

INFORMATION FOR BIDDERS

SECTION 1 – INTRODUCTION

This document is intended to assist bidders in preparation of bids, to call attention to legal requirements, and to set forth conditions upon which bids are submitted and received by the City of Gardner.

The award of the contract with respect to this invitation is governed by Chapter 149 of the Massachusetts General Laws (MGL). Certain provisions of the foregoing statute and of other applicable statutes are summarized in these Instructions. Whenever these Instructions or any other contract documents set forth or summarize applicable statutory provisions, whether or not the statutes have been specifically referred to, such summaries are for convenience only, do not assert to be complete or correct as summaries of any particular material, and shall in no respect supersede, expand or limit the rights and duties of the City or bidders in matters governed by the statute.

SECTION 2 – DEFINITIONS

The following definitions shall apply in these Instructions, Bidding Documents, and Contract Documents:

The “City” means the City of Gardner, Massachusetts.

The term “bidder” shall mean any individual, group, entity or business responding to the City’s procurement invitation.

The term “bidding documents” shall include the City’s bid package, including purchase descriptions, specifications, drawings, submission requirements, scope of work and all related documents, bidder’s submission, including any related documents, prices, deliverables or services promised, and any and all addenda issued, which are all incorporated and shall be made a part of the Contract as written herein.

The terms “addenda” and “addendum” shall mean written documents and/or drawings issued by the City prior to execution of the contract which modify, correct, modify, explain or interpret the bidding documents.

The word “Contractor” means the person, firm or corporation with whom the contract is made by carrying out the provisions of these specifications and the contract.

“Contracting Officer” shall be interpreted as the Purchasing Agent of the City of Gardner.

“Firm Price” shall mean a guarantee against price increases during the life of the contract.

SECTION 3 – EXAMINATION OF BID DOCUMENTS; PRE-BID CONFERENCE

Before submitting a bid, the bidder must (a) thoroughly examine the Bid Documents; (b) fully examine and be acquainted with local conditions that may in any manner affect cost, progress or performance of the work identified in the specifications; (c) be familiar with federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the work identified in the specifications; (d) study and carefully associate observations with the requirements of the Bid.

Failure of bidder to visit the site and/or be acquainted with the Bid Documents and work site, or to attend pre-bid conference, if any, shall in no way relieve the bidder from any obligation with respect to this procurement invitation.

Each bidder shall promptly notify the Contracting Officer of any ambiguity, inconsistency or error discovered upon examination of the Bid Documents, site or local conditions.

The submission of a bid shall constitute a representation by the bidder that every requirement of the Bid Documents has been complied with, and that the Bid Documents are sufficient in scope and detail and convey understanding of all terms and conditions for the performance of the contract.

SECTION 4 – ADDENDA

All questions and requests for clarification or interpretation of the Bid Documents shall be in writing and addressed to the Purchasing Agent, and to be given consideration shall be received at least five (5) days prior to the bid opening. The City will make every effort to issue Addenda not later than three days before the date fixed for the opening of bids.

Clarification or interpretation and any supplemental instructions, if issued, will be in the form of written Addenda. Bidder shall be responsible for determining that all Addenda issued have been received, and failure of bidder to receive such shall not relieve bidder from any obligation under the bid as submitted.

All Addenda issued shall become part of the Bid Documents.

Oral clarification or interpretation will be of no legal effect. The City shall not be responsible for, and no bidder shall rely upon or use as the basis of claim against the City or the City's agent, any information, explanation or interpretation of the Bid Documents rendered in any fashion except as herein provided.

SECTION 5 – WAGE RATES

Minimum rates of wages for work performed under this contract shall be as predetermined by the State Department of Labor and Workforce Development, in accordance with the provisions of Massachusetts General Laws, Chapter 149, Section 27.

MGL Chapter 149 provides record-keeping requirements for contractors and subcontractors with respect to employees, hours and wages. Bidders' attention is called to MGL Chapter 149, Section 148 relating to weekly payment of wages.

SECTION 6 – OSHA COMPLIANCE

Effective July 1, 2006, the Commonwealth requires persons submitting bids and signing construction contracts to certify that all employees to be employed at the worksite and in the work will have completed an OSHA-approved construction safety and health course that is at least 10 hours in duration.

SECTION 7 – SALES TAX

Purchases made by the City are exempt from Massachusetts Sales Tax in accordance with the provisions of MGL Chapter 64H, Section 6. Bidders shall not include any amounts for tax. A certificate of exemption, granted by the Massachusetts Department of Revenue, may be obtained from the City of Gardner.

SECTION 8 – PREPARATION AND SUBMISSION OF BIDS

Each bid shall be submitted upon the bid forms provided by the City of Gardner. All blank spaces shall be filled in, in ink or typewritten, in words or figures where applicable.

Where itemized lump sum or unit prices are called for, all such prices shall be provided by the bidder.

In the event of a discrepancy between prices written in words and prices written in figures, the written words shall govern. In the event of a discrepancy between the indicated sum of any column of figures and the correct sum thereof, the correct sum shall govern.

The bid shall state the legal name of the bidder and shall be signed in ink by the person or persons legally authorized to bind the bidder to a contract. The name and title of the person or persons signing the bid shall be typed or printed below the signatures.

Each bid and bid deposit (where applicable and described below) shall be submitted to the City at the place stated in the Bid Documents, in a sealed envelope bearing the name of the bidder, bidder's address, and the title of the project for which the bid is submitted. If submitted by mail, the sealed bid and deposit shall be enclosed in an envelope with the notation "BID ENCLOSED" on the face and addressed as indicated in the Bid Documents.

Conditional bids will not be accepted.

SECTION 9 – RECEIPT OF BIDS

All bidders are cautioned to allow ample time for transmittal of bids. Bidders are solely responsible for delivery to and receipt by City of bids at the time and place stated in the Bid Documents. Bids received after the specified time or at a place other than the specified location will not be accepted or recognized. The time of receipt will determine the acceptability of mailed bids, regardless of postmark.

Any bid may be withdrawn by the bidder by written notice received by the Purchasing Agent at the address specified in the Bid Documents, prior to the time scheduled for the opening of such bids.

No telephone or telegraphic bid, change in bid, or withdrawal of bid will be received or recognized.

A bid may be amended or modified only by withdrawing the bid and resubmitting another bid prior to the time for opening of bids.

No bid may be withdrawn for sixty (60) days, Saturdays, Sundays and legal holidays excluded, after the opening of bids.

Bids will be opened and read publicly at the place and time stated in the Bid Documents. Bidders and/or their authorized representatives are invited to be present.

SECTION 10 – BID DEPOSIT

Each bid must be accompanied by a bid deposit in the form of a bid bond, or certified check, or a treasurer's or cashier's check issued by a responsible bank or trust company. The check must be made payable to "Bidder (insert bidder's name) OR the City of Gardner."

A bid bond shall be (a) in a form satisfactory to the City of Gardner; (b) with a surety company qualified to do business in the Commonwealth of Massachusetts and satisfactory to the City of Gardner; and (c) conditioned upon the faithful performance by the principal of the agreements contained in the bid.

The bid deposit shall be in the amount of five percent (5%) of the total value of the bid.

SECTION 11 – REJECTION OF BIDS

The City of Gardner shall reject every bid which does not conform to the statutory requirements or the Bid Documents.

The City of Gardner reserves the right to reject any and all general bids which contain erasures, alterations, conditions, additions, errors or irregularities of any kind, or which contains proposed prices for any class or item of work which are, in the judgment of the City, substantially less or more than the actual cost to complete the work; provided, however, that the City reserves the right to waive any and all informalities as to form. Matters as to substance shall not be waived.

SECTION 12 – AWARD OF CONTRACT

The contract will be awarded to the lowest responsible and eligible bidder complying with the conditions and requirements provided in the Bid Documents.

Award of the contract will be made within thirty (30) days, Saturdays, Sundays and legal holidays excluded, after (1) the opening of bids or (2) the receipt by the City of any approvals necessary from federal or state agencies in connection with the project, whichever is later.

Successful bidder will be notified in writing that the bid has been accepted and awarded. The successful bidder shall execute the contract and furnish the required bonds and insurance certificates to the City within five (5) days, Saturdays, Sundays and legal holidays excluded, after presentation of the contract or notice that the contract is ready for execution.

If the bidder selected fails to execute the contract in accordance with the terms of the Bid Documents, and furnish bonds and insurance certificates, the award will be made to the next lowest responsible and eligible bidder.

SECTION 13 – DOCUMENTS TO BE FURNISHED WITH BID SUBMITTAL

Pursuant to MGL Section 49a, Chapter 62c, the contractor must certify that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes.

Affidavit of compliance with laws relating to corporations, and evidence of corporate authority with respect to execution of contract documents on behalf of the contractor shall be provided with the bid.

The Bidder must certify that no official or employee of the City of Gardner has pecuniary interest in this proposal or contract, and that this bid is made in good faith without fraud or collusion or connection with any other person submitting a proposal.

For Contracts in excess of \$100,000 the Contractor must file, as outlined in MGL C 30, Section 39R(c): a statement assuring that its system of auditing controls ensures management accountability and protection of assets; and a statement by a CPA that it has examined the statement of management and giving an opinion whether the representations of management are consistent with its system of controls and its financial statements.

SECTION 14 – DOCUMENTS TO BE FURNISHED UPON EXECUTION OF CONTRACT

14.1 LIABILITY AND PROPERTY DAMAGE INSURANCE

If the bid or proposal documents require insurance, Contractor shall purchase and maintain coverage with a company qualified to do business in Massachusetts in forms acceptable to the City and in adequate amounts as shall protect the Contractor, the City and its employees, agents, and officials. Coverage must be in place and remain in effect for: workers' compensation, comprehensive public and commercial general liability, owner's protective liability, and property damage, including products, completed operations, and contractual liability; automobile liability for protection of employees and others from bodily injury and damages to property which may arise out of or result from the Contractor's operations under this agreement. This insurance shall be in limits specified by Law or in the bid specifications. In no case shall the limits be less than: \$1,000,000 in bodily injury and property damages on account of any one person and \$1,000,000 on account of any one accident and \$1,000,000 in the aggregate; \$1,000,000 in automobile and truck liability, including hired vehicles, on account of any one person and \$1,000,000 on account of any one accident and \$1,000,000 for each occurrence for property damage liability. A Certificate of Insurance naming the City of Gardner as certificate holder shall be filed with the Purchasing Agent prior to commencement of any Contract's operations. The "Description" section shall contain the following sentence: "The City of Gardner is an additional insured under this policy." All policies and certificates shall contain an endorsement requiring at least thirty (30) days written notice of non-renewal, restrictive amendment, or cancellation of coverage to the City. Compliance by the Contractor with the insurance requirements shall not relieve the Contractor from liability under the full indemnity provisions contained herein. Failure to provide insurance as established above shall be considered a breach of Contract and grounds for termination of the Contract.

14.2 WORKERS COMPENSATION INSURANCE

Contractor shall furnish the City of Gardner with certificates showing that all employees who shall be connected with this work are protected under worker's compensation insurance policies.

SECTION 15 – COMPETENCE

It is the intent of the City that this contract be awarded to a responsible bidder, able to provide the appropriate expertise and experience with this particular procedure, as specified. Submission of proposals lacking the appropriate required experience will be treated as incomplete and will not be considered.

Submission of a bid offer authorizes the City to contact any and all parties referenced by the bidder in regard to financial and operational information; and to request verification of any information or qualifications submitted as part of any offer to the City. Negative references may be grounds for rejection.

Contract will be awarded to responsible established bidders capable of performing the class of work contemplated. Before the awarding of the Contract, any bidder may be required to show the necessary facilities, experience, ability and financial resources are available to perform work in a satisfactory manner and within time stipulated. Bidders may be required to furnish statements as to experience and financial status. Bidder agrees to furnish in confidence such information as will enable judgment of the financial responsibility of the bidder and any listed subcontractors.

The City reserves the right to request site visits and demonstrations of existing Bidder operations.

The Bidder shall provide a list of clients for whom similar services are provided, indicating for each client the date services began and the responsible official and phone number for each contract.

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

SECTION 1 – GENERAL PROVISIONS

1.1 DEFINITIONS

Contract Documents – Contract documents consist of the City-Contractor Agreement, all Bid Documents and all Modifications to the contract. A Modification is (a) a written amendment to the Contract signed by both parties; (b) a Change Order; (c) a written interpretation issued by the Contracting Officer; or (d) a written order for a minor change in the work issued by the Contracting Officer. The contract documents do not include sample forms.

Contract – The Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined. Nothing contained in the Contract shall create any contractual relationship between the City or the Engineer and any sub-contractor.

Work – The Work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated in such construction.

Project – The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

1.2 EXECUTION, CORRELATION AND INTENT

By executing the Contract, the Contractor represents familiarity with the site and local conditions under which the Work is to be performed and associated observations with the requirements of the Contract Documents.

It is the intent that Contract Documents include all items necessary for the proper performance of the Work. All work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such work is to be done by others. Should the specifications or drawings disagree within themselves or with each other, the Contractor shall provide the better quality or greater quantity of work and/or materials unless otherwise directed by written modification to the contract.

The division of specifications into sections and articles, and the arrangement of drawings shall not control the division of work among subcontractors, or in establishing the extent of work to be performed by any trade. The Contractor and any subcontractors shall refer to all drawings, including those showing primarily the work of the mechanical, electrical and other specialized trades, and to all of the sections of the specifications, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results.

Where the specifications refer to codes, standards, requirements and publications of public and private bodies, references shall be understood to be the latest revision prior to the date of receiving bids, except where otherwise indicated.

Work is to be of good quality for the intended use and consistent with the quality of the surrounding work and the construction of the project where no explicit quality or standards for materials or workmanship are established.

All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with manufacturer's written or printed directions and instructions unless otherwise indicated.

Any test boring or soil test information included with the Contract Documents or otherwise made available to the Contractor was obtained by the City or its Engineer for use by the Engineer in design. The City and Engineer do not hold out such information to the Contractor as an accurate or approximate indication of subsurface conditions, and no claim for extra cost or extension of time resulting from reliance by the Contractor on such information shall be allowed except as provided in MGL Chapter 30, Section 39N.

1.3 OWNERSHIP AND USE OF DOCUMENTS

All drawings and specifications furnished by the Engineer or City Engineer, and all copies thereof and the copyright therein are the property of the City of Gardner. They are to be used only with respect to this project and are not to be used on any other project. Submission or distribution to meet official regulatory requirements or for other purposes in connections with the project is not to be construed as publication in derogation of the Engineer or City's common law copyright or other reserved rights.

SECTION 2 – ENGINEER

2.1 DEFINITION

Engineer refers to either (a) a professionally licensed architect, engineer or landscape architect, hired or used by the City, or in the absence of thereof, or (b) the City Engineer or Contracting Officer identified in the Bid Documents.

2.2 – ADMINISTRATION OF THE CONTRACT

The Engineer will provide administration of the Contract as herein described and pursuant to the terms of the contract between the Engineer and the City.

The Engineer will be the City's representative during construction and until final payment is due. The Engineer will advise and consult with the City. The City's instructions to the Contractor shall be forwarded through the Engineer. The Engineer will have the authority to act on behalf of the City only to the extent provided in the Contract Documents and the Design Services Agreement, if such an Agreement exists, unless otherwise modified.

The Engineer will visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the work and to determine if the work is proceeding in accordance with Contract Documents. The Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of work. On the basis of on-site observations, the Engineer will keep the City informed of progress of the work and will endeavor to guard the City against defects and deficiencies in the work of the Contractor.

The Engineer will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and will not be responsible for the Contractor's failure to carry out the work in accordance with Contract Documents. The Engineer will not be responsible for or have control or charge over the acts or omissions of the Contractor, subcontractors, or any agents or employees, or any other persons performing any of the work.

The Engineer shall at all times have access to the work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Engineer may perform the functions under the Contract Documents.

Based on the Engineer's observations and evaluation, the Engineer will determine the amounts owed to the Contractor and will certify Certificates for Payment in such amounts.

The Engineer will be the interpreter of the requirements of the Contract Documents and judge the performance thereunder by both the City and Contractor.

The Engineer will render interpretations necessary for the proper execution or progress of the work, with reasonable promptness and in accordance with MGL Chapter 30, Section 39P or any lesser time limit agreed upon. Either party to the Contract may make written request to the Engineer for interpretations.

Claims, disputes and other matters in question between the Contractor and City relating to the execution of progress of the work or the interpretation of the Contract Documents shall be referred initially to the Engineer for decision, which the Engineer will render in writing within a reasonable time.

All interpretations and decisions of the Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. In the capacity of interpreter and judge, the Engineer will endeavor to secure faithful performance by both the City and the Contractor, and will not be liable for the result of any interpretation or decision rendered in good faith, and in the absence of negligence, in such capacity.

The Engineer's will have authority to reject work that does not conform to the Contract Documents. Whenever the Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, there will be the authority to require special inspection or testing of the work. Neither the Engineer's authority to act nor any decision made in good faith either to exercise or not exercise such authority, shall give rise to any duty or responsibility of the Engineer to the Contractor, subcontractor, agents or employees, or any other person performing the work.

Engineer will review and approve or take other action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the work and with information given in the Contract Documents. Engineer's approval of a special item shall not indicate approval of an assembly of which the item is a component.

Engineer will prepare Change Orders and will have the authority to order minor changes in the work.

Engineer will conduct inspections to determine the dates of Substantial Completion and final completion will receive and forward to the City for review written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate of Payment.

If the City and Engineer agree, the Engineer will provide one or more Project Representatives to assist the Engineer in carrying out responsibilities at the site. The duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in an exhibit to be incorporated in the Contract Documents.

The duties, responsibilities and limitations of authority of the Engineer as the City's representative during construction, as set forth in the Contract Documents and the Contract will not be modified or extended without the consent of the City and the Engineer.

In case of the termination of the employment of the Engineer, the City shall appoint an Engineer whose status under the Contract Documents shall be the same as that of the former engineer.

SECTION 3 – CITY OF GARDNER

3.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

The City shall furnish existing surveys, if any, describing the physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

Information or services under the City's control shall be furnished by the City with reasonable promptness after receipt from the Contractor of a written request for such information or services.

The City shall forward all instructions to the Contractor through the Engineer.

The foregoing are in addition to other duties and responsibilities of the City enumerated herein and especially those in respect to Work by the City or by Separate Contractors, Payments and Completion, and Insurance.

3.2 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct defective work as required or persistently fails to carry out the work in accordance with Contract Documents, the City, by a written order, may order the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the City to stop the work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required to coordinate work of itself or a separate contractor.

3.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails within seven days after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to any other remedy he may have, make such good deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Engineer's additional services made necessary by such default, neglect or failure. Such action by the City and the amount charged to the Contractor are both subject to prior notice being given to the Engineer by the City. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

SECTION 4 – CONTRACTOR

4.1 REVIEW OF CONTRACT DOCUMENTS

Before starting work, and at frequent intervals during the progress thereof, the Contractor shall carefully study and compare the Contract Documents, including Drawings and Specifications and all attachments, and shall at once report to the Engineer any error, inconsistency or omission discovered. Any necessary change shall be addressed. If the Contractor proceeds with work without such notice to the Engineer, having discovered such error, inconsistency or omission, or if by reasonable study of the Contract Documents the Contractor could have discovered such, the Contractor shall bear all costs arising therefrom.

The Contractor shall give the Engineer timely notice of any additional design drawings, specifications, or instructions required to define the work in greater detail, or to permit the proper progress of the work.

The Contractor shall not proceed with any work not clearly and consistently defined in detail in the Contract Documents, but shall request additional drawings or instructions from the Engineer. If the Contractor proceeds with work without obtaining further drawings or instructions, work performed incorrectly shall be corrected at the Contractor's expense.

4.2 SUPERVISION AND CONSTRUCTION PROCEDURES

The Contractor shall supervise and direct the work and be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of work under the Contract.

The Contractor shall be responsible to the City for the acts and omissions of employees, subcontractors and their agents and employees, and other persons performing any of the work under a contract with the Contractor.

The Contractor shall not be relieved from his obligations to perform the work in accordance with the Contract Documents either by the activities or duties of the Engineer in administration of the Contract, or by inspections, tests or approvals required or performed by persons other than the Contractor.

Where the Contract Documents refer to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used in the work, such mention is intended only to indicate that the operations of the Contractor shall be as to produce at least the quality of work implied by the operations described, but the actual determination of whether or not the described operations may be safely and suitably employed on the work shall be the responsibility of the Contractor. The Contractor shall notify the Engineer in writing of the actual means, methods, techniques, sequences or procedures which will be employed on the work, if these differ from those mentioned in the Contract Documents. All loss, damage, liability or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Contractor, notwithstanding that such construction means, methods, techniques, sequences or procedures are not safe or suitable, and the Contractor has then been instructed in writing by the City to proceed at the City's risk.

4.3 LABOR AND MATERIALS

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated into the work.

The Contractor shall at all times maintain authority and enforce control among employees and shall not employ on the work any unfit person or anyone not skilled in the task assigned.

4.4 WARRANTY

The Contractor warrants to the City and the Engineer that all materials and equipment furnished under this Contract will be new and of recent manufacture unless otherwise specified, and that all work shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective.

The Contractor shall be responsible for determining that all materials furnished for the work meet or exceed all requirements of the Contract Documents. The Engineer may require the Contractor to produce reasonable evidence that a material meets such requirements using methods that the Engineer would use to determine to a reasonable certainty that material used or proposed to be used in the work meets the requirements of the Contract Documents. All such data shall be furnished at the Contractor's expense.

If the Contractor proposes to use a material which, while suitable for the intended use, deviates in any way from the requirements of the Contract Documents, the City and the Engineer shall be notified in writing of the nature of such deviations at the time the material is submitted for approval, and shall request written approval of the deviation from the requirements of the Contract Documents.

In requesting approval of the deviations or substitutions, the Contractor shall provide, upon request, evidence leading to a reasonable certainty that the proposed substitution or deviation will provide a quality of result at least equal to that otherwise attainable. If, in the opinion of the Engineer, the evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty, the Engineer may reject such substitution or deviation without further investigation.

The Contract Documents are intended to produce a completed project of consistent character and quality of design. All components of the project have been selected to have a coordinated design in relation to the overall appearance. The Engineer shall judge the design and appearance of proposed substitutes on the basis of their suitability in

relation to the overall design of the project, as well as for their fundamental merits. The Engineer will not approve as equal to materials specified proposed substitutes which, in the Engineer's opinion, would be out of character, obtrusive, or otherwise inconsistent with the character or quality of design of the project.

Any additional cost, or any loss or damage arising from the substitution of any material or any method from those originally specified shall be borne by the Contractor, notwithstanding approval or acceptance of such substitution by the City or Engineer, unless such substitution was made at the written request or direction of the City.

The warranty provided in this paragraph shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

The Contractor shall procure and deliver to the Engineer, no later than the date claimed by the Contractor as the date of Substantial Completion, all special warranties required by the Contract Documents. Delivery by the Contractor shall constitute the Contractor's guarantee to the City that the warranty will be performed in accordance with its terms and conditions.

4.5 TAXES

The Contractor shall pay all sales, consumer, use and other similar taxes for the work or portions thereof provided by the Contractor which are legally enacted at the time the bids are received, whether or not yet effective.

4.6 PERMITS, FEES AND NOTICES

Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the work which are customarily secured after execution of the Contract and which are legally required at the time the bids are received.

The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work.

It is not the responsibility of the Contractor to make certain the Contract Documents are in accordance with the applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, the Engineer shall be promptly notified in writing, and any necessary changes shall be accomplished by appropriate Modification.

If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, the Contractor shall assume full responsibility therefore and shall bear all costs attributable thereto.

4.7 INDEMNIFICATION

The Contractor hereby assumes the entire responsibility and liability for any and all injury to or death of any or all persons, including the Contractor's employees, and for any and all damage to property caused by, resulting from, or arising out of any act, omission, or neglect on the part of the Contractor or of anyone directly or indirectly employed by any of them, or of anyone for whose acts any of them may be liable in connection with operations under the contract.

(1) The contractor further agrees to indemnify and hold harmless the City, including its agents, employees and representatives, from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from the performance of the work, or any activity related to the work provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and; (b) is caused in wholly or in part by any intentional, reckless or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

(2) The contractor shall be responsible for all damage or injury to property of any character during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the manner or method of executing the work or due to the non-execution of the work or at any time due to defective work or materials.

(3) In any and all claims against the City or any of their agents or employees by any employee of the Contractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any

limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under Workmen's Compensation Acts, disability benefit acts or other employee benefit acts.

(4) The obligations of the Contractor under this paragraph shall not extend to the liability of the City, its agents or employees, arising out of the giving of, or the failure to give, directions, or instructions by the City, its agents or employees provided such giving or failure to give directions is the primary cause of the injury or damage.

(5) The intent of the specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the City from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the Work.