

**CHAPTER 1**  
**INSTRUCTIONS TO BIDDERS**  
**FOR MUNICIPAL PROJECTS**



## CHAPTER 1 INSTRUCTIONS TO BIDDERS FOR MUNICIPAL PROJECTS

### **Section 100      Copies of Bid Documents**

Complete sets of the Bid Documents are available for the sum stated in the Advertisement for Bids from The Town of Essex, or the Project Engineer. This amount represents reproduction costs and is non-refundable. A complete bidder's package containing plans, specifications, bond forms, contract form, affidavits, bid forms and any related documents deemed applicable to the Town will be made available to qualified bidders.

Complete sets of Bid Documents must be used in preparing bids. Neither the Town of Essex nor the Project Engineer shall be liable for errors or misinterpretations resulting from the use of incomplete sets of Bid Documents, by Bidders, sub-bidders or others.

The Town of Essex, in making copies of Bid Documents available on the above terms, does so only for the purpose of obtaining Bids on the Work and does not confer a license or grant any other permission to use the documents for any other purpose. The Town Manager and Public Works Director shall determine if the advertising is necessary, unless the project involves Federal, or State funding with specific advertising requirements.

### **Section 110      Qualification of Bidders**

Each prospective Bidder must pre-qualify to demonstrate, to the complete satisfaction of the Town of Essex, that the Bidder has the necessary facilities, equipment, ability, financial resources and experience to perform the work in a satisfactory manner before obtaining drawings, specifications and contract documents. The Town of Essex will require all Contractors bidding on Town projects to complete a Certification of Bidders Qualifications and Use of Subcontracted Services, and submit this completed form at the time Bids are due. A copy of this form will be provided with individual bid packages and can be found in Appendix B of this document.

**Section 120      Project Understanding**

**121.0              Examination of Contract Documents**

It is the responsibility of each Bidder, before submitting a Bid, to do the following.

1. Examine and comprehend the Contract Documents thoroughly.
2. Visit the site to become familiar with local conditions that may in any manner affect cost, progress, performance or furnishing of the work.
3. Consider and abide by all applicable federal, state and local laws, ordinances, rules and regulations.
4. Study and carefully correlate Bidder's observations with the Contract Documents, and notify Project Engineer of all conflicts, errors or discrepancies in the Contract Documents.

Bidders shall reference the Technical Specifications and/or the Scope of the Work for identification of those reports of explorations and tests of subsurface conditions at the site which have been utilized by the Project Engineer in the preparation of the Contract Documents, Bidders may rely upon the accuracy of the technical data contained in such reports but not upon non-technical data, interpretations or opinions contained therein or for the completeness thereof for the purposes of bidding or construction. In reference to those drawings relating to physical conditions of existing surface and subsurface conditions (except Underground Facilities) which are at or contiguous to the site and which have been utilized by the Project Engineer in preparation of the Contract Documents, bidders may rely upon the accuracy of the technical data contained in such drawings but not upon the completeness thereof for the purposes of bidding or construction.

Information and data reflected in the Contract Documents with respect to underground facilities at or contiguous to the site are based upon information and data furnished to the Town of Essex and Project Engineer by owners of such underground facilities or others, and the Town of Essex does not assume responsibility for the accuracy or completeness thereof unless expressly provided in the Contract Documents.

Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders on subsurface conditions, underground facilities, other physical conditions, possible conditions, and possible changes in the Contract Documents due to differing conditions appear in the General Conditions.

Before submitting a Bid, each Bidder shall, at his/her own expense, make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface and Underground Facilities) at or contiguous to the site which may otherwise affect cost, progress, performance or furnishing the work in accordance with the time, price and other terms and conditions of the Contract Documents.

Upon request in advance by the Bidder, the Town of Essex will provide each Bidder access to the site to conduct such explorations and tests at Bidder's own expense as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the site to its former condition upon completion of such explorations and tests.

The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by the Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by the Contractor. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by the Town of Essex unless otherwise provided in the Contract Documents. Any or all sites within the Town used in connection with the project, such as materials disposal sites, material storage or staging sites shall be subject to the erosion control procedures set forth in the Public Works Specifications, Town related Ordinances/regulations, and / or State regulations and permit requirements.

The submission of a Bid will constitute an unequivocal representation by the Bidder that the Bidder has complied with every requirement of these Instructions to Bidders and that, without exception, the Bid is premised upon performing and furnishing the Work required by the Contract Documents by such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of performance and furnishing of the work.

## **122.0            Interpretations and Addenda**

All questions as to the meaning or intent of the Contract Documents are to be directed in writing to the Project Engineer. The Town of Essex Public Works Director may also perform the duties of Project Engineer on projects designed by in-house personnel. Interpretations or clarifications considered necessary by

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the Project Engineer in response to such questions will be issued by Addenda, either by mail, e-mail or facsimile transmission, to all plan holders of record. The Public Works Director may also perform the duties of Project Engineer on projects designed internally by Town personnel. Questions received less than ten (10) days prior to the date for opening of Bids will not be answered. Only information provided by formal written Addenda will be binding. Oral and other interpretations of clarifications will be without legal effect.

An Addendum may also be issued to modify the Bidding Documents as deemed advisable by the Town of Essex or Project Engineer. If the Bid Documents are amended, then all terms and conditions which are not modified remain unchanged.

Bidders shall acknowledge receipt of any addendum to this bidding Document (1) by identifying the addendum number and date on the bid form, or (2) by letter, telegram, or facsimile, if those latter methods are authorized in the Bidding Document. Bids which fail to acknowledge the bidder's receipt of any addendum will result in the rejection of the bid if the addendum (addenda) contained information which substantively changed the Town of Essex's requirements.

Addenda will be on file in the offices of the Town of Essex at least 5 days before the bid opening.

### **123.0            Contract Time**

The number of consecutive calendar days within which the work is to be completed is set forth in the Contract Documents. The Town of Essex shall reserve the right to adjust the Contract Time, in accordance with this document.

### **124.0            Liquidated Damages**

Provisions for liquidated damages are set forth in the Contract Agreement, when required by the project. The Town of Essex reserves the right to waive all or any portion of any Liquidated Damages accrued during a project.

### **125.0            Subcontractors**

The Bidder shall submit with their bid an experience statement with pertinent information as to similar projects and other evidence of qualification for each Subcontractor, supplier, person and organization to be used by the Contractor in the completion of the Work. The amount of subcontract work shall not exceed fifty percent (50%) of the work except as may be specifically approved by the

Town of Essex. The Town of Essex reserves the right to contact any Subcontractor, supplier, other person or organization, before recommending award of the Contract, if there is reasonable objection to any proposed Subcontractor.

If, when requested to by the Town of Essex, the successful Bidder declines to make an acceptable substitution without an increase in Contract Price or Contract Time, the Town may award the contract to the next lowest and most responsive Bidder that proposes to use acceptable Subcontractors, Suppliers, and other persons and organizations. Declining to make requested substitutions will not constitute grounds for sacrificing the Bid security to the Town of Essex of any Bidder. Any Subcontractor, supplier, other person or organization listed by the Contractor and to whom the Project Engineer or Public Works Director does not make written objection prior to the recommendation of award to the Town of Essex will be deemed acceptable to the Town of Essex subject to revocation of such acceptance after the Effective Date of the Contract Agreement.

## **Section 130      Bid Submission Requirements**

### **131.0      Bid Form**

The Bid Form is included with the Contract Documents and shall be completed in ink or by typewriter. All blanks on the Bid Form must be completed. The Bidder must state in the Bid Form in words and numerals without deletions, alterations or erasures, the price for which he/she will perform the work as required by the Contract Documents. Bidders are required to bid on all items in the Bid form. If a bidder submits a unit bid price of zero for a contract bid item, the bid will be declared invalid. The unit price for each section or item shall be for furnishing all equipment, materials, and labor for completing the section or item as per the plans and contract specifications. Should it be found that quantities or amounts shown on the plans or in the proposal, for any part of the work, are exceeded or should they be found to be less after the actual construction of the work, the amount bid for each section or item will be increased or decreased in direct proportion to the unit prices bid for the listed individual items.

In case of a discrepancy between a unit price written in words and one entered in figures, the price written in words shall govern. In case of a discrepancy between the bid total written in words and that entered as a figure, the bid total is determined by the unit price written in words multiplied by the quantity shall govern.

Bids by corporations shall be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal shall be affixed. The corporate address and state of incorporation shall be shown below the Signature. If requested, the person signing a Bid for a corporation or partnership shall produce evidence satisfactory to the Town of Essex of the person's authority to bind the corporation or partnership.

Bids by partnerships shall be executed in the partnership name and signed by a general partner, whose title shall appear under the signature and the official address of the partnership shall be shown below the signature.

Bidders are required to submit a signed and completed copy of the Town's Hold Harmless Agreement, and the Certification of Bidders Qualifications form found in the appendices of this document.

### **132.0            Bid Security or Bid Bond**

When required by the project, each Bid must be accompanied by Bid Security made payable to the Town of Essex in an amount equal to ten percent (10%) of the Bidder's maximum Bid price and in the form of a certified or cashier's check or a Bid Bond issued by a surety meeting the requirements of this document. A copy of the appropriate Bid Bond form can be found in Appendix B of this document. A cash bid bond will not be accepted.

The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished Payment and Performance bonds, when required by the project, whereupon the Bid Security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required Bonds within ten (10) days after the award of contract by the Town of Essex, the Town may annul the bid and the Bid Security of the Bidder will be forfeited. The Bid Security of any Bidder whom the Town believes to have a reasonable chance of receiving the award may be retained by the Town until the successful execution of the agreement with the successful Bidder or for a period up to ninety (90) days following bid opening. Security of other Bidders will be returned approximately fourteen (14) days after the Bid opening. The Bid Bond shall be issued in the favor of the Town of Essex by a surety company qualified to do business in, and having a registered agent in the State of Vermont.

**133.0            Submission of Bids**

Sealed Bids shall be submitted at or before the time and at the place indicated in the Advertisement for Bids. If forwarded by mail, the Bid shall be enclosed in another envelope with the notation "Bid Enclosed" on the face thereof and addressed to the Town of Essex, attention Public Works Director. Bids will be received at the location indicated in the Advertisement until the time and date specified. Telegraphic or facsimile bids will not be accepted.

**134.0            Modification and Withdrawal of Bids**

Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered as described in the Advertisement of Bids. A request for withdrawal or a modification shall be in writing and signed by a person duly authorized to do so. Withdrawal of a Bid will not prejudice the rights of a Bidder to submit a new Bid prior to the Bid Date and Time. After expiration of the period for receiving Bids, no Bid may be withdrawn or modified.

**Section 140        Project Bid Opening**

**141.0            Opening of Bids**

Bids will be opened and read publicly at the location and time stated in the Advertisement for Bids. Bidders are invited to be present at the opening of bids. All sealed bids will be opened in public, in the presence of at least one (1) witness, at the time and location specified in the bid documents.

**142.0            Rejection of Bids**

To the extent permitted by applicable State and Federal laws and regulations, the Town of Essex reserves the right to reject any and all Bids, and to waive any and all informalities. Grounds for the rejection of a bid include but are not limited to failure to submit on time, a material omission, unauthorized alteration of form, unauthorized alternate bids, incomplete or unbalanced unit prices, or irregularities of any kind.

The Town of Essex reserves the right to reject any Bid if the Town believes that it would not be in the best interest of the public to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria

established by the Town. The Town of Essex reserves the right to decide which bid is deemed to be the lowest and best in the interest of the public.

### **143.0            Disqualification of Bidder**

Any or all bids will be rejected if there is any reason for believing that collusion exists among the bidders. The participants in such collusion will not be considered in future proposals for the same work. Each Bidder shall execute the Non-Collusion Affidavit contained in the Contract Documents, when required by the project.

### **144.0            Award of Contract**

In evaluating the Bids, the Town of Essex will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, unit prices, and other data as may be requested in the Bid/Proposal form. The Town may consider the qualifications and experience of Subcontractors, suppliers and other persons and organizations proposed by the Contractor for the Work. The Town of Essex may conduct such investigations as it deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons, and organizations to perform and furnish the Work in accordance with the Contract Documents to the Town's satisfaction within the prescribed time.

The Award of a Contract shall be based upon Section V of the Town's purchasing policy which states "The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements set forth in the specifications."

The Award of a Contract will be made for that combination of base bid and alternate bid items in the best interest of the Town of Essex, however, unless otherwise specified all work awarded will be awarded to only one Contractor.

All bidders shall be notified of the Award of Contract, and a tabulation of all bids received will be forwarded to all bidders.

## **Section 150      Bid Protest**

Any actual bidder who is aggrieved in connection with the solicitation or award of a contract may seek resolution of his/her complaints initially with the Public Works Director / Town Engineer, and if not satisfied, with the Town Manager, in accordance with protest procedures set forth in this section.

### **151.0              Protest Procedure**

1. A protest with respect to the specifications of an invitation for bid or request for proposal shall be submitted in writing a minimum of five (5) work days prior to the opening of the bid or due date of the request for proposal. Opening dates for bids or due dates for requests for proposal will be printed on the bid/request document itself.
2. Protests in respect to award of contract shall be submitted in writing a maximum of three (3) business days after notice of intent to award is posted, or is mailed to each bidder, whichever is earlier. Notice of intent to award will be forwarded to bidders upon telephonic or written request. Protests of recommended award should cite specific portions of the Town of Essex ordinances that have allegedly been violated.
3. Exceptions to the time requirements noted in both 1 and 2 above may be granted if the aggrieved person could have not been reasonably expected to have knowledge of the facts giving rise to such protest prior to the bid opening, posting of intent to award, or due date for requests for proposals. Request for exceptions should be made in writing, stating reasons for the exception.
4. The Public Works Director shall respond to the formal written protest within five business days of receipt. The Public Works Director / Town Engineer response will be fully coordinated with the appropriate Department Director and the Town Manager.
5. If the protestor is not satisfied with the response from the Public Works Director, he/she may then submit in writing within five business days of receipt of that response his/her reason for dissatisfaction, along with copies of his/her original formal protest letter and the response from the Public Works Director / Town Engineer, to the Town Manager.
6. The Town Manager as Purchasing Agent for the Town of Essex has the final authority in the matter of protests. The Town Manager will respond to the protestor within ten business days of receipt of the appeal.

**152.0            Stay of Procurement During Protest**

The Town Engineer / Director of Public Works shall not proceed with the solicitation or award of contract until all administrative remedies have been exhausted or until the Town Manager makes written determination that the award of contract without delay is necessary to protect the best interest of the Town of Essex.