

## WYDOT BIDDING TERMS & CONDITIONS

***BIDS SUBMITTED WITH OTHER THAN THESE TERMS AND CONDITIONS WILL BE DEEMED TO BE IRREGULAR AND BID WILL NOT BE CONSIDERED.***

### 1. **SUBMISSION OF BIDS**

- A. All bids must be submitted electronically through Public Purchase on forms furnished by the Wyoming Department of Transportation (Department), and **signed by a proper official of the supplier**. Paper, email or facsimile bids **WILL NOT BE ACCEPTED**.
- B. No bids will be considered in which the Proposal, Specifications or any provisions have been modified.
- C. Bids received that are password protected or locked and inaccessible will not be considered.
- D. Bids must be received on or before the time and date specified. Bids received after the time and date specified will not be considered.

### 2. **GENERAL PROVISIONS**

#### **A. AMENDMENTS**

Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.

#### **B. APPLICABLE LAW, RULES OF CONSTRUCTION, AND VENUE**

The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Contract as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.

#### **C. ASSIGNMENT PROHIBITED AND CONTRACT SHALL NOT BE USED AS COLLATERAL**

Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof for collateral for any financial obligation without the prior written permission of the Agency.

#### **D. AUDIT/ACCESS TO RECORDS**

The Agency and its representatives shall have access to any books, documents, papers, electronic data and records of the Contractor which are pertinent to this Contract.

**E. AVAILABILITY OF FUNDS**

Each payment obligation of the Agency is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Contract, the Contract may be terminated by the Agency at the end of the period for which the funds are available. The Agency shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Agency in the event this provision is exercised, and the Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

**F. AWARD AND PURCHASE**

The Agency reserves the right to reject any or all bids, to waive any informalities or technical defects in bids, and unless otherwise specified by the Agency or by the Contractor, to accept any item or group of items in the bid, as may be in the best interest of the Agency.

No verbal explanations, clarifications, additions or instructions will be binding to either the Agency or the Bidders, except those confirmed in writing.

A signed purchase order/contract, furnished to the successful bidder, results in a binding contract without further action by either party.

**G. AWARD OF RELATED CONTRACTS**

The Agency may award supplemental or successor contracts for work related to this Contract or may award contracts to other contractors for work related to this Contract. The Contractor shall cooperate fully with other contractors and the Agency in all such cases.

**H. COMPLIANCE WITH LAWS**

The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.

**I. CONFIDENTIALITY OF INFORMATION**

All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by the Agency for its release. If and when Contractor receives a request for information subject to this Contract, Contractor shall notify Agency within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Agency.

**J. ENTIRETY OF CONTRACT**

This Contract, which includes these General Terms and Conditions in this Invitation to Bid and the Purchase Order to which they are attached, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

**K. ETHICS**

Contractor shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing Contractor's profession.

**L. FORCE MAJEURE**

Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.

**M. INDEMNIFICATION**

The Contractor shall release, indemnify, and hold harmless the State, the Agency, and their officers, agents, and employees from any and all claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Contractor's negligence or other tortious conduct.

**N. KICKBACKS**

Contractor certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If Contractor breaches or violates this warranty, Agency may, at its discretion, terminate this Contract without liability to Agency, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

**O. INDEPENDENT CONTRACTOR**

The Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Contract, the Contractor shall be free from control or direction over the details of the performance of services under this Contract. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Department or to incur any obligation of any kind on the behalf of the State of Wyoming or the Department. The Contractor agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance, or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents or employees as a result of this Contract.

**P. MATERIAL AVAILABILITY**

Contractors must accept responsibility for verification of material availability, production schedules and other pertinent data prior to submission of bid and delivery time. It is the responsibility of the Contractor to notify the Agency immediately if materials specified are discontinued, replaced or not available for an extended period of time.

**Q. MODIFICATIONS OR WITHDRAWAL OF BIDS**

A bid may be altered or withdrawn through Public Purchase prior to the time and date of opening. Bids withdrawn after the bid opening may eliminate the bidder from the active bidder's list for a minimum of one year.

**R. NON-COLLUSION**

Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the State of Wyoming, or any person interested in the proposed Contract; and

The price or prices quoted in this Bid are fair and proper and are not tainted by a collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest.

**S. NON-DISCRIMINATION**

The Wyoming Department of Transportation hereby notifies all bidders that it will affirmatively insure that minority business enterprises will be afforded full opportunity to submit bids in response to the invitation and will not be discriminated against on the grounds of age, race, color, sex, creed, national origin, or disability.

The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Contract.

**T. NOTICES**

All notices arising out of, or from, the provisions of this Contract shall be in writing either by Regular Mail, Facsimile, E-Mail or delivery in person at the addresses provided under this Contract.

## **U. NOTICE OF SALE OR TRANSFER**

The Contractor shall provide the Agency with notice of any sale, transfer, merger, or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notices provision of this Contract and, when possible and lawful, in advance of the transaction. If the Agency determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Contractor's obligations under this Contract, then the Agency may, at its discretion, terminate or renegotiate the Contract.

## **V. OWNERSHIP AND RETURN OF DOCUMENTS AND INFORMATION**

Agency owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Contractor in the performance of this Contract. Upon termination of services, for any reason, Contractor agrees to return all such original and derivative information and documents to the Agency in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon Agency's verified receipt of such information, Contractor agrees to physically and electronically destroy any residual Agency-owned data, regardless of format, and any other storage media or areas containing such information. Contractor agrees to provide written notice to Agency confirming the destruction of any such residual Agency-owned data.

## **W. PATENT OR COPYRIGHT PROTECTION**

The Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Contractor or its subcontractors will violate any such restriction. The Contractor shall defend and indemnify the Agency for any violation or alleged violation of such patent, trademark, copyright, license, or other restrictions.

## **X. PREFERENTIAL**

All contractors and suppliers wishing to be certified as a resident for purposes of receiving preference shall complete and submit the documents and affidavit(s) required by Labor Standards, a program within the Agency of Workforce Services. No residency preference shall be granted to any contractor or supplier who has not been certified as a resident by Labor Standards. No residency preference shall be granted to any contractor who has not participated in the prevailing wage survey as required by W.S. 27-4-405(a). Prevailing wage survey participation is not required to qualify as a resident supplier.

Preference is hereby given to materials, supplies, agricultural products, equipment, machinery and provisions produced, manufactured or grown in Wyoming, or supplied by a resident of the state, quality being equal to articles offered by the competitors outside of the state. When applicable, a percentile preferential will be accomplished or allowed in the following manner. W.S. 16-6-101 through 16-6-107.

- i. Preferential of five percent (5%) will be applied for materials, supplies, agricultural products, equipment, machinery and provisions manufactured or grown in Wyoming, or supplied by a resident of the state, quality being equal to articles offered by competitors outside the State of

Wyoming. The preferential, when applied, will be accomplished by adding the determined percentage to the total bid price of the non-resident bidder.

- ii. A preferential of ten percent (10%) will be applied for any public printing done within the State of Wyoming provided the printer either owns, operates and/or maintains an establishment that does at least seventy-five percent (75%) of the contract on the premises. W.S. 16-6-301.
- iii. Preference will be given Wyoming contractors for any contractual services. The contract shall be let to the responsible resident making the lowest bid, if such resident's bid is not more than five percent (5%) higher than that of the lowest responsible non-resident bidder.
- iv. Expenditures or contracts involving Federal Funds are subject to Federal Rules and Regulations. Under these conditions, a percentage differential will not be allowed. W.S. 16-6-108.

## **Y. PREPARATION OF BIDS**

Bidders are expected to examine any drawings, specifications, schedules and instructions included in the bid package. Failure to do so will be at the bidder's risk.

In case of error in the extension of prices in the bid Proposal, **the UNIT PRICE will govern. UNIT PRICE** shown must be **NET**.

## **Z. PUBLICITY**

Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Contractor, shall identify the Agency as the sponsoring agency and shall not be released without prior written approval from the Agency.

## **AA. SEVERABILITY**

Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

## **BB. SOVEREIGN IMMUNITY**

Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and Agency expressly reserve sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

## **CC. TAXES**

Direct purchases of materials by the State of Wyoming are exempt from Wyoming Sales or Use Tax. The bidder certifies that no Federal, State, County or Municipal tax will be added to the price shown

on the Proposal. The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.

**DD. TERMINATION OF CONTRACT**

This Contract may be terminated, without cause, by the Agency upon thirty (30) days written notice. This Contract may be terminated by the Agency immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract.

If at any time during the performance of this Contract, in the opinion of the Agency, the deliverables are not being supplied within the terms of this Contract, then at the discretion of the Agency and after written notice to the Contractor, the Agency may terminate this Contract or any part of it. As of the termination date, the Contractor will be entitled to a pro rata payment for all deliverables supplied and accepted by the Agency; however, the Contractor shall be liable to the Agency for the entire cost of replacement deliverables for the duration of the Contract term.

Failure of the bidder to furnish the materials, supplies, equipment, printing, services, and construction from a bid in which an award was made, shall eliminate the bidder from the active bidder's list for a minimum of one year.

**EE. THIRD PARTY BENEFICIARY RIGHTS**

The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

**FF. TIME IS OF THE ESSENCE**

Time is of the essence in all provisions of this Contract.

**GG. TITLES NOT CONTROLLING**

Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.

**HH. TRADE NAME PROVISIONS**

When items within the bid are identified by a manufacturer's name, trade name, brand name, catalog number or reference, it is understood that the bidder proposes to furnish the item so identified and does not propose to furnish an "equal" unless indicated hereon.

The use of trade names by the Agency is intended to be descriptive but not restrictive and only to establish a standard for articles that will be satisfactory.

**Specifications or descriptive literature must be forwarded with the bid on proposed "equals".**

The Procurement Services Manager reserves the right to approve or reject any proposed "equals" that are a variation from Agency specifications or requirements.

**II. WAIVER**

The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

**JJ. WARRANTY**

Warranties shall be Standard Manufacturer's Warranty unless otherwise specified in the bid documents.