

## SECTION 00 21 13 - INSTRUCTIONS TO BIDDERS

### PART 1 - GENERAL

#### 1.1 DEFINITIONS

- A. Definitions set forth in Division 00 Section "General Conditions" or in other Contract Documents are applicable to the Procurement Requirements.
- B. **Owner: The Kroger Company of Michigan (Michigan Division);** a subsidiary of the Kroger Co.
- C. **Contract Documents:** The Contract Documents describe the proposed construction and consist of the Procurement Requirements, Agreement Between Owner and Contractor, General Conditions, Jobsite Safety Rules, Drawings, Specifications, and all Addenda to the Contract Documents issued prior to execution of the Contract and any Change Orders that may be entered into.
- D. **Procurement Requirements:** Consist of the Invitation to Bid, Instructions to Bidders, the Trade Proposal, and other sample bidding and contract forms.
- E. **RFC:** Request for Clarification.

#### 1.2 MBE, WBE, AND DBE PARTICIPATION

- A. It is the policy of The Kroger Co. that certified Minority-Owned Business Enterprises (MBEs), Women-Owned Business Enterprises (WBEs) and other Diverse-Owned Business Enterprises (e.g., Veteran-Owned Business Enterprises; Service Disabled Veteran-Owned Business Enterprises; Lesbian, Gay, Bisexual & Transgender-Owned Business Enterprises) (DBEs) have the opportunity to participate in the performance of Kroger contracts. In support of the policy, Kroger encourages all our suppliers to provide meaningful contracting and sub-contracting opportunities to M/W/DBEs. Utilization of M/W/DBE suppliers and/or service providers throughout the course of the contract is one of the non-pricing factors that Kroger evaluates during the bid award selection process. Upon request, vendors will be required to track and report their expenditures with diverse-owned companies as it relates to the products and/or services provided to Kroger.
  - 1. MBE, WBE, and DBE Registration: At the time the a Bid is submitted, an MBE, WBE, and/or DBE Business is required to register with the Owner online at <http://www.thekrogerco.com/vendors-suppliers/supplier-diversity> and register by clicking the link indicated in the registration section.

#### 1.3 ANTICIPATED DATE OF COMMENCEMENT AND DATE OF COMPLETION

- A. The anticipated date of commencement of the awarded contractor's Work is (**See Section 00 01 11 for dates**). The anticipated date of completion of the contractor's Work is (**See Section 00 01 11 for dates**). The anticipated duration of the contractor's Work is is (**See Section 00 01 11 for duration**) calendar days. If a Notice to Proceed is issued, at the Owner's sole discretion, actual dates may vary dependent on date issued.

- B. Liquidated Damages: The Contractor shall be liable to the Owner \$1,000.00 as stipulated in the Agreement Between Owner and Contractor for each day that the Completion Date is exceeded in the completion of the Project. The sum is fixed and agreed as liquidated damages and not as a penalty; it being understood that the damages which the Owner will suffer in such an event are not subject to accurate calculation. The Owner shall be entitled to deduct any liquidated damages due from the Contract Sum. Should the liquidated damages exceed that portion of the Contract Sum owed to the Contractor, the Contractor shall promptly pay the Owner the difference.

#### 1.4 BIDDER'S REPRESENTATIONS

- A. The Bidder by making a Bid represents that:

1. The Bidder has read and understands the Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.
2. The Bid is made in compliance with the Contract Documents.
3. The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.
4. The Bid is based on the items and brands of materials, equipment and systems required by the Contract Documents including all Addenda without exception.
  - a. Where there is a conflict in or between the Drawings and Specifications or any other discrepancy in the Contract Documents, and no request for information is submitted or no response is provided by the Architect or Owner, the Bidder shall be deemed to have estimated on the most expensive way of doing the Work. The final decision of the conflict or discrepancy shall be determined by the Owner and will be included in the contractor's Scope of Work.

#### 1.5 CONTRACT DOCUMENTS FOR BIDDING

- A. Available Drawings

1. Proposed Contract Documents are available to invited bidders on the Owner's Project Management Website (PMW). All copies of drawings and specifications downloaded from the Owner's Project Management Website (PMW) or furnished from a reproduction company are the property of the Owner and shall not be used on any other work.
2. The cost of Drawings and/or Specifications from a reproduction company shall be paid to the reproduction company by the Bidder at the cost established by the reproduction company.

- B. Addenda To Contract Documents

1. During the progress of bidding, Bidders may be furnished Addenda covering additions, deductions, or alterations to the Contract Documents. Such Addenda shall be included in the Work covered by the proposal and shall become a part of the Contract Documents.
2. The last addenda, as required, shall be issued no later than 7 calendar days prior to the date for receipt of Bids. The last clarification letter for RFCs (Request for Clarification), as required, will be issued no later than 3 calendar days prior to the date for receipt of

Bids, but no RFC issued after 7 days prior to date for receipt of Bids will result in an addenda.

C. Electronic Forms

1. Certain forms required for Bidding shall be completed in electronic format. Those forms and other forms required after award of contract may be found at the Owner's Project Website. See Division 00 Section "Bidders Instructions for Electronic Form Retrieval" for procedures to download the forms from the Owner's Project Website.

1.6 SUBMISSION OF PROPOSALS (BIDDING PROCEDURES)

- A. In order to complete the Kroger e-Sourcing on-line bidding process, Bidders shall upload to the Owner's on-line bidding web site, by the date and time specified in the Invitation to Bid, a completed electronic copy of the Trade Proposal that matches (in total) the final project dollar amount bid on Kroger e-Sourcing. If the uploaded Trade Proposal does not match the amount bid on-line, or if the uploaded Trade Proposal is rejected for some other reason, the Bidder will have no more than 24 hours to make corrections to the Trade Proposal and re-upload the revised Trade Proposal to the Owner's bidding website. Bidder's pricing, as totaled in the Trade Proposal, must remain consistent with that submitted during the on-line Kroger e-Sourcing bid event.
- B. All columns of the Trade Proposal must be completely filled in including the dollar amount rounded to the nearest whole dollar, subcontractors names and percent total contract of MBE/WBE/DBE participation. All blanks shall be filled in or the Bid may not be accepted, at Owner's sole discretion
- C. The Base Bid must include all items and scope of work indicted in the Contract Documents. The Owner may disqualify any Base Bid that contains exclusions, substitutions, alternates not directed by the Owner, or other qualifications to the Bidding Documents. Voluntary substitutions or value engineering suggestions may be submitted separately from the base bid amount for the Owner's consideration. Bidders shall submit questions regarding the bidding documents to the Architect during the specified bidding period, prior to the release of the last addenda, and prior to submission of their bid.
- D. The Bidder's proposal shall include permit fees except for the general building permit as described in Division 00 Section "General Conditions" and the cost of all state or local sales or use taxes and charges or duties of any nature applicable to the Work incorporated under the Contract.
  1. The Owner will provide the general building permit.
- E. Direct Buy Material Bid Takeoff Forms
  1. Invited Bidders shall complete the material bid takeoff forms and submit with their Bids.
  2. Go to the Owner's Project Management Website (PMW), site|folio, at <https://www.sitefolio.net/Kroger/Login.aspx> and log-in. Then go to *files>Capital>Building & Site Specifications>Kroger Master Building & Site Specifications>Procurement and Contracting Requirements>Working Forms-open to retrieve excel files*. The following Direct Buy Material Bid Takeoff Forms can then be downloaded:

- a. 00 43 26 Electrical Wire Bid Takeoff Form
  - b. 00 43 26 Electrical Wire Cuts Form
  - c. 00 43 27 Direct Buy Refrigeration Copper Pipe Bidding
3. Contact the Owner if experiencing any difficulty downloading forms.

**F. Direct Buy Wire Bidding Procedure**

1. The successful electrical bid shall be determined by the combination of the lowest electrical bid and lowest cost for electrical wire supplied by the Owner.
2. Invited Bidders shall have all their proposed electrical subcontractors complete the Electrical Wire Bid Takeoff Form and submit with their bids.
  - a. A hard copy sample of the Wire Bid Takeoff Form is included in Division 00 Section "Direct Buy Wire Bidding." Download the electronic version of the form from the Owner's PMW as described above.
3. Invited Bidders shall submit along with the Trade Proposal the names of their two lowest proposed electrical subcontractors and proposed associated bid amounts (excluding wire) to the Owner.
4. Invited Bidders shall have their two lowest proposed electrical subcontractors complete the Electrical Wire Bid Takeoff Form and email (be sure to note Electrical Wire Bid Takeoff and the store number in the email subject line) to the Direct Buy Wire Supplier:

Graybar Electric  
CIOHKroger@graybar.com

5. The Direct Buy Wire Supplier will apply pricing to the submitted Electrical Wire Bid Takeoff Forms and calculate the total wire price and email the completed forms back to the Owner. The Owner will determine the apparent successful electrical subcontractor based on the lowest dollar amount of both factors and advise the invited Bidder without disclosing the cost associated with the electrical wire.
6. The successful Bidder will complete the Electrical Wire (Cuts) Order Form and submit to the Direct Buy Wire Supplier as specified in Division 26 Sections "Low Voltage Electrical Power Conductors and Cables" and "Grounding And Bonding For Electrical Systems."

**G. Direct Buy Refrigeration Copper Pipes Bidding Procedure (If Bid is through a Contractor)**

1. The successful refrigeration copper piping bid shall be determined by the combination of the lowest refrigeration bid and lowest cost for refrigeration copper piping supplied by the Owner.
2. Invited Bidders shall have their proposed refrigeration subcontractors complete the Copper Pipe Takeoff Form and submit with their bids.
  - a. A hard copy sample of the Copper Pipe Takeoff Form is included in Division 00 Section "Direct Buy Refrigeration Copper Pipes Bidding." Download the electronic version of the form from the Owner's PMW as described above.

3. Invited Bidders shall submit along with the Trade Proposal the names of their two lowest proposed refrigeration subcontractors and proposed associated bid amounts (excluding copper pipes) to the Owner.
4. Invited Bidders shall have their two lowest proposed refrigeration subcontractors complete the Copper Pipe Takeoff Form and email (be sure to note "Copper Pipe Takeoff" and the store number in the email subject line) to the Direct Buy Copper Pipe Supplier:

United Refrigeration  
info@uri.com  
Attention: Ken Ford

5. The Direct Buy Copper Pipe Supplier will apply pricing to the submitted Copper Pipe Bid Takeoff Forms and calculate the total copper pipe price and email completed forms back to the Owner. The Owner will determine the apparent successful refrigeration subcontractor based on the lowest dollar amount of both factors and advise the invited Bidder without disclosing the cost associated with the copper pipe.

#### 1.7 CONSIDERATION OF BIDS

##### A. The Owner's Reservations

1. The Owner reserves the unrestricted privilege to reject any, part of any, or all of the bids received and to waive any informality in the bidding. Contracts will be awarded on the basis of the best value as determined solely by the Owner.

##### B. Accelerated Construction Schedule & Planning

1. It is the intent of the Owner to award a Contract to the lowest qualified Bidder. Early completion of the Work is of utmost importance, and the Owner will base its decision not only on the lowest Bid dollar value but also on the duration of the project and may award the Contract to the Bidder whose Bid, in dollar amount and number of construction days, is to the Owner's overall advantage at the Owner's sole discretion. The Bidder shall thoroughly investigate all possible methods of scheduling (working the necessary weekends and/or evenings) and employing work forces to achieve the earliest completion date.

#### 1.8 PAYMENT PROTECTION

##### A. Bondability: Each Bidder must be bondable through a qualified Surety Company.

1. If requested by Owner, the Bidder must furnish at no cost to the Owner, a Letter of Bondability from a qualified Surety Company which states the surety unconditionally offers to guarantee to the extent of 100 percent of the contract sum. The Letter of Bondability must state that the Surety Company is willing to guarantee the Bidder's performance in all respects of the terms and conditions and provisions of the agreement. The Letter of Bondability must be submitted on Surety Company's official letterhead.

##### B. To cover the faithful performance of their Work and the payment of all legitimate claims arising thereunder, the Bidder may select from the following options to guarantee payment to subcontractors and material suppliers. The Bidder shall furnish the Owner one of the forms of

Payment Protection they have selected along with the associated cost. The Bidder shall use the alternate section to identify costs associated with the other forms of Payment Protection:

1. Contractor Financing – Within ten (10) calendar days after notice to award the successful Bidder shall submit to the Owner financial information to verify successful Bidder is solvent and can meet the obligations of conducting business during project construction. Owner reserves the right to require the successful Bidder to obtain a Letter of Credit or Performance Bond and Labor and Material Payment Bond by accepting the alternate any time prior to the start of physical start of construction. Successful Bidder is responsible for submitting unconditional waiver and release forms along with request for payment to the Owner. Refer to General Conditions, Article 9 “Payments and Completion” for table outlining conditional and unconditional waiver and release schedule requirements for this option.
  2. Letter of Credit –If Bidder selects this option when submitting the Trade Proposal, the successful Bidder has within ten (10) calendar days after notification of award to submit a Letter of Credit equal to the highest scheduled request for payment of the Project. At the Owners sole discretion, the value of the Letter of Credit may be amended based on the progress of the Work. The Letter of Credit shall be submitted to the Owner on the form entitled “Letter of Credit” which will be supplied by the Owner, a sample of which is herein included. Successful Bidder may submit a request for payment to the Owner prior to securing unconditional waiver and release forms. Refer to General Conditions, Article 9 “Payments and Completion” for table outlining conditional and unconditional waiver and release schedule requirements for this option.
  3. Performance Bond and Labor & Material Payment Bond - If Bidder selects this option when submitting the Trade Proposal, the successful Bidder has within ten (10) calendar days after notification of award to submit a Performance Bond and a Labor & Material Payment Bond each equal to 100 percent of the contract sum. Refer to General Conditions, Article 9 “Payments and Completion” for table outlining conditional and unconditional waiver and release schedule requirements for this option.
- C. The surety company providing the Performance Bond and Labor & Material Payment Bond must be rated A VII or better by AM Best and must be listed in the current U.S. Treasury Department’s Listing of Approved Sureties (Department Circular 570) with an underwriting limitation at least equal to the amount of the bond. The Listing of Approved Sureties (Department Circular 570) can be found at [www.fms.treas.gov/c570](http://www.fms.treas.gov/c570).
- D. All Bidders shall provide in the Trade Proposal, the cost associated with providing either a Contractor Financing, Letter of Credit or a Performance Bond and Labor and Material Payment Bond.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION 00 21 13