



**Bidding Conditions**

Attachment 'C'

REV Date: December 4, 2019

Project Name \_\_\_\_\_  
(Permit Nos.     )

at the

Fresno Chaffee Zoo

Project No. \_\_\_\_\_

Located at

894 West Belmont Avenue

Fresno, CA 93728

## DEFINITIONS

**Addendum** - A document issued by the PM during the bidding period that modifies or supersedes portions of the Contract Documents.

**Architect** - The person or organization, including the authorized representatives thereof, commissioned by the Owner to design the project. For projects on which an engineer or landscape architect is commissioned instead of an architect, the term "Architect" shall mean the design professional so commissioned for the project.

**Bid Date** - The day on which bid proposals for a project are opened.

**Bidder** - Any prequalified individual or business entity acting directly or through an authorized representative that submits a proposal for the work.

**Contract** - The Contract Documents which collectively represent the entire agreement between the Owner and the Contractor, and which supersede any prior negotiations, representations, or agreements either written or oral.

**Contract Documents** - The Bid Proposal Form, Notice to Contractors, bonds, insurance certificates, plans, specifications, addenda, Agreement, Contract General Conditions, FCZ Bidding Conditions, FCZ-Specific Conditions, and change orders.

**Owner** - The Fresno's Chaffee Zoo Corporation

**Plans** - The drawings which include elevations, sections, details, material and equipment schedules, diagrams, information, notes, or reproductions or any of these, and which show the location, character, dimension, or details of the work.

**Prequalified** - An individual or firm that has previously submitted company information and completed the necessary forms for review by FCZ. Entity was found to meet the standard criteria, and has been 'prequalified' by FCZ to bid on projects of said amount in the RFQ/RFP documents.

**Project** - The total work required by the Contract.

**Project Manager (PM)** - The person delegated by the Owner to manage the construction project, and authorized to approve and/or give direction to the Contractor by making changes to the Contract through use of a Change Directive.

**Site** - The area specified in the Contract for the project and the area made available for the Contractor's operation.

**Specifications** - The instructions and requirements which complement the plans and which describe the manner of performing the work or the quantities, qualities and types of materials to be furnished.

**Subcontractor** - Any individual or business entity that contracts with Contractor to furnish either labor and materials or equipment, or labor only.

**Supplier or Vendor** - Any individual or business entity that contracts with the Contractor to provide materials or equipment.

**Work** - That which is to be constructed or done under the Contract, including the furnishing of all labor, materials, and equipment.

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## BIDDING

These conditions shall be accepted by and binding upon all persons or entities submitting a bid for the project or work of improvement described above. For the successful bidder, these conditions shall be and are hereby incorporated as part of the Contract documents.

### **1. Contractor's License**

No Bidder may bid on work for which it is not properly licensed. The Owner shall disregard any bid received from a Bidder who is not properly licensed (Business and Professions Code § 7028.15). Nor will the Owner award a contract to a Bidder who does not possess the appropriate contractor's license, which is that specified in the Notice to Contractors. Joint venture Bidders must individually possess a current license when submitting the bid and the joint venture must possess a joint venture license at the time of award. All Bidders must be registered with the Department of Industrial Relations and must provide proof of current registration before the execution of any contract.

### **2. Necessity for Careful Examination of Site, Plans, and Specifications**

The Bidder shall carefully examine the site and the plans and specifications for the project and shall investigate and be satisfied as to the conditions to be encountered, the character and quantity of surface and subsurface materials or obstacles to be encountered, rights of way and easements at or near the site, the work to be performed, materials to be furnished and as to the requirements of the proposal, plans, and specifications for the project. Bidder certifies that Bidder has complied with the requirements of this provision by the submission of its bid.

Any failure by the Bidder to acquaint itself with information that is available or with reasonable investigation may be available will not relieve it from responsibility to properly estimate the difficulty or cost to perform the work. Such examination does not require independent underground soils borings unless required elsewhere.

### **3. Clarification During Bidding**

The Bidder shall examine the plans and specifications in preparing the bid and shall report to the PM any omissions, discrepancies, or apparent errors found in the plans and specifications. Before the date of bid opening, the Bidder shall submit a written request for clarification to the PM who may give such clarification in the form of an addendum to all Bidders if time permits. Otherwise, in estimating the cost of the project, the Bidder shall consider that any conflicts shall be governed by Article 5 of the Zoo's General Conditions, a copy of which is available upon request.

Only the PM, in consultation with the Architect and/or Engineer, is authorized to answer questions or prepare addenda relative to the project. Information obtained verbally from any source has no contractual authority, may not be relied upon, and shall have no standing in any event that may occur.

### **4. Bidding Documents**

#### **a. Bid Proposal Forms**

The bid shall be presented only on the standard 'Bid Proposal' form using the 'Subcontractor Listing' form provided in the bid documents. The bid shall be a guaranteed lump-sum amount for work completed as required by the Contract Documents and shall include license fees, sales tax, cost of insurance, and any other cost incidental to the work. The bid shall be executed by the Bidder, or authorized representative of the Bidder, and shall include the Bidder's name, address, and license number. The PM shall reject any proposal submitted that is not signed by the Bidder or by the Bidder's duly authorized representative. The bid shall be irrevocable for a period of 45 days after the date of the bid opening or as specifically stated in the Bid documents.

#### **b. Listing of Proposed Subcontractors**

Each proposal shall have listed therein on the form provided by FCZ the name and location of the place of business of each subcontractor under proposed subcontract to the Contractor, which will perform work or labor or render services for the Contractor in excess of one-half of one percent of the Contractor's total bid, on the required 'Subcontractor Listing Form'. The proposal shall also state the portion of work or labor or rendition of services that each such subcontractor will do. If no subcontractor is listed or if more than one subcontractor is listed for the same portion of work the Bidder must be qualified to do the work and perform

this work themselves. Within 24 hours after the deadline established for the receipt of bids, the apparent lowest and second lowest Bidders must submit a completed Expanded List of Subcontractors form, which contains more detailed information, such as complete subcontractor names and addresses, telephone numbers, license numbers, etc.

c. Bidder's Security

All bids shall be presented under sealed cover and have enclosed an amount equal to at least five (5) percent of the total amount bid, including alternatives (if additive), as bid security. The bid security may be a cashier's check, or certified check made payable to the Owner, or a bidder's bond. No bid shall be considered unless one of these forms of bid security is enclosed therewith. If the bid security is a bond, a corporation authorized as an admitted surety to issue surety bonds in California, shall execute that bond.

**5. Bid Proposals**

a. Submission of Proposals

Only prequalified Bidders through FCZ's prequalification process will be allowed to submit a proposal. Bidders shall submit bid proposals to the office indicated on the bid proposal. It is the Bidder's responsibility to see that its bid is received in the proper time. Delays in timely receipt of the bid caused by the United States mail system, independent carriers, acts of God, electronic communication failures, or any other cause shall not excuse late receipt of a bid. The PM shall return unopened any bid received after the time specified in the Notice to Contractors or in any addendum.

b. Withdrawal of Proposals

Any bid may be withdrawn at any time prior to the time fixed in the public notice for the opening of bids but only by a written request from the Bidder or its authorized representative filed with the PM. A request to withdraw a bid proposal orally, or by use of telegram or telephone is not acceptable. The withdrawal of a bid shall not prejudice the right of a Bidder to file a new bid. This paragraph does not authorize the withdrawal of any bid after the time fixed in the public notice for the opening of bids.

c. Public Opening of Proposals

Proposals will NOT be publicly opened.

d. Rejection of Irregular Proposals

Proposals may be rejected if they show any alterations of forms, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind. If the bid amount is changed after the amount has been once inserted, the change shall be initialed.

e. Power of Attorney or Agent

When an agent signs the proposal, a power of attorney shall either be on file with the PM before the opening of bids or be submitted with the proposal. Failure to submit a power of attorney may result in the rejection of the proposal as irregular and unauthorized. A power of attorney is not necessary in the case of a general partner of a partnership.

f. Waiver of Irregularities

The Owner reserves the right to waive minor irregularities in proposals submitted.

g. Additional Information

After opening of bids, those who submitted bids will be notified of who the apparent lowest bidder is at the time of opening. The bid opening by the Owner or the PM does NOT guarantee that lowest bidder will be selected to enter into contract negotiations. The Owner's representative shall further review each and every bid following the opening to confirm the lowest responsive and qualified bidder and, if such lowest responsive and qualified bidder is designated, will start the contract negotiation process with that bidder. Owner retains the right, in its sole and absolute discretion, to utilize a 'Request for Qualifications' form, a bidding scoresheet, or other documents or metrics to select the lowest responsive bid from a qualified bidder and/or to reject all bids and re-bid the project for any reason.

## **6. Competitive Bidding**

If more than one proposal is offered by an individual or business entity or combination thereof, under the same or different names, all such proposals may be rejected. A party who has quoted prices on materials or work to a Bidder is not thereby disqualified from quoting prices to other Bidders, or from submitting a bid directly for the materials or work.

All Bidders are hereby notified that any collusive agreement fixing the prices to be bid so as to control or affect the awarding of this Contract may render void any Contract awarded under such circumstances. The Bidder, by act of submitting a bid, certifies that in the preparation of the bid, no bid was received by the Bidder from a bid depository, which depository, as to any portion of the work, prohibits, or imposes sanctions for, the obtaining by the Bidder, or the submission to the Bidder by any subcontractor or vendor or supplier of goods and services, of a bid outside the bid depository. The certification shall constitute a warranty, the falsity of which shall entitle the Owner to pursue any remedy authorized by law and shall include the right at the option of Owner of declaring any Contract made as a result thereof to be void.

A 2% bid advantage will be given to a Preferred Business Enterprise, which is any business certified in the State of California, OSDS, Disabled Veteran Owned Business, Small Business Enterprise, or a Local Business Entity that has its primary office located in Fresno County. The 2% advantage is not cumulative; i.e. if a bidder qualifies as a Preferred Business Enterprise for more than one reason, the maximum bid advantage will still be 2%.

## **7. Mistake in Bid**

A Bidder shall not be relieved of a bid without consent of the PM nor shall any change be made in a bid because of mistakes.

## **8. Failure to Be a Responsible Bidder**

In order to be considered for award of a Contract a Bidder must be a responsible Bidder, and have been previously prequalified through annual prequalification process. To be responsible, the Bidder, in the judgment of the Owner, must be sufficiently trustworthy and possessed of the requisite quality, fitness, capacity and experience to satisfactorily perform the work.

## **9. Award and Execution of Contract**

### **a. Award of Contract**

If the Owner deems the acceptance of the lowest responsible bid or bids is not in the best interests of the Owner, the PM may reject all bids. If the Contract is awarded, it shall be to the lowest responsible Bidder. Such award shall be made within forty-five (45) days after the date of the bid opening or as specifically stated in the Bid documents. If the lowest responsible Bidder refuses or fails to execute the Contract, the PM may award the Contract to the second lowest responsible Bidder. Such award shall be made within forty-five (45) calendar days after the opening of proposals. If the second lowest responsible Bidder refuses or fails to execute the Contract, the PM may award the Contract to the third lowest responsible Bidder. Such award shall be made within sixty (60) calendar days after the opening of the proposals.

### **b. Return of Bidder's Security**

The Owner may withhold Bidder's security of the second and third lowest responsible Bidders until the Contract has been finally executed. The cashier's checks and certified checks submitted by all other unsuccessful Bidders shall be returned to them within ten (10) calendar days after the Contract is awarded, and their Bidder's bonds shall be of no further effect.

### **c. Contract Bonds**

The successful Bidder shall furnish in two duplicate counterparts, two (2) surety bonds in the form prescribed by the PM. Each shall be in an amount equal to 100 percent of the awarded Contract price and executed by an admitted surety insurer licensed in the State of California. One of the surety bonds shall guarantee faithful performance of the Contract by the Contractor and the other shall secure payment of laborers, mechanics, and/or material suppliers employed on the project. Such bonds are subject to the approval of the PM. Contract bonds shall remain in full force and effect during the term of the Contract including the one-year guarantee period, unless a longer bond period is stipulated in the Contract Documents.

All alterations, extensions of time, extra and additional work, and other changes authorized by any part of the Contract, including determinations made under Article 7 of the General Conditions, a copy of which is available upon request, shall be made without securing the consent of the surety or sureties on the Contract bonds.

Riders or modifications of any kind on Bidders bonds, performance bonds and payment bonds are not acceptable and may result in Bidder's disqualification as nonresponsive.

d. Execution of Contract

Within seven (7) calendar days of receiving the Contract from the PM, the Contractor will sign and return the Contract, with the requisite bonds and insurance certificates to the PM.

When the Contract has been fully executed, the PM will issue to the Contractor a Notice to Proceed. The Contractor may not begin work before receiving the PM's written Notice to Proceed. Any work performed by the Contractor before receipt of the Notice to Proceed shall be considered as having been done at the Contractor's own risk.

e. Failure or Refusal to Execute Contract

Failure or refusal by the Bidder to execute the Contract within the time set forth above shall be just cause for the rescission of the award and the forfeiture of the Bidder's security. Failure or refusal to file acceptable bonds within the time set in Section d, above, constitutes a failure or refusal to execute the Contract. If the successful Bidder fails or refuses to execute the Contract, the PM may award the Contract as set forth above. On the failure or refusal of the second or third lowest responsible Bidder to execute the Contract, Bidder's security in each case shall be forfeited.

## 10. Alternatives or Equals

For convenience in designation on the plans or in the specifications, certain materials or equipment may be designated by a brand or trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as "designated by brand name." No alternatives or equals shall be proposed by a Bidder before the Contract is awarded, nor shall a Bidder utilize any alternatives or equals in formulating or submitting its Bid Proposal. Submission of a Bid Proposal by a Bidder shall constitute a representation by the Bidder that the Bidder has not included an alternative or equal in its Bid Proposal.

Following the execution of the Contract, alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed for use provided the Contractor complies with the following requirements:

The Contractor shall submit its proposal to the PM for an alternative as an "equal" in writing no later than seven (7) calendar days after the execution of the Contract. In exceptional cases the Owner may give written consent to a submittal or re-submittal received after the expiration of the time limit designated. The Contractor is responsible for timely submittal of its proposed "or equal."

No proposal will be considered unless accompanied by complete information necessary to permit determination of the equality of the offered materials or equipment. Samples shall be provided when requested by the PM.

The burden of proof as to the comparative quality and suitability of the offered materials or equipment shall be upon the Contractor. Where the material is specified by capacity or performance, the burden of proof shall be on the Contractor to show that any particular equipment or materials meet the minimum capacities or the performance requirements specified. The Contractor shall furnish at its own expense all information necessary for a determination as to whether the minimum capacities or performance requirements will be met.

The PM shall be the judge of such matters *in its sole and absolute discretion*. If the PM rejects the use of any alternative materials or equipment, then one of the products designated by brand name shall be furnished.

If changes or delays are required for proper installation or fit of alternative materials, articles, or equipment, or because of deviations from Contract Documents, such changes or delays shall be made at the Contractor's expense without recourse for reimbursement from the Owner.

## **11. Substitutions**

Where manufacturers, vendors, or (in the case of Owner-specified design-build subcontractors) subcontractors are listed or identified in the Plans and/or Specifications, no Bidder shall submit a Bid Proposal which utilizes or lists any manufacturers, vendors, or (in the case of Owner-specified design-build subcontractors) subcontractors which are not listed or identified in the Plans and/or Specifications, nor shall a Bidder utilize any manufacturers, vendors, or (in the case of Owner-specified design-build subcontractors) subcontractors which are not listed or identified in the Plans and/or Specifications in formulating or submitting its Bid Proposal. Submission of a Bid Proposal by a Bidder shall constitute a representation by the Bidder that the Bidder has not included any manufacturers, vendors, or (in the case of Owner-specified design-build subcontractors) subcontractors which are not listed or identified in the Plans and/or Specifications.

Following the execution of the Contract, if the Contractor proposes a substitution, the Contractor must comply with these provisions, but, in addition, the Contractor must submit any cost impact. By submitting a substitute, the Contractor waives any rights to claim a delay due to the processing of this substitution. The time for submittal of a substitution of an unequal product shall be restricted to seven (7) calendar days after the effective date on the Notice to Proceed unless the PM allows a longer or shorter period in writing. The Owner is not obligated to review or accept substitutions.

## **12. Public Contract Code**

By submitting a Bid Proposal and, if the successful bidder, by entering into a Contract, Bidder/Contractor acknowledges and agrees that the Public Contract Code shall not apply to the Contract Documents, the Work, or the Project in any way.

End of Bidding Conditions