INSTRUCTIONS TO BIDDERS

Article 1 - Contract Information
  1.1 Project Scheduling and Coordination
  1.2 Giving Notices

Article 2 - Bidding Procedures
  2.1 Examination of Contract Documents and Project Site
  2.2 Pre-Bid Meeting
  2.3 Interpretation
  2.4 Standards
  2.5 Proposed Equals
  2.6 Bid Form
  2.7 Required Submittals with Bid Form
  2.8 Unit Prices
  2.9 Change in Bid Amount
  2.10 Copies of Bid Documents

Article 3 - Bid Opening and Consideration of Bids
  3.1 Delivery of Bids
  3.2 Bid Opening
  3.3 Bid Opening Extension
  3.4 Bid Evaluation Criteria
  3.5 Bid Evaluation Procedure
  3.6 Rejection of Bid
  3.7 Notice of Intent to Award

Article 4 - Withdrawal of Bid
  4.1 Withdrawal Prior to Bid Opening
  4.2 Withdrawal After Bid Opening
  4.3 Refusal by University to Accept Withdrawal
  4.4 Refusal by Bidder to Perform
  4.5 Effect of Withdrawal

Article 5 - Bid Estimate
  5.1 Limit on Award
Article 6 - Bid Guaranty and Contract Bond
   6.1 Bid Guaranty
   6.2 Bond Forfeiture
   6.3 Exception to Bond Forfeiture
   6.4 Bond Contract

Article 7 - Contract Award and Execution
   7.1 Noncompliance with Conditions Precedent
   7.2 Time Limits
   7.3 Conditions Precedent for Execution of Contract Form
   7.4 Notice to Proceed and Submittals
   7.5 Wage Rates

Article 8 – Applicable Law and Forum
   8.1 State Courts and Law
ARTICLE 1 - CONTRACT INFORMATION

1.1 PROJECT SCHEDULING AND COORDINATION

1.1.1 Unless otherwise provided in the Contract Documents, the time for completion of the Project indicated on the Bid Form shall be the time for Contract Completion applicable to the Bidders.

1.1.2 The University may assign all or any portion of its interest in a Contract with one or more of the successful Bidders to another successful Bidder as an agreed condition for an award of the Contract for the amount of the respective bid. Such assignment may include, without limitation, the duty to schedule, coordinate and administer the Contracts.

1.1.3 The Lead Contractor shall be responsible for scheduling the Project, coordinating the Contractors, and providing other services identified in the Contract Documents. When the cost estimate for the Project is $500,000 or more, critical path construction scheduling methods shall be provided.

1.1.4 The award of separate Contracts for the Project requires sequential, coordinated and otherwise interrelated Contractor operations and may involve interference, disruption, hindrance or delay in the progress of any individual Contractor's Work. Each Contractor shall be an intended third party beneficiary of the Contract of each other Contractor performing Work on the Project. Each Contractor shall cooperate with the Lead Contractor, the Associate, the University and any other Contractors to minimize interference, disruption, hindrance or delay of any Work on the Project.

1.1.5 The Bidder agrees that the Contract Price, as amended from time to time, shall cover all costs due the Bidder from the University resulting from interference, disruption, hindrance or delay caused by or between Contractors or their agents and employees.

1.1.6 The Bidder agrees that the Bidder will make no claim against the University for additional compensation or mitigation of Liquidated Damages for any such interference, disruption, hindrance or delay, and will accept as full satisfaction an extension of time which may be provided by the University in accordance with the Contract Documents. This provision is intended to be, and shall be construed as consistent and not in conflict with Section 4113.62, ORC, to the fullest extent permitted by law.

1.2 GIVING NOTICE

1.2.1 Whenever any provision of the Contract Documents requires the giving of notice during the bidding period and prior to Contract award, such notice shall
be deemed to have been validly given if delivered personally to the individual or to a member of the company or organization for whom the notice is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address of such individual or company known to the giver of the notice.

1.2.1.1 All notices provided to the Bidder from the Associate shall be copied to the University.

1.2.1.2 All notices provided to the Bidder from the University shall be copied to the Associate.

1.2.1.3 All notices provided to the Associate from the Bidder shall be copied to the University.

1.2.1.4 All notices provided to the University from the Bidder shall be copied to the Associate.

1.2.2 When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday, Sunday or a Legal Holiday, such day will be omitted from the computation and such period shall be deemed to end on the next succeeding day which is not a Saturday, Sunday, or Legal Holiday.

1.2.3 The effective date of any and all notices, regardless of the methods of delivery, shall be the effective date as provided in the notice.

1.3 USE OF FACSIMILE TRANSMISSION

1.3.1 Any notice required by the Contract Documents may be given by facsimile transmission, provided the original signed document is delivered pursuant to Paragraph IB 1.2.

1.3.2 Notice of withdrawal of a bid may be given by facsimile transmission provided an original signed document is received by the University within three (3) business days of the facsimile transmission.
ARTICLE 2 - BIDDING PROCEDURES

2.1 EXAMINATION OF CONTRACT DOCUMENTS AND PROJECT SITE

2.1.1 Prior to submitting its bid, the Bidder shall examine all Contract Documents, including without limitation the Drawings and Specifications for all divisions of Work for the Project, noting particularly all requirements which will affect the Bidder's Work in any way.

2.1.2 Failure of a Bidder to be acquainted with the extent and nature of Work required to complete any portion of the Work in conformity with all requirements set forth in the Contract Documents, will not be considered as a basis for additional compensation.

2.1.3 Prior to submitting a bid, the Bidder shall examine and evaluate the Project site and related Project conditions where the Work will be performed, and also consider when the Work will be performed, including without limitation the following:

2.1.3.1 The condition, layout and nature of the Project site and surrounding area;

2.1.3.2 The availability and cost of labor;

2.1.3.3 The availability and cost of materials, supplies and equipment;

2.1.3.4 The cost of temporary utilities required in the bid;

2.1.3.5 The cost of any permit or license required by a local or regional authority having jurisdiction over the Project;

2.1.3.6 The usual weather conditions;

2.1.3.7 Conditions bearing upon transportation, disposal, handling and storage of equipment, materials and waste;

2.1.4 Unless otherwise specified in the Contract Documents, soil borings, test excavations and other subsurface information or information about concealed physical conditions shall be considered as representative of actual Project conditions, Bidders shall be afforded access to examine the Project site and are responsible to use their own judgment and expertise in evaluating subsurface and concealed physical conditions and the related information provided in the Contract Documents in the preparation of its bid.
2.2 PRE-BID MEETING

2.2.1 The Bidder is strongly encouraged to attend the pre-bid meeting, where the Associate, and the University will answer questions regarding the Contract Documents.

2.2.2 The Associate shall prepare minutes of the pre-bid meeting for the Project record. If questions raised by the Bidders require changes to the Contract Documents, the changes, along with a list of attendees at the pre-bid meeting shall be issued by Addendum.

2.2.3 Failure of the Bidder to attend the pre-bid meeting, which results in the Bidder not being fully acquainted with the requirements of the Project, will not be considered as a basis for additional compensation.

2.3 INTERPRETATION AND ADDENDA

2.3.1 If the Bidder finds any perceived ambiguity, conflict, error, omission or discrepancy on or between any of the Contract Documents, including without limitation the Drawings and Specifications, or between any Contract Documents and any applicable provision of law, including without limitation the ORC, OAC and Ohio Building Code, the Bidder shall submit a written request to the Associate for an interpretation or clarification.

2.3.1.1 The Bidder shall be responsible for prompt delivery of such request.

2.3.1.2 In order to prevent an extension of the bid opening, the Bidder is encouraged to make all requests for interpretation or clarification a minimum of seven (7) business days before the bid opening.

2.3.2 The Associate shall promptly respond to written requests from Bidders by issuing addenda. The Associate shall issue addenda to plan holders of record. Any addenda issued within seventy-two (72) hours before any bid opening (excluding Saturdays, Sundays, and legal holidays) shall include a revision to the bid opening date.

2.3.2.1 The Addenda shall be deemed to have been validly given if the Addenda are issued via facsimile, or sent to each Plan holder receiving Contract Documents.

2.3.2.2 Any Addenda provided to the Bidder from the Associate shall be copied to the University.

2.3.3 Any interpretation or clarification of the Contract Documents made by any Person other than the Associate, or in any manner other than a written Addendum, shall not be binding and the Bidder shall not rely upon any such interpretation or clarification.
2.3.4 The Bidder shall not, at any time before or after the execution of the Contract Form, be compensated for a claim alleging insufficient data, incomplete, ambiguous, conflicting or erroneous Contract Documents, or incorrectly assumed conditions regarding the nature, extent or character of the Work, if no request for interpretation or clarification was made by the Bidder prior to the bid opening.

2.4 STANDARDS

2.4.1 The articles, devices, materials, equipment, forms of construction, fixtures and other items named in the Specifications or Addenda to denote kind, quality or performance requirements shall be known as Standards and all bids shall be based upon those Standards.

2.4.2 Where two (2) or more Standards are named, the Bidder may furnish any one of those Standards.

2.4.3 Items which are not Standards may be used only if accepted pursuant to the requirements of Paragraph IB 2.5.

2.5 PROPOSED EQUALS

2.5.1 If the Bidder proposes to use an article, device, material, equipment, form of construction, fixture or other item other than those Standards named in the Specifications, the Bidder shall certify that the item is equal in quality, and all aspects of performance and appearance, to the Standards specified.

2.5.2 In addition, the Bidder shall submit information to the Associate no later than ten (10) days prior to the bid opening, which information shall include:

2.5.2.1 The name and a complete description of the Proposed Equal, including Drawings, performance and test data, and other information necessary for a complete evaluation;

2.5.2.2 A statement setting forth any changes which the Proposed Equal will require in the Contract Documents or the Project.

2.5.3 If the Associate approves the proposed Equal as a Standard, an Addendum shall be issued no later than seventy-two (72) hours prior to the bid opening, excluding Saturdays, Sundays, and Legal Holidays, to each Plan holder receiving Contract Documents.

2.5.4 If the Associate does not approve the Proposed Equal as a Standard, the Associate shall inform the Bidder of the disapproval in writing, no later than seventy-two (72) hours prior to the bid opening, excluding Saturdays, Sundays,
and Legal Holidays, stating the reason for the disapproval, which decision shall be final. The Associate shall have the discretion to reject a Proposed Equal for the reason that the Bidder failed to provide sufficient information to enable the Associate to completely evaluate the Proposed Equal without delay in the scheduled bid opening.

2.5.5 No consideration shall be given to any proposed Proposed Equal unless submitted to the Associate ten (10) days prior to the bid opening.

2.6 BID FORM

2.6.1 Each bid shall be submitted on the Bid Form and sealed in a pre-printed envelope if provided with the Contract Documents or in an envelope clearly marked as containing a bid, indicating the Project name and Project number, construction trade of the bid, Purchasing’s quotation number and the date of the bid opening on the envelope.

2.6.1.1 Any change, alteration or addition in the wording of the Bid Form may cause a bid to be rejected as non-responsive.

2.6.1.2 Unless the Bidder withdraws the bid as provided in Article IB 4, the Bidder will be required to comply with all requirements of the Contract Documents, regardless of whether the Bidder had actual knowledge of the requirements and regardless of any statement or omission made by the Bidder which might indicate a contrary intention.

2.6.2 The Bidder shall fill in all relevant blank spaces in the Bid Form by printing in ink or by typewriting, and not in pencil.

2.6.2.1 The Bidder shall show all bid amounts in both words and figures. In the case of a conflict between the words and figures, the amount shown in words shall govern, where such words are not ambiguous. When the Bidder's intention and the meaning of the words are clear, omissions or misspellings of words will not render the words ambiguous.

2.6.2.2 Any alteration or erasure of items filled in on the Bid Form shall be initialed by the Bidder.

2.6.3 When an Alternate is listed on the Bid Form, the Bidder shall fill in the applicable blank with an increased or decreased bid amount. The University reserves the right to accept or reject any or all bids on Alternates, in whole or in part, and in any order.

2.6.3.1 If no change in the bid amount is required, indicate "No Change" or $0 dollars.
2.6.3.2 Failure to make an entry or an entry of "No Bid," “N/A," or similar entry on any Alternate may cause the bid to be rejected as non-responsive only if that Alternate is selected.

2.6.3.3 If an Alternate is not selected, an entry as listed in Paragraph IB 2.6.3.2 on that Alternate will not, by itself, render a bid non-responsive.

2.6.3.4 In a combined bid, a blank entry or an entry of “No Bid,” “N/A,” or similar entry on an Alternate may cause the bid to be rejected as non-responsive only if that Alternate applies to the combined bid and that Alternate is selected.

2.6.4 If the Bidder is a corporation, partnership or sole proprietorship, an officer, partner or principal of the Bidder, as applicable, shall print or type the legal name of the Bidder on the line provided, and sign the Bid Form. If the Bidder is a joint venture, an officer, partner or principal, as applicable, of each member of the joint venture shall print or type the legal name of the applicable member on the line provided, and sign the Bid Form on behalf of that member. All signatures must be original.

2.6.5 Subject to the provisions of this Paragraph IB 2.6, the completed Bid Form of the Bidder with whom the University executes a Contract Form shall be incorporated into the Contract as if fully rewritten therein.

2.7 REQUIRED SUBMITTALS WITH BID FORM

2.7.1 A Bid shall be rejected as non-responsive if the Bidder fails to submit the following with the Bid Form in a sealed envelope:

2.7.1.1 A Bid Guaranty as provided in Article IB 6 meeting the requirements of Sections 153.54 and 153.571, ORC;

2.7.1.2 A valid Power of Attorney of the agent signing for the Surety. Power of Attorney must be provided within three (3) business days of request if a valid Power of Attorney was not submitted with the bid.

2.7.2 To expedite an evaluation for possible award, all Bidders are encouraged to submit all of the following with the Bid Form in a sealed envelope, or within a time frame noted herein or as determined by the University:

2.7.2.1 A complete and signed “Responsible Bidder Information” (RBI) form with all required attachments. If not submitted with the bid, this form must be submitted to the University within three (3) business days of request, or bid will be rejected.
2.7.2.2 Certificate of Compliance with Affirmative Action Programs, issued pursuant to Section 9.47, ORC, by the Equal Opportunity Division of DAS. (Apply for Certificate of Compliance at http://www.state.oh.us/das/eod/cc.htm.)

2.7.2.3 To support a Bond, a current and signed Certificate of Compliance required under Section 9.311, ORC, issued by the Ohio Department of Insurance, showing the Surety is licensed to do business in Ohio;

2.7.2.4 Current Ohio Workers' Compensation Certificate;

2.7.2.5 If the Bidder is a foreign corporation, i.e., not incorporated under the laws of Ohio, a Certificate of Good Standing from the Ohio Secretary of State showing the right of the Bidder to do business in the State; or, if the Bidder is a person or partnership, the Bidder has filed with the Ohio Secretary of State a Power of Attorney designating the Ohio Secretary of State as the Bidder's agent for the purpose of accepting service of summons in any action brought under Section 153.05, ORC, or under Sections 4123.01 to 4123.94, inclusive, ORC.

2.7.2.6 Subsequent to the bid opening, submit any other data or information which the Associate or University may request concerning the responsibility of the Bidder, including a complete list of major Subcontractors with an estimated contract value of $150,000 or more, which the Bidder proposes to employ on the Project;

2.7.2.7 Plumbing, electrical, hydronics, refrigeration, and heating, ventilating and air conditioning (HVAC) Contractors shall submit proof of current licensing by the Department of Commerce, Industrial Compliance Division, Ohio Contractors Industry Examining Board (OCIEB) as required by Section 4740, ORC.

2.7.3 All Bidders are required to be enrolled, prior to submitting a bid, and in good standing in a Drug-Free Workplace Program (DFWP) approved by the Ohio Bureau of Workers’ Compensation (OBWC), and are required to provide on the Bid Form certain information relative to their enrollment in such a program; and, if awarded a Contract, shall comply with other DFWP criteria described in the General Conditions paragraph 20.8 – Drug Free Workplace Program Participation. A BWC DFWP application may be obtained at http://www.ohiobwc.com or by calling 1-800-OHIOBWC.

2.8 UNIT PRICES

2.8.1 When Unit Prices are requested on the Bid Form, any scheduled quantities listed are to be considered as approximate and are to be used only for the
comparison of bids for purposes of award of the Contract and to determine the maximum quantity to be provided without a Change Order.

2.8.2 Unless otherwise specified in the Contract Documents, the Unit Prices set forth shall include all materials, equipment, labor, delivery, installation, overhead, profit and any other cost or expense, in connection with or incidental to, the performance of that portion of the Work to which the Unit Prices apply. The Bidder shall submit Unit Prices for all items listed unless other instructions are stated on the Bid Form.

2.8.3 Where there is a conflict between a Unit Price and the extension thereof made by the Bidder, the Unit Price shall govern and a corrected extension of such Unit Price shall be made and such corrected extension shall be used for the comparison of the bids and to determine the maximum quantity to be provided without a Change Order.

2.8.4 The Bidder agrees that the University may increase, decrease or delete entirely the scheduled quantities of Work to be done and materials to be furnished after execution of the Contract Form.

2.8.5 Payments, except for lump sum items in Unit Price Contracts, will be made to the Contractor only for the actual quantities of Work performed or materials furnished in accordance with the Contract Documents.

2.8.6 If the cost of an item for which a Unit Price is stated in the Contract changes substantially so that application of the Unit Price to the quantities of Work proposed will create an undue hardship on the University or the Contractor, the applicable Unit Price may be equitably adjusted by Change Order.

2.9 CHANGE IN THE BID AMOUNT

2.9.1 Any change to a previously submitted bid must be made before the time scheduled for the bid opening. Bid packets may be retrieved from the University Purchasing Department and must be returned to the University Purchasing Department prior to the bid opening. Any changes should be initialed and dated.

2.10 COPIES OF BID DOCUMENTS

2.10.1 The University shall furnish to the Lead Contractor, free of charge, one (1) set of documents bearing “plan approval” annotations and the Plan Approval Certificate from the Ohio Department of Commerce Industrial Compliance Division authorized representative(s). The Lead Contractor shall keep and protect all such plan approval documents, neatly consolidated, in a secure environment at the construction site, maintain them during the course of the
project, and make them available to the authorized representative(s) upon request.

2.10.2 The Contractor shall purchase, as they require, copies of the Contract Documents with all addenda incorporated from the University’s Printing Term Contractor.

2.10.3 The Contractor may obtain, following the award, electronic formatted Drawings with all addenda incorporated from the Associate, subject to a nominal fee and the Associate’s document release agreement form, if any.

ARTICLE 3 - BID OPENING AND CONSIDERATION OF BIDS

3.1 DELIVERY OF BIDS

3.1.1 It is the responsibility of the Bidder to submit its bid prior to the time scheduled for the bid opening to the University of Cincinnati, Department of Purchasing, Suite 320 University Hall, 51 Goodman Drive, Cincinnati, Ohio 45221-0089.

3.1.2 If the bid envelope is enclosed in another envelope for the purpose of delivery, the exterior envelope shall also be clearly marked as containing a bid with the Project name and Project number, construction trade of the bid, Purchasing’s quotation number, and the date and time of the bid opening shown on the envelope.

3.1.3 Bids that are submitted or that arrive after the time set for the bid opening, as determined by the Department of Purchasing shall not be opened or considered.

3.2 BID OPENING

3.2.1 Sealed bids will be received at the location designated in the Notice to Bidders until the time stated when all bids will be opened, and read publicly.

3.2.2 The public opening and reading of bids is for informational purposes only and is not to be construed as an acceptance or rejection of any bid submitted.

3.2.3 The contents of the bid envelope shall be a public record and available upon request for inspection, at the Department of Purchasing any time after the bid opening, except for any information which is not a public record as provided by applicable law.

3.3 BID OPENING EXTENSION

IB - 12 of 26   Lead Contractor Project   June 15, 2006
3.3.1 When any Addendum is issued within seventy-two (72) hours prior to the published time for the bid opening, excluding Saturdays, Sundays, and Legal Holidays, the bid opening shall be extended one (1) week. If the University approves, the bid opening may be extended for more than one (1) week, and consideration for additional advertising may be recommended.

3.3.2 As part of issuing any Addendum earlier than seventy-two (72) hours prior to the published time for the bid opening, excluding Saturdays, Sundays and Legal Holidays, only the University can approve a revised bid opening date or additional advertising.

3.4 BID EVALUATION CRITERIA

3.4.1 The University reserves the right to accept or reject any or all bids, in whole or in part, and reserves the right to award the Contract to any remaining Bidder the University determines to be the lowest responsive and responsible Bidder. The University reserves the right to accept or reject any or all Alternates. Alternates may be accepted or rejected in any order.

3.4.2 The University may reject the bid of any Bidder who has engaged in collusive bidding as lacking in responsibility for the Contract or future University Contracts.

3.4.3 The University reserves the right to waive, or to allow any Bidder a reasonable opportunity to cure a minor irregularity or technical deficiency in a bid, provided the irregularity or deficiency does not affect the bid amount or otherwise give the Bidder a competitive advantage. Noncompliance with any requirements of the Contract Documents may cause a bid to be rejected.

3.4.4 If, in the opinion of the University, the award of the Contract to the lowest Bidder is not in the best interest of the University, the University may accept, in its discretion, another bid so opened, or reject all bids and advertise for other bids. Such advertisement will be for such time, in such form, and in such publications as may be directed by the University.

3.4.4.1 The University considers the Bidder’s average four (4) year “Experience Modification Rate” (EMR) as part of the “responsibleness” evaluation. An average EMR greater than 1.0 will be evaluated to determine “responsibleness” of the bidder.
3.5 BID EVALUATION PROCEDURE

3.5.1 The Contract will be awarded to the lowest responsive and responsible Bidder as determined in the discretion of the University, or all bids will be rejected in accordance with the applicable law.

3.5.1.1 In determining which Bidder is the lowest, the University shall consider the Base Bid and the bids for any Alternate or Alternates which the University determines to accept.

3.5.1.2 The total of the bids for the accepted Alternate(s) will be added to or deducted from the Base Bid, as applicable, for the purpose of determining the lowest Bidder.

3.5.1.3 If two Bidders submit the same bid amount and both are determined to be responsive and responsible, the University reserves the right to select one Bidder by the flip of a coin, which shall be conducted in the presence of both Bidders and shall be final.

3.5.2 A Bidder for a Contract shall be considered responsive if the Bidder's bid responds to the Contract Documents in all material respects and contains no irregularities or deviations from the Contract Documents which would affect the amount of the bid or otherwise give the Bidder a competitive advantage.

3.5.2.1 A bid shall be rejected as non-responsive if the bid contains a Bid Guaranty executed by a Surety not licensed in Ohio or a Bid Guaranty that is otherwise determined to be insufficient by the University.

3.5.2.2 If the lowest Bidder is not responsive, such Bidder shall be notified according to Paragraph IB 3.6.

3.5.3 In determining whether a Bidder is responsible, factors to be considered, most of which are in response to the “Responsible Bidder Information” form and required attachments, include, without limitation:

3.5.3.1 Preferences required by law, where applicable;

3.5.3.2 The experience of the Bidder;

3.5.3.3 The financial condition of the Bidder;

3.5.3.4 The conduct and performance of the Bidder on previous Contracts, which shall include without limitation, the Bidder’s safety record, compliance with, Equal Employment Opportunity in the Construction Industry Administrative Rules, OSHA and Prevailing Wage laws, and demonstration of good faith effort to participate in or actual participation in, or both, in the EDGE Business Development program.
as indicated in the Ohio Revised Code and the Ohio Administrative Code.

3.5.3.5 The facilities of the Bidder;

3.5.3.6 The management skills of the Bidder;

3.5.3.7 The ability of the Bidder to execute the Contract properly, including without limitation, the past performance and safety record of the Bidder and the Bidder’s Subcontractors that the Bidder proposes to use on the Project;

3.5.3.8 The current licensing by the Ohio Department of Commerce for plumbing, electrical, hydronics, refrigeration and HVAC Contractors (IB 7.3.6)

3.5.4 The University and the Associate shall obtain from the lowest responsive Bidder any information deemed appropriate to the consideration of factors showing responsibility. If the lowest responsive Bidder is responsible, the Contract shall be awarded to such Bidder unless all bids are rejected.

3.5.5 If the lowest responsive Bidder is not responsible, and all bids are not rejected, the University shall follow the procedure set forth in Subparagraph IB 3.5 with each next lowest responsive Bidder until the Contract is awarded, all bids are rejected or all responsive Bidders are determined to be not responsible.

3.5.6 Information relating to responsibility obtained from several Bidders may be reviewed concurrently, but shall be reviewed separately and not comparatively.

3.6 REJECTION OF BID

3.6.1 If the lowest Bidder is not responsive or responsible, the University shall reject such bid and notify the Bidder in writing by Certified Mail of the finding and the reasons for finding.

3.6.2 A Bidder who is notified in accordance with Subparagraph IB 3.6.1 may object to such Bidder's rejection by filing a written protest which must be received by the University within five (5) days of the notification provided pursuant to Subparagraph IB 3.6.1.

3.6.3 Upon receipt of a timely protest, the University shall meet with the protesting Bidder to hear the Bidder's objections. Chapter 119, ORC, shall not be applicable to such meeting.
3.6.3.1 No award of the Contract shall become final until after the University has met with all Bidders who have timely filed protests and the award of the Contract is affirmed by the University.

3.6.3.2 If all protests are rejected in the University’s discretion, the award of the Contract shall be affirmed by the University or all bids shall be rejected.

3.7 NOTICE OF INTENT TO AWARD

3.7.1 The University shall notify the apparent successful Bidder that upon satisfactory compliance with all conditions precedent for execution of the Contract Form, within the time specified, the Bidder will be awarded the Contract.

3.7.2 The University reserves the right to rescind any Notice of Intent to Award.

ARTICLE 4 - WITHDRAWAL OF BID

4.1 WITHDRAWAL PRIOR TO BID OPENING

4.1.1 A Bidder may withdraw a bid after the bid has been received by the University, provided the Bidder makes a request in writing and the request is received by the University prior to the time of the bid opening, as determined by the employee of the University designated to open the bids.

4.2 WITHDRAWAL AFTER BID OPENING

4.2.1 All bids shall remain valid and open for acceptance for a period of, at least, sixty (60) days after the bid opening; provided, however, a Bidder may withdraw a bid from consideration after the bid opening if the bid amount was substantially lower than the amounts of other bids, providing the bid was submitted in good faith, and the reason for the bid amount being substantially lower was a clerical mistake, as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of Work, labor or material made directly in the compilation of the bid amount.

4.2.1.1 Notice of a request to withdraw a bid must be made in writing filed with the University within two (2) business days after the bid opening. The University reserves the right to request the Bidder to submit evidence substantiating the Bidder’s request to withdraw the bid.
4.2.1.2 No bid may be withdrawn under Subparagraph IB 4.2.1 when the result would result in awarding the Contract on another bid to the same Bidder.

4.2.2 If a bid is withdrawn under Subparagraph IB 4.2.1, the University may award the Contract to the next lowest responsive and responsible Bidder or reject all bids and advertise for other bids. In the event the University advertises for other bids, the withdrawing Bidder shall pay the costs, in connection with the re-bidding, of printing new Contract Documents, required advertising and printing and mailing notices to prospective Bidders, if the University finds that such costs would not have been incurred but for such withdrawal.

4.2.3 A Bidder may withdraw the Bidder’s bid at any time after the sixty (60) day period described in Subparagraph IB 4.2.1 by written notice to the University.

4.3 REFUSAL BY UNIVERSITY TO ACCEPT WITHDRAWAL

4.3.1 If the University intends to contest the right of the Bidder to withdraw a bid pursuant to Subparagraph IB 4.2.1, a hearing shall be held within ten (10) days after the bid opening and an order shall be issued by the University allowing or denying the claim of such right within five (5) days after such hearing is concluded. The University shall give the withdrawing Bidder timely notice of the time and place of any such hearing.

4.3.1.1 The University shall make a stenographic record of all testimony, other evidence, and rulings on the admissibility of evidence presented at the hearing. The Bidder shall pay the costs of the hearing.

4.3.1.2 The order of the University required by Subparagraph IB 4.3.1 may be appealed under Section 119.12, ORC.

4.4 REFUSAL BY BIDDER TO PERFORM

4.4.1 In the event the University denies the claim for withdrawal and the Bidder elects to appeal or otherwise refuses to perform the Contract, the University may reject all bids or award the Contract to the next lowest responsive and responsible Bidder.

4.5 EFFECT OF WITHDRAWAL

4.5.1 No Bidder who is permitted, pursuant to Subparagraph IB 4.2.1, to withdraw a bid, shall for compensation supply any material or labor to, or perform any subcontract or other work agreement for, the Person to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the
Project for which the withdrawn bid was submitted, without the written approval of the University.

4.5.2 The Person to whom the Contract was awarded and the withdrawing Bidder are jointly liable to the University in an amount equal to any compensation paid to or for the benefit of the withdrawing Bidder without such approval, in addition to the penalty which may be imposed under Section 2913.31, ORC.

ARTICLE 5 - BID ESTIMATE

5.1 LIMIT ON AWARD

5.1.1 No Contract or Contracts shall be entered into when the Contract or Contracts awarded exceed ten (10) percent greater than the published construction estimate, as follows;

5.1.1.1 If a Project has a single bid and award (single phase Project) and there is only one (1) Contract being bid or only one (1) combined bid to be awarded for the entire Project no Contract shall be entered into when the amount of the Contract awarded exceeds ten (10) percent greater than the published entire estimate for construction.

5.1.1.2 If a Project has a single bid and award (single phase Project) and there are multiple Contracts to be awarded no Contract shall be entered into when the total amount of all Contracts awarded exceeds ten (10) percent greater than the published entire estimate for construction.

5.1.1.3 If a Project has multiple bids and awards (multiple phase Project) no Contract shall be entered into when the total amount of Contracts awarded to date exceeds ten (10) percent greater than the published entire estimate for construction for all phases bid to date.

ARTICLE 6 - BID GUARANTY AND CONTRACT BOND

6.1 BID GUARANTY

6.1.1 The Bidder must file with the bid a Bid Guaranty, payable to the University of Cincinnati, in the form of either:

6.1.1.1 The signed Bid Guaranty and Contract Bond contained in the Contract Documents for the amount of the Base Bid plus all add Alternates; or
6.1.1.2 A certified check, cashier's check or letter of credit, in the amount of ten (10) percent of the Base Bid, plus all add Alternates. Any letter of credit shall be revocable only by the University.

6.1.2 The Bid Guaranty shall be in form and substance satisfactory to the University and shall serve as an assurance that the Bidder will, upon acceptance of the bid, comply with all conditions precedent for Contract execution, within the time specified by the University.

6.1.3 If the blank line on the Bid Guaranty and Contract Bond is not filled in, the penal sum will be the full amount of the Base Bid plus all add Alternates. If the blank line is filled in, the amount must not be less than the full amount of the Base Bid plus all add Alternates, stated in dollars and cents. A percentage is not acceptable.

6.1.4 The Bid Guaranty and Contract Bond must be signed by an authorized agent, and accompanied by a Power of Attorney, from a Surety. The Bond must be issued by a Surety authorized by the Ohio Department of Insurance to transact business in Ohio.

6.1.5 The requirements of Section 3905.41, ORC, may be applicable to require the Bid Guaranty and Contract Bond be countersigned by an Ohio resident agent. The Bidder shall determine the applicability of this provision.

6.1.6 Bid Guaranties will be returned to all unsuccessful Bidders sixty (60) days after the bid opening. If used, a certified check, cashier's check or letter of credit will be returned to the successful Bidder upon providing the Bond required by law in form and in substance, and from a Surety, satisfactory to the University.

6.2 BOND FORFEITURE

6.2.1 If for any reason, other than as authorized by Subparagraph IB 4.2.1 or Paragraph IB 6.3, the Bidder fails to execute the Contract Form, and the University awards the Contract to another Bidder which the University determines is the lowest responsive and responsible Bidder, the Bidder who failed to execute the Contract Form shall be liable to the University for the difference between such Bidder's bid and the bid of the next lowest responsive and responsible Bidder, or for a penal sum not to exceed ten (10) percent of the bid amount, whichever is less.

6.2.2 If the University then awards a Contract to another Bidder which the University determines is the lowest responsive and responsible Bidder and such Bidder also fails or refuses to execute the Contract Form, the liability of such lowest responsive and responsible Bidder shall, except as provided in Paragraph IB 6.3, be the amount of the difference between the bid amount of such lowest responsive and responsible Bidder and another Bidder which the University determines is the lowest responsive and responsible Bidder, but not in excess of
the liability specified in Subparagraph IB 4.2.2. Liability on account of an award to any lowest responsive and responsible Bidder beyond the third lowest responsive and responsible Bidder shall be determined in like manner.

6.2.3 If the University does not award the Contract to another Bidder which the University determines is the lowest responsive and responsible Bidder but resubmits the Project for bidding, the Bidder failing to execute the Contract Form shall, except as provided in Paragraph IB 6.3, be liable to the University for a penal sum not to exceed ten (10) percent of such Bidder's bid amount or the costs in connection with the resubmission, of printing new Contract Documents, required advertising and printing and mailing notices to prospective Bidders, whichever is less, pursuant to Section 153.54, ORC.

6.3 EXCEPTION TO BOND FORFEITURE

6.3.1 A Bidder for a Contract with the University costing less than $500,000 may withdraw a bid from consideration if the Bidder's bid for some other Contract with the University costing less than $500,000 has already been accepted, if the Bidder certifies in good faith that the total price of all such Bidder's current Contracts is less than $500,000, and if the Bidder's Surety certifies in good faith that the Bidder is unable to perform the subsequent Contract because to perform such Contract would exceed the Bidder's bonding capacity.

6.3.2 If a bid is withdrawn pursuant to Subparagraph IB 6.3.1, the University may award the Contract to another Bidder which the University determines is the lowest responsive and responsible Bidder or reject all bids and resubmit the Project for bidding, and neither the withdrawing Bidder nor such Bidder's Surety shall be liable for the difference between the Bidder's bid and that of the next lowest responsive and responsible Bidder, for a penal sum, or for the costs of printing new Contract Documents, required advertising and printing and mailing notices to prospective Bidders.

6.4 CONTRACT BOND

6.4.1 If the Bidder executes the Contract Form, the Bidder shall, at the time of signing the Contract, provide the Bond required by law in form and substance, and from a Surety, satisfactory to the University.

6.4.2 The Bond shall be in the full amount of the Contract to indemnify the University against all direct and consequential damages suffered by failure of the Contractor to perform according to the provisions of the Contract and in accordance with the Plans, Specifications, details and bills of material therefore and to pay all lawful claims of Subcontractors, Material Suppliers, and laborers for labor performed or materials furnished in carrying forward, performing or completing the Contract.
ARTICLE 7 - CONTRACT AWARD AND EXECUTION

7.1 NONCOMPLIANCE WITH CONDITIONS PRECEDENT

7.1.1 The award of the Contract and the execution of the Contract Form are based upon the expectation that the lowest responsive and responsible Bidder will comply with all conditions precedent for execution of the Contract Form within ten (10) days of the date of the Notice of Intent to Award, except for the Bid Information Escrow required by Subparagraph IB 7.3.8 for which the Bidder will comply within three (3) business days of the date of the Notice of Intent to Award, and except for any Responsible Bidder Information form not previously provided for which the Bidder will comply within three (3) business days of the date of receiving the request by the University.

7.1.2 Noncompliance with the conditions precedent for execution of the Contract Form within the timelines stated in Subparagraph IB 7.1.1 following the date of the Notice of Intent to Award shall be cause permitting the University to cancel the Notice of Intent to Award for the Bidder’s lack of responsibility and award the Contract to another Bidder which the University determines is the lowest responsive and responsible Bidder or re-bid the Work, at the discretion of the University.

7.1.3 The University may extend the time for complying with the conditions precedent for execution of Contract Form for good cause shown. No extension shall operate as a waiver of the conditions precedent for execution of the Contract Form.

7.2 TIME LIMITS

7.2.1 The failure to award the Contract and execute the Contract Form within sixty (60) days of the bid opening invalidates the entire bid process and all bids submitted, unless the time is extended by written consent of the apparent lowest responsive and responsible Bidder, and there is concurrence of the University with such extension.

7.2.1.1 If the Contract is awarded within sixty (60) days of the bid opening, any increases in material, labor and subcontract costs shall be borne by the Bidder without alteration of the amount of the bid.

7.2.1.2 If the cause of the failure to execute the Contract within sixty (60) days of the bid opening is due to matters for which the University is solely responsible, the Contractor shall be entitled to a Change Order authorizing payment of verifiable increased costs in materials, labor or
subcontracts which increase cannot exceed the difference in price between the successful Bidder and the price of the next lowest responsive and responsible Bidder.

7.2.1.3 If the cause of the failure to execute the Contract within sixty (60) days of the bid opening is due to matters for which the Contractor is responsible, no request for increased costs will be granted.

7.3 CONDITIONS PRECEDENT FOR EXECUTION OF CONTRACT

7.3.1 Bond, and to support the Bond, a Certificate of Compliance issued by the Ohio Department of Insurance, showing the Surety is licensed to do business in Ohio;

7.3.2 Ohio Workers' Compensation Certificate;

7.3.3 Certificate of Compliance with Affirmative Action Programs, issued by the Ohio Department of Administrative Services, Equal Opportunity Division under Section 9.47, ORC. Application form and instructions for completing the form are available at its web site: www.state ohio us/das/eod/ccsubmitreportswitchboard.htm;

7.3.4 Certificate of Insurance (ACORD form is acceptable) and copy of additional insured or loss payee endorsement. The University reserves the right to request and receive a certified copy of the Contractor's insurance policies;

7.3.5 If the Bidder is a foreign corporation, i.e., not incorporated under the laws of Ohio, a Certificate of Good Standing from the Ohio Secretary of State showing the right of the Bidder to do business in the State; or, if the Bidder is a Person or partnership, the Bidder has filed with the Ohio Secretary of State a Power of Attorney designating the Ohio Secretary of State as the Bidder's agent for the purpose of accepting service of summons in any action brought under Section 153.05, ORC, or under Sections 4123.01 to 4123.94, inclusive, ORC.

7.3.6 Plumbing, electrical, hydronics, refrigeration, and heating, ventilating and air conditioning (HVAC) Contractors shall submit proof of current licensing by the Ohio Department of Commerce, Industrial Compliance Division, Ohio Construction Industry Licensing Board (OCILB) as required by Section 4740, ORC.

7.3.7 Evidence that the Bidder was enrolled in and in good standing in a Drug Free Workplace Program approved by the Ohio Bureau of Workers’ Compensation prior to the Bidder submitting its Bid for the project.

7.3.8 Bid Information Escrow

7.3.8.1 Scope and Purpose
The purpose of this requirement is to preserve, for any Contract of $2,000,000 or more, the Bid Information as defined in Subparagraph IB 7.3.8.2 of the successful Bidder for use by the University in any claim or litigation arising out of the Contract. The Bidder shall submit to the University bonded storage facility a legible copy of all Bid Information used to prepare the Bidder’s bid for the Contract.

7.3.8.2 Bid Information

“Bid Information” as used in this section shall mean all writings, working papers, computer printouts, charts and any and all other documentation or data compilations which contain or reflect information, data and calculations used by the Bidder to prepare or determine the bid submitted by the Bidder for the Project. Bid Information includes, but is not limited to, the Bidder’s equipment rates, profit margins, overhead rates, labor rates, efficiency or productivity factors, arithmetic extensions, and quotations from Subcontractors and Material Suppliers to the extent that such rates and quotations were used by the Bidder in determining its bid. Bid Information also includes any manuals or computer programs used by the Bidder in determining its bid. Such manuals or programs may be included in the Bid Information by reference, which shall include the name and date of the publication, publisher, or program where the manuals or programs are readily available to the University. Bid Information does not include anything provided by the University for use in submitting a bid.

The Bidder agrees that, the Bid Information constitutes all information used by Bidder in the calculation, preparation, or determination of its bid and Bidder agrees that it shall not rely upon any other pre-bid information in making or pursuing claims. Bidder also understands and agrees that nothing in the Bid Information shall change or modify the provisions of the Contract.

7.3.8.3 Submittal of Bid Information

Within three (3) business days of the Notice of Intent to Award, the successful Bidder for any Contract of $2,000,000 or more shall submit its Bid Information to the University bonded storage facility sealed in a container or envelope. The Bidder shall address the sealed container or envelope to itself, and in the upper left corner indicate “Bid Documentation”, the date of submittal, and University Project Number. Failure to submit the Bid Information on a timely basis may cause the bid to be rejected and awarded to the next lowest responsive and responsible Bidder. Bidder shall also attach the Bid Information Escrow Agreement and Affidavit signed by the Bidder to the outside of the container or envelope, attesting that the Bidder has personally...
examined the Bid Information and that it contains all the documentation used by Bidder in calculating, preparing and determining its bid.

7.3.8.4 Duration and Use

The Contract shall not be executed by the University and the Bidder shall not commence work until the Bid Information has been received. The Bid Information shall remain in escrow during the term of the Contract or until such time as the Bidder files a claim or initiates litigation against the University related to the Contract. Receipt of the Bidder’s claim, or of a complaint initiating litigation against the University, shall entitle the University to obtain the release and custody of the Bid Information for purposes of review. If no such claim or litigation is received and the Bidder has otherwise released claims against the University, the University shall instruct the bonded document storage facility to release the sealed container to the Bidder.

7.3.8.5 Refusal or Failure to Provide Bid Information

Failure or refusal to provide the Bid Information within the approved time shall constitute a refusal to execute the Contract. If the Bidder refuses to execute the Contract the University may enforce the Bid Guaranty and award the Contract to the next lowest responsive and responsible Bidder.

7.3.8.6 Confidentiality of Bid Information

The Bid Information in escrow is a trade secret provided the Bidder certifies it as a trade secret in the Bid Information Escrow Agreement and Affidavit. The Bid Information will remain the property of the Bidder until such time as a claim is filed or litigation is initiated against the University. In the event of such claim or litigation, the Bid Information shall become the property of the University. The University shall keep the Bid Information confidential, to the fullest extent permitted by law. In the event any dispute arises with any other Person about whether such other Person should be given access to the Bid Information, the Contractor agrees to indemnify the University against all costs, expenses, and damages, including without limitation attorney fees, incurred or paid by reason of the request for disclosure. At the option of the University, the Bidder shall undertake the defense of the University in any action relating to any such request.

7.3.8.7 Bid Information Escrow Agreement and Affidavit

The Bidder shall sign the Bid Information Escrow Agreement and Affidavit, provided with the Notice of Intent to Award and attach it to
the outside of the sealed Bid Information. If the Bidder refuses to sign the agreement, the University may enforce the Bid Guaranty.

7.3.9 Required Notice of Unresolved Findings for Recovery

By submitting a bid, Bidder warrants that it is not now, and will not become subject to an unresolved findings for recovery under 9.24, ORC, prior to the award of any Contract arising out of this Project, without notifying the University of such findings. Ohio Revised Code (ORC), Section 9.24 prohibits the University from awarding a Contract to any Bidder against whom the Auditor of State has issued a findings for recovery if the findings for recovery is unresolved at the time of award.

7.3.10 EDGE Program - Supporting Documentation Required

Evidence acceptable to the University of the Bidder’s participation in contracting with certified EDGE Business firms for the project, evidence acceptable to the University of the Bidder’s good faith effort to contract with certified EDGE Business Enterprise companies for this project, or both.

7.3.11 Declaration Regarding Material Assistance / Non-Assistance to a Terrorist Organization (DMA)

A properly executed DMA form published by the Ohio Department of Public Safety, to certify that the apparent low bidder does not provide material assistance to any organization on the United States Department of State’s terrorist exclusion list. Government Business and Funding Contract form can be obtained from www.homelandsecurity.ohio.gov

7.4 NOTICE TO PROCEED

7.4.1 The University shall issue the Contractor a Notice to Proceed which shall establish the date for commencement of the calendar days allocated for Contract Completion. The Contractor shall, within ten (10) days of the date of the Notice to Proceed, furnish the Associate the following submittals:

7.4.1.1 Schedule of Values;

7.4.1.2 Preliminary schedule of Shop Drawings and Submittals;

7.4.1.3 Subcontractor's Information;

7.4.1.4 Manufacturer's Information;

7.4.1.5 Evidence that an authorization agreement for automatic deposit of state warrants has been submitted to the Auditor of the State of Ohio using the electronic funds transfer form provided on the Internet at:
http://auditor.state.oh.us. If the Project is funded solely from local funds, the Project Administrator will advise the Contractor to use the University of Cincinnati electronic funds transfer form available at http://www.uc.edu/architect.

7.5 WAGE RATES

7.5.1 The Bidder shall base its bid upon the prevailing rates of wages as ascertained by the Ohio Department of Commerce, Wage and Hour Bureau for the Project as provided in Section 4115.03 through 4115.14, ORC. Refer to the Wage Rates section of the Standard Conditions for related information and the Project prevailing rates of wages.

7.5.2 The Contractor shall, within ten (10) days of the date of the Notice to Proceed, provide the University’s Office of Contract Compliance a schedule of dates during the term of the Contract on which wages will be paid to employees for the Project.

ARTICLE 8 – APPLICABLE LAW AND FORUM

8.1 STATE COURTS AND LAW

8.1.1 The courts of the State shall be the exclusive jurisdiction in which any action or proceeding concerning any Contract, agreement or performance under the Contract Documents or in connection with the Project shall be filed. In any such action or proceeding the Contract Documents shall be construed in accordance with the laws of the State of Ohio which shall govern to the exclusion of the law of any other forum.