

**SPECIAL INSTRUCTION TO BIDDERS  
(TRANSPORTATION AND PUBLIC WORKS)**

- 1) **BID SECURITY:** Cashier's check or an acceptable bidder's bond payable to the City of Fort Worth, in an amount of not less than five percent (5%) of the total of the bid submitted must accompany the bid, and is subject to forfeit in the event the successful bidder fails to execute the contract documents within ten (10) days after the contract has been awarded.

To be an acceptable surety on the bid bond, the surety must be authorized to do business in the state of Texas. In addition, the surety must

- a) hold a certificate of authority from the United States secretary of the treasury to qualify as a surety on obligations permitted or required under federal law; or
  - b) have obtained reinsurance for any liability in excess of \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in the state of Texas and is the holder of a certificate of authority from the United States secretary of the treasury to qualify as a surety on obligations permitted or required under federal law. Satisfactory proof of any such reinsurance shall be provided to the City upon request. The City, in its sole discretion, will determine the adequacy of the proof required herein.
- 2) **PAYMENT, PERFORMANCE AND MAINTENANCE BONDS:** The successful bidder entering into a contract for the work will be required to give the City surety in a sum equal to the amount of the contract awarded. In this connection, the successful bidder shall be required to furnish a performance bond and a payment bond, both in a sum equal to the amount of the contract awarded. The form of the bond shall be as herein provided and the surety shall be acceptable to the City. All bonds furnished hereunder shall meet the requirements of Chapter 2253, Texas Government Code.

In order for a surety to be acceptable to the City, the surety must

- a) hold a certificate of authority from the United States secretary of the treasury to qualify as a surety on obligations permitted or required under federal law; or
- b) have obtained reinsurance for any liability in excess of \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in the state of Texas and is the holder of a certificate of authority from the United States secretary of the treasury to qualify as a surety on obligations permitted or required under federal law. Satisfactory proof of any such reinsurance shall be provided to the City upon request. The City, in its sole discretion, will determine the adequacy of the proof required herein.

The City will accept no sureties who are in default or delinquent on any bonds or who have an interest in any litigation against the City. Should any surety on the contract be determined unsatisfactory at any time by the City, notice will be given to the contractor to that effect and the contractor shall immediately provide a new surety satisfactory to the City.

If the contract amount is in excess of \$25,000, a Payment Bond shall be executed, in the amount of the contract, solely for the protection of all claimants supplying labor and materials in the prosecution of the work.

If the contract amount is in excess of \$100,000, a Performance Bond shall be executed, in the amount of the contract conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents. Said bond shall solely be for the protection of the City of Fort Worth.

All contracts shall require a maintenance bond in the amount of one hundred percent (100%) of the original contract amount to guarantee the work for a period of two (2) years after the date of acceptance of the project from defects in workmanship and/or material.

- 3) **LIQUIDATED DAMAGES:** The Contractor's attention is called to Part 1, Item 8, paragraph 8.6, of the "General Provisions" of the *Standard Specifications for Street and Storm Drain Construction* of the City of Fort Worth, Texas, concerning liquidated damages for late completion of projects.
- 4) **AMBIGUITY:** In case of ambiguity or lack of clearness in stating prices in the proposal, the City reserves the right to adopt the most advantageous construction thereof to the City or to reject the proposal.
- 5) **EMPLOYMENT:** All bidders will be required to comply with City Ordinance No. 7278 as amended by City Ordinance No. 7400 (Fort Worth City Code Section 13-A-21 through 13-A-29) prohibiting discrimination in employment practices.
- 6) **WAGE RATES:** Section 8.8 of the Standard Specifications for Street and Storm Drain Construction is deleted and replaced with the following:
  - a) The contractor shall comply with all requirements of Chapter 2258, Texas Government Code, including the payment of not less than the rates determined by the City Council of the City of Fort Worth to be the prevailing wage rates in accordance with Chapter 2258, Texas Government Code. Such prevailing wage rates are included in these contract documents.
  - b) The contractor shall, for a period of three (3) years following the date of acceptance of the work, maintain records that show
    - 1) the name and occupation of each worker employed by the contractor in the construction of the work provided for in this contract; and
    - 2) the actual per diem wages paid to each worker. These records shall be open at all reasonable hours for inspection by the City. The provisions of the special provision titled "Right to Audit" pertain to this inspection.
  - c) The contractor shall include in its subcontracts and/or shall otherwise require all of its subcontractors to comply with paragraphs a) and b) above.
  - d) With each partial payment estimate or payroll period, whichever is less, an affidavit stating that the contractor has complied with the requirements of Chapter 2258, Texas Government Code.
  - e) The contractor shall post the prevailing wage rates in a conspicuous place at the site of the project at all times.
- 7) **FINANCIAL STATEMENT:** A current certified financial statement may be required by the Department of Transportation and Public Works if required for use by the CITY OF FORT WORTH in determining the successful bidder. This statement, if required, is to be prepared by an independent Public Accountant holding a valid permit issued by an appropriate State Licensing Agency.

- 8) **INSURANCE:** Within ten (10) days of receipt of notice of award of contract, the Contractor must provide, along with executed contract documents and appropriate bonds, proof of insurance for Worker's Compensation and Comprehensive General Liability (Bodily Injury-\$500,000 each person, \$1,000,000 each occurrence (\$2,000,000 aggregate limit); Property Damage - \$250,000 each occurrence). The City reserves the right to request any other insurance coverage as may be required by each individual project.
- 9) **ADDITIONAL INSURANCE REQUIREMENTS:**
- a) The City, its officers, employees and servants shall be endorsed as an additional insured on Contractor's insurance policies excepting employer's liability insurance coverage under Contractor's workers' compensation insurance policy.
  - b) Certificates of insurance shall be delivered to the City of Fort Worth, contract administrator in the respective department as specified in the bid documents, 1000 Throckmorton Street, Fort Worth, TX 76102, prior to commencement of work on the contracted project.
  - c) Any failure on part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
  - d) Each insurance policy shall be endorsed to provide the City a minimum thirty days notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten days notice shall be acceptable in the event of non-payment of premium.
  - e) Insurers must be authorized to do business in the State of Texas and have a current A.M. Best rating of A: VII or equivalent measure of financial strength and solvency.
  - f) Deductible limits, or self-funded retention limits, on each policy must not exceed \$10,000.00 per occurrence unless otherwise approved by the City.
  - g) Other than worker's compensation insurance, in lieu of traditional insurance, City may consider alternative coverage or risk treatment measures through insurance pools or risk retention groups. The City must approve in writing any alternative coverage.
  - h) Workers' compensation insurance policy(s) covering employees employed on the project shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
  - i) City shall not be responsible for the direct payment of insurance premium costs for contractor's insurance.
  - j) Contractor's insurance policies shall each be endorsed to provide that such insurance is primary protection and any self-funded or commercial coverage maintained by City shall not be called upon to contribute to loss recovery.
  - k) In the course of the project, Contractor shall report, in a timely manner, to City's officially designated contract administrator any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
  - l) Contractor's liability shall not be limited to the specified amounts of insurance required herein.
  - m) Upon the request of City, Contractor shall provide complete copies of all insurance policies required by these contract documents.

- 10) **NONRESIDENT BIDDERS:** Pursuant to Article 601g, Texas Revised Civil Statutes, the City of Fort Worth will not award this contract to a non resident bidder unless the nonresident's bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

"Nonresident bidder" means a bidder whose principal place of business is not in this state, but excludes a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

"Texas resident bidder" means a bidder whose principal place of business is in this state, and includes a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

This provision does not apply if this contract involves federal funds.

The appropriate blanks of the Proposal must be filled out by all nonresident bidders in order for its bid to meet specifications. The failure of a nonresident contractor to do so will automatically disqualify that bidder.

- 11) **MINORITY AND WOMEN BUSINESS ENTERPRISES:** In a accord with City of Fort Worth Ordinance No. 15530, the City of Fort Worth has goals for the participation of minority business enterprises and women business enterprises in City contracts. A copy of the Ordinance can be obtained from the Office of the City Secretary. The bidder shall submit the MBE/WBE UTILIZATION FORM SUBCONTRACTOR/SUPPLIER UTILIZATION FORM , PRIME CONTRACTOR WAIVER FORM, and/or the GOOD FAITH EFFORT FORM ("with Documentation") and/or the JOINT VENTURE FORM as appropriate. The Documentation must be received by the managing department no later than 5:00 p.m., five (5) City business days after the bid opening date. The bidder shall obtain a receipt from the appropriate employee of the managing department to whom delivery was made. Such receipt shall be evidence that the documentation was received by the City. Failure to comply shall render the bid non-responsive.

Upon request, Contractor agrees to provide the Owner complete and accurate information regarding actual work performed by a minority business enterprise (MBE) and/or women business enterprise (WBE) on the contract and payment thereof. Contractor further agrees to permit any audit and/or examination of any books, records or files in its possession that will substantiate the actual work performed by an MBE and/or WBE. The misrepresentation of facts (other than a negligent misrepresentation) and/or commission of fraud by the Contractor will be grounds for termination of the contract and/or initiating action under appropriate Federal, State or local laws or ordinances relating to false statements. Further, any such misrepresentation facts (other than a negligent misrepresentation) and/or commission of fraud will result in the Contractor being determined to be irresponsible and barred from participating in City work for a period of time of not less that three (3) years.

- 12) **AWARD OF CONTRACT:** Contract will be awarded to the lowest responsive bidder. The City reserves the right to reject any and/or all bids and waive any and/or all irregularities. No bid may be withdrawn until the expiration of ninety (90) days from the date the M/WBE UTILIZATION FORM, PRIME CONTRACTOR WAIVER FORM, GOOD FAITH EFFORT FORM, and/or the JOINT VENTURE FORM ("Documentation") as appropriate is received by the City. The award of contract, if made, will be within ninety (90) days after this documentation is received, but in no case will the award be made until all the responsibility of the bidder to whom it is proposed to award the contract has been verified.
- 13) **PAYMENT:** The Contractor will receive full payment (minus retainage) from the City for all work for each pay period. Payment of the remaining amount shall be made with the final payment, and upon acceptance of the project.
- 14) **ADDENDA:** Bidders are responsible for obtaining all addenda to the contract documents prior to the bid receipt time and acknowledging them at the time of bid receipt. Information regarding the status of addenda may be obtained on-line on City's Buzzsaw site or by contacting the City Project Manager. Bids that do not acknowledge all applicable addenda may be rejected as non-responsive.
- 15) **CONTRACTOR COMPLIANCE WITH WORKER'S COMPENSATION LAW:**
- a) Workers Compensation Insurance Coverage
- 1) Definitions:
- Certain of coverage ("certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory worker's compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
- Duration of the project-includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
- Persons providing services on the project ("subcontractor" in §406.096)-includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or toner services related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- 2) The contractor shall provided coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) or all employees of the contractor providing services on the project, for the duration of the project.

- 3) The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- 4) If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- 5) The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
  - a) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - b) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- 6) The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter
- 7) The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- 8) The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Worker's Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- 9) The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
  - a) provide coverage, based on proper reporting on classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;
  - b) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - c) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - d) obtain from each other person with whom it contracts, and provide to the contractor:

- 1) a certificate of coverage, prior to the other person beginning work on the project; and
  - 2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- e) retain all required certificates of coverage on file for the duration of the project and for one year thereafter.
  - f) notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - g) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- 10) By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by worker's compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative, criminal, civil penalties or other civil actions.
- 11) The contractor's failure to comply with any of these provisions is a breach of contract by the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity
- b) The contractor shall post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Texas Worker's Compensation Act or other Texas Worker's Compensation Commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text, without any additional words or changes:

**"REQUIRED WORKER'S COMPENSATION COVERAGE"**

The law requires that each person working on this site or providing services related to this construction project must be covered by worker's compensation insurance. This includes persons providing, hauling or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee".

Contact the Texas Workers' Compensation Commission to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage".

16) **NON DISCRIMINATION:** The contractor shall not discriminate against any person or persons because of sex, race, religion, color, or national origin and shall comply with the provisions of City Ordinance 7278, as amended by City Ordinance 7400 (Fort Worth City Code Sections 13A-21 through 13A-29), prohibiting discrimination in employment practices.

17) **AGE DISCRIMINATION:** In accordance with the policy ("Policy") of the Executive Branch of the federal government, contractor covenants that neither it nor any of its officers, members, agents, or employees, will engage in performing this contract, shall, in connection with the employment, advancement or discharge of employees or in connection with the terms, conditions or privileges of their employment, discriminate against person because of their age except on the basis of a bona fide occupational qualification, retirement plan or statutory requirement.

Contractor further covenants that neither it nor its officers, members, agents, or employees, or person acting on their behalf, shall specify, in solicitations or advertisements for employees to work on this Contract, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan or statutory requirement.

Contractor warrants it will fully comply with the Policy and will defend, indemnify and hold City harmless against any and all claims or allegations asserted by third parties against City arising out of

Contractor's alleged failure to comply with the above referenced Policy concerning age discrimination in the performance of this Contract.

18) **DISCRIMINATION DUE TO DISABILITY:** In accordance with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), Contractor warrants that it will not unlawfully discriminate on the basis of disability in the provision of services to the general public, nor in the availability, terms and/or conditions of employment for applicants for employment with, or current employees of Contractor. Contractor warrants it will fully comply with ADA's provisions and any other applicable federal state and local laws concerning disability and will defend indemnify and hold City harmless against any claims or allegations asserted by third parties against City arising out of Contractor's alleged failure to comply with the above-referenced laws concerning disability discrimination in the performance of this Contract.

19) **PROGRESS PAYMENTS, FINAL PAYMENT, PROJECT ACCEPTANCE AND WARRANTY:**

- a) The contractor will receive full payment (less retainage) from the city for each pay period.
- b) Payment of the retainage will be included with the final payment after acceptance of the project as being complete.
- c) The project shall be deemed complete and accepted by the City as of the date the final punch list has been completed, as evidenced by a written statement signed by the contractor and the City.
- d) The warranty period shall begin as of the date that the final punch list has been completed.
- e) Bills Paid Affidavit and Consent of Surety shall be required prior to final payment becoming due and payable.

- f) In the event that the Bills Paid Affidavit and Consent of Surety have been delivered to the city and there is a dispute regarding
    - 1) final quantities, or
    - 2) liquidated damages, city shall make a progress payment in the amount that city deems due and payable.
  - g) In the event of a dispute regarding either final quantities or liquidated damages, the parties shall attempt to resolve the differences within 30 calendar days.
- 20) **PREQUALIFICATION REQUIREMENTS:** All contractors submitting bids are required to be prequalified by the Fort Worth Transportation and Public Works Department prior to submitting bids for pavement contracts. This prequalification process will establish a bid limit based on a technical evaluation and financial analysis of the contractor. It is the bidder's responsibility to submit the following documentation: a current financial statement, an acceptable experience record, an acceptable equipment schedule as outlined in the PREQUALIFICATION REQUIREMENTS FOR PAVING CONTRACTORS most recent version, and any other documents the Department may deem necessary, to the Director of Transportation and Public Works at least fourteen (14) calendar days prior to the date of the opening of bids.
- a) The financial statement required shall have been compiled by an independent certified public accountant or an independent public accountant holding a valid permit issued by an appropriate State licensing agency and shall have been so prepared as to reflect the financial status to the submitting company. This statement must be current and not more than one (1) year old. In the case that a bidding date falls within the time a new statement is being prepared, the previous statement shall be updated with proper verification.
  - b) For an experience record to be considered to be acceptable for a given project, it must reflect the experience of the firm seeking qualification in work of both the same nature and technical level as that of the project for which bids are to be received.
  - c) The Director of the Transportation and Public Works Department shall be the sole judge as to the level of project a Contractor is qualified to bid based upon a review of the information submitted.
  - d) The City, at its sole discretion, may reject any bid for failure by the Contractor to demonstrate acceptable experience, expertise or financial wherewithal to perform the work included in the project.
  - e) Any proposals submitted by a non-prequalified bidder shall be returned unopened, and if inadvertently opened, shall not be considered
  - f) The City will attempt to notify prospective bidders whose qualifications (financial or experience) are not deemed to be suitable for the nature and/or magnitude of the project on which bids are to be received. Failure to notify shall not be a waiver of any necessary prequalification.
  - g) Any contractor who becomes qualified and remains in good standing with the City will not be required to submit for re-qualification for 2 years from the date of having last being qualified. Re-qualification procedures are included in the PREQUALIFICATION REQUIREMENTS FOR PAVING CONTRACTORS document.