

INSTRUCTIONS TO BIDDERS

To be considered, Bids must be made in accordance with these Instructions to Bidders.

1. PROJECT DESCRIPTION

The Project consists of performing Clinton Market Collective as shown on the Contract Drawings and described in the Specifications.

1. The Work consists of renovation of an existing park to create a new gateway and open air market for downtown Albany containing performance stages, seating, concession structures, swing structures, an aquatic splash park, new paving, new plantings, site lighting, electrical power distribution, and other improvements.
2. The Work will be performed at the existing Federal Park located at 11 Clinton Avenue (between Broadway and North Pearl Street) in downtown Albany, NY 12207.

2. TYPE OF CONTRACT

The Work of this Project will be let in a single contract for General Construction Work.

3. TIME SCHEDULE

It is the intent of the Owner to award the Contract for the Work on or about four weeks after receipt of bids. Immediately upon receipt of Notice of Award of Contract from Owner, Contractor shall begin preparing required bonds, insurance certificates and other required submittals. Work may be performed at the site only upon receipt of written authorization (Notice to Proceed) from Owner and after the approval of the required submissions.

The Work shall be Substantially Complete on or before the dates indicated in Section 011000 "General Requirements." It is extremely important that the Owner resume its full use of the site on the completion date(s) specified.

4. QUALIFICATIONS OF BIDDERS

The Owner may make such investigation as it deems necessary to determine the responsibility of any bidder or to determine the ability of any bidder to perform the Work. The Owner reserves the right to disqualify any prospective bidder or to reject any bid.

5. DOCUMENTS

Complete sets of Bidding and Contract Documents in electronic or printed format will be available starting 2:00 P.M. on Monday January 3, 2022 from Camelot Print and Copy Centers, 630 Columbia Street Extension, Latham, NY 12110, Tel: (518) 435-9696; e-mail camelotbids@teamcamelot.com; website www.camelotplanroom.com .

Bid and Contract Documents may be examined without charge by accessing The Camelot plan room at www.camelotplanroom.com and clicking on the Public Projects tab at the top left. To obtain the Bid and Contract Documents, all Bidders must register at www.camelotplanroom.com, log into their account and place an order for a digital download of the complete electronic set of Bidding and Contract Documents for the fee of \$15.00. Registered plan holders may purchase printed copies of the Bidding and Contract Documents for the cost of printing, plus shipping and handling by ordering directly through Camelot. Costs for printed documents and shipping and handling are non-refundable.

Please note Camelot Print and Copy Centers (www.camelotplanroom.com) is the designated location and means for distributing and obtaining all bid package information. All bidders are required to register with Camelot to become a registered plan holder and ensure receipt of all necessary information, including notices of bid addenda.

6. EXAMINATION

Bidders shall carefully examine the Bid Documents and the existing site to obtain first-hand knowledge of existing conditions and to verify conditions under which work will be performed. Failure to do so will not relieve a successful bidder of the obligation to furnish all material and labor necessary to carry out the provisions of the Contract Documents and to complete the contemplated work for the construction set forth in the bid. Submission of a Bid will be considered conclusive evidence that a bidder has visited the site and is conversant with local facilities and difficulties, the requirements of the Contract Documents, applicable laws and codes, the state of labor and material markets, and has made due allowance in the bid for all contingencies that may arise, whether or not stated.

7. QUESTIONS

Should a bidder find discrepancies in, or omissions from the drawings or any Contract Documents, or should a bidder be in doubt, as to their meaning, or should a bidder find provisions of any law or applicable code conflicting with provisions of the Contract Documents, the Bidder shall at once notify the Landscape Architect in writing, who will endeavor to issue the necessary clarifications or revisions to prospective bidders by means of an Addendum. Upon issuing, emailing or delivery and making available for inspection, such Addendum will become a part of the Bidding and Contract Documents and will be binding on all bidders whether or not the bidder receives or acknowledges the actual notice of it. Prospective bidders are responsible for ensuring that all addenda have been incorporated into the bid.

Prospective bidders may request clarifications of the Bid Documents by simultaneously contacting both of the Project contacts, at the following e-mail addresses:

- addressed to the Landscape Architect, Place Alliance Northeast via e-mail to Josiah Simpson jsimpson@placealliance.com
- and copy to the Owner's Representative, TW&A Construction Management via e-mail to Perri Ottati pno@twa-cm.com

All questions must be submitted via e-mail, no phone calls will be accepted. All e-mails must have subject line "Clinton Market Collective".

Bidders may utilize the "Pre-Bid Request for Information Form" following this Section for submitting questions to the Landscape Architect and Owner's Representative during bidding.

Inquiries received over the phone will not be answered. All information will be relayed to bidders by written addenda. Neither the Owner's Representative nor the Landscape Architect will be responsible for any oral instruction or clarification to any persons whatsoever. Questions received less than four (4) working days prior to the bid opening date cannot be answered.

If a bidder, prior to submitting a Bid, fails to give notification to the Landscape Architect of the existence of any such discrepancies, omissions, ambiguities, errors, or conflicts, such bidder shall comply with the interpretations or directions given by the Landscape Architect in resolving same, without claiming extra costs.

8. INTERPRETATION OF BID DOCUMENTS

If, in the interpretation of Bid Documents, requirements within the Drawings and Specifications conflict, or it appears that the Drawings and Specifications are not in agreement, the Contractor shall base the bid on (1) the greater quantity, where there is a discrepancy in quantity; and (2) the superior quality, where there is a discrepancy in quality.

9. PRE-BID MEETING

A pre-bid meeting will be held on Monday, January 10, 2022 at 1:00 PM at the Clinton Market Collective project site, 11 Clinton Avenue, Albany, NY 12207. Attendance at the prebid meeting is mandatory for submitting a bid.

10. PREPARATION OF BIDS

Each Bid must be completed on the applicable Bid Form(s) provided herein. All blank spaces must be filled in with ink in both words and figures. Erasures or other changes in a proposal must be explained or noted over the signature of the bidder. The Bid shall be signed by person or persons legally authorized to bind Bidder to Contract.

A complete, signed bid must be submitted as a .pdf document.

Bid Security, Certificate of Compliance with the Iran Divestment Act, NYSDOS Form A, NYSDOS Form B, and NYSDOS Form D shall be a part of each bid submitted and are required to be submitted with the Bid Form. The Statement of Bidder's Qualifications (AIA Document A305) and all required Exhibits (A, C, D and E) shall be considered part of the

bid and are required to be submitted with each Bid. All blank spaces on all documents must be filled in using both words and figures.

Any Bid submitted contrary to requirements above or specified, or containing omissions, conditions, or irregularities of any kind may be rejected by the Owner.

11. CERTIFICATE OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT

In accordance with the requirements of General Municipal Law §103-g, the bidder is required to include with its bid either (1) the "Certification of Compliance with the Iran Divestment Act" or, in the case where the bidder is unable to make such certification, (2) the form titled "Declaration of Bidder's Inability to Provide Certification of Compliance with the Iran Divestment Act". This form is included in the Bid Documents.

12. BID SECURITY

Each bid must be accompanied by a Bid Security made payable to Capitalize Albany Corporation in the amount of five percent (5%) of the Bid Sum (the sum of the Base Bid plus all Add Alternates). The Bid Security shall be either a certified bank check or a Bid Bond issued by a surety company licensed to conduct business in the State of New York on the form included herein (AIA Document A310). The sufficiency of the bonds is subject to the approval of the Owner, and bonds which are deemed insufficient by the Owner may be rejected.

The successful bidder's security will be retained until the successful bidder has signed the Agreement and furnished required Performance and Payment Bonds. The Owner reserves the right to retain the security of the three lowest bidders for each contract until the successful bidder enters into contract, or until 45 days after the bid opening, whichever is longer. All other bid security will be returned as soon as practicable.

Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney

13. CONTRACTOR'S QUALIFICATION STATEMENT

Submit a properly executed Contractor's Qualification Statement on the forms included herein (AIA Document A305 with all required exhibits – A, C, D and E) with the Contractor's bid. The Contractor's Qualification Statement must be signed and notarized. All items must be answered and the data given must be clear and comprehensive. Failure to answer these questions in a complete and satisfactory manner may result in the rejection of the bid. Failure to submit a properly executed Contractor's Qualification Statement with the Bid may result in the rejection of the bid. If necessary, questions may be answered on separate attached sheets. Additional information may be submitted by bidder, if desired.

If, after evaluating the Contractor's Qualification Statement, the Owner has any doubt that a Bidder has the proper qualifications, it may require from that Bidder within 3 working days and prior to a Contract award, further written evidence of financial data, previous experience, personnel resumes, or other information. If after evaluating supplied data and investigating the evidence, the Owner has any reasonable doubt that a Bidder has the experience, available personnel, reliability, or availability of financial resources to complete the project in a timely manner and in full compliance with the requirements of the Contract, the Owner may reject the Bid and award to another Bidder.

14. PERFORMANCE AND LABOR AND MATERIAL BOND

If required, the successful bidder shall provide a Performance Bond and Payment Bond made payable to Capitalize Albany Corporation each in an amount at least equal to one hundred percent (100%) of the Contract Price as security for the faithful performance of their Contract and for payment of all persons performing labor and furnishing materials in connection with the project. The value of each bond shall be adjusted during the Project construction period to reflect changes in the Contract Sum. All Bonds must meet or exceed the requirements set forth in Article 17 of the Standard Abbreviated Form of Agreement Between Owner and Contractor - AIA Document A104, 2017 Edition included herein. The sufficiency of the bonds is subject to the approval of the Owner, and bonds which are deemed insufficient by the Owner may be rejected. Provide such bonds simultaneously with the execution of the Contract. Only sureties licensed to do business in the State of New York may be used.

15. SUBMITTAL

Submit each Bid as a single electronic document in .pdf format, including all required attachments. Identify the electronic file with: (1) project name and number, (2) name of bidder, and (3) proposal opening date. Submit Bids in accordance with the Advertisement for Bids and with these Instructions to Bidders.

Electronic bids shall be submitted via e-mail to the persons and addresses provided in the Advertisement for Bids. Any documents that can only be in paper form, such as a certified check for the bid security, must be delivered to the Owner at their office (Capitalize Albany Corporation, 21 Lodge Street, Albany, NY 12207, Att: Andrew Corcione, Senior Economic Developer) in a sealed envelope identified with: (1) project name and number, (2) name of bidder, and (3) proposal opening date, prior to the bid opening date and time.

The bidder assumes full responsibility for having their full and complete bid deposited on time and to the location and person indicated in the Advertisement for Bids.

16. MODIFICATION AND WITHDRAWAL

No oral, facsimile, or telephonic proposals or modifications of Bids will be considered. Bids may be modified at any time prior to bid opening by submitting to the Owner a written modification, enclosed in a sealed opaque envelope, signed by the bidder, or an officer

thereof if the bidder is a corporation, clearly setting forth in what respects the Bid is to be modified. Bids may be withdrawn on written or telegraphic request received from bidders prior to the time fixed for bid opening. Except as otherwise provided by law, negligence on the part of the bidder in preparing the Bid confers no right for the withdrawal of the Bid after it has been opened. No bidder may withdraw their Bid for forty-five (45) days after the Bid opening.

17. REJECTION OF BIDS

The Owner reserves the right to reject any and all Bids. The Owner reserves the right to reject any Bid for reasons including, but not limited to, the following:

- a. The bidder fails to furnish any portion of the information required pursuant to the Instructions to Bidders.
- b. The bidder mis-states or conceals any material fact.
- c. The Bid does not strictly conform to law or to requirements of the Contract Documents.
- d. The Bid is conditional.
- e. The Bid is incomplete (by reason of, for example, failure to fill in an alternate price or failure to submit required documentation described herein).
- f. The Bidder is deemed unqualified to undertake the work.

The Owner reserves the right, however, to waive any informalities in the Bids received when such waiver is deemed to be in its interest.

18. OPENING AND AWARD

Bids will be opened as stated in the Advertisement for Bids. The Owner will award the Contract, if at all, as soon as possible following Bid opening.

The Owner reserves the right to accept Alternates in any order or combination and to determine the total bid on the basis of the sum of the Base Bid and Alternates accepted.

19. EXECUTION OF CONTRACT

After the Owner has ascertained the successful bidder, it shall send a Notice of Award of Contract to bidder to whom a Contract has been awarded.

The Contract used for this project shall be the Standard Abbreviated Form of Agreement Between Owner and Contractor - AIA Document A104, 2017 Edition published by the American Institute of Architects as modified herein.

In case of failure or refusal of an accepted Bidder to enter into a Contract within ten (10) days after the issue date of the Notice of Award, or to provide the Performance and Payment Bonds simultaneously with the execution of such Contract (if required), the bidder will be considered as having abandoned the Contract. In such event, the bidder

shall be liable for and agrees to pay to the Owner, on demand, damages for such failure or refusal. Such damages shall be the difference between the price bid by him and the price for which such contract shall subsequently be relet, plus the cost of such reletting, plus any other consequential expenses and damages.

The amount of such bidder's Bid Security shall be retained by the Owner and shall be applied toward payment of such damages. If any amount remains in excess of such damages, such remaining amount shall be returned to the bidder.

20. SUBCONTRACTORS

All Subcontractors must be acceptable to the Landscape Architect and/or Owner. When requested by the Landscape Architect and/or Owner, the Bidder shall submit the names of the Subcontractors proposed for use on the Project and all other information concerning the Subcontractors as requested by the Landscape Architect and/or Owner within the time frame stipulated. If the Landscape Architect and/or Owner disapproves any proposed Subcontractor the contractor shall submit the name of an alternate Subcontractor to whom the Landscape Architect and/or Owner has no objection in the same manner as the original submittal.

21. SALES AND COMPENSATING USE TAXES

The Owner is exempt from paying sales and compensating use taxes of the State of New York and of cities, counties, and other subdivisions of the State on all materials sold to it pursuant to the provisions of this Contract. These taxes are not to be included in bids. This exemption shall apply to supplies and materials which are incorporated in such project. This exemption does not, however, apply to equipment rentals, small tools, and supplies for equipment such as supplies of gasoline used in operating trucks. The term "materials" as used in this article shall include supplies incorporated in this project. A Tax Exemption Certificate will be furnished to the Contractor by the Owner upon request.

22. LAWS AND REGULATIONS

All applicable State Laws, municipal ordinances, and the rules, regulations and ordinances of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as though herein written out in full.

23. AFFIRMATIVE ACTION PROVISION

During the performance of this Contract, each Contractor agrees that they will not discriminate against any employee or applicant for employment because of race, creed (religion), color, national origin, sex, age, disability or marital status. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Each Contractor

agrees to include, or require the inclusion of, the above provision in any subcontract made pursuant to its contract with the Owner.

24. EQUIVALENCY CLAUSE

Whenever a material, article, device, piece of equipment or type of construction is identified on the Drawings or in the Specifications by reference to manufacturers' or vendors' names, trade names, catalog numbers, or similar specific information, it is so identified for the purpose of establishing a standard of quality, and such identification shall not be construed as limiting competition. Any material, article, device, piece of equipment or type of construction of other manufacturers or vendors that will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, device, piece of equipment or type of construction so proposed is completely described in submittals to the Landscape Architect and is, in the opinion of the Landscape Architect, of equal substance, appearance, and function. Refer to Division 01 General Requirements, and the General Conditions contained in the Agreement.

25. MINORITY AND WOMAN OWNED BUSINESS ENTERPRISES (MWBE) PARTICIPATION

The Contractor, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department of State (the "Agency"), shall fully comply and cooperate with the Agency in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

The Agency has established an overall goal of 30% for Minority and Women-Owned Business Enterprises ("MWBE") participation, 15% for Minority Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).

For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp> Only the use of New York Sate Certified MWBEs will count towards meeting NYS contract goals.

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development (518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. Evidence of good faith efforts is contact by certified mail, follow-up with phone contact and a summary of all contacts and results. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to make good faith efforts to meet the established MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Agency for liquidated or other appropriate damages, as determined by the Agency.

Prior to the award of a contract to the successful bidder; review and acceptance of the bid summary and all MWBE documentation by the Agency is required.

Please note the MWBE requirements apply to the grant award amount, not to the total project cost. The Owner has partially satisfied the MWBE goals through contracting with other contractors for this project. The amount of MWBE participation for this Contract that this Contractor must meet is \$141,012.00 for MBE participation and \$19,576.00 for WBE participation.

Contractor shall be required to file Workforce Employment Utilization Reports ("Workforce Report") periodically during the construction work as required by the Agency. Contractor shall submit an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract, which shall be used for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals. Failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract.

26. SERVICE-DISABLED VETERAN OWNED BUSINESS (SDVOB) PARTICIPATION

Contractor shall comply with Article 17-B of the Executive Law establishing a statewide SDVOB goal of 6%, to improve contracting opportunities for SDVOB's. Contractor shall make every effort, to the maximum extent possible, to engage certified SDVOBs subcontractors or suppliers in the performance of their contracts.

27. NEW YORK STATE DEPARTMENT OF STATE FUNDING

This project is funded by a grant from the New York State Department of State under Title 11 of the Environmental Protection Fund.

28. MASTER CONTRACT

The successful bidder will be subject to the terms of the NYS Master Contract for Grants -- Standard Terms and Conditions, which can be found online at <https://grantsmanagement.ny.gov/system/files/documents/2018/09/nys-mcq-standard-terms-and-conditions.pdf>

By submitting a Bid, a bidder agrees (1) that the work performed by the Contractor will be in accordance with the terms of the Master Contract, (2) that nothing contained in the contract between the Owner and Contractor shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the contract between the Owner and Contractor, nor under the Master Contract, shall be deemed to create any contractual relationship between the Contractor and the State.

29. PAYMENT/ACCOUNTING AND EMPLOYMENT REQUIREMENTS

Contractor shall comply with the latest NYSDOL requirements, including all posting requirements and all other requirements.

Prevailing Wage Rates are not applicable to this project.

All laborers, workers and mechanics working on the site of this project must be certified as having successfully completed the OSHA 10-hour construction safety and health course

30. VENDOR RESPONSIBILITY QUESTIONNAIRE

Vendor Responsibility Questionnaire and Certification is required to be submitted by the successful bidder. This Questionnaire is designed to provide information to assist the contracting agency in assessing a CONTRACTOR's responsibility, prior to entering into a contract, and must be completed and submitted electronically or returned with the contract. Contractor is invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at <http://osc.state.ny.us/vendrep/index.htm> or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Department of State or the Office of the State Comptroller's Help Desk for a copy of the paper form.

Contractor hereby acknowledges that the Vendor Responsibility Questionnaire (VRQ), as described in Section IV (N) of the Master Grant Contract, as well as any updated or amended version of the VRQ submitted during the term of this contract, or any contractor responsibility information that may be requested by the Department and submitted during the term of this contract, is made a part of this contract by reference hereto and that any misrepresentation of fact in the information submitted, may result in termination of this contract. During the term of this Contract, any changes in the information provided in the questionnaire shall be disclosed to the Department, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of the contract.

31. POST BID PROCEDURES

The responsibility of bidders and of their proposed subcontractors will be considered in making the contract award. The Owner through the Landscape Architect and Owner's Representative may make such investigation as the Owner deems necessary to determine the responsibility of any bidder or to determine the ability of any bidder to perform the Work.

When requested by the Owner's Representative, bidders shall furnish all information and data required by the Owner, including financial data, within the time and in the form and manner required by the Owner. Upon notification from the Owner's Representative, the notified bidder shall furnish within three (3) working days after the bid opening the following information in writing:

1. The names, addresses and phone numbers of the subcontractors and suppliers that the bidder proposes to use on the project;
2. The bidder's proposed site safety plan;
3. A bar chart schedule showing the bidders' proposed plan and schedule to complete the bidder's work in accordance with the milestones outlined in Section 011000;
4. The insurance certificates required by the Bid Documents;
5. A proposed schedule of values for the bidder's work;
6. A proposed list of submittals and a proposed schedule for making them, all keyed to the bar chart.
7. A list of proposed substitutions.

After receipt of the above information, the Owner's Representative will designate a time and place for a meeting between the Owner, Owner's Representative, Landscape Architect and the selected bidder. The bidder's principal, project manager and site superintendent shall attend that meeting, at which time the parties will discuss the bidder's responsiveness, responsibility and qualifications.

The Owner reserves the right to disapprove the use of any proposed Subcontractor and in such event the bidder shall submit the name of another Subcontractor in a similar manner within the time specified by the Owner's Representative.

The Owner reserves the right to reject any bid if the evidence required by the Owner is not submitted or fails to satisfy the Owner that the bidder is responsible, able and qualified to carry out the obligations of the Contract or to complete the Work as contemplated. The Owner will consider the information received as outlined above in determining whether or not to accept a proposal.

Acceptance of a proposal will be a written Notice of Award signed by a duly authorized representative of the Owner.

Any bidder whose proposal is accepted will be required to sign the Contract within ten (10) days after receiving Notice of Award.

In the event that the Owner rejects the proposal of a bidder as provided above or otherwise, at the Owner's option, the Owner may elect to meet with another selected bidder and to consider the information as outlined above. In the event that the proposal of the next selected bidder is rejected as provided above or otherwise, at the Owner's option, the Owner may elect to meet with another selected bidder and repeat the above process. At all times the Owner retains the right to reject all bids.

END OF INSTRUCTIONS TO BIDDERS