

**UNIVERSITY OF ROCHESTER
INSTRUCTIONS TO BIDDERS**

INDEX

ARTICLE 1	
BIDDING DOCUMENTS.....	1
1.1 DEFINITIONS.....	1
ARTICLE 2	
BIDDER'S REPRESENTATIONS.....	2
2.1 EACH BIDDER BY MAKING HIS BID REPRESENTS THAT:.....	2
ARTICLE 3	
BIDDING DOCUMENTS.....	2
3.1 COPIES.....	2
3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS.....	3
3.3 SUBSTITUTIONS.....	3
3.4 ADDENDA.....	3
ARTICLE 4	
BIDDING PROCEDURE.....	4
4.1 FORM AND STYLE OF BIDS.....	4
4.2 BID SECURITY.....	4
4.3 SUBMISSION OF BIDS.....	5
4.4 MODIFICATION OF WITHDRAWAL OF BID.....	5
ARTICLE 5	
CONSIDERATION OF BIDS.....	6
5.1 OPENING OF BIDS.....	6
5.2 REJECTION OF BIDS.....	6
5.3 ACCEPTANCE OF BID (AWARD).....	6
ARTICLE 6	
POST BID INFORMATION.....	6
6.1 CONTRACTOR'S QUALIFICATION STATEMENT.....	6
6.2 SUBMITTALS.....	6
ARTICLE 7	
PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND.....	7
7.1 BOND REQUIREMENTS.....	7
7.2 TIME OF DELIVERY AND FORM OF BONDS.....	7
ARTICLE 8	
FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR.....	8
8.1 FORM TO BE USED.....	8
ARTICLE 9	
SUPPLEMENTARY INSTRUCTIONS.....	8
9.1 BID SECURITY.....	8
9.2 EXECUTION OF CONTRACT, PERFORMANCE AND PAYMENT BOND, INSURANCE.....	8
9.3 TIME OF COMPLETION.....	9
9.4 ACCEPTED STANDARDS.....	9
9.5 APPROVAL OF ACCEPTABLE PRODUCTS.....	9
9.6 UNIT PRICES.....	9
9.7 APPLICABLE STATE AND COUNTY SALES TAX.....	10

**UNIVERSITY OF ROCHESTER
INSTRUCTIONS TO BIDDERS**

ARTICLE 1

BIDDING DOCUMENTS

1.1 DEFINITIONS

- 1.1.1 Bidding Documents include the Invitation to Bid, Instructions to Bidders, the Form of Proposal, other sample Bidding and contract forms and the proposed Contract Documents including any Addenda issued prior to receipt of bids. The Contract Documents proposed for the Work consist of the Owner-Contractor Agreement, the University of Rochester Standard General Conditions of the Contract for Construction as well as any Supplementary and other conditions (the "General Conditions"), the Drawings, the Specifications and all Addenda issued prior to and all Modifications issued after execution of the Contract.
- 1.1.2 All definitions set forth in the General conditions of the Contract for Construction, or in other Contract Documents, are applicable to the Bidding Documents.
- 1.1.3 Addenda are pre or post bid written or graphic instruments issued by the Consultant, whether pre or post bid prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.
- 1.1.4 A bid is a complete and properly signed proposal to do the Work or designated portion thereof for the sums stipulated therein, submitted in accordance with the Bidding Documents.
- 1.1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which work may be added or from which work may be deleted for sums stated in Alternate Bids.
- 1.1.6 An Alternate Bid (or Alternate) is an amount stated in the bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.
- 1.1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials or services as described in the Bidding Documents or in the proposed Contract Documents.
- 1.1.8 A Bidder is a person or entity who submits a Bid.
- 1.1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials or labor for a portion of the Work.

ARTICLE 2

BIDDER'S REPRESENTATIONS

2.1 EACH BIDDER BY MAKING HIS BID REPRESENTS THAT:

- 2.1.1 He has read and understands the Bidding Documents and his Bid is made in accordance therewith.

- 2.1.2 He has visited the site, has familiarized himself with the local conditions under which the Work is to be performed and has correlated his observations with the requirements of the proposed Contract Documents.
- 2.1.3 His Bid is based upon the materials, systems and equipment required by the Bidding Documents without exception.

ARTICLE 3

BIDDING DOCUMENTS

3.1 COPIES

- 3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Invitation to Bid in the number and for the deposit amount, if any, stated therein. The deposit will be refunded to Bidders who submit a bona fide Bid and return the Bidding documents in good condition to the Consultant not later than fifteen days after opening of Bids. Any prospective Bidder who does not submit a Bid will receive one-half of his deposit (one check) upon return of the Drawings and Project Manuals to the Consultant. All other persons receiving any or all of the Bidding Documents, including Subcontractors and Material Suppliers, will receive one-half of their deposit upon return of the Drawings and Project Manuals to the Consultant. All Bidding Documents received (except for Documents held by Successful Bidders) must be returned to the Consultant. The cost of replacement of any missing or damaged documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the Bidding documents and his deposit will be refunded.
- 3.1.2 Bidding documents will not be issued directly to Sub-bidders or others unless specifically offered in the Invitation to Bid.
- 3.1.3 Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the Owner nor the Consultant assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 3.1.4 The Owner or the Consultant in making copies of the 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.

3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

- 3.2.1 Bidders and Sub-bidders shall promptly notify the Consultant and the Owner of any ambiguity, inconsistency or error which they may discover upon examination of the Bidding Documents or of the site and local conditions.
- 3.2.2 Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Consultant at least seven days prior to the date for receipt of Bids.
- 3.2.3 Any interpretation, correction or change of the Bidding Documents will be made by Addendum. Interpretations, corrections or changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon such interpretations, corrections and changes.
- 3.2.4 In the absence of an interpretation by the Consultant, should the Drawings disagree in themselves or with the Specifications, the better quality or the greater quantity of work or materials shall be estimated upon, and unless otherwise ordered, shall be furnished.

3.2.5 Communications regarding any questions shall be directed to the Consultant or his designated representative(s).

3.3 **SUBSTITUTIONS**

3.3.1 The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

3.3.2 No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Consultant at least ten days prior to the date for receipt of Bids. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for an evaluation. A statement setting forth any changes in other materials, equipment or other Work that incorporation of the substitute would require shall be included. The burden of proof of the merit of the proposed substitute is upon the proposer. The Owner's decision, in consultation with the Consultant, of approval or disapproval of a proposed substitution shall be final.

3.3.3 If the Owner approves any proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not reply upon approvals made in any other manner.

3.3.4 No substitutions will be considered after the Contract award unless specifically provided in the Contract Documents.

3.4 **ADDENDA**

3.4.1 Addenda will be mailed, faxed or delivered to all who are known by the Consultant to have received a complete set of Bidding Documents.

3.4.2 Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

3.4.3 Each Bidder shall ascertain prior to submitting his bid that he has received all Addenda issued, and he shall acknowledge their receipt in his Bid.

ARTICLE 4

BIDDING PROCEDURE

4.1 **FORM AND STYLE OF BIDS**

4.1.1 Bids shall be submitted on forms identical to the form included with the Bidding Documents, in the quantity required by the Invitation to Bid.

4.1.2 All blanks on the bid form shall be filled in by typewriter or manually in ink.

4.1.3 Where so indicated by the makeup of the bid form, sums shall be expressed in both words and figures, and in case of discrepancy between the two, the amount written in words shall govern.

4.1.4 Any interlineation, alteration or erasure must be initialed by the signer of the Bid.

4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change."

4.1.6 Where individual bids are requested for different designated portions of the work, the Bidder may, without forfeiture of his bid security, elect and state his refusal to accept award for less than the combination of individual Bids that he stipulates.

4.1.7 Each copy of the Bid shall include the legal name of the Bidder and a statement that the Bidder is a sole proprietor, a partnership, a corporation, or some other legal entity. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

4.2 **BID SECURITY**

4.2.1 If so stipulated in the Invitation to Bid, each Bid shall be accompanied by a bid security in the form and amount required by the Invitation to Bid pledging that the Bidder will enter into a contract with the Owner on the terms stated in his Bid and will, if required, furnish bonds as described hereunder in Article 7 covering the faithful performance of the Contract and the payment of all obligations arising thereunder. Should he Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty.

4.2.2 If a surety bond is required it shall be written in form acceptable to Owner, and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of his power of attorney.

4.2.3 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn, or (c) all Bids have been rejected.

4.3 **SUBMISSION OF BIDS**

4.3.1 All copies of the Bid, the bid security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

4.3.2 Bids shall be deposited at the designated location prior to the time the date for receipt of Bids indicated in the Advertisement or Invitation to Bid, or any extension thereof made by Addendum. Bids received after the time and date for receipt of Bids will be returned unopened.

4.3.3 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

4.3.4 Oral, telephonic, telegraphic or faxed Bids are invalid and will not receive consideration.

4.4 **MODIFICATION OR WITHDRAWAL OF BID**

4.4.1 A bid may not be modified, withdrawn or canceled by the Bidder for a period of forty-five days following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting his Bid.

- 4.4.2 Prior to the time and date designated for receipt of Bids, any Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder or by telegram or facsimile; if by telegram or facsimile, written confirmation over the signature of the Bidder shall be mailed and postmarked on or before the date and time set for receipt of Bids, and it shall be so worded as not to reveal the amount of the original Bid.
- 4.4.3 Withdrawn Bids may be resubmitted up to the time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.
- 4.4.4 Bid security, if any is required, shall be in an amount sufficient for the Bid as modified or resubmitted.

ARTICLE 5

CONSIDERATION OF BIDS

5.1 OPENING OF BIDS

- 5.1.1 Properly identified Bids received on time will be opened privately.

5.2 REJECTION OF BIDS

- 5.2.1 The Owner shall have the right, in its sole discretion, to reject any or all bids and to reject a Bid not accompanied by any required bid security or by other data required by the Bidding Documents, or to reject a Bid which is in any way incomplete or irregular.

5.3 ACCEPTANCE OF BID (AWARD)

- 5.3.1 It is the intent of the Owner, in its sole discretion, to award a Contract to the lowest responsive and responsible Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available; provided, however, that the Owner retains complete discretion to reject all bids or to award to other than the lowest bidder, if it believes that that is in its own best interest. The Owner shall have the right, in its sole discretion, to waive any informality or irregularity in any Bid or Bids received and to accept the Bid or Bids which, in its judgment, is in its own best interest.
- 5.3.2 The Owner shall have the right, in its sole discretion, to accept Alternates in any order or combination, unless otherwise specifically provided in Article 9, and to determine the low Bidder on the basis of the sum of the Base Bid and the Alternates accepted.

ARTICLE 6

POST BID INFORMATION

6.1 CONTRACTOR'S QUALIFICATION STATEMENT

- 6.1.1 Bidders to whom award of a Contract is under consideration shall submit to the Consultant, upon request, and in form acceptable to the Owner, a properly executed Contractor's Qualification Statement, unless such a Statement has been previously required and submitted as a prerequisite to the issuance of Bidding Documents.

6.2 SUBMITTALS

- 6.2.1 The Bidder shall, within seven days of notification of selection for the award of a Contract for the Work, submit the following information to the Consultant:
1. A designation of the Work to be performed by the Bidder with his own forces;
 2. The proprietary names and the suppliers of principal items or systems of materials and equipment proposed for the Work;
 3. A list of names of the Subcontractors or other persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.
- 6.2.2 The Bidder will be required to establish to the satisfaction of the Consultant and the Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.
- 6.2.3 Prior to the award of the Contract, the Consultant will notify the Bidder in writing if either the Owner or the Consultant, after due investigation, has reasonable objection to any such proposed person or entity. If the Owner or Consultant has reasonable objection to any such proposed person or entity, the Bidder may, at his option, (1) withdraw his Bid, or (2) submit an acceptable substitute person or entity with an adjustment in his bid price to cover the difference in cost occasioned by such substitution. The Owner may, at his discretion, accept the adjusted bid price or may disqualify the Bidder. In the event of either withdrawal or disqualification under this Subparagraph, bid security will not be forfeited, notwithstanding the provisions of Paragraph 4.2.1.
- 6.2.4 Persons and entities proposed by the Bidder and to whom the Owner and the Consultant have made no reasonable objection under the provisions of Subparagraph 6.2.3 must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and the Consultant.

ARTICLE 7

PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.1 BOND REQUIREMENTS

- 7.1.1 Prior to execution of the Contract, if required in Article 9 hereinafter, the Bidder shall furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder in such form and amount as the Owner may prescribe. If the furnishing of such bonds is stipulated hereinafter in Article 9, the cost shall be shown on the form of Proposal.

7.2 TIME OF DELIVERY AND FORM OF BONDS

- 7.2.1 The Bidder shall deliver the required bonds to the Owner not later than the date of execution of the Contract, or if the Work is to be commenced prior thereto in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.
- 7.2.2 The Performance Bond and Labor and Material Payment Bond shall be written on forms acceptable to Owner.
- 7.2.3 The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney.

ARTICLE 8

FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

8.1 FORM TO BE USED

- 8.1.1 The Agreement for the Work between Owner and Contractor, will be written in the form included in the Contract Documents.

ARTICLE 9

SUPPLEMENTARY INSTRUCTIONS

9.1 BID SECURITY

- 9.1.1 Bids shall be accompanied by a Bid Guarantee of not less than five percent (5%) of the amount of the Bid, which may be a Bid Bond, certified check or cashier's check made payable to the Owner. Such Bid bond, or check, shall be submitted with the understanding that it shall guarantee that the Bidder will not withdraw his Bid for a period of forty-five (45) days after the scheduled closing time for the receipt of Bids: that if his Bid is accepted he will enter into a formal contract with the Owner in accordance with the Owner-Contractor Agreement included as part of the Contract Documents, and that if required, the Performance and Payment Bonds will be given; and that in the event of the withdrawal of said Bid within said period or the failure to enter into said Contract and give said Bonds within ten (10) days after he has received notice of the acceptance of his Bid, the Bidder shall be liable to the Owner for the full amount of the Bid Guarantee as representing the damage to the Owner on account of the default of the Bidder in any particular hereof. The Bid Bond shall be obtained from a surety company which is acceptable to the Treasury Department of the United States for bonds given to the United States Government, and which is authorized to do business in the State of New York. The Owner may waive the requirement for Bid Bond in its discretion.
- 9.1.2 The Bid Bonds and checks shall be returned to all except the three (3) lowest Bidders within three (3) days after the formal opening of bids. The remaining Bid Bonds and checks will be returned to the three (3) lowest Bidders within forty-eight (48) hours after the Owner and the accepted Bidder have executed the Contract and if required the executed Performance and Payment Bonds have been approved by the Owner. If the required Contract and Bonds have not been executed within forty-five (45) days after the date of the opening of Bids, then the Bond or check of any Bidder will be returned upon his request, provided he has not been notified of acceptance of his Bid prior to the date of such request.

9.2 EXECUTION OF CONTRACT, PERFORMANCE AND PAYMENT BOND, INSURANCE

- 9.2.1 The Successful Bidder shall, within ten (10) days after notification that the Contract is ready for execution, execute in triplicate and deliver to the Owner all executed counterparts of the Contract in the form set forth in the Contract Documents.
- 9.2.2 Upon request by the Owner, the successful Bidder shall, if a corporation or an unincorporated association, file a Certificate, evidencing the fact that it is authorized to do business in the State of New York, or if conducting business under an assumed name, file a County Clerk's Certificate, evidencing filing with such Clerk of a Certificate to conduct business under such assumed name, and/or if conducting business as a Partnership, file a County Clerk's Certificate, evidencing filing with such Clerk of a Certificate of Partnership.

9.2.3 Simultaneously with his delivery of an executed Contract, the successful Bidder must deliver to the Owner an executed bond in an amount equal to one hundred percent (100%) of the Contract Price, to secure faithful performance of the Contract, and an executed Bond in amount equal to one hundred percent (100%) of Contract Price, as security for payment of all persons performing labor or furnishing materials in connection with this Contract, prepared on the forms acceptable to Owner, and having as surety thereunder such surety company or companies as are acceptable to the Treasury Department of the United States on bonds given to the United States Government, and which are authorized to do business in the State of New York. Premium on such Bonds shall be shown on the Form of Proposal. The Owner may waive the requirement for a Performance Bond and Labor and Material Payment Bond in its discretion.

9.2.4 Simultaneously with his delivery of an executed Contract, a successful Bidder shall deliver copies of Certificates of Insurance for insurance in the amounts specified in the General Conditions.

9.3 **TIME OF COMPLETION**

9.3.1 The Work shall be started on the date set forth in the Notice to Proceed issued by the Owner and shall be completed in the time stated, if any, on the Form of Proposal.

9.4 **ACCEPTED STANDARDS**

9.4.1 When any Article, material, or equipment is specified by reference to Standard Specifications such as ASTM, etc., any material, Article, or equipment may be used at Contractor's option, providing that the requirements of the Standard Specifications mentioned have been satisfied. The latest edition of all Standards' designations, and any supplements thereto, shall apply.

9.5 **APPROVAL OF ACCEPTABLE PRODUCTS**

9.5.1 It is the intent throughout the Specifications that whenever a material or method of some particular manufacturer or process is specified, that that Specification be considered as the standard of quality. The Base Bid shall be made in accordance with these Specifications. Equivalent substitutions may be proposed and must be listed separately, along with price information for each substitution, in the Form of Proposal.

9.6 **UNIT PRICES**

9.6.1 In accepting the Proposal, the Owner may reject any, some or all Unit Prices quoted by the successful Bidder. All Unit Prices accepted by Owner shall remain binding and irrevocable for entire period of Contract, irrespective of actual amounts of work ordered under such Unit Prices.

9.6.2 The Schedule of "Unit Prices" submitted in the Bidder's Proposal as adjusted and accepted by the Owner will be used as the basis for computing "additions to" or "deductions from" the Contract Price for "Extra Work" and for Work countermanded, reduced or omitted, or awarded as separate Contracts, as may subsequently be provided for in the Contract Agreement.

9.7 **APPLICABLE STATE AND COUNTY SALES TAX**

9.7.1 The Owner has informed the Bidders that all materials supplied in connection with performance of the work which will become an integral component of the Project are not subject to the imposition of New York State and Monroe County sales taxes, and that, with respect to the purchase or rental of certain services and materials, Contractor will be appointed as Owner's agent. Should such sales taxes be imposed, the Owner agrees that the Contract Sum shall be increased by the full amount of all such sales taxes.