

# The Tulalip Tribes of Washington

## INSTRUCTIONS TO BIDDERS

The Tulalip Tribes of Washington hereby invite you to submit a Bid Proposal and or Material Quotation in your area of expertise for this project.

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### **ARTICLE 1 – CONTRACT INFORMATION**

#### **1.1 PROJECT BID REQUIREMENTS**

- 1.1.1 The Tulalip Tribes of Washington’s Board of Directors has the authority to require those employers subject to Tribal Employment Rights Ordinance No. 60 and applicable federal laws and guidelines, to give preference to Indians in hiring promotions, training and all other aspects of employment contracting and subcontracting, and those contractors subject to Tribal Contracting Ordinance No. 89 to give preference to Indians in contracting goods and services and must comply with Ordinance Nos. 60 and 89 and the rules, regulations and orders of the TERO Commission.
- 1.1.2 With respect to each Project / Contract or Subcontract of \$10,000 or more, operating within the exterior boundaries of the Tulalip Reservation, the Contractor shall pay a one time tax of 1.75% of the total Project / Contract cost, i.e., equipment labor, materials and operations and any increase of the Contract / Project or Subcontract amount. If the Contractor initially enters into a Contract / Project or Subcontract of less the \$10,000, but subsequent changes in the Work increases the total Contract / Project or Subcontract amount to \$10,000 or more, the tax shall apply to the total amount including increases.
- 1.1.3 The TERO tax provided for in the Tribal Employment Rights Ordinance No. 60 shall be paid by the Contractor / Employer or Subcontractor, prior to commencing work within the exterior boundaries of the Tulalip Reservation. However, where good cause is shown, the TERO Representative may authorize the Contractor / Employer or Subcontractor to pay the tax in installments over a course of the Contract, when:
  - 1.1.3.1 The total annual tax exceeds \$10,000.00; or
  - 1.1.3.2 The Contractor demonstrates hardship or other good cause.
  - 1.1.3.3 The decision whether to authorize an alternative arrangement, which, if allowed, shall be in writing, shall rest solely with the discretion of the TERO Representative.

1.1.4 Whenever an employer or union would be required by any provision of Ordinance No. 60 to give preference in hiring or contracting, such preference shall be given to the following persons in the following enumerated order:

- a) Members of the Tulalip Tribes.
- b) Indian Spouses of members of the Tulalip Tribes who contribute to the support of a Tulalip household.
- c) Other Indians.

Where prohibited by applicable Federal law above order of preference shall not apply. In such cases, preference shall be given in the following enumerated order:

- a) Indians who are local residents.
- b) Other Indians.

1.1.5 The preference requirements contained in Ordinance Nos. 60 and 89 shall be binding on all contractors and subcontractors, regardless of tier, and shall be deemed a part of all resulting contract agreements.

1.1.6 For more information about Ordinance Nos. 60 and 89, contact the Tulalip Tribes' TERO Department at 6404 Marine Drive, Tulalip, WA 98271, Office (360) 716-4747 or Facsimile (360) 716-0612.

## **1.2 PROJECT SCHEDULING AND COORDINATION**

1.2.1 The time for completion of the Work, or applicable portion thereof, indicated in the bidding documents shall be the time for Contract Completion applicable to the Bidders.

1.2.2 The Construction Manager shall be responsible for providing administration, management and related services as required to coordinate the Project, coordinate the Contractors and provide other services identified in the Contract Documents.

1.2.3 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 Construction Manager and any other Contractors to minimize interference, disruption, hindrance or delay of any Work on the Project.

1.2.4 The Bidder agrees that the Contract price, as amended by Change Order from time to time, shall cover all amounts due from the Tulalip Tribes of Washington resulting from interference, disruption, hindrance or delay caused by or between Contractors or their agents and employees.

1.2.5 The Bidder agrees that the Bidder will make no request 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 Tulalip Tribes of Washington in accordance with the Contract Documents.

## **1.3 GIVING NOTICE**

1.3.1 Whenever any provision of the Contract Documents requires the giving of notice, such notice shall be deemed to have been validly given if delivered personally to the individual or to a member of the entity 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 entity known to the giver of the notice.

- 1.3.1 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.
- 1.3.2 The effective date of any and all notices, regardless of the method of delivery, shall be the date of receipt.

#### **1.4 USE OF FACSIMILE TRANSMISSION**

- 1.4.1 Any notice required to be given by the Contract Documents may be given by facsimile transmission, provided the original signed notice is delivered pursuant to paragraph IB 1.3.1.
- 1.4.2 Notice of withdrawal of a bid may be given by facsimile transmission provided an original signed document is received 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 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. In addition, the Bidder must carefully examine all Contract Documents because laws and rules applicable to other Tribal projects are not necessarily applicable to this Project.
- 2.1.2 Failure of a Bidder to be acquainted with the extent and nature of Work required to complete any applicable portion of the Work, in conformity with all requirements of the Project as a whole wherever set forth in the Contract Documents, will not be considered as a basis for additional compensation.
- 2.1.3 The Bidder shall evaluate the Project site and related Project conditions where 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 generally prevailing climatic conditions;
  - 2.1.3.7 Conditions bearing upon transportation, disposal, handling, and storage of materials.
- 2.1.4 Unless otherwise specified in the Contract Documents, borings, test excavations and other subsurface information, if any, are provided solely to share information available to the Tulalip Tribes of Washington and any use of, or reliance upon, such items by the Bidder is at the risk of the Bidder. The Bidder shall be afforded access to the Project site to obtain the Bidder's own borings, test excavations

and other subsurface information upon request made to the Construction Manager not less than ten (10) days prior to the opening of the bids.

## **2.2 PRE-BID MEETING – NOT USED**

## **2.3 INTERPRETATION**

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 of the Contract Documents and any applicable provision of law, including without limitation, the current International Building Code, the Bidder shall submit a written request to the Construction Manager 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) days before the bid opening.

2.3.2 If the Construction Manager determines that an interpretation or clarification is warranted, the Construction Manager shall issue an Addendum and shall provide a copy to each person of record holding Contract Documents in accordance with paragraph IB 1.3. Any Addendum shall be deemed to have been validly given if it is delivered via facsimile, issued and mailed, or otherwise furnished to each person of record holding the Contract Documents. If any Addendum is issued within 72 hours prior to the published time for the bid opening, excluding Saturdays, Sundays and legal holidays, the bid opening shall automatically be extended one (1) week, with no further advertising required.

2.3.3 Any interpretation or clarification of the Contract Documents made by any person other than the Construction Manager, 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 after the execution of the Contract, be compensated for a claim alleging insufficient data, incomplete, ambiguous, conflicting or erroneous Contract Documents, any discrepancy on or between Contract Documents, or incorrectly assumed conditions regarding the nature or character of the Work, if no request for interpretation or clarification regarding such matter 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 to denote kind quality or performance requirement shall be known as Standards and all bids shall be based upon those Standards.

2.4.2 Where two 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 – NOT USED**

### **2.6 BID FORM**

- 2.6.1 Each bid shall be submitted on the Bid Form and sealed in an envelope clearly marked as containing a bid, indicating the Project name, the Contractor scope of work, 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 by a Bidder may cause the Bidder to be rejected as not responsible for award of a Contract.
  - 2.6.1.2 Unless the Bidder withdraws the bid as provided in IB Article 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 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 in ink.
- 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 Tulalip Tribes of Washington reserves the right to accept or reject any or all bids on Alternates, in whole or in part, and in any order. Voluntary Alternates submitted by a Bidder are prohibited from becoming the basis of the Contract award.
  - 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 for any Alternate by a Bidder may cause the Bidder to be rejected as nonresponsive only if that Alternate is selected.
  - 2.6.3.3 If an Alternate is not selected, an entry by a Bidder as listed in paragraph IB 2.6.3.2 on that Alternate will not, by itself, render a Bidder nonresponsive.
  - 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 will cause the bid to be rejected as nonresponsive only if that Alternate applies to the combined bid and that Alternate is selected.
- 2.6.4 Each bid shall contain the name of every person interested therein. If the Bidder is a corporation, partnership, sole proprietorship, or limited liability company, 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 Tulalip Tribes of Washington executes a Contract Form shall be incorporated into the Contract Form as if fully rewritten therein.

## **2.7 REQUIRED SUBMITTALS WITH BID FORM – NOT USED**

## **2.8 UNIT PRICES**

2.8.1 When Unit Prices are requested on the Bid Form, the 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. If Unit Prices are stated to be sought only for informational purposes, they shall not be used for comparison of bids.

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 Tulalip Tribes of Washington 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 Tulalip Tribes of Washington 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 shall be made in writing and must be received by the Tulalip Tribes of Washington before the time scheduled for the bid opening, as determined by the employee or agent of the Tulalip Tribes of Washington designated to open the bids.

2.9.2 Changes shall provide an amount to be added or subtracted from the bid amount, so that the final bid amount can be determined only after the sealed envelope is opened.

2.9.3 If the Bidder's written instruction reveals the bid amount in any way prior to the bid opening, the bid shall not be opened or considered for award of a Contract.

## **2.10 COPIES OF THE DRAWINGS AND SPECIFICATIONS – NOT USED**

### ***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 the bid to the Tulalip Tribes of Washington at the designated location prior to the time scheduled for bid opening.
- 3.1.2 If the bid envelope is enclosed in another envelope for the purpose of delivery, the exterior envelope shall be clearly marked as containing a bid with the Project name, the scope of Work or Contract and the date of the bid opening shown on the envelope.
- 3.1.3 No bid shall be considered if it arrives after the time set for the bid opening as determined by the employee or agent of the Tulalip Tribes of Washington designated to open the bids.

#### **3.2 BID OPENING**

- 3.2.1 Sealed bids will be received at the office designated in the Notice to Bidders until the time stated when all bids will be opened, read aloud and the tabulation made public.
- 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 open for inspection, upon request, at any time after the bid opening.

#### **3.3 BID OPENING EXTENSION**

- 3.3.1 If any Addendum is issued within 72 hours prior to the published time for the bid opening, excluding Saturdays, Sundays and legal holidays, the bid opening shall automatically be extended one (1) week, with no further advertising required.

#### **3.4 BID EVALUATION CRITERIA**

- 3.4.1 The Tulalip Tribes of Washington reserves the right to accept or reject any bid or bids and to award the Contract to any remaining Bidder the Tulalip Tribes of Washington determines to be the lowest responsive and responsible Bidder unless, Bidders are advised during the bidding process award will be made pursuant to paragraph IB 3.5.2. The Tulalip Tribes of Washington reserves the right to accept or reject any or all Alternates, in whole or in part, and the right to reject any Alternate or Alternates and to accept any remaining Alternate or Alternates. Alternates may be accepted or rejected in any order.
- 3.4.2 The Tulalip Tribes of Washington may reject the bid of any Bidder who has engaged in collusive bidding.
- 3.4.3 The Tulalip Tribes of Washington 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 requirement of the Contract Documents may cause a Bidder to be rejected.
- 3.4.4 The Tulalip Tribes of Washington may reject all bids for one or more bid packages, prior to, during or after evaluation of Bidders pursuant to paragraph IB 3.5.8, and may advertise for other bids, using the original estimate or an

amended estimate, for such time, in such form and in such newspapers as the Tulalip Tribes of Washington may determine.

### **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 Tulalip Tribes of Washington, unless Bidders are advised during the bidding process award will be made pursuant to paragraph IB 3.5.2, or all bids will be rejected in accordance with applicable or Tribal ordinances.
  - 3.5.1.1 In determining which Bidder is lowest responsive and responsible, the Tulalip Tribes of Washington shall consider the Base Bid, the bids for any Alternate or Alternates and the bids for any Unit Price or Unit Prices which the Tulalip Tribes of Washington determines to accept.
  - 3.5.1.2 If the Request for Bid Proposal is not restricted to qualified Indian-owned enterprises or organizations preference to an Indian-owned enterprise will be made to the qualified Indian-owned enterprise with the lowest responsive bid if that bid is within budgetary limits established for the project and no more than "X" higher than the bid prices of the lowest responsive bid from any qualified Bidder as set forth in Ordinance No. 89 Article 89.1.04.1.2 (A)(2).
  - 3.5.1.3 The total of the bids for accepted Alternate(s) and Unit Price(s) will be added to the Base Bid for the purpose of determining the lowest Bidder.
  - 3.5.1.4 If two or more Bidders submit the same bid amount and are determined to be responsive and responsible, the Tulalip Tribes of Washington reserves the right to select one Bidder in the following manner:
    - 3.5.1.4.1 If the Request for Bid Proposal is restricted to Indian-owned enterprises or organizations and a majority of the funds used to pay the contract or subcontract are derived from Tulalip tribal resources preference shall be given to the certified, qualified Indian-owned enterprise or organization owned by a member(s) of the Tulalip Tribes; otherwise, selection shall be by lot in the presence of all such Bidders in such a manner as the Construction Manager shall determine and such selection shall be final.
    - 3.5.1.4.2 If the Request for Bid Proposal is not restricted to Indian-owned enterprises or organizations selection shall be by lot in the presence of all such Bidders in such a manner as the Construction Manager shall determine and such selection shall be final.
- 3.5.2 In determining whether a Bidder is responsible, factors to be considered include, without limitation:
  - 3.5.2.1 Whether 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.
  - 3.5.2.2 Preference to Indians in hiring promotions, training and all other aspects of employment contracting and subcontracting;
  - 3.5.2.3 Preferences required by law or Tribal ordinances;

- 3.5.2.4 The experience of the Bidder;
  - 3.5.2.5 The financial condition of the Bidder;
  - 3.5.2.6 The conduct and performance of the Bidder on previous contracts;
  - 3.5.2.7 The facilities of the Bidder;
  - 3.5.2.8 The management skills of the Bidder;
  - 3.5.2.9 The ability of the Bidder to execute the Contract properly;
  - 3.5.2.10 The evaluation of a bid below the median of other bids pursuant to paragraph IB 5.2.
  - 3.5.2.11 Bidder's commitment to Safety and worker training.
- 3.5.3 The Construction Manager shall obtain from the lowest and most responsive and responsible Bidder and such other Bidders as the Construction Manager determines to be appropriate any information appropriate to the consideration of factors showing responsibility, including without limitation the following:
- 3.5.3.1 Overall experience of the Bidder, including number of years in business under present and former business names;
  - 3.5.3.2 Complete listing of all ongoing and completed public and private construction projects of the Bidder in the last three years, including the nature and value of each contract and a name/address/phone number for each owner;
  - 3.5.3.3 Complete listing of any public or private construction projects for which the Bidder has been declared in default; also, any EPA, OSHA, WISHA or other regulating entity issues or citations in the last ten (10) years;
  - 3.5.3.4 Certified financial statement and bank references;
  - 3.5.3.5 Description of relevant facilities of the Bidder;
  - 3.5.3.6 Description of the management experience of the Bidder's project manager(s) and superintendent(s);
  - 3.5.3.7 Complete list of major subcontractors with an estimated contract value of \$250,000 or more, which the Bidder proposes to employ on the Project;
  - 3.5.3.8 Current Washington Workers' Compensation Certificate or other similar type documentation supporting workers' compensation coverage; and
  - 3.5.3.9 If the Bidder is a foreign corporation, i.e., not incorporated under the laws of Washington, a Certificate of Good Standing from the 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 Secretary of State a Power of Attorney designating the Secretary of State as the Bidder's agent for the purpose of accepting service of summons in any action brought under this Contract.
- 3.5.4 Each such Bidder's information shall be considered separately and not comparatively. If the lowest Bidder is responsible, the Contract shall be awarded to such Bidder or all bids are rejected.
- 3.5.5 If the lowest Bidder is not responsible, and all bids are not rejected, the Tulalip Tribes of Washington shall follow the procedure set forth in paragraph IB 3.5.3 with each next lowest Bidder until the Contract is awarded, all bids are rejected or all Bidders are determined to be not responsible.

### **3.6 REJECTION OF BID BY THE TULALIP TRIBES OF WASHINGTON**

- 3.6.1 If the lowest or most responsive Bidder, as applicable, is not responsible, the Tulalip Tribes of Washington shall reject such Bidder and notify the Bidder in writing by certified mail of the finding and the reasons for the finding.
- 3.6.2 A Bidder who is notified in accordance with paragraph IB 3.6.1 may object to such Bidder's rejection by filing a written protest which must be received by the Tulalip Tribes of Washington, through the Construction Manager, within five (5) days of the notification provided pursuant to paragraph IB 3.6.1.
- 3.6.3 Upon receipt of a timely protest, representatives of the Tulalip Tribes of Washington shall meet with the protesting Bidder to hear the Bidder's objections.
  - 3.6.3.1 No award of the Contract shall become final until after the representatives of the Tulalip Tribes of Washington have met with all Bidders who have timely filed protests and the award of the Contract is affirmed by the Tulalip Tribes of Washington.
  - 3.6.3.2 If all protests are rejected in the Tulalip Tribes of Washington's discretion the award of the Contract shall be affirmed by the Tulalip Tribes of Washington or all bids shall be rejected.

### **3.7 NOTICE OF INTENT TO AWARD**

- 3.7.1 The Tulalip Tribes of Washington 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 Tulalip Tribes of Washington reserves the right to rescind any Notice of Intent to Award if the Tulalip Tribes of Washington determines the Notice of Intent to Award was issued in error.

## ***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 Tulalip Tribes of Washington, provided the Bidder makes a request in writing and the request is received by the Tulalip Tribes of Washington prior to the time of the bid opening, as determined by the employee or agent of the Tulalip Tribes of Washington designated to open 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, 60 days after the bid opening; provided, however, that within two (2) business days after the bid opening, a Bidder may withdraw a bid from consideration if the bid amount was substantially lower than the amounts of other bids, provided 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 Tulalip Tribes of Washington, through the Construction Manager, within two (2) business days after the bid opening.

4.2.1.2 No bid may be withdrawn under paragraph IB 4.2.1 when the result would be the awarding of the Contract on another bid to the same Bidder.

4.2.2 If a bid is withdrawn under paragraph IB 4.2.1, the Tulalip Tribes of Washington may award the Contract to another Bidder the Tulalip Tribes of Washington determines to be the next lowest or most responsive and responsible Bidder, as applicable, or reject all bids and advertise for other bids. If the Tulalip Tribes of Washington advertises for other bids, the withdrawing Bidder shall pay the costs, in connection with the rebidding, of printing new Contract Documents, required advertising and printing and mailing notices to prospective Bidders, if the Tulalip Tribes of Washington 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 period described in paragraph IB 4.2.1 by written notice to the Tulalip Tribes of Washington.

#### **4.3 REFUSAL BY TULALIP TRIBES OF WASHINGTON TO ACCEPT WITHDRAWAL**

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

4.3.1.1 The Tulalip Tribes of Washington 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.

#### **4.4 REFUSAL BY BIDDER TO PERFORM**

4.4.1 If the Tulalip Tribes of Washington denies the claim for withdrawal and the Bidder elects to appeal or otherwise refuses to perform the Contract, the Tulalip Tribes of Washington may reject all bids or award the Contract to the next lowest or most responsive and responsible Bidder, as applicable.

#### **4.5 EFFECT OF WITHDRAWAL**

4.5.1 No Bidder who is permitted, pursuant to paragraph 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 Tulalip Tribes of Washington.

4.5.2 The person to whom the Contract is awarded and the withdrawing Bidder shall be jointly liable to the Tulalip Tribes of Washington in an amount equal to any compensation paid to or for the benefit of the withdrawing Bidder without such approval.

### ***ARTICLE 5 – BID ESTIMATE***

#### **5.1 BID TOTALS**

- 5.1.1 No Contract shall be entered into if the price of the Contract, or if the Project involves multiple Contracts where the total price of all Contracts for the Project, is in excess of ten (10) percent above the entire estimate.

## **5.2 SUBSTANTIALLY LOW BID**

- 5.2.1 No Bidder shall be responsible if the Bidder's bid is more than twenty (20) percent below the median of all higher bids received for a Contract where the estimate is \$100,000 or more, and no Bidder shall be responsible if the Bidder's bid is more than twenty-five (25) percent below the median of all higher bids received for a Contract where the estimate is less than \$100,000, unless the following procedures are followed.
- 5.2.1.1 The Construction Manager conducts an interview with the Bidder to determine what, if anything, has been overlooked in the bid, and to analyze the process planned by the Bidder to complete the Work. The Construction Manager shall submit a written summary of the interview to the Tulalip Tribes of Washington.
- 5.2.1.2 The Tulalip Tribes of Washington reviews and approves the Bidder's responsibility pursuant to paragraph IB 3.5.8.
- 5.2.1.3 The Construction Manager notifies the Bidder's Surety, if applicable, in writing that the Bidder with whom the Tulalip Tribes of Washington intends to enter a Contract submitted a bid determined to be substantially lower than the median of all higher bids.

## **ARTICLE 6 – BID GUARANTY AND CONTRACT BOND**

### **6.1 BID GUARANTY – NOT USED**

### **6.2 FORFEITURE**

- 6.2.1 If for any reason, other than as authorized by paragraph IB 4.2.1 or paragraph IB 6.3, the Bidder fails to execute the Contract Form, and the Tulalip Tribes of Washington awards the Contract to another Bidder which the Tulalip Tribes of Washington determines is the next lowest or most responsive and responsible Bidder, as applicable, the Bidder who failed to enter into a Contract shall be liable to the Tulalip Tribes of Washington for the difference between such Bidder's bid and the bid of the next lowest or most responsive Bidder, as applicable, or for a penal sum not to exceed five (5) percent of the bid amount, whichever is less.
- 6.2.2 If the Tulalip Tribes of Washington then awards a Contract to another Bidder which the Tulalip Tribes of Washington determines is the next lowest or most responsive and responsible Bidder, as applicable, and such Bidder also fails or refuses to execute the Contract Form, the liability of such lowest or most responsive and responsible Bidder, as applicable, shall, except as provided in paragraph IB 6.3, be the amount of the difference between the bid amounts of such lowest or most responsive Bidder, as applicable, and another Bidder which the Tulalip Tribes of Washington determines is the next lowest or most responsive and responsible Bidder, as applicable, but not in excess of the liability specified in paragraph IB 6.2.1. Liability on account of an award to each succeeding lowest or most responsive and responsible Bidder, as applicable, shall be determined in like manner.
- 6.2.3 If the Tulalip Tribes of Washington does not award the Contract to another Bidder which the Tulalip Tribes of Washington determines is the next lowest or most responsive and responsible Bidder, as applicable, 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 Tulalip Tribes of Washington for a penal sum not to exceed five (5) 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.

### **6.3 EXCEPTION TO FORFEITURE**

6.3.1 A Bidder for a Contract costing less than \$500,000 may withdraw a bid from consideration if the Bidder's bid for some other Contract 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, if applicable, 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 paragraph IB 6.3.1, the Tulalip Tribes of Washington may award the Contract to another Bidder which the Tulalip Tribes of Washington determines is the next lowest or most responsive and responsible Bidder, as applicable, or reject all bids and resubmit the Project for bidding, and neither the withdrawing Bidder nor such Bidder's Surety, as applicable, shall be liable for the difference between the Bidder's bid and that of another Bidder which the Tulalip Tribes of Washington determines is the next lowest or most responsive and responsible Bidder, as applicable, 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 – NOT USED**

### **6.5 OPTION TO WAIVE CONTRACT BOND – TULALIP TRIBES-OWNED ENTERPRISES AND ORGANIZATIONS ONLY – NOT USED**

## ***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 or most responsive and responsible Bidder, as applicable, 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.

7.1.1.1 Noncompliance with the conditions precedent for execution of the Contract Form within ten (10) days of the date of the Notice of Intent to Award shall be cause for the Tulalip Tribes of Washington to cancel the Notice of Intent to Award for the Bidder's lack of responsibility and award the Contract to another Bidder which the Tulalip Tribes of Washington determines is the next lowest or most responsive and responsible Bidder, as applicable, or resubmit the Contract for bidding, at the discretion of the Tulalip Tribes of Washington.

7.1.1.2 The Tulalip Tribes of Washington may extend the time for submitting the conditions precedent for execution of the 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 to execute the Contract Form within 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 Bidder whose bid is accepted by the Tulalip Tribes of Washington and with respect to whom the Tulalip Tribes of Washington awards and executes a Contract.
  - 7.2.1.1 If the Contract is awarded and the Contract Form is executed within 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 60 days of the bid opening is due to matters for which the Tulalip Tribes of Washington is solely responsible, the Contractor shall be entitled to a Change Order authorizing payment of verifiable increased costs in materials, labor or subcontracts.
  - 7.2.1.3 If the cause of the failure to execute the Contract within 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 FORM**

- 7.3.1 Bond, if required. To support the Bond, a current and signed Certificate of Compliance or Certificate of Authority showing the Surety is licensed to do business in Washington;
- 7.3.2 Current Washington Workers' Compensation Certificate or other similar type documentation supporting workers' compensation coverage;
- 7.3.3 Certificate of Insurance (ISO general liability form CG 2010 11/85 edition or equivalent form is acceptable) and copy of additional insured endorsement. The certificate shall clearly state "The Tulalip Tribes of Washington and The Consolidated Borough of Quil Ceda Village are named as 'Additional Insureds' to the General Liability, Automobile Liability, and Excess Liability Policies. Workers Compensation coverage includes a waiver of subrogation against the Tulalip Tribes of Washington and The Consolidated Borough of Quil Ceda Village." The wording "endeavor to" and "but failure to" under CANCELLATION shall be stricken from the certificate. The Tulalip Tribes of Washington reserves the right to request a certified copy of the Contractor's insurance policies meeting the requirements of GC Article 12;
- 7.3.4 If the Bidder is a foreign corporation, i.e., not incorporated under the laws of Washington, a Certificate of Good Standing from the 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 Secretary of State a Power of Attorney designating the Secretary of State as the Bidder's agent for the purpose of accepting service of summons in any action brought under this Contract;
- 7.3.5 Contractor signed Contract Form;
- 7.3.6 Completed and approved TERO Contracting and Subcontracting Compliance plan;
- 7.3.7 Current Tulalip Tribes Business License; and
- 7.3.8 Completed and signed Confidentiality Agreement.

## **7.4 NOTICE TO PROCEED AND SUBMITTALS**

7.4.1 The Tulalip Tribes of Washington shall issue to the Contractor a Notice to Proceed, which shall establish the date for Contract Completion. The Contractor shall, within ten (10) days of the date of the Notice to Proceed, furnish the Construction Manager with the following submittals:

7.4.1.1 Contract Cost Breakdown;

7.4.1.2 Preliminary schedule of Shop Drawings and Submittals;

7.4.1.3 Outline of qualifications of the proposed superintendent; and

7.4.1.4 Acknowledgement by a TERO Representative the Project related TERO tax has been paid or an agreement has been reached to pay the tax in installments over the course of the Contract.

## ***ARTICLE 8 – APPLICABLE LAW AND FORUM***

### **8.1 FORUM FOR EQUITABLE RELIEF**

8.1.1 The Tribal Court of the Tulalip Tribes of Washington shall have exclusive jurisdiction over any action or proceeding for any injunction or declaratory judgment concerning any agreement or performance under the Contract Documents or in connection with the Project. Any such action or proceeding arising out of or related in any way to the Contract or performance thereunder shall be brought only in the Tribal Court of the Tulalip Tribes of Washington and the Contractor irrevocably consents to such jurisdiction and venue. The Contract shall be governed by the law of the State of Washington.

### **8.2 FORUM FOR MONEY DAMAGES**

8.2.1 The Tribal Court of the Tulalip Tribes of Washington shall be the exclusive jurisdiction for any action or proceeding for any injunction or declaratory judgment concerning any agreement or performance under the Contract Documents or in connection with the Project. The Tribal Court of the Tulalip Tribes of Washington shall be the exclusive jurisdiction for any action or proceeding by the Contractor or the Contractor's Surety, if applicable, for any money damages concerning any agreement or performance under the Contract Documents or in connection with the Project.