

DOCUMENT 002113

INSTRUCTIONS TO BIDDERS

1. EXAMINATION OF DOCUMENTS

- 1.1. Carefully examine and be familiar with the Bidding and Contract Documents.
- 1.2. Examine information concerning subsurface or other latent physical conditions. It is presented in good faith but is not intended as a substitute for personal investigation, interpretations, or judgment of the Contractor.

2. VISIT TO THE SITE

- 2.1. For projects that include Document 002218, visit the Site of the Work prior to submitting your bid. Refer to the Advertisement for Bids for any special instructions.
- 2.2. Become familiar with restrictions and regulations established by the facility. Existing restrictions and regulations will not be considered as grounds for any additional cost over the Contract sum.
- 2.3. Assume the risk of encountering any subsurface or other latent physical condition that can be reasonably anticipated on the basis of documentary information provided by the State and from inspection and examination of the Site.
- 2.4. Interpretations of contract documents by facility personnel are not binding.

3. DESIGNATED, PERMISSIBLE, IMPERMISSIBLE CONTACTS AND QUESTIONS

- 3.1. The designated contacts during the restricted period for this procurement will be:
 - Kimberly Belden, Contract Awards Unit, telephone – (518) 474-0203, fax – (518) 473-7862
 - Catherine Skaczkowski, Contract Awards Unit, telephone – (518) 474-0203, fax – (518) 473-7862
 - Jessica Hoffman, Assistant Director, Contract Management, telephone – (518) 474-0203
 - Pierre Alric, Director, Contract Management, telephone – (518) 474-0201
- 3.2. State Finance Law §139-j recognizes a series of permissible contacts that can go to other than the designated contacts, as follows:
 - 3.2.1. The submission of written proposals in response to a request for proposals, invitation for bids or any other method for soliciting a response from offerers intending to result in a procurement contract.
 - 3.2.2. The submission of written questions to a designated contact set forth in a request for proposals, or invitation for bids, or any other method for soliciting a response from offerers intending to result in a procurement contract, when all written questions and responses are to be disseminated to all offerers who have expressed an interest in the request for proposals, or invitation for bids, or any other method for soliciting a response from offerers intending to result in a procurement contract.
 - 3.2.3. Participation in a conference provided for in a request for proposals, invitation for bids, or any other method for soliciting a response from offerers intending to result in the procurement contract.
 - 3.2.4. Complaints by an offerer regarding the failure of the person or persons designated by the procuring governmental entity pursuant to this section to respond in a timely manner to authorized offerer contacts made in writing to the office of general counsel of the procuring governmental entity, provided that any such written complaints shall become a part of the procurement record.
 - 3.2.5. Offerers who have been tentatively awarded a contract and are engaged in communication with a governmental entity solely for the purpose of negotiating the terms of the procurement contract after being notified of tentative award.
 - 3.2.6. Contacts between designated governmental staff of the procuring governmental entity and an offerer to request the review of a procurement contract award.

- 3.2.7. Contacts by offerers in protests, appeals or other review proceedings (including the apparent successful bidder or proposer and his or her representatives) before the governmental entity conducting the procurement seeking a final administrative determination, or in a subsequent judicial proceeding.
- 3.2.8. Complaints of alleged improper conduct in a governmental procurement to the attorney general, inspector general, district attorney, or court of competent jurisdiction.
- 3.2.9. Written protests, appeals, or complaints to the New York State Office of the State Comptroller (OSC) during the process of contract approval, where OSC's approval is required by law, and where such communications and any response thereto are made in writing and shall be entered in the procurement record pursuant to §163 of the State Finance Law.
- 3.2.10. Complaints of alleged improper conduct in a governmental procurement conducted by a municipal agency or local legislative body to OSC's office.
- 3.2.11. Permissible Contacts are only with the procuring agency unless specifically excepted.
- 3.3. Impermissible contacts include those that a reasonable person would infer are intended to influence a governmental procurement and occur during the restricted period of a governmental procurement between the offerer and any member, officer or employee of any governmental entity; provided, however, that nothing in this section shall be deemed to prohibit an offerer from communicating with a member of the state legislature or legislative staff about a governmental procurement. Contacting a person or entity other than the designated contact person during the restricted period, when such contact does not fall within one of the exemptions, is also an impermissible contact.

Direct all questions regarding the intent or meaning of the drawings or specifications to the Office of General Services (OGS) website at:

<https://online.ogs.ny.gov/dnc/contractorConsultant/esb/esbplansavailableindex.asp>

From this web page, first click on the project number link, then on the **Review/Submit Bid Questions** link, and then submit the question for the appropriate trade. All responses to appropriate pre-bid inquiries will be communicated via the OGS website. Those inquiries resulting in clarification and or changes to the bid documents will be communicated by Addenda to all persons who have obtained drawings and specifications.

- 3.4. Pre-bid inquiries answered by means other than Addenda will not be binding.

4. PREPARATION OF BIDS

- 4.1. **For electronic bids:** Prepare and submit bid using OGS Design & Construction's Electronic Bidding service, Bid Express®. Registration along with viewing, downloading, and electronic bidding can be accessed at the following website: <http://www.bidexpress.com>.
 - 4.1.1. Prepare each bid on the official form furnished by the State within the Bid Express® website. Fill in all blank spaces. An incomplete entry may disqualify the bid in its entirety. No post bid meetings will be afforded to any bidder to explain or clarify an incomplete bid or entry omission(s).
 - 4.1.2. Bidders must be registered with Bid Express® in advance. Bidders not previously registered with Bid Express® must complete a one-time registration for a user account. There is no cost to register, to view/download bid documents, or to submit a bid. Vendors can select 'Pay per solicitation (non-member)' when registering.
 - 4.1.3. Bid Security is required in accordance with the BID SECURITY INFORMATION section within this document. Bidders must be registered with a Bid Express® approved bonding service in advance. Bidders not already registered must register with a Bid Express® approved bonding service, and shall refer to the instructions contained in the BID SECURITY INFORMATION section within this document.
 - 4.1.4. Bidders must establish an Infotech® Digital ID in advance. The Infotech® Digital ID application process may take up to seven business days to complete. Refer to <http://www.bidexpress.com> for guidance on the application for and installation of Digital IDs. The Digital ID is an electronic tool that allows users to digitally sign bids, contracts, and forms. Digital IDs are used as part of a secure method of maintaining confidentiality and identity verification within the Bid Express® service.

- 4.2. **For paper bids:** Prepare each bid on the official form furnished by the State.
- 4.2.1. Make no erasures, cross-outs, whiteouts, write-overs, obliterations, or changes of any kind in the Bid Form phraseology, in the entry of unit prices, or anywhere on the Bid Form.
 - 4.2.2. Fill in all blank spaces legibly. An illegible entry may disqualify the bid in its entirety. If a mistake is made, use a new Bid Form. No post bid meetings will be afforded to any bidder to explain or clarify illegible or changed entries.
 - 4.2.3. Sign the Bid Form in the space provided. An officer or a principal of a corporation or a partnership signing for the bidder shall print or type the legal name of the person, partnership, or corporation on the line provided and place his/her signature after "SIGN BID HERE". The same procedure shall apply to the bid of joint venture by two or more firms, except that the signature and title of an officer or a principal of each member firm of the joint venture shall be required. All signatures must be original. Mechanically reproduced signatures, stamps, or copies are not acceptable. Submitted Bid Forms that do not conform to these requirements will be disqualified.
- 4.3. For paper or electronic bids, if the Project Manual contains Section 012300 - Alternates, indicate the amounts to be added to or deducted from the base bid in the spaces provided on the Bid Form. If the Work is to be performed at no change in cost, indicate "0". Any bid which fails to indicate an amount for each alternate will be held to be informal and may be rejected.
- 4.4. For paper or electronic bids, note in the space designated on the Bid Form, each Addenda by numbers, which have been issued.
- 4.4.1. For paper bids: If no Addenda have been issued, insert the word "NONE" in the space designated on the Bid Form.
- 4.5. All bidders must complete a form DCA-3 – Offerer Disclosure of Prior Non-Responsibility Determinations and submit it with their Bid.
- 4.5.1. For electronic bids: Complete and submit form DCA-3 within the Bid Express® website. Fill in all blank spaces.
 - 4.5.2. For paper bids: Complete paper form DCA-3 and include it with the Bid Form. Fill in all blank spaces.
- 4.6. All bids, regardless of dollar value, must include the cost of Labor and Material and Performance Bonds.

5. **BID SECURITY INFORMATION**

- 5.1. Bid security is required as a guarantee that the bidder will enter into the Contract and furnish a satisfactory Performance Bond and Labor and Material Bond within the time specified on the Bid Form. Submit bid security in the amount indicated in the Advertisement for Bids in one of the following forms:
- 5.1.1. Certified check or bank check drawn upon a legally incorporated bank or trust company (payable to the Office of General Services).
 - 5.1.2. Bid Bond on OGS Form 004313 to be issued by a Surety licensed in the State of New York.
 - 5.1.2.1. **For electronic bids:** Electronic bid bond furnished by a Bid Express® approved bonding service is required for an Electronic Bid. Vendors must be registered with a Bid Express® approved bonding service. Refer to <http://www.bidexpress.com> for guidance and registration information. Vendors not already registered must complete a one-time registration with a Bid Express® approved bonding service. At the time of this publication, the Bid Express® approved bonding services are Tinubu at <https://www.tinubu.com>, or Surety2000 at <https://surety2000.com>. Allow sufficient time for account registration and bond processing prior to the bid due date noted in the Advertisement for Bids.

- 5.1.2.2. **For paper bids:** Sign the bid bond in the space provided. An officer or a principal of a corporation or a partnership signing for the bidder shall print or type the legal name of the person, partnership, or corporation on the line provided and place his/her signature above "Principal". The same procedure shall apply to the bid security of a joint venture by two or more firms, except that the signature and title of an officer or a principal of each member firm of the joint venture shall be required. The same procedure shall apply to the signature for the Attorney-in-Fact. All signatures must be original. Electronic, mechanically-reproduced or stamped signatures, or copies, are not acceptable for either signature. Submitted Bid Security that does not conform to these requirements will be disqualified.
- 5.2. Upon submission of a certified check or bank check, the bid security of the successful bidder will be returned (check issued by OSC) pending acceptance of the required bonds and the execution of Contract. The second low bidder's bid security will be returned after the successful bidder executes the Contract or with the submission of an approved Substitute Bid Bond on the Design and Construction form. The bid security of all other bidders with a bid security in the form of checks will be returned as soon as possible after the apparent low bidder has been determined.
- 5.3. Bid Bonds submitted as bid security will not be automatically returned to the bidder. Firms requesting to have bonds returned may do so in writing provided they are not the first or second low bidder prior to award. Only those requests made in writing, directed to the Contract Awards Unit, shall be considered for return.

6. SUBMISSION OF BID

- 6.1. Do not submit both electronic and paper bids. If both an electronic bid from Bid Express® and a paper bid are received from the same contractor, the electronic bid from Bid Express® will prevail, and the paper bid(s) will be disqualified.
- 6.2. Submit Bid Form, Bid Security and Form DCA-3 – *Offerer Disclosure of Prior Non-Responsibility Determinations*.
- 6.2.1. **For electronic bids:** Complete and submit within Bid Express®.
- 6.2.1.1. Within Bid Express®, select the procurement from the 'Solicitations' tab and click 'Select For Bidding'. Fill in all blank spaces.
- 6.2.1.2. In accordance with the BID SECURITY INFORMATION section contained within this document, coordinate with a Surety Agent to obtain a Bond ID from one of the Bid Express® approved bonding services. Refer to the instructions in the BID SECURITY INFORMATION section of this document. Complete the Bid Bond information section within Bid Express® and click 'Verify Bid Bond'. Failure to submit a valid Bond ID from an approved electronic bonding service for a bond of the specified value may result in automatic bid disqualification.
- 6.2.1.3. Click 'Check Bid' and resolve any errors. Click 'Submit Bid'. Sign the electronic bid form using a Bid Express® approved digital ID by clicking 'Submit Bid'.
- 6.2.2. **For paper bids:** Provide bid in a sealed envelope addressed to:
- NYS Office of General Services – Design & Construction Group, Division of Contract Management, Contract Awards Unit, 35th Floor, Corning Tower, Albany, NY 12242**
- Exterior of sealed envelope shall include the words "SEALED BID ENCLOSED", Project Number and Trade Designation of Bid, Bid Due Date, Company Name, Address and Federal ID Number.
- 6.2.3. Telephone, email, fax, or electronic bids other than electronic bids submitted within Bid Express® will not be accepted.
- 6.3. All bids must be received before the time specified, and at the place designated for the receipt of bids.
- 6.4. Late Bids:
- 6.4.1. Electronic bids cannot be accepted after the due date and time.

- 6.4.2. Paper bids received after the due date and time will be returned unopened with notification of the reason for its refusal.
- 6.4.3. A late paper bid will be considered if: (1) its arrival at the place designated after the time specified can be shown by documentary or other proofs to be due to mishandling by OGS and (2) that absent such mishandling, the bid would have arrived timely. Delays in the mail or any other means of transmittal, including couriers or agents of the State, other than employees of OGS will not suffice to excuse late arrival of the bid.

7. MODIFICATION OF BID

7.1. Bid Modifications By Amendment:

- 7.1.1. **For Modification to Electronic Bids:** Electronic bids may be modified on Bid Express® up to the deadline for receipt of bids. To modify your bid, access your bid in Bid Express®, modify applicable component(s), select Submit Bid to update the bid. Refer to the Submission Status to confirm the Last Submitted date and time. Only the submitted bid will be considered.
- 7.1.2. **For Modification to Paper Bids:** Modifications by amendment will only be considered on condition that the amendment arrives before the time specified and at the place designated for receipt of bids, and
 - 7.1.2.1. The amendment is in writing and executed by a principal of the bidder firm, and
 - 7.1.2.2. The bid, as amended, conforms in all respects with the Contract Documents. Bidders may mail or fax their bid modifications. Fax bid modifications to (518) 473-7862. Bidders may use a bid modification to acknowledge addenda and/or change the bid amount. Bid modifications received by fax must be on company letterhead and signed by a principal of the bidder firm. DO NOT use the OGS Bid Form to submit bid modifications by fax. Indicate any amounts to be added to or deducted from any part of the bid amount with the words “ADD” or “DEDUCT” next to the amount. The only amounts listed on a faxed bid modification should be the amounts to be added or deducted. **DO NOT expose the new bid amount on the faxed bid modification.** If the bid amount is shown on the faxed bid modification, or otherwise exposed at any time before the bid opening, the bid will be disqualified.

8. WITHDRAWAL OF BID

- 8.1. A bid may be withdrawn at any time prior to the time specified for receipt of bids.
 - 8.1.1. For electronic bids, bidders can withdraw their bids on Bid Express® up to the time specified for receipt of bids.
 - 8.1.2. For paper bids, should a bidder decide to withdraw its bid before the bid opening, the request must be prepared on company letterhead, signed by a principal of the bidder firm, and faxed to (518) 473-7862, or hand-delivered or mailed to the Contract Awards Unit at the place designated for receipt of bids. OGS will e-mail an acknowledgment of the withdrawal request that includes an indication that the unopened bid will be returned. Should the withdrawal request be in error, the bidder must call the Contract Awards Unit at (518) 474-0203 immediately. The unopened bid will be returned by mail to the bidder.
- 8.2. Not more than 7 calendar days after the bid opening or a scheduled pre-award meeting, whichever comes later, a low bidder may request the withdrawal of its bid based on a mistake. The request must be submitted via certified or registered mail to the address in Paragraph 6.2.2 of these Instructions to Bidders. The Contracting Officer may conduct or have conducted on his/her behalf a fact-finding proceeding to develop information concerning the request for withdrawal. A request for withdrawal of a bid made after the specified number of days allowed shall result in forfeiture of the bid security.
- 8.3. Following a timely request for withdrawal of a bid, the bid security will be returned if the bidder establishes by credible evidence, including original documents when requested, the following:
 - 8.3.1. An error, clerical as opposed to judgmental in nature and verifiable by written evidence, occurred in the computation of the bid,

- 8.3.2. The error constitutes either an unintentional and substantial computational error or an unintentional omission of a substantial quantity of labor and/or material from the final bid computation,
- 8.3.3. The absence of gross negligence in the preparation of the bid. For the purposes of this subparagraph, gross negligence may include,
- i) the apparent failure of a bidder to account for two or more categories (divisions) of work,
 - ii) the use of multiple erroneous quotations from subcontractors or suppliers,
 - iii) submission to the Contracting Officer of a bid withdrawal request within the preceding six (6) months.
- 8.4. If the bidder fails to meet its burden of proof, the request to withdraw without penalty shall be denied and its bid security will be forfeited and become the property of the State. The decision of the Contracting Officer shall be final and conclusive.
- 8.5. Once a request to withdraw is made, the bidder is ineligible for award. The Contracting Officer shall continue to progress the award process considering only the remaining bids.

9. DISQUALIFICATION

- 9.1. Any bid which fails to conform to the requirements of the Bidding and Contract Documents may be rejected.
- 9.2. The Commissioner may waive any informality or afford the bidder an opportunity to remedy any deficiency resulting from a minor informality or irregularity.
- 9.3. The State reserves the right to disqualify bidders, before or after bid opening, upon evidence of collusion with third parties or other illegal practices upon the part of the bidder.
- 9.4. Bidders may review the list of common Bid Informalities and Bid Disqualifications at:

<https://online.ogs.ny.gov/dnc/contractorConsultant/esb/informalitylist.asp>

10. GOVERNING LAWS AND REGULATIONS ADMINISTERED BY OTHER DEPARTMENTS

- 10.1. Taxes: All taxes pertaining to the Work must be paid. Address inquiries regarding taxes to the Tax Collecting Agency. For information regarding sales and use taxes contact the Sales Tax Bureau, Department of Taxation and Finance.
- 10.2. While all applicable laws, rules and regulations of the State of New York are incorporated by reference in this Contract, take special note of the provisions of the Labor Law and Industrial Code Rule 23 relative to the safety of workers and of persons lawfully occupying or using the premises. Address inquiries regarding labor law provisions to the New York State Department of Labor.
- 10.3. Anti-Discrimination Clause: Discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status is prohibited.

11. OPENING OF BIDS

Bids will be opened as announced in the Advertisement for Bids.

12. DETERMINATION OF CONTRACTOR'S RESPONSIBILITY

- 12.1. The State Public Buildings Law requires that contracts for public work in the State of New York be awarded to the lowest responsible and reliable bidders as will best promote the public interest.
- 12.2. Each apparent low bidder, and each proposed subcontractor (for subcontract work of \$100,000 or more) will be required to submit form CCA-2 - *New York State Vendor Responsibility Questionnaire For Profit Construction* prior to contract award or subcontractor approval. OGS reserves the right to request CCA-2 forms from proposed subcontractors for work of less than \$100,000 if it is determined to be in the best interest of the State. Submission of these forms will assist the State in determining the responsibility and reliability of the vendor.

OGS recommends that vendors file the required CCA-2 form online via the New York State VendRep System. Use of this system requires that the vendor have a New York State Vendor Identification Number (Vendor ID). Please note that the Vendor ID is not the Taxpayer ID number.

If bidders do not already have a Vendor ID, they are encouraged to obtain one *in advance* of the bid opening.

To obtain a Vendor ID, contact the OSC Help Desk at 866-370-4672 or 518-408-4672, or by e-mail at ITServiceDesk@osc.state.ny.us.

To enroll in and use the VendRep System, see the **VendRep System** page at:

http://www.osc.state.ny.us/vendrep/info_vrsystem.htm

If you already have a User ID and password, go directly to the VendRep System online at:

<https://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire> For direct VendRep System user assistance, contact the OSC Help Desk; the help desk phone numbers and e-mail address are shown above.

Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website at http://www.osc.state.ny.us/vendrep/forms_vendor.htm or may telephone the OSC Help Desk.

- 12.3. After the bids are opened, the apparent low bidder shall complete and file the CCA-2 within 5 days. Vendors using the online system may certify (or recertify) and file the CCA-2 electronically via the VendRep System <https://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire>
- 12.4. It is recommended that all bidders become familiar *in advance* with all of the requirements of the CCA-2. As mentioned in 12.2, bidders who do not have a Vendor ID are encouraged to obtain one in advance of the bid opening.
- 12.5. All bidders must submit a completed form DCA-3 - *Offerer Disclosure of Prior Non-Responsibility Determinations* along with their Bid Form.
- 12.6. The determination of responsibility will include a review to ensure the Contractor has not knowingly and willfully violated the provisions of the Procurement Lobby Law or New York State Finance Law §139-j and §139-k.
- 12.7. New York State Finance Law §139-k (2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, a Contractor must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity.
- 12.8. As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether a Contractor fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any Contractor that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary time frame.

13. AWARD OF CONTRACT

- 13.1. The Contract may be awarded to the lowest responsible and reliable bidder as will best promote the public interest.
- 13.2. If alternates are included in the bidding documents, the State reserves the right to accept or reject any or all alternates. The State shall determine the lowest bid by adding to or deducting, from the Base Bid Amount of the bidders, the additive or deductive alternates, if any, that the State elects to accept after the opening of the bids. Alternates will be accepted in the order they are set forth in the contract documents.

- 13.3. The State reserves the right to reject any or all bids, and advertise for new bids, if in its opinion the best interest of the State will thereby be promoted. In the event that all bids are rejected, each bidder will be so notified.
- 13.4. A bidder may withdraw its bid if no award is made within forty-five (45) days after the receipt of bids. A written notice must be submitted via certified or registered mail to the address in Paragraph 6.2.2 of these Instructions to Bidders prior to approval of the contract by OSC. The notice must clearly state that the withdrawal is based on the fact that the contract was not awarded within 45 days after the receipt of bids.
- 13.5. Pursuant to Public Buildings Law § 8(6), effective January 11, 2020, for any projects where the project design commenced on or after January 1, 2020 and for any contracts over \$5,000 for the work of construction, reconstruction, alteration, repair, or improvement of any State building, a responsible and reliable NYS-certified Minority or Women-Owned Business Enterprise (“MWBE”) that submits a bid within ten percent of the lowest bid will be deemed the apparent low bidder provided that the MWBE bid is \$1,628,283 or less, adjusted annually for inflation as of March 1, 2024. If more than one responsible or reliable NYS-certified MWBE firm meets these requirements, the MWBE firm with the lowest bid will be deemed the apparent low bidder. Refer to the Advertisement for Bids for applicability of projects subject to this criteria.

14. MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES

- 14.1. Pursuant to New York State Executive Law Article 15-A and the rules and regulations promulgated thereunder, OGS is required to promote opportunities for the maximum feasible participation of NYS-certified Minority- and Women-owned Business Enterprises and the employment of minority group members and women in the performance of OGS contracts.
- 14.2. Information on the availability of subcontractors and suppliers for this project may be accessed by first using the following website link:

<https://online.ogs.ny.gov/dnc/contractorConsultant/esb/esbplansavailableindex.asp>

From this web page, first click on the project number link, then on Interested Subcontractors and Suppliers, and follow the prompts. A list of all interested vendors will be provided with their contact information, MWBE and SDVOB status, and construction specialties.

- 14.3. Other information on MWBEs, including a directory of MWBE's, is available from:

NYS Empire State Development
Minority and Women's Business Development Division
30 South Pearl Street
Albany, NY 12245
Telephone: (518) 292-5252
Website: <https://esd.ny.gov/doing-business-ny/mwbe>

15. SURETY BOND

If required, the Contractor shall furnish Performance and Payment Bonds in an amount equal to one hundred percent (100%) of the total Contract price as security for the faithful performance of this Contract, and for the payment of all persons performing labor or furnishing materials in connection with this contract. These bonds are to be executed on the State Comptroller's form and the surety company must be licensed in the State of New York, have a Best Rating of A- or better and appear on the most recent published Department of the Treasury's Listing of Approved Sureties (Department Circular 570) at the time of filing the bonds.

16. VENDOR PROTEST POLICY

It is the policy of OGS to provide all vendors, prospective bidders, bidders, suppliers and contractors with an opportunity to resolve complaints or inquiries related to bid solicitations, contract awards, or other associated contract award actions. OGS encourages vendors to seek resolution of complaints related to bid solicitations, contract awards, or other associated actions through consultation with the agency designated contact(s). All such complaints will be given impartial and timely consideration. Vendors may also file formal written protests. A copy of the Design and Construction Vendor Protest Policy and Procedures may be obtained by contacting the designated contact or by visiting the OGS website at:

<https://ogs.ny.gov/design-construction/vendor-protest-policy-procedures>

17. POLICY ON TIED BIDS

A tie-bid is defined as an instance where bids are received from two or more bidders who are the apparent low responsive and reliable bidders with identical offers, or who are MWBEs with identical offers with bids of \$1,628,283 or less and whose bids are within ten percent of the lowest bid. A tie-bid does not exist when an apparent low bidder has an identical offer to an MWBE, as the MWBE is deemed the apparent low bidder pursuant to Public Buildings Law § 8(6). It is the policy of OGS to settle the outcome of tie-bids by either drawing a name from a hat or flipping a coin within 24 hours of the bid opening. All affected firms will be notified of the tie and the time and place of the resolution of the tie, and shall be invited to witness the outcome. Attendance is not mandatory. The drawing/flip will be held at OGS, Contract Awards Unit, 35th Floor, Corning Tower, Albany, New York. Two impartial witnesses will be provided and shall be present. All attendees will acknowledge the results of the tie-breaker on the bid tabulation sheet. All firms affected by the tied bids will be notified of the results. The results pursuant to this provision shall be considered final.

18. WORKERS' COMPENSATION INSURANCE AND DISABILITY BENEFITS REQUIREMENTS

Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts provide proof that they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of the vendor's bid or renewal.

18.1. Proof of Compliance with Workers' Compensation Coverage Requirements: In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall: (1) obtain such coverage from an insurance carrier; or (2) be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan; or (3) be legally exempt from obtaining Workers' Compensation insurance coverage.

An ACORD 25 form is **NOT** acceptable as proof of workers' compensation coverage.

A Contractor seeking to enter into a contract with the State of New York **MUST** provide **ONE** of the following forms to OGS upon request, prior to award:

18.1.1. CE-200, *Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage*, which is available on the Workers' Compensation Board's website, www.wcb.ny.gov, under the heading "Forms"; **OR**

18.1.2. C-105.2 – *Certificate of Workers' Compensation Insurance* (the contractor's insurance carrier will send this form to OGS upon request); contractors insured through the New York State Insurance Fund should use their version of the form, the U-26.3; **OR**

18.1.3. SI-12 – *Certificate of Workers Compensation Self-Insurance* (the contractor should call the Workers' Compensation Board's Self-Insurance Office at 518 402-0247), **OR** GSI-105.2 – *Certificate of Participation in Workers' Compensation Group Self-Insurance* (the contractor's Group Self-Insurance Administrator will send this form to OGS upon request).

18.2. Proof of Compliance with Disability Benefits Coverage Requirements: In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a contractor shall: (1) obtain such coverage from an insurance carrier; or (2) be a Board-approved self-insured employer; or (3) be legally exempt from obtaining disability benefits coverage.

An ACORD 25 form is NOT acceptable as proof of disability benefits coverage.

A Contractor seeking to enter into a contract with the State of New York **MUST** provide ONE of the following forms to OGS upon request, prior to award:

18.2.1. CE-200 – *Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage*, which is available on the Workers' Compensation Board's website, www.wcb.ny.gov, under the heading "Forms"; **OR**

18.2.2. DB-120.1 – *Certificate of Disability Benefits Insurance* (the contractor's insurance agent, broker or carrier will send this form to OGS upon request); **OR**

18.2.3. DB-155 – *Certificate of Disability Benefits Self Insurance* (the contractor should call the Workers' Compensation Board's Self-Insurance Office at 518 402-0247).

18.3. All of the above-referenced forms, except the CE-200, SI-12 and DB-155, must show the following as the Entity Requesting Proof of Coverage (entity being listed as the Certificate Holder):

NYS Office of General Services – Design & Construction Group
Division of Contract Management
35th Floor, Corning Tower, GNARESP
Albany, NY 12242

19. ELECTRONIC CONTRACTOR PAYMENTS (ECP)

The ECP Program is initiated with an Electronic Contractor Payments (ECP) Certification Form that is forwarded to the contractor with the project agreement and bond forms. This form must be completed, executed and returned with the executed Contract agreement in order for the contractor to participate in the ECP program. The executed ECP Certification Form will remain on file. Note that the certification will apply to this contract and to future ECP-eligible contracts.

19.1. Upon final approval of the contract, an e-mail will be sent to the contractor's designated e-mail address with a hyperlink that will enable the firm to register, using a temporary password, on the OGS Design & Construction Vendor Interface. The temporary password will be sent to the contractor in letter form that is mailed on the same day.

19.2. The OGS Vendor Interface website will provide the ability to view contract information, submit the detailed estimate and payments requests electronically, and communicate with OGS Design & Construction.

20. IRAN DIVESTMENT ACT

20.1 By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

20.2 During the term of the Contract, should OGS receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, OGS will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then OGS shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

20.3 OGS reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a

responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

21. NOT USED

END OF DOCUMENT

DOCUMENT 002213

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS - MWBE-EEO

This Supplement modifies the Instructions to Bidders. Where any part of the Instructions to Bidders is modified by this supplement, the unaltered provisions of that part shall remain in effect.

Add the following:

22. GOALS

22.1 To ensure meaningful participation in the Project of certified Minority- and Women-Owned Business Enterprises (“MWBEs”) under the Contract, the Commissioner of General Services has established goals set forth in the Supplementary Conditions.

22.2 All bidders should note that important definitions and conditions relating to the foregoing MWBE goals are contained in the Supplementary Conditions.

22.3 In order to assist the State in determining compliance with the goals set forth in the Supplementary Conditions the apparent low bidder will be required to submit an MWBE Utilization Plan via the New York State Contracting System (NYSCS) prior to Contract award or subcontractor approval.

22.4 If unable to submit an MWBE Utilization Plan through the NYSCS, the apparent low bidder must use Form BDC 328 to submit the plan. The BDC 328 form is available for download at <https://ogs.ny.gov/mwbe/forms> and may be mechanically reproduced. Additional copies may be obtained upon request from the address listed in Paragraph 23.2 below.

22.5 The apparent low bidder must submit the completed MWBE Utilization Plan within seven (7) calendar days after the bids are opened. OGS will review the submitted MWBE Utilization Plan and advise the bidder of OGS acceptance or issue a notice of deficiency within twenty (20) days of receipt.

23. CERTIFICATION

23.1 All Minority- and Women-Owned Business Enterprises (“MBEs” or “WBEs”) proposed as contractors, subcontractors or suppliers must be certified by the NYS Empire State Development, Division of Minority and Women’s Business Development to be eligible for MBE or WBE credit on this project.

23.2 UPON WRITTEN REQUEST, The New York State Office of General Services’ Office of Business Diversity (OBD) will provide a computer printout of certified MBEs and WBEs in specific trades for a given geographical area of New York State.

This printout can be requested in writing as follows:

- By e-mail to: DCMWBEManager@ogs.ny.gov
- By fax to: (518) 486-2679

- By mail to:
NYS Office of General Services
Office of Business Diversity
29th Floor, Corning Tower, GNARESP
Albany, NY 12242

24. LIQUIDATED DAMAGES – MWBE PARTICIPATION

24.1 Refer to Article 27.8, Document 007307, Supplementary Conditions - MWBE-EEO, for “Liquidated Damages – MWBE Participation”.

END OF DOCUMENT

DOCUMENT 002216

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS - ASBESTOS PROJECTS

This supplement modifies the Instructions to Bidders.

Add the following:

25. CONDITION OF AWARD

25.1 As a condition of award, the following shall be transmitted to the Bureau of Contract Awards, Division of Contract Administration, Design and Construction Group, Office of General Service, 35th Floor, Corning Tower, Empire State Plaza, Albany, NY 12242 by certified mail by the apparent low bidder within 5 days after the bids are opened and by other bidders within 5 days after receiving a written request from the Bureau of Contract Awards for such a submission:

A copy of a valid asbestos-handling license issued by the Commissioner of Labor to the contractor who will perform the Work of the asbestos project.

END OF DOCUMENT

DOCUMENT 002218

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS - PRE-BID SITE VISIT

This Supplement modifies the Instructions to Bidders. Where any part of the Instructions to Bidders is modified by this supplement, the unaltered provisions of that part shall remain in effect.

2. VISIT TO THE SITE

Change 2.1 to Read:

2.1 Prospective bidders will be allowed to visit the job site to take field measurements and examine existing conditions of the project area only during the pre-bid site visit. Prospective bidders are urged to visit the site at this time. Prospective bidders or their representatives attending the pre-bid site visit will not be admitted on facility grounds without proper photo identification. Parking restrictions and security provisions will apply and vehicles will be subject to search. The date, time, location of the pre-bid site visit, and the phone number are included in the Advertisement for Bids.

Bidders are strongly encouraged to visit the project site to assess the following project conditions or quality standards:

Roof Access,

Building Access Locations(Access to Bldg by Vehicular and Pedestrian Traffic must be maintained at all times.)

Bldg Occupants may not occupy building of the floor below roof areas during any craning activities.

Phone a minimum of 48 hours in advance of the pre-bid site visit with the names of those who will attend.

All participants shall comply with facility rules and regulations.

Participants will not be allowed to deviate from the group walk-thru and must stay with the group for the duration of the visit. All participants will adhere to the direction given by the Director's Representative at all times during the visit.

Participants shall not wear any green and/or hooded clothing in Correctional Facilities. Any participant doing so will be denied entry to the facility.

Individuals shall not attend the site visit if they are feeling ill.

END OF DOCUMENT

DOCUMENT 002219

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS - QUALIFICATIONS OF BIDDERS AND MANDATORY PRE-AWARD SUBMITTAL REQUIREMENTS

This Supplement modifies the Instructions to Bidders. Where any part of the Instructions to Bidders is modified by this supplement, the unaltered provisions of that part shall remain in effect.

Add the following Articles:

26. QUALIFICATIONS OF BIDDERS

26.1 The Contracting Officer or their representative will schedule a pre-award meeting to consider the bid responsiveness of the bid submitted by the apparent low bidder within fourteen (14) calendar days of the bid opening. Bidders will be notified of the time and place of the meeting. On a case by case basis, the State will examine and evaluate the bid as responsive by considering the contractors understanding of: the overall project scope, estimated cost, utilization of proposed sub-contractors, expertise, workmanship and past performance in completing similar contracts.

26.2 The Contracting Officer or their respective representative will conduct an investigation to determine the responsibility of any Bidder, including the ability of any Bidder to perform the Work. Bidders shall furnish to the Officer all information and data requested, including complete financial data, within the time and in the form and manner requested. The Contracting Officer reserves the right to reject any bid if the evidence required by the Officer is not submitted as requested, or if the evidence submitted by or the investigation of any Bidder fails to satisfy the Contracting Officer that the Bidder is responsible, or is able and qualified to carry out the obligations of the Contract, or to complete the Work as indicated in the Contract Documents, or able to reasonably perform the Work for the Bid Amount.

26.3 The criteria contained in Executive Order No. 170.1 Uniform Guidelines for Determining the Responsibility of Bidders will be applied in the evaluation of Bidders. Special criteria that will be considered in establishing the responsibility of the Bidders shall include, but not be limited to established experience in performing the Work required by the Contract Documents. Experience will be viewed from comparable projects as well as experience and knowledge of construction by the firm's personnel.

27. MANDATORY PRE-AWARD SUBMITTAL REQUIREMENTS

27.1 The apparent low bidder must submit the required pre-award submittal package outlined below to the Regional Supervisor within seven (7) calendar days after the bids are opened.

Regional Supervisor Name: Daniel Kilmartin

Address: Nathan Kline Institute, 35 Third Avenue, Orangeburg, NY 10962

Phone: (845) 365-0730

Email: Region2preawardsubmittals@ogs.ny.gov

Submissions must be emailed and must include the Project Number of this contract in the Subject Line of the Pre-Award submission email (i.e. OGS PN 12345-C: Pre-Award Submission).

Pre-award Submittal Package:

1. References and Experience:

- a. List of all past contracts with OGS. Include OGS Project Number and date.
- b. Provide three (3) references (Name, Title, and Phone Number) associated with three (3) different projects (OGS, public, or private sector) of similar scope and size to the one identified in this contract. Additionally, include the names of two major suppliers used for each of these three (3) projects.

Provide a copy of recent past experience as required under the filing of the NYS Vendor Responsibility Questionnaire (CCA-2 document) with the Office of the State Comptroller. Provide only Attachment A: Completed Construction Contracts and Attachment B: Uncompleted Construction Contracts. For additional information, see:

http://www.osc.state.ny.us/vendrep/form_cca2.htm

2. Workforce and Work Plan – Provide a detailed written Work Plan which shall demonstrate the contractor's understanding of overall project scope and shall include, but not be limited, to the following:

- a. Sequential listing of specific project activities required to successfully complete the Work of the contract.
 1. Include Critical Milestones.
 2. Include phasing of the Work, if required.
 3. Include listing of long lead items.
 4. Impact of weather and restricted work period(s).
 5. Include a list of site-/project-specific safety hazards, and how such hazards will be considered in performance of the Work.
- b. Résumés for Contractor's proposed supervisory staff, including qualifications for specialized expertise or any certification(s) required to perform the Work.
- c. Schedule Preparer qualifications when required by specification 013200.
- d. Submittal Coordinator qualifications when required by specification 013300.
- e. Names of proposed major sub-contractors (more than 15% of the bid amount or where critical systems of work are identified in the contract) and a listing of the related trade of work and value.
- f. Any special coordination requirements with other trades.
- g. Any special storage and staging requirements for construction materials.

3. Detailed Cost Estimate:

- a. A copy of a Detailed Cost Estimate outlined in CSI format.

4. Provide information for any other special requirements at the request of the Director's Representative.

27.2 When requested by the Contracting Officer or his representative, Bidders shall, within the time specified by the Officer, submit to the Officer the names of the Subcontractors the Bidder proposes to use on the project. The Contracting Officer reserves the right to disapprove the use of any proposed Subcontractor. In such an event the Bidder shall submit the name of another Subcontractor in like manner within the time specified by the Officer. The Bidder shall have and will make no claim for compensation if the Contracting Officer disapproves any proposed Subcontractor. The Contracting Officer reserves the right to reject any bid if the names of proposed Subcontractors, or additional subcontract information, are not submitted as required.

END OF DOCUMENT