

## ADDENDUM NO. II

DATE: April 17, 2017

TO: All Bidders

FROM: Janice McClelland, Assistant Purchasing Agent

SUBJECT: Addendum No. 2 – Fly Rail System Removal and Replacement

BIDS TO BE OPENED: April 21, 2017, at 11:00:00 a.m.

This addendum becomes a part of the Contract Documents and modifies the original specifications as noted.

### ITEM I. CLARIFICATION OF DATES LISTED IN INVITATION TO BID

The dates of June 11 through 15, 2017, noted in the ITB are reserved for the removal of the fire curtain; this work must be conducted in coordination with the third party asbestos abatement firm. However, the actual work removal and replacement of the fly rail system must be conducted between June 18 and July 19, 2017.

### ITEM II. QUESTION SUBMITTED TO THE OFFICE OF THE PURCHASING AGENT

**Question:** If we are to follow the current NFPA 80 – 2016 standards, as noted in the bid request, the fire curtain will not be an “in-kind” replacement and will add weight to the building structure. Compliance requires the following to be part of the installation:

**For a motorized hoist, Section 20.6.2 states:** *"Fire safety curtain assemblies other than straight lift unframed fire safety curtains for proscenium openings less than 850 sq. ft. shall be power operated."*

**For frame/edge reinforcement. Section 20.4.4.1.1 states:** *"Unframed fire safety curtain assemblies shall use a roller guide/ metal track side edge guide system. Section 20.4.4.1.2 states:' For openings 42 feet or less In width and 22 feet or less in height, fire safety curtain assemblies shall be permitted to have a side guide cable system."*

**Furthermore, a steel framed fire curtain is recommended for any proscenium opening width greater than 50 ft. Section 20.6.4 which states:** *"Fire safety curtain assemblies shall be designed to operate in emergency and non-emergency conditions for all imposed loads, including dead loads of the assembly, and for a pressure differential of 2 lb./sq. ft. on the fire safety curtain over the area of the proscenium opening."*

**The Invitation to Bid states that the replacement installation is not to exceed the weight of the current installation. Please let us know how to proceed.**

Response: The City is willing to accept the additional weight of the NFPA required components indicated above.

### **ITEM III. ADDITIONS TO INVITATION TO BID**

The following language hereby is included in the Invitation to Bid:

#### **1. Contractor Must Provide Engineer's Stamped Drawings**

Stamped drawings detailing the fly rail structure must be included with the bid submission and approved by the City before work may commence.

#### **2. Engineer Must be Licensed in the State of Tennessee**

Contractor's engineering services may be subcontracted, but Engineer must be licensed to conduct business in the State of Tennessee; as such, the prime contractor's proposal must include the fully executed and notarized "Licensure Affidavit for Prime Bidder" with the bid submission. This document affirms that all subcontractors providing professional services requested in this ITB are in fact licensed as professional service firms in the State of Tennessee; the document immediately follows this Addendum.

Bid submission must include license information and resume of the proposed engineer. Contractor must use the services of the proposed subcontractor unless Contractor has written approval to do so by the City of Knoxville. Furthermore, proposed engineer for the awarded contractor will be required to provide the City with approved evidence of Professional Liability/Errors & Omissions insurance coverage as specified in Item III.

#### **3. Professional Liability (including Errors & Omissions) for Subcontractor(s) Employed by the Prime Contractor for the Performance of the Professional Services Requested in this Invitation to Bid**

Engineer must maintain professional liability insurance covering claims arising from real or alleged errors, omissions, or negligent acts committed in the performance of professional services under this contract with limits of \$1,000,000.

#### **4. Bonds**

A Performance Bond and a Payment Bond, each in the amount of one hundred percent (100%) of the Contract price, with a corporate surety approved by the Owner, will be required for the faithful performance of the Contract.

The required Bid Bond of the successful Bidder will be retained until the Payment Bond and Performance Bond have been executed and approved, after which it will be returned.

Attorneys-in-fact who sign Bid Bonds and Performance Bonds must file with each bond a certified and effective dated copy of their power of attorney.

## **5. Additional Contractor Insurance**

In addition to the insurance requirements detailed in the Invitation to Bid, the following insurance will be required:

**Excess Liability Insurance:** Contractor shall maintain excess liability insurance in addition to the insurance specified above with a limit of not less than \$2,000,000.00, each occurrence. This coverage shall be on a follow form basis.

Maintain liability coverage that shall include completed operations coverage, and Contractor shall maintain such coverage for a period of 2 years from the date of final acceptance of the project.

## **6. Subcontracting**

The Contractor may utilize the services of specialty Subcontractors on those parts of the Work which, under normal contracting practices, are performed by specialty Subcontractors. Work shall not be awarded to the Subcontractor without prior approval of the Owner.

The Contractor shall not award Work to Subcontractor(s), in excess of fifty (50%) percent of the Contract Price, without prior written approval of the Owner.

The Contractor shall be fully responsible to the Owner for the acts and omissions of his Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the Work of Subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the Contract Documents.

Nothing contained in this Contract shall create any contractual relation between any Subcontractor and the Owner.

All bidders must submit with their bid a "Subcontractor/Consultant Statement" form. Any bid not containing such documentation may be rejected. Said form immediately follows this Addendum.

## **7. Prime Contractor's Licensure**

All Bidders must be licensed contractors as required by the Contractors Licensing Act of 1994, and all Acts amendatory thereof and must have a classification. Bidder's name, address, license number, date of expiration of license, and that part of the license classification applying to the Bid must be placed on the sealed envelope containing the bid. Prior to submitting their bids, bidders are to be registered with the Purchasing Division by setting up a Vendor Self-Service Account. Instructions for registering on-line are available at [www.knoxvilletn.gov/purchasing](http://www.knoxvilletn.gov/purchasing). Bid submissions from un-registered bidders may be rejected.

#### **8. Sub-Contractors Listed on Outside of Envelope**

If applicable, sub-contractors for electrical work, plumbing work, and HVAC must be shown on the outside of the envelope along with their respective license numbers, expiration date, and classification; where the total cost of the masonry portion of the project exceeds \$100,000 in materials and labor, the license number, expiration date, and classification must be listed on the outside of the envelope for the masonry sub-contractor. Any bid envelope which contains the listing of more than one contractor in each classification shall be considered in violation and the bid shall not be opened or considered. These requirements are detailed in Tennessee Code Annotated § 62-6-119 (B), the State of Tennessee, Department of Commerce and Insurance Board for licensing contractors can provide additional information if required.

#### **9. Changes in Contract Price**

The Contract Price may be changed only by a Change Order. The value of any Work covered by a Change Order or of any claim for increase or decrease in the Contract Price shall be determined by one or more of the following methods in the order of precedence listed below:

- (a) Unit prices previously approved.
- (b) An agreed lump sum.
- (c) The actual cost for labor, direct overhead, materials supplies, equipment, and other services necessary to complete the work. In addition there shall be added an amount to be agreed upon but not to exceed fifteen (15) percent of the actual cost of the Work to cover the cost of general overhead and profit.

#### **10. Time for Completion and Liquidated Damages**

The date of beginning and the time for completion of the Work are essential conditions of the Contract Documents and the Work embraced shall be commenced on a date specified in the Notice to Proceed.

The Contractor will proceed with the Work at such rate of progress to insure full completion within the Contract Time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the Contract Time for the completion of the Work described herein is a reasonable time, taking into consideration average climatic and economic conditions and other factors prevailing in the locality of the Work.

If a Contractor shall fail to complete the Work within the Contract Time, or extension of time granted by the Owner, then the Contractor will pay to the Owner the amount for liquidated damages as specified in the Bid for each calendar day that the Contractor shall be in default after the time stipulated in the Contract Documents.

The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is due to the following, and Contractor has promptly given Written Notice as such delay to the Owner or Engineer.

To any preference, priority or allocation order duly issued by the Owner.

To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and

To any delays of Subcontractors occasioned by any of the causes specified in the preceding paragraphs of this Item.

## **11. Correction of Work**

The Contractor shall promptly remove from the premises all Work rejected by the Engineer for failure to comply with the Contract Documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to the Owner and shall bear the expense of making good all Work of other Contractors destroyed or damaged by such removal or replacement.

All removal and replacement Work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected Work within ten (10) days after receipt of Written Notice, the Owner may remove such Work and store the materials at the expense of the Contractor.

If, in the opinion of the Owner, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the Work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Owner shall be equitable.

## **12. Suspension of Work, Termination and Delay**

The Owner may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the Contractor, by Written Notice to the Contractor and the Engineer on which Notice shall fix the date on which Work shall be resumed. The Contractor will resume that Work on the date so fixed. The Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension.

If the Contractor is adjudged a bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the Work or if he disregards the authority of the Engineer, or if he otherwise violates any provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and his surety a minimum of ten (10) days from delivery of a Written Notice, terminate the services of the Contractor and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and finish the Work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the Engineer and incorporated in a Change Order.

Where the Contractor's services have been so terminated by the Owner, said termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from compliance with the Contract Documents.

After ten (10) days from delivery of a Written Notice to the Contractor, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Contract. In such case, the Contractor shall be paid for all Work executed and any expense sustained plus reasonable profit.

If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority, or the Engineer fails to act on any request for payment within thirty (30) days after it is submitted, or the Owner fails to pay the Contractor substantially the sum approved by the Engineer or awarded by arbitrators within thirty (30) days of its approval and presentation, then the Contractor may, after ten (10) days from delivery of a Written Notice to the Owner and the Engineer, terminate the Contract and recover from the Owner payment for all Work executed and all expenses sustained. In addition and in lieu of terminating the Contract, if the Engineer has failed to act on a request for payment or if the Owner has failed to make any payment as aforesaid, the Contractor may upon ten (10) days' notice to the Owner and the Engineer stop the Work until he has been paid all amounts then due, in which event and upon resumption of the Work, Change Orders shall be issued for adjusting the Contract Price or extending the Contract Time or both to compensate for the costs and delays attributable to the stoppage of the Work.

If the performance of all or any portion of the Work is suspended, delayed, or interrupted as a result of a failure of the Owner to act within the time specified in the Contract Documents, or if

no time is specified, within a reasonable time, an adjustment in the Contract Price or an extension of the Contract Time, or both, shall be made by Change Order to compensate the Contractor for the costs and delays necessarily caused by the failure of the Owner or Engineer.

The Owner may terminate this Agreement at any time, with or without cause, by written notice of termination to the Contractor. If the Owner terminates this Agreement, and such termination is not a result of a default by the Contractor, the Contractor shall be entitled to receive as its sole and exclusive remedy the following amount from the Owner, and the Owner shall have no further or other obligations to the Contractor: The amount due to the Contractor for work executed through the date of termination, not including any future costs, profits, or other compensation or payments which the Contractor would have been entitled to receive if the Agreement had not been terminated.

### **13. Payments to Contractor**

All Work covered by payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the Work upon which payments have been made or the restoration of any damage Work, or as a waiver of the right of the Owner to require the fulfillment of all terms of the Contract Documents.

Upon completion and acceptance of the Work, the Engineer shall issue a certificate attached to the final payment request that the Work has been accepted by him under conditions of the Contract Documents. The entire balance found to be due the Contractor, including the retained percentages, but except such sums as may be lawfully retained by the Owner, shall be paid to the Contractor within thirty (30) days of completion and acceptance of the Work.

The Contractor will indemnify and save the Owner or the Owner's agents harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the Work. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the Contractor fails to do so the Owner may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of the Contract Documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor, his Surety, or any third party. In paying any unpaid bills of the contractor, any payment so made by the Owner shall be considered as a payment made under the Contract Documents by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

### **14. Acceptance of Final Payment as Release**

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor other than claims in state amounts as may be specifically excepted by the Contractor for all things done or furnished in connection with this Work and for every act and neglect of the Owner and others relating to or arising out of this Work. Any payment, however, final or otherwise, shall not release the Contractor or his sureties from any obligations under the Contract Documents or the Performance Bond and Payment Bonds.

## **15. Care of Work**

The Contractor expressly undertakes at his own expense:

- a. To clean up frequently all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the site of the Work shall present a neat, orderly and workmanlike appearance;
- b. Before final payment to remove all surplus material, false work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, and to put the site in a neat, orderly condition;

The Owner expressly disclaims any responsibility for the accuracy or completeness of the information given on the Drawings with regard to existing structures and pipelines and the Contractor will not be entitled to any extra compensation on account of inaccuracy or incompleteness of such information, said structures and pipelines being shown only for the convenience of the Contractor who must verify the information to his own satisfaction. The giving of this information upon the Drawings will not relieve the Contractor of his obligations to support and protect all pipelines and other structures which may be encountered during the construction of the Work and to make good all damages done to such pipelines and structures.

**END OF ADDENDUM NO. II**



**LICENSURE AFFIDAVIT OF PRIME BIDDER**

The undersigned “prime proposer” hereby states that any and all sub-consultants/contractors employed or to be employed by the prime bidder in the performance of the services requested in this itb are licensed as professional service firms in the State of Tennessee where said sub-consultants/contractors will perform services that are considered professional in nature.

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_

My commission expires: \_\_\_\_\_