

SECTION 002113 – INSTRUCTIONS TO BIDDERS

ARTICLE 1 - DEFINITIONS

All definitions set forth in the General Conditions of the Contract for Construction or in other Contract Documents are applicable to the Bidding Documents.

- 1.1 "Addenda" are written or graphic instruments issued by the Architect or Federal Way Public Schools prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections. The contents of Addenda are issued in no particular order and therefore should be carefully and completely reviewed. Addenda relating to administrative matters, such as, for example, the date or time of meetings or Bid receipt, may be issued in writing, by fax, mail or other delivery.
- 1.2 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 by Federal Way Public Schools.
- 1.3 "Award" means the formal decision by Federal Way Public Schools notifying a Bidder with the lowest Responsive Bid of Federal Way Public Schools' acceptance of the Bid and intent to enter into a contract with the Bidder. A contract is only formed upon execution of the contract by both parties and also the delivery of the purchase order from Federal Way Public Schools to the Bidder, and not simply by Award.
- 1.4 The "Award Requirements" include the statutory requirements outlined in RCW 39.04.350 as a condition precedent to Award. This includes, but is not limited to, the following criteria:
 - 1.4.1 At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;
 - 1.4.2 Have a current state unified business identifier number;
 - 1.4.3 If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;
 - 1.4.4 Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);
 - 1.4.5 If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;

- 1.4.6 Have received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The department of labor and industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its website. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption;
- 1.4.7 Before award of a public works contract, a bidder shall submit to the contracting agency a signed statement in accordance with chapter RCW 5.50 verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (1)(g) of RCW 39.04.350. A contracting agency may award a contract in reasonable reliance upon such a sworn statement.
- 1.4.8 Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW; and
- 1.4.9 If the Bidder has a history of receiving monetary penalties for not achieving the apprentice utilization requirements pursuant to RCW 39.04.320, or is habitual in utilizing the good faith effort exception process, the bidder must submit an apprenticeship utilization plan within ten business days immediately following Federal Way Public Schools' notice to proceed.
- 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 to or from which work may be deleted for sums stated in Alternate Bids.
- 1.6 A "Bid" is a complete and properly signed proposal to do the Work or designated portion thereof, submitted in accordance with the Bidding Documents, for the sums therein stipulated and supported by any data called for by the Bidding Documents.
- 1.7 A "Bidder" is a person or entity who submits a Bid for a prime contract with Federal Way Public Schools for the Work described in the Contract Documents.
- 1.8 The "Bidding Documents" include the Advertisement or Invitation to Bid, Instructions to Bidders, the Bid form, any other sample Bidding and contract forms, the Bid Bond (if required), and the Contract Documents, including any Addenda issued prior to receipt of Bids.
- 1.9 The "Contract Documents" for the Work consist of the Agreement Between Owner and Contractor, the General Conditions of the Contract (as well as any Supplemental,

Special or other Conditions included in the Project Manual), the Drawings, the Specifications, and all Addenda issued prior to and all modifications issued after execution of the Contract.

- 1.10 e-Builder is the Owner's construction software and is utilized for bid management of Small Works projects.
- 1.11 The "Owner" is Federal Way Public Schools No. 210.
- 1.12 To be considered "Responsible" or meet "Responsibility" requirements, a Bidder must meet those requirements outlined in clause 1.4 as well as the following supplemental criteria applicable to this Project to the satisfaction of the Architect and Federal Way Public Schools:
 - 1.12.1 The ability, capacity, and skill to perform the Contract;
 - 1.12.2 The character, integrity, reputation, judgment, experience, and efficiency of the Bidder;
 - 1.12.3 Whether the Bidder can perform the Contract within the time specified;
 - 1.12.4 The previous and existing compliance by the Bidder with laws relating to the Contract;
 - 1.12.5 The quality of performance of previous contracts, including demonstration of successful completion of similar projects of equal or greater size, scope and value in the last three (3) years;
 - 1.12.6 The designated Project Manager shall have a minimum of three (3) years of successful experience in project management and scheduling of projects of similar scope and complexity;
 - 1.12.7 The designated Superintendent shall have a minimum of five (5) years of successful supervision of projects of similar scope and complexity;
 - 1.12.8 Any other qualifications required by the Contract Documents or Bidding Documents; and
 - 1.12.9 Such other information as may be secured having a bearing on the decision to award the contract.
- 1.13 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.
- 1.14 A "Unit Price" is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services as described in the Bidding Documents or in the Contract Documents. Federal Way Public Schools reserves the right to reject at any time, without impairing the balance of the proposal, any or all such predetermined unit prices.

ARTICLE 2 - BIDDER'S REPRESENTATIONS

By making its Bid, each Bidder represents that:

- 2.1 *Bidding Documents.* The Bidder has read and understands the Bidding Documents, and its Bid is made in accordance with them.
- 2.2 *Pre-Bid Meeting.* The Bidder has attended any pre-bid meeting(s) required by the Bidding Documents.
- 2.3 *Possible Self-Performed Work Requirement.* The Bidder will perform *with its own forces* at least that percentage (if any) of the Work required by the Bidding Documents or the Contract Documents.
- 2.4 *Basis.* Its Bid is based upon the materials, systems, services, and equipment required by the Bidding Documents, without exception.
- 2.5 *Examination.* The Bidder has carefully examined and understands the Bidding Documents, the Contract Documents (including without limitation any liquidated damages and insurance provisions), and the Project site, including any existing buildings, it has familiarized itself with the local conditions under which the Work is to be performed and has correlated its observations with the requirements of the Contract Documents and it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished, and all other requirements of the Contract Documents. The Bidder has also satisfied itself as to the conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof, including but not limited to those conditions and matters affecting: transportation, access, disposal, handling and storage of materials, equipment and other items; availability and quality of labor, water, electric power and utilities; availability and condition of roads; climatic conditions and seasons; physical conditions at the Project site and the surrounding locality; topography and ground surface conditions; and equipment and facilities needed preliminary to and at all times during the performance of the Work. The failure of the Bidder fully to acquaint itself with any applicable condition or matter shall not in any way relieve the Bidder from the responsibility for performing the Work in accordance with, and for the Contract Sum and within the Contract Time provided for in, the Contract Documents.
- 2.6 *Project Manual.* When a Project Manual is available, the Bidder has checked its copies of the Project Manual with the Table of Contents bound therein to ensure the Project Manual is complete.
- 2.7 *Separate Work.* The Bidder has examined and coordinated all Drawings, Contract Documents, and Specifications for any other contracts to be awarded separately from, but in connection with, the Work being bid upon, so that the Bidder is fully informed as to conditions affecting the Work under the contract being bid upon.
- 2.8 *License Requirements.* Bidders and their proposed Subcontractors shall be registered and shall hold such licenses as may be required by the laws of Washington for the performance of the Work specified in the Contract Documents. At the time of Bid submittal, Bidders shall have a certificate of registration in compliance with RCW 18.27.
- 2.9 *No Exceptions.* Bids must be based upon the materials, systems and equipment described and required by the Bidding Documents, and terms and conditions in the Contract Documents, without exception.

ARTICLE 3 - BIDDING DOCUMENTS

3.1 *Copies*

- 3.1.1 **Deposit.** Except when Bidding Documents are only made available electronically, Bidders may obtain complete sets of the Bidding Documents from the issuing office and other locations designated in the Advertisement or Invitation to Bid in the number and for the deposit amount, if any, stated. The deposit (if any) will be refunded to Bidders who submit a bona fide Bid and return the Bidding Documents in good condition within ten (10) days after receipt of Bids. The cost of replacement of any missing or damaged documents will be deducted from the deposit. A Bidder awarded a Contract may retain the Bidding Documents, and its deposit will be refunded.
- 3.1.2 **Sub-bidders.** Bidding Documents will not be issued directly to Sub-bidders or others unless specifically offered in the Advertisement or Invitation to Bid.
- 3.1.3 **Complete Sets.** Bidders shall use complete sets of Bidding Documents in preparing Bids and are solely responsible for utilizing established plan holder identification processes to obtain updated bid information; neither Federal Way Public Schools nor the Architect assumes any responsibility for errors or misinterpretations resulting from the use of incomplete and/or superseded sets of Bidding Documents. Printed copies (when made available) of plans take precedence over any on-line images.
- 3.1.4 **Conditions.** Federal Way Public Schools and/or the Architect make copies of the Bidding Documents available on the above terms only for the purpose of obtaining Bids on the Work and do not confer a license or grant permission for any other use.
- 3.1.5 **Legible Documents.** To the extent any drawings, specifications, or other Bidding documents are not legible, it is the Bidder's responsibility to notify Federal Way Public Schools and the Architect and to obtain legible documents from the plan center.

3.2 *Interpretation or Correction of Bidding Documents*

- 3.2.1 **Format.** The Contract Documents may be divided into parts, divisions, and sections for convenient organization and reference. Generally, there has been no attempt to divide the Specification sections into Work performed by the various building trades, any Work by separate contractors, or any Work required for separate facilities in or phases of the Project.

- 3.2.2 **Notify Owner and Architect.** Bidders and Sub-bidders shall promptly notify Federal Way Public Schools and the Architect in writing of any ambiguity, inconsistency, or error which they may discover upon examination of the Bidding Documents or of the site and local conditions. All Bidders and Sub-bidders shall thoroughly familiarize themselves with specified products and installation procedures and submit to Federal Way Public Schools and the Architect any objections (in writing) no later than seven (7) calendar days prior to the Bid Date. The submittal of the Bid constitutes acceptance of products and procedures specified as sufficient, adequate, and satisfactory for completion of the Contract.
- 3.2.3 **Questions/Clarifications.** Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a request via e-Builder which shall reach the Owner at least two (2) calendar days prior to the date for receipt of Bids.
- 3.2.4 **Addenda.** Any interpretation, correction or change of the Bidding Documents will be made by Addendum via e-Builder. Interpretations, corrections or changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon such interpretations, corrections and changes.
- 3.2.5 **Singular References.** Reference in the singular to an article, device, or piece of equipment shall include as many of such articles, devices, or pieces as are indicated in the Contract Documents or as are required to complete the installation.
- 3.2.6 **Utilities and Runs.** The Bidder should assume that the exact locations of any underground or hidden utilities, underground fuel tanks, and any plumbing and electrical runs may be somewhat different from any location indicated in the surveys or Contract Documents.

3.3 *Substitutions*

- 3.3.1 **Standard.** The materials, products, procedures and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance, and quality that must be met by any proposed substitution.
- 3.3.2 **Substitution Procedure.** No substitution will be considered prior to receipt of Bids unless the Federal Way Public Schools and/or Architect receives a request via e-Builder for approval, at least four (4) days prior to the date for receipt of Bids. Each such request shall include the name of the material or equipment proposed to be replaced and a complete description of the proposed substitute, including drawings, cuts, performance and test data, warranty information, and any other information necessary for an evaluation. A statement setting forth any changes in other materials, equipment or other Work that incorporation of the substitute would require shall be included. The proposer has the burden to prove the merit of the proposed substitute; by proposing the substitution, the Bidder represents that it has personally investigated the proposed material or product and determined that it is equal or better in all respects to that specified, that the same or better warranty will be

provided for the substitution, that complete cost data, including all direct and indirect costs of any kind, has been presented, that the Contract Time will not be increased, and that it will coordinate the installation of the substitute if accepted and make all associated changes in the Work. Federal Way Public Schools and/or the Architect's decision to approve or disapprove a proposed substitution shall be final. Submitted requests for approval shall constitute a guarantee by the Bidder that the articles or materials are in all respects, including warranty and installation, equal or superior to those specified, unless otherwise noted. To the extent the proposed substitution will require additional services by the Architect or its consultants after Bid award, the Bidder, if successful, will be required to pay the Architect or its consultants for these services at their customary hourly rates.

3.3.3 **Addendum.** If the Federal Way Public School and/or Architect approves a proposed substitution prior to receipt of Bids, the approval will be set forth in an Addendum via e-Builder. Bidders shall not rely upon approvals made in any other manner. Bidders/Sub-bidders shall rely solely on substitution approvals listed in an Addenda.

3.3.4 **Post-Bid Substitutions.** After the Contract has been executed, Federal Way Public Schools and the Architect may consider a written request for the substitution of material or products in place of those specified in the Contract Documents only under the circumstances as specified therein.

3.4 *Addenda*

3.4.1 **e-Builder.** All Addenda will be available via e-Builder with notice to those bidders who have registered with e-Builder.

3.4.2 **Verification and Acknowledgment of Receipt.** Prior to bidding, each Bidder shall ascertain that it has received all Addenda issued. Each Bidder shall acknowledge its receipt of all Addenda in its Bid.

ARTICLE 4 - BIDDING PROCEDURE

4.1 *Form and Style of Bids*

4.1.1 **Form.** Bids (including any required attachments) shall be submitted via e-Builder. No oral, email or telephonic responses or modifications will be considered to be Bids.

4.1.2 **Entries on the Bid Form.** All blanks on the e-Builder Bid form shall be completed. Any additional files requested shall be uploaded into system.

4.1.3 **Words and Figures.** Where so indicated by the makeup of the Bid form, sums shall be expressed in both words and figures; in case of discrepancy between the two and regardless of any statement to the contrary on the Bid form, *the amount written in figures shall govern, and the words shall be used to determine any ambiguities in the figures.* Portions of the Bid form may require the addition of component bids to a total or the identification of component amounts within a total. In case of discrepancy

between component amounts listed and their sum(s), the component amounts listed shall govern.

- 4.1.4 **Alternates and Unit Prices.** All requested Alternates and unit prices should be bid. Federal Way Public Schools reserves the right, but is not obligated, to reject any Bid on which all requested Alternates or unit prices are not bid. If no change in the Base Bid is required for an Alternate, enter "No Change." If there is no entry, it will be presumed that the Bidder has made no offer to accomplish this Alternate. If it is not otherwise clear from the Bid or nature of the Alternate, it will be presumed that the amount listed for an Alternate is an add rather than a deduct.
- 4.1.5 **No Conditions.** The Bidder shall make no conditions or stipulations on the Bid form nor qualify its Bid in any other manner.
- 4.1.6 **Identity of Bidder.** The Bid shall be entered into e-Builder by the person or persons legally authorized to bind the Bidder to a contract. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder, and provide other information requested.
- 4.1.7 **Bid Amounts do Not Include Sales Tax.** The Bid shall include in the sum stated all taxes imposed by law, EXCEPT state and local sales tax on the contract sum.
- 4.1.8 **Bid Breakdown.** The Bid form may contain, for Federal Way Public Schools' accounting purposes only, a breakdown of some or all of the components included in the Base Bid.

4.2 *Potential Listing of Subcontractors*

- 4.2.1 **Procedure.** On certain projects of Federal Way Public Schools, the Bid form includes a requirement that certain Subcontractors be listed, and the list must be submitted to Federal Way Public Schools as described in the bidding documents. In these circumstances, the Bidder shall name the Subcontractor with whom the Bidder, if awarded the Contract, will subcontract *directly* (i.e., not lower-tier Subcontractors) for performance of the work of:
 - (a) HVAC (heating, ventilation and air conditioning),
 - (b) plumbing as described in RCW 18.106,
 - (c) electrical work as described in RCW 19.28,
 - (d) structural steel installation,
 - (e) rebar installation, and
 - (f) any other categories of Work listed on the Subcontractor listing form(s).

In accordance with RCW 39.30.060, failure of a Bidder to submit the names of such proposed heating, ventilation and air conditioning, plumbing, electrical, structural steel installation, and rebar installation Subcontractors or to name itself to perform such Work or the naming of two or more Subcontractors to perform the same Work in the time periods described above shall render the Bidder's Bid nonresponsive and, therefore, void. The Bidder, if awarded the Contract, will subcontract with the listed Subcontractor for performance of the portion of the Work designated on the Form of Proposal, subject to the provisions of the Contract for Construction and RCW 39.30.060.

- 4.2.2 **Timing:** The listing of HVAC, plumbing, and electrical subcontractors shall occur within one hour of the published bid submittal time. The listing of structural steel installation and rebar installation subcontractors shall occur within forty-eight hours of the published bid submittal time. The listing of any other categories of Work listed on the Subcontractor listing form(s) shall occur as indicated on such forms or as otherwise described in the bidding documents.
- 4.2.3 **Self-Performance:** If the Bidder intends to self-perform any of these categories of Work, it must name itself for each such category of Work.
- 4.2.4 **If no Subcontractors:** If there is no work to be performed by a HVAC, plumbing, electrical, structural steel installation, rebar installation, or other subcontractor category identified on the Bid form(s), the Bidder should insert "None" or "N/A" on the Bid form. If a category is left blank, that shall indicate that the Bidder believes that there is no Work to be performed by that trade.
- 4.2.5 **Multiple Entries:** The Bidder shall not list more than one (1) entity for a particular category of Work identified, unless a Subcontractor varies with an Alternate Bid, in which case the Bidder shall identify the Subcontractor to be used for the Alternate and the affected portion of the Work and otherwise make its Bid clear as to which subcontractor shall be utilized depending upon the selection of alternates.
- 4.2.6 **Multiple Submittal Times.** In the event the Bidding Documents call for a second submittal time for receipt of alternate bids, and no additional Subcontractors are listed with such alternate bids, Federal Way Public Schools will consider that there is no change in the Subcontractors from those listed with regard to the base Bid.
- 4.2.7 **Replacement.** If a listed Subcontractor is unable to comply with any bondability, qualification or other requirements of the Contract or Bidding Documents (including without limitation a finding of Subcontractor non-Responsibility), Federal Way Public Schools may require the Bidder to replace the Subcontractor with a Subcontractor acceptable to Federal Way Public Schools at no change in the Contract Sum or Contract Time.
- 4.2.8 **Subcontractor Standards.** Subcontractors shall meet contractual and technical qualifications standards, and provide specialized certification, licensing, and payment and performance bonding where specified.

4.3 *Bid Security*

4.3.1 **Purpose and Procedure.** Each Bid exceeding the sum of Three Hundred Fifty-Thousand Dollars (\$350,000.00) shall be accompanied by a bid security payable to Federal Way Public Schools in the form required in the Bidding Documents and equal to five percent (5%) of the Base Bid. The bid security constitutes a pledge that the Bidder will enter into the Contract with Federal Way Public Schools in the form provided, in a timely manner, and on the terms stated in its Bid and will furnish in a timely manner the payment and performance bonds, certificates of insurance, Contractor's Construction Schedule, and all other documents required in the Contract Documents. Should the Bidder fail or refuse to enter into the Contract or fail to furnish such documents, the amount of the bid security shall be forfeited to Federal Way Public Schools as liquidated damages, not as a penalty. By submitting its Bid and bid security, the Bidder agrees that any forfeiture is a reasonable prediction at the time of Bid submittal of future damages to Federal Way Public Schools.

4.3.2 **Form.** The bid security shall be in the form of a certified or bank cashier's check payable to Federal Way Public Schools or a bid bond executed by a bonding company acceptable to Federal Way Public Schools and licensed in the State of Washington on the form included with the Bidding Documents or equivalent form acceptable to Federal Way Public Schools. The Attorney-in-Fact who executes the bond on behalf of the surety shall be licensed to do business in the State of Washington and shall affix to the bond a certified and current copy of that person's Power of Attorney.

4.3.3 **Retaining Bid Security.** Federal Way Public Schools will have the right to retain the Bid Security of Bidders to whom an award is being considered until the earliest of either (a) the Contract has been executed, and payment and performance bonds have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn, or (c) all Bids have been rejected.

4.3.4 **Return of Bid Security.** Within forty-five (45) days after the Bid Date, Federal Way Public Schools will release or return Bid Securities to Bidders whose Bids are not to be further considered in awarding the Contract. Bid securities of the three apparent low Bidders will be held until the Contract has been finally executed, after which all unforfeited Bid securities will be returned.

4.4 *Submission of Bids*

4.4.1 **Procedure.** The Bid, the Bid security, and any other documents required to be submitted with the Bid shall be provided via e-Builder.

4.4.2 **Responsibility.** The Bidder assumes full responsibility for timely delivery for receipt of Bids.

4.4.3 **Form.** Oral, telephonic, email, fax or telegraphic Bids are invalid and will not receive consideration unless this Project is bid under small works and is explicitly allowed by the invitation to bid or other bidding documents.

4.5 *Modification or Withdrawal of Bid*

- 4.5.1 **After Receipt Time.** A Bid may not be modified, withdrawn or canceled by the Bidder during the 45-day period following the time and date designated for the receipt of Bids, and each Bidder so agrees by virtue of submitting its Bid.
- 4.5.2 **Before Receipt Time.** Prior to the time and date designated for receipt of Bids, any Bid submitted may be modified or withdrawn via e-Builder.
- 4.5.3 **Resubmittal.** Withdrawn Bids may be resubmitted up to the time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.
- 4.5.4 **Bid Security With Resubmission.** Bid security shall be in an amount sufficient for the Bid as modified or resubmitted.

4.6 *Notice*

- 4.6.1 Notice or a request from a Bidder under these Instructions to Bidders must be in writing over the signature of the Bidder and delivered in person or by mail, email, express delivery, or fax. If the notice is by email or fax, written confirmation over the signature of the Bidder must be mailed and postmarked on or before the date and time set for the notice.

ARTICLE 5 - CONSIDERATION OF BIDS

- 5.1 *Opening of Bids:* Unless stated otherwise in the Advertisement or Invitation to Bid or an Addendum, the properly identified Bids received on time will be opened publicly and will be read aloud. An abstract of the Base Bids and Alternate Bids, if any, will be made available to Bidders and other interested parties.
- 5.2 *Rejection of Bids:* Federal Way Public Schools shall have the right but not the obligation to reject any or all Bids for any reason or for no reason, to reject a Bid not accompanied by required Bid security or by other material or data required by the Bidding Documents, or to reject a Bid which is in any way incomplete or irregular.
- 5.3 *Acceptance of Bid (Award)*
 - 5.3.1 **Owner.** Federal Way Public Schools intends (but is not bound) to award a Contract to the lowest Responsible and Responsive Bidder, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. Federal Way Public Schools has the right to waive any informality or irregularity in any Bid(s) received and to accept the Bid which, in its judgment, is in its own best interests.
 - 5.3.2 **Alternates.** Federal Way Public Schools shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Contract Documents or Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and the Alternates (if any) accepted. Federal Way Public Schools retains the right

to accept Alternate Bid items at the price bid within 60 days after the Agreement is executed.

5.3.3 **Requirements for Award.** Before the Award, the lowest Responsive Bidder shall meet the Award Requirements.

5.4 *Bid Protest Procedures*

5.4.1 **Procedure.** A Bidder protesting for any reason the Bidding Documents, a bidding procedure, Federal Way Public Schools' objection to the Bidder or a person or entity proposed by the Bidder, including but not limited to a finding of non-Responsibility, the rejection of a Bid; the award of the Contract or of any other aspect arising from or relating in any way to the bidding or award or lack thereof, shall cause a written (or email) protest to be filed with Federal Way Public Schools within two (2) business days of the event giving rise to the protest and, in any event, no later than two (2) business days after the date upon which Bids are opened. (Intermediate Saturdays, Sundays, and legal holidays are not counted.) The written protest shall include the name of the protesting Bidder, a detailed description of the specific factual and legal grounds for the protest, copies of all supporting documents, and the specific relief requested. The written protest shall be delivered to:

Contracts Manager
Maintenance and Operations
Federal Way Public Schools
1211 S. 332nd Street
Federal Way, Washington 98003
PWContracting@fwps.org
And shall be labeled: "Protest"

5.4.2 **Consideration.** Upon receipt of the written protest, Federal Way Public Schools will consider the protest. Federal Way Public Schools may, within three (3) business days of Federal Way Public Schools' receipt of the protest, provide any other affected Bidder(s) the opportunity to respond in writing to the protest. If the protest is not resolved by mutual agreement of the protesting Bidder and Federal Way Public Schools, the Superintendent of Federal Way Public Schools or the Superintendent's designee will review the issues and promptly furnish a final and binding written decision to the protesting Bidder and any other affected Bidder(s) within six (6) business days of Federal Way Public Schools' receipt of the protest. (If more than one protest is filed, Federal Way Public Schools' decision will be provided within six (6) business days of Federal Way Public Schools' receipt of the last protest.) If no reply is received from Federal Way Public Schools during the six-business-day period, the protest shall be deemed rejected.

5.4.3 **Waiver.** Failure to comply with these protest procedures will render a protest waived.

5.4.4 **Condition Precedent.** Timely and proper compliance with and exhaustion of these protest procedures shall be a condition precedent to any otherwise permissible judicial consideration of a protest.

ARTICLE 6 - POST BID INFORMATION

6.1 Information From Apparent Low Bidder

6.1.1 **Submittal.** Within twenty-four (24) hours of Federal Way Public Schools' request, the apparent low Bidder and any other Bidders so requested shall submit the following to the Architect and Federal Way Public Schools, which list may be modified by Federal Way Public Schools:

- (a) a properly executed Contractor's Qualification Statement on the form provided (unless otherwise required to be submitted at the time of the Bid);
- (b) a letter or form from the Bidder's insurance company stating that the insurance required by the Contract Documents will become effective upon execution of the Contract;
- (c) a letter or form from the Bidder's surety stating that the bond(s) required by the Contract Documents will become effective upon execution of the Contract;
- (d) if requested by Federal Way Public Schools, a detailed breakdown of the Bid in a form acceptable to Federal Way Public Schools;
- (e) the names of the persons or entities (including a designation of the Work to be performed with the Contractor's own forces, and the names of those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work;
- (f) the proprietary names and the suppliers of the principal items or systems of materials and equipment proposed for the Work; and
- (g) a State Board of Education Form D-9, if requested.

Failure to provide any of the above information in a timely manner may constitute an event of breach permitting forfeiture of the Bid security.

6.1.2 **Responsibility.** The Bidder will be required to establish to the satisfaction of the Architect and Federal Way Public Schools the reliability and Responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents as well as qualifications set forth in the Sections of the Project Manual pertaining to such proposed Subcontractor's respective trades. The Responsibility of the Bidder may be judged in part by the Responsibility of these proposed entities.

- (a) Consideration. In considering a Bidder's Responsibility, a Bidder shall be deemed to be unqualified to perform the Contract if, after review and verification of the representations included upon the Contractor's Qualification Statement submitted by the Bidder, conditions such as, but not limited to, the following appear:

- The Bidder does not have sufficient prior experience (or an acceptable substitute thereof, as described below) with projects of a similar nature in technical, managerial, and financial requirements to that in the present Contract being bid. In addition to such established contractors, a newly established contractor may be considered qualified if it has shown on the Contractor's Qualification Statement that it is staffed with sufficient technical, managerial, and financial personnel with prior experience in the nature of construction for which the Bids are invited.
- The Bidder does not have sufficient capability to undertake the obligations of the Contract. A determination will be made when Federal Way Public Schools' review of the probable cash flow needs of the Bidder for this Project (including payroll, cost of material and supplies, equipment rental costs, and any other direct or incidental costs of the Contract), concludes that the Bidder does not have sufficient financial resources to enable it to satisfy its financial obligations under the Contract.
- The Bidder has submitted unrealistic unit prices as determined by other bidders' unit prices for this Project.
- The Bidder does not have sufficient staff, equipment, or plant available to perform the Contract. Federal Way Public Schools' determination in this matter will be based upon that represented by Bidder in the Contractor's Qualification Statement.
- The Bidder has a history of unsatisfactory performance of contracts of this or similar nature, regardless of whether such contracts existed between Federal Way Public Schools and the Bidder, or other parties.
 - 1) A determination of this nature will be made if Federal Way Public Schools, after review of the Bidder previous work experience, determines that the Bidder's unsatisfactory performance has resulted predominantly from the Bidder's failure rather than a failure to perform by another party. Federal Way Public Schools will give the Contractor an opportunity to explain such nonperformance's before any final determination is reached.
 - 2) A determination of failure to perform will be made if Federal Way Public Schools is satisfied after review of the Bidder's prior experience, that the Bidder has failed to satisfy its obligations under past contracts and Federal Way Public Schools cannot safely assume satisfactory performance of the Contract by the Bidder.
 - 3) In reaching its determination, Federal Way Public Schools may consider statements of other parties to the prior

unperformed contracts, as well as the representations of the Bidder on its Contractor's Qualification Statement.

- 6.1.3 **Subcontractors.** The Responsibility of the Bidder may be judged in part by the Responsibility of its Subcontractors. Bidders must verify Responsibility criteria for each first-tier Subcontractor. A Subcontractor of any tier that hires other Subcontractors must verify Responsibility criteria for each of its next lower-tier Subcontractors. Verification shall include that each Subcontractor, at the time of subcontract execution, is Responsible and possesses an electrical contractor license, if required by RCW 19.28, or an elevator contractor license, if required by RCW 70.87, and can obtain any payment and performance bonds required by the Bidding documents or the Contract Documents.
- 6.1.4 **Request to Modify Criteria.** No later than ten (10) days prior to the Bid Date, a potential Bidder may request in writing that Federal Way Public Schools modify the Responsibility criteria listed in clause 6.1.2 above or elsewhere in the Contract Documents or Bidding Documents. Federal Way Public Schools will evaluate the information submitted by the potential Bidder and respond before the Bid Date. If the evaluation results in a change of the criteria, Federal Way Public Schools will issue an Addendum identifying the new criteria.
- 6.1.5 **Objection.** Prior to the Award of the Contract, Federal Way Public Schools will notify the Bidder in writing if either Federal Way Public Schools or the Architect, after due investigation, has reasonable objection to the Bidder or a person or entity proposed by the Bidder, and Federal Way Public Schools will provide the reasons for the determination. The Bidder may appeal the determination within two (2) business days of its receipt of the objection by presenting additional information to Federal Way Public Schools, and Federal Way Public Schools will consider the additional information before issuing its final determination. The Bidder may, after Federal Way Public Schools' objection or determination, and at Bidder's option, (1) withdraw the Bid, (2) submit an acceptable substitute person or entity with no change in the Contract Time and no adjustment in the Base Bid or any Alternate Bid, even if there is a cost to the Bidder occasioned by the substitution, or (3) appeal by filing a protest in accordance with paragraph 5.4. In the event of withdrawal under these circumstances, Bid security will not be forfeited.
- 6.1.6 **Change.** Persons and entities proposed by the Bidder and to whom Federal Way Public Schools or the 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 Federal Way Public Schools and the Architect.
- 6.1.7 **Right to Terminate.** The Bidder's representations concerning its qualifications will be construed as a covenant under the Contract. Should it appear that the Bidder has made a material misrepresentation on its Contractor's Qualification Statement, Federal Way Public Schools shall have the right to terminate the Contract for cause for the Contractor's breach, and Federal Way Public Schools may then pursue such remedies

as exist elsewhere under this Contract, or as otherwise are provided at law or equity.

- 6.2 *Information From Other Bidders:* All other Bidders designated by the Architect as under consideration for award of a Contract shall also provide a properly executed Contractor's Qualification Statement, if so requested by Federal Way Public Schools.
- 6.3 *Bidding Mistakes:* Federal Way Public Schools will not be obligated to consider notice of claimed bidding mistakes received more than three (3) business days after the Bid opening. In accordance with Washington law, a low Bidder that claims error and fails to enter into the Contract is prohibited from bidding on the Project if a subsequent call for Bids is made for the Project.

ARTICLE 7 - PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

- 7.1 *Bond and Bondability Requirements:* Within seven (7) days after the issuance of Federal Way Public Schools' notice of intent to award the Contract, and prior to the date of execution of the Contract, the Bidder shall furnish evidence satisfactory to Federal Way Public Schools of its ability to obtain statutory bonds pursuant to RCW 39.08 covering the faithful performance of the Contract and the payment of all obligations arising thereunder in the form and amount prescribed in the Contract Documents. The cost of such bonds shall be included in the Base Bid. Such bonds for projects under \$150,000 may be waived by Federal Way Public Schools; see RCW 39.08.010(3).
- 7.2 *Time of Delivery and Form of Bonds:* The Bidder shall deliver the required bonds to Federal Way Public Schools within seven (7) days after the date of execution of the Contract and prior to commencing operations at the site. The bonds shall be written on current AIA payment and performance bond forms (A312) and shall be in the amount of the Contract Sum plus sales tax.

ARTICLE 8 - FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

- 8.1 *Form to Be Used:* The Agreement for the Work will be written on the form(s) contained in or referenced by the Bidding Documents, including any General, Supplemental or Special Conditions, and the other Contract Documents included with the Project Manual. In the event no form is enclosed or referenced, an AIA Document A101-2017, "Standard Form of Agreement Between Owner and Contractor, where the basis of payment is a Stipulated Sum," along with AIA Document A201-2017, "General Conditions of the Contract for Construction" as both are revised, modified and supplemented by Federal Way Public Schools, will be used. All references in these Instructions to Bidders to the A101 or the A201 refer to the documents as revised by Federal Way Public Schools.

- 8.2 *Conflicts:* In case of conflict between the provisions of these Instructions and any other Bidding Document, these Instructions shall govern. In case of conflict between the provisions of the Bidding Documents and the Contract Documents, the Contract Documents shall govern.

ARTICLE 9 - NONDISCRIMINATION

- 9.1 *Nondiscrimination Requirement.* During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
- 9.2 *Obligation to Cooperate.* Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
- 9.3 *Default.* Notwithstanding any provision to the contrary, Agency may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Agency receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Agency may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
- 9.4 *Remedies for Breach.* Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Agency shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Agency for default under this provision.

ARTICLE 10 - CONTRACT DOCUMENTS

This paragraph contains descriptions of some but not all of the provisions of the Contract Documents.

- 10.1 *Retainage:* The Contract Documents specify the statutory retainage requirements of RCW 60.28 for this Project.
- 10.2 *Contract Time:* The Contract Documents specify the Contract Time. Timely completion of this Project is essential to Federal Way Public Schools.

- 10.3 *Prevailing Wages:* The Contract Documents contain requirements regarding the payment of prevailing wages pursuant to RCW 39.12.
- 10.4 *Written Claims and Notice:* The Contract Documents contain a number of provisions that require the Contractor to provide notice of Claims and to make and support Claims in writing within a specified time in order to maintain the Claim.
- 10.5 *Changes in Contract Sum:* The Contract Documents contain provisions specifying requirements for and pricing of changes in the Contract Sum.
- 10.6 *Dispute Resolution:* The Contract Documents contain alternative dispute resolution procedure which, among other things, requires non-binding mediation of all disputes.
- 10.7 *Contractor Registration:* Pursuant to RCW 39.06, the Bidder shall be registered or licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27.
- 10.8 *Taxes.* The Contractor shall include in its Bid and pay for all applicable taxes except Washington State Sales Tax and Local Sales Tax on the Contract Sum, which shall be excluded in the preparation of its Bid. Such State and Local Sales Taxes shall be added to the Contract Sum, paid by Federal Way Public Schools to the Contractor, and then paid by the Contractor over the course of the Project. Refer to general, supplementary or other conditions regarding further information.
- 10.9 *Other Provisions:* The above paragraphs contain descriptions of some but not all of the provisions of the Contract Documents. Bidders should review in detail the Contract Documents themselves and not rely upon the above paragraphs in this article as complete or inclusive.

ARTICLE 11 - POSSIBLE TRENCH EXCAVATION SAFETY PROVISIONS

- 11.1.1 To ensure that the Bidder agrees to comply with relevant trenching safety requirements of RCW 39.04.180 and RCW 49.17, the Base Bid may include the cost of any required trenching. The Bidder shall enter in the blank provided (if any) on the Bid form the dollar amount the Bidder has included in its Base Bid for any work requiring trenching that will exceed a depth of four feet. If trench excavation safety provisions do not pertain to the Project, the Bidder should enter "N.A." or "Not Applicable" in the blank (if any) on the bid form.

END OF INSTRUCTIONS TO BIDDERS SECTION