**Please note that these instructions were prepared to be used for a variety of projects and all items noted may not apply to a particular request for bids. It is the Bidder’s responsibility to verify if particular sections of this document apply to the project on which they are bidding. If any terms of these instructions conflict with those in the Project Manual or other Bid Documents, the Project Manual and Documents prevail.**

**Questions? – Bob Byers at** [**bbyers@fwbg.org**](mailto:bbyers@fwbg.org)

**INSTRUCTIONS TO BIDDERS**

1. **Defined Terms**

1.1. Terms used in these INSTRUCTIONS TO BIDDERS are as generally understood in construction documents. For any term whose use is not clear, please contact Bob Byers at [bbyers@fwbg.org](mailto:bbyers@fwbg.org) for clarification.

1.2. Certain additional terms used in these INSTRUCTIONS TO BIDDERS have the meanings indicated below which are applicable to both the singular and plural thereof.

1.2.1. Bidder: Any person, firm, partnership, company, association, or corporation acting directly through a duly authorized representative, submitting a bid for performing the work contemplated under the Contract Documents.

1.2.2. Nonresident Bidder: Any person, firm, partnership, company, association, or corporation acting directly through a duly authorized representative, submitting a bid for performing the work contemplated under the Contract Documents whose principal place of business is not in the State of Texas.

1.2.3. Successful Bidder: The lowest qualified, responsible, and responsive Bidder to whom FWBG (on the basis of FWBG's evaluation as hereinafter provided) makes an award.

1.2.4. FWBG or Owner: The Botanical Research Institute of Texas, DBA Fort Worth Botanic Garden

**2. Copies of Contract Documents**

2.1. Neither the Owner nor the designer shall assume any responsibility for errors or misinterpretations resulting from the Bidders use of incomplete sets of Bidding and Contract Documents.

2.2. The Owner and the designer in making copies of Bidding Documents available do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license or grant for any other use.

1. **Prequalification of Bidders (Prime Contractors and Subcontractors)**

3.1. The Invitation to Bidders will state if prequalification is required

3.2. All Bidders and their subcontractors may be required to be prequalified for the work types required at the time of bidding. Bids received from contractors who are not prequalified shall not be opened and, even if inadvertently opened, shall not be considered. Minimum requirement for all projects is a State of Texas Contractor’s license. Other prequalification requirements are available through the FWBG’s website at: <https://fwbg.org/business-opportunities/>

3.3. Each Bidder, if required and unless currently prequalified, must submit to FWBG at least seven (7) calendar days prior to Bid opening, the documentation identified as BIDDERS PREQUALIFICATIONS.

3.3.1. Submission of and/or questions related to prequalification should be addressed to FWBG contact as provided in Paragraph 6.1.

3.4. FWBG reserves the right to require any pre-qualified contractor who is the apparent low bidder(s) for a project to submit such additional information as FWBG, in its sole discretion may require, including but not limited to manpower and equipment records, information about key personnel to be assigned to the project, and construction schedule, to assist FWBG in evaluating and assessing the ability of the apparent low bidder(s) to deliver a quality product and successfully complete projects for the amount bid within the stipulated time frame. Based upon FWBG’s assessment of the submitted information, a recommendation regarding the award of a contract will be made to the Review Committee. Failure to submit the additional information, if requested, may be grounds for rejecting the apparent low bidder as non-responsive. Affected contractors will be notified in writing of a recommendation to the Review Committee.

3.5. In addition to prequalification, additional requirements for qualification may be required within various sections of the Contract Documents.

3.6. Special qualifications required for this project include the following: Demonstrated experience in preparing sites and providing pedestrian access and parking amenities..

**4. Examination of Bidding and Contract Documents, Other Related Data, and Site**

4.1. Before submitting a Bid, each Bidder shall:

4.1.1. Examine and carefully study the Contract Documents and other related data identified in the Bidding Documents (including "technical data" referred to in Paragraph 4.2. below). No information given by FWBG or any representative of FWBG other than that contained in the Contract Documents and officially promulgated addenda thereto, shall be binding upon FWBG.

4.1.2. Visit the site to become familiar with and satisfy Bidder as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work. Bidders should note that the site may not open to the public and should contact a Garden representative to arrange a time for review/inspection.

4.1.3. Consider federal, state, and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work.

4.1.4. Not Used

4.1.5. Study all: (i) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in the Contract Documents as containing reliable "technical data" and (ii) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in the Contract Documents as containing reliable "technical data."

4.1.6. Be advised that the Contract Documents on file with FWBG shall constitute all of the information which FWBG will furnish. All additional information and data which FWBG will supply after promulgation of the formal Contract Documents shall be issued in the form of written addenda and shall become part of the Contract Documents just as though such addenda were actually written into the original Contract Documents. No information given by FWBG other than that contained in the Contract Documents and officially promulgated addenda thereto, shall be binding upon FWBG.

4.1.7. Perform independent research, investigations, tests, borings, and such other means as may be necessary to gain a complete knowledge of the conditions which will be encountered during the construction of the project. On request, FWBG may provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder must fill all holes and clean up and restore the site to its former conditions upon completion of such explorations, investigations, tests, and studies.

4.1.8. Determine the difficulties of the Work and all attending circumstances affecting the cost of doing the Work, time required for its completion, and obtain all information required to make a proposal. Bidders shall rely exclusively and solely upon their own estimates, investigation, research, tests, explorations, and other data which are necessary for full and complete information upon which the proposal is to be based. It is understood that the submission of a proposal is prima-facie evidence that the Bidder has made the investigations, examinations and tests herein required. Claims for additional compensation due to variations between conditions actually encountered in construction and as indicated in the Contract Documents will not be allowed unless mutually agreed by Owner and Designer as unforeseeable.

4.1.9. Promptly notify FWBG of all conflicts, errors, ambiguities, or discrepancies in or between the Contract Documents and such other related documents. The Contractor shall not take advantage of any gross error or omission in the Contract Documents, and FWBG shall be permitted to make such corrections or interpretations as may be deemed necessary for fulfillment of the intent of the Contract Documents.

4.2. By submitting a bid, the respondent has verified/agrees to the following:

4.2.1. any reports of explorations and tests of subsurface conditions at or contiguous to the site which have been utilized by FWBG in preparation of the Contract Documents. The logs of Soil Borings and other testing, if any, on the plans are for general information only. Neither FWBG nor the Designer guarantee that the data shown is representative of conditions which actually exist.

4.2.2. those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site that have been utilized by FWBG in preparation of the Contract Documents.

4.2.3. copies of such reports and drawings will be made available by FWBG to any Bidder on request. Those reports and drawings may not be part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely. Bidder is responsible for any interpretation or conclusion drawn from any "technical data" or any other data, interpretations, opinions or information.

4.3. The submission of a Bid will constitute an incontrovertible representation by Bidder (i) that Bidder has complied with every requirement of this Paragraph 4, (ii) that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, methods, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, (iii) that Bidder has given FWBG written notice of all conflicts, errors, ambiguities and discrepancies in the Contract Documents and the written resolutions thereof by FWBG are acceptable to Bidder, and when said conflicts, etc., have not been resolved through the interpretations by FWBG as described in Paragraph 6., and (iv) that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

4.4. The provisions of this Paragraph 4, inclusive, do not apply to Asbestos, Polychlorinated biphenyls (PCBs), Petroleum, Hazardous Waste or Radioactive Material covered by Paragraph 4.06. of the General Conditions, unless specifically identified in the Contract Documents.

**5. Availability of Lands for Work, Etc.**

5.1. 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 Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

**6. Interpretations and Addenda**

6.1. All questions about the meaning or intent of the Bidding Documents are to be directed to FWBG in writing on or before 1:00 p.m., the Friday prior to the Bid opening. Questions received after this day may not be responded to. Interpretations or clarifications considered necessary by FWBG in response to such questions will be issued by Addenda delivered to all parties recorded by FWBG as having received the Bidding Documents. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. Address questions to:

Topographic Engineering Division

481 Winscott Road, Ste. 200

Benbrook, TX 76126

Attn: Rob Foster, Project Manager

Fax: 817.744.7554

Email: [Robert.Foster@topographic.com](mailto:Robert.Foster@topographic.com)

Phone: 817.755.7512

Fort Worth Botanic Garden

1700 University Drive

Fort Worth, TX 76107

Attn: *Bob Byers, Executive Vice President*

Fax: *817.332.4112*

Email: bbyers@fwbg.org

Phone: *817.463.4190*

6.2. Addenda may also be issued to modify the Bidding Documents as deemed advisable by FWBG.

6.3. Addenda or clarifications may be posted via FWBG’s electronic document management and collaboration system at https://brit.org/business-opportunities/.

6.4. A Prebid conference may be held at a time and place indicated in the Advertisement or INVITATION TO BIDDERS. Representatives of FWBG will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. FWBG will transmit to all prospective Bidders of record such Addenda as FWBG considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

**7. Bid Security**

7.1. Each Bid must be accompanied by Bid Bond made payable to FWBG in an amount of five percent (5%) of Bidder's maximum Bid price on form attached*,* issued by a surety meeting the requirements of Paragraphs 5.01 of the General Conditions.

7.2. The Bid Bond of all Bidders will be retained until the conditions of the Notice of Award have been satisfied. If the Successful Bidder fails to execute and deliver the complete Agreement within 10 days after the Notice of Award, FWBG may consider Bidder to be in default, rescind the Notice of Award, and the Bid Bond of that Bidder will be forfeited. Such forfeiture shall be FWBG's exclusive remedy if Bidder defaults. The Bid Bond of all other Bidders whom FWBG believes to have a reasonable chance of receiving the award will be retained by FWBG until final contract execution.

**8. Contract Times**

The number of days within which, or the dates by which, Milestones are to be achieved in accordance with the General Requirements and the Work is to be completed and ready for Final Acceptance is set forth in the Agreement or incorporated therein by reference to the attached Bid Form.

**9. Liquidated Damages**

Provisions for liquidated damages are set forth in the Agreement.

**10. Substitute and "Or-Equal" Items**

The Contract, if awarded, will be on the basis of materials and equipment described in the

Bidding Documents without consideration of possible substitute or "or-equal" items.

Whenever it is indicated or specified in the Bidding Documents that a "substitute" or "or equal"

item of material or equipment may be furnished or used by Contractor if acceptable to

FWBG, application for such acceptance will not be considered by FWBG until after the

Effective Date of the Agreement. The procedure for submission of any such application by

Contractor and consideration by FWBG is set forth in the General Conditions and is supplemented in the General Requirements.

**11. Subcontractors, Suppliers and Others**

11.1. In accordance with the City’s Business Equity Ordinance No. 24534-11-2020 FWBG has a goal of ten percentage (10%) for the participation of minority business and/or women business enterprises in FWBG contracts over One Hundred Thousand Dollars ($100,000.00). A copy of the Ordinance can be obtained from the Office of the City Secretary. The Bidder shall submit the Business Equity Utilization Form, Business Equity Prime Contractor Waiver Form and/or Good Faith Effort Form with documentation and/or Business Equity Joint Venture Form, as appropriate. The Forms including documentation must be received by FWBG no later than 2:00 P.M. Central Time, on the second business day after the bid opening date. The Bidder shall obtain a receipt from FWBG as evidence the documentation was received. Failure to comply shall render the bid as non-responsive. Business Equity Ordinance No. 24534-11-2020

11.2. No Contractor shall be required to employ any Subcontractor, Supplier, other person or organization against whom Contractor has reasonable objection.

**12. Bid Form**

12.1. The Bid Form is included with the Bidding Documents; additional copies may be obtained from FWBG.

12.2. All blanks on the Bid Form must be completed by printing in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each Bid item, alternative, and unit price item listed therein. In the case of optional alternatives, the words "No Bid," "No Change," or "Not Applicable" may be entered. Bidder shall state the prices, written in ink in both words and numerals, for which the Bidder proposes to do the work contemplated or furnish materials required. All prices shall be written legibly. In case of discrepancy between price in written words and the price in written numerals, the price in written words shall govern.

12.3. 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. The corporate seal shall be affixed. The corporate address and state of incorporation shall be shown below the signature.

12.4. Bids by partnerships shall be executed in the partnership name and signed by a partner, whose title must appear under the signature accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signature.

12.5. Bids by limited liability companies shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.

12.6. Bids by individuals shall show the Bidder's name and official address.

12.7. Bids by joint ventures shall be executed by each joint venture in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.

12.8. All names shall be typed or printed in ink below the signature.

12.9. The Bid shall contain an acknowledgement of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.

12.10. Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.

12.11. Evidence of authority to conduct business as a Nonresident Bidder in the state of Texas shall be provided in accordance with Section 00 43 37 – Vendor Compliance to State Law Non-Resident Bidder.

**13. Submission of Bids**

Bids shall be submitted on the prescribed Bid Form, provided with the Bidding Documents, at the time and place indicated in the Advertisement or INVITATION TO BIDDERS, addressed to Bob Byers of FWBG, and shall be enclosed in an opaque sealed envelope, marked with the Assigned Project Number if any, Project title, the name and address of Bidder, and accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

**14. Modification and Withdrawal of Bids**

14.1. Bids addressed to the Designated FWBG Representative and filed per these instructions cannot be withdrawn prior to the time set for bid opening. A request for withdrawal must be made in writing by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids. After all Bids not requested for withdrawal are opened and publicly read aloud, the Bids for which a withdrawal request has been properly filed may, at the option of FWBG, be returned unopened.

14.2. Bidders may modify their Bid by electronic communication at any time prior to the time set for the closing of Bid receipt**.**

**15. Opening of Bids**

Bids will be opened and read aloud publicly at the place where Bids are to be submitted. An

abstract of the amounts of the base Bids and major alternates (if any) will be made available

to Bidders after the opening of Bids.

**16. Bids to Remain Subject to Acceptance**

All Bids will remain subject to acceptance for the time period specified for Notice of Award

and execution and delivery of a complete Agreement by Successful Bidder. FWBG may, at

FWBG's sole discretion, release any Bid and nullify the Bid security prior to that date.

**17. Evaluation of Bids and Award of Contract**

17.1. FWBG reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids and to reject the Bid of any Bidder if FWBG believes that it would not be in the best interest of the Project 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 FWBG. FWBG also reserves the right to waive informalities not involving price, contract time or changes in the Work with the Successful Bidder. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

17.1.1. Any or all bids will be rejected if FWBG has reason to believe that collusion exists among the Bidders, Bidder is an interested party to any litigation against FWBG, FWBG or Bidder may have a claim against the other or be engaged in litigation, Bidder is in arrears on any existing contract or has defaulted on a previous contract, Bidder has performed a prior contract in an unsatisfactory manner, or Bidder has uncompleted work which in the judgment of the FWBG or the City of Fort Worth will prevent or hinder the prompt completion of additional work if awarded.

17.2. FWBG may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Contract Documents or upon the request of FWBG. FWBG also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

17.3. FWBG may conduct such investigations as FWBG 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 FWBG's satisfaction within the prescribed time.

17.4. Contractor shall perform with his own organization, work of a value not less than 35% of the value embraced on the Contract, unless otherwise approved by FWBG.

17.5. If the Contract is to be awarded, it will be awarded to lowest responsible and responsive Bidder whose evaluation by FWBG indicates that the award will be in the best interests of FWBG.

17.6. Pursuant to Texas Government Code Chapter 2252.001, FWBG will not award contract to a Nonresident Bidder unless the Nonresident Bidder’s bid is lower than the lowest bid submitted by a responsible Texas Bidder by the same amount that a Texas resident bidder would be required to underbid a Nonresident Bidder to obtain a comparable contract in the state in which the nonresident’s principal place of business is located.

17.7. A contract is not awarded until formal approval by a review committee or other individuals as required under the terms of the bid in question. If the Contract is to be awarded, FWBG will award the Contract within 90 days after the day of the Bid opening unless extended in writing. No other act of FWBG or others will constitute acceptance of a Bid. Upon the contractor award a Notice of Award will be issued by FWBG.

17.8. Failure or refusal to comply with the requirements may result in rejection of Bid.

**18. Signing of Agreement**

18.1. When FWBG issues a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement, typically AIA A101-2017 with accompanying General Conditions A201-2017. Within 14 days thereafter Contractor shall sign and deliver the required number of counterparts of the Agreement to FWBG with the required Bonds, Certificates of Insurance, and all other required documentation.

18.2. Failure to execute a duly awarded contract may subject the Contractor to penalties.

18.3. FWBG shall thereafter deliver one fully executed counterpart to Contractor.