



# INSTRUCTIONS TO BIDDERS

## DIVISION 0 \* SECTION 00200

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PURCHASING DEPARTMENT • 3630 STATE STREET • SALEM, OREGON 97301-5399 • (503) 399-3086

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### 1. **SUBMISSION OF BIDS AND BID OPENING:**

- A. In accordance with ORS 279C.365, bids will be received by Salem-Keizer School District 24-J, and will be opened and read at the time and place set forth in the Bid Document. Bidders, or their representative, and other interested persons may be present at the opening of bids.
- B. The District will accept only those bids submitted via the online bidding system, SKeBid. Bidders may request assistance with the online bidding process by contacting the buyer listed on this bid.
- C. The Bidder shall assume full responsibility for timely submission of bids. Bidders are cautioned to consider transmission speeds and submit their response sufficiently in advance of the closing time, to allow for transmission and receipt of their response.

### 2. **BIDDING DOCUMENTS:**

- A. Bidding Documents are those posted in the online system, including attachments and any Addenda issued prior to receipt of bids. All requirements and obligations of the Bidding Documents are hereby incorporated by reference into the Contract Documents and are binding on the Successful Bidder upon award of the Contract.
- B. Bona fide bidders may access Bidding Documents by logging into the online bidding system at <https://skebid.ionwave.net>.
- C. Bidders shall use complete sets of Bidding Documents in preparing Bids. The Owner, Owner's Representative, and the A/E assume no responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- D. The Owner in making copies of the Bidding Documents available on the above terms does so only for the purpose of obtaining Bids on the Work and does not confer a license or grant for any other use.
- E. When boring data (geological) is provided by Bidding Documents, the Contractor shall assume responsibility for any conclusions it may draw from such data. It may employ its own consultants to analyze available information and to conduct additional tests and examinations of site conditions and shall be responsible for any conclusions drawn from such information, tests and examinations. The Owner does not warrant and specifically disclaims any responsibility for the interpretation of any such data or information.

3. **DEFINITIONS:**

A. **THE BID:**

A Bid is a complete and properly signed competitive offer to do the work for the sums stipulated therein, submitted in accordance with the Bidding Documents.

B. **BASE BID:**

The Base Bid is the sum stated in the Bid for which the Bidder offers to perform all the Work shown and described in the Bidding Documents as a lump sum bid, to which Work may be added or deducted for sums stated in Alternate Bids, if any.

C. **ALTERNATES:**

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 the Owner. Any or all Alternates may be accepted or rejected in any order.

4. **QUALIFICATIONS OF BIDDERS:**

A. Before the Bid is considered for award, the Owner reserves the right to request the Bidder to complete within seventy-two (72) hours a bidder qualification form and/or a current financial statement prepared by a Certified Public Accountant. Bidder qualifications to be listed upon the Bidder Qualification Form will include as a minimum, a listing of Bidder's previous contracts of a nature similar with technical complexity, operations and size to that being bid upon; a listing of Bidder's staff to include managerial, technical, and laboring positions; summary of Bidder's plan and equipment available for use in the execution of the Contract; and the listing of the projects to which Bidder is currently obligated or anticipates being obligated during this Work.

1. The Owner reserves the right to reject the Bid of any Bidder who fails to furnish promptly and properly all the information called for as previously mentioned when notified to do so.

B. Pursuant to ORS 279C.375, a Bidder may be deemed unqualified to perform the Contract, if any of the following conditions appear:

1. Bidder does not have sufficient capability to undertake the obligations of the Contract. A determination in this respect will be made when Owner, upon review of the probable cash flow needs of Contractor for this particular Contract (to include payroll, cost of material and supplies, equipment rental costs, and any other direct or incidental costs of the Contract), determines that Contractor does not have sufficient financial resources to enable it to continue to satisfy its financial obligations under the Contract. Owner will consider all other pertinent financial data required by this clause and submitted by the Contractor. A determination that Bidder is unqualified will not be made under this paragraph unless Owner has determined that Bidder cannot meet its financial obligations under the Contract after having considered all sources of income available to the Bidder.

a. Bidder does not have sufficient staff, equipment, or plant available to perform the Contract. Owner's determination in this matter will be based upon that represented by bidder in the bid form and in subsequent qualification information requested by the Owner upon receipt of bids. Additionally, 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.

b. Experience does not necessarily mean that the Bidder is an established

Contractor in the exact technical area for which the Bid is submitted. In addition to such established Contractors, newly established Contractors will be considered qualified if they have shown on the Bidder Qualification Form that they are staffed with sufficient technical, managerial, and financial personnel with prior experience in the nature of construction for which the Bids are invited, that Bidder may adequately foresee and appreciate problems of such construction.

2. Bidder has a consistent history of unsatisfactory performance of contracts of this or similar nature, regardless of whether such contracts existed between Owner and the Contractor, or other parties and the Contractor.
  - a. A determination of this nature will not be made unless Owner, after review and verification of Contractor's previous work experience, determines that Contractor's consistent, unsatisfactory performance has resulted from Contractor's failure rather than a failure to perform by the other party. Owner will give Contractor an opportunity to appeal such final determination. Contract disputes, which are pending resolution before any duly authorized judicial or administrative body, will not be considered in reaching this determination.
  - b. A determination of "consistent" failure to perform will not be made unless the Owner is satisfied, after review of Bidder's prior experience that Contractor has repeatedly failed to satisfy its obligations under past contracts. For purposes of this clause, "consistent" will not be construed to mean in every contract, nor will it be construed to include "isolated instances" of failure to perform. Rather it means such evidence of recurring past nonperformance by the Contractor that Owner cannot safely assume satisfactory performance of the Contract by the Contractor upon execution of the Contract.
  - c. In reaching any determination of this nature, Owner may consider statements of other parties to the prior unperformed Contracts. However, in each instance, Owner will advise Contractor of such other statements considered before a determination that the Bidder is not qualified, is made by Owner.
3. Bidder has submitted unrealistic unit prices as determined by other bidders' unit prices for this project.
4. Any information voluntarily submitted by a bidder or prospective bidder pursuant to an investigation may be deemed a trade secret pursuant to ORS 192-501 to 192.505 if requested by the person(s) submitting the information.
- C. Bidder's representations concerning its qualifications will be construed as a covenant under the Contract. Should it appear that Bidder has made a material misrepresentation, Owner shall have the right to terminate the Contract for Contractor's breach, and Owner may then pursue such remedies as exist elsewhere under this Contract, or as otherwise are provided at law or equity.
- D. Any determination that a Bidder is unqualified will be made by the Owner. Such determination will be made in writing and identify the reasons why the Bidder is deemed unqualified. A letter will be sent to the Bidder deemed unqualified, stating the reasons for such determination, and the Bidder's right to request a review of this determination by appeal pursuant to ORS 279C.450.
5. **BIDDER'S REPRESENTATIONS:** Each Bidder by submitting its Bid represents that:
  - A. I/We have read and understand the Bidding Documents and its Bid is made in accordance therewith; and Bidder agrees to be bound by the terms and requirements set forth in the Bidding and Contract Documents;
  - B. I/We have visited the site, have familiarized ourselves with the local conditions under which the Work is to be performed in accordance with Paragraph 10 herein, and have

correlated our observations with the requirements of the proposed Contract Documents;

- C. Bid is based upon the materials, systems and equipment required by the Bidding Documents without exception; and
- D. I/We have the capability, in all respects, and the moral and business integrity, reliability, technical ability, financial resources, plant, management, superintendence, equipment and materials which will assure effective and efficient good faith performance in full compliance with the Contract Documents and with any and all schedules and completion dates required by the Owner. The Bidder acknowledges and represents that it has made allowances for normal inclement weather indigenous to the Project Site, in estimating, planning and scheduling of the Work. The Bidder further acknowledges that the Contract Documents are, in its opinion, appropriate and adequate for completing this project and for the construction of sound and suitable work. The Bidder hereby certifies that the Work shall be completed, in place, in full accordance with the Contract Documents, within the time limits specified.

6. **PREPARATION AND SUBMITTAL OF BID FORM:**

- A. Bids shall be submitted using the online system, and shall be complete in every respect. The total Bid amount shall be entered in written words and figures in the space provided. Amounts for alternates and unit prices should be entered in the spaces provided.
- B. For lump sum Bids, in the event of a discrepancy between the Bid amount in writing and that in figures, the written value shall govern.
- C. Bids shall not contain any restatement or qualifications of work to be done and alternate bids will not be considered unless called for. No oral, telegraphic or telephonic bids or modifications will be considered.
- D. Bids must be submitted by the closing date and time shown on the bidding documents.

7. **BID SECURITY:**

- A. If requested, each Bid must be accompanied by a Bidder's Bond on the Form of Bid Bond provided herein or on a similar form which in every respect materially complies with said Form of Bid Bond, in the amount of ten percent (10%) of its Bid. For purposes of this provision, the amount of the Bid shall be the Base Bid. The Bidder's Bond shall be issued by a Surety company licensed to conduct business in the State of Oregon and be acceptable to the Owner. The Surety signing the Bidder's Bond shall be registered with the Oregon State Insurance Commissioner, and the Surety's name shall appear in the current Authorized Insurance Company list in the State of Oregon published by the office of the Insurance Commissioner. Each Surety's name must also appear on the United States Treasury Department's list of authorized sureties, circular 570, as amended.

Bidders are to attach a copy of the bid security to their response. Bidders are required to provide contact information for the bonding company so the District can verify the bond is authentic. **Failure to provide valid contact information may result in rejection of the bid.**

- B. Said Bid Security is given as a guarantee that the Bidder will enter into a Contract if awarded the Work and, in the case of refusal or failure to so enter into said Contract, the Bid Security shall be declared forfeited to the Owner, in accordance with ORS 279C.385. Such Bid Security shall be returned to all but the three (3) lowest Bidders after the opening of the Bids and the remaining Bid Security will be returned after the Owner and the successful Bidder have executed the Contract. If no Contract has been awarded or the Bidder has not been notified of the acceptance of its Bid, within sixty (60) days of the Bid opening, the Bidder may withdraw its Bid and request the return of its Bid Security. If, at the Owner's request, the Bidder agrees to extend and maintain its Bid beyond the specified sixty (60) days, its Bid Security will not be returned until after the Owner and the Successful

Bidder have executed the Contract.

- C. The successful Bidder, upon their failure or refusal to execute the Contract within ten (10) days after it has received Notice of Acceptance of its Bid, shall forfeit to the Owner the Bid Security deposited with its Bid, as liquidated damages for such failure or refusal.

8. **INSURANCE BINDER:**

- A. The successful bidder is required to provide a certificate of insurance within five days of bid award, for the coverage specified elsewhere in the bidding documents.

9. **UNIT PRICES:**

- A. The Bidder shall include in the spaces provided on the Line Items, a Bid for each unit price.
- B. The Owner may accept or reject any or all of these unit prices and include them in the Contract. The Owner is not obligated to use these unit prices and may require the Contractor to provide complete breakdown of costs listed therein.

10. **SITE CONDITIONS AND CONDITIONS OF THE WORK:**

- A. Each Bidder must acquaint themselves thoroughly as to the character and nature of the Work to be done and the conditions under which the work will be performed. Each Bidder furthermore must make a careful examination of the site of the Work and inform themselves fully as to the difficulties to be encountered in the performance of the Work, the facilities for delivering, storing and placing materials and equipment, existing and available services and utilities, environmental and access constraints, permit requirements and other conditions relating to construction and labor.
- B. The Successful Bidder, assumes all risk as to the nature and behavior of the soil or subsurface conditions which underlie the Work or is adjacent thereto, or difficulties that may be due to any unfavorable conditions that may be encountered in the Work, whether apparent on surface inspection or disclosed after construction begins.
- C. No plea of ignorance of conditions that exist or may hereafter exist on the site of the Work, or difficulties that may be encountered in the execution of the Work, as a result of failures to make necessary investigations and examinations, will be accepted as an excuse for any failure or omission on the part of the Successful Bidder to fulfill in every detail all the requirements of the Contract Documents and to complete the Work for the consideration set forth therein, or as a basis for any claim whatsoever.
- D. Insofar as possible, the Successful Bidder, in carrying out its work, must employ such methods or means as will not cause interruption of or interference with the Work of the Owner, the Owner's Authorized Representative or any separate Contractor.
- E. The Contract includes excavation on an unclassified basis. The cost of all excavation and backfill required under this Contract is a part of the Base Bid. No distinction will be made insofar as payment is concerned between earth and rock.

11. **BIDDER'S QUESTIONS, ADDENDA AND INTERPRETATIONS:**

- A. Bidders and Sub-Bidders shall promptly notify the Owner through the A/E of any ambiguity, inconsistency, or error, which they may discover upon examination of the Bidding and Contract Documents or of the site and local conditions. No interpretation of the meaning of the drawings, specifications or other Contract Documents will be made to any Bidder orally.
- B. Every request for such interpretation shall be in writing addressed to the Buyer identified in the bidding document, utilizing Section 00210 form, and to be given

consideration must be received at least ten (10) days prior to the date fixed for the opening of the Bids, or two days after the mandatory pre-bid, whichever occurs last.

- C. Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the Bidding Documents which, if issued, will be posted on the online bidding system not later than three (3) calendar days prior to the date fixed for the opening of the Bids. Neither the Owner's Authorized Representative nor the Owner will be responsible for any other explanations or interpretations of the proposed documents. Failure of any Bidder to receive any such addendum or interpretation shall not relieve the Bidder from any obligation under its Bid as submitted. All addenda so issued shall become a part of the Contract Documents.
- D. If the Bidder (or any person bidding to Bidder and/or subsequently in contract with the Bidder, relating to the subject project) knows, or should have known, that an ambiguity, discrepancy, error, omission or conflicting statement exists in the Bidding or Contract Documents, said Bidder has an obligation to seek a clarification thereof from the A/E prior to the Bid. The Owner will welcome such a clarification request, and, if deemed necessary by the Owner, the Project Manager or A/E, the Purchasing Department will issue a written addendum clarifying the matter in question.

12. **SECURITY FOR FAITHFUL PERFORMANCE:**

If requested, the Successful Bidder shall furnish a Performance and Payment Bond in an amount equal to one hundred percent (100%) of the Contract sum, as security for the faithful performance of this Contract and as security for the payment of all persons performing labor and furnishing materials under this Contract. The Performance and Payment Bond shall be acceptable to the Owner, in accordance with State law and shall be delivered to the Owner not later than the date of execution of the Contract. The Surety signing the Bond shall be registered with the Oregon State Insurance Commissioner, and the Surety's name shall appear in the current Authorized Insurance Company list in the State of Oregon published by the office of the Insurance Commissioner. The Surety's name must also appear on the United States Treasury Department's list of authorized sureties, circular 570, as amended. No Work shall commence at the project site until approved Bonds are received by the Owner. Both bonds shall be in compliance with ORS Sections 279C.380, 279C.625 and 701.430.

13. **TIME FOR COMPLETION:**

The time for completion of this Contract shall be as listed on the Specific Dates list and as fixed in the Owner-Contractor Agreement.

14. **LOCATION OF THE WORK:**

The site of the proposed work is on Owner owned property, public streets, easements and/or other right-of-ways, as shown on the drawings.

15. **LIABILITY INSURANCE AND WORKER'S COMPENSATION:**

The Successful Bidder will be required to carry public liability and worker's compensation and other insurance in the amounts and under the terms stipulated under the General Conditions. No Work shall commence at the project site until approved Certificates are received by the Owner. Limits of liability and general aggregate coverage limits shall apply on a per project basis.

16. **BIDDERS REFERRED TO LAWS:**

- A. The attention of the Bidders is called to the provisions of all Local, State and

Federal laws, regulations, ordinances and resolutions applicable to the work, as well as laws, regulations, ordinances, resolutions and permits relating to obstructing streets, maintaining signals, storing and handling of explosives, preserving safety or affecting the Bidder, or its employees or its work hereunder in its relation to the Owner or any other person. The Bidder shall obey all such laws, regulations, ordinances, permits or resolutions applicable to the Work or controlling or limiting Contractors while engaged in the prosecution of the Work under this Contract.

- B. The provisions of this Contract shall be interpreted in accordance with the laws of the State of Oregon and in accordance with the laws, ordinances, regulations, permits and resolutions of Marion County.

17. **TAXES:**

Contractor shall include in its Bid and pay for all applicable taxes. Refer to General Conditions regarding further discussion. Certification of Compliance with Oregon tax laws is required to be submitted prior to commencement of work.

18. **RIGHT TO REJECT BIDS:**

The Owner expressly reserves the right to reject any or all Bids, to waive any informalities or irregularities in the Bids received, and to accept that Bid which in its judgment, best serves the interest of the Owner.

19. **MODIFICATION OR WITHDRAWAL OF BID:**

- A. A Bidder may withdraw its Bid from consideration if the price Bid was substantially lower than the other Bids due solely to a mistake therein, provided:  
(1) the Bid was submitted in good faith; and (2) the mistake was a clerical mistake as opposed to a judgment mistake, and; (3) the mistake was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a Bid, which unintentional error or omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid sought to be withdrawn. The Bidder shall give notice in writing of its claim of right to withdraw its Bid within two (2) business days after the conclusion of the Bid opening procedure.
- B. Prior to the time and date designated for the receipt of Bids, any Bid submitted may be retracted by the Bidder.
- C. Withdrawn Bids may be resubmitted up to the time designated for the receipt of the Bids provided that they are then fully in conformance with these Instructions to Bidders.
- D. Bid security, if any is required, shall be in an amount sufficient for the Bid as modified or resubmitted.

20. **DETAILED BID BREAKDOWN:**

- A. Upon notification from the Owner or the Project Manager to the Bidder that submitted the apparent lowest responsive Bid, the Bidder shall, within forty-eight (48) hours, provide a detailed breakdown of its Bid in a form acceptable to the Owner or Project Manager.
- B. The breakdown may be used by the Owner to verify accounting requirements, and to determine whether the Bidder has grossly misjudged the requirements of any area.

- C. The Bidder's failure to provide the requested detailed breakdown in the specified time may result in rejection of the Bid at the sole discretion of the Owner.

21. **AWARD OF CONTRACT:**

The Contract will be awarded to the lowest responsive and responsible Bidder whose Bid is considered to be in the best interest of the Owner. After the Owner determines that a contract is to be awarded, it will award the contract to the lowest responsible bidder. The "lowest responsible bidder" will be the lowest bidder who has substantially complied with all bidding requirements and procedures and who has not been disqualified by the Owner under ORS 279C.375. In determining the lowest responsible bidder, the Owner shall add a percentage increase of the bid of nonresident bidder as required by ORS 279A.120.

- A. The Lowest Bidder is determined by the aggregate amount of the Base Bid, plus any Alternates selected by the Owner or Project Manager.
- B. A Responsive Bidder shall mean a Bidder who has submitted a Bid, which conforms, in all material respects, to the Bidding Documents.
- C. A Responsible Bidder shall mean a Bidder who has the capability, in all respects, to perform fully the Contract requirements and the moral and business integrity and reliability, which will assure good faith performance. In determining responsibility, the following criteria will be considered:
  - 1. The ability, capacity and skill of the Bidder to perform the Contract or provide the services required;
  - 2. Whether the Bidder can perform the Contract or provide the service promptly, or within the time specified, without delay or interference;
  - 3. The character, integrity, reputation, judgment, experience and efficiency of the Bidder;
  - 4. The quality of performance of previous contracts or services. For example, the following information will be considered:
    - a. The administrative and consultant cost overruns incurred by Owners on previous contracts with Bidder,
    - b.
    - c. The Bidder's compliance record with Contract General Conditions on other projects,
    - d. The submittal by the Bidder of excessive and/or unsubstantiated extra costs proposals and claims on other projects,
    - e. The Bidders record for completion of the work within the Contract time or within Contract milestones and Bidders compliance with scheduling and coordination requirements on other projects,
    - f. The Bidder's demonstrated cooperation with the Owner, the Project Manager, or the A/E and other Contractors on previous contracts,
    - g. Whether the work performed and materials furnished on previous contracts were in accordance with the Contract Documents;
  - 5. The previous and existing compliance by the Bidder with laws, regulations, resolutions and ordinances relating to contracts or services;
  - 6. The sufficiency of the financial resources and ability of the Bidder to



perform the Contract or provide the services;

7. The quality, availability and adaptability of the goods or services to the particular use required;
  8. The ability of the Bidder to provide future maintenance and service for the warranty period of the Contract;
  9. Whether the Bidder is or has been in arrears to the Owner on debt or contract or is or has been a defaulter on surety to the Owner;
  10. Such other information as may be secured by the Owner or the Project Manager having a bearing on the decision to award the Contract, to include, but not limited to:
    - a. The ability, experience and commitment of the Bidder to properly and reasonably plan, schedule, coordinate and execute the Work,
    - b. Whether the Bidder has ever been debarred from bidding or found ineligible for bidding on any other projects.
- D. The purpose of the above is to enable the Owner or the Owner's Authorized Representative in its opinion, to select the Bid that is in the best interest of the Owner. The ability of the low Bidder to provide the required bonds will not of itself demonstrate responsibility of the Bidder.
- E. The Owner reserves the right to require from the Bidder: (1) submission of references, within seventy-two (72) hours, to include a listing of previous and current projects and (2) financial statements indicating current financial status, prepared in accordance with generally accepted accounting principles, by a CPA licensed to do business in the State of Oregon.
- F. The Owner reserves the right to defer award of this Contract for a period of sixty (60) days after the due date of the Bids. During this period of time, the Bidder shall guarantee the prices quoted in its Bid.

22. **BID PROTEST:**

Any actual bidder who is adversely affected or aggrieved by the Owner's notice of award of the contract to another bidder on the same solicitation shall have seven (7) calendar days after notice of award to submit to the Owner a written protest of the notice of award. The written protest shall specify the grounds upon which the protest is based. In order to be an adversely affected or aggrieved with the right to submit a written protest, a bidder must itself claim to be eligible for award of the contract as the lowest responsible bidder and must be next in line for award, i.e., the protestor must claim that all lower bidders are ineligible for award because they are non-responsive or non-responsible. The Owner will not entertain a protest submitted after the time period established in this provision.

The Owner's designee shall have the authority to settle or resolve the written protest. If the protest is not settled or resolved by mutual agreement, the Owner's designee shall promptly issue a written decision on the protest.

23. **SUBCONTRACTORS:**

- A. All Subcontractors proposed for the Work must be acceptable to the Owner.
- B. Contractor shall comply with ORS 279C.580, a copy of which is hereto attached under Section 00667.
- C. The Owner reserves the right to request the proposed Subcontractors to complete

Bidder Qualification Forms and/or current financial statements prepared by a Certified Public Accountant. These forms will be similar to those required of a Bidder under Instruction to Bidders.

- D. In accordance with ORS 279A.110
  - (1) A bidder or proposer who competes for or is awarded a public contract may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.
  - (2) The public contracting agency may debar or disqualify under ORS 279C.440 any person as a bidder on a public contract if the agency finds that the person has violated subsection (1) of this section in a contract between the person and the agency.
  - (3) If the person desires to appeal the disqualification, the appeal procedure shall be subject to ORS 279C.445 to 450.

24. **PREVAILING WAGE RATES:**

- A. If applicable, labor required for the construction of this project is subject to the prevailing wage rates as provided in the General Requirements.
- B. Contractors working on public works projects must obtain and file with the Construction Contractors Board (CCB) a public works bond with a corporate surety authorized to do business in Oregon for the amount of \$30,000 before starting work on a contract or subcontract for a public works project, unless exempt.

25. **PRE-BID CONFERENCE:**

- A. When scheduled, a Pre-Bid Conference will be conducted by the Owner's Authorized Representative in conjunction with the A/E at the time indicated in the Advertisement for Bids to afford Bidders the opportunity to question the Owner, the Owner's Authorized Representative, and the A/E.

The meeting will be held at the location identified in the Bidding Documents. Sign-in will begin 15 minutes prior to start of meeting. Bidders must be signing in by no later than 10 minutes after meeting start time. Any bidders not signing in by that time may be deemed late and not eligible to submit a bid. The District reserves the right to consider unusual or extenuating circumstances

26. **INSPECTION AND LABORATORY TESTING:**

- A. Inspection and Laboratory Testing shall be provided as called for in the General Requirements and Technical Specifications by a Testing Consultant to be retained by the Owner.

27. **PROGRESS PAYMENTS:**

- A. Monthly progress payments will generally be made to the Contractor by the Owner within thirty (30) days after approval of the Certificate of Payment by the Owner.
- B. The Owner will retain funds from progress payments as described in General Conditions and in accordance with ORS 279C.550 through 279C.570.

28. **SUBSTITUTIONS:**

The attention of potential bidders and other interested parties is called to the conditions

set forth in Division 1, Section 016300, "Approval for Substitution and Product Option", regarding approval and product options for substitutions. All requests for substitutions must be submitted on the form provided in the bidding documents.

**29. DRUG TESTING PROGRAM FOR PUBLIC IMPROVEMENT CONTRACTS:**

Pursuant to ORS 279C.505, District's performance under this contract is conditioned upon the Contractor's compliance with the following Contractor representations and warranties.

Contractor represents and warrants the following:

A. That Contractor has at the time of the execution of this contract and shall maintain during the term of this contract, an employee drug testing program for its employees that includes, at a minimum, the following:

- (1) A written employee drug-testing policy,
- (2) Required drug testing for all new Subject Employees or alternatively, required testing of all Subject Employees every six (6) months on a random selection basis,
- (3) Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs, and
- (4) Required testing of a Subject Employee when the Subject employee is involved in:
  - (i) an incident causing an injury requiring treatment by a physician, or
  - (ii) an incident resulting in damage to property or equipment.

A drug-testing program that meets the above requirements will be deemed a "Qualifying Employee Drug-testing Program." For the purposes of this section, an employee is a "Subject Employee" only if that employee will be working on the Project job site; and

B. That Contractor shall require each subcontractor providing labor for the Project to:

- (1) Demonstrate to the Contractor that it has a Qualifying Employee Drug-testing Program for the subcontractor's Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug-testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, **or**
- (2) Require the subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug-testing Program for the duration of the subcontract.

**30. STUDENT/STAFF SAFETY**

A. Contractors provided District badge access will be required to complete a fingerprint-based criminal history check through the District. Team leads and supervisors will complete a fingerprint-based criminal history check. Any other contractor who is in a position where they will likely come in direct contact with students will also be subject to fingerprint based criminal history check. Construction Services will provide to Prevention and Protection the names of contractors who need fingerprint checks. The contractor is responsible for the fee. The rate as of January 2019 is \$79. This fee is subject to change without notice.

B. Contractor must ensure that individuals convicted of crimes listed in ORS 342.143 are not allowed to perform job duties or activities on District Property. Furthermore, the Contractor shall provide timely notification to the District once they become aware that an employee providing services within the District has been arrested or charged with a crime listed in ORS 342.143, and remove said individual from District premises until the issue is resolved. If the contractor is found in violation the district will require at the contractor's expense, a full

fingerprint based criminal history check of all personnel on site. Additionally, this requirement must be included in all sub-contractor and vendor agreements entered into by Contractor.

- C. Contractor will take all necessary precautions to place physical barriers to separate their work area from students to prevent direct or in-direct contact with students. This precautionary action must be in Coordination with District Project Manager for the Project. There is to be no contact with students unless it is a matter of imminent danger or a medical condition requiring immediate intervention.

END SECTION 00200