. All surety companies must complete a Surety Disclosure Statement and Certification for all payment and performance bonds.

In addition, for these public works project bids, including any and all alternates, that equals at least \$850,000.00 but not more than \$3.5 million, the surety company must hold a current certificate of authority issued by the U.S. Secretary of the Treasury that is valid in Delaware as listed annually in the U. S. Treasury Circular 570. However, if the surety company has been operational for a period in excess of five years, the surety company shall also be considered to have satisfied this requirement if it is rated in one of the three highest categories by an independent nationally recognized United State rating company that determines the financial stability of insurance companies.

In addition, for those public works project bids, including any and all alternates, is in excess of \$3.5 million, the surety company must hold a current certificate of authority issued by the United States Secretary of the Treasury that is valid in the State of Delaware listed annually in U.S. Treasury Circular 570. And, if the surety company has been operational for a period in excess of five years, it must be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies.

A surety company, which seeks to provide a payment and performance bond in excess of \$3.5 million, is exempt from the requirement of Treasury Circular 570 if it meets standards developed by the Commissioner of Insurance through regulations which, at least equal, and may exceed, the general criteria required for Treasury listing.

### 3.03 LAWS AND REGULATIONS

The bidder's attention is directed to the fact that all applicable Federal, State, County and municipal laws ordinances, regulations, etc. and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though therein written out in full including, but not limited to the Department of Transportation Specifications, latest revision --General Provisions and the Federal Construction Safety Act (Public Law 91-54), Federal Register, Chapter XXII, Part 1926 of Title 29 Code of Federal Regulations, Occupational Safety and Health Regulations for Construction, and subsequent publications updating these regulations

### 3.04 PERMITS

The Contractor shall determine which construction permits and licenses shall be needed, and shall procure and pay for all such construction permits and licenses necessary for the execution of his work.

### 3.05 CONTRACT DOCUMENTS

Attached hereto is the "Form of Contract" that will be executed between the Owner and the Contractor.

The Contractor shall execute and return these documents with the required bonds, insurance certificates, affirmative action forms and any other documents required within ten (10) days after receipt of the request for execution.

### 3.06 NOTICE TO PROCEED

After approval and execution of the contract documents by all parties and a preconstruction meeting, the contractor shall be sent a "Notice to Proceed". This document serves as formal authorization to proceed with the project.

Any and all work performed by the Contractor prior to receipt of the Notice to Proceed is at the Contractor's risk with no claim against the Owner for such work.

## 4.0 AFFIRMATIVE ACTION AGAINST DISCRIMINATION

### 4.01 BIDDER REFERRED TO LAW

The bidder is specifically referred to the Delaware State Code, as amended and the Regulations adopted pursuant thereto, relating to affirmative action in relation to discrimination.

### 4.02 SPECIFIC LANGUAGE REQUIRED

In accordance with the following is made a part of this Contract:

During the performance of this contract, the contractor agrees as follows:

- a. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status or sex, affectional or sexual orientation, familial status, liability for service in the Armed Forces of the United States, or nationality. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, familial status, liability for service in the Armed Forces of the United States, or nationality. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this non-discrimination clause.
- b. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, familial status, liability for service in the Armed Forces of the United States, or nationality.
- c. The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or worker's representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The contractor or subcontractor, where applicable, agrees to comply with any Regulations promulgated by the Treasurer pursuant to the Delaware State Code, as amended and supplemented from time to time.

e. When scheduling workers in each construction trade, the contractor or subcontractor agrees to attempt in good faith to employ minority and female workers in each construction trade consistent with the applicable employment goal prescribed by the Delaware State Code; provided however, that the Department of Labor may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures, as long as the Department of Labor is satisfied that the contractor is scheduling workers provided by a union which provides evidence, in accordance with standards prescribed by the Department of Labor, that its percentage of active "card carrying" members who are minority and/or female workers is equal to or greater than the applicable employment goal prescribed by the Delaware State Code, as amended and supplemented from time to time. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

- (A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to the Delaware State Code as supplemented and amended from time to time. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five days prior to the commencement of construction work, the contractor or subcontractor agrees directly to attempt to hire minority and female workers consistent with the applicable employment goal. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and female workers consistent with the applicable employment goal, the contractor or subcontractor agrees to be prepared to hire minority and female workers directly consistent with the applicable employment goal, by complying with the following hiring procedures prescribed under (B) below; and the contractor or subcontractor further agrees to immediately take said action if it determines or is so notified by the Delaware State Code that the union is not referring minority and female workers consistent with the applicable employment goal.
- (B) If the scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions consistent with the applicable county employment goals:
  - 1. To notify the Public Agency Compliance Officer, Department of Labor, and at least one approved minority referral organization of its manpower needs, and request the referral of minority and female workers;
  - 2. To notify any minority and female workers who have been listed with it as awaiting available vacancies;
  - 3. Prior to commencement of work, to request the local construction trade union, if the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, to refer minority and female workers to fill job openings;
  - 4. To leave standing requests for additional referral to minority and female workers with the local construction trade union, if the contractor or sub-contractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal;

5. If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority employees remain on the site consistent with the employment goal; and to employ any minority and female workers so laid off by the contractor or any other construction site in the area on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing the Delaware State Code.
6. To adhere to the following procedure when minority and female workers apply or are referred to the contractors or subcontractor:
  - i. If said individuals have never previously received any document or certification signifying a level of qualification lower than that required, the contractor or subcontractor shall determine the qualifications of such individuals and if the contractor's or sub-contractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall employ such persons which satisfy appropriate qualification standards; provided however, that a contractor or subcontractor shall determine that the individual at least possesses the skills and experience recognized by any worker's skills and experience classification determination which may have been made by a Public Agency Compliance Officer, union, apprentice program or a referral agency, provided the referral agency is acceptable to the Department of Labor and provided further, that if necessary, the contractor or subcontractor shall hire minority and female workers who qualify as trainees pursuant to these regulations. All of the requirements of this paragraph, however, are limited by the provisions of (C) below.
  - ii. If the contractor's or subcontractor's work-force is consistent with the applicable employment goal, the name of said female or minority group individual shall be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.
  - iii. If, for any reason, said contractor or sub-contractor determines that a minority individual or a female is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform said individual in writing with the reasons for the determination, maintain a copy in its files, and send a copy to the Public Agency Compliance Office and the Department of Labor.
7. To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Department of Labor and shall be submitted promptly to that Office upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the hiring hall or apprenticeship provisions in any applicable collective bargaining agreement or hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement; provided, however, that where the practices of a union or apprenticeship program will result in the exclusion of minorities and female or the failure to refer minorities and females consistent with the county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to said provisions (B) without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ female and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a

percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of the preceding provisions (B), it shall, where applicable, employ minority and female workers residing within the geographical jurisdiction of the union.

- (D) The contractor agrees to complete Initial Project Manning Reports on forms distributed by the Public agency awarding the contract or in the form prescribed by the Department of Labor and submit a copy of said form, at the time of award of the construction contract, to the Department of Labor as well as to the Public Agency Compliance officer; and to submit a copy of the Monthly Project Manning Report once a month (by the seventh work day of each month) thereafter for the duration of this contract to the Department of Labor and to the Public Agency Compliance Officer. The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and off-the-job programs for outreach and training of minority and female trainees employed on the construction projects.
- (E) The contractor and its subcontractors shall furnish such reports or other documents to the Department of Labor as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the affirmative action office for conducting a compliance investigation pursuant to the Delaware State Code.

#### 4.03 CONTRACT PROCEDURES

The Contractor must sign a contract containing the mandatory language in Section 4.02 above entitled "Specific Language Required". The construction goals and related contract obligations and procedures, as described in the regulations, do not apply to any construction contractor or subcontractor which submits appropriate evidence that it is operating under a federally approved or sanctioned affirmative action plan.

If the contractor refuses to sign a contract containing the mandatory affirmative action contract language, at the time the contract is submitted for signing by the OWNER, then the Owner will reject the contractor's bid as non-responsive. When such a rejection occurs, the same affirmative action requirements shall apply to any other contractor selected by the Owner in accordance with the contracting laws and procedures.

#### 4.04 EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

The contractor and the Owner do hereby agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. s12.101 et seq.), which prohibits discrimination on the basis of disability by public entities, in all services, programs and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereunto, are made part of this contract. In providing any aid, benefit or service on behalf of the Owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act.

In the event the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the Owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the Owner, its agents, servants and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs or other expenses arising from such action or administrative proceeding or incurred in connection therewith.

In any and all complaints brought pursuant to the Owner's grievance procedure, the contractor agrees to abide by any decision of the Owner, which is rendered pursuant to, said grievance procedure. If any action or administrative proceeding results in an award of damages against the Owner, or if the Owner incurs any expense to cure a violation of the Act which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

The Owner shall, as soon as practical after a claim has been made against it, give written notice thereof to the contractor along with the full particulars of the claim. If any action or administrative proceeding is brought against the Owner or any of its agents, servants and employees, the Owner shall expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the Owner or its representatives.

It is expressly agreed and understood that any approval by the Owner of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the Owner pursuant to this paragraph. It is further agreed and understood that the Owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this contract.

Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this contract, nor shall they be construed to relieve the contractor from any liability, nor preclude the Owner from taking any other actions available to it under any other provisions of this contract or otherwise at law.