



AIA[®] Document A701[™] – 1997

Instructions to Bidders

for the following PROJECT:

(Name and location or ~~address~~ address):

Orig A701 - 1997

THE OWNER:

(Name, legal status and address)(Name and address):

THE ARCHITECT:

(Name, legal status and address)(Name and address):

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

[Revised 7/22/09 – A101]

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ARTICLE 1 DEFINITIONS

§ 1.1 Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, ~~Instructions to Bidders, Supplementary Instructions to Bidders, the bid form,~~ Project Information Sheet (Division 00030), Instructions to Bidders (Division 00100), , the Bid Document (Division 00200), and other sample bidding and contract forms. In the event of any conflict between the provisions of any of the Bidding Requirements, the provisions in the document first to appear in the foregoing list of Bidding Requirements shall control. If a conflict is discovered, the Owner should be notified in writing. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Addenda issued prior to execution of the Contract.

§ 1.2 ~~Definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201, or in other Contract Documents are applicable to the Bidding Documents.~~ **Minority and Women-Owned Business Enterprises:**

1.2.1 Minority Business Enterprise (MBE):

1.2.1.1 At least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged. In the case of a publically owned business, at least 51 percent of its stock must be unconditionally owned by one or more socially and economically disadvantaged individuals such as African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans and Subcontinent Asian Americans;

1.2.1.2 whose management and daily business operation is controlled by one or more such individuals

1.2.2 Woman-Owned Business Enterprise (WBE):

1.2.2.1 An organization that is at least 51 percent owned and controlled by a woman or women who are U.S. citizens.

1.2.3 Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in day-to-day management.

1.2.4 Case Western Reserve University acting in good faith may rely on representations by vendors regarding their status

§ 1.3 ~~Addenda are written or graphic instruments issued by the Architect prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.~~ Definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201, or in other Contract Documents are applicable to the Bidding Documents.

§ 1.4 ~~A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.~~ Addenda are written or graphic instruments issued by the Architect prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.

§ 1.5 ~~The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.~~ A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.

§ 1.6 ~~An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.~~ The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.

§ 1.7 A Unit Price An Alternate Bid (or Alternate) is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

§ 1.8 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents.

§ 1.9 A Sub-bidder Bidder is a person or entity who submits a bid to a Bidder for materials, equipment or labor for a portion of the Work Bid and who meets the requirements set forth in the Bidding Documents.

§ 1.10 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment or labor for a portion of the Work.

ARTICLE 2 BIDDER'S REPRESENTATIONS

§ 2.1 The Bidder by making a Bid represents that:

§ 2.1.1 The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.

§ 2.1.2 The Bid is made in compliance with the Bidding Documents Documents and the Bidder accepts all of the terms and conditions of the Bidding Requirements.

§ 2.1.3 The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.

§ 2.1.4 The Bid is based upon the materials, equipment and systems required by the Bidding Documents without exception.

§ 2.1.5 Bidder acknowledges that the Owner and the Architect do not assume responsibility for the accuracy or completeness of information or data shown or indicated in the Bidding Documents with respect to Underground Facilities at or contiguous to the site. The Bidder does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents.

§ 2.1.6 The Bidder agrees that no work shall begin until issuance of a Notice to Proceed by the Owner.

§ 2.1.7 The Bidder agrees to plan and perform the work in a manner to effect the minimum interference with other Contractors working in the area, and the Bidder shall not interfere with operation of the Owner's facilities.

§ 2.1.8 The Bidder further agrees that it will exercise its best efforts to avoid and minimize labor disputes (including jurisdictional disputes) and disruptions on the Owner's premises.

§ 2.1.9 The Bidder acknowledges that if the Owner desires to, and will accept beneficial occupancy of the facility prior to the stated completion date if it is considered to be substantially complete by the Architect and the Contractor, will allow the Owner to take occupancy of the facility.

§ 2.1.10 General Information

§ 2.1.10.1 It is the policy of the Owner, Case Western Reserve University, not to discriminate on the basis of race, religion, age, sex, color, disability, sexual orientation, national or ethnic origin, political affiliation, or status as a disabled veteran, veteran of the Vietnam era or other veteran status and to take action to ensure that applicants and employees are treated fairly. The Owner will comply with all applicable federal, state, and local laws, ordinances, orders, and rulings governing equal employment opportunity. The Owner expects

that all Contractors and subcontractors will comply with this nondiscrimination policy and all applicable laws and ordinances.

§ 2.1.10.2 The Bidder shall endeavor to maintain a working environment free from sexual harassment and harassment based on race, religion, age, sex, color, disability, sexual orientation, national or ethnic origin, political affiliation or veteran status, intimidation and coercion at the Project Site. The Bidder and all subcontractors shall ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain such a working environment, with specific attention to members of protected classes working at the Project Site as well as students, faculty, staff and others on or near the site. Failure to comply with this policy will result in immediate permanent dismissal of the offender from the Project.

§ 2.1.11 M/WBE Participation

§ 2.1.11.1 It is the policy of the Owner that, in acquiring goods and services, it maintains an environment that promotes, increases, and improves the overall participation of a widely-diverse group of business enterprises. The Owner is committed to assist M/WBE in gaining access to business opportunities at the University.

§ 2.1.11.2 The Owner, as a continuation of its commitment to equal opportunity, has adopted policies and procedures to assure meaningful participation of M/WBE in all appropriate phases of construction.

§ 2.1.11.3 It is the expectation of the Owner that the Bidder, as part of its proposal, provide a plan to include underrepresented minorities and women, including M/WBE, as part of: (1) the project team (as applicable), (2) subcontract and supplier contracts, and (3) the overall labor force. The Owner wants to ensure that subcontractors and suppliers owned by underrepresented minorities or women are made aware of the project and given opportunities to effectively participate in the competitive bidding process.

ARTICLE 3 BIDDING DOCUMENTS

§ 3.1 COPIES

~~§ 3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement or Invitation to Bid in the number and for the deposit sum, if any, stated therein. The deposit will be refunded to Bidders who submit a bona fide Bid and return the Bidding Documents in good condition within ten days after receipt of Bids. The cost of replacement of missing or damaged documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the Bidding Documents and the Bidder's deposit will be refunded.~~

§ 3.1.2 Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the Advertisement or Invitation to Bid, or in supplementary instructions to bidders.

§ 3.1.3 Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

§ 3.1.4 The Owner and Architect may make copies of the Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work. No license or grant of use is conferred by issuance of copies of the Bidding Documents.

§ 3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

§ 3.2.1 The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Architect errors, inconsistencies or ambiguities discovered.

§ 3.2.2 Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Architect at least seven days prior to the date for receipt of Bids.

§ 3.2.3 Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.

§ 3.3 SUBSTITUTIONS

§ 3.3.1 The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

§ 3.3.2 No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Architect at least ten days prior to the date for receipt of Bids. Such requests shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of the Work, including changes in the work of other contracts that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

§ 3.3.3 If the Architect approves a proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.

§ 3.3.4 No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

§ 3.4 ADDENDA

§ 3.4.1 Addenda will be transmitted to all who are known by the issuing office to have received a complete set of Bidding Documents.

§ 3.4.2 Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

§ 3.4.3 Addenda will be issued no later than four days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

§ 3.4.4 Each Bidder shall ascertain prior to submitting a Bid that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

ARTICLE 4 BIDDING PROCEDURES

§ 4.1 PREPARATION OF BIDS

§ 4.1.1 Bids shall be submitted on the forms included with the Bidding Documents.

§ 4.1.2 All blanks on the bid form shall be legibly executed in a non-erasable medium.

§ 4.1.3 Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

§ 4.1.4 Interlineations, alterations and erasures must be initialed by the signer of the Bid.

§ 4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change."

§ 4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall make no additional stipulations on the bid form nor qualify the Bid in any other manner.

§ 4.1.7 Each copy of the Bid shall state the legal name of the Bidder and the nature of legal form of the Bidder. The Bidder shall provide evidence of legal authority to perform within the jurisdiction of the Work. Each copy shall be

signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

§ 4.2 BID SECURITY

~~§ 4.2.1 Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the Instructions to Bidders. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. The amount of the bid security shall not be forfeited to the Owner in the event the Owner fails to comply with Section 6.2.~~

~~§ 4.2.2 If a surety bond is required, it shall be written on AIA Document A310, Bid Bond, unless otherwise provided in the Bidding Documents, and the attorney in fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney.~~

~~§ 4.2.3 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.~~

§ 4.3 SUBMISSION OF BIDS

§ 4.3.1 All copies of the Bid, the bid security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by ~~mail~~, ~~mail~~ or ~~courier~~, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

§ 4.3.2 Bids shall be deposited at the designated location prior to the time and date for receipt of Bids. Bids received after the time and date for receipt of Bids will be returned unopened.

§ 4.3.3 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

§ 4.3.4 Oral, telephonic, telegraphic, facsimile or other electronically transmitted bids will not be considered.

~~§ 4.3.5 Bids shall remain subject to acceptance by the Owner without the right to modify or withdraw for sixty (60) days after the day of the Bid opening.~~

§ 4.4 MODIFICATION OR WITHDRAWAL OF BID

§ 4.4.1 A Bid may not be modified, withdrawn or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.

§ 4.4.2 Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. Written confirmation over the signature of the Bidder shall be received, and date- and time-stamped by the receiving party on or before the date and time set for receipt of Bids. ~~A change shall be so worded as not to reveal the amount of the original Bid.~~

§ 4.4.3 Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

§ 4.4.4 Bid security, if required, shall be in an amount sufficient for the Bid as resubmitted.

ARTICLE 5 CONSIDERATION OF BIDS

§ 5.1 OPENING OF BIDS

~~At the discretion of the Owner, if stipulated in the Advertisement or Invitation to Bid, the~~ The properly identified Bids received on time will be publicly opened and will be read aloud. An abstract of the Bids may be made available to Bidders privately opened.

§ 5.2 REJECTION OF BIDS

~~The Owner shall have the right to reject any or all Bids. A Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.~~ § 5.2.1 The Owner shall have the right to reject any or all Bids. A Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.

§ 5.2.2 Any bid that omits the requested information on participation by minority and women-owned business enterprises ("M/WBE") may be considered "non-responsive" and may be rejected.

§ 5.3 ACCEPTANCE OF BID (AWARD)

§ 5.3.1 It is the intent of the Owner to award a Contract to the lowest qualified Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

§ 5.3.2 The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted.

§ 5.3.3 The contract, if awarded, shall be awarded to the lowest responsible bidder(s) subject to the Owner's right to reject any or all bids and to waive any informality in the bids or in the bidding which is determined by the Owner to be in the best interest(s) of the Owner.

ARTICLE 6 POST-BID INFORMATION

§ 6.1 CONTRACTOR'S QUALIFICATION STATEMENT

~~Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request, a properly executed AIA Document A305, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted as a prerequisite to the issuance of Bidding Documents. Submitted with the Bid~~

§ 6.2 OWNER'S FINANCIAL CAPABILITY

~~The Owner shall, at the request of the Bidder to whom award of a Contract is under consideration and no later than seven days prior to the expiration of the time for withdrawal of Bids, furnish to the Bidder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Unless such reasonable evidence is furnished, the Bidder will not be required to execute the Agreement between the Owner and Contractor.~~

§ 6.3 SUBMITTALS

~~§ 6.3.1 The Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, after notification of selection for the award of a Contract, furnish to the Owner through the Architect in writing:~~

- ~~.1 a designation of the Work to be performed with the Bidder's own forces;~~
- ~~.2 names of the manufacturers, products, and the suppliers of principal items or systems of materials and equipment proposed for the Work; and~~
- ~~.3 names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.~~

§ 6.3.2 The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

§ 6.3.3 Prior to the execution of the Contract, the Architect will notify the Bidder in writing if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. ~~In the event of either withdrawal or disqualification, bid security will not be forfeited.~~

§ 6.3.4 Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.

§ 6.3.5 Prior to award of Contract, the successful Bidder shall be required to document M/WBE participation by providing names and contract dollar amounts.

ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

§ 7.1 BOND REQUIREMENTS

§ 7.1.1 If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Bonds may be secured through the Bidder's usual sources.

§ 7.1.2 If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

§ 7.1.3 If the Owner requires that bonds be secured from other than the Bidder's usual sources, changes in cost will be adjusted as provided in the Contract Documents.

§ 7.2 TIME OF DELIVERY AND FORM OF BONDS

§ 7.2.1 The Bidder shall deliver the required bonds to the Owner ~~not later than three days following the date of execution of the Contract~~ prior to the issuance of a fully executed Contract and the Owner's Purchase Order. If the Work is to be commenced prior thereto in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1.

§ 7.2.2 Unless otherwise provided, the bonds shall be written on AIA Document A312, Performance Bond and Payment Bond. Both bonds shall be written in the amount of the Contract Sum.

§ 7.2.3 The bonds shall be dated on or after the date of the Contract.

§ 7.2.4 The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

Unless otherwise required in the Bidding Documents, the Agreement for the Work will be written on AIA Document ~~A101, A121, Standard Form of Agreement Between Owner and Contractor Where the Basis of Payment Is a Stipulated Sum~~ Construction Manager where the Construction Manager is Also the Constructor.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 10:42:12 on 04/29/2010 under Order No. 5474930795_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A701™ – 1997 - Instructions to Bidders, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)