

SECTION 002113

INSTRUCTIONS TO BIDDERS

ARTICLE 1 – STATUTE REFERENCES

- A. Wherever in the Contract Documents reference is made to General Laws of Massachusetts, (MGL), it shall be construed to include all amendments thereto effective as of the date of issue of INVITATION TO BID on the proposed work.
- B. General Bid and Filed Sub-Bids are subject to the provisions of Massachusetts General Laws, Chapter 149 and Chapter 30, and all other applicable provisions of MGL as modified by Chapter 16 of the Acts of 1999 and Chapter 193 of the Acts of 2004.
 - 1. This “Instructions to Bidders” contains important information about bidding procedures and is intended to provide guidance and assistance to bidders. This “Instructions to Bidders” does not change or supersede the provisions of the above referenced Massachusetts General Laws, or other provisions of Statute Law.
 - 2. In the event of any conflict or inconsistency between the provisions of the Bid and Contract Documents and the provisions of applicable law, the provisions of law shall govern. In such event, the application of all remaining provisions of the Bid and Contract Documents not in conflict and not inconsistent with applicable law shall not be affected thereby.
- C. The attention of bidders is called to MGL Chapter 149, Section 179A, which requires persons contracting to do public work to give preference in awarding contracts to persons who are citizens of the United States and to partnerships all of whose members are such citizens.
 - 1. Foreign Corporations: Attention of all Bidders is directed to provisions of MGL Chapter 30, Section 39L, as amended, which provides that the Awarding Authority may not enter into a contract for construction work, and may not approve as a subcontractor furnishing labor and materials for a part of any such work, a foreign corporation that has not complied with certain requirements of Chapter 156D of the Massachusetts General Laws. The term "foreign corporation" means a corporation not incorporated under the laws of the Commonwealth of Massachusetts. Bidders are responsible to know and comply with the requirements of Section 39L of Chapter 30.

ARTICLE 2 – DEFINITIONS

- A. Awarding Authority:

City of Fitchburg
718 Main Street
Fitchburg, Massachusetts
01420

- B. Architect (Designer):
Saam Architecture
283 Franklin Street, 6th Floor
Boston, Massachusetts 02110
- C. Bidding Documents: As referenced herein refers to Document 00 11 16 – INVITATION TO BID, Document 00 21 13 - INSTRUCTIONS TO BIDDERS, Document 00 41 00 - FORM FOR GENERAL BID, Document 00 41 13 - FORM FOR FILED SUB-BID, all other bid requirements, and the “Contract Documents” (see Form of Agreement for definition of “Contract Documents”), including all Addenda.
1. Document 00 11 16 – INVITATION TO BID and this Document 00 21 13 – INSTRUCTIONS TO BIDDERS contain important information about bidding procedures and are intended to provide guidance and assistance to bidders. Both documents are complementary and should be carefully reviewed by Bidders for specific instructions. Information contained in Document 00 11 16 is not repeated herein this Document 00 21 13.
 - a. Document 00 11 16 – INVITATION TO BID and this Document 00 21 13 – INSTRUCTIONS TO BIDDERS do not change or supersede the provisions of Massachusetts General Laws, including the provisions of Chapter 149 and Chapter 30, and all other applicable provisions of law, as amended.

ARTICLE 3 - BIDDER QUALIFICATIONS

- A. The Awarding Authority has followed the procedures for the Pre-Qualification of General Bidders and the following Filed Sub Trade Categories: Miscellaneous and Ornamental Iron; Waterproofing, Dampproofing and Caulking; Roofing and Flashing; Metal Windows; Glass and Glazing; Tile; Acoustical Tile; Resilient Floors; Painting; Elevators; Fire Protection; Plumbing; Heating, Ventilating and Air Conditioning; and Electrical Work, in accordance with the provisions of MGL c.149, §§ 44D½. A list of the filed sub-trades is included in Document 00 11 16 – INVITATION TO BID.
1. **General Bidders, Miscellaneous and Ornamental Iron; Waterproofing, Dampproofing and Caulking; Roofing and Flashing; Metal Windows; Glass and Glazing; Tile; Acoustical Tile; Resilient Floors; Painting; Elevators; Fire Protection; Plumbing; Heating, Ventilating and Air Conditioning; and Electrical Filed Sub Bidders:** Under the process as set forth in MGL chapter 149 § 44D ½, **the Awarding Authority has**

ALREADY prequalified General Contractors, Miscellaneous and Ornamental Iron; Waterproofing, Dampproofing and Caulking; Roofing and Flashing; Metal Windows; Glass and Glazing; Tile; Acoustical Tile; Resilient Floors; Painting; Elevators; Fire Protection; Plumbing; Heating, Ventilating and Air Conditioning; and Electrical Filed Subcontractors interested in this Project and ONLY those firms who have ALREADY been prequalified are eligible to participate in bidding on those applicable trade categories.

- B. Each General Bidder and Filed Sub-Bidder shall be certified by the Massachusetts Division of Capital Asset Management and Maintenance (DCAMM) for the category of work and the dollar amount of this project in accordance with the provisions of Massachusetts General Laws Chapter 149 before consideration for such bid will be given.
 - 1. DCAMM Classification Rating Required for General Bidders on this Contract: General Contracting.

- C. In compliance with MGL Chapter 149, Section 44D, as amended, ALL BIDS (every General Bid and Filed-Sub-bid) shall be accompanied by a copy of a DCAMM Certificate of Eligibility and Contractor's Update Statement.
 - 1. Forms are Required from General Bidders: The Awarding Authority will use the Certificate of Eligibility and Update Form, among other information, to determine the lowest responsible and eligible bidder. General Bids submitted without Certificate of Eligibility and Update Statement shall be invalid. Filed Sub-bidders are also required to submit Certificates of Eligibility and an Update Statement.
 - 2. Public Records: Contractor's Update Statement is not a public record as defined in MGL Chapter 4, Section 7, and will not be open to public inspection.

ARTICLE 4 - EXAMINATION OF DOCUMENTS AND SITE CONDITIONS

- A. Site Visit: Each bidder is strongly encouraged to visit the site of proposed work and become fully and completely aware of all existing conditions and the character of the operations to be carried on under the proposed Contract. Each bidder shall become fully familiar with the facilities, physical conditions, and restrictions attending the work under the Contract. Failure to make such examinations will not relieve the bidder from any obligation under the General Bidder's proposal, or Filed-Sub-Bid, as submitted, and bidders agree, by virtue of submitting a bid, that they will make no claim on account of their failure to discover that which may have been discovered upon such examinations and visit.

- B. Document Examination: Each Bidder shall thoroughly examine and become familiar with the Contract Documents and the Bidding Requirements. Failure of any General Bidder or Filed Sub-Bidder to thoroughly examine

the Bidding Requirements and Contract Documents, shall in no way relieve him of any obligation with respect to his bid or of any responsibility assigned him under the Contract, and bidders agree, by virtue of submitting a bid, that they will make no claim on account of their failure to discover that which may have been discovered upon such an examinations.

- C. Pre-Bid Conference at Site: An open, public pre-bid conference will be convened at the site to permit bidders to examine the site, examine existing conditions, and ask questions. Time and place of the Pre-Bid Conference is indicated in Document 00 11 16 – INVITATION TO BID. All general bidders and filed sub-bidders are strongly encouraged to attend.

ARTICLE 5 - ADDENDA AND INTERPRETATION

- A. Bidders shall promptly notify the Architect of questions, ambiguities, and inconsistencies which they may discover upon examination of the Contract Documents, the site, and local conditions. All questions by prospective bidders as to the interpretation of the Contract Documents shall be submitted in writing to the Architect.
1. Written requests: Submit written requests for clarification and interpretation to the Architect only by email.
 - a. Telephone calls pointing out errors or discrepancies in the documents will be received by the Architect, but only for receipt of information and potential processing, but not for interpretation or clarification.
 - b. Oral or telephone interpretations will not generally be made, and if made, shall be strictly informal and not legally valid or binding.
 2. Timing of requests: Requests for clarification and interpretations must be received by the Architect at least 5 working days (Saturdays, Sundays, Federal and Massachusetts State Holidays excluded) prior to the date bids are due.
- B. Architect's Response: If the Architect considers such request for clarification or interpretation to be of sufficient importance, the Architect will issue a response in the form of a written Addenda which will become part of the Contract Documents. Clarifications and interpretations offered by the Authority, the Architect, or any of the Architect's consultant's in any form other than a formal written Addenda shall be invalid.
- C. Issuance of Addenda: It is intended, but not guaranteed that an Addenda will be issued to every bidder on record as having obtained bid documents. Copies of Addenda will be available at locations where Contract Documents are filed for public inspection as listed in the Invitation and these Instructions to Bidders. Failure to receive such Addenda shall in no way relieve any Bidder from the execution of its provisions. All Bidders shall verify the

number of Addenda which have been issued and secure any needed copies from the Architect before submitting a bid.

- D. Acknowledgement of Addenda on Bid Form: Bidders shall acknowledge Addenda in the spaces provided on bid forms. Failure of a bidder to acknowledge Addenda in the spaces provided on bid form will cause rejection of the bid. Failure of the bidder to receive any addenda shall not relieve it from any obligation under its bid as submitted.

ARTICLE 6 – PREPARATION, SUBMISSION AND CONSIDERATION OF BIDS

- A. General bids shall be for the complete work as specified and shall include the names of Filed Sub-bidders and the amounts of their sub-bids. The General Contractor shall be selected on the basis of such general bids. Sub-bids for each trade designated on the FORM FOR GENERAL BID shall be for the complete work of the trade as specified and filed with the Awarding Authority as provided in the INVITATION TO BID.
- B. Bids shall be submitted in accordance with the Instructions To Bidders.
- C. The dates and times for Submittal of Sub-Bids and General Bids are as set forth in the Advertisement. Bids received after that time will be rejected.
- D. No oral, written or telegraphic amendments to the bid will be received or be recognized. A bidder wishing to amend a bid after transmittal to the Awarding Authority may do so only by amending the bid document itself prior to the time for opening bids.
- E. Bid Withdrawal:
 - 1. Bids may not be modified, withdrawn or canceled by the Bidder for thirty days, Saturdays, Sundays and legal holidays excluded, from the date designated for the receipt of General Bids, and each Bidder so agrees in submittal a Bid.
 - 2. Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn as outlined in Article 6 of Instructions To Bidders.
 - 3. Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids, provided that they are then fully in conformance with these Instructions to Bidders.
 - 4. Bid security shall be in an amount sufficient for the Bid as modified or resubmitted.
- F. The Owner shall have the right to reject any or all Bids, reject a Bid not accompanied by a required bid security or by other date required by the Bidding Documents, or reject a Bid which is in any way incomplete or irregular. The Owner shall further have the right to reject any sub-bid if

the Owner determines that such sub-bid does not represent the bid of a person competent to perform the work as specified or if fewer than three sub-bids are received for a sub-trade.

- G. Acceptance of General Bids and Filed Sub-Bids shall be in accordance with M.G.L. Chapter 149, Sections 44 E and F. The General Contract will be awarded to the lowest responsible and eligible Bidder on the basis of the proposed Contract Price. The award of Contract to the lowest responsible and eligible Bidder will be made within thirty (30) days, Saturdays, Sundays and legal holidays excluded, after the opening of General Bids.
- H. The Owner shall have the right to waive informalities and irregularities in a Bid received and to reject any or all bids if it is in the public interest to do so.
- I. Alternates will be accepted in the order in which they are listed in the Bid Form. No Alternate will be accepted without all lower-numbered alternates being accepted.
- J. The Owner may require the successful General Bidder to substitute for any sub-bid listed in the General Bidder's Proposal, a sub-bid duly filed with the Owner by another sub-bidder in accordance with M.G.L. c. 149, Section 44F. The Contract Price will be adjusted to reflect the difference in the amounts of the respective sub-bids.
- K. If the General Bidder selected as the General Contractor fails to execute a Contract with the Owner and to furnish a Performance Bond and also a Labor and Materials or Payment Bond in accordance with the terms of the General Bid, an award may be made to the next lowest responsible and eligible General Bidder. The thirty (30) day time limit will not apply to a second or subsequent award made after the expiration of the time limit because the General Bidder failed to execute the General Contract or to provide a Performance Bond and Labor and Materials or Payment Bond.

ARTICLE 7 - BID DEPOSIT REQUIREMENTS AND PROCEDURES

- A. The following matters respecting bid deposits are governed by MGL Section 44B of Chapter 149. Every general bid and every sub-bid not accompanied by the prescribed bid deposit will be rejected.
- B. Each general bid and each sub-bid for designated trades must be accompanied by a deposit in the form of a bid bond, or cash or a certified check on, or a treasurer's or cashier's check issue by, a responsible bank or trust company, payable to the City of Fitchburg. A bid bond shall be (a) with a surety company qualified to do business in the Commonwealth of Massachusetts and satisfactory to the Awarding Authority, and (b) conditioned upon the faithful performance by the principal of the agreements contained in the bid. The amount of such bid deposit shall be five percent (5%) of the amount of the bid.

1. Filed Sub-Bids are required for trades listed in Document 00 11 16 – INVITATION TO BID.
 - C. All bid deposits of general bidders, except those of the three (3) lowest responsible and eligible general bidders, shall be returned within ten (10) days, Saturdays, Sundays and legal holidays excluded after the opening of the general bids. The bid deposits of the three (3) lowest responsible and eligible general bidders shall be returned upon the execution and delivery of the contract, or, if no award made, upon the expiration of thirty (30) calendar days after the date of opening General Bids; except that, any selected general bidder fails to perform its agreement to execute contract and furnish a performance bond and also a labor and materials or payment bond as stated in its bid in accordance with MGL Section 44E of Chapter 149, its deposit shall become and be the property of the Awarding Authority as liquidated damages, provided that the amount of the bid deposit which becomes the property of the Awarding Authority shall not, in any event, exceed the difference between its bid price and the bid price of the next lowest responsible and eligible bidder; and provided further that, in case of death, disability, bona fide clerical or mechanical error of a substantial nature, or other similar unforeseen circumstances affecting the general bidder, its bid deposit shall be returned to him/her named in the general bids.
 - D. All bid deposits of sub-bidders, except those of the three (3) lowest responsible and eligible sub-bidders, shall be returned within ten (10) days, Saturdays, Sundays and legal holidays excluded after the opening of the general bids. The bid deposits of the three (3) lowest responsible and eligible filed sub-bidders shall be returned upon the execution of the General Contract, except that, if a selected sub-bidder fails to perform its agreement to execute a sub-contract with the general bidder selected as the General Contractor, contingent upon the execution of the general contract, and, if requested to do so in the general bid by such general bidder, to furnish a performance and payment bond as stated in his sub-bid in accordance with MGL Section 44F(2) of Chapter 149, the bid deposit of such sub-bidder shall become and be the property of the Awarding Authority as liquidated damages, provided that the amount of the bid deposit which becomes the property of the Awarding Authority shall not, in any event, exceed the difference between its sub- bid price and the sub-bid price of the next lowest responsible and eligible sub- bidder; and provided further that, in case of death, disability, bona fide clerical or mechanical error of a substantial nature, or other similar unforeseen circumstances affecting the general bidder, its bid deposit shall be returned to him/her named in the general bids.

ARTICLE 8 – BID SUBMISSION CHECKLIST

- A. General Bids: On or before the date and time of receipt of General Bids, General Bidders must submit the following:
- Document 00 41 00 - Form for General Bid.
 - Document 00 43 13 - Bid Security Form (AIA Form A310 - Bid Bond).
or another acceptable form of Bid Security
 - Document 00 45 00 - Required Forms
 - Certificate of Non-Collusion and Good Faith
 - Statement of Tax Compliance
 - Wage Theft and Responsible Employers
 - Minority/Women Business Enterprises and Workforce Participation Goals
 - Certificate of Authority/Corporate Vote of Authorization
 - Certifications
 - Cori Compliance
 - Foreign Corporation
 - Debarment
 - Compliance
 - Electronic Signatures
 - Bidder's Reference Form
 - OSHA Certification
 - Bidder's Checklist
 - DCAMM Certificate of Eligibility (*not bound herewith*).
 - DCAMM form – Contractor's Update Statement (*not bound herewith*).
- B. Filed Sub-Bids: On or before the date and time of receipt of Filed Sub-Bids, Filed Sub-Bidders must submit the following:
- Document 00 41 13 - Form for Filed Sub-Bid.
 - Document 00 43 13 - Bid Security Form (AIA Form A310 -Bid Bond).
or another acceptable form of Bid Security
 - Document 00 45 00 - Required Forms
 - DCAMM Certificate of Eligibility (*not bound herewith*).
 - DCAMM form – Contractor's Update Statement (*not bound herewith*).

ARTICLE 9 – FORM OF CONTRACT

- A. Form of Agreement between Awarding Authority and General Contractor: The form of Contract for Construction Services is included in the Bidding Documents.

- B. Form of Agreement between General Contractor and Filed Subcontractor: The form of Contract for Construction Services is included in the Bidding Documents.

ARTICLE 10 - ALTERNATES

- A. Bid on all alternates listed in the Contract Documents. In the event an alternate does not involve a change in the amount of the base bid, indicate this by writing “No Change” in the space provided for the price of that alternate.
- B. Filed Sub-bidders shall enter on the Form for Sub-Bid the dollar amount of addition or subtraction, or the indication of “No Change” which pertains to the Work of the particular trade as defined in the Specifications.
- C. General Bidders shall enter on the Form for General Bid a single amount of addition or subtraction to the base bid, or the indication of “No change” for each alternate. The said amount for each alternate shall include the sum of all Sub- bidders Work and the Work of the General Contractor.

ARTICLE 11 - SALES TAX EXEMPTION

- A. The City of Fitchburg is exempt from certain taxes as provided by MGL Chapter 64(H), Section 6(f). It is therefore required that the Contractor and all Subcontractors purchasing taxable goods or services make known to suppliers the tax-exempt status of the Owner, in order that such taxes will not be applied to the goods under Contract. The City of Fitchburg will provide the necessary evidence and certificates of its tax-exempt status to the General Contractor and Filed Sub-Contractors as requested.
- B. Copies and Receipts Required: In compliance with Department of Revenue regulations, the Contractor shall provide the Awarding Authority with copies of all receipts for materials and products used for this Contract purchased using the Awarding Authority’s Tax Exemption Number.

ARTICLE 12 – LOCAL FEES

- A. Fees: All permits required by City, State Agencies or other public agencies will require payment of fees. Each Bidder shall take this into account in calculating his or her bid for work. The General Contractor shall receive all the required permits prior to performing any work on the Project.
- B. The General Bidder and Sub-Bidders are responsible for all permits, fees, inspections, and licenses, as may be required by State and local authorities.

ARTICLE 13 - REJECTION OF BIDS

- A. The Awarding Authority reserves the right to reject any or all General Bids, to revise the contract Documents and rebid, if it be in the public interest to do so. The Awarding Authority reserves the right to reject any sub-bid on any trade, if it determines that such sub-bid does not represent the sub-bid of a person competent to perform the work as specified, or if less than three (3) such sub-bids were received for each filed sub-bid trade category, or the bid prices are not acceptable without further competition.
- B. Sub-bids which are restricted to use by one General Contractor and are deemed to be unrealistic in that the proposed price is substantially less or more than the actual cost to complete all the work specified in that Section of the Specifications will be considered as not responsive to the Invitation to Bid and shall be rejected (Massachusetts Department of Labor and Industries Ruling N^o.136 and N^o.169.)
- C. Within five (5) days, Saturdays, Sundays and legal holidays excluded, after opening of sub-bids, the Awarding Authority will reject every sub-bid which is not accompanied by the required bid deposit or which otherwise does not conform to the statutory requirements, or which is on a form not completely filled in, or which is incomplete, conditional or obscure, or which contains any addition not called for, provided, however, that the failure of the Awarding Authority to reject such a sub- bid within such period shall not validate such a sub-bid nor preclude the Awarding Authority from subsequently rejecting it.
- D. Every general bid which is not accompanied by the required bid deposit, or which otherwise does not conform to the statutory requirements, or which is on a form not completely filled in, or which is incomplete, conditional or obscure, or which contains any addition not called for, shall be invalid; and the Awarding Authority shall reject every such bid.
- E. No general bid or sub-bid shall be rejected because of the failure to submit prices for, or information relating to, any item or items for which no specific space is provided in the bid form furnished by the Awarding Authority, but this sentence shall not be applicable to any failure to furnish prices or information required by MGL Chapter 149 Section 44E (in the case of general bids) or MGL Section 44F (in the case of sub-bids) of Chapter 149. No general bid shall be rejected
(1) because the sum of the prices for all work of the General Contractor and sub- bids does not equal the general bid price set forth on the bid form for that purpose or (2) because of error in setting forth the name, the sub-bid price of a sub-bidder, or the total sub-bids as long as the sub-bidder or sub-bidders designated are clearly identifiable, or (3) because the plans

and specifications do not accompany the bid or are not submitted with the bid.

- F. Any unit price bid that contains a unit price which is unduly high or low may be rejected as unbalanced. In the event of a discrepancy between the Arabic numerals and the written words, if the intent of the bidder is not clear as finally determined by the Awarding Authority, the written word shall prevail.

ARTICLE 14 - EXECUTION OF CONTRACTS

- A. All bidders' attention is called to the agreements and certifications made by general bidders and sub-bidders in the required FORM FOR GENERAL BID and FORM FOR SUB-BID, respectively.
- B. The contract between the General Contractor and each Sub-Contractor shall be in the form contained in the Contract Documents following these Instructions, as required by MGL Chapter 149, Section 44F.

ARTICLE 15 – PERFORMANCE AND PAYMENT BONDS

- A. Performance and Payment Bonds: The successful General Contractor is required to provide the Owner with a performance bond, and a labor and materials or payment bond, executed by a surety company licensed by the Division of Insurance and approved by the Owner. Bonds must be delivered to the Awarding Authority not later than the time of execution of the Contract. Each such bond will be in the amount of the total Contract price.
 - 1. An attorney-in-fact who executes the required bond on behalf of the surety must affix thereto a certified and current copy of his Power of Attorney.
- B. The Miscellaneous and Ornamental Iron; Waterproofing, Dampproofing and Caulking; Roofing and Flashing; Metal Windows; Glass and Glazing; Tile; Acoustical Tile; Resilient Floors; Painting; Elevators; Fire Protection; Plumbing; Heating, Ventilating and Air Conditioning; and Electrical Filed Subcontractors will be required to provide a payment and a performance bond to the General Contractor, and the Miscellaneous and Ornamental Iron; Waterproofing, Dampproofing and Caulking; Roofing and Flashing; Metal Windows; Glass and Glazing; Tile; Acoustical Tile; Resilient Floors; Painting; Elevators; Fire Protection; Plumbing; Heating, Ventilating and Air Conditioning; and Electrical Filed Subcontractors shall include the cost for the premium for those bonds in its sub-bid price. (Reference MGL Chapter 149 Sect. 44 F(2)D.)
 - 1. An attorney-in-fact who executes the required bond on behalf of the surety must affix thereto a certified and current copy of his Power of Attorney.

ARTICLE 16 - COMMENCEMENT OF WORK AND TIME OF COMPLETION

- A. It is agreed that time is of the essence of this Contract. The successful bidder, upon execution of the Contract Agreement, shall commence the work of the Contract within seven (7) calendar days from receipt of written Notice to Proceed issued by the Awarding Authority. The selected General Bidder shall agree to commence and prosecute the Work under this Contract in conformance with the conditions of the Contract Documents and shall thereafter diligently and continuously carry on the work without interruption in such manner as to substantially complete the work of each phase in accordance with the Contract Documents.
1. Delay Remedy: In the event that the Project is delayed for any reason, the Contractor shall not be eligible for any additional compensation or damages on account of such delay, and the sole remedy for the Contractor, and any subcontractor, for a delay not caused by the Contractor or its subcontractors shall be an extension of the Contract Time only. No party shall have any other rights or remedies against the Owner on account of any delay, and agrees, by submitting a bid, that it shall make no claim therefor.
 2. The Contract Time may be extended due to suspensions, delays, interruptions or failures caused by the Owner as provided for by MGL Chapter 30, Sections 39O and 39P, and for changes in the scope of the Contract due to differing subsurface or latent physical conditions as provided for by MGL Chapter 30, Section 39N.

ARTICLE 17 - LIQUIDATED DAMAGES

- A. The Owner may, in its sole discretion assess and collect from the Contractor Liquidated Damages in the amount of \$1,500 per day in the event the General Contractor has not achieved Substantial Completion by the date indicated in the General Conditions of the Contract for Construction.

END OF DOCUMENT