

# Document 00 21 13 - Instructions to Bidders (Limited Scope / Electronic Bid) State of Ohio Standard Requirements for Public Facility Construction

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## ARTICLE 1 - GENERAL INSTRUCTIONS

### 1.1 Applicable Law and Forum

1.1.1 The rights of any Bidder or any party to a subsequent Contract shall be governed by the laws of the state of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding related to the Bid or any subsequent Contract. The Bidder irrevocably consents to such jurisdiction.

### 1.2 Project Scheduling and Coordination

1.2.1 When the Contract Documents refer to a period of time by a number of days, it excludes the first day and includes the last day of the period. If the last day of the period falls on a Saturday, Sunday, or legal holiday, that day shall be omitted and the period shall end on the next day which is not a Saturday, Sunday, or legal holiday.

1.2.2 The time for completion of the Project indicated on the electronic Bid Form is the time for Contract Completion of all Work applicable to the Bidder.

1.2.3 The Contractor is responsible for scheduling the Project, coordinating Subcontractors, and providing other services identified in the Contract Documents.

1.2.4 By submitting its Bid, the Bidder indicates its understanding that the Contract Sum, based on its Bid and as amended by Change Orders, includes all costs that the Owner owes the Bidder.

### 1.3 Written Notice

1.3.1 Notice under the Contract Documents shall be validly given if: **(1)** delivered personally to a member of the organization for whom the notice is intended; **(2)** delivered, or sent by registered or certified mail, to the last known business address of the organization; or **(3)** sent by facsimile, email, or web-based project management software, provided the original signed document is delivered within 3 business days after the date of the electronic transmission.

1.3.2 Notices provided to one project participant from another shall be simultaneously copied to the prospective Bidders, Owner, and A/E.

## ARTICLE 2 - BIDDING PROCEDURES

### 2.1 Examination of Contract Documents and the Site

2.1.1 Before submitting a Bid, the Bidder shall examine all Contract Documents, including, but not limited to, the Drawings, Specifications, and Addenda for all divisions of Work for the Project, noting in particular all requirements which may affect its Work in any way.

2.1.2 The Bidder's failure to become acquainted with the extent and nature of Work required to complete any portion of the Work in conformity with the requirements of the Contract Documents, shall not be a basis for additional compensation.

2.1.3 Before submitting a Bid, the Bidder should not only examine and evaluate the Site and related Project conditions where the Work will be performed, but shall also consider when the Work will be performed including, but not limited to, the following: condition, layout, and nature of the Site and surrounding area; availability and cost of labor; availability and cost of materials, supplies, and equipment; cost of temporary utilities required in the Bid; cost of any permit or license required by a local or regional authority having jurisdiction over the Project; usual weather conditions of the Project location; conditions bearing upon transportation, disposal, handling, and storage of equipment, materials, and waste; and subsurface and concealed physical conditions and related information provided in the Contract Documents.

### 2.2 Pre-Bid Meeting

2.2.1 The Bidder is encouraged to attend the pre-bid meeting, where the A/E and Owner will receive questions regarding the Contract Documents. If not given in **Document 00 10 00 - Solicitation**, the A/E shall issue notice of the time and place of any pre-bid meeting to each registered Plan Holder.

**2.2.2** The A/E shall prepare minutes of the pre-bid meeting for the Project record. If questions raised by the prospective Bidders require changes to, or clarifications of, the Contract Documents, the A/E shall issue the changes by written Addendum, along with a list of pre-bid meeting attendees.

**2.2.3** Additional compensation shall not be based upon the Bidder's failure to attend the pre-bid meeting, which results in the Bidder's incomplete knowledge and familiarity of the Project requirements.

### 2.3 Request for Interpretation

**2.3.1** If the Bidder finds any perceived ambiguity, conflict, error, omission, or discrepancy within the Contract Documents, including the Drawings, Specifications, and Addenda, or between any of the Contract Documents and Applicable Law, the Bidder shall submit a written Request for Interpretation ("RFI") to the A/E for an interpretation or clarification. The Bidder is responsible for prompt delivery of the RFI. The A/E shall respond to RFIs received more than 7 days before the bid opening.

**2.3.2** The A/E shall issue Addenda in response to RFIs that modify or clarify the Contract Documents. Any Addenda issued within 72 hours before any bid opening (excluding Saturdays, Sundays, and legal holidays) shall extend the bid opening date by 7 days pursuant to **Section 3.3.1**. Addenda may be delivered via the State's electronic bidding system, facsimile or e-mail, posted to a web or FTP site, or otherwise furnished to each registered Plan Holder.

**2.3.3** Any interpretation or clarification of the Contract Documents made by any Person other than the A/E, in any manner other than a written Addendum, shall not be binding, and the Bidder shall not rely upon the interpretation or clarification.

**2.3.4** The successful Bidder shall not be compensated for a claim alleging insufficient data, incomplete, ambiguous, conflicting, or erroneous Contract Documents or proposed Contract Documents, or assumed conditions regarding the nature, extent, or character of the Work, if the Bidder did not submit a related RFI prior to the bid opening.

### 2.4 Substitutions Prior to Bid Opening

**2.4.1** If the Bidder proposes to use an article, device, material, equipment, form of construction, fixture, or item other than the components named in the Specifications, the Bidder shall certify that the proposed item is equal in quality and all aspects of performance and appearance, to the item specified. If approval of a Substitution requires changes to the Contract Documents or affects the work of other trades, the Bidder is responsible for the additional costs, including, but not limited to, changes to the design by the A/E.

**2.4.2** The Bidder shall submit its request for Substitution to the A/E no later than 10 days prior to the bid opening, which must include: **(1)** the name and complete description of the proposed Substitution, including Drawings, performance and test data, and other information necessary for a complete evaluation; and **(2)** a statement setting forth any changes that the Proposed Substitution will require in the Contract Documents or the Project.

**2.4.3** If the A/E approves the Proposed Substitution, the A/E shall issue an Addendum.

**2.4.4** If the A/E does not approve the Proposed Substitution, the A/E shall inform the Bidder of its decision, which is final. The A/E may reject a proposed Substitution because the Bidder failed to provide sufficient information to enable the A/E to completely evaluate the Proposed Substitution without causing a delay in the bid deadline.

**2.4.5** Proposed Substitutions received by the A/E less than 10 days prior to the bid deadline shall not be considered.

### 2.5 Electronic Bid Form

**2.5.1** Each Bid shall be submitted on the electronic Bid Form through the State's electronic bidding system.

**2.5.1.1** All sections of the electronic Bid Form, including a completed "Bidder Affirmation and Disclosure" section acknowledging that the Bidder affirms, understands, and will abide by the requirements of Executive Order 2011-12K, and a completed "Commitment to Participate in the EDGE Business Assistance Program" page, shall be submitted with the Bid. Failure to do so may cause the Bid to be rejected as non-responsive. If the names, locations, and service locations of Subcontractors are not known at the time of the Bid deadline, the Bidder must provide the information requested with its **Subcontractor and Material Supplier Declaration**.

**2.5.1.2** Unless the Bidder withdraws the Bid as provided in **Article 4**, the Bidder is required to comply with all requirements of the Contract Documents, regardless of whether the Bidder had actual knowledge of the requirements and regardless of any statement or omission made by the Bidder that might indicate a contrary intention.

**2.5.2** The Bidder shall fill in all relevant spaces on the electronic Bid Form. The electronic bidding system will identify any incomplete required fields.

**2.5.3** An officer, partner or principal of the Bidder shall enter the legal name of the Bidder in the space provided on the electronic Bid Form.

## 2.6 Allowances

**2.6.1** If Allowances are provided on the electronic **Bid Form**, the amount of each Allowance shall be included in the Base Bid amount. Allowances shall be used solely for the purpose of determining the adjustment to the Contract Sum for the difference between the amount of the Allowance and the actual cost of the related Work provided. Allowances shall not include the Contractor's Fee.

## 2.7 Unit Prices

**2.7.1** If Unit Prices are requested on the electronic **Bid Form**, the amount of the scheduled quantities shall be included in the Base Bid amount. Unit prices shall be used solely for the purpose of determining the adjustment to the Contract Sum for the difference between the estimated quantities on the electronic **Bid Form** and the actual quantities provided.

**2.7.2** Unit Prices shall include all materials, equipment, labor, delivery, installation, and any other cost or expense, in connection with, or incidental to, the performance of that portion of the Work. Unit Prices shall not include the Contractor's Fee on account of the associated Unit Price Work. The Bidder shall submit Unit Prices for all items listed.

## 2.8 Alternates

**2.8.1** If an Alternate is listed on the electronic Bid Form, the Bidder shall fill in the applicable space with a positive or negative bid amount as applicable. The Owner reserves the right to accept or reject any or all bid amounts for Alternates, in whole or in part, and in any order.

**2.8.1.1** If no change in the bid amount is required, indicate "\$0."

**2.8.1.2** Failure to make an entry on any Alternate shall cause the Bid to be rejected as non-responsive if that Alternate is selected.

**2.8.1.3** Failure to indicate a negative number will indicate the Bidder's intent to increase the Base Bid by the amount entered in the applicable space.

**2.8.1.4** If an Alternate is not selected, an entry as listed in **Section 2.8.1.2** on that Alternate shall not, by itself, render a Bid non-responsive.

## 2.9 Submittals with Electronic Bid Form

**2.9.1** The Owner shall reject a Bid as non-responsive if the Bidder fails to submit the following with the Bid: an electronic facsimile of the Bid Guaranty as provided in **Article 5**, meeting the requirements of ORC Sections 153.54 and 153.571. The original unaltered Bid Guaranty shall be delivered to the Owner 3 business days after the public bid opening as provided in OAC Section 153:1-8-01(H).

**2.9.2** If the apparent low Bidder does not submit a valid Power of Attorney of the agent signing for the Surety with its Bid, the Owner shall direct the apparent low Bidder to deliver a valid and appropriate Power of Attorney to the Owner within a period determined by the Owner. The Owner shall not enter into a Contract without a valid Power of Attorney.

**2.9.3** The Bidder is encouraged to submit background information with its Bid using the **Bidder's Qualifications** form and including, but not limited to, the information listed in this **Section 2.9**. If the apparent low Bidder does not submit the **Bidder's Qualifications** form and related information attached to the electronic Bid Form, the Bidder shall provide it upon request in accordance with **Section 3.5.4**, including, but not limited to:

**2.9.3.1** the overall experience of the Bidder, including number of years in business under present and former business names;

**2.9.3.2** a complete listing of all the Bidder's ongoing construction projects and a listing of construction projects which are similar in cost and type to the Project completed by the Bidder in the last 5 years. Include information of the scope of work and value of each contract, a description of Encouraging Diversity Growth and Equity ("EDGE") participation and performance, and a project name/contact Person/address/phone number for the owner and the architect or engineer for each project;

**2.9.3.3** a Certificate of Compliance with Affirmative Action Programs, issued pursuant to ORC Section 9.47, by the Equal Opportunity Coordinator of the Department of Administrative Services;

- 2.9.3.4** a complete listing of Affirmative Action and EDGE program violations in the last 5 years;
- 2.9.3.5** a complete listing of Prevailing Wage, EPA, OSHA, or other regulatory entity issues or violations in the last 5 years;
- 2.9.3.6** a complete listing of judgments, claims, arbitration proceedings or suits pending or outstanding in the last 5 years;
- 2.9.3.7** a complete listing of Drug-Free Workplace Program and Drug-Free Safety Program (“DFSP”) violations in the last 5 years;
- 2.9.3.8** a description of the Bidder’s relevant facilities and major equipment, whether leased or owned;
- 2.9.3.9** a description of the management experience of the Bidder’s project manager(s) and superintendent(s) and a comprehensive resume for each;
- 2.9.3.10** a description of the EDGE-certified Business Enterprises the Bidder proposes as Subcontractors and Material Suppliers for this Project by attaching a fully completed EDGE Affidavit for each EDGE-certified Business Enterprise;
- 2.9.3.11** to support a Bond, a current and signed Certificate of Compliance issued by the Ohio Department of Insurance, showing the Surety is licensed to do business as a surety in Ohio;
- 2.9.3.12** a current Ohio Workers’ Compensation Certificate;
- 2.9.3.13** if the Bidder is a foreign corporation not incorporated under the laws of Ohio, a Certificate of Good Standing from the Ohio Secretary of State; or, if the Bidder is a foreign person or partnership, evidence that the Bidder filed, with the Ohio Secretary of State, a Power of Attorney designating the Ohio Secretary of State as the Bidder’s agent for the purpose of accepting service of summons in any action brought under ORC Section 153.05 or under ORC Sections 4123.01 to 4123.94, inclusive;
- 2.9.3.14** evidence that the Bidder is enrolled in, and in good standing in, a DFSP approved by the Ohio Bureau of Workers’ Compensation (“OBWC”); and
- 2.9.3.15** any other data or information which the A/E may request concerning the responsibility of the Bidder.

## **2.10 Changes in the Bid Amount**

- 2.10.1** Any change to a previously submitted Bid shall be resubmitted through the State’s electronic bidding system prior to the deadline for submission of Bids.

## **ARTICLE 3 - BID OPENING AND EVALUATION**

### **3.1 Delivery of Bid**

- 3.1.1** The Bidder shall submit its Bid to the Owner prior to the time of the bid deadline.
- 3.1.2** Bids that are submitted after the time of the bid deadline or are not fully received by the electronic bidding system shall not be considered.

### **3.2 Bid Opening**

- 3.2.1** Electronic Bids shall be received until the time stated when all Bids shall be electronically opened and the Bid tabulation made public by posting on the State’s electronic bidding system.
- 3.2.2** The posting of Bid tabulations is for informational purposes only and is not to be construed as an acceptance or rejection of any Bid submitted.
- 3.2.3** The contents of the electronic Bid Form and its attachments are public records and shall be available for inspection, upon request, at any time after the bid deadline, except for any information that is not defined as a public record under Ohio law.

### **3.3 Bid Deadline Extension**

- 3.3.1** If an Addendum is issued within 72 hours prior to the published time for the bid deadline, excluding Saturdays, Sundays and legal holidays, the bid deadline shall be extended 7 days. If the Owner approves, the bid deadline may be extended for more than 7 days, and consideration for additional advertising may be recommended.
- 3.3.2** As part of issuing any Addendum earlier than 72 hours prior to the published time for the bid deadline, excluding Saturdays, Sundays and legal holidays, only the Owner may approve a revised bid deadline or additional advertising.

### 3.4 Bid Evaluation Criteria

**3.4.1** The Owner reserves the right to accept or reject any or all Bids, in whole or in part, and reserves the right to award the Contract to any remaining Bidder the Owner determines, in its sole discretion, to have submitted the lowest responsive and responsible Bid.

**3.4.2** The Owner reserves the right to accept or reject any or all Alternates. Alternates may be accepted or rejected in any order.

**3.4.3** If any Bidder has engaged in collusive bidding, the Owner shall reject that Bidder's Bid as non-responsible for the Contract. A collusive bidder may also be debarred from future State Contracts.

**3.4.4** The Owner reserves the right to waive, or to allow any Bidder a reasonable opportunity to cure a minor irregularity or technical deficiency in a Bid, provided the irregularity or deficiency does not affect the bid amount, or otherwise give the Bidder a competitive advantage. Noncompliance with any material requirements of the Contract Documents shall cause a Bid to be rejected as non-responsive.

**3.4.5** If, in the opinion of the Owner, the award of the Contract to the lowest Bidder is not in the best interest of the State, with the written consent of the Owner, the Owner may accept, in its discretion, another Bid so opened, or the Owner may reject all Bids and advertise for other Bids. The advertisement shall be for the period, in the form, and in the publications directed by the Owner.

### 3.5 Bid Evaluation Procedure

**3.5.1** The Contract shall be awarded to the lowest responsive and responsible Bidder as determined in the discretion of the Owner, or all Bids may be rejected in accordance with Applicable Law.

**3.5.1.1** In determining which Bid is the lowest, the Owner shall consider the Base Bid and the bid amounts for any Alternate, or Alternates, which the Owner decides, in its sole discretion, to accept.

**3.5.1.2** The total of the bid amounts for the accepted Alternate(s) shall be added to, or deducted from, the Base Bid, as applicable, for determining the lowest Bidder.

**3.5.1.3** If two Bidders submit the same bid amount and both are determined to be responsive and responsible, the Owner may select one Bidder by the flip of a coin, which shall be conducted in the presence of both Bidders and shall be final. If one of the Bidders refuses to participate in, or fails to be present at, the flip of a coin, the remaining Bidder shall be selected.

**3.5.2** A Bidder for a Contract shall be considered responsive if the Bidder's Bid responds to the Contract Documents in all material respects and contains no irregularities or deviations from the Contract Documents that would affect the amount of the Bid or otherwise give the Bidder a competitive advantage.

**3.5.2.1** A Bid shall be rejected as non-responsive if the Bid contains a Bid Guaranty executed by a Surety not licensed in Ohio or a Bid Guaranty that is otherwise determined to be insufficient by the Owner.

**3.5.2.2** If the lowest Bidder is non-responsive, the Bidder shall be notified according to **Section 3.6**.

**3.5.3** In determining whether a Bidder is responsible, factors to be considered include, without limitation:

**3.5.3.1** preferences required by law, where applicable;

**3.5.3.2** the experience of the Bidder;

**3.5.3.3** the financial condition of the Bidder;

**3.5.3.4** the conduct and performance of the Bidder on previous Contracts, including compliance with Equal Employment Opportunity in the Construction Industry Administrative Rules, OSHA and Prevailing Wage laws, and demonstration of good faith effort to participate in the EDGE Business Development program, or actual participation in the EDGE Business Development program, or both, as indicated in the ORC and the Ohio Administrative Code;

**3.5.3.5** the facilities of the Bidder;

**3.5.3.6** the management skills of the Bidder, including the capability of the Bidder to construct and manage the entire Project, including but not limited to the plumbing, fire protection, heating, ventilating and air conditioning, and electrical branches or classes of the Work; and

**3.5.3.7** the Bidder's ability to execute the Contract properly, including past performance of the Bidder and the Subcontractors that the Bidder proposes to use on the Project.

**3.5.4** The A/E shall obtain from the lowest responsive Bidder any information the Owner determines appropriate to consideration of factors showing responsibility. If the lowest responsive Bidder is responsible, the Contract shall be awarded to that Bidder, unless all Bids are rejected. The Bidder shall provide all requested information within 3 days of a request from the A/E, or a longer period, if the Owner consents in writing.

**3.5.5** If the lowest responsive Bidder is not responsible, the Owner shall evaluate the next lowest Bidder according to the procedures set forth in this **Section 3.5** until the Contract is awarded, all Bids are rejected, or all responsive Bidders are determined to be not responsible.

### **3.6 Rejection of Bid**

**3.6.1** If the lowest Bidder is not responsive or responsible, the Owner shall reject the Bid and notify the Bidder in writing by Certified Mail of the finding and the reasons for the finding.

**3.6.2** If the lowest responsive and responsible Bid for the Contract, including the Base Bid and accepted Alternates if any, exceeds an amount 10 percent greater than the published Estimated Construction Cost for the Contract, the Owner shall reject all Bids.

**3.6.3** A Bidder notified in accordance with **Section 3.6.1** may object to its rejection by filing a written protest, which must be received by the Owner within 5 days of the notification provided pursuant to **Section 3.6.1**.

**3.6.4** Upon receipt of a timely protest, the Owner shall meet with the protesting Bidder to hear its objections. ORC Chapter 119 administrative hearing requirements are not applicable to the bid protest meeting.

**3.6.4.1** No Contract award shall become final until after the Owner has met with all Bidders who have timely filed protests and the award of the Contract is affirmed by the Owner.

**3.6.4.2** If all protests are rejected, the Contract shall be awarded to the lowest responsive and responsible Bidder, or all Bids shall be rejected.

### **3.7 Notice of Intent to Award**

**3.7.1** The Owner shall notify the apparent successful Bidder that upon satisfactory compliance with all conditions precedent for execution of the Contract, within the time specified, the Bidder shall be awarded the Contract.

**3.7.2** The Owner reserves the right to rescind any Notice of Intent to Award if the Owner determines it issued the Notice of Intent to Award in error, or if the conditions precedent for execution of Contract set forth in **Article 6** are not met.

## **ARTICLE 4 - WITHDRAWAL OF BID**

### **4.1 Withdrawal prior to Bid Opening**

**4.1.1** A Bidder may withdraw a Bid after submitting the Bid through the State's electronic bidding system, provided the Bidder submits its request through the State's electronic bidding system prior to the bid deadline.

### **4.2 Withdrawal after Bid Opening**

**4.2.1** The Bid shall remain valid and open for acceptance for a period of 60 days after the bid opening; provided, however, a Bidder may withdraw a Bid from consideration after the bid opening if the bid amount was substantially lower than the amounts of other Bids, providing the Bid was submitted in good faith, and the reason for the bid amount being substantially lower was a clerical mistake, as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of Work, labor, or material made directly in the compilation of the bid amount.

**4.2.1.1** Notice of a request to withdraw a Bid shall be made in writing filed with the Owner within 2 business days after the bid opening. The Owner reserves the right to request the Bidder to submit evidence substantiating the Bidder's request to withdraw the Bid.

**4.2.1.2** No Bid may be withdrawn under **Section 4.2.1** which would result in awarding a Contract involving the same item on another Bid to the same Bidder.

**4.2.2** If a Bidder withdraws its Bid under **Section 4.2.1**, the Owner may award the Contract to the next lowest responsive and responsible Bidder, or reject all Bids and advertise for other Bids. In the event the Owner advertises for other Bids, the withdrawing Bidder shall pay the costs, in connection with the re-bidding, of printing new Contract Documents, required advertising, and printing and mailing of notices to prospective Bidders, if the Owner finds that these costs would not have been incurred but for the withdrawal.

**4.2.3** A Bidder may withdraw the Bidder's Bid at any time after the 60-day period described in **Section 4.2.1** by giving written notice to the Owner.

#### **4.3 Refusal to Accept Withdrawal**

**4.3.1** If the Owner contests the right of a Bidder to withdraw a Bid pursuant to **Section 4.2.1**, a hearing shall be held within 10 days after the bid opening and the Owner shall issue an order allowing or denying the claim of this right within 5 days after the hearing is concluded. The Owner shall give the withdrawing Bidder timely notice of the time and place of the hearing.

**4.3.1.1** The Owner shall make a stenographic record of all testimony, other evidence, and rulings on the admissibility of evidence presented at the hearing. The Bidder shall pay the costs of the hearing.

**4.3.1.2** Pursuant to ORC Section 119.12, the Bidder may appeal the order of the Owner required by **Section 4.3.1**.

#### **4.4 Refusal to Perform**

**4.4.1** In the event the Owner denies the request for withdrawal and the Bidder refuses to perform the Contract, the Owner may reject all Bids or award the Contract to the next lowest responsive and responsible Bidder.

#### **4.5 Effect of Withdrawal**

**4.5.1** A Bidder, who is permitted to withdraw a Bid under **Section 4.2.1**, shall not supply material or labor to, or perform a subcontract or other work for, the Person to whom the Contract is awarded; or otherwise benefit, directly or indirectly, from the performance of the Project for which the withdrawn Bid was submitted; without the Owner's prior written consent.

### **ARTICLE 5 - BID GUARANTY AND BOND**

#### **5.1 Bid Guaranty**

**5.1.1** The Bidder shall submit a Bid Guaranty with the Bidder's Bid, payable to the Owner, in the form of either:

**5.1.1.1** the signed **Document 00 43 13 - Bid Security Form** contained in the Contract Documents for the amount of the Base Bid plus all additive Alternates; or

**5.1.1.2** a certified check, cashier's check, or letter of credit, for 10 percent of the Base Bid, plus all additive Alternates – a letter of credit shall expressly provide that it is revocable only by the Owner.

**5.1.2** The Bid Guaranty shall be in form and substance satisfactory to the Owner and shall serve as an assurance that upon acceptance of the Bid, the Bidder shall comply with all conditions precedent for Contract execution, within the time specified by the Owner.

**5.1.3** If the blank line on the **Bid Security Form** is not filled in, the penal sum shall be the full amount of the Base Bid plus all additive Alternates. If the blank line is filled in, the amount shall not be less than the full amount of the Base Bid plus all additive Alternates, stated in dollars and cents. A percentage is not acceptable. In the event the blank line is filled in for an amount less than the full amount of the Base Bid plus all additive alternates, the Bid shall be rejected as non-responsive.

**5.1.4** An authorized agent must sign the **Bid Security Form**, and the Bidder shall provide a Power of Attorney from the Surety. A Surety authorized by the Ohio Department of Insurance to transact business in Ohio must issue the **Bid Security Form**.

**5.1.5** The requirements of ORC Section 3901.86 may be applicable requiring an Ohio resident agent countersign the **Bid Security Form**. The Bidder shall determine the applicability of this provision.

**5.1.6** Bid Guaranties in the form of a certified check, cashier's check, or letter of credit shall be returned to unsuccessful Bidders 60 days after the bid opening. Bid Guaranties in the form of a certified check, cashier's check, or letter of credit shall be returned to the successful Bidder upon providing **Document 00 61 13 - Performance and Payment Bond Form** from a Surety satisfactory to the Owner.

## 5.2 Forfeiture of Bid Guaranty

**5.2.1** If for any reason, other than as authorized by **Section 4.2.1** or **5.3**, the Bidder fails to execute the Agreement, and the Owner awards the Contract to another Bidder, which the Owner determines is the lowest responsive and responsible Bidder:

**5.2.1.1** The Bidder who failed to execute the Agreement is liable to the State for the difference between its Bid and the Bid of the next lowest responsive and responsible Bidder, or for a penal sum not to exceed ten percent of the bid amount, whichever is less.

**5.2.2** If the Owner then awards a Contract to another Bidder, which the Owner determines is the lowest responsive and responsible Bidder and that Bidder fails or refuses to execute the Agreement:

**5.2.2.1** The liability of the lowest responsive and responsible Bidder shall be the difference between the bid amount of the lowest responsive and responsible Bidder and another Bidder which the Owner determines is the lowest responsive and responsible Bidder, except as provided in **Section 5.3**, but not in excess of the liability specified in **Section 4.2.2**.

**5.2.2.2** The liability on account of an award to the lowest responsive and responsible Bidder beyond the third lowest responsive and responsible Bidder shall be determined in like manner.

**5.2.3** If the Owner does not award the Contract to another Bidder under **Section 5.2.2**, but submits the Project for re-bidding:

**5.2.3.1** The Bidder failing or refusing to execute the Agreement is liable to the State for a penal sum not to exceed 10 percent of the Bidder's bid amount or the costs in connection with the resubmission of printing new Contract Documents, required advertising, and printing and mailing notices to prospective Bidders, whichever is less, except as provided in **Section 5.3**.

## 5.3 Exception to Forfeiture

**5.3.1** A Bidder for a Contract with the State costing less than \$500,000 may withdraw its Bid from consideration if its Bid for another Contract with the State for less than \$500,000 has already been accepted if:

**5.3.1.1** the Bidder certifies in good faith that the total amount of its current contracts is less than \$500,000; and

**5.3.1.2** the Bidder's Surety certifies in good faith that the Bidder is unable to perform the subsequent Contract because such performance would exceed the Bidder's bonding capacity.

**5.3.2** If a Bid is withdrawn pursuant to **Section 5.3.1: (1)** the Owner may award the Contract to another Bidder which the Owner determines is the lowest responsive and responsible Bidder or reject all Bids and submit the Project for re-bidding; and **(2)** neither the withdrawing Bidder nor the Bidder's Surety shall be liable for the difference between the Bidder's Bid and that of the next lowest responsive and responsible Bidder for a penal sum, or for the costs of printing new Contract Documents, required advertising, and printing and mailing notices to prospective Bidders.

## 5.4 Bond

**5.4.1** Prior to signing the Agreement, the Bidder shall provide the Bond required by law in form and substance satisfactory to the Owner, and from a Surety licensed to do business in the state of Ohio and satisfactory to the Owner.

**5.4.1.1** If the Bidder provided **Document 00 43 13 - Bid Security Form**, described in **Section 5.1.1.1**, as its Bid Guaranty then that form shall be the Bond.

**5.4.1.2** If the Bidder provided another form of Bid Guaranty, described in **Section 5.1.1.2**, then **Document 00 61 13 - Performance and Payment Bond Form**, described in **Section 5.1.6**, shall be the Bond.

**5.4.1.3** The Bidder shall not be required to provide both forms described above.

**5.4.2** The Bond must be in the full amount of the Contract to indemnify the State against all direct and consequential damages suffered by failure of the Contractor to perform according to the provisions of the Contract and in accordance with the Plans, Specifications, details, and bills of material therefore and pay all lawful claims of Subcontractors, Material Suppliers, and laborers for labor performed or materials furnished in performing and completing the Contract.

# ARTICLE 6 - CONTRACT AWARD AND EXECUTION

## 6.1 Conditions Precedent for Execution of Contract

**6.1.1** The successful Bidder must submit the items in this **Section 6.1** to the Owner before executing the Agreement.

**6.1.2** Bond, and to support the Bond, a Certificate of Compliance issued by the Ohio Department of Insurance, showing the Surety is licensed to do business in the state of Ohio.

**6.1.3** Ohio Workers' Compensation Certificate

**6.1.4** Certificate of Compliance with Affirmative Action Programs, issued by the Equal Opportunity Coordinator. The form must be submitted through the Ohio Business Gateway: <http://business.ohio.gov/efiling/>.

**6.1.5** Certificate of Insurance (ACORD form is acceptable) and copy of additional insured or loss payee endorsement. The Owner reserves the right to request and receive a certified copy of the Contractor's insurance policies.

**6.1.6** If a Bidder is a foreign corporation (e.g., not incorporated under the laws of Ohio) it must submit a Certificate of Good Standing from the Ohio Secretary of State showing the right of the Bidder to do business in the state of Ohio.

**6.1.7** If a Bidder is an individual or partnership, nonresident of the State, it must submit a Power of Attorney designating the Ohio Secretary of State as the Bidder's agent for accepting service of summons in any action brought under ORC Section 153.05 or under ORC Sections 4123.01 to 4123.94, inclusive.

**6.1.8** Evidence that the Bidder is enrolled in, and in good standing in, a DFSP approved by the OBWC.

**6.1.9** By submitting its Bid, the Bidder warrants that it is not subject to an unresolved findings for recovery under ORC Section 9.24. ORC Section 9.24 prohibits the State from awarding a Contract to any Bidder against whom the Auditor of State has issued a finding for recovery if the finding for recovery is unresolved at the time of award. If the Contract is awarded to a Bidder subject to an unresolved finding for recovery under ORC Section 9.24, the Contract is void on its face and the Contractor shall immediately repay to the Owner any funds paid under the Contract.

**6.1.10** The Bidder shall provide evidence acceptable to the Owner of the Bidder's participation in the EDGE Program by contracting with EDGE-certified Business Enterprise(s) for the Project by submitting a fully completed **EDGE Affidavit** for each EDGE-certified Business Enterprise, by requesting a waiver or partial waiver of the advertised EDGE Program participation goal for the Project on the Bidder's company letterhead including full documentation of the Bidder's good faith effort to contract with EDGE-certified Business Enterprise(s) for this Project, or both.

## 6.2 Non-compliance with Conditions Precedent

**6.2.1** The award of the Contract and execution of the Agreement require the Contractor to comply with: **(1)** all conditions precedent for execution of the Contract within 10 days of the date of the Notice of Intent to Award; and **(2)** submission of the **Bidder's Qualifications** form, including a fully completed **EDGE Affidavit** for each EDGE-certified Business Enterprise, not previously provided within 3 business days of receiving the Owner's request.

**6.2.2** Non-compliance with the conditions precedent for execution of the Contract as stated in **Section 6.1** within the timelines stated in **Section 6.2.1** following the date of the Notice of Intent to Award shall be sufficient cause to permit the Owner to cancel the Notice of Intent to Award, for the Bidder's lack of responsibility and award the Contract to another Bidder, which the Owner determines is the lowest responsive and responsible Bidder; or the Owner may re-bid the Work at its sole discretion.

**6.2.3** The Owner may extend the time for complying with the conditions precedent for execution of the Contract for good cause. The extension is not a waiver of the conditions precedent for execution of the Contract.

## 6.3 Time Limits

**6.3.1** The Owner's failure to award the Contract and execute the Agreement within 60 days of the bid opening invalidates the entire bid process and all Bids submitted, unless the time is extended by written consent of the apparent lowest responsive and responsible Bidder and the Owner.

**6.3.1.1** If the Owner awards the Contract within 60 days of the bid opening, increases in material, labor, and subcontract costs shall be borne by the Bidder.

**6.3.1.2** If failure to execute the Contract within 60 days of the bid opening is due to matters for which the State is solely responsible, the Contractor is entitled to a Change Order authorizing payment of verifiable increased costs in materials, labor, or subcontracts. This increase shall not exceed the difference in price between the successful Bidder and the price of the next lowest responsive and responsible Bidder.

**6.3.1.3** If failure to execute the Contract within 60 days of the bid opening is due to matters for which the Contractor is responsible, the Owner shall not grant a request for increased costs.

## 6.4 Notice to Proceed

**6.4.1** The Owner shall issue a Notice to Proceed to the Contractor, which establishes the date for commencement and the calendar days allocated for Contract Completion. Within 10 days of the date of the Notice to Proceed, or other period as mutually agreed by the Contractor and Owner, the Contractor shall furnish the following submittals to the A/E:

**(1)** Schedule of Values; **(2)** preliminary schedule of Shop Drawings and other submittals; **(3) Subcontractor and Material Supplier Declaration** form, with completed Bidder Affirmation and Disclosure forms acknowledging that the Contractor affirms, understands, and will abide by the requirements of Executive Order 2011-12K for Subcontractors that were not identified in the electronic Bid Form; **(4)** qualifications of proposed project manager(s) and superintendent(s) and a comprehensive resume of each; and **(5)** evidence that an authorization agreement for automatic deposit of state warrants has been submitted to Ohio Shared Services using the electronic funds transfer form provided on the Internet at <http://ohiosharedservices.ohio.gov/Vendors.aspx?Page=2>.

## 6.5 Prevailing Wage Rates

**6.5.1** The Bidder shall base its Bid upon the prevailing rates of wages as ascertained by the Ohio Department of Commerce, Wage and Hour Bureau for the Project as provided in ORC Sections 4115.03 through 4115.14.

**6.5.2** The Bidder shall not be entitled to an increase in the Contract Sum on account of an increase in prevailing wage rates, except as otherwise provided by Applicable Law. The Bidder is responsible for compliance of its Subcontractors with prevailing wage requirements.

**6.5.3** Within 10 days of the date of the Notice to Proceed, the Contractor shall provide the Owner's Prevailing Wage Coordinator with a schedule of dates during the term of the Contract when the Contractor shall pay wages to its employees for the Project.

## ARTICLE 7 - DEFINED TERMS AND ABBREVIATIONS

**7.1** For the purposes of these Instructions, the words, terms, and abbreviations set forth below have the following meanings:

**7.1.1** "Addenda" or "Addendum" means a written or graphic instrument issued prior to the bid opening which modifies or interprets the proposed Contract Documents by additions, deletions, clarifications, or corrections.

**7.1.2** "Alternate" means a written or graphic instrument issued prior to the bid opening which modifies or interprets the proposed Contract Documents by additions, deletions, clarifications, or corrections.

**7.1.3** "Architect/Engineer" or "A/E" means the Person responsible for providing professional design services and construction contract administration for the Project as provided in the Contract Documents.

**7.1.4** "Applicable Law" means all federal, state, and local codes, statutes, ordinances, and regulations that apply to the performance of the Work or the A/E's Services on the Project.

**7.1.5** "Base Bid" means the amount stated in a Bid as the sum for which the Bidder offers to perform the Work in a particular trade or other category, which is described in the Contract Documents, excluding Alternates.

**7.1.6** "Bid" means a written proposal to perform a Contract, submitted on a completed Bid Form, accompanied by other required documents. The term Bid includes a proposal that has been digitally signed, encrypted, and submitted through the State's electronic bidding application pursuant to OAC Section 153:1-8-01.

**7.1.7** "Bidder" means a Person that submitted a Bid.

**7.1.8** "Bid Form" means a form furnished by the Owner with the proposed Contract Documents that is to be completed, signed, and submitted containing the Bidder's Bid.

**7.1.9** "Bid Guaranty" means a bid bond or other instrument of security authorized by ORC Section 153.54 submitted with the Bid to provide assurance that the Bidder will execute the Agreement.

**7.1.10** "Bond" means a performance and payment bond in the format specified by ORC Section 153.57 submitted by the Contractor to provide assurance that the Contractor will perform the Work of the Contract, including making required payments to Subcontractors and Materials Suppliers.

**7.1.11** "Change Order" means a document executed by the Owner and Contractor that modifies the Contract.

**7.1.12** "Claim" means a demand or assertion, initiated by written notice, certified by one of the parties to the Contract seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract.

- 7.1.13** “Commission” means the Ohio Facilities Construction Commission, the authorized contracting agent for public improvement projects in accordance with ORC Chapters 123 and 153, acting by and through its Executive Director.
- 7.1.14** “Construction Progress Schedule” means the schedule for performance of the Contract; showing the time for completing the Work within the Contract Times; the planned sequence for performing the various components of the Work; and the interrelationship between the activities of the Contractor, A/E, and Owner; as periodically updated during the performance of the Work.
- 7.1.15** “Contract” means the state of legal obligation entered into by the State and the Contractor, whereby they have agreed to an exchange of certain acts, materials, equipment, and services for certain monetary consideration, under all terms and conditions specified in the Contract Documents, which shall remain in full force and effect until such time as all obligations under the Contract have been lawfully and completely discharged, or the Contract is terminated under other conditions specified in the Contract Documents.
- 7.1.16** “Contract Completion” means the schedule Milestone when the Work is completed in accordance with the terms of the Contract Documents and Contractor has satisfied all of its other obligations under the Contract Documents, including but not limited to **(1)** all governmental authorities have given final, written approval of the Work, **(2)** a final unconditional certificate of occupancy has been granted and issued to the Owner by the appropriate governmental authorities, **(3)** the Contractor’s Work is 100 percent complete, and **(4)** all Punch List items have been completed or corrected, and **(5)** the Contractor has complied with conditions precedent to final payment and release of retained funds.
- 7.1.17** “Contract Documents” means collectively, the documents that constitute the substance of the Contract including but not limited to Drawings, Specifications, Addenda if any, General Conditions, Supplementary Conditions if any, Bid Form, Wage Rates; and the executed Agreement, Bid Guaranty and Contract Bond, and executed Change Orders if any.
- 7.1.18** “Contract Sum” means the Contractor’s entire compensation for the Contractor’s proper, timely, and complete performance of the Work and is subject to adjustment as provided in the Contract.
- 7.1.19** “Contract Time” means the period stipulated in the Contract for the achievement of Substantial Completion, in consecutive days, beginning on the date established by the Notice to Proceed, including adjustments authorized by executed Change Orders.
- 7.1.20** “Contractor” means a firm, which is party to the Contract for the performance of Work on the Project in accordance with the Contract Documents.
- 7.1.21** “Defective Work” means Work that does not conform to the Contract Documents; or does not meet the requirements of any applicable statute, rule or regulation, inspection, reference standard, test or approval; or has been damaged prior to the A/E’s recommendation of final payment, unless responsibility for the protection thereof has been expressly assumed by the Owner; or that is not free from defects in workmanship, materials or equipment during the period of any warranty or guarantee.
- 7.1.22** “Drawings” means graphic portions of the Contract Documents, showing the design, type of construction, location, dimension, and character of the Work to be provided by the Contractor, which generally includes plans, elevations, sections, details, schedules, diagrams, notes, and text.
- 7.1.23** “Liquidated Damages” means a sum established in the Contract Documents, pursuant to the statutory delay forfeiture authorized under ORC Section 153.19, to be paid to the Owner due to the Contractor’s failure to complete the Work within the Contract Time for achievement of Substantial Completion, or any applicable portion of the Work on or prior to any Milestone date stated on the Agreement.
- 7.1.24** “Milestone” means a principal event specified in the Contract relating to an intermediate date or time prior to Substantial Completion.
- 7.1.25** “Modification” means a Change Order or an order for a minor change in the Work.
- 7.1.26** “Notice of Commencement” means a notice prepared by the Owner identifying the Project, the Contractor, the Surety for the Contractor, and the name of the Owner’s representative upon whom a claim affidavit may be served.
- 7.1.27** “Notice to Proceed” means written notice provided by the Owner authorizing the Contractor to proceed with the Work and establishing the dates for commencement and completion of the Work.
- 7.1.28** “OAC” means the Ohio Administrative Code.
- 7.1.29** “ORC” means the Ohio Revised Code.

- 7.1.30** “Owner” means the state of Ohio agency, institution of higher education or division thereof, school district board, or other instrumentality for whom the Project is being constructed.
- 7.1.31** “Person” means an individual, corporation, business trust, estate, partnership, association, or other public or private entity.
- 7.1.32** “Plan Holder” means a prospective Bidder that received a set of Contract Documents prior to the bid opening.
- 7.1.33** “Product Data” means a manufacturer’s standard illustrations, schedules, diagrams, performance charts, instructions, and brochures that illustrate physical appearance, size, and other characteristics of materials and equipment.
- 7.1.34** “Project” means the public improvement, of which the Work performed under the Contract Documents may be the whole or a part.
- 7.1.35** “Request for Interpretation” or “RFI” means a written request to the A/E seeking an interpretation or clarification of the Contract Documents.
- 7.1.36** “Samples” means physical examples, color selection items, field samples, and mock-ups furnished by the Contractor to illustrate functional and aesthetic characteristics of products, materials, equipment, or workmanship and establish criteria by which the Work shall be judged.
- 7.1.37** “Schedule of Values” means a full, accurate, and detailed statement furnished by the Contractor reflecting a defined breakdown of the Contract Sum.
- 7.1.38** “Shop Drawings” means drawings, diagrams, illustrations, and schedules specifically prepared for the Project provided by the Contractor or a Subcontractor to illustrate some portion of the Work. Shop Drawings are not Contract Documents.
- 7.1.39** “Site” means the location designated for the Project.
- 7.1.40** “Specifications” means those portions of the Contract Documents consisting of detailed written administrative, procedural, and technical requirements for the construction of the Work, whether physically on the Drawings or bound in separate volumes, including identification of acceptable materials, methods, equipment, quality, and workmanship.
- 7.1.41** “State” means the government of Ohio, including any organized body, office, or agency established by the laws of this state for the exercise of any function of state government, any state institution of higher education as defined in ORC Section 3345.011, or any school district board as defined in ORC Section 3318.01.
- 7.1.42** “Subcontract” means any contract or agreement between the Contractor and a Subcontractor for performance of a portion of the Work.
- 7.1.43** “Subcontractor” means a Person who undertakes to perform any part of the Work on the Project under a contract with a Contractor or with any Person other than the State, including all such Persons in any tier. The term “Subcontractor” includes material suppliers.
- 7.1.44** “Substantial Completion” means the stage when the Work is sufficiently complete in accordance with the Contract that the Owner can utilize the Work for its intended use, as determined by the A/E. The issuance of a certificate of occupancy (if applicable) is a condition precedent to the achievement of Substantial Completion.
- 7.1.45** “Substitution” means an article, device, material, equipment, form of construction, or other item, proposed prior to the bid opening and approved by the A/E by Addendum, for incorporation or use in the Work as being functionally and qualitatively equivalent to essential attributes of a component specified in the proposed Contract Documents.
- 7.1.46** “Supplementary Conditions” means amendments to the General Conditions, issued as a separate document, which describe conditions of the Contract unique to a particular Owner or Project.
- 7.1.47** “Surety” means a Person providing a Bid Guaranty or a Bond to a Bidder or a Contractor, as applicable, to indemnify the State against all direct and consequential damages suffered by failure of the Bidder to execute the Contract, or of the Contractor to perform the Contract and to pay all lawful claims of Subcontractors, material suppliers and laborers, as applicable.
- 7.1.48** “Work” means the labor, materials, equipment, and services, individually or collectively which are required by the Contract Documents, to be performed or provided by the Contractor for the Project.

**END OF DOCUMENT**