

INSTRUCTIONS TO BIDDERS

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ARTICLE 1- DEFINED TERMS

1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and the Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

- A. Bidder - The individual or entity who submits a Bid directly to OWNER.
- B. Issuing Office - The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
- C. Successful Bidder - The lowest responsible Bidder submitting a responsive Bid to whom OWNER (on the basis of OWNER's evaluation as hereinafter provided) makes an award.

ARTICLE 2 - COPIES OF BIDDING DOCUMENTS

- 2.1 Bidding Documents may be obtained as stated in the Advertisement to Bid.
- 2.2 Complete sets of Bidding Documents must be used in preparing Bids; neither OWNER nor ENGINEER assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.3 OWNER and ENGINEER in making copies of Bidding Documents available on the above

terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

ARTICLE 3 - QUALIFICATIONS OF BIDDERS

3.01 To demonstrate Bidder's qualifications to perform the Work, within five days of OWNER's request, Bidder shall submit written evidence such as financial data, previous experience, present commitments and other such data as may be called for below. Bidder must be prepared to submit evidence of Bidder's qualifications to do business in the State of Wisconsin and City of Middleton prior to award of the Contract.

ARTICLE 4 - EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA AND SITE

4.01 Subsurface and Physical Conditions

A. The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Bidding Documents.

2. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except underground Facilities) that ENGINEER has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in paragraph 4.01.A will be made available by OWNER to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 5.03 of the General Conditions has been identified and established in paragraph 5.03 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.02 Underground Facilities

C. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site are based upon information and data furnished to OWNER and ENGINEER by owners of such Underground Facilities, including OWNER or others.

4.03 Hazardous Environmental Conditions

D. If any hazardous environmental conditions are known, the Supplementary Conditions identifies those reports and drawings relating to a Hazardous Environmental Condition identified at the Site that ENGINEER has used in preparing the Bidding Documents.

E. Copies of reports and drawings referenced in paragraph 4.03.A will be made available by OWNER to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 5.06 of the General Conditions has been identified and established in paragraph 5.06 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated conditions appear in paragraphs 5.02, 5.03, and 5.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents because of any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in paragraph 5.06 of the General Conditions.

4.05 On request, OWNER will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.06 Reference is made to Article 8 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by OWNER or others (such as utilities and other prime contractors) that relates to the Work for which a Bid is to be submitted. On request, OWNER will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work.

4.07 Bidder shall comply with instructions and requirements identified in the Bid.

4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the work required by the Bidding Documents and applying the specific means, methods, techniques, sequences, or procedures of construction (if any) that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolution thereof by ENGINEER is acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the work.

ARTICLE 5 - PRE-BID CONFERENCE

5.01 If a pre-Bid conference is to be held, it will be held at the time and place stated in the Advertisement to Bid.

ARTICLE 6 - SITE AND OTHER AREAS

6.01 The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment are to be obtained and paid for by CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by OWNER unless otherwise provided in the Bidding Documents.

ARTICLE 7 - INTERPRETATIONS AND ADDENDA

7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to

ENGINEER in writing. Interpretations or clarifications considered necessary by ENGINEER in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Issuing Office as having received the Bidding Documents.

7.02 All requests for interpretation must be received at least five days prior to the day set for opening Bids. Addenda will be issued not later than three days prior to the day set for opening Bids. Failure of any Bidder to receive any such Addendum or interpretation shall not relieve such Bidder from any obligations under the Bid as submitted. All Addenda so issued shall become part of the Contract Documents.

7.03 Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.04 Addenda may also be issued to clarify, correct, or change the Bidding Documents as deemed advisable by OWNER or ENGINEER.

7.05 Receipt of all Addenda must be acknowledged in space provided in the Bid.

ARTICLE 8 - BID SECURITY

8.01 A Bid must be accompanied by Bid security made payable to OWNER in an amount of 5% of the Bidder's maximum Bid price and in the form of Surety2000, a cashier's, certified, or bank check, or a Bid Bond (on form attached, if a form is prescribed) issued by a surety meeting the requirements of paragraphs 5.01 and 5.02 of the General Conditions. A PDF copy of the Bid Bond can be attached to electronically submitted bids.

8.02 The Bid security of the successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required Contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required Contract security within 15 days after the Notice of Award, OWNER may annul the Notice of Award and the Bid security of the Bidder will be forfeited. The Bid security of other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of seven days after the Effective Date of the Agreement or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

8.03 Bid security of other Bidders whom OWNER believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 9 - CONTRACT TIMES

9.01 The numbers of days within which, or the dates by which, the Work is to be (a) Substantially Completed and (b) completed and ready for final payment are set forth in the Agreement (or incorporated therein by reference to the attached Bid Form).

ARTICLE 10 - LIQUIDATED DAMAGES

10.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

ARTICLE 11 - SUBSTITUTE OR "OR-EQUAL" ITEMS

11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is specified or described in the Bidding Documents 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 submission of any such application by CONTRACTOR and consideration by ENGINEER is set forth in paragraph 6.05.A of the General Conditions and may be supplemented in the General Requirements.

ARTICLE 12 - SUBCONTRACTORS, SUPPLIERS, AND OTHERS

12.01 If the Supplementary Conditions require the identity of certain subcontractors, suppliers, individuals, or entities to be submitted to OWNER in advance of a specified date prior to the Effective Date of the Agreement, the apparent successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to OWNER a list of all such subcontractors, suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such subcontractor, supplier, individuals, or entities if requested by OWNER. If OWNER or ENGINEER, after due investigation, has reasonable objection to any proposed subcontractor, supplier, individual, or entity may, before the Notice of Award is given, request the apparent successful Bidder to submit an acceptable substitute without an increase in the Bid.

12.02 If apparent successful Bidder declines to make any such substitution, OWNER may award the Contract to the next lowest Bidder that proposes to use acceptable subcontractors, suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for the forfeiture of the Bid security of any Bidder. Any subcontractor, supplier, individual, or entity listed and against which OWNER or ENGINEER makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ENGINEER subject to revocation of such acceptance after the Effective Date of the Agreement as provided in paragraph 6.06.B of the General Conditions.

12.03 CONTRACTOR shall not be required to employ any subcontractor, supplier, individual, or entity against whom CONTRACTOR has reasonable objection.

12.04 In contracts where the Contract Price is on the basis of cost-of-the-work plus a fee, the apparent successful Bidder, prior to the Notice of Award, shall identify in writing to OWNER those portions of the work that such Bidder proposes to subcontract and after the Notice of Award may only subcontract other portions of the work with OWNER's written consent.

ARTICLE 13 – BID

13.01 The Bid form is included with the Bidding Documents for Contractor's use. Submittal of actual bid must be done online at the QuestCDN website. Instructions for this are available on the City website under the link for Bid and Contract Document Preparation, or by contacting QuestCDN directly.

13.02 All blanks on the Bid form must be completed and all required documents uploaded before QuestCDN will accept the online bid. For the bid to be accepted as submitted, Bidder must click the SUBMIT button and enter the Online Bid ID Code, which serves as the digital signature. A Bid price shall be indicated for each section, Bid item, alternative, adjustment unit price item or unit price item listed therein, or the words "No Bid", "No Change", or "Not Applicable" entered.

13.03 Bidders who submit a Bid must be a Plan Holder of record. Bids from Bidders who are not on the Plan Holders List may be returned as being not responsive.

13.04 Plan Holders are required to provide an e-mail address in order to receive addenda or other information electronically. Plan Holders are requested to designate whether they are a prime contractor, subcontractor, or supplier if they want this information posted on the project Plan Holders List.

13.05 A Bid by a corporation shall be executed in the corporate name by the president or vice president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

13.06 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signature.

13.07 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown below the signature.

13.08 A Bid by an individual shall show the Bidder's name and official address.

13.09 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid form. The official address of the joint venture shall be shown below the signature.

13.10 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid form.

13.11 The address and telephone number for communications regarding the Bid shall be shown.

13.12 The Bid shall contain evidence of Bidder's authority and qualification to do business in the State of Wisconsin and City of Middleton or covenant to obtain such qualification prior to award of the Contract. Bidder's state contractor license number for the state of the Project, if any, shall also be shown on the Bid form.

13.13 If Bids for a specific project are allowed to be submitted on paper, all Bids shall be signed in the presence of and be notarized by a Notary Public or other Officer authorized to administer oaths.

ARTICLE 14 - BASIS OF BID; EVALUATION OF BIDS

14.01 Unit Price

A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.

B. The total of all estimated prices will be determined as the sum of the products of the estimated quantity of each item and the unit price Bid for the item. The final quantities and Contract Price will be determined in accordance with paragraph 11.03 of the General Conditions.

14.02 Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the

correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words. These requirements do not apply to bids submitted electronically using the online bid form.

14.03 The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances named in the Contract Documents as provided for in paragraph 11.02 of the General Conditions. The final Contract Price will be adjusted to reflect actual costs on account of cash allowances. No allowances for temporary services are provided. Bidder shall include costs for temporary services in Contract Price.

ARTICLE 15 - SUBMISSION OF BIDS

15.01 Bids will be received for all divisions of the specifications and all other provisions of the Bidding Documents.

15.02 All Bids, regardless of format, shall be submitted no later than the date and time indicated in the Advertisement to Bid.

15.03 The City of Middleton is subject to the Wisconsin public records law. Any submissions to the City in connection with this project may be disclosed in response to a public records request.

ARTICLE 16 - MODIFICATION AND WITHDRAWAL OF BIDS

16.01 A Bid 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 prior to the date and time set for the opening of Bids.

ARTICLE 17 - OPENING OF BIDS

17.01 Bids will be opened (downloaded) at the time and place indicated in the Advertisement to Bid and, unless obviously nonresponsive, read aloud publicly or displayed on a screen visible to all present. An abstract of the amounts of the base Bids and major alternatives and components (if any) will be made available to Bidders after the opening of Bids.

ARTICLE 18 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

18.01 All Bids will remain subject to acceptance for the period of time stated in the Advertisement to Bid, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 - AWARD OF CONTRACT

19.01 OWNER reserves without limitation the right to reject any or all Bids; and the right to accept or reject all incomplete, nonconforming, nonresponsive, unbalanced, obscure, or conditional Bids, or Bids which contain additions not called for, erasures, alterations, or irregularities of any kind, or which do not comply with the Instructions to Bidders. OWNER reserves the right to reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of

doubtful financial ability or fails to meet any other pertinent standard or criteria established by OWNER. OWNER further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible.

19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

19.03 In evaluating Bids, OWNER will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternatives, unit prices, and other data as may be requested in the Bid form or prior to the Notice of Award.

19.04 In evaluating Bids, OWNER will consider the qualifications of Bidders and may consider the qualifications and experience of subcontractors, suppliers, and other individuals or entities proposed for those portions of the work for which the identity of subcontractors, suppliers, and other individuals or entities must be submitted as provided in paragraph 6.06.B of the Supplementary Conditions. OWNER also may consider the operating costs, maintenance requirements, performance data, and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

19.05 OWNER may make such investigations as OWNER deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of Bidders, proposed subcontractors, suppliers, and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to OWNER's satisfaction within the prescribed time. Bidder shall furnish to OWNER all such information and data for this purpose as OWNER may request. OWNER reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy OWNER that such Bidder is properly qualified to carry out the obligations of the Contract Documents and to complete the work contemplated therein.

19.06 OWNER shall be satisfied that Bidder involved:

- (1) maintains a permanent place of business,
- (2) has adequate plant and equipment to do the work properly and expeditiously,
- (3) has a suitable financial status to meet obligations incident to the Work,
- (4) has appropriate technical experience, and
- (5) can submit a satisfactory performance record.

19.07 If a Contract is to be awarded, it will be awarded to the lowest responsible Bidder whose evaluation by OWNER indicates to OWNER that the award will be in the best interests of the project.

19.08 If a Contract is to be awarded, OWNER will give the successful Bidder a Notice of Award within sixty days after the time set for opening Bids.

ARTICLE 20 - CONTRACT SECURITY AND INSURANCE

20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth OWNER's requirements as to performance and payment bonds and insurances. When the Successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by

the required performance and payment bonds and insurances.

ARTICLE 21 - SIGNING OF AGREEMENT

21.01 When OWNER gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents which are identified in the Agreement attached thereto. Within 15 days thereafter, successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER with the required Bonds and insurances. Within 10 days thereafter, OWNER shall deliver one fully signed counterpart to Successful Bidder with a complete set of Drawings with appropriate identification.

ARTICLE 22 - INCOME TAX

22.01 Bidders, whether a corporation, partnership, or individual, who are nonresidents of the State of Wisconsin, shall comply with Section 71.80 (16) of the Wisconsin Statutes.

ARTICLE 23 - OTHER TAXES

23.01 The Bid shall include all taxes in effect at the time the Bid is submitted. Bidders who are uncertain as to what items are subject to tax, or who require further explanation or clarification, are requested to contact the State of Wisconsin Department of Revenue. Refer to the Supplementary Conditions SC-7.09 for additional information on taxes including exemptions for sales and use taxes.