



CONSTRUCTION CONTRACT

New York City
Department of
Environmental Protection

59-17 Junction Boulevard
Elmhurst, New York 11373

Emily Lloyd
Commissioner

Steven W. Lawitts
First Deputy Commissioner

Carol Fenves
Agency Chief Contracting Officer



INFORMATION FOR BIDDERS, STANDARD CONSTRUCTION CONTRACT, AND SPECIFICATIONS FOR FURNISHING ALL LABOR AND MATERIAL NECESSARY AND REQUIRED FOR:

Contract: CONTRACT CRO-334G – STRUCTURES AND EQUIPMENT
CONTRACT CRO-334E – ELECTRICAL

Description: NEW CROTON AQUEDUCT REHABILITATION

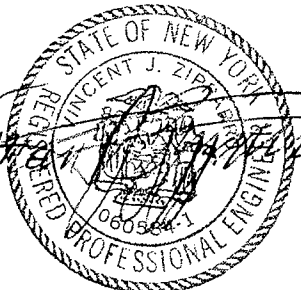


February 2008
Volume 1 of 2



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Metcalf & Eddy ◊ Hazen and Sawyer
A Joint Venture



NOTICE TO BIDDERS

This Contract Document is comprised of the following THREE sections:

SECTION 1 - INFORMATION FOR BIDDERS - consisting of :

- a) Cover Sheet (on blue cardstock)
- b) Table of Contents (pages i to iv)
- c) Pages 1 to 16

SECTION 2 - CITY OF NEW YORK STANDARD CONSTRUCTION CONTRACT - consisting of :

- a) Cover Sheet (on blue cardstock)
- c) Table of Contents (pages i to iv)
- d) Pages 1 to 88

SECTION 3 - REMAINDER OF THIS CONTRACT DOCUMENT - consisting of

- a) Cover Sheet (on blue cardstock)
- b) Table of Contents (length varies)
- c) Schedule of Wage Rates
- d) General Conditions (including Schedule "A")
- e) General Specifications
- f) Detailed Specifications

Note: Invitation For Bid Packages are furnished separately.



**CONSTRUCTION CONTRACT
INFORMATION FOR BIDDERS**



59-17 Junction Boulevard, Corona, New York 11368

DEPARTMENT OF ENVIRONMENTAL PROTECTION
INFORMATION FOR BIDDERS - CONSTRUCTION (Effective 12/01/01)



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NO TEXT FOR THIS PAGE

NOTICE TO BIDDERS

The pages of this document are numbered consecutively. Prospective bidders must examine the documents carefully. Before bidding, prospective bidders must notify the Agency Chief Contracting Officer, in writing, that pages are missing and request that these missing pages be furnished to them.

In these specifications, wherever certification by, or membership in, a non-governmental entity or organization is required, this shall be deemed to mean such certification or membership or possession of equivalent qualifications or characteristics as determined by the Engineer, is required. The foregoing shall not be construed to be a waiver of any legally required Federal, State or local certification or licensing requirement, nor shall it apply where certification by the manufacturer of materials or equipment is called for.

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1. **DESCRIPTION AND LOCATION OF WORK**

The description and location of the work for which bids are requested are specified on the *Cover Page of the Invitation For Bid*.

1A. **PROCUREMENT POLICY BOARD RULES**

This Invitation For Bid is subject to the Procurement Policy Board of the City of New York (the "PPB Rules"). In the event of a conflict between said PPB Rules and a provision of this Invitation For Bid, the PPB Rules shall take precedence.

1B. **BID SUBMISSION REQUIREMENTS**

The following forms, all of which are contained in the Invitation For Bid, are to be completed and submitted with the bid:

1. **Bid Form**
2. **Bid Security (if required, see Schedule A)**

It is recommended that the following forms, all of which are contained in the Invitation For Bid, are to be completed and submitted with the bid, or within five days of the bid opening. Please be advised, however, that when requested to do so by the Agency, the bidder must submit the following forms:

1. **Business Entity and Principal VENDEX Questionnaire** (if this bid is \$100,000 or more, or if this bid when added to the sum total of all contracts, concessions, and franchises the bidder has received from the City, and any subcontracts received from City contractors over the past twelve months, equals or exceeds \$100,000). If completed VENDEX Questionnaires have been filed with the Department within the previous 36 months, and there are no changes to any response contained in the VENDEX Questionnaires in the current submission, the bidder may submit an Affidavit of No Change in lieu of completing additional VENDEX Questionnaires. If changes have occurred, bidder is required to submit a changed Questionnaire.

2. **Employment Report** - See Section 32 for details.

NON - COMPLIANCE WITH ANY OF THE ABOVE BID SUBMISSION REQUIREMENTS MAY RESULT IN REJECTION OF THE BID.

2. **TIME AND PLACE FOR RECEIPT OF BIDS**

Sealed bids will be received by the *Department of Environmental Protection, Contract Management Office, 59-17 Junction Blvd. 17th Floor, Corona, New York 11368*, on the day and at the time specified on the Invitation For Bid Cover Page. Bids will be publicly opened and read aloud in the presence of the Commissioner, or his/her representatives, and any bidder who may desire to be present.

3. **DEFINITIONS**

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The definitions set forth in the Procurement Policy Board Rules shall apply to this Invitation For Bid.

4. **INVITATION FOR BID DOCUMENTS**

a) **DOCUMENTS TO BE INCLUDED.** Except for titles, subtitles, headings, running headlines, tables of contents and indices (all of which are printed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of the Contract:

1. The Advertisement and Information for Bidders.
2. The Invitation For Bid (the Bid).
3. The Construction Contract, including General Conditions.
4. The Budget Director's Certificate.
5. The Specifications.
6. The Contract Drawings.
7. All Addenda issued by the Commissioner prior to the receipt of bids.
8. All provisions required by law to be inserted in this Contract whether actually inserted or not.
9. The Notice of Award.
10. Performance and Payment Bonds (as required in Schedule A).
11. Notice to Proceed with Work (also known as the Commence Work Letter).

b) **GENERAL CONDITIONS AND SPECIFICATIONS.** For particulars as to this procurement, including quantity and quality of the purchase, extent of the work or labor to be performed, delivery and performance schedule, and any other special instructions, prospective bidders are referred to the General Conditions and Specification sections of the Invitation for Bid . A copy of such documents can be obtained at the DEP Contract Management Office, 59-17 Junction Blvd., 17th Floor, Corona, 11368.

c) **DEPOSIT FOR COPY OF INVITATION FOR BID DOCUMENTS.** *Prospective bidders may obtain a copy of the Invitation For Bid Documents by complying with the conditions set forth in the City Record Advertisement for Bids. The deposit required must be in the form of a money order or certified check, made payable to the order of the City of New York, and drawn upon a State or National bank or trust company, or of a check of such bank or trust company signed by a duly authorized officer thereof.*

d) **RETURN OF INVITATION FOR BID DOCUMENTS.** All Invitation For Bid documents must be returned to the Department upon request. If the bidder elects not to submit a bid thereunder, Invitation For Bid documents shall be returned to the Department along with a statement that no bid will be submitted.

e) **RETURN OF DEPOSIT.** Such deposit will be returned within 30 days after the award of the Contract or the rejection of all bids as set forth in the advertisement provided the Invitation For Bid documents are returned to the Contract Management Office in physical condition satisfactory to the Commissioner.

f) **ADDITIONAL COPIES.** Additional copies of the Invitation For Bid may be obtained, subject to conditions as set forth in the Advertisement for Bids.

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5. **PRE-BID CONFERENCE**

A pre-bid conference, if required, as shown in the advertisement, shall be held as set forth on the *Cover Page of the Invitation For Bid* ("*Cover Page*").

Nothing stated at the pre-bid conference shall change the terms and/or conditions of the Invitation For Bid unless a change is made by written amendment as provided in Section 9, below, and the Procurement Policy Board Rules.

Failure to attend a mandatory pre-bid conference shall constitute grounds for the rejection of the bid.

Please notify the Agency Contact, listed on the *Cover Page*, of the number of representatives from your firm that will attend the conference. This should be done at least five City working days before the date of the pre-bid conference.

6. **AGENCY CONTACT**

Any questions or correspondence relating to this bid solicitation shall be addressed to the Agency Contact Person specified on the *Cover Page*.

7. **BIDDER'S OATH**

a) The bid shall be properly signed by an authorized representative of the bidder and the bid shall be verified by the written oath of the authorized representative who signed the bid, that the several matters stated and information furnished therein are in all aspects true.

b) A materially false statement willfully or fraudulently made in connection with the bid or any of the forms completed and submitted with the bid may result in the termination of any Contract between the City and the Bidder. As a result, the Bidder may be barred from participating in future City Contracts as well as be subject to possible criminal prosecution.

8. **EXAMINATION AND VIEWING OF SITE AND CONSIDERATION OF OTHER SOURCES OF INFORMATION**

a) **PRE-BIDDING (INVESTIGATION) VIEWING OF SITE.** Bidders must carefully view and examine the site of the proposed work, as well as its adjacent area, and seek other usual sources of information, for they will be conclusively presumed to have full knowledge of any and all conditions on, about or above the site relating to or affecting in any way the performance of the work to be done under this Contract which were or should have been indicated to a reasonably prudent bidder. To arrange a date for visiting the work site, bidders are to contact the Agency Contact Person specified in the *Cover Page*.

b) **CHANGED CONDITIONS.** Should the Contractor encounter during the progress of the work, subsurface conditions at the site materially differing from any shown on the Contract Drawings or

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as indicated in the specifications, or such subsurface conditions as could not reasonably have been anticipated by the Contractor and were not anticipated by the City, which conditions will materially affect the cost of the work to be done under the Contract, the attention of the Commissioner must be called immediately to such conditions before they are disturbed. The Commissioner shall thereupon promptly investigate the conditions. If the Commissioner finds that they do so materially differ, or that they *could not* reasonably have been anticipated by the Contractor and were not anticipated by the City, the Contract may be modified with his written approval.

9. **EXAMINATION OF PROPOSED CONTRACT**

a) **REQUEST FOR INTERPRETATION OR CORRECTION BEFORE BIDDING.** Prospective bidders must examine the Invitation For Bid carefully and, before bidding, must request the Commissioner in writing for an interpretation or correction of every patent ambiguity, inconsistency or error therein which should have been discovered by a reasonably prudent bidder. Such interpretation or correction as well as any additional Contract provisions the Commissioner may decide to include will be issued in writing by the Commissioner as an addendum to the Contract, which will be sent to each person recorded as having received a copy of the Invitation For Bid, and which will also be posted at the place where Invitation For Bid are distributed. Upon such mailing or delivery and posting, such addendum shall become a part of the Contract documents, and binding on all bidders, whether or not actual notice of such addendum is shown.

b) **ONLY THE COMMISSIONER'S INTERPRETATION OR CORRECTION BINDING.** Only the written interpretation or correction so given by the Commissioner shall be binding, and prospective bidders are warned that no other officer, agent or employee of the City is authorized to give information concerning, or to explain or interpret, the Contract.

c) **SUBCONTRACTOR SOLICITATION.** Documents given to a subcontractor for the purpose of soliciting the subcontractor's bid shall include either a copy of the bid cover or a separate information sheet setting forth the project name, the contract number (if available), the contracting agency, and the project's location.

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10. **FORM OF BIDS (Also see Invitation For Bid)**

Each bid must be submitted upon the prescribed form and must contain:

- a) The name, residence, and place of business of the person or persons making the same.
- b) The names of all persons interested therein, and if no other person is so interested, such fact must be distinctly stated.
- c) A statement to the effect that it is made without any connection with any other person making a bid for the same purpose and it is in all respects fair and without collusion or fraud.
- d) A statement that no Councilman, or other officer or employee or person whose salary is payable in whole or in part from the City Treasury is directly or indirectly interested therein or in the supplies, materials or equipment and work or labor to which it relates, or in any portion of the profits thereof.
- e) A statement that the bidder is not in arrears to the City or to any agency upon a debt or Contract, or taxes, and is not a defaulter as surety or otherwise upon any obligation to the City or to any agency thereof, except as set forth in the bid.

The bid shall be typewritten or written legibly in ink. The bid shall be signed in ink. Erasures or alterations shall be initialed by the signer in ink.

11. **BLANK**

12. **IRREVOCABILITY OF BID**

The prices set forth in the bid cannot be revoked and shall be effective until the award of the Contract, unless the bid is withdrawn as provided for in Sections 16 and 19, below.

13. **ACKNOWLEDGMENT OF AMENDMENTS**

The receipt of any amendment to the Contract documents shall be acknowledged by the bidder on or before on or before the submission of the bid.

14. **BID SAMPLES AND DESCRIPTIVE LITERATURE**

Bid samples and descriptive literature shall not be submitted by the bidder, unless expressly requested elsewhere in the Contract or Contract documents. Any unsolicited bid samples or descriptive literature which are submitted shall not be examined or tested and shall not be deemed to vary any of the provisions of this Contract.

15. **PROPRIETARY INFORMATION / TRADE SECRETS**

The bidder shall identify those portions of the bid which it deems to be confidential,

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proprietary information or trade secrets, and provide justification why such materials shall not be disclosed by the City. All materials the bidder desires to remain confidential shall be clearly indicated by stamping the pages on which such information appears, at the top and bottom thereof with the word "Confidential". Such materials stamped "Confidential" must be easily separable from non-confidential sections of the bid.

All such materials so indicated shall be reviewed by the Agency and any decision not to honor a request for confidentiality shall be communicated in writing to the bidder. For those bids which are unsuccessful, all such confidential materials shall be returned to the bidder. Prices, makes, and model or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available after bid opening regardless of any designation of confidentiality made by the bidder.

16. **PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS**

Bids may be modified or withdrawn by written notice received by the *Contract Management Office, 59-17 Junction Blvd. 17th Floor, Corona, NY 11368*. Written notices must be received by the Contract Management Office before the time and date set for the bid opening. If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

17. **BID EVALUATION AND AWARD**

In accordance with the New York City Charter, the Procurement Policy Board Rules and the terms and conditions of this Invitation For Bid, this Contract shall be awarded, if at all, to the lowest responsible bidder whose bid meets the requirements and evaluation criteria set forth in the Invitation For Bid, and whose bid price is either the lowest responsive and responsible bid price or if the Invitation For Bid so stated, the lowest evaluated responsive, and responsible bid price. A bid may not be evaluated for any requirement or criterion that is not disclosed in the Invitation For Bid.

a) **RESTRICTIONS.** No negotiations with any bidder shall be allowed to take place except under circumstances and in the manner set forth in Section 22 of this Information For Bidders. Nothing in this Section shall be deemed to permit a Contract award to a bidder submitting a higher quality item than that designated in the Invitation For Bid if that bid is not also the most favorable bid.

b) **NEGOTIATIONS WITH THE APPARENT LOWEST RESPONSIVE AND RESPONSIBLE BIDDER.** Upon determination of the apparent lowest responsive and responsible bidder and prior to award, the Contracting Officer may elect to open negotiations with the selected bidder in an effort to improve the bid to the City with respect to the price only. In the event the apparent lowest responsive and responsible bidder declines to negotiate, the Contracting Officer may elect to either award the contract to the apparent lowest responsive and responsible bidder or may, upon written approval by the Agency Chief Contracting Officer, reject all bids in accordance with the PPB Rules.

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18. **LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS**

Any bid received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Any request for withdrawal or modification received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Late bids and modifications shall not be opened until after registration of the contract.

The exception to this provision is that a late modification of a successful bid that makes the bid terms more favorable to the City shall be considered at any time it is received and may be accepted upon written approval of the Agency Chief Contracting Officer.

19. **WITHDRAWAL OF BID**

Except as provided for in Section 16 above, a bidder may not withdraw its bid before the expiration of 45 days after the date of the opening of bids; thereafter, a bidder may withdraw his bid only in writing and in advance of an actual award.

If, within 60 days after the execution of the Contract, the Commissioner fails to fix the date of the commencement of work by written notice to the bidder, the bidder, at his option, may ask to be relieved of his obligation to perform the work called for by written notice to the Commissioner. If such notice is given, and request to withdraw is granted, the bidder waives all claims in connection with this Contract.

20. **Mistakes in Competitive Sealed Bids for Public Projects**

A) **Mistakes Discovered Before Bid Opening**: A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Section 16 above.

B) **Mistakes Discovered After Bid Opening**

1. **Mistakes Where Intended Correct Bid is Evident**

If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

2. **Mistakes Where Intended Correct Bid is Not Evident**

In accordance with General Municipal Law Section 103 sub. 11, mistakes may not be corrected after bid opening. Unless otherwise required by law, the sole remedy for a bid mistake discovered after bid opening in accordance with this Section shall be withdrawal of that bid, and return of the bid bond or other security, if any, to the bidder. Thereafter, the agency may, in its discretion, award the contract to the next lowest bidder or rebid the contract. Any amendment to or

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reformation of a bid or a contract to rectify such an error or mistake therein is strictly prohibited. Where a unilateral error or mistake is discovered in a low bid, such bid may be withdrawn upon written approval of the Agency Chief Contracting Officer if the following conditions are met:

- i) The mistake is known or made known to the agency prior to the awarding of the contract or within three days after the opening of the bid, whichever period is shorter; and
- ii) The price bid was based on an error of such magnitude that enforcement would be unconscionable; and
- iii) The bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and
- iv) The error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid, sought to be withdrawn; and
- v) it is possible to place the City in the same condition that had existed prior to the receipt of the bid.

21. **LOW TIE BIDS**

a) When two or more low responsive bids from responsible bidders are identical in price, meeting all the requirements and criteria set forth in the Invitation For Bid, the Agency Chief Contracting Officer will break the tie in the following manner and order of priority:

- i) Award to a certified New York City small, minority, or woman owned business entity bidder;
- ii) Award to a New York City bidder;
- iii) Award to a certified New York State small, minority, or woman owned business entity bidder;
- iv) Award to a New York State bidder.

b) If two or more bidders still remain equally eligible after application of paragraph (a) above, award shall be made by a drawing by lot limited to those bidders. The bidders involved shall be invited to attend the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation

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sheet.

22. **REJECTION OF BIDS**

a) REJECTION OF INDIVIDUAL BIDS. The Agency may reject a bid if:

i) The bidder fails to furnish any of the information required pursuant to Section 26 or 31 hereof; or if

ii) The bidder is determined to be not responsible pursuant to the Procurement Policy Board Rules; or if

iii) The bidder is determined to be non-responsive pursuant to the Procurement Policy Board Rules; or if

iv) The bid, in the opinion of the Agency Chief Contracting Officer, contains unbalanced bid prices and is thus non-responsive.

b) REJECTION OF ALL BIDS. The ACCO may reject all bids and may elect to resolicit by bid or by other method authorized by the PPB Rules.

23. **RIGHT TO APPEAL DETERMINATIONS OF NON-RESPONSIVENESS OR NON-RESPONSIBILITY AND RIGHT TO PROTEST SOLICITATIONS AND AWARD**

The bidder has the right to appeal a determination of non-responsiveness or non-responsibility and has the right to protest a solicitation and award. For further information concerning these rights, the bidder is directed to the Procurement Policy Board Rules.

24. **BLANK**

25. **AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY**

This Invitation For Bid is subject to applicable provisions of Federal, State, and Local Laws and executive orders requiring affirmative action and equal employment opportunity.

26. **VENDEX QUESTIONNAIRE**

Pursuant to Administrative Code §6-116.2 and the New York City Procurement Policy Board Rules (9 RCNY§5-02), bidders may be obligated to submit completed VENDEX questionnaires with this bid. Generally, if this bid is \$100,000 or more, or if this bid when added to the sum total of all contracts, concessions, and franchises the bidder has received from the City, and any subcontracts received from City contractors over the past twelve months, equals or exceeds \$100,000 VENDEX questionnaires must be completed and submitted. Any questions concerning this requirement must be submitted to the Agency Chief Contracting Officer or the contact person for this contract.

27. **AUDIT BY THE COMPTROLLER**

The New York City Comptroller is charged with the audit of Contracts in New York City. Any vendor who believes that there has been unfairness, favoritism, or impropriety in the bid process should inform the Comptroller, Office of Contract Administration, One Centre Street, Room 835, New York, New

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York; telephone number (212) 669-2797.

28. **BID, PERFORMANCE, AND PAYMENT SECURITY**

a) **BID SECURITY.** The Mayor's Office of the Director of Construction or the Agency Chief Contracting Officer may require the submission of bid security in an amount and type specified in *the General Conditions, Schedule A*. **If Bid Security is required, no bid will be considered which is not accompanied by the Bid Security. The Bid Security shall assure the City and the Agency of the adherence of the bidder to its bid, and the execution of the contract, in form as annexed hereto, if its bid is accepted.**

1) If a Bid Bond is furnished to satisfy the Bid Security requirement, it shall be submitted in the form set forth herein, issued by a surety company which is authorized to do business in the State of New York. The Bid Security shall insure the City of New York to the extent of not less than amount stated in *the General Conditions, Schedule A*.

2) If a bank certified check is submitted as Bid Security, it must be upon a state or national bank or trust company or a check of such bank or trust company signed by a duly authorized officer thereof, drawn to the City, which the Comptroller shall approve as of equal value with sum so required.

3) The bid deposit, in whatever form, must not be enclosed in the envelope containing the bid, but must be submitted separately to the Commissioner's representative upon presentation of the bid.

b) **PERFORMANCE SECURITY.** The Agency Chief Contracting Officer or the Mayor's Office of the Director of Construction may require performance security, in the form set forth herein, in the amount specified in *General Conditions, Schedule A*. The performance security shall be delivered by the Contractor to the Contract Management Office *within ten days after the receipt of a Notice of Award*. If a Contractor fails to deliver the required performance security, the award shall be rescinded, its bid security shall be enforced and award of the Contract may be made to the next lowest responsive and responsible bidder or the Contract may be rebid.

c) **PAYMENT SECURITY.** Payment security is required in the amount specified in *General Conditions, Schedule A*. The payment security, in the form set forth herein, shall be delivered by the Contractor to the Contract Management Office *within ten days after the receipt of a Notice of Award*. If a Contractor fails to deliver the required payment security, the award shall be rescinded, its bid security shall be enforced, and award of the Contract may be made to the next lowest responsive and responsible bidder, or the Contract may be rebid.

d) **ACCEPTABLE SECURITY.** Acceptable security for bids, performance and payment shall be limited to:

1. A one-time bond in a form satisfactory to the City
2. A bank certified check or money order;
3. City Bonds; or
4. Other financial instruments as determined by the Mayor's Office of the Director of Construction in consultation with the Comptroller.

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When the successful bidder deposits obligations of The City of New York as performance and payment security, the Comptroller may sell and use the proceeds thereof for any purpose for which the principal or surety on such bond would be liable under the terms of the Contract. If the money is deposited with the Comptroller, the successful bidder shall not be entitled to receive interest on such money from the City.

(e) Security provided in the form of bonds must be prepared on the form of bonds authorized by the City of New York. Forms for bid, performance, and payment bonds are included in the Invitation For Bid documents. Such bonds must have as surety thereunder such surety company or companies as are:

1. Approved by The City of New York;
2. Authorized to do business in the State of New York; and
3. Approved by the Department of the Treasury of the United States.

The Department of the Treasury of the United States advises that information concerning approved surety companies may be obtained as follows:

1. From the Government Printing Office at 202-512-1800;
2. Through the Internet at <http://www.fms.treas.gov/c570/index.html>; and
3. Through a computerized public bulletin board which may be accessed by using a personal computer with a modem and dialing 202-874-6887.

(f) Premiums for any required bonds must be included in the base bid.

(g) The bidder is advised that submission of a bid bond where the surety on such bond fails to meet the criteria set forth herein shall result in the rejection of the bid as non-responsive.

29. **FAILURE TO EXECUTE CONTRACT AND FURNISH SECURITY**

In the event of failure of the successful bidder to execute the Contract and furnish the required security, within ten days after Notice of Award of the Contract, the deposit of the successful bidder or so much thereof as shall be applicable to the amount of the award made shall be retained by the City, and the successful bidder shall be liable for and hereby agrees to pay the City on demand the difference between the price bid and the price for which such Contract shall be subsequently relet, including the cost of such reletting less the amount of such deposit. No plea of mistake in such accepted bid shall be available to the bidder for the recovery of such deposit or as a defense to any action based upon such accepted bid. Further, should the bidder's failure to comply with this Section cause any funding agency, body or group (Federal, State, City, Public, Private, etc.) to terminate, cancel or reduce the funding on this project, the bidder in such event shall be liable also to the City for the amount of actual funding withdrawn by such agency on this project less the amount of the forfeited deposit.

30. **POWER OF ATTORNEY**

Attorneys-in-fact who sign Bid Bonds or Performance and Payment Bonds must file with each bond a certified copy of their power of attorney to sign said bonds.

31. **BIDDER RESPONSIBILITY AND QUALIFICATIONS**

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Bidders must include with their bids all information necessary for a determination of bidder responsibility, as set forth in the specifications.

a) **BIDDER'S RECORDS.** The Agency may require any bidder or prospective bidder to furnish all books of account, records, vouchers, statements or other information concerning the bidder's financial status for examination as may be required by the Agency to ascertain the bidder's responsibility and capability to perform the Contract. If required, a bidder must also submit a sworn statement setting forth such information as the Agency may require concerning present and proposed plant and equipment, the personnel and qualifications of his working organizations, prior experience and performance record.

b) **ORAL EXAMINATION ON QUALIFICATIONS.** In addition thereto, and when directed by the Agency, the bidder, or a responsible officer, agent, or employee of the bidder, must submit to an oral examination to be conducted by the Agency in relation to his proposed tentative plan and schedule of operations, and such other matters as the Agency may deem necessary in order to determine the bidder's ability and responsibility to perform the work in accordance with the Contract. Each person so examined must sign and verify a stenographic transcript of such examination noting thereon such collections as such person may desire to make.

c) **FAILURE TO SUPPLY INFORMATION.** If the bidder fails or refuses to supply any of the documents or information set forth in paragraph (a) hereof or fails to comply with any of the requirements thereof, the Agency may reject this bid.

32. **EMPLOYMENT REPORTS (DEPARTMENT OF BUSINESS SERVICES)**

In accordance with Executive Order No. 50 (1980) as modified by Executive Order 108 (1986), the filing of a complete Employment Report is a requirement of doing business with the City of New York for construction contractors with a contract of **\$1,000,000 or more and subcontractors with construction subcontracts of \$750,000 or more.** The required forms and information are attached hereto.

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- a) **Employment Report.**
- b) **Subcontractor Employment Report (if subcontract is equal to or in excess of \$750,000).**
- c) **Less than \$750,000 Subcontractor Certificate (for subcontracts valued at less than \$750,000).**
- d) **Executive Order No. 89 (as revised) Forms and Affidavit (if bid is in excess of \$250,000).**

33. **LABOR LAW REQUIREMENTS**

The successful bidder will be required to comply strictly with all Federal, State, and local labor laws and regulations, including, but not limited, to providing on - the - job training opportunities and payment of prevailing wages.

All requests for clarification of the classification of trades to be employed in the performance of the work under this contract shall be directed to the Agency Chief Contracting Officer, in writing, at least 48 hours prior to the bid opening date.

In the event that a trade not listed in the classification of trades required to be used at the time of the award of the contract is in fact employed during the performance of this contract, the contractor shall be required to obtain from the agency the prevailing wage rates and supplementary benefits for the trades used and to complete the performance of this contract at the price at which the contract was awarded.

34. **INSURANCE**

Bidders are advised that the insurance requirements contained herein are regarded as a material term of this Contract. During performance and up to the date of final acceptance, the Contractor must effect and maintain with insurance companies authorized to do business in the State of New York, the types and amounts of insurance specified in Article 22 of the Contract and in General Conditions, Schedule A.

Bidders are advised that the insurance requirements contained herein are regarded as a material term of this contract. Pursuant to Section 57 of the New York State Worker's Compensation Law, the bidder must submit proof of worker's compensation and disability benefits coverage to this Department prior to the execution of any contract resulting from this solicitation.

ALL other required insurance documentation must also be submitted prior to commencement of work of this contract. During performance and up to the date of final acceptance, the contractor must effect and maintain with insurance companies authorized to do business in the State of New York, the types and amounts of insurance specified in Schedule A of this solicitation.

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35. **LUMP SUM CONTRACTS**

a) **COMPARISON OF BIDS.** Bids on Lump Sum Contracts will be compared on the basis of the lump sum price bid, as adjusted for alternate prices bid, if any.

b) **LUMP SUM BIDS FOR "GENERAL CONSTRUCTION WORK"** which include excavation shall include all necessary excavation work defined in the specifications as being included in the lump sum bid. The bidder shall also bid a unit price for the additional cost of excavating material which is defined in the specifications as excavation for which additional payment will be made. The total estimated additional cost of removing such material will be taken as the quantity set forth in the Engineer's Estimate of Quantities multiplied by the unit price bid. This total estimated cost of additional excavation shall be added to the lump sum bid for the General Construction Work for the purpose of comparing bids to determine the low bidder.

c) **VARIATIONS FROM ENGINEER'S ESTIMATE.** The Engineer's Estimate of the quantity of excavation for which additional payment will be made is approximate only and is given solely for use as a uniform basis for the comparison of bids, and such estimate is not to be considered as part of this Contract. The quantities actually required to complete the Contract work may be more or less than the quantity in the Engineer's Estimate and, if so, no action for damages or for loss of profits shall accrue to the Contractor by reason thereof.

36. **UNIT PRICE CONTRACTS**

a) **COMPARISON OF BIDS.** Bids on Unit Price Contracts will be compared on the basis of a total estimated price, arrived at by taking the sum of the estimated quantities of such item multiplied by the corresponding unit prices, and including any lump sum bids on individual items, in accordance with the Engineer's Estimate of Quantities set forth in the Bid Form.

b) **VARIATIONS FROM ENGINEER'S ESTIMATE.** The terms and conditions applicable to overruns of unit price items are set forth in Article 26 of the Contract.

37. **EXCISE TAX**

Bidders are referred to the specifications for information on Federal Excise Tax exemptions.

38. **LICENSES AND PERMITS**

The successful bidder will be required to obtain all necessary licenses and permits to perform the work.

39. **MULTIPLE PRIME CONTRACTORS**

If more than one prime Contractor will be involved on this project, all Contractors are required to examine the Invitation For Bid packages for all other parts of the project.

40. **LOCALLY BASED ENTERPRISE REQUIREMENTS ("LBE")**

This contract is subject to the requirements of Administrative Code § 6-108.1 and the regulations promulgated thereunder. No construction contract shall be awarded unless and until these requirements have been complied with in their entirety. The bidder is referred to the provisions set forth in **Article 67** of the Contract.

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41. BLANK

COMPTROLLER'S CERTIFICATE

This Contract shall not be binding or of any force unless the Comptroller of the City shall endorse hereon his certificate that there remains unexpended and unapplied, as provided in Section 6-101 of the Administrative Code of the City of New York, a balance of the appropriation of funds applicable thereto sufficient to pay the estimated expense of executing this Contract as certified by the officer making the same. This Contract shall continue in force only after annual appropriation of funds by the City of New York and certification as hereinabove set forth.

43. BLANK

44. BLANK

45. PROMPT PAYMENT

The Prompt Payment provisions set forth in the Procurement Policy Board Rules are applicable to payments made under a contract resulting from this solicitation. The provisions require the payment to contractors of interest on payments made after the required payment date except as set forth in the PPB Rules. The contractor must submit a proper invoice to receive payment, except where the contract provides that the contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment. Determinations of interest due will be made in accordance with the provisions of the Procurement Policy Board Rules.

END OF INFORMATION FOR BIDDERS