

INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACTS

2006 American Water System Edition

Issued by

American Water Engineering
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The Instructions to Bidders for Construction Contracts, 2007 American Water System Edition (“Instructions to Bidders”), are based on the Suggested Instructions to Bidders for Construction Contracts (EJCDC No. C-200, 2007 Edition). The Instructions to Bidders incorporate terms and conditions that are consistent with American Water System practices and policies.

INSTRUCTIONS TO BIDDERS

ARTICLE 1 – DEFINED TERMS

- 1.1 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions, with the following exceptions:
- A. “Bidder” means one who submits a Bid directly to Owner, as distinct from a subbidder, who submits a bid or quote to a Bidder.
 - B. “Successful Bidder” means the responsible Bidder submitting a responsive Bid, to whom Owner (on the basis of Owner’s evaluation as hereinafter provided) makes an award of the Contract.
 - C. “Bidding Documents” includes the Invitation to Bid, Instructions to Bidders, the Bid Form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
- 1.2 Whenever used herein, a pronoun in the masculine gender shall be considered as including the feminine gender.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

- 2.1 Complete sets of the Bidding Documents in the number and for the amount, if any, stated in the Invitation to Bid may be obtained from the party stated in the Invitation to Bid. No refunds will be made for the return of complete or partial copies of the Bidding Documents.
- 2.2 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.3 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

- 3.1 Owner will accept Bids only from contractors that are prequalified by Owner, and whom Owner has invited to submit Bids. Each Bid must contain evidence of Bidder’s qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the Contract.
- 3.2 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder’s representations and certifications.

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

- 4.1 *Subsurface and Physical Conditions*
- A. The Construction Drawings identify:

1. A Geotechnical Baseline Report on subsurface conditions at the Site;
 2. Other reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents.
 3. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.
- B. Each Bidder will receive two copies of the Geotechnical Baseline Report as part of the Bidding Documents. Copies of other reports and drawings referenced in Paragraph 4.01.A will be made available by Owner to any Bidder on request, at cost. Those other reports and drawings are not part of the Contract Documents. Bidder's reliance on Owner-furnished items is limited by the terms of Paragraph 4.02.B of the General Conditions.

4.2 *Underground Facilities*

- A. Information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or by others. Bidders shall review the terms of Paragraph 4.04 of the General Conditions with respect to Underground Facilities.

4.3 *Hazardous Environmental Condition*

- A. The Supplementary Conditions identify those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that Engineer has used in preparing the Contract Documents.
- B. Copies of reports and drawings referenced in Paragraph 4.03.A will be made available by Owner to any Bidder on request, at cost. Those reports and drawings are not part of the Contract Documents. Bidders shall review the terms of Paragraph 4.06 of the General Conditions with respect to Hazardous Environmental Conditions.

4.4 **[Reserved.]**

- 4.5 On request, and after receipt from Bidder of evidence of satisfactory insurance coverage, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and the advance locating and protection of utilities, and to any other terms and conditions established by Owner.
- 4.6 Reference is made to the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request, Owner will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work.
- 4.7 It is the responsibility of each Bidder before submitting a Bid to:

- A. examine and carefully study the Bidding Documents, including but not limited to the Drawings, Specifications, and Geotechnical Baseline Report, and the other related data identified in the Bidding Documents;
 - B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
 - C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;
 - D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions, and (2) reports and drawings of Hazardous Environmental Conditions at the Site which have been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions;
 - E. consider the information known to Bidder, information and observations obtained from visits to the Site, information commonly known to contractors doing business in the locality of the Site, the Bidding Documents, and the reports and drawings identified in the Bidding Documents and referred to in Paragraph 4.07.D above with respect to the effect of such information and observations on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.
 - F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;
 - G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
 - H. be prepared to comply with the applicable requirements of Owner's safety or security programs, if any;
 - I. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
 - J. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.8 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given

Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 5 – PRE-BID CONFERENCE (NOT USED)

ARTICLE 6 – SITE AND OTHER AREAS

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

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

7.1 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing (including by e-mail). Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.2 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.

ARTICLE 8 – BID SECURITY (NOT USED)

ARTICLE 9 – CONTRACT TIMES

9.01 The number of days within which, or the dates by which, the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

ARTICLE 10 – LIQUIDATED DAMAGES

10.01 Provisions for liquidated damages, if any, are set forth in the Agreement. *N/A*

ARTICLE 11 – SUBSTITUTE AND “OR-EQUAL” ITEMS

11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or those substitutes or “or-equal” materials and equipment approved by Engineer, accepted by Owner, and identified by Addendum (“Alternatives”). The materials and equipment described in the Bidding Documents establish a standard of required type, function and quality to be met by any proposed substitute or “or-equal” item. No item of material or equipment will be considered by Engineer as an Alternative unless Bidder submits to Engineer a written request for approval (including any supporting documentation) at least 15 days prior to the date for receipt of Bids. The burden of proof of the merit of the proposed Alternative is upon Bidder. Engineer’s decision of approval or disapproval of a proposed Alternative will be final as to Bidder. If Engineer approves any proposed Alternative, 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. The Owner reserves the right to accept or reject proposed Alternatives. The Bid sum for each proposed Alternative shall include all money required to incorporate the Alternative into the Project. Later requests for additional compensation for Alternatives will not be considered.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS AND OTHERS

- 12.1 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to Owner a list of all proposed Subcontractors and Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor or Supplier if requested by Owner. 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 a substitute, without an increase in the Bid.

If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors or Suppliers. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.

- 12.2 Owner encourages Contractors to seek diverse subcontractors and suppliers (including but not limited to Women Business Enterprises (WBE's), Minority Business Enterprises (MBE's), and Disabled Veteran Business Enterprises (DVBE's)), while at the same time ensuring that the best combination of quality, service and price is provided in accordance with the highest ethical and professional standards. The Owner recognizes the value of subcontractor and supplier diversity as a strategic business decision and is committed to offer them an equal opportunity to compete for subcontracts to supply materials and services with all other suppliers and contractors in the competitive marketplace. **The Owner's goal is that at least 25% of the Contract Price be directed to qualified Diversity Subcontractors. Bidders shall submit as part of bid Owner's Supplier Diversity Questionnaire (Appendix D to Supplementary Conditions).**
- 12.3 Contractor shall not be required to employ any Subcontractor, Supplier, individual or entity against whom Contractor has reasonable objection.

ARTICLE 13 – PREPARATION OF BID

- 13.1 The Bid Form is included with the Bidding Documents. Additional copies may be obtained from Owner.
- 13.2 All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be

indicated for each section, Bid item, alternative, adjustment unit price item, and unit price item listed therein, or the words "No Bid," "No Change," or "Not Applicable" entered.

- 13.3 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.
- 13.4 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.
- 13.5 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 13.6 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.
- 13.7** All names shall be printed in ink below the signatures.
- 13.8 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.9 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 13.10 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the Contract. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.

ARTICLE 14 – BASIS OF BID; COMPARISON OF BIDS

14.1 Lump Sum

- A. Bidders shall submit a Bid on a lump sum basis for the base Bid and include a separate price for each alternate described in the Bidding Documents as provided for in the Bid Form. The price for each alternate will be the amount added to or deleted from the base Bid if Owner selects the alternate. In the comparison of Bids, alternates will be applied in the same order as listed in the Bid form.

14.2 Unit Price

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.
- B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 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.

ARTICLE 15 – SUBMITTAL OF BID

- 15.1 With each copy of the Bidding Documents, a Bidder is furnished one separate unbound copy of the Bid Form, the Bid Schedule, the Supplier Diversity Questionnaire, and the Bid Bond Form. The unbound copy of the Bid Form is to be completed and submitted with the Bid security and the documents required by paragraph 7.01 of the Bid Form.
- 15.2 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Invitation to Bid and shall be enclosed in a plainly marked opaque, sealed envelope or package that shows the Project title, and the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED."

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

- 16.1 A Bid may be modified or withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 16.2 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, that Bidder may withdraw its Bid, and the Bid security will be returned.

ARTICLE 17 – OPENING of Bids

- 17.01 Bids will be opened privately.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the 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 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.1 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive any and all informalities and to negotiate contract terms with the Successful Bidder.
- 19.2 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest

in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

- 19.3 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 19.4 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.
- 19.5 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the Contract Documents.
- 19.6 If the Contract is to be awarded, Owner will award the Contract to the Bidder whose Bid is in the best interests of the Project.
- 19.7 Discrepancies in 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.
- 19.8 Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

ARTICLE 20 – CONTRACT SECURITY AND INSURANCE

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

ARTICLE 21 – SIGNING OF AGREEMENT

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

ARTICLE 22 – SALES AND USE TAXES

- 22.01 Owner is **not** exempt from Illinois state sales and use taxes on materials and equipment to be incorporated in the Work. Said taxes shall be included in the Bid. Refer to Paragraph SC-6.10 of the Supplementary Conditions for additional information.

ARTICLE 23 – RETAINAGE

23.01 Provisions concerning retainage are set forth in the Agreement.

ARTICLE 24 – CONTRACTS TO BE ASSIGNED (NOT USED)

ARTICLE 25 – PARTNERING (NOT USED)