

SECTION 002113

INSTRUCTIONS TO BIDDERS

Arden Park Restoration

Owner: Minnehaha Creek Watershed District

Class of Work: Demolition, Stream Restoration, Bituminous, Pavers, Excavation

Project Location: City of Edina, Hennepin County, Minnesota

Mandatory Pre-bid Meeting: Wednesday, October 24, 2018 10:00 A.M. at MCWD Offices, 15320 Minnetonka Blvd., Minnetonka, MN 55345.

Optional site visit: Wednesday, October 24, 2018 at 11:00 A.M. at Arden Park, 5230 Minnehaha Blvd, Edina, MN 55424

Bids Close At: Monday, November 5, 2018 at 1:00 P.M. Central Time

The attached Specifications, including drawings incorporated by reference and a complete set of forms of Bid Proposal, Bid Bond, Agreement, and other Contract Documents, are furnished for convenience of the Bidders and are not to be detached, filled out or executed. Separate copies of Bid Proposal forms will be furnished for the purpose of submission of bids. In submitted Bid Proposals, bidders shall comply with the following instructions that shall control as to the submission of bids.

Bidders are responsible to review insurance requirements and ensure that conforming certificates and endorsements can be provided as required.

1. DEFINED TERMS

- A. The term "Mn/DOT" in reference to a specification shall mean the latest published edition of the Minnesota Department of Transportation's Standard Specifications for Highway Construction, as modified by any Mn/DOT Supplemental Specification edition published prior to the date of the Advertisement.
- B. The term "Bidder" means one that submits a Bid directly to OWNER, as distinct from a sub-bidder, who submits a bid to the Bidder
- C. The term "Successful Bidder" means the lowest, qualified, responsible and responsive Bidder to whom OWNER (on the basis of OWNER'S evaluation as hereinafter provided) makes an award. The Successful Bidder becomes the CONTRACTOR upon execution of the Agreement.
- D. The term "Bidding Documents" includes these Instructions to Bidders, the Bid Proposal, and the other Contract Documents (including all addenda issued prior to receipt of Bids).
- E. The term "Bidding Requirements" means those set forth in this Information Available to Bidders and on the Bid Form and otherwise in the Contract Documents.
- F. The term "Mn/DOT" means Minnesota Department of Transportation.
- G. The term "ENGINEER" means the authorized representative of MCWD.

2. **CONTRACT DOCUMENTS**

The Contract Documents shall consist of the following:

- Modifications (Change Orders, Work Change Directives and Field Orders)
- Notice to Proceed
- Addenda
- Notice of Award
- Agreement
- Instruction to Bidders
- Contract Drawings
- Technical Specifications
- Payment Bond
- Performance Bond
- Insurance
- Supplementary Conditions
- General Conditions
- Completed Bid Form
- Advertisement for Bids

In the case of a discrepancy between or among any of the technical terms and conditions set forth in any of the Contract Documents, the condition or term discrepancy shall be resolved by applying the Contract Documents in the order of priority listed above.

Technical terms used in a Contract Document shall have the meaning given by a specific definition of the term in that document, or if there is not such a definition, the term shall be governed by common understanding within engineering practice.

3. **COPIES OF PROPOSED CONTRACT DOCUMENTS**

- A. Complete sets of the proposed Contract Documents may be obtained from QuestCDN (www.questcdn.com) (digital plan documents) or the ENGINEER for the deposit sum stated in the Advertisement for Bids. Plans and specifications shall only be available on a non-refundable, per set basis, with all contractors and vendors being charged the same. Plan holders may obtain more than one set of plans and specifications for the stipulated amount; however, all are non-refundable.
- B. Complete sets of the proposed Contract Documents must be used in preparing Bids. Neither OWNER nor ENGINEER assumes any responsibility for Bidder errors or Bidder misinterpretations resulting from the use of incomplete sets of the Contract Documents.
- C. OWNER and ENGINEER in making copies of the Contract Documents available on the above terms do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant permission for any other use.

4. QUALIFICATIONS OF BIDDERS

- A. Bidder must submit to OWNER as a part of its bid a qualified work experience statement. This statement must identify three completed projects within the past five years involving the following elements of work:
- Stream Restoration: Includes but is not limited to water control, grading, substrate placement, fabric encapsulated lift installation, large wood installation, etc.
 - Helical Pier Installation: Includes but is not limited to helical pier installation for boardwalks
 - Native Plant Establishment and Maintenance: Includes but is not limited to installation, protection, and maintenance of native seeds and plants
 - Natural Stone and Limestone Block Work: Includes but is not limited to installing natural stone materials and limestone blocks for various onsite applications including walls, habitat structures, fishing and boater accesses, etc.

For each project, the description must include project name and location; project owner with reference name, phone number and email address; contract price; price of the work element; brief description of project and scope; whether Bidder or subcontractor performed the work element (identify subcontractor); and year of project completion. The work element may have been performed by Bidder or by a subcontractor listed on the Section 00030 bid form to perform the same work element.

- B. Failure to submit a qualified work experience statement meeting the requirements of paragraph 4.A will render a bid nonresponsive. OWNER's determination that Bidder (and its subcontractors) have successfully completed one project that include each of the named work elements, in at least equivalent nature and scope as included in the Work, will be one element of OWNER's determination that Bidder is a responsible bidder.
- C. If requested, after bid opening Bidder shall submit to OWNER additional written documentation that demonstrates the Bidder's ability to complete the Work as specified and that demonstrates qualifications to perform the Work. Written documentation, including a copy to the ENGINEER, shall be received by the OWNER within seven (7) calendar days following the request by the OWNER. This documentation may include, but shall not be limited to, clarification of materials submitted in accordance with paragraph 4.A; a description of present commitments; a description of the Bidder's broader project experience in the past five years including nature of project, owner's name, dollar value and name of bonding company; a description of the Bidder's equipment, key personnel and resources demonstrating the Bidder's ability to successfully complete the Work; a

list of subcontractors Bidder proposes to use; and such other information OWNER believes is necessary to judge Bidder's ability and qualifications.

5. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

A. It is the responsibility of each Bidder before submitting a Bid, to (a) examine the Contract Documents and become thoroughly familiar with all terms, conditions, and requirements; (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work; (c) consider federal, state and local Laws, Codes, Ordinances, and Regulations that may affect cost, progress, performance or furnishing of the Work; (d) study and carefully correlate Bidder's observations with the Contract Documents; and (e) notify ENGINEER of all conflicts, errors or discrepancies in the Contract Documents.

B. Reference is made to the General Conditions for identification of:

1. Existing Structures: All existing above and below ground structures at the site may not be shown on the Drawings and Bidder shall be responsible to take reasonable steps to verify the existence and location of all above and below ground structures. Bidder's Bid shall include the costs necessary for the performance, progress, furnishing, and installing of the Work as relates to existing above and below ground structures.

(a) The OWNER and ENGINEER do not imply that the existing above and below ground structure information represented by the Drawings is necessarily representative, exhaustive, or comprehensive and expressly disclaim any warranties as to their accuracy or reliability for Bidder's purposes or purposes of construction. The Bidder may use this information and the data Bidder judges appropriate, but Bidder is not entitled to rely on any of the information, technical data, non-technical data, interpretations, or opinions contained therein or the completeness thereof. Bidder's reliance on such for Bidder's purposes is solely at Bidder's own risk.

(b) The OWNER and ENGINEER have no reliable information regarding the existence of subsurface structures other than those indicated in the Drawings, which are at or contiguous to the Work. If the Bidder suspects or verifies the existence of subsurface structures which may affect the cost, performance, progress, furnishing, or installing of the Work in accordance with the Contract Documents prior to the time for the opening of bids, the Bidder shall notify OWNER and ENGINEER promptly, in writing, of the conflict. If such an existing subsurface structure is located at any time thereafter, OWNER and ENGINEER may consider the existing subsurface structure under the provisions for differing conditions as set forth in the General Conditions.

2. Underground Facilities and Utilities: Information and data concerning underground facilities and utilities at or contiguous to the site, and known to OWNER and ENGINEER, are available for review by any Bidder at the ENGINEER'S office by appointment but are not a part of the Contract Documents. OWNER and ENGINEER do not imply that this information is necessarily representative, exhaustive, or comprehensive and expressly disclaim responsibility for or any warranties as to its accuracy. Whether underground facilities and utilities are shown or indicated, or not shown or indicated, on the Drawings the CONTRACTOR shall have the full responsibility for locating all underground facilities and utilities prior to the performance of all elements of the Work. The additional responsibilities of Bidder regarding underground facilities and utilities are set forth in the General Conditions.

- C. Before submitting a Bid, each Bidder will, at Bidder's own expense, make or obtain such reasonable additional examinations, investigations, explorations, tests and studies, and obtain any additional information and data which pertain to the physical conditions (surface, subsurface, underground facilities and utilities) at or contiguous to the site or otherwise which may affect the cost, progress, performance or furnishing of the Work, and which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of the Contract Documents. Bidder's failure to conduct or perform such reasonable examinations, investigations, explorations, tests, and studies or obtain additional information, shall represent that Bidder's Bid has included adequate cost contingencies as Bidder deems necessary for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of the Contract Documents.
- D. It is the Bidder's responsibility to visit the site to conduct such explorations and testing as Bidder deems necessary for submission of a Bid. The land is public parkland that Bidders may freely visit and inspect. Access for any explorations or tests that require vehicular access, land disturbance or any site usage other than visual inspection shall be coordinated through the MCWD and OWNER. Bidder shall be responsible for restoration of all such lands to a condition equal to or better than the existing condition of such lands. The OWNER will facilitate access or assist in acquiring access, to a reasonable extent, to provide for recognition of unknown conditions.
- E. The boundaries of lands upon which the Work is to be performed, rights-of-way, and easements for access thereto, other lands designated for use by CONTRACTOR in performing the Work are identified in the Contract Drawings.
- F. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this section and that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and by such means, methods, techniques,

sequences or procedures of construction as may be specifically indicated in or required by the Contract Documents, if any, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work. Except where means, methods, techniques, sequences or procedures of construction are specifically stated herein, the CONTRACTOR shall choose same in order to achieve the specified results.

- G. Permits and easements will be acquired by the OWNER, except as listed below. The CONTRACTOR shall be responsible for acquiring the listed permits and approvals prior to Notice to Proceed. The CONTRACTOR will be required to pay any associated fees:

The OWNER is responsible to acquire the permits and approvals listed in Specification Section 007300.

The CONTRACTOR shall be responsible to acquire the following permits and approvals that are specific to the construction methods and equipment to be employed by CONTRACTOR:

- *Any permits required for dewatering activities CONTRACTOR expects to be required by CONTRACTORS proposed methods of construction.*
- *Any other approvals required by the City of Edina not listed in Specification Section 007300, and any approvals required by Hennepin County, including approval of haul routes, traffic controls, construction hours, construction methods, staging, material and equipment storage, etc.*
- *NPDES Stormwater Construction Permit*

Information on permits obtained by the OWNER are available from the OWNER and will be discussed at the mandatory pre-bid meeting.

- H. Prior to the submittal of Bids, if any potential Bidder is in doubt as to the true meaning of the Contract Documents or requires clarifications, that potential Bidder shall submit to the ENGINEER a written request for an interpretation or clarification thereof. The Bidder submitting the request shall be responsible for prompt delivery. Interpretations and clarifications considered necessary by the ENGINEER in response to such requests will be issued by Addenda mailed or delivered to all parties recorded by the OWNER as having received the Contract Documents. Requests received less than five (5) calendar days prior to the date for opening of Bids may not be answered by Addenda. Only interpretations and clarifications issued by Addenda will be binding. Oral interpretations and clarifications will be without legal effect.
- I. The estimate of quantities as shown in Section 00030, Bid Form, shall be used as the basis for calculation upon which the award of Contract will be made and for

calculation of the initial Contract Price, but these quantities are not guaranteed to be accurate and are furnished without liability on the part of OWNER and ENGINEER. The actual quantities of the various items of work performed can be expected to differ from the estimates indicated on the Bid Form and will affect the final Contract Price. The CONTRACTOR shall cooperate with and assist the ENGINEER as necessary to obtain the actual measurements required for the ENGINEER's determination of the actual quantities. The CONTRACTOR may also be required to furnish to the ENGINEER or/and OWNER, on a daily basis, daily reports stating information such as quantities of work performed, labor force used, hours worked, equipment used, and the amount of time the equipment was operated.

- J. It is the intent of the Contract Documents to cover all aspects of the Work. Should there be some item or items shown on the Drawings or described in the Specifications, required to complete the Work, but not specifically included in any of the bid items or any unit prices on the bid form or as amended by modifications to the Contract, these items and the furnishing of all necessary labor, materials and equipment shall be considered incidental to the Work and no additional compensation will be provided.**

- K. Any Addenda issued during the time of the bidding or forming a part of the Contract Documents acquired by the Bidder for the preparation of a Bid shall be included in the Bid and shall be made a part of the Contract Documents. Receipt of each Addendum shall be acknowledged in the Bid Form. **Failure on the part of the Bidder to so acknowledge receipt of Addenda may be cause for a bid to be deemed non-responsive.**

6. MANDATORY PRE-BID MEETING

The ENGINEER will conduct a mandatory on Wednesday, October 24, 2018 10:00 A.M. at MCWD Offices, 15320 Minnetonka Blvd., Minnetonka, MN 55345. Plan holders anticipating to submit a bid *must attend the meeting*.

7. BID SECURITY

- A. Each Bid must be accompanied by Bid Security made payable to the OWNER in an amount of five (5) percent of the Bidder's total base Bid price and in the form of a certified or bank check or a Bid Bond issued by a surety meeting the requirements outlined in the General Conditions.

- B. The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required Performance and Payment Bonds and Certificates of Insurance, and Endorsements whereupon the Bid Security will be returned to CONTRACTOR. If the Successful Bidder fails to execute and deliver the Agreement, Bonds and Insurance documents within ten

(10) calendar days after Notice of Award, OWNER may annul the Notice of Award and the Bid Security will be forfeited.

- C. The Bid Security of the second and third low Bidders may be retained for 60 calendar days after the closure of Bids, or if earlier, until a contract is awarded. Bid Securities will be returned at that time. Bid Security of all other Bidders will be returned within ten (10) days after the closure of Bids.

8. CONTRACT TIME

The CONTRACTOR shall commence the Work within ten (10) calendar days of the date of the Notice to Proceed. Completion dates for certain components of the project are as follows:

Substantial Completion	July 1, 2019
Final Completion	December 1, 2019

Note that it is anticipated that work within the Post-Phase 2 Improvement Area will not be completed until after completion of the phase 2 work (by others), which is anticipated to extend through the fall of 2019. CONTRACTOR is responsible for remobilizing to complete work within the Post-Phase 2 Improvement Area within the window of time between Substantial Completion and Final Completion.

CONTRACTOR shall comply with all other requirements contained in the General Conditions.

Delays due to abnormal weather conditions, fires, floods, epidemics, or acts of god which prevent the Contractor from completing any part of the Work within the contract times above will result in an extension of time equal to such delays. Number of days must be approved by Owner.

9. FAILURE TO COMPLETE WORK ON TIME

The Contractor guarantees that they can, and will complete the Work within the time limit stated in the Agreement, or within the time, as extended elsewhere in the contract documents. Inasmuch as the damage and loss to the Owner which will result from the failure of the Contractor to complete the Work within the stipulated time, will be most difficult or impossible of accurate assessment, the damage to the Owner for such delay and failure on the part of the Contractor shall be liquidated at a daily rate, independently and cumulatively for each of the two completion deadlines, in an amount as specified herein for each calendar day, Sundays and holidays excluded, by which the Contractor shall fail to complete the work or any part thereof in accordance with the provisions hereof. Such liquidated damages shall not be considered as a penalty but as the extra cost of field and office engineering and inspection. The owner will deduct and retain out of any money due or become due hereunder, additional Owner administrative costs, lost use of public park space, lost temporal water quality and habitat benefit, and related public

costs not subject to precise quantification, the amount of liquidated damages, and in case those amounts are less than the amount of liquidated damages the Contractor shall be liable to pay the difference upon demand.

Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of the Owner of any of its rights under the contract.

Neither by the taking over of the Work by the Owner, nor by the termination of the contract, shall the Owner forfeit the right to recover liquidated damages from the Contractor or Contractor's Surety for failure to complete the contract.

10. LIQUIDATED DAMAGES

Should the Contractor fail to complete the work by the completion date specified; or approved time extension, the Contractor shall be subject to liquidated damages in accordance with Section 9 (Failure to Complete Work on Time) of Section 002113 Instruction to Bidders and MnDOT Section 1807.

Liquidated damages will be assessed at a rate of \$500 per calendar day, or Table 1807-1, whichever is higher.

11. SUBSTITUTE OR "OR-EQUAL" ITEMS

The Agreement, if a contract is awarded, will be on the basis of materials and equipment described in the Drawings or stated in the Specifications without consideration of possible substitute or "Or-Equal" items. The procedure for submission of any application and consideration of application for Substitute or "Or-Equal" materials is set forth in the Specifications and will only be allowed to be proposed after the contract is awarded. All substitution submittals will be provided by the CONTRACTOR to the OWNER and ENGINEER.

12. BID FORM

- A. The Bid Form is included with the Specifications/Bid Package and Contract Documents; additional copies may be obtained from the ENGINEER.
- B. The blanks on the Bid Form must be completed in ink or typed.
- C. Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

- D. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.
- E. All names must be typed or printed below the signature.
- F. The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).
- G. The address, telephone number and fax number for communications regarding the Bid must be shown.

13. SUBMISSION OF BIDS

Bids shall be submitted as set forth in the Agreement as follows:

- A. Oral, FAX or email proposals or modifications will not be accepted.
- B. It is the sole responsibility of the Bidder to see that the submitted Bid is received in proper time. Any Bid received after the scheduled closing time for receipt of the proposals will not be considered and will be returned to Bidder unopened.
- C. If a Bid is received from a Bidder when there was required (mandatory) attendance at a Pre-Bid meeting, and said Bidder was not in attendance at the meeting, receipt of the Bid will not be considered and will be returned to the Bidder unopened.
- D. **Discrepancies in the multiplication of units of Work shown on the Bid Form with unit prices Bid by Bidder will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures on the Bid Form and the correct sum thereof will be resolved in favor of the correct sum.**
- E. All bid proposals shall be submitted on the unaltered forms included with these Contract Documents in Section 00030. The blank spaces on the proposals shall be filled in correctly in ink or typewritten where indicated for each and every item for which a quantity is given, and the Bidder shall clearly indicate the prices for which he/she proposes to do each item of work contemplated. Additional copies of the Bid Form and other forms may be obtained from the ENGINEER.
- F. The Bid Form including required attachments shall be submitted in a sealed envelope clearly marked: "BID PROPOSAL: Arden Park Restoration, Minnehaha Creek Watershed District" and shall also include the name of the Bidder.

- G. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notification "BID ENCLOSED" on its face.

H. The Bid Proposal shall be delivered to:

Minnehaha Creek Watershed District
15320 Minnetonka Blvd.
Minnetonka, MN 55345

Bids must be stamped received by Minnehaha Creek Watershed District no later than the date and time stated in the Advertisement for Bids, unless modified by Addendum. All other Bids will be returned, unopened to the Bidder.

14. RESPONSIBLE CONTRACTOR VERIFICATION

As required by Minnesota Statutes §16C.285, Bidder shall submit to OWNER as a part of its bid a signed statement under oath verifying compliance with each of the following minimum criteria of responsibility. An electronic verification of compliance made and submitted as part of an electronic bid shall be an acceptable verification of compliance under this section provided that it contains an electronic signature as defined in Minnesota Statutes §325L.02, paragraph (h).

(1) Bidder:

- (i) is in compliance with workers' compensation and unemployment insurance requirements;
- (ii) is currently registered with the Department of Revenue and the Department of Employment and Economic Development if it has employees;
- (iii) has a valid federal tax identification number or a valid Social Security number if an individual; and
- (iv) has filed a certificate of authority to transact business in Minnesota with the secretary of state if a foreign corporation or cooperative;

(2) Bidder or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated Minnesota Statutes §§177.24, 177.25, 177.41 to 177.44, 181.13, 181.14, or 181.722, and has not violated United States Code, title 29, sections 201 to 219, or United States Code, title 40, sections 3141 to 3148. For purposes of this clause, a violation occurs when a contractor or related entity:

- (i) repeatedly fails to pay statutorily required wages or penalties on one or more separate projects for a total underpayment of \$25,000 or more within the three-year period;
- (ii) has been issued an order to comply by the commissioner of labor and industry that has become final;

- (iii) has been issued at least two determination letters within the three-year period by the Department of Transportation finding an underpayment by the contractor or related entity to its own employees;
- (iv) has been found by the commissioner of labor and industry to have repeatedly or willfully violated any of the sections referenced in this clause pursuant to Minnesota Statutes §177.27;
- (v) has been issued a ruling or findings of underpayment by the administrator of the Wage and Hour Division of the United States Department of Labor that have become final or have been upheld by an administrative law judge or the Administrative Review Board; or
- (vi) has been found liable for underpayment of wages or penalties or misrepresenting a construction worker as an independent contractor in an action brought in a court having jurisdiction.

Provided that, if the contractor or related entity contests a determination of underpayment by the Department of Transportation in a contested case proceeding, a violation does not occur until the contested case proceeding has concluded with a determination that the contractor or related entity underpaid wages or penalties;

(3) Bidder or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated Minnesota Statutes chapter 326B. For purposes of this clause, a violation occurs when a contractor or related entity has been issued a final administrative or licensing order;

(4) Bidder or related entity has not, more than twice during the three-year period before submitting the verification, had a certificate of compliance under Minnesota Statutes §363A.36 revoked or suspended based on the provisions of §363A.36, with the revocation or suspension becoming final because it was upheld by the Office of Administrative Hearings or was not appealed to the office;

(5) Bidder or related entity has not received a final determination assessing a monetary sanction from the Department of Administration or Transportation for failure to meet targeted group business, disadvantaged business enterprise, or veteran-owned business goals, due to a lack of good faith effort, more than once during the three-year period before submitting the verification; and

(6) Bidder or related entity is not currently suspended or debarred by the federal government or the state of Minnesota or any of its departments, commissions, agencies, or political subdivisions that have authority to debar a contractor.

Any violations, suspensions, revocations or sanctions, as defined in clauses (2) to (5), above, occurring before July 1, 2014, will not be considered in determining whether Bidder or related entity meets the minimum criteria.

In its verification, Bidder shall include a list of all of its first-tier subcontractors. If Bidder is awarded the construction contract, before execution of the contract, and as a condition precedent to execution of the contract, Bidder shall submit to OWNER a supplemental verification under oath confirming the following:

All subcontractors and motor carriers that the contractor intends to use to perform project work have verified to the contractor through a signed statement under oath by an owner or officer that they meet the minimum criteria listed in clauses (1) through (6), above.

Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all the minimum criteria in clauses (1) through (6) above before execution of a construction contract with each subcontractor.

If Bidder or any subcontractor retains an additional subcontractor after submitting its verification of compliance, it shall obtain verification of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification to OWNER confirming compliance with clauses (1) through (6) above within 14 days of retaining the additional subcontractor. On OWNER's request, Bidder shall submit copies of signed verifications of compliance from all subcontractors of any tier. Bidder or a subcontractor shall not be responsible for a false statement of a subcontractor with which it does not have a direct contractual relationship. Bidder or a subcontractor shall be responsible for a false statement of a first-tier subcontractor with which it has a direct contractual relationship only if it accepts the verification of compliance with actual knowledge that it contains a false statement.

If Bidder, a subcontractor or a motor carrier fails to meet the above minimum criteria or fails to verify that it meets those criteria, it is not a "responsible contractor" under the cited statute and is not eligible to be awarded the contract. A false statement under oath verifying compliance with any of the minimum criteria shall render Bidder, the subcontractor or the motor carrier that makes the false statement ineligible to be awarded the contract and may result in termination of a contract with such an entity that submits a false statement.

Terms within are as defined at Minnesota Statutes §16C.285, subdivision 1(i).

15. WITHDRAWAL OF BIDS

No Bid Proposal shall be withdrawn except with the consent of the OWNER for a period of sixty (60) days after the date set for the opening of bids, or until the Bid Proposal is returned by OWNER, or the Agreement is executed by the Successful Bidder.

16. OPENING OF BIDS

Bids will be opened publicly and read aloud in such place as designated at the time and the date set in the Advertisement for Bids. Bidders or their authorized agents are invited to be present, but attendance is optional.

17. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

All bids will remain subject to acceptance for sixty (60) calendar days after the Bid opening, but OWNER may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

18. REJECTION OF BIDS AND AWARD OF CONTRACT

- A. OWNER reserves the right to reject any and all Bids, to waive any and all irregularities, informalities, or discrepancies not involving price, time, or changes to the Work or that do not confer competitive advantage on Bidder and to negotiate contract terms with the Successful Bidder, and the right to disregard all non-conforming, non-responsive, unbalanced or conditional Bids. Also, OWNER reserves the right to 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, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criterion of responsibility established by OWNER including Bidder's past performance as a contractor on MCWD projects.
- B. If the Contract is to be awarded, it will be awarded to the lowest responsible and responsive Bidder whose evaluation by OWNER indicates to OWNER that the Award will be in the best interest of the Project.
- C. If the contract is to be awarded, OWNER will give the Successful Bidder a Notice of Award within thirty (30) calendar days after the day of the Bid opening.

19. CONTRACT SECURITY

Performance and payment bonds will be submitted and maintained by CONTRACTOR in accordance with Sections 00070 and 00080 and the remaining Contract Documents. When the Successful Bidder delivers the executed Agreement to OWNER, the required Performance and Payment Bonds must accompany it. The performance bond shall be

maintained for the duration of any maintenance obligation under the Contract, but on Final Completion, OWNER may reduce CONTRACTOR's performance bond to an amount sufficient for the maintenance and/or warranty obligation.

20. SIGNING OF AGREEMENT

When OWNER gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within ten (10) calendar days thereafter Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER along with the required Bonds, certificates of insurance, additional insured endorsements and any other required submittals. OWNER or ENGINEER will review required submittals and may require Successful Bidder to make revisions. Successful Bidder shall make required revisions and resubmit to OWNER within five (5) calendar days of OWNER'S request for such revision. Within thirty (30) days upon final receipt of all acceptable materials, OWNER will deliver one (1) fully signed counterpart of the Contract Documents to CONTRACTOR. Each counterpart is to be accompanied by a complete set of the Contract Documents with appropriate identification. Failure to deliver a complete set of Contract Documents does not have the effect of modifying the definition of the Contract Documents.

21. PAYMENT AND RETAINAGE

- A. Provisions concerning progress payments and final payment are set forth in the General Conditions and the other Contract Documents.
- B. No payment amounts on account of materials and equipment delivered to the site prior to installation will be made. Progress payments will only be made when materials are completely installed in accordance with the Contract Documents.
- C. Retainage shall be 5 percent (5%) of the value of the Work completed to date.
- D. Payment requests are due from CONTRACTOR no later than the first Thursday of each month for processing.
- E. Minnesota Statutes §290.9705 regarding payment withholding for surety purposes applies if CONTRACTOR is an out-of-state contractor within the meaning of that statute.

22. PRE-CONSTRUCTION MEETING

Prior to the beginning of construction operations, a pre-construction meeting will be held at which time the CONTRACTOR will supply for the ENGINEER's approval a copy of the CONTRACTOR proposed project schedule as provided for in the General Conditions.

****END OF SECTION****