

INSTRUCTIONS TO BIDDERS

SECTION 1 DEFINITIONS

- 1.1 Bidder: The person or organization submitting a bid to the Nevada State Public Works Division in response to an Invitation to Bid. The term Bidder means the Contractor or his authorized representative.
- 1.2 Work: The term Work includes all labor, materials, services, equipment, tools, transportation, power, water, permanent and temporary utilities, utility connections, provisions for safety, and all incidental and other things necessary to produce the finished construction as described by the Bid Documents.
- 1.3 Bid Date: The day established in the Invitation to Bid (or by subsequent addendum) for the submission of bids to the Nevada State Public Works Division and for opening of those bids.
- 1.4 Bid Time: The time established in the Invitation to Bid (or by subsequent addendum) for the submission of bids to the Nevada State Public Works Division and for opening of those bids. The official time governing the bid opening will be announced periodically by a representative of the State Public Works Division at the place of bidding.
- 1.5 Bid Documents: The Bid Documents consist of the Bid Proposal Form, the Owner-Contractor Agreement Form, the Performance and Payment Bond Forms, the General Conditions of the Contract, the Supplemental General Conditions, the Drawings, the Specifications, the Wage Scales, the Addenda, and these Instructions to Bidders.
- 1.6 Owner: The Owner is the State Agency or Department listed in the Invitation to Bid and in the Owner-Contractor Agreement included in the Bid Documents, and shall include his authorized representative.
- 1.7 Consultant: The Consultant is the person or organization identified as such in the Bid Proposal Form, and shall include his authorized representatives.
- 1.8 Joint Venture Bid: A single bid submitted by two or more contractors who propose to perform the work jointly.
- 1.9 Place of Bidding: The specific location established in the Invitation to Bid for the public opening of bids.

SECTION 2 PREQUALIFICATION OF BIDDERS

- 2.1 Each Bidder shall be properly licensed by the Nevada State Contractors Board prior to the bid opening. The Owner will not award a contract to any Bidder who, at the time of the bid, is not licensed under the provisions of Nevada Revised Statutes Chapter 624, or if the contract would exceed the limit of his license.
- 2.2 Prior to the bid opening each Bidder shall be qualified under the terms of Nevada Revised Statutes Section 338.1375.
- 2.3 Pursuant to Nevada Revised Statutes Section 338.141, each Bidder shall ensure that none of the Subcontractors utilized in determining and submitting his bid have been disqualified under the State Public Works Division pre-qualification program.
- 2.4 Each Bidder shall ensure that all sub-bids utilized by him in preparing his bid have been obtained from subcontractors who are properly licensed on the Bid Date by the Nevada State Contractors Board to perform their portion of the work. A subcontractor named by the Bidder who is not properly licensed for that portion of the work shall be deemed to be unacceptable. The Bidder shall provide an acceptable subcontractor before the award of the contract at no additional cost to the Owner.
- 2.5 Any Bidder proposing to submit a Joint Venture Bid shall obtain the written approval of the Nevada State Contractors Board prior to submitting such a bid.

SECTION 3 PREPARATION OF BIDS

- 3.1 Each Bidder is solely responsible for the proper and complete preparation of his bid. The failure of a Bidder to comply with any or all provisions of the Instructions to Bidders, or with the requirements of the Bid Documents may result in the rejection of the Bid by the Owner.
- 3.2 Each bid shall be submitted on the Bid Proposal Form provided with the Bid Documents.
- 3.3 Where indicated on the Bid Proposal Form each Bidder shall:
 - A. Print or type his name and address.
 - B. If a partnership, print or type the names of all partners.
 - C. If incorporated, print or type the State in which incorporated, and attach seal.
 - D. Check the type of bid security being provided.
 - E. List the number of each Addendum received and acknowledged.
 - F. Clearly and legibly print or type the amount of the base bid and, if applicable, the amount of each bid alternate.
 - G. Sign and date the Bid Proposal Form. Print or type the title of the authorized representative(s) signing the form. The signature(s) must be of an authorized officer of the firm. See Section 4 (Joint Venture) regarding joint venture bids.
 - H. Enter the Nevada State Contractors Board license number of the Bidder.

- I. Pursuant to Nevada Revised Statutes Section 338.141, which states in pertinent part, each bid shall include a printed or typed list naming each first tier subcontractor who will provide labor or a portion of the work to the prime contractor and a description of the portion of the work which each subcontractor named in the bid will complete, for which he will be paid an amount exceeding 5% of the prime contractor's total bid. If a prime contractor fails to submit such a list within the required time, his bid shall be deemed non-responsive.

The general contractor shall also list any portion of the work exceeding 5% of the general contractor's total bid that the general contractor intends to self-perform. If the prime contractor substitutes a subcontractor to perform such work, the prime contractor shall forfeit as a penalty to the Owner the lesser of, excluding change orders;

1. An amount equal to 2.5% of the Contract Sum; or
2. An amount equal to 35% of the estimated cost of the work that the prime contractor indicated in his bid that he would perform.

- J. Pursuant to Nevada Revised Statutes Section 338.141, which states in pertinent part, within two hours after the completion of the bid opening, the prime contractors who submitted the three lowest bids shall submit a printed or typed list naming each first tier subcontractor who will provide labor or a portion of the work to the prime contractor and a description of the portion of the work which each subcontractor named in the bid will complete, for which he will be paid an amount exceeding 1% of the prime contractor's total bid or \$50,000, whichever is greater, and the number of the license issued to the subcontractor by the Nevada State Contractors Board. If a prime contractor fails to submit such a list within the required time, his bid shall be deemed non-responsive.

The general contractor shall also list any portion of the work exceeding 1% of the general contractor's total bid or \$50,000, whichever is greater, that the general contractor intends to self-perform. If the prime contractor substitutes a subcontractor to perform such work, the prime contractor shall forfeit as a penalty to the Owner the lesser of, excluding change orders;

1. An amount equal to 2.5% of the Contract Sum; or
2. An amount equal to 35% of the estimated cost of the work that the prime contractor indicated in his bid that he would perform.

- K. The prime contractor whose bid is accepted shall not substitute a subcontractor who is named in the bid, unless such substitution complies with Nevada Revised Statutes Section 338.141. If the prime contractor fails to comply with Nevada Revised Statutes Section 338.141 as amended by Senate Bill No. 268 the prime contractor shall forfeit as a penalty to the Owner an amount equal to 1% of the Contract Sum.

- 3.4 Within 48 hours after receipt of an Intent to Award letter the Contractor shall submit to the State Public Works Division a final and complete list of all subcontractors and sub-subcontractors who will participate in any portion of the work, along with their Nevada State Contractor's license number, and a description of the work that they will perform. Should the 48 hour time period elapse on a weekend day or on a recognized state holiday the required list may be submitted on the following business day.

The prime contractor shall also list any portion of the work that the prime contractor intends to self-perform.

- 3.5 Each bid shall be based on providing the materials and equipment specified in the Bid Documents. The determination of whether material or equipment is equal to that specified is the responsibility of the Architect or Engineer, and each Bidder submitting his bid shall agree to abide with his decision if awarded a contract. Bidders are advised not to prepare bids in anticipation of substitutions to specified materials or equipment being accepted.
- 3.6 Materials and equipment for which there is no installation procedure noted in the specifications shall be installed in conformance with the manufacturer's written instructions.
- 3.7 Bidders may request interpretations or clarifications of the Bid Documents at any time prior to 72 hours before the Bid Time by making a written request to the Architect or Engineer, who may then issue a written addenda to all Bidders prior to the Bid Time. No interpretation, clarification, or change to the Bid Documents will be binding on the Owner unless it is included in an Addendum. It is the sole responsibility of each Bidder to ensure that he has received all Addenda issued, and he shall acknowledge his receipt of each Addenda on the Bid Proposal Form.
- 3.8 Each Bidder shall be solely responsible to inform himself fully of all conditions relating to the Bid Documents and the work prior to submitting a bid.
- 3.9 All applicable State laws, County ordinances, and the rules and regulations of local and State authorities having jurisdiction over the work, shall apply to the Bid Documents as if repeated in full therein. The Bidder's attention is directed to those portions of the Bid Documents which govern insurance, wage rates, allowances, equal employment opportunity, inspection and testing of materials, liquidated damages, and contract time.
- 3.10 The prevailing wage rates as established by the Office of the Nevada Labor Commissioner must be paid when noted in the Invitation to Bid, regardless of the size of the project. The wage rates published in the contract documents must be posted at the site of the project in a place generally visible to the workmen.

SECTION 4 JOINT VENTURE

- 4.1 In the event that a bid proposal is made by two or more bidders as a joint venture, such bid proposals shall be submitted in strict accordance with Nevada Revised Statutes Section 624.740, State Contractor License Law, and the Rules and Regulations of the State Contractors Board.
- 4.2 All proposals submitted by contractors in joint venture must be signed by an authorized officer of each firm to the joint venture and shall include the Nevada State Contractor's license number of each partner to the joint venture.
- 4.3 Also see Section 11 (Determination of Low Bidder) regarding joint venture bids.

SECTION 5 SUBMISSION OF BIDS

- 5.1 Each bid shall consist of the properly completed Bid Proposal Form, Bid Bond (for bids over \$100,000 per NAC Section 341.077) and the required Subcontractor lists.
- 5.2 Pursuant to Nevada Revised Statutes Section 338.1389, each bid for a project where the estimated construction cost exceeds \$250,000 shall also consist of a Certificate of Eligibility (when and if the Bidder is eligible) accompanied by an 'Affidavit of Compliance' (pursuant to Assembly Bills No. 144 & 574). Bidders must utilize the Affidavit of Compliance form provided with the Bid Documents.
- 5.3 Each Bid shall be delivered to an authorized representative of the State Public Works Division at the place of bidding prior to the Bid Time on the Bid Date. Any bid received after that time will be rejected. It is the sole responsibility of the Bidder to ensure that his bid is received by the proper authority at the proper time.
- 5.4 Each Bid shall be delivered in a sealed envelope bearing on the outside the name of the bidder, his address, and the project name and number for which the Bid is submitted. Any other written or printed information relating to the Bid or the work appearing on the outside of the envelope, except for the address of the State Public Works Division, may result in rejection of the Bid.
- 5.5 In submitting a Bid, the Bidder agrees and certifies that:
 - A. He has carefully checked the submitted Bid, and will accept a contract offered in accordance with it, and accordance with the terms and conditions of the Bid Documents.
 - B. The Bid is genuine and not a sham or collusive bid, or made in the interest or on behalf of any person other than the Bidder.
 - C. He has not induced or solicited any other Bidder to submit a sham bid or to refrain from bidding.
 - D. He has read and understands the Bid Documents, and is thoroughly familiar with all requirements of the work.
 - E. He has informed himself fully of the conditions relating to the construction of the project. Failure to do so will not relieve a successful bidder of his obligation to furnish all material and labor necessary to carry out the provisions of the contract.
 - F. He has informed himself fully that his Nevada State Contractor's License is acceptable to the Nevada State Contractors Board for the type of work covered by the bid. Each Bidder is held responsible for submitting bid proposals only if properly and adequately licensed by the Nevada State Contractors Board prior to submitting his bid.

SECTION 6 OPENING OF BIDS

- 6.1 All bids received by the Owner from qualified bidders prior to the Bid Time on the Bid Date will be opened, and read publicly at the specified time and place of bidding.
- 6.2 Any obvious irregularities in any bid will be announced when the bid is opened.
- 6.3 Bid Tabulation Forms for the use of all bidders will be provided at the place of bidding.

SECTION 7 BID SECURITY

- 7.1 Pursuant to Nevada Administrative Code Section 341.077, every bid in excess of \$100,000 shall be submitted with either cash, a certified check, a cashier's check, or a properly executed bid bond utilizing the Nevada State Public Works Division Bid Bond Form, in the amount of 5% of the total amount of the bid, including all bid alternates.
- 7.2 Pursuant to Nevada Administrative Code Section 341.077, all amounts listed in the Bid Proposal shall be guaranteed by the Bidder for a period of not less than 35 calendar days from the date of the bid opening.
- 7.3 Each bid bond submitted shall be executed by both the Bidder and the Attorney-in-Fact representing the Insurance Company acting as the surety issuing the bond. A certified copy of a Power-of-Attorney authorizing the Attorney-in-Fact to execute the bid bond on behalf of the Insurance Company as surety shall be submitted with the bid bond.
- 7.4 The bid bond submitted with each unsuccessful bid will be returned to the associated Bidder after the award of a contract to the successful bidder.
- 7.5 Should the successful Bidder fail to execute the Owner-Contractor Agreement and the required Performance and Payment Bonds within 15 calendar days after receiving the Owner-Contractor Agreement from the Owner, the Contractor and his Surety shall pay to the Owner the difference between the amount of the bid and the amount for which the Owner legally contracts with another party to perform the Work. The amount that the Contractor and his Surety shall be responsible to pay shall include any additional costs and expenditures which the Owner necessarily incurs as actual damages resulting from the failure of the Bidder to execute the Owner-Contractor Agreement and the required Performance and Payment Bonds within the stipulated time. In no event shall the Bidder or his Surety be required to forfeit any sum in excess of the amount of his bid bond.

SECTION 8 WITHDRAWAL AND MODIFICATION OF BIDS

- 8.1 Any submitted Bid can be withdrawn or modified, and resubmitted by the Bidder at any time prior to the Bid Time on the Bid Date.
- 8.2 Once the bid opening commences withdrawal of a submitted Bid will be considered only in a case when all of the following conditions are met:
 - A. The bid amount was reached as the result of a bona fide clerical error.
 - B. Written notice of the error is received by the Owner within 24 hours after the bid opening.
 - C. The written notice fully explains the nature and cause of the error.
 - D. The Owner will review the information submitted by the Bidder concerning the alleged error and the circumstances surrounding the alleged error, and will make a determination as to whether the circumstances justify the withdrawal of the Bid by reason of a bona fide clerical error.

- 8.3 After the recommendation to award the contract is issued and posted on the State Public Works Division website (pursuant to Section 13 ‘Notice of Intent to Award’) the Contractor’s bid cannot be withdrawn for any reason without forfeiture of the bid security in accordance with the terms of the bid bond.
- 8.4 A Bid may be modified by a telegram or facsimile sent to the Owner at the place of bidding, provided such telegram or facsimile is received by the representative of the Owner prior to the Bid Time on the Bid Date. The telegram or facsimile shall not reveal the bid price, but shall provide the addition or subtraction to bid amounts or other modifications, such that the final bid amount or terms will not be known until the Bid to be modified is opened.

SECTION 9 RIGHTS OF THE OWNER

- 9.1 The Owner specifically reserves the right to reject any and all bids, and to determine the validity of any bid not prepared or submitted in accordance with these instructions. The Owner reserves the right to award a contract to the Bidder who has, in the judgment of the Owner, submitted the lowest responsible bid in accordance with the provisions of Section 11, Determination of Low Bidder.

SECTION 10 PRINTING OF DOCUMENTS FOR CONTRACTOR’S USE

- 10.1 The Contractor that is awarded the contract for construction will be responsible for all costs associated with printing and distributing sets of the documents for his use and for the use of all subcontractors and suppliers. Determining the appropriate number of sets will be the Contractor’s responsibility (to ensure appropriate distribution as required for successful completion of the work). The electronic files (in pdf file format) will either be the documents originally posted on the Quest-CDN website, or in some cases may be updated or conformed documents provided by the Owner that include addendum items and/or negotiated scope items.

SECTION 11 DETERMINATION OF LOW BIDDER

The final determination of the low bidder for any State Public Works Division Project will be determined on the basis of the base bid plus any bid alternates which are accepted.

- 11.1 For projects where the estimated construction cost exceeds \$250,000 the terms and conditions of Nevada Revised Statutes Section 338.1389 apply, which states in pertinent part:
- A. Contracts for a public work shall be awarded to the contractor who submits the best bid.
 - B. For the purpose of this section, the lowest bid is a bid provided by the contractor who:
 - 1. Has been found to be a responsible and responsive contractor by the public body; and
 - 2. Pursuant to Nevada Revised Statutes Section 338.1389, at the time that he submits his bid, provides a Certificate of Eligibility (when and if the contractor is eligible), issued by the Nevada State Contractors Board; and an ‘Affidavit of Compliance’ certifying compliance with Assembly Bills No. 144 and 574, and
 - 3. The bid is not more than 5 percent higher than the bid submitted by the lowest responsive and responsible bidder who does not have, at the time he submits his bid, a valid Certificate of Eligibility, or does not submit a properly executed ‘Affidavit of Compliance’ with his bid. In order to be eligible for the 5% bid preference, the Bidder must have a valid Certificate of Eligibility and must have provided a properly executed ‘Affidavit of Compliance’ with his bid.

- C. Should any Bidder neglect to attach a valid Certificate of Eligibility with their Bid Proposal the Bidder will not receive the associated 5% bid preference until such time that a valid Certificate of Eligibility is received. The Bidder must furnish a valid Certificate of Eligibility to the State Public Works Division within 2 hours of the Bid Opening in order to receive the 5% bid preference; however, the 'Affidavit of Compliance' required by Assembly Bills No. 144 and 574 must be submitted with the bid. After the 2 hour time period has elapsed if a valid Certificate of Eligibility has not been received the Bidder will be deemed ineligible for the 5% bid preference.
 - D. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of Section 11.1(B), those provisions do not apply insofar as their application would preclude or reduce federal assistance for that work.
 - E. If a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the provisions of Section 11.1(B) apply only if both or all of the joint venturers separately meet the requirements of Section 11.1(B).
- 11.2 When the approved construction budget permits the acceptance of the base bid and one or more bid alternates, the bid alternates will be selected and awarded by the Owner in the sequential order they are listed on the Bid Proposal Form and in the best interest of the State of Nevada.
- 11.3 The base bid and bid alternates of the low bidder are subject to negotiation in the best interest of the State of Nevada.
- 11.4 Pursuant to Nevada Revised Statutes Section 338.1385 any bid received may be rejected if the State Public Works Division Administrator determines that:
- A. The Bidder is not qualified;
 - B. The Bid received is not responsive;
 - C. The quality of the services, materials, equipment, or labor offered does not conform to the plans and specifications; or
 - D. The public interest would be served by such a rejection.

SECTION 12 BID PROTESTS

- 12.1 In accordance with Nevada Revised Statutes Section 338.142, a person who bids on a contract may file a notice of protest regarding the awarding of the contract within 5 business days after the date that the recommendation to award the contract is issued and posted on the State Public Works Division website (under the 'Bids' tab). The protest must include a written statement specifying the reasons for the protest and the applicable provisions of law that were violated.
- 12.2 A person filing a notice of protest may be required, at the time the notice of protest is filed, to post a bond with a good and solvent surety authorized to do business in this state or submit other security, in a form approved by the public body, to the public body who shall hold the bond or other security until a determination is made on the protest.
- 12.3 A bond posted or other security submitted with a notice of protest must be in an amount equal to the lesser of 25% of the total value of the bid submitted by the person filing the notice of protest; or \$250,000.

SECTION 13 NOTICE OF INTENT TO AWARD

- 13.1 Once the State Public Works Division reviews and evaluates the bids that were received, notification of the recommendation to award the contract will be posted on the State Public Works Division website (under the 'Bids' tab). This notification will typically be posted within 24 hours after the bid opening. It shall be the responsibility of all interested bidders to check the website as necessary to determine the posting date.
- 13.2 Once the 5 day bid protest period has elapsed (see Invitation to Bid for details regarding bid protests) and the State Public Works Division arrives at a determination of the low bidder, the State Public Works Division will issue an Intent to Award letter to the recommended contractor.
- 13.3 The Intent to Award letter will include notification as to whether the provisions of Assembly Bills No. 144 and 574 are applicable to the Project.