

NIAGARA FALLS HOUSING AUTHORITY SUPPLEMENTARY
INSTRUCTIONS TO BIDDERS

*BIDDER'S NOTE: Inclusion of "Form HUD-5369 Instructions to Bidders" is required but in every provision of the "Form HUD-5369 Instructions to Bidders" where the NFHA Supplementary Instructions to Bidders are more restrictive, the "NFHA Supplementary Instructions to Bidders" shall take precedence over the "Form HUD-5369 Instructions to Bidders".

ARTICLE 1: DEFINITIONS

- 1.1 Contract Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, the Supplementary Instructions to Bidders, the Bid Form, and other sample bidding and contract forms. The proposed contract documents consist of the form of Agreement between the Niagara Falls Housing Authority and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Amendments issued prior to execution of the Contract. These form the Contract between the Niagara Falls Housing Authority and the Bidder.
- 1.2 Definitions set forth in the General Conditions of the Contract Documents are applicable to the Bidding Documents.
- 1.3 Amendments are written or graphic instruments issued by the Niagara Falls Housing Authority and/or Architect prior to the receipt of bids which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.
- 1.4 A Bid is a complete and properly signed proposal to do the Work for the sums stipulated therein submitted in accordance with the Bidding Documents.
- 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.
- 1.6 An Alternate Bid (or Alternate) is an amount 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.
- 1.7 A 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. All Unit Prices are subject to negotiation.
- 1.8 A Bidder is a person or entity who submits a Bid directly to the Niagara Falls Housing Authority.
- 1.9 A Subcontractor 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:
 - A. The Bidder has read and understands the Bidding Documents and the Bid is made in accordance

therewith. The Bidder does signify, by the submission of a Bid, that the Bidder does accept and agree to be bound by the terms of the Instructions to Bidders, Supplementary Instructions to Bidders, to Bid Form, and any and all other applicable Contract Documents.

B. 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, for other portions of the Project, if any, being bid concurrently or presently under construction.

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

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

E. The Bidder who is awarded the Contract shall comply with 24 CFR Part 35 prohibiting the use of lead-based paint.

F. The Bidder specifically represents that the Bidder is familiar with all applicable ordinances, statutes, rules and regulations of all governmental entities concerned with this Contract, and further, that the Bidder has or will employ skilled work persons to complete the work under this Contract competently and skillfully and in a workmanlike manner.

ARTICLE 3: BIDDING DOCUMENTS

3.1 Copies:

A. 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 stated therein.

B. Bidders shall use complete sets of Bidding Documents in preparing Bids; the NFHA does not assume responsibility for errors and/or misrepresentations resulting from the use of incomplete sets of Bidding Documents.

C. In making copies of the Bidding Documents available on the above terms, the NFHA do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant permission for any other use of the Bidding Documents.

3.2 Interpretation or Correction of Bidding Documents:

A. 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 NFHA errors, inconsistencies or ambiguities discovered.

B. No oral interpretation will be made to any Bidder or Subcontractor as to the meaning of the specifications. Every request for such an interpretation shall be made in writing and addressed

to the NFHA's Modernization Department at 744 Tenth Street, Niagara Falls, New York, 14301.

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

3.3 Amendments:

A. Amendments will be mailed, delivered or faxed to all who are known to the issuing office to have received a complete set of Bidding Documents. It is the responsibility of the Bidder wishing to receive such amendments to so advise the NFHA of the name and address to which the amendments should be mailed and delivered.

B. Copies of amendments will be made available for inspection wherever Bidding Documents are on file for that purpose.

C. No amendments will be issued later than seven days prior to the date for receipt of Bids except an amendment withdrawing the request for Bids or one which include postponement of the date for receipt of Bids.

D. Each bidder shall ascertain prior to submitting a Bid that the Bidder had received amendments issued, and the Bidder shall acknowledge their receipt in the Bid.

E. All such amendments shall become a part of the Contract Documents. Failure of the NFHA to send or of any Bidder to receive an amendment shall not relieve any Bidder from obligation under his Bid as submitted.

ARTICLE 4: BIDDING PROCEDURES

4.1 Sales Tax:

A. Materials purchased by the Contractor which are to be physically incorporated in and become part of any building or improvement to real or improvement to real property of the Niagara Falls Housing Authority are exempt from all State and local sales and taxes. Bidders shall not include amounts for such items in any bids submitted by them and all Bidders shall so instruct their subcontractors and materialmen.

B. This exemption does not, however, apply to tools, machinery, equipment or other property purchased by or leased by or to the Contractor or Subcontractor or to supplies or materials not incorporated into the completed project and the Contractor and his Subcontractors shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on such tools, machinery, equipment or other property or such unincorporated supplies and materials.

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4.2 Form and Style of Bids:

A. Bids shall be submitted on the Bid Form included with the Bidding Documents. NO OTHER FORMS WILL BE ACCEPTED.

C. All blanks on the Bid Form shall be filled in by typewriter or manually in ink.

C. Where so indicated by the makeup of the Bid Form, sums shall be expressed in both words and figures, and in case of discrepancy between the two, the amount written in words and shall govern.

D. Interlineations, alternations and erasures must be initialed by the signer of the Bid.

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

F. Each copy of the Bid shall include the legal name of the Bidder and a statement that the Bidder is a sole proprietor, partnership, corporation or other legal entity. 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 thereto.

4.3 Bidder Certifications:

A. Affidavit Regarding Collusion: Each Bidder is required to submit the included in the Bidding Documents, to the effect that they have not colluded with any other person in regards to any Bid submitted. Said affidavit shall be submitted.

B. MBE Utilization Requirements: On all Contracts of \$10,000 or more, each Bidder must fully comply with the MBE Utilization Requirements including the Niagara Falls Housing Authority's established goal of 20% of the total dollar value of the contract for minority business participation, or documentation showing a good faith effort to achieve the goal for Niagara Falls Housing Authority

MBE participation. MBE forms included in the bidding documents must be completed and submitted with the sealed bid; failure to submit all forms completed in full may cause rejection of the Bid.

C. Statement of Compliance with Section 3, Housing and Urban Development Act of 1968: The form included in the Bidding Documents must be completed and submitted with the sealed Bid.

D. Representations, Certifications, and Other Statements of Bidders, Form HUD-5369-A: The form included in the Bidding Documents must be completed and submitted with the sealed bid.

E. As part of their bid, all Bidders competing for NFHA contracts by whatever means of award are required to submit proof of their authority to conduct business within New York State. Proof of partnerships and corporations could consist of providing a copy of the most recent business filing with the New York State Department of State.

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F. Statement of Bidder's Construction Experience: Each Bidder is required to submit the statement to show proof for themselves and/or their subcontractors of having performed like work.

4.4 Bid Security:

~~A. As stipulated in the Advertisement of Invitation to Bid, or supplementary instructions to bidders, each Bid shall be accompanied by a Bid Security in the amount of 10% of the Base Bid, pledging that the Bidder will enter into a Contract with the NFHA on the terms stated in the Bid and will furnish bonds covering the faithful performance of the Contract and payment of 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, the amount of the bid security shall be forfeited to the NFHA as liquidated damages, not as a penalty. ONLY THE FORM FOR THE BID BOND INCLUDED WITH THE BIDDING DOCUMENTS WILL BE ACCEPTED, AND NO OTHER FORMS WILL BE ACCEPTED.~~

~~B. On all Contracts the Bidder shall be given the option of furnishing a Bid Bond or a Bank or Certified Check made payable to the Niagara Falls Housing Authority.~~

~~C. The surety must be a guarantee or surety company acceptable to the Federal Government; it must be listed in the U.S. Treasury Circular No. 570, published annually in the Federal Register and licensed to do business in New York State.~~

~~D. The NFHA 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 have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn, or (c) all Bids have been rejected.~~

4.5 Submission of Bids:

A. All copies of the bid, ~~the bid security~~ and 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 portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

B. 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 and will not be considered.

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

D. Oral, telephonic, telegraphic or faxed Bids are invalid and will not receive consideration.

4.6 Modification or Withdrawal of Bid:

A. A Bid may not be modified, withdrawn or canceled by the Bidder without the consent of the NFHA for a period of sixty (60) days following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.

B. 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 or by telegram; if by telegram, written confirmation over the signature of the Bidder shall be mailed and postmarked 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.

C. 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.

ARTICLE 5: CONSIDERATION OF BIDS

5.1 Consideration of Bids:

A. Unless stated otherwise in the Advertisement or Invitation to Bid, the properly identified Bids received on time will be opened publicly and read aloud. An abstract of the Bids will be made available for inspection to Bidders or other interested parties upon request.

B. After bids are opened and prior to award, the NFHA reserves the right to request a Bidder to complete and submit AIA Document A305, Contractor's Qualification Statement, to show proof for themselves and/or their subcontractors of having performed like work.

C. Upon receipt of a Sole Bid, the sole bidder will be required to submit a formal, detailed breakdown in writing of their estimate. The minimum requirements of this detailed breakdown are as follows: The sole bidder is to supply a detailed breakdown by each specification section, listing labor and materials as well as profit and overhead at the bottom of the breakdown for review by the NFHA and their project consultant.

5.2 Rejection of Bids: The Niagara Falls Housing Authority reserves the right to reject any and/or all Bids, reject a Bid not accompanied by a bid security or other date required by the Bidding Documents, or reject a Bid which is in anyway incomplete or irregular.

5.3 Acceptance of Bid (Award): It is the intent of the Niagara Falls Housing Authority to award a Contract to the lowest responsible Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The NFHA shall have the right to waive informalities or irregularities in any Bid received and to accept the bid which, in the NFHA's judgement, is in the NFHA's own best interests.

ARTICLE 6: POST-BID INFORMATION

6.1 Submittals:

A. The Bidder shall, as soon as practicable after notification of selection for award of a Contract, furnish to the NFHA in writing:

1. a designation of the Work to be performed with the Bidders own forces (this must be at least 12%);
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.

B. The Bidder will be required to establish to the satisfaction of the NFHA the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents. The NFHA is prohibited from accepting as subcontractors any individuals or firms which are on lists of contractors' ineligible to receive awards from the United States, as furnished from time to time from HUD. The Bidder is responsible for determining that potential subcontractors are not on the U.S. General Services Administration Office of Acquisition Policy Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

C. Prior to the award of the Contract, the NFHA will notify the Bidder in writing if the NFHA after due investigation, has reasonable objection to a person or entity proposed by the Bidder.

D. Persons and entities proposed by the Bidder and to whom the NFHA and/or for which they were proposed and shall not be changed except with the written consent of the NFHA.

E. The NFHA shall receive copies of all second tier and lesser contracts. These subcontractors shall be reviewed to make certain they contain the required provisions.

ARTICLE 7: PERFORMANCE BOND, PAYMENT BOND AND
MAINTENANCE BOND

7.1 Bond Requirements:

A. 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.

B. The cost of furnishing such bonds shall be included in the Bid.

7.2 Time of Delivery and Form of Bonds:

A. The Contractor shall deliver the required Performance and Payment Bonds to the NFHA within ten days after his receipt of notice of acceptance of his Bid by the NFHA.

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B. Such Performance and Payment Bonds shall be executed in triplicate on the forms furnished by the NFHA and shall be written in the amount of the approved Contract Sum. **NO OTHER BOND FORMS WILL BE ACCEPTED.**

C. The Performance and Payment Bonds shall be dated on or after the date of the Contract.

~~D. The Contractor shall deliver the required Maintenance Bond at the time of the contract closeout; such bond shall be on the form furnished in the Contract Documents and shall be written in the amount of the final adjusted Contract Sum and shall be in effect for a period of one year from the date of the Certificate of Completion. NO OTHER BOND FORMS WILL BE ACCEPTED.~~

E. The Contractor 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 THE NFHA AND CONTRACTOR

8.1 Form to be Used: The Agreement for the Work shall be written on the form included in the Contract Documents. **NO OTHER FORMS WILL BE ACCEPTED, EXCEPT FOR THOSE APPROVED BY THE NFHA.**

9.1 Smoke Free Workplace- It is the policy of NFHA to prohibit smoking on all organization premises in order to provide and maintain a safe and healthy work environment for all employees. The law defines smoking as the “act of lighting, smoking or carrying a lighted or smoldering cigar, cigarette, vaping or pipe of any kind.” The smoke-free workplace policy applies to: all areas of organization buildings, all organization-sponsored off-site conferences and meetings, all vehicles owned or leased by the organization, all visitors (clients and vendors) to the organization premises, all contractors and consultants and/or their employees working on the organization premises and all employees, temporary employees and student interns. Employees who violate the smoking policy will be subject to disciplinary action up to and including immediate discharge.