



# Memorandum

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## Pre-Bid Conference: Project 45309-C NYS Fairgrounds, Syracuse

### Demolish Various Buildings and Provide Site Improvements

Dec. 9, 2015, 9:30 a.m., Art and Home Building

Attendance sheet is attached.

**INTRODUCTION:** Erik Deyoe, OGS Director of Design, opened the meeting at approximately 9:45 a.m. He announced that a guided site visit would now take place, led by Mark Astheimer, the Project Executive from OGS' construction manager, Gilbane Building Company.

**SITE VISIT WALK-THROUGH:** The group walked through the fairgrounds and gathered beside the track area. Mr. Astheimer explained that the project was on a fast track and would be awarded in mid-January. OGS will support whatever hours are needed to expedite the work. The whole blacktop will be removed down to subgrade. Access to the site will be provided through Gate 12.

A question was presented as to whether boring samples have been taken. A representative from OGS' consultant designer, M.J. Engineering and Land Surveying, replied that these have been done in several places, though not specifically under the track. The soils in the area are silty clay. OGS is planning to mitigate the difficulty of working with the soil by stabilizing it with gravel and underdrains, etc. Another question was asked regarding hazardous materials contained in the soil. The engineer said that hazardous testing has been done throughout the area, and no removal will be necessary; the soil can be reused. The drawings and bid documents indicate the above responses as well as the location of drainage and electrical systems.

There was a question regarding allowances for unforeseen conditions. Mr. Astheimer said that there are no provisions in the contract for unforeseen conditions. The contractor must negotiate overhead fees for time and materials as part of the bid. If during construction, the contractor is approaching the not to exceed value of the contract, they must notify OGS with a request for a change order.

The group moved to the back of the grandstand area and walked all the way around it, then up the front steps into the bleachers, where there was a good view of the grounds. Mr. Astheimer pointed out several buildings that would be taken down, in addition to the whole front entrance, box office, and an administration building. He said that some buildings have lead paint and asbestos, which are indicated in the drawings.

A contractor asked him if there were any as-built drawings with this project. OGS representatives answered that they do have them for tunnels, restrooms and some on the grandstand in the end of the bid package. Someone raised a question about bonding: the whole contract must be bonded. Another person asked whether there was any disconnected drainage, and was answered no, but he suggested that it might be a good idea to get some more testing done first.

The group then moved to the area of the Main Entrance gate where Mr. Astheimer and M.J. Engineering described the scope of the demolition at the main gate.

Mr. Astheimer announced it was time to return to the Art & Home Building, and suggested that people return later after the presentation for a closer look at the work sites.

## **PROJECT OVERVIEW**

Margaret Larkin, Executive Director of OGS Design & Construction, began the Power Point presentation at 10:45 a.m. Project No. 45309 is being bid as the first phase of a comprehensive project to renovate the fairgrounds. She said that this is a very important project for OGS and the Dept. of Agriculture & Markets (AGM). OGS has brought in a team with several presenters to answer any questions the bidders may have. They will give a quick overview of the project and give information on aspects of the contract process. After the session, there will be an opportunity for networking between prospective primes and subcontractors.

Jenny Lippman from M.J. Engineering came up to explain more details of the project, including the demolition of the inner and outer track, the grandstand, and some buildings on the exterior (such as restrooms) to make way for a new midway, front entrance gate, a new RV Park, etc. covering 17 acres.

There is some known asbestos in some of the buildings, which is included in the documents. There is some grading work to prepare for new construction. The condition of the silt soil is poor and unstable and will require gravel, geo-grid and underdrains. There is a storm water management area inside the track for water drainage for future projects.

The scheduled completion date is March 2, 2016. Liquidated damages can be assessed for delays. Later work is restricted in the summer. The successive projects will commence after the demolition and may be ongoing during the term of the demolition contract.

Coming up next to speak was Mark Astheimer from Gilbane Building Co., the onsite construction manager for the project. He said that site access will be off of Gate 12 in the far corner. This is shown on the Site Logistics Plan. There are important site staffing requirements to take note of. Safety is very important in the demolition work. Every worker needs the 10-hour OSHA course certification. There will be a safety officer. Because of the expedited schedule, there is a provision for a "rolling 40" for work hours. OGS will support the contractor to work this out.

Next, John Lewyckyj introduced himself as the Deputy Director and also the Acting Director of Contract Management. He urged bidders to read through all the advertisement and bid information thoroughly to avoid making any mistakes. OGS is pushing the schedule into a short time frame. Dec. 17<sup>th</sup> is the bid date. There is a bid deposit of \$125,000. If it is submitted as a bond, the state's form must be used. This form is included in the bid documents. Be sure that the Surety does not use its own form or a form used in another project.

An informational document was made available for download ahead of time, which was a unique circumstance. That was for reference only. The official bid documents will be coming the form of a CD if the bid documents were purchased online

This project will move quickly to award. The agreements and bonds must be submitted within 48 hours of notification. Other required information will be requested soon after. The Pre-Award meeting is scheduled for Dec. 22.

**Procurement Lobby Law (PLL):** This project is currently under the *restricted period* of the bid phase. Under the PLL, the “designated contacts” are the only individuals allowed to answer questions during the restricted period from the time the project is advertised all the way to award. This rule must be honored, as failure to do so can lead to disqualification. Designated contacts for this project are: Frank Peris, Carl Ruppert, John Lewycky, Erik Deyoe, Bridget Morey, John LaRow and Mark Barker. The contact information will be posted soon. Contacts only for today’s conference as subject matter experts are Laurie Adrian, Tryphina Ramsey, and Pierre Alric.

**Project Labor Agreement (PLA):** This project has a single prime contract with a PLA. All contractors onsite with this project must comply with PLA requirements. Please see further information about this in the contract documents and make sure it is understood. It is a Cost-Plus contract with an upset limit of \$5 million. According to the PLA and State Finance Law, the contractor must submit a list of subs with the bid on Form 59P.

**Bid Checklist:** Mr. Lewycky asked the group to take note of the following items to avoid disqualification of their bid:

- The bid must be signed with an original signature.
- The bid must show the percentage fee amount.
- The bid deposit must be included (and the bond form must be OGS).
- The bond amount must be 100% of the cost.
- The agreement documents must be signed and returned in 48 hours.
- Subs must be listed on Form BDC 59P.

The website lists which items are considered bid informalities and disqualifications.

**Pre-Award Meeting:** The Pre-Award meeting will be conducted on Dec. 22 by Gilbane with field staff present. This meeting, referred to in Document 002219, is held for the purpose of evaluating the firm on their work plans, scheduling, staffing, supervisors, experience, qualifications, and understanding of the requirements of the project. The apparent low bidder must have all the requested information submitted prior to the meeting and come ready to discuss at the meeting. Dec. 22<sup>nd</sup> is a mandatory date, which is unusual, because of the expedited schedule. If the contractor does not attend, the company will be disqualified.

### **Questions and Answers:**

Q: Define the meaning of “cost” for “cost-plus.”

A: This is explained in Supplementary Conditions. The cost will incorporate overhead, chargeable materials, installation, reimbursable rentals, etc. Pierre Alric will be explaining in more detail.

Q: How does this work for a lower tier sub?

A: The markup to the prime will vary according to value: refer to the Supplementary Conditions. Payment terms are individual for each sub and it goes through an approval process. There are very specific requirements predefined in the contract documents.

Q: Is there any flexibility to take off a sub from the list after bid opening?

A: Yes –Subs are not locked in, but must go through the proper channels. It will be explained later in the meeting. Another document with Form 59P allows submittal of a different sub if there is reasonable justification.

Q: Is there a website for subs?

A: Go to the OGS public website for all OGS projects, which is explained in the brochure.

Q: Can bidders get access to OGS Blue Book rates?

A: The State has a licensed agreement for utilization of Blue Book rates, and can't share access to Equipment Watch Blue Book system.

Q: Are contractors reimbursed excess liability expenses?

A: Bidders are to include excess liability insurance in their overhead calculations. This would be included in the percentage fee for the cost of the contract. There is an amount of \$5 million for general liability insurance on this contract.

Q: What about winter weather conditions in upstate New York? There may be a problem meeting the deadlines.

A: We understand that the winter weather conditions are not optimal for site work construction. However, the project is a priority initiative and the schedule of the successive projects depends on the timely completion of this demolition contract. Contractors are expected to take necessary measures to meet the State's schedule requirements for this project.

### **MINORITY & WOMEN-OWNED BUSINESS ENTERPRISES (MWBE) BUSINESS OPPORTUNITIES**

Tryphina Ramsey introduced herself as the Senior Compliance Officer and contact person for MWBE, who reviews utilization plans for construction contracts over \$100,000 and consultant contracts over \$25,000. She demonstrated how to navigate the OGS website in order to find project listings, plans for purchase, bid documents, etc. There are a number of tools available on the OGS website to assist vendors. “Special Notices” will highlight large projects. There is a link to an Excel list of “Previously Approved Vendors” as a reference-only pool of potential subs and

suppliers to draw from. Vendors can additionally sign up on the OGS website: see instructions in brochure. MWBE's can register to receive automatic electronic notices of upcoming opportunities. The website also lists primes who have purchased bid documents under the project number.

MWBE Goals for this project are 30% (15% minority-owned/ 15% women-owned). An MWBE prime can count for 15%. Primes and subs must be approved through the MWBE office, and then must be approved by the Vendor Responsibility office. Different requirements apply to MWBE firms as brokers vs. suppliers. The notes from this conference and the attendees will be uploaded on the website. Contact Tryphina for any help that may be needed.

## **SERVICE-DISABLED VETERAN-OWNED BUSINESSES (SDVOB)**

Ken Williams was introduced as the representative overseeing SDVOB for New York State. He encouraged the group to consider using SDVOB contractors as subs, even though there is no mandated percentage as with MWBE. There were only 40 or 50 firms enrolled when the program was first rolled out in 2014, but now the number is up to 171. There are contractors and suppliers available in this area. He encouraged everyone to visit the SDVOB page of the OGS website for additional information

## **VENDOR RESPONSIBILITY**

**“FLIP Review”**: Laurie Adrian gave a presentation on Vendor Responsibility (“VendRep”) process defining a responsible vendor as one who has the capacity to fully perform its contractual obligations with competence and integrity, so as to justify the use of public dollars. The vendor review process is mandated by law, and all prime contractors and subcontractors must be reviewed and approved before starting work. According to Executive Order 170, vendors are reviewed by four areas of the “FLIP” standard: Financial viability to carry through the project, Legal authority to do business, Integrity and compliance with laws and regulations, and Performance record and proof of expertise.

Vendors must be registered with the NYS Dept. of State Corporations, or if a sole proprietor, be registered with the counties in which they do business. Vendors are also required to furnish proof of workers' compensation and disability insurance. Pollution control insurance is required for asbestos abatement, etc. The agency will check for any legal or criminal issues, tax liens, safety records, adherence to regulations including MWBE requirements, and past performance records.

**Form CCA-2**: Prime contractors must complete an online vendor questionnaire (Form CCA-2) within 72 hours of their notice of being the apparent low bidder. OGS will send an e-mail to the low bidder with instructions. The questionnaire resides in the electronic vendor system administered by the Office of the State Comptroller (OSC). OSC can be contacted if help is needed in completing the questionnaire, and they are good at responding to questions.

**Note**: It is very important to answer all questions truthfully and to disclose all issues. Failure to disclose issues may lead to disapproval and a determination of non-responsibility.

**Vendor ID**: Every vendor doing business with NYS must have an OSC Vendor Identification number. This number is required in order to fill out the CCA-2. OGS will assist new vendors in

obtaining one. Any interested vendors who are new and do not have one already are encouraged to apply for one ahead of the bid to avoid any delay. The questionnaire must be certified within 72 hours of being notified as apparent low bidder.

**Subcontractors:** All subcontractors must be submitted, reviewed, and approved before the sub is allowed on site. Prime contractors must submit them electronically on Form BDC-329. Major subs are to be identified with the bid in accordance with the agreement. All subs doing \$100,000 or more of work must do the CCA-2 questionnaire for review. In selecting subs, it may be helpful to consult the list of “Previously Approved Construction Vendors.” This link under “D&C Construction Opportunities” goes to a list of contractors who have been approved to work on OGS projects within the last year. Please note that this is not a guarantee of approval – all subs must be submitted, reviewed and approved for each project.

Contact names for VendRep are listed on the PowerPoint and will be posted on the website.

## CONTRACT PAYMENTS

Pierre Alric introduced himself as the Manager of OGS D&C Contract Payment Audit Group (CPAG). He explained that Project 45309 is a ‘Cost-Plus Percentage Fee Contract’, also known as a Time & Material Contract, meaning that bidders will submit a percentage fee bid, and the lowest percentage fee bid from a responsible bidder will tentatively receive the award. The most important thing from a billing and payments perspective at this phase of the project is to make sure bidders review documentation to understand which items are to be included in the percentage fee markup, to assist bidders in submitting an appropriate percentage fee bid.

Bidders are strongly encouraged to review and become familiar with Spec Section 007304 ‘Supplementary Conditions – Cost-Plus % Fee Contract’ specific to project 45309. This document outlines what is to be included in the percentage fee, versus actual billable costs that the contractor will be reimbursed under the contract. Specifically, expenses including, but not limited to, salaries and benefits of all clerical/secretarial staff, bond and liability Insurance premiums, and overhead and profit, are to be included in the bidder’s percentage fee bid, as these expenses are not reimbursable as a ‘cost’ under the contract. Actual billable ‘costs’ are also outlined in this Supplementary Conditions document and will be reimbursed and reflective on payment documentation. These costs typically fall into four categories: Labor, Material, Equipment, and/or Subcontracting services.

Strict documentation is required for payment applications. The contractor must submit daily labor and material expense reports which must be certified by the OGS field staff. The information will be summarized in an Excel Workbook which will be submitted to OGS’s Director’s Representative, typically the OGS Engineer-in-Charge (EIC) for certification. The EIC will then forward the payment workbook to CPAG in Albany for cost review and payment processing. The OGS website contains “guideposts” and forms to use. These should be reviewed by contractors. CPAG staff is prepared to meet with the awardee to go over payment documentation to ensure reimbursable costs are reflected on payment documentation and requirements are satisfied for CPAG review.

Ms. Larkin said that today’s information will be posted on the web, and she encouraged people to take the brochures at the table. She advised that the information should be carefully reviewed as we are in a tight time frame.

**Questions and Answers:**

Q: The bonding requirement for the bid is \$5 million. Is that amount due up front?

A: Yes. OGS Contract Management will agree to report back to the Surety on the actual costs of the project.

Q: Two different substantial completion dates are listed: March 2<sup>nd</sup> and August 3<sup>rd</sup>. Which is it?

A: The date will be posted in an addendum.

Q: Is the payment schedule biweekly?

A: Yes. The contractor will submit bi-weekly payment requisitions in the workbook which must be approved by field staff and CPAG. The law (Prompt Payment Law) states that payment must be made within 30 days of approval. The payment request requires an audit, which takes several days to do. This project will have cash flow demands, and OGS will work with the contractor on it to keep the cash flow moving. Certified payrolls must be reviewed by the EIC before payment application. There should be no problem if the contractor is keeping up the daily log submittals. OGS will do a workshop with the low bidder on the payment process. The more documents and pre-approval of rates agreed to up front, the quicker the process. Establish blue book rates, classifications, etc. so that the evaluation work is done ahead.

Q: Will the typical 5% retainage be withheld?

A: Yes, this is a State Finance Law requirement. This is a 60-day contract, so there is not much time. Gilbane has experience working with fast-track projects and will guide the process.

Q: What payment documentation does OGS get from subcontractors?

A: OGS does not have direct communication with subs – it is the prime's responsibility.

Q: Are primes required to pick subs off the Previously-Approved list on the website?

A: No. This list is for information and reference only, and lists the county location. It includes vendors who have been reviewed and approved in the last year, but is not a guarantee of approval. All subs have to be reviewed and approved for each contract.

Q: The list does not indicate if subs belong to a union. If a sub is not union, can they still be on board?

A: The list does not indicate if a contractor is a union or non-union contractor. Subcontractors may be non-union so long as the work is compliant with the PLA requirements.

Q: It would be helpful if the list would indicate union in the future.

A: NYS must be open for anyone and we, therefore, don't provide this level of detail in the list.

Q: There is a requirement in the specs to provide a detailed cost estimate two days after the low bidder is notified. Where is this document?

A: That "Pre-Award Submittal Requirement" does not apply to this project and this will be clarified by addendum. The information to be brought to the Pre-Award is a detailed work plan, subs, manpower, schedule, supervisors, asbestos licenses, etc. as required in the contract documents.

At the conclusion of the presentation at 12:10 p.m., it was restated that any bidder questions are to be submitted in writing online through the OGS website. OGS staff would be present for several more hours to answer any further questions.

## **NETWORKING SESSION**

Mr. Lewyckyj announced after the presentation that there was time allotted now to give primes and subs, MWBE's and SDVOB's, the opportunity to meet and talk with each other. He also reminded the group that there was additional site access from 1:00 to 2:30 p.m. He asked attendees to be sure that they were all signed in, and the networking session began.

**NOTE:** Verbal questions and answers during this session, including those recorded in the above minutes, are unofficial and non-binding. Only written questions submitted electronically, with answers posted electronically on the web, are binding. If answers involve changes to the bid documents, an addendum will be issued.

The following link on the OGS public website should be used to submit questions and review replies related to this project:

<https://online.ogs.ny.gov/dnc/contractorConsultant/esb/BidQuestions.ASP?Project=45309&Trade=C>

For information on OGS's Pre-Bid Inquiry and Response Policy, please see the following link:

<https://online.ogs.ny.gov/dnc/contractorConsultant/esb/PreBidInquiryResponsePolicy.asp>