SECTION B
1. ATLANTA BELTLINE, INC. TERMS & CONDITIONS

ABI desires to develop a Contract that appropriately places risk with the party most able to address the issue, to ensure that all parties to the Contract are appropriately protected and to maintain its responsibility to serve as an effective steward of public funds while advancing the Project.

1. Solicitation / Not Offer

This solicitation does not constitute an offer by Atlanta Beltline, Inc. (ABI) to enter into an Agreement and is not an offer that can be accepted by the bidder to form an Agreement. No language contained anywhere in this solicitation should be construed or interpreted to convey an offer to enter into an Agreement with ABI. The terms of this solicitation are to be considered as a whole. However, no terms may be considered in whole or in part to constitute an offer to enter into an Agreement with ABI.

This solicitation invites the bidder to make an offer to ABI in the form of a bid. No offer made in response to the terms and conditions of this solicitation may include any terms and conditions which can bind ABI to any contractual Agreement until such time as the Agreement has first been awarded by ABI to the most responsible and responsive bidder whose bid meets the material requirements and criteria set forth in the solicitation and the same is accepted and fully executed and sealed by agents of ABI designated on the signature page of the Agreement included in the solicitation. The term of your offer must conform to all applicable federal and local laws, and all requirements of the solicitation.

YOUR OFFER IS A FIRM OFFER AND MAY NOT BE WITHDRAWN FOR **120** DAYS.

Your response to this solicitation is a firm offer, which ABI may accept or reject in whole or in part without any further action on your part. ABI's acceptance of your offer will form an Agreement enforceable against you.

2. General Terms and Conditions

All applicable State of Georgia and federal laws, City of Atlanta and county ordinances, licenses and regulations of all agencies having jurisdiction shall apply to the bidder and the project throughout and incorporated herein. The Agreement with the successful bidder and all questions concerning the execution, validity or invalidity, capability of the parties, and the performance of the Agreement, shall be interpreted in all respects in accordance with the laws of the State of Georgia.

Professionals requiring special licenses must be licensed in the State of Georgia and shall be responsible for those portions of the work as may be required by law.

No bid shall be accepted from and no Contract will be awarded to any person, firm, or corporation that is in arrears to ABI, IA, or the City of Atlanta, under debt or contract that is a defaulter, as surety or otherwise, upon any obligation to ABI, IA or the City of Atlanta, or that is deemed irresponsible or unreliable by ABI, IA or the City of Atlanta. If requested, the bidder or subcontractor shall be required to submit satisfactory evidence that they have the necessary financial resources to provide the proposed services.

From the date a bid is received through the date a Contract is awarded, no bidder may make substitutions, deletions, additions or other changes in the configuration of its bid without ABI’s express written consent.

This procurement may be canceled, or any or all bids, qualifications, or proposals may be rejected in whole or in part when it is in the best interest of ABI or when funding is not available for completion of the services requested under this document. In the event that this procurement is canceled, a notice of cancellation shall be sent to all persons, firms, or entities that submitted responses to this procurement. Bidder's status shall be that of an independent contractor, and neither it nor any of its employees or subcontractors is or shall be an agent, servant, or employee of ABI, IA, or the City.

Bidder shall defend, indemnify, and hold harmless ABI, IA and the City of Atlanta against all claims, judgments or liabilities to which they may be subject because of any negligence, intentional act, omission, or fault or default by the bidder, its consultants, or sub-consultants.

Bidder shall agree to the Superior Court of Fulton County as the venue in any legal action or proceeding between the bidder and ABI, IA, or the City.

3. Organizational Conflicts of Interest and Excluded Parties

An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract or lease may, without some restriction on future activities, result in an unfair competitive advantage to the bidder or impair the bidder's objectivity in performing the work. Clarifications may be sought by submitting a letter requesting clarification and stating the reasons why the bidder believes a potential organizational conflict of interest exists. In preparing this solicitation, a review of existing contracts with ABI should be undertaken, and the bidder shall make known any consultants, subcontractors or sub-consultants that are specifically excluded from participating in this solicitation. All who respond to this ITB shall complete the Certification of No Organizational Conflict of Interest attached hereto as part of **Exhibit A** and submit it as part of its response to this ITB. A bid that does not include this completed form is subject to disqualification.

Consultants, subcontractors or sub-consultants with active contracts with ABI are excluded from being eligible to submit a response to this procurement except under the following circumstances:

- If the GC, consultant, subcontractor or sub-consultant completes the Certification of No Organizational Conflict of Interest; and
- If ABI Legal Counsel agrees that the GC, consultant, subcontractor, or sub-consultant has no organizational conflict of interest.

If the above conditions are met, the bidder may be considered eligible to participate in this procurement.

4. Termination of Contract

ABI has the right to terminate the contract upon thirty (30) days' written notice, with or without cause.

5. Payment ABI shall make payment within **60** days upon receipt of payment request (see sample contract), inspection and acceptance of the work and all required documentation by ABI.

6. Code of Ethics ABI's Code of Ethics, included as **Exhibit S,** applies to this solicitation.

7. Background Checks and Drug Testing The bidder may be required to implement a drug-free workplace program including pre-employment testing and background checks including Social Security number verification. Any employee assigned to the Project may be subject to background screening through "Livescan" administered by the Georgia Bureau of Investigation.

8. Federal Work Authorization Pursuant to O.C.G.A. §13-10-91, qualifying general contractors and subcontractors performing work within the State of Georgia on a contract with ABI must register and participate in a federal work authorization program. A certification form verifying participation in such a program will be required of all Respondents in addition to the S.A.V.E. Program Affidavit required by O.C.G.A. §50-36-1 (e) (2). See **Exhibit G**.

9. Debarment and Suspension ABI shall not award a contract to bidders that are debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549**.**

10. Authority to Debar or Suspend After reasonable notice to the vendor involved and reasonable opportunity for that person or entity to respond, ABI's President and CEO shall have authority to debar or suspend a person or entity for cause from consideration for award of contracts.

11. Proprietary Information ABI recognizes that material in its possession or in the possession of IA or the COA or any other government agency is subject to public examination and copying under the Georgia Open Records Act, O.C.G.A. §50-18-70, *et.seq.* (the "Act"). Bidder **has the obligation to identify proprietary information and trade secrets by clearly marking the documents "Trade Secret" as required by the Act.** If ABI receives any request under the Act to examine or copy any of the proprietary information obtained pursuant to this Agreement, it will immediately notify the bidder of such request and will respond to the requesting party within the time allowed by law, indicating to the requesting party that the information requested constitutes trade secrets and therefore is considered by ABI to be exempt from disclosure under the Act. Notwithstanding the foregoing, it shall be the obligation of the bidder to take appropriate, timely legal action to secure the nondisclosure of the information requested, at its sole expense. ABI shall cooperate in any action at law or equity in any court of competent jurisdiction to permit the bidder to seek a protective order or other relief to prevent the disclosure of the Proprietary Information of the bidder requesting disclosure under the Georgia Open Records Act; provided, however, that the bidder shall be required to indemnify ABI, IA and the COA for any and all costs, expenses, or claims arising from such matter(s).

12. Ex Parte Communication Please note that to ensure the proper and fair evaluation of a proposal or bid, ABI prohibits *ex parte* communication initiated by a bidder, respondent or offeror to an ABI employee, consultant, contractor, volunteer, board member, graduate or undergraduate fellow, citizen, City of Atlanta official (i.e. city council member, mayor, etc.), or any ABI affiliates, evaluating or considering the proposal or bid prior to the time a selection has been made and the contract between the awardee and ABI is executed. Communication includes but is not limited to fax, phone call, email, and in-person. Communication between a bidder, respondent, or offeror and ABI must be directed in writing only to the Procurement Director or other contact person designated by ABI. The Procurement Director or designated contact person will obtain the needed information or clarification. *Ex parte* communication may be grounds for disqualifying the offending bidder, respondent, or offeror from consideration or award of a bid or proposal (or any solicitation), and repeat offenders may be disqualified from responding to solicitations for future projects. After this solicitation has been published and up until the time a contract is fully executed, no bidder, respondent, or offeror shall make direct contact with any member of ABI staff other than the persons listed on the first page of this solicitation. Furthermore, no person shall attempt to communicate with any ABI employee, director, or officer, excluding the ABI Procurement Manager or the ABI Procurement Director, regarding this ITB during its pendency.

13. Force Majeure Neither party shall be held to be in breach of the Contract resulting from this ITB because of any failure to perform any of its obligations hereunder, if said failure is due to any act of God, fire, flood, accident, strike, riot, insurrection, war, or any other cause over which that party has no control. Such party shall give notice and full details of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event and the obligation of the party giving such notice shall endeavor to remove or overcome such inability with all reasonable dispatch.

14. Addenda and Interpretations All questions by prospective bidders as to the interpretation of the bid document must be submitted within Bonfire and must be received no later than the time and date specified on the first page of this ITB. Every interpretation made to a bidder will be in the form of an addendum to the bid document. All addenda will be accessible at the Bonfire link listed within this ITB. The Bonfire link is listed on the first page of this ITB. Bidders are responsible for inquiring about issued addenda. All such addenda shall become part of the Agreement, and all bidders shall be bound by such addenda, whether or not received by the bidders. Please double-check Bonfire to ensure you have all documents issued before submitting your bid.

ABI shall not be bound by any information, explanation, clarification, or any interpretation, oral or written, by whosoever made, that is not incorporated into an addendum to the bid document. ABI shall not respond to inquiries received after the time and date specified in the ITB.

15. Preparation of Bids All bids must be submitted in accordance with the bid submittal requirements listed within this ITB. ABI supplies bid document forms, which are subject to all requirements of the agreement as described below. All bids must be regular in every respect, and the bidder shall not make or include interlineations, excisions, or special conditions in the bid.

Enter lump sum, unit price, and unit price extensions in the appropriate spaces on the Bid Schedule/Bid Form. Unit prices shall include an appropriate allocation of overhead and other indirect costs so that the summation of unit price extensions and lump sum items represents the total bid amount. In the case of any bid item for which a fixed amount predetermined by ABI has already been entered on the Bid Schedule, the amount so entered shall be conclusive of all bidders as the price for such item and shall not be revised unless ABI directs a change in the Scope of Work affecting the item to which such amount relates.

ABI may consider as irregular any conditional bid or any bid on which there is an alteration of, or departure from, the Bid Schedule hereto attached and at its option may reject the same.

Erasures or other changes in the bids must be explained or noted over the bidder's signature. Failure to do so shall render the bidder non-responsive and cause rejection of the bid.

Failure to execute the Bid Schedule/Bid Form documents may render the bidder non-responsive and cause rejection of the bid at the sole discretion of ABI.

16. Execution of Bid Bidders shall submit their bids, together with the Bid Guarantee and all forms which the bidder is required to sign, executed in the appropriate manner as set forth below:

a. If the bidder is a corporation, all required documents shall be signed by the president or vice-president of the corporation, whose signature shall be attested by the secretary or assistant secretary of the corporation and the corporate seal affixed.
b. If the bidder is an individual, the bidder shall sign all required documents and his or her signature shall be notarized by a notary public.
c. If the bidder is an individual doing business under a trade name, all required documents shall be signed by the bidder whose signature shall be followed by either "doing business as," or "trading as," followed by the trade name of the bidder's business and notarized by a notary public.

d. If the bidder is a partnership, all required documents shall be executed by placing the name of the partnership followed by "By: (the name of the partner executing)" followed by the word "Partner," and notarized by a notary public.
e. If the bidder is a limited liability company, all required documents shall be signed and notarized by the sole or managing member or manager, as the case may be.
f. If the bidder is a joint venture, each party to the joint venture shall execute the Bid Documents in the manner set forth in items a, b, c, d, or e of this article of the Instructions to Bidders as appropriate for this type of organization.

17. Errors in Bids Bidders and their authorized representatives are required to fully familiarize themselves with the conditions, requirements, addenda, and specifications before submitting a bid. Failure to do so will be at the bidder's own risk. In case of error in extension or prices in the bid, the unit price(s) shall govern.

18. Disqualification of Bidders Any of the following may be considered as sufficient justification for disqualification of a bidder and the rejection of the bid, in ABI's sole discretion:

a. Submission of more than one bid for the same work by an individual, firm, partnership,
b. corporation or any other organization under the same or different name(s);
c. Evidence of collusion among bidders;
d. Previous participation in collusive bidding on work for ABI;
e. Submission of an unbalanced bid, in which the prices quoted for same items are out of proportion to the prices for other items;
f. Lack of competency of bidder (the Agreement will be awarded only to a bidder(s) rated as capable of performing the work; ABI may declare any bidder ineligible at any time during the process of receiving bids or awarding the Agreement where developments arise which, in the opinion of ABI, adversely affect the bidder's responsibility. However, in such cases, the bidder will be given an opportunity by ABI to present additional evidence before final action is taken);
g. Determination that the bidder has a conflict of interest;
h. The bidder, or any of its subsidiaries, affiliates, subcontractors, suppliers, or vendors, is or has been involved in a claim, dispute, litigation, arbitration, or other proceeding against ABI, or ABI has filed a claim with the bidder's or such party's insurance carrier, whether pending or resolved, where ABI determines such matter is relevant to the bidder's responsibility, cooperation, or ability to perform work;
i. The bidder's failure to fully, accurately, or timely disclose information required by Exhibit X – Claims, Disputes, and Responsibility Disclosure Form, or the existence, nature, or status of any matters disclosed therein, where ABI determines such matters render the bidder non-responsible;
j. Any other ground for disqualification, non-responsibility, or rejection of a bid expressly provided for in this solicitation (including any exhibits or addenda), or any other ABI procurement documentation applicable to the solicitation.

19. Rejection of Bids may be considered irregular and may be rejected if they show omissions, alterations of forms, additions not called for, conditions, limitations, unauthorized alternate bids, or other irregularities of any kind. ABI reserves the right to waive any informalities or irregularities of bids.

20. Failure to Perform If for any reason the successful bidder fails to perform any of the work required by the Specifications, or if the work performed is not as specified, ABI reserves the absolute right to have such work performed by other persons and deduct the cost thereof from the bid price in the Agreement of the non-performing General Contractor.

21. Pricing Sheet Prices shall include an appropriate allocation of overhead, other indirect costs and profits so that the summation of unit price extensions and lump sum items represents the total bid amount. In the case of any bid item for which a fixed amount predetermined by ABI has already been entered on the Bid Schedule, the amount so entered shall be conclusive of all bidders as the price for such item and shall not be revised unless ABI directs a change in the Scope of the Work affecting the item to which such amount relates. The award will be based on the total fixed unit cost for all items aggregated.

22. Bid Guarantee Bidders are required to furnish a Bid Guarantee in the amount of five percent (5%) of the total bid amount. At the bidder's option, the guaranty may be a certified check payable to the order of ABI or a bid bond in the form attached. The bid bond shall be secured by a guaranty or a surety company listed in the latest issue of U.S. Treasury Circular 570. The amount of such bid bond shall be within the maximum amount specified for such company in Circular 570. No bid shall be considered unless it is accompanied by the required guaranty. The Bid Guarantee shall ensure execution of the Agreement and the successful bidder's furnishing of the performance and payment bonds and insurance required by the agreement documents. The Bid Guarantee of the bidders submitting the five lowest total bid amounts for the ITB will be retained either until the successful bidder has signed the Agreement and furnished performance and payment bonds and certificates of insurance, or until the one hundred twentieth (120^{th}) calendar day after the Bid Opening date, whichever is sooner. Other Bid Guarantees will be returned within ten (10) calendar days after the Bid Opening date. Bid Guarantees held pending signing the Agreement and furnishing other documents will be returned within ten (10) calendar days thereafter. Each bidder agrees that if it is awarded the Agreement and fails to execute the Agreement and to furnish the other documents required within fifteen (15) days, ABI will retain the Bid Guarantee as liquidated damages for the bidder's failure to fulfill its bid and not as a penalty.

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

23. Statement of Bidder's Qualifications The Statement of Bidder's Qualifications must be filled out completely, signed by the bidder, and notarized.

ABI shall have the right to require such additional information as it deems necessary to evaluate the ability of the bidder to successfully perform the work.

ABI reserves the right to reject any bidder that does not satisfy ABI as to its ability to successfully perform the work, notwithstanding any prior pre-qualification.

24. Affidavits The affidavit must be filled in completely, signed by the bidder, and notarized. Violation of the statements set forth in the affidavit may be grounds for rejection of bid, or termination of Agreement by ABI, as appropriate, as well as other appropriate remedies as provided by local, state, and federal statutes.

25. Equal Business Opportunity The bidder shall complete the DBE Utilization Plan (**Exhibit E**) and the Sub-Contractor/Sub-Consultant Utilization and DBE Participation Certification form (**Exhibit Q**).

A determination by ABI that misstatements have been made by the bidder in this document shall be cause for rejection of the bid or termination of the Agreement, as appropriate.

26. Authorization to Transact Business If the successful bidder is an organization or organizations combined to form a Joint Venture, before the Agreement is executed, the organization or the members of the Joint Venture team must submit documentary evidence from the Georgia Secretary of State that the organization is in good standing and that the organization is authorized to transact business in the State of Georgia. ABI reserves the right to request this evidence at any time during the procurement process.

27. Bid Form The bidder must complete all sections of the bid document and shall execute the Bid Form.

28. Pre-Bid Inspection Prior to submission of a bid, the bidder shall have made a thorough examination of the work site. The bidder shall become informed as to the nature of the proposed construction, the kind of facilities required to carry out the construction, labor conditions, and all other matters that may affect the cost and time of completion of the work upon which it bids.

The bidder shall make itself familiar with all of the agreement documents and other instructions before submitting its bid, in order that no misunderstanding shall exist in regard to the nature and character of the work to be done. No allowance shall be made to any claims that the bid is based on incomplete information as to the nature and character of the site or the work involved.

The GC, by execution of the Agreement, shall in no way be relieved of any obligation under it due to its failure to receive or examine any form or legal instrument or to visit the site and acquaint itself with the conditions there existing, and ABI shall be justified in rejecting any claims based on facts regarding that the GC should have known as a result thereof.

29. Bid Modification and Withdrawal Due to Errors The bidder shall give notice in writing of its claim of right to withdraw a bid without penalty due to an error within forty-eight (48) hours after the conclusion of the bid opening procedure. Bids may be withdrawn from consideration if the bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake; and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and material used in the preparation of the bid sought to be withdrawn. The bidder's original work papers shall be the sole acceptable evidence of error and mistake if the bidder elects to withdraw a bid. If a bid is withdrawn under the authority of this provision, the lowest remaining responsive bid shall be deemed to be the low bid.

No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor or perform any subcontract or other work agreement for the person or firm to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted. A bidder has up to 48 hours after the bid opening to notify the Procurement Manager of an obvious clerical error in a bid calculation and withdraw the bid. A request to withdraw a bid for this reason must be submitted in writing within the 48-hour period. Bidders who fail to request withdrawal of a bid by the required 48-hour period shall automatically forfeit the bid bond. A bid may not be withdrawn otherwise.

30. Non-Collusion Bidder declares that the bid is not made in connection with any other bidder submitting a bid for the same commodity or commodities, and that the bid is bona fide and is in all respects fair and without collusion or fraud. An affidavit of non-collusion shall be executed by each bidder. Collusion and fraud in bid preparation shall be reported to the Office of the Georgia Attorney General and the United States Department of Justice. See **Exhibit L**.

31. Termination for Convenience ABI may terminate any Agreement arising from this solicitation for its convenience at any time upon thirty (30) days' written notice to the GC. In the event of ABI's termination of any Agreement for convenience, the GC will be paid for those services actually performed through the date of termination. Partially completed performance of the Scope of Work will be compensated based upon a signed statement of completion to be submitted by the GC, which shall itemize each element of performance, and shall be subject to review and approval by ABI.

32. Termination for Cause ABI may terminate any Agreement arising from this solicitation for cause upon ten (10) days prior written notice to the GC of the GC's default in the performance of any term of this Agreement. Such termination shall be without prejudice to any of ABI's rights or remedies at law.

33. Bid Evaluation Each bid timely received by ABI shall constitute an offer to perform the work on the terms and conditions of the Agreement documents and all other requirements, all for the total bid amount. For good cause and valuable consideration, the sufficiency of which is acknowledged by submittal of a bid, each bidder promises and agrees that its bid shall be irrevocable for a period of **one hundred twenty (120)** calendar days after the bid opening and will not be withdrawn or modified during that time. ABI may accept any bid by giving the bidder written notice of acceptance during that time. If necessary, ABI and the bidder or bidders concerned may extend the specified period by written agreement.

After the bids have been opened and before any award is made, ABI will evaluate the bid process, the total bid, the supplements to the Bid Form, bidder's experience, financial data, proposed subcontractors and DBE participation, and other data relating to bidders' responsibility and qualifications to perform the Scope of Work satisfactorily.

ABI may verify all extensions of the unit prices shown and any subsequent additions of extended amounts. In the event of a discrepancy between the unit price bid and the extension, the unit price will be deemed intended by the bidder, and the extension shall be adjusted. In the event of a discrepancy between the sum of the extended amounts and the total bid, the sum of the extended amounts shall govern.

Bidder may be required to submit, in writing, the addresses of any proposed subcontractor or equipment manufacturers listed on the bid, and to submit other material information relative to proposed subcontractors or equipment manufacturers. ABI reserves the right to reject any proposed subcontractor or equipment manufacturer whose technical or financial ability or resources or experience are deemed inadequate or with whom ABI, IA, or the City have had a negative experience.

ABI reserves the right to reject any bid when the prices of which appear to be unbalanced, and to reject any or all bids, or parts thereof, if it determines, in its sole discretion, that such rejection is in the best interest of ABI. ABI will not consider a bid with an unsigned Bid Form.

Where only a single responsible and responsive bid is received, ABI may, in its sole discretion, elect to conduct a price or cost analysis of the bid. Such bidder shall cooperate with such analysis and provide supplemental information as may be required. ABI will determine whether to enter into an Agreement with a single bidder in its sole discretion.

Bids will be evaluated on the basis of determining the lowest total bid of a bidder, not including alternates, whose bid is responsive to the ITB and who is determined to be technically, financially and otherwise responsible to perform the Agreement satisfactorily, and to meet all other requirements of the bid relating thereto. ABI may reject any bid it determines to be non-responsive. However, ABI reserves the right to waive any irregularities or technicalities that it determines, in its sole discretion, are minor in nature and in the interest of the project.

ABI may conduct a pre-award conference with the apparent low responsive and responsible bidder(s) to review the general requirements of the bidding documents.

34. Award Criteria

ABI will make a final award after evaluating each bidder's responsiveness, responsibility, and total bid. ABI intends to award the Agreement at the earliest practicable date to the lowest responsive and responsible bidder(s). ABI may make such investigations as it deems necessary to determine the ability of the bidder to perform, and the bidder shall furnish to ABI all such information and data for this purpose as requested. ABI reserves the right to reject any bid if the evidence submitted by the bidder, or investigation of such bidder, fails to satisfy ABI that such bidder is properly qualified to carry out the obligations of the Contract.

ABI reserves the right to make an award as deemed in its best interest, which may include awarding a bid to a single bidder or multiple bidders; or to award the whole bid, only part of the bid, or none of the bid to single or multiple bidders, based on the sole discretion of its best interest.

A. The responsiveness of a bidder is determined by the following:
   i. A timely and effective delivery of all services, materials, documents, and/or other information required by ABI;
   ii. The completeness of all material, documents and/or information required by ABI; and
   iii. Notification to ABI of methods, services, supplies, and/or equipment that could reduce cost or increase quality.

B. The responsibility of a bidder is determined by the following:
   i. The ability, capacity and skill of the bidder to perform the Agreement or provide the work required;
   ii. The capability of the bidder to perform the Agreement or provide the work promptly or within the time specified without delay or interference;
   iii. The quality of performance of previous contracts or work for ABI or the City including, but is not limited to, the quantity and cost of change orders due to the bidder's inadequate interpretation or misinterpretation of the scope of work and/or specifications; timeliness of completion of specific milestones or the agreed upon schedule, and failure to communicate construction issues with ABI staff clearly and immediately.
   iv. The previous or existing compliance by the bidder with laws and ordinances relating to the Agreement or work;
   v. The previous experience as it relates to compliance with OSHA regulations and demonstration of an acceptable safety culture;
   vi. The sufficiency of the financial and labor resources and ability of the bidder to perform the services required under the Agreement or provide the work; and
   vii. The quality, availability and adaptability of the supplies or contractual work to the particular use required.

35. Surety Bonds

Regarding submission of surety bonds prior to or subsequent to the bid submission, the following requirements are applicable:

a. ABI, IA and City of Atlanta shall be named as co-obligee on all bonding;
b. Any surety bonds submitted in accordance with the Bid or Agreement requirements must be issued by a corporate surety company satisfactory to ABI, IA and the City of Atlanta, and be authorized to act as such in the State of Georgia;
c. Such bonds shall conform to the forms provided with the Bid Documents and be completed in accordance with the instructions thereon; and
d. In accordance with Georgia law, and upon award of the Agreement, separate performance and payment bonds shall be required of the successful bidder, each in an amount not less than the total amount payable under the Agreement. The performance bond shall remain in effect for one year after final acceptance of the work or the guaranty period under the Agreement, whichever is longer.
e. The payment bond shall remain in effect for the period required under Georgia law for the payment bonds on public construction Agreements. Reference is made to the bond forms and the Agreement documents for additional details of the terms required in the bonds. In the case of any inconsistency between the Bond Forms and Georgia law, Georgia law shall control. Finally, alterations, extension of the time allowed for performance, additional work, and other changes authorized under the Agreement may be made without notice to or consent of the surety or sureties.

36. Power of Attorney

Attorneys-in-fact who sign agreement bonds must file with each bond a certified copy of their power of attorney with the appropriate effective date.

37. Insurance Requirements

The GC shall procure and maintain during the term of any Agreement between ABI and GC: workers' compensation, general liability, property damage, automobile liability insurance and any other insurance necessary to satisfy the requirements of the Bid Documents. ABI, IA and the City of Atlanta shall be named as additional insureds on all insurance policies.

38. Laws and Regulations

The bidder's attention is directed to the fact that all applicable federal and state laws, local ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Agreement throughout, to the extent that such requirements do not conflict with federal laws or regulations, and they will be deemed to be included in the Agreement the same as though therein written out in full.

Bidder's attention is directed to the following laws and regulations:

a. Applicable provisions of the Occupational Safety and Health Act (OSHA) must be observed during work under this Agreement
b. Applicable regulations and ordinances of the City of Atlanta must be observed during work under this Agreement;
c. E-Verify and S.A.V.E. obligations as required by law;
d. Applicable regulations of the Georgia Environmental Protection Division and the U.S. Environmental Protection Agency must be observed during work under this Agreement.

39. Agreement Term

The term of this Agreement shall be **400** consecutive calendar days from the Notice to Proceed.

40. Liquidated Damages

Timely performance of the work under the Agreement is essential to ABI's economic interests. The attention of potential bidders is directed to the provisions of the Agreement documents, which establish the basis for liquidated damages to be paid to ABI if the work is not completed on schedule.

41. Sample Agreement and Execution of Agreement

Upon receipt of a bid package containing an ABI "Sample Agreement" as part of the requirements, it is understood that the bidder has reviewed the documents with the understanding that ABI requires that all Agreements between the parties must be finalized in writing and executed by ABI and the GC before either party shall have any obligations. Please be aware that this "Sample Agreement" is a non-binding sample document that serves to provide an example to interested parties of the executed contract agreement. The sample contract agreement is not inclusive of all terms, conditions or requirements of the solicitation, bid award or final executed contract.

Subsequent to the award and within fifteen (15) days after the prescribed forms are presented for signature, the Apparent Successful Bidder shall execute and deliver to ABI four copies of the ABI-Contractor Agreement as included in the Agreement documents and provide performance and payment bonds and insurance certificates. The failure of the Apparent Successful Bidder to execute ABI-Contractor Agreement and to supply the required bonds within fifteen (15) days after the prescribed forms are presented for signature, or within such extended period as ABI may grant, shall constitute a default, and the bidder shall forfeit the bid guarantee and ABI may either award the Agreement to the next lowest responsive and responsible bidder or re-advertise for bids, and may proceed against the bid bond of the defaulted bidder. If ABI receives a more favorable bid by re-advertising, the defaulting bidder shall have no claim against ABI.

42. Pre-Construction Conference

A required pre-construction conference shall be held with the Apparent Successful Bidder and all known subcontractors at a time and place set by ABI after contract execution.

43. Federal Compliance Requirements and Grant Conditions

This project is funded in part by a U.S. Environmental Protection Agency (EPA) assistance agreement administered through the Georgia Environmental Protection Division (GA EPD). The GC shall comply with all applicable federal requirements, including but not limited to:

- 2 CFR Part 200 (Uniform Guidance) – The GC shall comply with all applicable procurement, cost reasonableness, and documentation requirements.
- 40 CFR Part 33 (Disadvantaged Business Enterprise requirements) – The GC shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The GC shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the GC to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.
- Lobbying Disclosure – The GC hereby warrants as a condition of this contract that if it is an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, it will not engage in lobbying activities prohibited by the Lobbying Disclosure Act of 1985.
- Debarment and Suspension: The GC certifies that it and its principals:
    - Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
    - Have not, within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; violation of Federal or State antitrust statutes; or commission of

embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
    - Are not presently indicted for or otherwise criminally or civilly charged by a government entity with commission of any of the above offenses.
    - Have not within a three-year period preceding this contract had one or more public transactions terminated for cause or default.
- 2 CFR Part 184 (Build America, Buy America Act) – The GC shall comply with the Build America, Buy America Act (2 CFR Part 184). Materials subject to BABA must be produced in the United States unless an applicable waiver is approved.
- A33 U.S.C. §1251 et seq. (1972) – Applicable provisions of the Clean Water Act
- EPA General Terms and Conditions applicable to assistance agreements.
- Recordkeeping and Audit: The GC acknowledges that this is a federally funded project and agrees to maintain all records required for compliance, monitoring, and audit purposes. Records shall be retained for a minimum of five (5) years following project close-out or longer if required by law.
- Flow-Down Requirements – GC shall ensure all subcontractors comply with applicable federal requirements.
- 29 CFR Part 5 (Davis-Bacon and Related Acts) - if applicable

Failure to comply with federal requirements may result in withholding of payment, termination of the Agreement, or other remedies available to ABI or the funding agency.

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