

# INSTRUCTIONS TO BIDDERS

## FOR CONSTRUCTION CONTRACT

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## ARTICLE 1—DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. *Issuing Office*—The office from which the Bidding Documents are to be issued, and which registers plan holders.

## ARTICLE 2—BIDDING DOCUMENTS

- 2.01 Bidder shall obtain a complete set of Bidding Requirements and proposed Contract Documents (together, the Bidding Documents). See the Agreement for a list of the Contract Documents. It is Bidder's responsibility to determine that it is using a complete set of documents in the preparation of a Bid. Bidder assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete documents, by Bidder itself or by its prospective Subcontractors and Suppliers.
- 2.02 Bidding Documents are made available for the sole purpose of obtaining Bids for completion of the Project and permission to download or distribution of the Bidding Documents does not confer a license or grant permission or authorization for any other use, nor does it grant or confer ownership or any property interest in the Bidding Documents and other documents distributed for the Project. Authorization to download documents, or other distribution, includes the right for Bidding Documents holders to print documents solely for their use, and the use of their prospective Subcontractors and Suppliers, provided the Bidding Documents holder pays all costs associated with printing or reproduction. Paper or other types of printed documents may not be re-sold under any circumstances.
- 2.03 Owner has established a Bidding Documents Website as indicated in the Advertisement or invitation to bid. Owner recommends that Bidder register as a Bidding Documents holder with the Issuing Office at such website, and obtain a complete set of the Bidding Documents from such website. Bidders may rely that sets of Bidding Documents obtained from the Bidding Documents Website are complete, unless an omission is blatant. Registered Bidding Documents holders will receive Addenda issued by Owner or Issuing Office.
- 2.04 Bidder may register as a Bidding Documents holder and obtain complete sets of Bidding Documents, in the format stated in the Advertisement or invitation to bid, from the Issuing Office. Bidders may rely that sets of Bidding Documents obtained from the Issuing Office are complete, unless an omission is blatant. Registered Bidding Documents holders will receive Addenda issued by Owner or Issuing Office.
- 2.05 Plan rooms (including construction information subscription services, and electronic and virtual plan rooms) may distribute the Bidding Documents, or make them available for examination. Those prospective bidders that obtain an electronic (digital) copy of the Bidding Documents from a plan room are encouraged to register as Bidding Documents holders from the Bidding Documents Website or Issuing Office. Owner is not responsible for omissions in Bidding

Documents or other documents obtained from plan rooms or other such sources (such as other prospective bidders), or for a Bidder's failure to obtain Addenda from a plan room.

## 2.06 *Electronic Documents*

- A. When the Bidding Requirements indicate that electronic (digital) copies of the Bidding Documents are available, such documents will be made available to prospective Bidders as Electronic Documents in the manner specified.
  - 1. Bidding Documents will be provided in Adobe PDF (Portable Document Format) (.pdf) that is readable by Adobe Acrobat Reader Version or similar. It is the intent of the Engineer and Owner that such Electronic Documents are to be exactly representative of the paper copies of the documents. However, because the Owner and Engineer cannot totally control the transmission and receipt of Electronic Documents nor any bidder's or the Contractor's means of reproduction of such documents, the Owner and Engineer cannot and do not guarantee that Electronic Documents and reproductions prepared from those versions are identical in every manner to the paper copies.
- B. Unless otherwise stated in the Bidding Documents, the Bidder may use and rely upon complete sets of Electronic Documents of the Bidding Documents, described in Paragraph 2.06.A above. However, Bidder assumes all risks associated with differences arising from transmission/receipt of Electronic Documents versions of Bidding Documents and reproductions prepared from those versions and, further, assumes all risks, costs, and responsibility associated with use of the Electronic Documents versions to derive information that is not explicitly contained in paper versions of the documents, and for Bidder's reliance upon such derived information.
- C. After the Contract is awarded, the Owner will provide or direct the Engineer to provide for the use of the Contractor certain documents that were developed by Engineer as part of the Project design process, as Electronic Documents in native file formats as originally prepared by Engineer.
  - 1. Electronic Documents that are available in native file format include:
    - a. Drawing Files
  - 2. Release of such documents will be solely for the convenience of the Contractor and subject to additional requirements. No such document is a Contract Document.
  - 3. Unless the Contract Documents explicitly identify that such information will be available to the Successful Bidder (Contractor), nothing herein will create an obligation on the part of the Owner or Engineer to provide or create such information, and the Contractor is not entitled to rely on the availability of such information in the preparation of its Bid or pricing of the Work. In all cases, the Contractor shall take appropriate measures to verify that electronic/digital information provided in Electronic Documents is appropriate and adequate for Contractor's specific purposes.
  - 4. In no case will Contractor be entitled to additional compensation or time for completion due to any differences between the actual Contract Documents and any related document in native file format.

### **ARTICLE 3—QUALIFICATIONS OF BIDDERS**

- 3.01 To demonstrate Bidder's qualifications to perform the Work, after submitting its Bid and within 3 to 5 days of Owner's or Engineer's request, Bidder must submit the following information:
- A. Written evidence establishing its qualifications such as financial data, previous experience, and present commitments.
  - B. A written statement that Bidder is authorized to do business in the state where the Project is located, or a written certification that Bidder will obtain such authority prior to the Effective Date of the Contract. Such statement or certification, as applicable, shall be signed by the same officer of Bidder's company that signed the Bid.
  - C. Bidder's state (or other issuing entity) contractor license number, if applicable.
  - D. Subcontractor and Supplier qualification information.
  - E. Other required information regarding qualifications.
- 3.02 Prospective Bidders must submit required information regarding their qualifications. Owner will review the submitted information to determine which contractors are qualified to bid on the Work. Owner will issue an Addendum listing those contractors that Owner has determined to be qualified to construct the Project. Bids will only be accepted from listed contractors. The information that each prospective Bidder must submit to seek prequalification includes the following:
- A. Written evidence establishing its qualifications such as financial data, previous experience, and present commitments.
  - B. A written statement that Bidder is authorized to do business in the state where the Project is located, or a written certification that Bidder will obtain such authority prior to the Effective Date of the Contract.
  - C. Prospective Bidder's state (or other) contractor license number, if applicable.
  - D. Subcontractor and Supplier qualification information.
  - E. Other required information regarding qualifications.
- 3.03 Bidder is to submit the following information with its Bid to demonstrate Bidder's qualifications to perform the Work:
- A. Written evidence establishing its qualifications such as financial data, previous experience, and present commitments.
  - B. A written statement that Bidder is authorized to do business in the state where the Project is located, or a written certification that Bidder will obtain such authority prior to the Effective Date of the Contract.
  - C. Bidder's state (or other) contractor license number, if applicable.
  - D. Subcontractor and Supplier qualification information.
  - E. Other required information regarding qualifications.

- 3.04 A Bidder's failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.
- 3.05 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.
- 3.06 Bidders shall be experienced in the kind of Work to be performed, shall have the or be able to obtain construction equipment necessary for the Work, and shall possess sufficient capital to properly perform the Work within the time allowed. Bids received from Bidders who have previously failed to complete work within the time required, or who have previously performed similar work in an unsatisfactory manner, may be rejected. A Bid may be rejected if Bidder cannot show and document to Owner's satisfaction that Bidder has the necessary ability, facilities, equipment, and resources to commence the Work at the time prescribed and thereafter to prosecute and complete the Work at the rate or within the times specified. A Bid may be rejected if Bidder is already obligated for the performance of other work which would delay the commencement, prosecution or completion of the Work.

#### **ARTICLE 4—PRE-BID CONFERENCE**

- 4.01 A mandatory pre-bid conference will be held at the time and location indicated in the Advertisement for Bids. Representatives of Owner and Engineer will be present to discuss the Project. Bids will not be accepted from Bidders who do not attend the conference. It is each Bidder's responsibility to sign in at the pre-bid conference to verify its participation. Bidders must sign in using the name of the organization that will be submitting a Bid. A list of Bidders that attended the pre-bid conference and are, on that basis alone, eligible to submit a Bid for this Project, will be issued in an Addendum.
- 4.02 Information presented at the pre-bid conference does not alter the Bidding Documents. Owner or Issuing Office will issue Addenda to make any changes to the Bidding Documents that result from discussions at the pre-bid conference. Information presented, and statements made at the pre-bid conference will not be binding or legally effective unless incorporated in an Addendum.

#### **ARTICLE 5—SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE**

- 5.01 *Site and Other Areas*
- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.
- 5.02 *Existing Site Conditions*
- A. *Subsurface and Physical Conditions; Hazardous Environmental Conditions*
1. The Supplementary Conditions identify the following regarding existing conditions at or adjacent to the Site:
- a. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data.

- b. Those drawings known to Owner of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data.
  - c. Reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
  - d. Technical Data contained in such reports and drawings.
- 2. Owner will make copies of reports and drawings referenced above available to any prospective Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in 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.
- 3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05 of the General Conditions, and not in the drawings referred to in Paragraph 5.02.A of these Instructions to Bidders. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

#### 5.03 *Other Site-Related Documents*

- A. Owner has not verified the contents of these other Site-related documents, and Bidder may not rely on the accuracy of any data or information in such documents. Bidder is responsible for any interpretation or conclusion Bidder draws from the other Site-related documents.
- B. The other Site-related documents are not part of the Contract Documents.
- C. Bidders are encouraged to review the other Site-related documents, but Bidders will not be held accountable for any data or information in such documents. The requirement to review and take responsibility for documentary Site information is limited to information in (1) the Contract Documents and (2) the Technical Data.
- D. No other Site-related documents are available.

#### 5.04 *Site Visit and Testing by Bidders*

- A. Bidders visiting the Site are required to: (1) arrange their own transportation to the Site; and (2) each Bidder visiting the Site is responsible for providing and using its own personal protective equipment appropriate for the Site and conditions, and in accordance with posted requirements, if any. Comply with Paragraph 5.05 of these Instructions to Bidders.
- B. All access to the Site, other than during a regularly scheduled Site visit, must be coordinated through the following Owner or Engineer contact for visiting the Site: Valerie Keller, Val.Keller@ci.pierre.sd.us. Bidder must conduct the required Site visit during normal working hours, Mondays through Fridays.

- C. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.
- D. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder general access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site. Bidder is responsible for establishing access needed to reach specific selected test sites.
- E. Bidder must comply with Laws and Regulations regarding excavation and location of utilities, obtain necessary permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- F. Bidder must fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

5.05 *Owner's Safety Program*

- A. Site visits and work at the Site may be governed by an Owner safety program. If an Owner safety program exists, it will be indicated in the Supplementary Conditions. Where the Bidding Documents indicate an Owner's safety program, visitors to the Site during the bidding phase and at other times shall comply with Owner's safety programs.

5.06 *Other Work at the Site*

- A. The project site is an active waste disposal facility. Contractor's work should continuously be coordinated with the site's operations.

**ARTICLE 6—BIDDER'S REPRESENTATIONS AND CERTIFICATIONS**

6.01 *Express Representations and Certifications in Bid Form, Agreement*

- A. The Bid Form that each Bidder will complete and submit contains express representations regarding the Bidder's examination of Project documentation, Site visit, and preparation of the Bid, and certifications regarding lack of collusion or fraud in connection with the Bid. Bidder should review these representations and certifications, and assure that Bidder can make the representations and certifications in good faith, before executing and submitting its Bid.
- B. If Bidder is awarded the Contract, Successful Bidder (as Contractor) will make similar express representations and certifications when it signs the Agreement.

## ARTICLE 7—INTERPRETATIONS AND ADDENDA

- 7.01 Owner on its own initiative may issue Addenda to clarify, correct, supplement, or change the Bidding Documents.
- 7.02 Bidder shall submit all questions about the meaning or intent of the Bidding Documents to Engineer in writing. Contact information and submittal procedures for such questions are as follows:
- To: Garrett Williams, P.E., [garrett.williams@hdrinc.com](mailto:garrett.williams@hdrinc.com)
- CC: The City of Pierre
- 7.03 Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all Bidding Documents holders registered with the Issuing Office. Questions received less than seven days prior to the date for opening of Bids may not be answered.
- 7.04 Only responses set forth in an Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. Responses to questions are not part of the Contract Documents unless set forth in an Addendum that expressly modifies or supplements the Bidding Documents.
- 7.05 Addenda that engineer judges to have a material or significant effect on Bidders' preparation of pricing and other requirement element of the Bid will be transmitted via Addendum for Bidders' receipt not less than three days prior to the scheduled date for receipt of the Bids. Clarifications or modifications that Engineer deems will not have a material or substantial effect on the preparation of Bids may be transmitted for Bidders' receipt later, for receipt prior to the deadline for receipt of Bids.

## ARTICLE 8—BID SECURITY

- 8.01 *Required Form and Amount of Bid Security*
- A. A Bid must be accompanied by bid security made payable to Owner as described in Section 00 11 13 – Advertisement For Bid.
- 8.02 *Bid Security of Successful Bidder*
- A. The Bid security of the apparent Successful Bidder will be retained until Owner awards the Contract to such Bidder, and such Bidder has signed the Contract, furnished the required Contract security, and met the other conditions of the Notice of Award, whereupon the Successful Bidder's bid security will be released.
- B. If the Successful Bidder fails to sign and deliver the Contract and furnish the required Contract security within the number of days, indicated in Paragraph 20.01 of these Instructions to Bidders, after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the bid security of that Bidder will be forfeited.
- C. Upon Successful Bidder's default:
1. When the bid security is a penal sum bid bond, the entire penal sum amount of the bid bond will be forfeit and due Owner.



2. When the bid security is a damages form of bid bond, to the extent of Owner's damages will be forfeit and due Owner.
  3. If a type of bid security other than a bid bond is allowed and is furnished, the amount that will be forfeit and due Owner will be the same as for the form of bid bond included in the Bidding Documents. Owner will so notify the defaulting Bidder in writing of the annulment and the amount of the forfeiture, with documentation of the amount forfeited.
- D. Such forfeiture will be Owner's exclusive remedy if Bidder defaults.
- 8.03 *Bid Security of Bidders other than the Successful Bidder*
- A. The bid security of other Bidders that 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 Contract or 30 days after the Bid opening, whereupon bid security furnished by such Bidders will be released.
  - B. Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within seven days after the bid opening.
  - C. Release of Bid Security: Owner may release any Bidder's bid security by returning such bid security to the associated Bidder. When bid security is in the form of a bid bond, Owner may dispose of or destroy the bid bond and so advise the associated Bidder in writing that the bid bond has been released.

## **ARTICLE 9—CONTRACT TIMES**

- 9.01 The number of days within which, or the dates by which, the Work is to be (a) substantially completed and (b) ready for final payment, and (c) Milestones (if any), are to be achieved are set forth in the Agreement.
- 9.02 Provisions for liquidated and special damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

## **ARTICLE 10—SUBSTITUTE AND "OR EQUAL" ITEMS**

- 10.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, and those "or-equal" or substitute or materials and equipment subsequently approved by Engineer prior to the submittal of Bids and identified by Addendum. No item of material or equipment will be considered by Engineer as an "or-equal" or substitute unless written request for approval has been submitted by Bidder and has been received by Engineer at least 15 days prior to the date for receipt of Bids. Each such request shall comply with the requirements of Paragraphs 7.04 and 7.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approves any such proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.
- 10.02 All prices that Bidder sets forth in its Bid will be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, and will

perform the Work in accordance with procedures indicated in the Bidding Documents, as supplemented by Addenda, if any. Assumptions regarding the possibility of post-bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

#### **ARTICLE 11—SUBCONTRACTORS, SUPPLIERS, AND OTHERS**

- 11.01 A Bidder must be prepared to retain specific Subcontractors and Suppliers for the performance of the Work if required to do so in the Specifications or elsewhere in the Bidding Documents. If a prospective Bidder objects to retaining any such Subcontractor or Supplier and the concern is not relieved by an Addendum, then the prospective Bidder should not submit a Bid.
- 11.02 The apparent Successful Bidder, and any other Bidder so requested by Owner or Engineer, must submit to Owner (with a copy to Engineer) a list of the Subcontractors and Suppliers proposed for the following portions of the Work within five days after the bid opening:
  - A. Earthwork, Geosynthetics, Erosion Control, Piping, and Aggregate Supply
- 11.03 If requested by Owner or Engineer, such list must be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor or Supplier. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor or Supplier, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder will submit a substitute.
- 11.04 If apparent Successful Bidder declines to make a requested substitution, Owner may award the Contract to another Bidder, consistent with the basis for evaluating the Bids for award as set forth in these Instructions to Bidders, that proposes to use acceptable Subcontractors and Suppliers. Any Subcontractor or Supplier, so listed and against which Owner or Engineer makes no written objection prior to issuance of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.07 of the General Conditions.

#### **ARTICLE 12—PREPARATION OF BID**

- 12.01 The Bid Form is included with the Bidding Documents.
  - A. All blanks on the Bid Form must be completed in ink and the Bid Form signed in ink. Erasures or alterations must be initialed in ink by the person signing the Bid Form. A Bid price must be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.
  - B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words “No Bid” or “Not Applicable.”
- 12.02 If Bidder has obtained the Bidding Documents as Electronic Documents, then Bidder shall prepare its Bid on a paper copy of the Bid Form printed from the Electronic Documents version of the Bidding Documents. The printed copy of the Bid Form must be clearly legible, printed on 8.5inch by 11-inch paper and as closely identical in appearance to the Electronic Document version of the Bid Form as may be practical. The Owner reserves the right to accept Bid Forms which nominally vary in appearance from the original paper version of the Bid Form, providing that all required information and submittals are included with the Bid.

- 12.03 A Bid by a corporation must be signed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation must be shown.
- 12.04 A Bid by a partnership must 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 must be shown.
- 12.05 A Bid by a limited liability company must be signed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown.
- 12.06 A Bid by an individual must show the Bidder's name and official address.
- 12.07 A Bid by a joint venture must be signed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture must have been formally established prior to submittal of a Bid, and the official address of the joint venture must be shown.
- 12.08 All names must be printed in ink below the signatures.
- 12.09 The Bid must contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.
- 12.10 Postal and e-mail addresses and telephone number for communications regarding the Bid must be indicated on the Bid Form.
- 12.11 The Bid must contain evidence of Bidder's authority to do business in the state where the Project is located, or Bidder must certify in writing that it will obtain such authority within the time for acceptance of Bids and attach such certification to the Bid.
- 12.12 If Bidder is required to be licensed to submit a Bid or perform the Work in the state where the Project is located, the Bid must contain evidence of Bidder's licensure, or Bidder must certify in writing that it will obtain such licensure within the time for acceptance of Bids and attach such certification to the Bid. Bidder's state contractor license number, if any, must also be shown on the Bid Form.
- 12.13 The low responsive BIDDER will be required to certify to the following: Non-discrimination in Employment and DBE goals, Davis-Bacon Wage Rate, and Public Law 115-232.
- A. The low responsive BIDDER will be required to certify to compliance with the American Iron and Steel provision of the Consolidated Appropriations Act of 2014. This certification form may be found on page AIS-1 of the State Revolving Fund (SRF) General Conditions and must be included in the Bidding Documents.
  - B. Please be advised that waivers or exemptions from the American Iron and Steel provision that cite International Trade Agreements DO NOT comply with the Consolidated Appropriations Act of 2014 as it applies to the SRF programs. Claims from suppliers that the American Iron and Steel provision does not apply to certain products based on the International Trade Agreement exemptions of the Consolidated Appropriations Act of 2014 will not be accepted.
  - C. The low responsive BIDDER must assure compliance with the requirements of Public Law 115-232, Section 889, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Contractors must assure that telecommunications equipment

produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) WILL NOT be supplied for the project.

- D. BIDDERS will be required to comply with the President's Executive Order No. 11246 as amended, 11518 and 11635 as amended. The requirements for BIDDERS and Contractors under these orders are explained in the Bidding Documents.
- E. BIDDERS on this work will be required to comply with Title 40 CFR 33 and Executive Order 12138. The requirements for BIDDERS and Contractors under this regulation which concerns utilization of Disadvantaged/Minority Business Enterprises (DBE/MBE) and Women's Business Enterprises (WBE) are explained in the Bidding Documents. The DBE/MBE and the WBE goals for participation in this contract in terms of percentage of contract value are as follows: MBE 1.5 percent; WBE 2.4 percent.
- F. Davis Bacon and Related Acts wages apply to this project. All provisions relative to those acts must be met. The requirements for bidders, contractors, and subcontractors are included in the State Revolving Fund General Conditions found in these specifications.
- G. In accordance with South Dakota Codified Law 5-18B-1, one copy of Plans and Specifications shall be furnished without charge, to each Contractor resident in South Dakota who intends, in good faith to Bid upon the project.

## **ARTICLE 13—BASIS OF BID**

### **13.01 *Unit Price***

- A. Bidders must submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
- B. The "Bid Price" (sometimes referred to as the extended price) for each item of Unit Price Work will be the product of the "Estimated Quantity", which Owner or its representative has set forth in the Bid Form, for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and final Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.
- C. 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.

### **13.02 *Cash Allowances***

- A. For cash allowances the bid price (for items other than cash allowances) must include such amounts as Bidder deems proper for Contractor's overhead, handling and installation costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 13.02.B of the General Conditions.

13.03 *Price-Plus-Time Bids - Not Used*

**ARTICLE 14—SUBMITTAL OF BID**

- 14.01 The Bidding Documents include one separate, unbound copy of the Bid Form, and, where required, the Bid Bond Form and other supplements to the Bid Form. The unbound copy of the Bid Form and supplements (if any) is to be completed and submitted with the Bid security and the other documents required with the Bid by Article 2 of the Bid Form.
- 14.02 A Bid must be received no later than the date and time prescribed and at the place indicated in the Advertisement or invitation to bid and must be enclosed in a plainly marked package with the Project title, and, if applicable, the designated portion of the Project for which the Bid is submitted, and the name and address of Bidder, and must be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery method, the sealed envelope containing the Bid must be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid must be addressed to the location designated in the Advertisement or invitation to bid.
- 14.03 Bids received after the date and time prescribed for the opening of Bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened. Owner accepts no responsibility for delays in returning Bids submitted or delivered to the incorrect location.

**ARTICLE 15—MODIFICATION AND WITHDRAWAL OF BID**

- 15.01 An unopened Bid may be withdrawn by an appropriate document duly signed in the same manner that a Bid must be signed and delivered to the place where Bids are to be submitted, prior to the date and time established in the Bidding Documents for the receipt of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.
- 15.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 15.01 of this Article and submit a new Bid prior to the date and time for established in the Bidding Documents the receipt of Bids.
- 15.03 If, within 24 hours after Bids are opened, any Bidder files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a

material and substantial mistake in the preparation of its Bid, the Bidder may withdraw its Bid, and the bid security will be returned.

#### **ARTICLE 16—OPENING OF BIDS**

- 16.01 Bids will be opened at the time and place indicated in the Advertisement or invitation to bid and, unless obviously non-responsive, will be read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

#### **ARTICLE 17—BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

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

#### **ARTICLE 18—EVALUATION OF BIDS AND AWARD OF CONTRACT**

- 18.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner also reserves the right to waive all minor Bid informalities not involving price, time, or changes in the Work.
- 18.02 Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible. Owner may reject the Bid of any Bidder that fails to demonstrate appropriate qualifications, experience, and resources for the Work, in accordance with Article 3 of these Instructions to Bidders.
- 18.03 If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, whether in the Bid itself or in a separate communication to Owner or Engineer, then Owner will reject the Bid as nonresponsive.
- 18.04 *Basis for Award of Contract*
- A. If Owner awards the contract for the Work, such award will be to the responsible Bidder submitting the lowest-priced, responsive Bid that has not otherwise been disqualified.
- 18.05 *Evaluation of Bids*
- A. In evaluating Bids, Owner will consider whether the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or elsewhere in the Bidding Documents, or prior to the Notice of Award.
- B. *Based Bid with Alternates:* In the comparison of Bids, alternates will be applied in the same order of priority as listed in the Bid Form. To determine the Bid prices for purposes of comparison, Owner will announce to all Bidders, present at the opening of Bids, a “Base Bid plus alternates” budget after receiving all Bids, but prior to opening the Bids; Bidders not present for the opening of Bids may obtain the announced budget amount from Owner or Engineer. For comparison purposes, alternates will be accepted, following the order of priority established in the Bid Form, until doing so would cause the budget to be exceeded. After determination of the Successful Bidder based on this comparative process and on the responsiveness, responsibility, and other factors set forth in these Instructions to Bidders, the award may be made to said Successful Bidder on its base Bid and any combination of its

additive alternate bid prices for which Owner determines funds will be available at the time of award.

- C. *Unit Price Work*: For the determination of the apparent low-price Bid when unit price bids are submitted, Bids will be compared on the basis of the total of the products of the estimated quantity of each item and unit price bid for that item, together with amount(s) of lump sum items (if any).
- 18.06 In evaluating whether a Bidder is responsible, Owner will consider the qualifications, experience, and resources of the Bidder and may consider the qualifications, experience, and resources of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.
- 18.07 Owner, with or without Engineer's assistance, may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.

#### **ARTICLE 19—BONDS AND INSURANCE**

- 19.01 Paragraph 2.01 and Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, set forth Owner's requirements as to performance and payment bonds, other required bonds (if any), and insurance. When the Successful Bidder delivers the signed Agreement to Owner (or Owner's representative), it must be accompanied by required bonds and insurance documentation.
- 19.02 Article 8 ("Bid Security") of these Instructions to Bidders addresses any requirements for providing bid bonds as part of the bidding process.

#### **ARTICLE 20—SIGNING OF AGREEMENT**

- 20.01 When Owner issues a Notice of Award to the Successful Bidder, it will be accompanied by the unsigned counterparts of the Agreement, along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Agreement and required bonds and insurance documentation (as required by the Contract Documents) to Owner. Within 10 days thereafter, Owner will deliver one fully signed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.