INSTRUCTIONS TO BIDDERS

IB‑1. BIDS: All bids shall be made on the forms provided in this bound volume of contract documents and shall be in compliance with the Notice to Bidders. All appropriate blanks shall be filled in and shall be signed by the appropriate individual on behalf of him/herself or the entity submitting the bid. Each bid must be enclosed in a sealed envelope plainly marked "BID FOR ”. As per the Notice to Bidders, bid shall be addressed to:

CITY OF OVERLAND PARK, KANSAS

Attention: City Clerk

8500 Santa Fe Drive

Overland Park, Kansas 66212

IB-2. DEFINITIONS:

a. All definitions set forth in the General Conditions or in other contract documents are applicable to the Bidding Documents.

b. “Alternative Bid” (or ”Alternate”) means an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the work, as described in the Bidding Documents, is accepted.

c. “Base Bid” means the sum stated in the Bid for which the Bidder offers to perform the work described in the Bidding Documents as the base, to which work may be added or from which work may be deleted for sums stated in Alternate Bids.

d. “Bid” shall mean the offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the work to be performed (and the City reserves the right to reject any and all bids).

e. “Bidder” shall mean any individual, partnership, corporation, association or other entity submitting a Bid for the work.

f. “Bidding Documents” shall mean all documents related to a Bidder's submitting a Bid, including, but not limited to, the advertisement for Bids, if applicable, Instructions to Bidders, the Bid form, other sample bidding and contract forms and the proposed contract documents, including any addenda issued prior to receipt of Bids. At the City's option, Bidders may be required to complete and submit a prequalification statement.

g. “City” means the City of Overland Park, Kansas.

h. “Contractor” shall mean the entity entering into the contract for the performance of the work covered by the contract, together with its duly authorized agents or legal representatives.

i. “Successful Bidder” means the person or entity who is determined and declared by the City to have submitted the lowest and best responsible Bid in conformity with the terms of the Bidding Documents.

j. “Unit Price” means an amount stated in the Bid as a price per unit of measurement for materials or services as described in the Bidding Documents or in the proposed contract documents.

IB‑3. BIDDER'S REPRESENTATIONS: Each Bidder by making its Bid represents that:

a. It has read and understands the Bidding Documents, and its Bid is made in accordance therewith.

b. It has visited the site, has familiarized itself with the local conditions under which the work is to be performed, has reviewed all published reports, inspections and other documents relating to the project and has correlated its observations with the requirements of the proposed contract documents.

c. Its Bid is based upon the materials, systems and equipment required by the Bidding Documents without exception.

d. It has familiarized itself with state, federal law and local ordinances, regulations, and permitting requirements which may affect cost and/or progress or performance of the work.

IB‑4. BIDDING DOCUMENTS: Bidders may obtain complete sets of the Bidding Documents from the City or the consultant for the sum stated in the Notice to Bidders. Neither the City nor the consultant shall be responsible for the accuracy, completeness, or sufficiency of any Bidding Documents obtained from any source other than the source indicated in the Notice to Bidders. Obtaining copies of Bidding Documents from any other source(s) may result in obtaining incomplete and inaccurate information or result in failure to receive any addenda, corrections, or other revisions to these documents that may be issued.

Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the City nor the consultant assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

The City in making copies of the Bidding Documents available on the above terms does so only for the purpose of obtaining Bids on the work and does not confer a license or grant for any other use.

IB‑5. DEFECTS IN BIDDING DOCUMENTS: Bidders shall promptly notify the City of any errors, omissions, discrepancies or inconsistencies (hereinafter "defects") which they may discover upon examination of the Bidding Documents or of the site and local conditions. Bidders will not be permitted to take advantage of any such defect.

Bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the consultant at least seven (7) days prior to the date for receipt of Bids.

Any interpretation, correction or change of the Bidding Documents will be made by Addendum. Interpretations, corrections or changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon such interpretations, corrections and changes.

IB‑6. SUBSTITUTIONS: The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the consultant at least seven (7) days prior to the date for receipt of Bids. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for an evaluation. A statement setting forth any changes in other materials, equipment or other work that incorporation of the substitute would require shall be included. The burden of proof of the merit of the proposed substitute is upon the Bidder. The consultant’s decision of approval or disapproval of a proposed substitution shall be final.

If the consultant approves any proposed substitution prior to receipt of Bids, such approval will be set forth in a written addendum. Bidders shall not rely upon approvals made in any other manner.

No substitutions will be considered after the Contract award unless specifically provided in the contract documents (see GC‑61).

IB‑7. ADDENDA: Written addenda will be mailed or delivered to all who are known by the consultant to have received a complete set of Bidding Documents.

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

No written addenda will be issued later than four (4) days prior to the date for receipt of Bids except an addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

Each Bidder shall ascertain prior to submitting its Bid that it has received all written addenda issued, and it shall acknowledge its receipt in its Bid.

IB‑8. INSURANCE:

a. General: The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms provided by the City or on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

Bidders are referred to Article GC‑38 of the General Conditions for additional insurance information.

b. Notice of Claim Reduction of Policy Limits: The Contractor, upon receipt of notice of any claim in connection with the agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract documents) if the Contractor’s limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

c. Commercial General Liability:

Limits –

|  |  |
| --- | --- |
| General Aggregate: | $2,000,000 |
| Products / Completed Operations Aggregate: | $2,000,000 |
| Personal & Advertising Injury: | $1,000,000 |
| Each Occurrence: | $1,000,000 |

Policy MUST include the following conditions:

1. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)

**2. NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED”**

d. Automobile Liability: Policy shall protect the Contractor against claims for bodily injury and/or property damage arising from the ownership or use of any owned, hired and/or non‑owned vehicle.

Limits (Same as Commercial General Liability) -

Combined Single Limits, Bodily Injury and Property Damage - Each Accident:

Policy MUST include the following condition:

**NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED”**

e. Workers' Compensation: This insurance shall protect the Contractor against all claims under applicable state workers' compensation laws. The Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation: Statutory

Employer's Liability:

Bodily Injury by Accident $100,000 each accident

Bodily Injury by Disease $500,000 policy limit

Bodily Injury by Disease $100,000 each employee

f. Industry Ratings: The City will only accept coverage from an insurance carrier who offers proof that it:

1. Is authorized to do business in the State of Kansas;

2. Carries a Best's policy holder rating of A- or better; and

3. Carries at least a Class VIII financial rating, **or**

4. Is a company mutually agreed upon by the City and Contractor.

g. Subcontractors' Insurance: If a part of the Contract is to be sublet, the Contractor shall either:

1. Cover all subcontractors in its insurance policies, **or**

2. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its subcontractors.

h. Railroad Protective Liability: Additional requirement applicable when working on railroad property.

Named Insured: Applicable Railroad

Limits – Bodily Injury & Property Damage: Per Railroad Requirements

i. Aircraft Liability: Additional requirement applicable for aerial photograph or contract involving any use of aircraft.

Limits- Single Limit Bodily Injury; Including Passengers; and Property Damage:

 $1,000,000 Each Occurrence

Coverage must include all Owned, Hired and Non-Owned Aircraft.

Policy MUST include the following condition:

**NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED” ON THE HIRED AND NON-OWNED AIRCRAFT LIABILITY.**

j. Contractor Property Insurance (“Builder’s Risk”): [Additional requirement when constructing a building.] Unless otherwise provided in the contract documents, Contractor shall procure and maintain property insurance from insurance companies authorized to do business in the State of Kansas upon the entire project to the full insurable value of the project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Contractor shall include as additional insured’s the interests of City, Contractor, design consultants, subcontractor and sub-subcontractors, and shall insure against the risk of direct physical loss including but not limited to fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the contract documents. The property insurance shall include physical loss or damage to the work, including materials and equipment in transit, at the site or at another location as may be indicated in Contractor’s application for payment and approved by City. All deductibles are the responsibility of the Contractor.

1. Unless the contract documents provide otherwise, Contractor shall procure and maintain boiler and machinery insurance that will include the interests of City, Contractor, design consultants, subcontractors and sub-subcontractors.

2. Prior to commencing any work, Contractor shall provide City with certificates evidencing that (1) all Contractor’s insurance obligations required by the contract documents are in full force and in effect and will remain in effect until Contractor has completed all of the work and has received final payment from City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Contractor’s property insurance shall not lapse or be canceled if City occupies a portion of the work. Contractor shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the work.

3. Any loss covered under Contractor’s property insurance shall be adjusted with City and Contractor and made payable to both of them as trustees for the insured’s as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 11 of the Agreement.

4. City and Contractor waive against each other and City’s separate contractors, design consultants, subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Contractor and City shall, where appropriate, require similar waivers of subrogation from City’s separate contractors, design consultants and subcontractors and shall require each of them to include similar waivers in their contracts.

IB‑9. BID SECURITY: Each Bid shall be accompanied by a bid bond or a certified cashier's check on an acceptable bank, made payable, without condition, to the City of Overland Park, Kansas, (hereinafter “City”) in an amount of not less than five percent (5%) of the total Bid. In addition to other legal remedies, the amount of said bid security may be retained by and forfeited to the City as liquidated damages if such Bid is accepted and the Successful Bidder fails to enter into an agreement in the form prescribed, within the time specified in the notice of award by the City; provided, however, that the City shall not necessarily be limited in protecting its legal rights to enforcement of its rights under the bid security. Deposits will be returned to unsuccessful Bidders, with the exception of the second qualifying Bidder, at such time as their Bids are rejected. The Bid deposit of the Successful Bidder and the second qualifying Bidder will be returned when satisfactory insurance certificates, performance bond and statutory or labor and material payment bond in an amount equal to 100% of the agreement and other documents required by the General Conditions have been furnished and the contract documents have been executed.

IB‑10. TAXES: It is the intent of the City to supply the Contractor with a Project Exemption Certificate for use in purchasing materials and supplies used on the project. The Contractor shall, in preparing its Bid, omit from its computed costs all sales and compensation taxes. Upon issuance of a Kansas tax exemption number, two (2) copies of the Project Exemption Certificate (Form PR-74a) will be forwarded to the Contractor. Upon completion of the project, the City will provide the State of Kansas with the project completion date and the State will issue a Project Completion Certification. This will be forwarded to the Contractor who must sign and return it to the City. All invoices must be retained by the Contractor for a period of five (5) years and are subject to audit by the Kansas Department of Revenue. Final payment will not be made to the Contractor until the City has received the Project Completion Certification from the Contractor along with a Consent of Surety Company to Final Payment.

IB‑11. LIQUIDATED DAMAGES: In case of failure on the part of the Contractor to effect completion within the time specified, the City shall have the right to deduct from the total compensation otherwise due the Contractor as liquidated damages based on the full Bid price of the agreement, fixed and agreed to in advance, according to the following schedule:

|  |  |  |
| --- | --- | --- |
| Contract Amount |  | Liquidated Damages |
| $0 | to | $50,000 |  |  $250.00 |
| $50,000 | to | $100,000 |  |  $400.00 |
| $100,000 | to | $500,000 |  |  $800.00 |
| $500,000 | to | $1,000,000 |  | $1,000.00 |
| $1,000,000 | to | $2,000,000 |  | $1,750.00 |
| $2,000,000 | to | $5,000,000 |  | $2,500.00 |
| $5,000,000 | to | $10,000,000 |  | $3,500.00 |
| $10,000,000 | to | $20,000,000 |  | $5,500.00 |
| $20,000,000 | and up |  |  | $6,000.00 |

for each twenty-four (24) hour calendar day, including Sundays and holidays, the work remains incomplete over the specified completion time. **(THE CITY RESERVES THE RIGHT TO ADJUST THE SCHEDULE OF LIQUIDATED DAMAGES, PRIOR TO ADVERTISING FOR BIDS, BASED ON THE SCOPE AND URGENCY OF THE PROJECT.)**

In the event moneys being retained by the City shall not be sufficient to cover the amount of any liquidated damages, City may sue for and recover compensation for damages for nonperformance of this Contract at the time stipulated herein and provided for.

IB‑12. MODIFICATION OR WITHDRAWAL OF BIDS: Bids may be modified or withdrawn by written request of the Bidder received in the office of the City Clerk, prior to the time and date for Bid opening. No Bidder may withdraw its Bid for a period of thirty (30) days from the date set for the opening thereof.

IB‑13. ACCEPTANCE AND REJECTION OF BIDS AND AWARD OF CONTRACT: The contract will be awarded to the lowest and best, responsible Bidder as determined by the City.

The City reserves the right to reject any and all Bids; to waive any and all irregularities and informalities; to negotiate contract terms with the Successful Bidder; and the right to disregard all nonconforming, non-responsive or conditional Bids.

In evaluating Bids, the City may consider the qualification of Bidders, whether or not the Bids comply with the prescribed requirements, and alternates and Unit Prices if requested in the Bid forms. The City reserves the right to reject the Bid of any Bidder who does not pass the evaluation to the City's satisfaction.

IB‑14. BONDS: The Contractor to whom the work is awarded will be required to furnish a Performance Bond, Maintenance Bond, and a Statutory or Labor and Material Payment Bond in the forms hereinafter provided in an amount equal to 100 percent (100%) of the amount of the Contract to be awarded in each case in addition to any other bonds as may be required by the contract documents. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

IB‑15. INDEMNIFICATION: The Contractor shall be required to indemnify and hold the City harmless as set forth in Article GC‑33 of the General Conditions.

IB‑16. BID PREFERENCE: Existing State law (K.S.A. 75‑3740a) requires that, to the extent permitted by federal law and regulations, the City, when letting contracts for bids, must require any Successful Bidder‑Contractor domiciled outside the state of Kansas to submit a Bid the same percent less than the lowest bid submitted by a responsible Kansas contractor as would be required of such Kansas domiciled contractor to succeed over the bidding Contractor domiciled outside Kansas on a like contract let in the foreign Bidder's domiciliary state. All Bids are received on this condition, and if it is determined by the City that the apparent lowest and best Bidder is a foreign domiciled contractor, such contractor shall be awarded the Contract only if such Contractor's Bid complies with this state law requirement.

All Bidders domiciled outside of the State of Kansas may be requested to furnish the City with a copy of their state's preferential bidding statutes, if any.

IB‑17. NON‑DISCRIMINATION, AFFIRMATIVE ACTION AND SEXUAL HARASSMENT: The Contractor shall comply with Article GC‑68 of the General Conditions.

IB‑18. APPOINTMENT OF SERVICE AGENT: Kansas Statutes Annotated 16‑113 requires that non‑resident Contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Any Successful Bidder‑Contractor domiciled outside the State of Kansas must comply with these statutory requirements.

IB‑19. SUBCONTRACTING: As provided in Article GC-36, the Contractor may utilize the services of subcontractors on those parts of the work which, under normal contracting practices, are performed by subcontractors.

IB‑20. CONFLICT OF INTEREST: 31 USCS Section 1352 requires all subgrantees, Contractors, subcontractors and consultants who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreements.

In addition, contract applicants, recipients and subrecipients must file a form disclosing any expenditures they make for lobbying out of non‑federal funds during the agreement period. Necessary forms are available from the City Engineer and should be returned to the City with other contract documents. It is the responsibility of the general Contractor to obtain executed forms from any subcontractors who fall within the provisions of the Code and to provide the City with the same.