

INSTRUCTION TO BIDDERS

Sealed proposals will be received by the City of Bay City at the Purchasing Office, City Hall, 301 Washington Ave., Bay City, Michigan, until **2:00 p.m. on Wednesday, March 3, 2010** for the **Accounts Receivable Counter** all in accordance with the Bidding Documents, and as otherwise set forth herein.

Each bid must be submitted in a sealed envelope, addressed to the Purchasing office, City Hall, 301 Washington Avenue, Bay City, Michigan 48708. Each sealed envelope containing a bid must be plainly marked on the outside as **Accounts Receivable Counter Bid # 10-0303** and the envelope should bear on the outside the name and address of the bidder.

ARTICLE 1 **DEFINITIONS**

Bidding Documents (Proposal) include the Bidding Requirements and the Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, Supplementary Instructions to Bidders, Addenda, the Proposal Form, and other bidding and contract forms. The Contract Documents consist of the Contract, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Plans, Special Provisions, Standard Specifications for Construction, all Addenda issued prior to execution of the Contract, and all other documents defined as Contract Documents in the General Conditions.

Definitions set forth in the General Conditions of the Contract for Construction or in other Contract Documents are applicable to the Bidding Documents.

Addenda are written or graphic instruments issued by the City of Bay City prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections. Addenda will be faxed, mailed or delivered to all who are known by the issuing office to have received a complete set of Bidding Documents. Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose. No 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 a Bid that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in their Bid.

A Bid is a complete and properly signed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents, on the Proposal Form.

A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents.

A Bidder is a person or entity who submits a Bid.

A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment or labor for a portion of the Work.

ARTICLE 2 **BIDDER'S REPRESENTATIONS**

The Bidder by making a Bid covenants, warrants and represents that:

1. The Bidder has read, thoroughly examined and understands the Bidding Documents.
2. The Bidder has visited the site of the proposed project, become thoroughly familiar with any conditions (surface and subsurface), facilities, difficulties and restrictions that may, in any way, affect the cost, progress and/or performance of the Work; and has correlated the Bidder's personal observations with the requirements of the Contract Documents. No plea of ignorance of conditions, facilities, difficulties and restrictions that exist or that may be encountered in the execution of the Work under this Contract, arising out of or as a result of failure to make the necessary examinations and investigations, will be accepted as an excuse for any failure or omission on the part of the Contractor to fulfill in every detail all the requirements of the Contract Documents, or will be accepted as a basis for claims for extra compensation.
3. The Bidder has familiarized himself with all applicable federal, state and/or local laws, statutes, ordinances, rules

and/or regulations that may, in any way, affect the prosecution of the Work.

4. The Bidder has familiarized himself with the City's latest edition of the Standard Specifications for Construction, and understands that these are part of the Bidding Documents.
5. The Bid is based upon all of the requirements of the Bidding Documents, without exception.
6. The Bidder has disclosed to City any material errors or omissions in the Bidding Documents known to or discovered by Bidder.

ARTICLE 3 **COPIES OF BIDDING DOCUMENTS**

Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement for the deposit sum, if any, stated therein.

Bidding Documents will not be issued directly to Sub-bidders or others unless specifically offered in the Advertisement or Invitation to Bid, or in supplementary Instructions to Bidders.

Bidders shall use complete sets of Bidding Documents in preparing Bids and the City of Bay City assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

In making copies of the Bidding Documents available on the above terms, the City of Bay City does so only for the purpose of obtaining Bids on the Work and do not confer a license or grant permission for any other use of the Bidding Documents.

Interpretation or Correction of Bidding Documents

The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Purchasing Office any errors, inconsistencies or ambiguities discovered.

Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Purchasing Office at least seven (7) days prior to the date for the opening of Bids. Any inquiry not received within seven (7) days of the date fixed for the opening of Bids will not be given consideration.

Interpretations, corrections and changes of the Bidding Documents will be made by written Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them. Oral interpretations, if made, shall not be binding. The Purchasing Department's interpretation of the Bidding Documents shall be final.

The Purchasing Department will endeavor to issue interpretations, corrections or changes to all persons known to have received the Bidding Documents. Failure of the Purchasing Department to send, or of the Bidder to receive, any such interpretations, corrections or changes in the Bidding Documents shall not relieve the Bidder from obligation under his Bid as submitted.

ARTICLE 4 **BIDDING PROCEDURES**

Form and Style of Bids

Bids shall be submitted on Proposal Forms included with the Bidding Documents. All blanks on the Proposal Form shall be filled in by typewriter or manually in ink. Where so indicated by the makeup of the bid form, sums shall be expressed in both words and figures, and in case of discrepancy between the two, the amount written in words shall govern. Interlineations, alterations, changes and/or erasures must be initialed by the signer of the Bid. All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change". The Bid shall be for the Work required by the Contract Documents and any Bid not in strict compliance therewith may be rejected as not responsive.

Any general reference made in the bid specifications to a manufacturer's make, model or catalog number is intended to identify specifications as to type and quality of equipment required, but, unless otherwise stated, is not intended to preclude the use of any other make of equipment that is deemed to be equal by the City of Bay City. Any other

manufacturer's equipment which is capable of accomplishing the intended purpose and is equal in performance and quality must be approved by the City of Bay City to be considered.

Bidder shall be responsible for all sales, use, excise, transportation or other taxes, charges, costs, fees or expenses applicable to any of the materials or goods which are a part of the Bid. Bidder shall be responsible to obtain and pay for all permits and licenses as well as all inspections and approvals which are required for the work covered by the Bidding Documents.

Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall make no additional stipulations on the Proposal Form nor qualify the Bid in any other manner.

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

Basis on Which Proposals are Solicited.

Unit Price Proposals shall be computed on the basis of the Engineer's estimate of the quantities, as listed in the Proposal forms. It shall be understood that the actual quantities for which the Contractor shall be determined by measurements of the actual "As Constructed" quantities and may be more or less than the figures stated in the Proposal.

Lump Sum Proposals shall be the total price paid, to the Contractor, for the Project. Periodic payments, to the Contractor, shall be based upon the actual percentage of the Work completed and further upon a breakdown of the Lump Sum price as submitted by the Contractor.

Bid Security.

Each Proposal must be accompanied by a bid deposit in the form of a certified check, or bank draft, drawn upon a bank in good standing, or bid bond by a surety licensed and admitted to do business in the State of Michigan, for a sum of not less than five (5%) percent of the amount of the Proposal as a guarantee on the part of the Bidder that he will, if called upon to do so, enter into a Contract in the attached form, to do the Work covered by such Proposal and at the prices stated herein, and to furnish acceptable surety for its faithful and entire fulfillment. Such bank draft or certified check or bid bond shall be made payable to the City of Bay City, Michigan, and shall be subject to the conditions specified in the Bidding Documents. Should the Bidder refuse to enter into such Contract or fail to furnish the required bonds and certificates or policies of insurance, the amount of the bid security shall be forfeited to the City of Bay City as damages for such refusal and/or neglect.

After Bidders have submitted Proposals, they shall not modify, withdraw or cancel such Proposals, and all sums deposited with such Proposals may be held by the City of Bay City until all such Proposals submitted have been canvassed and a Contract awarded and executed and bonds furnished and approved, except that at the expiration of sixty (60) days from the date of opening Bids any Bidder may withdraw his Bid and all sums deposited with such Proposal in the event the City of Bay City should at that time be holding his Bid.

Bids to Remain Open

All Bids shall remain open for sixty (60) days after the day of the bid opening, but the City of Bay City may, in its sole discretion, release any Bid and return the bid security prior to that date.

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

Qualifications of Bidders

To demonstrate its qualifications for the Project, the Bidder must be prepared to submit upon demand a sworn statement (on the form attached) of the Bidder's legal organization, licensing and qualification to do business, including year organized and/or incorporated and the names and address of officers, partners, shareholders or anyone owning an interest in the entity, background and experience of the principals of Bidder, including a list of work of a similar nature to that covered in the Proposal which has been completed by or is in progress by the Bidder and the year in which the work was done; the principal items of equipment owned by the Bidder which he proposes to use on this Project; a list of trade

and bank references; and a financial statement evidencing the financial ability to successfully complete and properly execute the specified Work. Such sworn statement shall, if demanded, be provided to City of Bay City at least seven (7) days before the date the Bids are opened or within the sixty (60) day period during which the Bids may remain open.

ARTICLE 5 **CONSIDERATION OF BIDS**

Opening of Bids

Unless stated otherwise in the Advertisement or Invitation to Bid, only the properly identified Bids received on time will be opened publicly and will be read aloud. An abstract of the Bids will be made available to Bidders.

Invitation to Bidders to be Present.

Bidders are invited to be present at the opening of the Proposals.

Award of Bids

The City of Bay City reserves the right to award based on evaluation of the Bids and proposed alternates and any combination thereof as it is determined to be in the best interest of the City, and which will not exceed the funds available for the project. The City of Bay City reserves the right to waive informalities or irregularities in any Bid. No contract will be awarded until the City of Bay City has concluded such investigations as it deems necessary to establish the responsibility, qualifications and financial ability of the Bidder to do the work in accordance with the Bidding Documents and Contract to the satisfaction of the City of Bay City within the time prescribed. The City of Bay City reserves the right to reject the Bid of any Bidder who does not pass such investigations to the City of Bay City's satisfaction. In analyzing Bids, the City of Bay City may take into consideration alternates and unit prices, if requested by the bid forms. In accordance with city ordinance, City Commission may give consideration to manufacturers, retailers, wholesalers or service providers located within the City of Bay City. The Bidder shall execute a Contract in the form which is attached to the Quotation Request if it is the successful bidder.

Rejection of Bids

The City of Bay City shall have the right to reject any or all Bids, to reject a Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or reject a Bid which is in any way incomplete, irregular, not responsive or not responsible. Any bid received by the Purchasing Office after 2:00 p.m. Eastern Standard Time on the date first set forth above will be rejected and returned to the bidder.

Local Preference Policy

The City of Bay City utilizes a Local Preference Policy in order to encourage local vendors to provide goods and/or services to Bay City Government. Copies of this policy and the required qualifying affidavit are available on the City of Bay City web site (www.baycitymi.org). Vendors seeking to qualify as local vendors may submit an executed affidavit on an annual basis or return the executed affidavit along with their bid submission. The City of Bay City may, in its sole discretion, accept and consider an affidavit from a vendor seeking to qualify as a local vendor at any time.

ARTICLE 6 **POST-BID INFORMATION**

Submittals

The Bidder shall, as soon as practicable after notification of selection for recommendation of the award of a Contract, but no later than ten (10) days thereafter, furnish to the City of Bay City, through the Purchasing Department, in writing:

1. A designation of the Work to be performed with the Bidder's own forces;
2. Names of the manufacturers, products and the suppliers of principal items or systems of materials and equipment proposed for the Work; and
3. Names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.

The Bidder will be required to establish to the satisfaction of the City of Bay City, the reliability and responsibility of the

persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

Prior to the award of the Contract, the City of Bay City will notify the Bidder in writing if the City, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the City of Bay City has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid, or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid to cover the difference in cost occasioned by such substitution. The City of Bay City may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

Persons and entities proposed by the Bidder and to whom the City of Bay City have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the City of Bay City.

Payment Terms.

Unless otherwise provided in the Contract, the City of Bay City's payment terms are Net 30 days for approved invoices. Payment by the City of Bay City to the Bidder shall not constitute a waiver or release of the City of Bay City's right to assert any claim against the Bidder.

ARTICLE 7 WARRANTIES AND PATENTS

Warranty Specifications.

Bidder expressly warrants that all the materials and articles covered by its Bid or other description or specification furnished by the City of Bay City will be in exact accordance with the order, description or specification and free from defects in material and/or workmanship, merchantable, and fit for its intended purpose. Bidder also warrants that all machinery, equipment, materials, furnishings and other products which are part of the work covered by the Bidding Documents will be installed and/or incorporated in the work in strict accordance with the manufacturer's and/or supplier's instructions and requirements. The preceding warranties shall survive delivery and installation, and shall not be deemed waived either by reason of the City of Bay City's acceptance of the materials or articles or by payment for them. Any deviations from the Bidding Documents, or any other exceptions or alterations, must be approved in writing by the City of Bay City's Purchasing Department.

Compliance with Law

Bidder covenants and agrees that it will comply with all applicable federal, state and local laws, statues, ordinances, rules and regulations, including OSHA and MIOSHA, concerning or relating to the materials, machinery, equipment and/or goods to be sold or provided to the City of Bay City in its Bid.

Patents

Bidder covenants and warrants that the materials, articles and goods ["product"] purchased hereunder do not infringe upon any letters patent granted by the United States, and Bidder covenants and agrees to hold the City of Bay City, and its successors, assigns, customers and users of the product, harmless against any claim or demand based upon such infringement, and after notice, to appear and defend at its own expense any suits at law or in equity arising therefrom.

ARTICLE 8 PERFORMANCE BOND AND PAYMENT BOND

Guarantee Bonds

The Contractor shall furnish a surety bond in an amount at least equal to 100% of the Contract Price as security for faithful performance of the Contract. The Contractor shall also furnish a separate surety bond in an amount at least equal to 100% of the Contract Price as security for payment of all persons performing labor and furnishing materials in connection with the Contract. The premium for the bonds described above shall be paid by the Contractor. The form of the bonds shall be as appended herewith. The surety of the bond shall be a duly authorized surety company with a "Certificate of Authority of the Surety Company" to do business in the State of Michigan. The Bidder shall require the attorney-in-fact

who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

Insurance Requirements

Bidder shall purchase and maintain such insurances as are appropriate for the work being performed and furnished, including materials, and as will provide protection from all claims which may arise out of, result from or is caused by Bidder's performance and furnishing of the Work and Bidder's other obligations under the Bidding Documents and Contract, whether it is to be performed or furnished by Bidder, by any Subcontractor or Supplier, by anyone directly or indirectly retained, consulted or employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable. ALL OF THE POLICIES OF INSURANCE SO REQUIRED TO BE PURCHASED AND MAINTAINED (OR THE CERTIFICATES OR OTHER EVIDENCE THEREOF) SHALL CONTAIN A PROVISION OR ENDORSEMENT THAT THE COVERAGE AFFORDED WILL NOT BE CANCELED, MATERIALLY CHANGED OR RENEWAL REFUSED UNTIL AT LEAST THIRTY (30) DAYS PRIOR WRITTEN NOTICE HAS BEEN GIVEN TO CITY OF BAY CITY BY CERTIFIED MAIL. All such insurance shall remain in effect until final payment and at all times thereafter when Bidder may be correcting, removing or replacing defective Work. All insurances shall be obtained from companies licensed and admitted to do business in the State of Michigan.

All Contractors shall be required to strictly comply with the insurance requirements as specified in Article 6 of the General Conditions.

Time of Delivery of Bonds and Insurance Certificates

Contractor shall deliver to the City of Bay City such bonds and certificates or policies of insurance as Contractor, or any subcontractor, may be required to furnish in accordance with Article 6, or in any other Contract Document within ten (10) days of the City's Commission's approval of the Contract unless a shorter period is set forth in a Notice to Proceed. In no event shall Contractor commence any of the Work until such bonds and certificates of insurance have been provided to and approved by the City of Bay City. Contractor's failure, refusal or neglect to provide the required bonds and insurances within this time frame shall give the City of Bay City, at its sole discretion, the right to immediately terminate the Contract without recourse by Contractor. Contractor waives and releases the City of Bay City from all legal and equitable remedies it may have against the City of Bay City if it fails, refuses or neglects to provide the required bonds and insurances.

Prevailing Wages and Fringe Benefits

The Contractor shall pay the prevailing wages and fringe benefits for construction mechanics working in Bay City as defined by Chapter 2, Article VIII of the Bay City Code of Ordinances.

Non-Discrimination in Employment

Contracts for Work under this Proposal will obligate the Contractor and Its Subcontractors not to discriminate in employment practices under Chapter 2, Article 11 of the Bay City Code of Ordinances. Bidders must submit with their initial bid a signed COMPLIANCE REPORT AND PLAN OF ACTION FOR CITY CONTRACTORS statement as included in the EEO section of this document (unless there is a current copy on file with the City). Successful Bidders must be prepared to comply in all respects with the Contract provisions regarding non-discrimination.

Name and Status of Bidder

The name and legal status of the Bidder shall be stated in the Proposal.

In the case of a corporate or limited liability company Bidder, the signature of the signing official shall be accompanied by a copy of a resolution of the board of directors of the corporation authorizing the official to sign both the proposal form and the Contract. The copy of the resolution shall be certified by the secretary of the corporation or entity and shall bear the seal of the corporation or entity. In the event the corporation or entity does not have a seal, then notarization of the entity's secretary's certifying signature shall be required.

In the case of partnership, either all partners shall sign the Proposal form and Contract, or where less than all sign, their signatures shall be accompanied by a notarized power of attorney executed by those not signing, authorizing the signatures of those who do sign. The place of residence of each Bidder, or the office address in the case of a firm or company, with county and state, must be given after his signature.

ARTICLE 9
AWARD OF CONTRACT

Award of Contract.

The award of the Contract, if it is awarded, will be to the lowest responsible Bidder whose qualifications indicate the award will be in the best interest of the City of Bay City and whose Proposal has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The City of Bay City absolutely reserves the right to waive informalities or irregularities in any Bid received or to reject any part of or all Bids. No "Notice of Tentative Award" will be given until the City Engineer has concluded such investigations as it deems necessary to establish the responsibility, qualifications and financial ability of the Bidder to do the Work in accordance with the Contract Documents to the satisfaction of the City of Bay City within the time prescribed. The City of Bay City reserves the right to reject the Bid of any Bidder who does not pass such investigations to the City of Bay City's satisfaction. In analyzing Bids, the City of Bay City may take into consideration alternates and unit prices, if requested by the bid forms. The City of Bay City will give the recommended successful Bidder a "Notice of Tentative Award" within sixty (60) days after the opening of the Bids. Notwithstanding anything herein to the contrary, only the City of Bay City Commission may award a contract to the successful Bidder.