

SECTION 1.0
GENERAL INSTRUCTIONS TO BIDDERS

BID No.: 2017-RED-BID-CON-066

SECTION 1

GENERAL INSTRUCTIONS TO BIDDERS

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IN ADDITION, PLEASE SEE EXHIBIT E-1 THRU E-8 FOR ALL STATE OF NEW JERSEY CONSTRUCTION RELATED COMPLIANCE REQUIREMENTS.

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GENERAL INSTRUCTION TO BIDDERS

ARTICLE 1

DEFINITIONS

- 1.1 The term “NJEDA”, “Authority” or “Owner” shall mean the New Jersey Economic Development Authority, located at 36 West State Street, P.O. Box 990, Trenton, New Jersey, 08625-0990.
- 1.2 Bid Documents include the General Instructions to Bidders, Construction Conditions, Rider A - Scope of Work, Form of Proposal and the General Contract Documents, including Bid Modifications issued prior to the receipt of bids.
- 1.3 Bid Modifications that are written, or graphic instruments, issued prior to execution of the Agreement, which modify or interpret the bid documents, including Drawings and Specifications, Addenda or Bulletins, making additions, deletions, clarifications or corrections, will become part of the Contract Documents when the Agreement is executed.
- 1.4 It is understood that where the Contract Documents impose any obligation on the General Contractor the Bidder shall assume all such obligations, to the extent that they may relate to the work covered by the Contract Documents. Wherever the term "General Contractor", "Contractor", "Subcontractor", “Vendor” or the like appears in the Contract Documents, it shall be construed to mean the Bidder excepting in such events or instances where it will be in conflict with or distort the true meaning and intent of language of the prime contract documents or of the Agreement, or any other Contract Documents.
- 1.5 For the purposes of this Bid, the following definitions apply for items regarding evaluation of the Proposal submission and subsequent compliance in accordance with the terms of the Contract:

MAY: “May” means the Bid item is recommended, but not mandatory for the Bid to be complete.

MUST: “Must” means the Bid item is mandatory for a Bid to be complete.

SHALL: “Shall” means the Bid item is mandatory for a Bid to be complete.

SHOULD: “Should” means the Bid item is recommended, but not mandatory for the Bid to be complete.

ARTICLE 2

BIDDER'S REPRESENTATION

- 2.1 Each Bidder by making its bid represents that it has read and fully understands the Bid Documents.
- 2.2 Each Bidder by making its bid represents that it has visited the site and has familiarized itself with the local conditions under which the work is to be performed.
- 2.3 The failure of any Bidder to receive or examine any form, instrument or document or to visit the site and acquaint itself with conditions there existing, shall in no way relieve the Bidder from any obligation with respect to its Bid.

ARTICLE 3

BIDDING PROCEDURES

- 3.1 All Bids must be submitted in accordance with the Bid Documents, General Instructions to Bidders and the Construction Conditions.
- 3.2 Attention is particularly called to the importance of filling in all Alternate Estimates called for as NJEDA reserves the right to let a Contract or Contracts based upon the possible inclusion of one or more such Alternates. The amount quoted for each Alternate Estimate must include any and all modifications made necessary by the use of such Alternate.
- 3.3 The Bidder must include all labor, materials, etc., in connection with or incidental to each Alternate quotation, whether specifically mentioned or not, so that a complete project results in each instance.
- 3.4 Alternate prices may be considered. NJEDA shall have the right to accept Alternates in any order or combination and to have the right to accept and to determine the contract price on the basis of the sum of the Base Bid and the Alternates accepted. Failure to state a change in price for an Alternate shall be considered as "no change" in price.
- 3.5 All Bids must be submitted on the Proposal Form supplied by NJEDA in **triplicate**, and shall be subject to all requirements of the Contract Documents. All Bids must be regular in every respect; all applicable spaces must be filled in and no interlineations, excisions or special conditions shall be made or included in the

Form of the Bid by the Bidder. Conditional bids will not be accepted, nor will oral, telephone, or e-mailed, bids. Erasures or other changes in the bids must be explained or noted over the signature of the Bidder. **DO NOT FAX BIDS.**

3.6 Bids will be received until the advertised time for receipt of bid and then opened in accordance with the Bid Documents. No responsibility will be assumed for the premature opening of a bid not properly addressed and identified.

3.7 Bids may be withdrawn or modified on written request dispatched by the Bidder and received by NJEDA prior to the time for receipt of bids, provided that written confirmation of withdrawal over the signature of the Bidder shall be placed in the mail with the postmark prior to the time set for receipt of bids. It shall be so worded as not to reveal the amount of the original Bid. Accordingly, any Bid Documents submitted in response to this Bid will be considered a firm Offer by the responding Bidder to perform the Scope of Services as outlined in the Bid Documents and Specimen Contract.

A Bid may not be modified, withdrawn or canceled by the Bidder during the 90 calendar day time period following the time and date designated for the receipt of bids, and Bidder so agrees in submitting its Bid unless otherwise stated in the Bid Form, in which case, the Bid Form shall control.

Negligence on the part of the Bidder in preparing its Bid confers no right for the withdrawal of the Bid after it has been opened.

ARTICLE 4

EXAMINATION OF BIDDING DOCUMENTS

4.1 Each Bidder must examine the Bid Documents carefully and, shall request, via question to QARED@njeda.com during the question and answer period only, as outlined in the Invitation to Bid, to NJEDA for interpretation or correction of any ambiguity, inconsistency or error therein which the Bidder may discover. Any interpretation, clarification or correction and any supplemental instructions will be issued on the NJEDA website and as outlined in the Bid Documents, not later than two working days prior to the date of the opening of the bids as a Bid Modification or Addendum. All Bid Modifications and Addenda issued shall become part of the Contract Documents and should be acknowledged in all bid proposals on the Acknowledgement of Receipt of Addenda / Q&A Form. Only a written interpretation or correction included in a Bid Modification or Addendum shall be binding. No Bidder shall rely upon any interpretation or correction given by any other method. **The Acknowledgement of Receipt of Addenda / Q&A Form provided in Section 16.0 should be signed and submitted to NJEDA as part of the Bid submission whether or not Addenda or Q&A were issued for the Bid.**

ARTICLE 5

MATERIAL SUBSTITUTION

- 5.1 Each Bidder represents that its Bid is based upon the materials and equipment described in the Bid Documents.
- 5.2 No substitution of material or equipment will be considered unless written request has been submitted to NJEDA for approval during the question and answer period only as outlined in the Bid Documents. Each such request shall include a complete description of the proposed substitution, the name of the material or equipment for which it is to be substituted, drawings, catalog cuts, performance and test data, appropriate credit price, and any other data or information necessary for complete evaluation.
- 5.3 If any proposed material or equipment substitution is approved, such approval will be set forth in a Bid Modification.
- 5.4 Consideration will be given to a Bidder's Proposed Substitution (material, equipment and subcontractor) provided that complete information and appropriate credit is included for each item, but it is understood that the Base Bid is in strict accordance with the plans and specifications.

ARTICLE 6

QUALIFICATION OF BIDDERS

- 6.1 All Bidders shall submit to NJEDA a properly executed Contractor's Qualification Statement as included in Section 15.
- 6.2 In order to provide the Authority with the ability to evaluate Bidders' financial capacity to undertake and successfully complete the contract, all Bidders should submit certified financial statements, including the balance sheet, income statement and statement of cash flow, and all applicable notes, for the most recent calendar year or the Bidder's most recent fiscal year. If certified financial statements are not available, the Bidder should provide either a reviewed or compiled statement from an independent accountant setting forth the same information required for the certified financial statements, together with a certification from the Chief Executive Officer and the Chief Financial Officer that the financial statements and other information included in the statements fairly represent, in all material respects, the financial condition, results of operations and cash flows of the Proposer as of, and for, the periods presented in the statements.

Bidders should submit their financial information in a separate sealed envelope.

- 6.3 If a Bidder is a corporation, they should submit a completed listing of shareholders on the Affirmative Action Certificate (Rider E, Article 18) of this document.

ARTICLE 7

REJECTION OF BIDS

- 7.1 The Bidder acknowledges the right of NJEDA to reject any or all Bids and to waive any informality or irregularity in any Bid received, in accordance with applicable laws. In addition, the Bidder recognizes the right of NJEDA to reject a Bid if the Bidder fails to provide the data required by the Bid Documents or if the Bid is in any way incomplete, unresponsive, or non-compliant.

ARTICLE 8

TAXES

- 8.1 Unless otherwise specifically excluded by the "Rider A", the Contract Sum proposal, Alternates, Unit Prices and Bidder initiated Alternates shall include all applicable taxes. **No sales tax shall be charged due to the tax-exempt status of NJEDA.**
- 8.2 All trade contractors and subcontractors on the project are required to be registered with the New Jersey Division of Taxation and the New Jersey Department of Labor and Workforce Development, and are to comply with all New Jersey tax laws and provide evidence of same.

ARTICLE 9

POST BID INFORMATION

- 9.1 Upon request by NJEDA, the selected Bidder shall within seven calendar days thereafter submit the following:
- 9.1.1. A statement of Costs for each major item of work included in the Bid.
 - 9.1.2. A designation of the work to be performed by the Bidder with its own forces.
 - 9.1.3. A list of names of the trade contractors or other persons or organizations (including those who are to furnish materials or equipment to a design) proposed for such portions of the work as

may be designated in the Bid Documents or, if no portions are so designated, the names of the trade contractors proposed for the principal portions of the work.

The Bidder may, as a Bidder-Proposed Substitution, submit a substitute contractor with a decrease in its Base Bid Price to cover the difference in cost occasioned by such substitution; and NJEDA at its discretion, may accept the decreased Bid Price (see Paragraph 5.4).

Subcontractors and other persons and organizations proposed by the Bidder and accepted by NJEDA must be used on the work for which they are proposed and accepted and shall not be changed without the prior written approval of NJEDA.

ARTICLE 10

BID BOND

- 10.1 Each bid must be accompanied by a Bid Bond equal to Five Percent (5%) of the maximum value of the bid prepared, on a form acceptable to NJEDA. The Bond shall be duly executed by the Bidder as principal and shall list NJEDA as obligee.

The Bid Bond shall be secured from a surety company authorized and licensed to do business in the State of New Jersey and approved by NJEDA. The Bid Bond shall be accompanied by a Consent of Surety.

NJEDA shall have the right to retain the Bid Bonds from the three lowest responsible Bidders until award. The unsuccessful Contractor's respective Bid Bonds will be returned after agreement has been reached with the successful Bidder.

ARTICLE 11

PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

- 11.1 NJEDA shall have the right, as a condition precedent to the award of the contract, to require the Bidder to furnish a 100% Performance Bond and 100% Payment Bond with a surety company authorized and licensed to do business in the State of New Jersey and approved by NJEDA. Note: Bonds shall have an endorsement naming NJEDA as obligee, and shall be in the full face amount of bid. The Bidder shall deliver the required bonds to NJEDA not later than the date of execution of the Agreement; or, if the work is commenced prior thereto, in response to a letter of intent, the Bidder shall, prior to commencement of the work, submit evidence satisfactory to NJEDA that such bonds will be issued.
- 11.2 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 its power of attorney indicating the monetary limit of such power.

- 11.3 Bonds shall be in the amount of 100% of the Contract Sum, and the cost included in the lump sum amount unless otherwise instructed on the Bid Form. The cost shall also be stated separately where indicated on the form of proposal.
- 11.4 The Bidder shall comply with the requirements of N.J.S.A. 2A:44-143 and N.J.S.A. 2A:44-144.

ARTICLE 12

EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS AND NON-SEGREGATED FACILITIES

- 12.1 During the performance of the work, the trade contractor agrees as follows: "We certify that we do not and will not maintain or provide for our employees any segregated facilities at any of our establishments, and that we do not and will not permit our employees to perform their services at any location, under our control, where segregated facilities are maintained". The term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise.

We acknowledge familiarity with Title VII of the Civil Rights Act of 1964 and Section 202 of Executive Order 11246, dated September 24, 1965, and Amendments thereto, and we agree to comply with the provisions of Paragraphs 1 through 7 of Section 202, together with all applicable rules and regulations of the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance, and certify that we are in compliance with such requirements as they pertain to government contractors, subcontractors and suppliers to contractors and subcontractors.

We agree to comply with the affirmative action requirements of Part 60-741 of Title 41, Code of Federal Regulations, with respect to handicapped workers during the performance of this Agreement.

We agree to comply with the affirmative action requirements of Part 60-250 of Title 41, Code of Federal Regulations with respect to Disabled Veterans of the Vietnam Era during the performance of this agreement.

We agree that (except where we have obtained appropriate certifications from our subcontractors and suppliers for specific time periods) we will obtain similar certifications from proposed subcontractors and suppliers prior to the award of subcontracts or purchase orders exceeding \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity clause of Executive Order 11246; that we will retain such certifications in our files; and that we will notify proposed subcontractors and suppliers that we are subject to the provisions of the certification requirements.

- 12.2 See Article 18 for NJEDA Prevailing Wage and Affirmative Action Requirements and forms.

ARTICLE 13

FORM OF AGREEMENT

- 13.1 New Jersey Economic Development Authority Contractor Agreement, as included in Section 4 of the Bid, shall be the form used. Said Agreement shall be considered a Contract Document. The award of a contract under this Bid is subject to both parties entering into NJEDA's form of Contractor Agreement.

ARTICLE 14

SCOPE OF WORK

- 14.1 See Rider A.

ARTICLE 15

ADDITIONAL CONTRACT DOCUMENTS

- 15.1 See Rider B.

ARTICLE 16

MARKUPS, EXTRA WORK, UNIT PRICES AND ALTERNATES

- 16.1 See Rider C.

ARTICLE 17

INSURANCE REQUIREMENTS

17.1 See Rider D.

ARTICLE 18

COMPLIANCE REQUIREMENTS AND FORMS

18.1 See Rider E.

Rider F – Intentionally Omitted

ARTICLE 19

OSHA HAZARD COMMUNICATION CFR-1926.59

19.1 See Rider G.

ARTICLE 20

SELECTION PROCESS

- 20.1 In accordance with applicable law, NJEDA expressly reserves the right, (1) to reject any submission which is not in compliance with the terms of the Bid or any part thereof, (2) to request clarifications of a document or the contents thereof submitted in response to this Bid or (3) terminate the selection process at any time. In addition, NJEDA's staff reserves the right to allow for a clarification by a proposer, as may be permitted by law; and which is in the best interest of NJEDA.
- 20.2 NJEDA expressly reserves the right, in its sole and absolute discretion, to waive any non-material provisions or informalities of this Bid in accordance with applicable law.
- 20.3 NJEDA reserves the right to waive minor elements of non-compliance of any firm's submission with regard to the requirements outlined in this Bid, to the extent allowable under applicable law.
- 20.4 Proposers responding to this Bid before the closing date will be considered for selection.
- 20.5 In accordance with all applicable law, failure to meet a mandatory requirement under the bid specifications will result in the rejection of a proposal as non-responsive.

ARTICLE 21

AWARD

- 21.1 Contractor Agreement will be awarded to the lowest responsible Bidder whose Bid conforms in all material respects with the terms and conditions of the Bid and contract documents. NJEDA reserves the right to deny award to any Bidder that is not clearly responsive, or not having the necessary financial capabilities or sufficient experience to perform the scope of services, based upon the criteria set forth in the Bid documents.
- 21.2 Award of a contract for the services outlined in this Bid will be subject to the firm's entering into the Contract for the referenced services which will be provided to the successful Bidder by NJEDA.
- 21.3 NJEDA reserves the right to solely determine, at any time, not to proceed with the project, or any portion of the project, and, in such circumstances, to reassess the order of the project, if such action is found to be in NJEDA's best interest based upon budgetary and fiscal considerations.
- 21.4 NJEDA reserves the right to proceed or not to proceed with any additional services referenced herein for the project, in the order and strictly as needed, based solely on the determination of NJEDA.
- 21.5 NJEDA retains the discretion to modify, expand or delete any portion of the Scope of Services outlined in this Bid, in accordance with applicable law.
- 21.6 Notwithstanding any information provided during the Bid opening, any requests for review or copies of Bid documents cannot be accommodated until after Notice of Award.
- 21.7 Any proposer attempting to contact government officials (elected or appointed) or NJEDA's Board members and staff, in an effort to influence the selection process, shall immediately have its proposal summarily rejected and disqualified.
- 21.8 Any proposal submitted in response to this Bid will be considered a Firm Offer by the responding firm to perform the Scope of Services, as outlined in the Bid and Contract. By submitting an Offer in response to this Bid, the responding firm agrees to hold its Offer open for at least 90 days after the response due date. Any provision in a submitted Offer that attempts to limit or condition the time that an Offer is open for consideration by NJEDA will not be binding on NJEDA. NJEDA, in its sole discretion, and subject to applicable law, reserves the

right, upon written request and good cause shown to the satisfaction of NJEDA's staff, to allow a responding firm to withdraw its Offer after Offers have been opened.

- 21.9 Any proposer may protest a Contractor selection (an award) by NJEDA. In order for a protest to be timely, it must be submitted to the Vice President – Real Estate Division within ten (10) business days of receipt of the unsuccessful notification. The notifications will be sent via email and letter via regular US mail delivery. In order to be considered complete, a protest must: (i) identify the proposer that is submitting the protest, (ii) identify the contract award that is being protested, (iii) specify all grounds for the protest (including all arguments, materials and/or documents that support the protest); and, (iv) indicate whether an oral presentation is requested, and if so, the reason for the oral presentation. A Hearing Officer will be designated by NJEDA's President/Chief Operating Officer. The designated Hearing Officer will review all timely and complete Contractor protests and will have sole discretion to determine if an oral presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest.
- 21.10 After completing his or her review of the protest, the Hearing Officer will write a report making a recommendation regarding the merits of the contract award protest. The protestor will receive a copy of the "*Hearing Officer's Report*" and be given a ten (10) business day "*Exceptions Period*" to refute the findings of the Hearing Officer. The "*Hearing Officer's Report*" and any exceptions submitted by the protestor will be submitted to either NJEDA's Board of Directors or NJEDA's President and Chief Executive Officer, as determined by the dollar amount of the potential award as it relates to NJEDA's internal *Operating Authority Approval Levels*, for a final decision to award the contract.
- 21.11 It is NJEDA's intent not to award the Contract until it has completed all of the review procedures described in this section. If, however, in NJEDA's sole discretion, it is determined that such an award is necessary to support the uninterrupted and efficient business operations of NJEDA, the Contract may be awarded. NJEDA's Board of Directors or Chief Executive Officer will review the protestor's "*Exceptions to the Hearing Officer's Report*" and shall render a decision regarding the appropriateness of the award. The action of NJEDA's Board of Directors or President or Chief Executive Officer, to make a final decision for the award of the contract will be a final NJEDA action that is appealable to the Appellate Division of the Superior Court of New Jersey.
- 21.12 Proposals submitted in response to this Bid will be available, upon request, for public inspection. NJEDA will make every effort to maintain confidentiality of information received as part of the Bid. However, all proposers are cautioned that NJEDA is subject to the provisions of the New Jersey Open Public Meetings Act,

N.J.S.A. 10:4-6 et seq. and the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq. (“OPRA”) and are bound by the requirements of both and relevant case law.

- 21.13 Proposals can be released to the public during the protest period or after contract award under OPRA or the common law right to know as established under New Jersey case law. A proposer may designate specific information as not subject to disclosure pursuant to the exceptions to OPRA found at N.J.S.A. 47:1A-1.1, when a good faith legal and/or factual basis for such assertion exists. Any proprietary and/or confidential information contained in a proposal will be redacted by NJEDA; however, NJEDA reserves the right to make a determination as to what is proprietary or confidential, and will advise the proposer accordingly. The location in the proposal of any such designation should be clearly stated in a cover letter. **NJEDA will not honor any attempt by the proposer to designate its entire proposal as proprietary, confidential and/or to claim copyright protection for its entire proposal.** In the event of any challenge to the proposer’s assertion of confidentiality, the proposer shall be solely responsible for defending its designation and NJEDA shall have no responsibility therefore.

ARTICLE 22

COMPENSATION

- 22.1 Refer to **Section 6.0** – Bid Form.
Each Bidder must, on the attached Bid Form, provide a lump sum as indicated for all items to successfully complete the Scope of Services requested and outlined in the Bid Documents within the specified time/schedule. The lump sum is to be fully loaded (including all reimburseable costs, notice costs, etc.) to cover all costs to complete the work as described in Section 7, Rider A.
- 22.2 No sales tax will be charged due to the tax-exempt status of NJEDA.
- 22.3 Invoices will be submitted on a monthly basis and will generally be paid within thirty (30) days from the date of receipt of a complete and acceptable invoice. The amount of payment will not exceed the corresponding percentage of completion of work. Invoices will not be processed unless accompanied by the Monthly Status Report (**Section 11 - Compliance Exhibit F-9**).
- 22.4 All invoices must be submitted to NJEDA electronically. The successful Contractor must email all invoices for payment to: **redinvoices@njeda.com**. To ensure payments are processed in a timely manner, it is important that NJEDA’s project name, the firm’s name, and the invoice number(s) are included in the subject line of each email that is submitted. All invoices must be in **PDF format**, and should be sent with a return receipt requested to ensure delivery.

- 22.5 Invoices submitted to NJEDA will be subject to review by the Office of the State Comptroller (“OSC”). Improper billing practices will be subject to penalties. Services under this Bid will be subject to N.J.A.C. 17:44-2.2. Accordingly, relevant records of the Bidder entering into the Contract are subject to audit or review by OSC pursuant to N.J.S.A. 52:15C-14(d).
- 22.6 This Contract is subject to N.J.A.C. 17:44-2.2. Accordingly, the contract partner(s) shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the OSC upon request. Furthermore, relevant records of private Contractors or other persons entering into contracts with covered entities are subject to audit or review by the OSC pursuant to N.J.S.A. 52:15C-14(d).
- 22.7 NJEDA reserves the right to audit the records of the Contractor in connection with all matters related to the Contract. The Contractor agrees to maintain records in accordance with generally accepted accounting principles, for period of not less than five (5) years after receipt of final payment.
- 22.8 Pursuant to N.J.S.A. 2A:30A-1, et seq. and N.J.S.A. 52:32-40 et seq., the terms of the is this contract are subject to the New Jersey Prompt Pay Act. This includes the provisions of the Act that address subcontracting, subcontractors and subcontracts, 30 day payment terms, and ADR for payment disputes (if applicable).
- 22.9 Pursuant to N.J.S.A. 54:49-19, and notwithstanding the provision of another law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of state government, is entitled to payment for those good or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any state tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer partner or shareholder subsection of set-off under this Act. The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-19. No request for conference, protest or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness