



# AIA<sup>®</sup> Document A701<sup>™</sup> – 1997

## ***Instructions to Bidders***

### **for the following PROJECT:**

*(Name and location or address)*

Carey Ridge Elementary School  
16231 Carey Road, Westfield, IN 46074  
&  
Oak Trace Elementary School  
16504 Oak Ridge Road, Westfield, In 46074

### **THE OWNER:**

*(Name, legal status and address)*

Westfield Washington Schools  
1143 East 181st Street  
Westfield, IN 46074-8926

### **THE ARCHITECT:**

*(Name, legal status and address)*

not applicable

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### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

## ARTICLE 1 DEFINITIONS

§ 1.1 Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, Supplementary Instructions to Bidders, the Bid form, and other sample bidding and contract forms. The proposed Contract Documents consist of the Form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Addenda issued prior to execution of the Contract.

§ 1.2 Definitions set forth in the General Conditions of the Contract for Construction, AIA Document, or in other Contract Documents are applicable to the Bidding Documents.

§ 1.3 Addenda are written or graphic instruments issued by the Architect prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.

§ 1.4 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents and applicable laws.

§ 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.

§ 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

§ 1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents.

§ 1.8 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.

§ 1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment or labor for a portion of the Work.

§ 1.10 All communications to the Architect, noted above, shall be **in writing**.

## ARTICLE 2 BIDDER'S REPRESENTATIONS

§ 2.1 The Bidder by making a Bid represents that:

§ 2.1.1 The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of that Project, if any, being bid concurrently or presently under construction.

§ 2.1.2 The Bid is made in compliance with the Bidding Documents and applicable laws.

§ 2.1.3 The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.

§ 2.1.3.1 No claims for extra compensation shall be allowed due to failure of any Bidder to examine conditions, which exist at the building site nor for conditions of difficulties encountered in execution of Work, which may have been avoided by such prior examination.

§ 2.1.4 The Bid is based upon the materials, equipment and systems required by the Bidding Documents without exception.

§ 2.2 Each Bidder by submitting a Bid also agrees that, if accepted by the Owner, his Bid will be the basis for an agreement directly with the Owner and agrees to enter into such agreement in accordance with the intent of the Contract Documents and the Work.

§ 2.3 It is the purpose and intent of the Contract Documents, that a complete job be accomplished. It shall be each Bidder's responsibility to include costs necessary to provide labor, services, equipment, supplies, and materials for that portion of the Work bid upon, including incidentals, whether or not specifically called for in the Specifications and Drawings.

§ 2.4 The Bidder has carefully examined the documents and the construction site and informed himself of the limitations and conditions related to the Work covered by his Bid, and shall include in his Bid a sum to cover the cost of such items. Contractors will not be given extra payments for conditions, which could have been determined by examining the site and documents.

§ 2.5 Each Bidder by making his Bid represents that he has read and understands the Bidding requirements for the Work and contract categories he is submitting a bid on, and further that he has read and understands the Work of other contract categories which require interface with the contract category (s) upon which he is bidding.

### **ARTICLE 3 BIDDING DOCUMENTS**

#### **§ 3.1 COPIES**

§ 3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement or Invitation to Bid in the number and for the deposit sum, if any, stated therein. The deposit will not be refunded to any prospective Bidders or for Bidders who submit a bona fide Bid and return the Bidding Documents in good condition within ten days after receipt of Bids. A Bidder receiving a Contract award may retain the Bidding Documents but the Bidder's deposit will not be refunded.

§ 3.1.2 Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the Advertisement or Invitation to Bid, or in supplementary instructions to bidders.

§ 3.1.3 Bidders shall consult applicable permit standards, certification standards, accrediting standards, and building standards, and any other laws, rules, or regulations governing the Work to be provided and use complete sets of Bidding Documents in preparing Bids; neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the lack of familiarity with standards, laws, rules, or regulations governing the Work or use of incomplete sets of Bidding Documents.

§ 3.1.4 The Owner and Architect may make copies of the Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work. No license or grant of use is conferred by issuance of copies of the Bidding Documents.

#### **§ 3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS**

§ 3.2.1 The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Architect and Owner errors, inconsistencies or ambiguities discovered.

*(Paragraph deleted)*

§ 3.2.2. Prospective Bidders in doubt as to the true meaning of a part of the Drawings, Specifications, or other Contract Documents shall submit to the Architect and Owner, not less than 10 business days prior to the date for receipt of Bids a written request for interpretation and clarification. Request for "or equal" product approvals shall be addressed in the same manner and shall be submitted on the required form. No verbal answer, solution, interpretations nor acceptance of an "or equal/substitution" shall be honored. Only

information issued as part of the Owner's published documents, including addenda, shall be considered as part of the project.

**§ 3.2.3** Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.

**§ 3.2.4** Bidders are instructed to inform the Architect and Owner if the Contract Documents call for materials, equipment or methods, which adversely affect quality of that project, or are unavailable.

**§ 3.2.5** Cooperation during Bidding Period:

**§ 3.2.5.1** Each Bidder shall contact the Architect and Owner when questions arise in analyzing the Drawings and Specifications, and when clarification or additional information is needed. All such communication shall be in writing and through the Architect and Owner via email

**§ 3.2.5.2** The Architect will provide information required, provided the Architect's ethical and legal responsibilities to the Owner are not encroached upon. This will include assisting Bidders, upon request, in locating the suppliers of unique products specified, and other assistance as may be helpful in the preparation of a proper, competitive Bid.

### **§ 3.3 SUBSTITUTIONS**

**§ 3.3.1** The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

**§ 3.3.2** No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Architect and Owner at least ten (10) business days prior to the date for receipt of Bids. Such requests shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of the Work, including changes in the work of other contracts that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect and Owner's decision of approval or disapproval of a proposed substitution shall be final.

**§ 3.3.3** If the Architect and Owner approve a proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.

**§ 3.3.4** No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

### **§ 3.4 ADDENDA**

**§ 3.4.1** Addenda will be transmitted to all who are known by the issuing office to have received a complete set of Bidding Documents.

**§ 3.4.1.1** A copy of the addenda will be mailed, emailed, faxed or delivered (at the Architect and Owner's option) to each prime Bidder of record, and to each prospective prime Bidder requesting a copy. Prime Bidders who request and are sent such documents are considered "Prime Bidders of Record".

**§ 3.4.2** Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

**§ 3.4.3** Addenda will be issued no later than four days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

**§ 3.4.4** Each Bidder shall ascertain prior to submitting a Bid that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

§ 3.4.4.1 Bidders are responsible for acquiring any Addenda and to incorporate those requirements into their Bid.

## **ARTICLE 4 BIDDING PROCEDURES**

### **§ 4.1 PREPARATION OF BIDS**

§ 4.1.1 Bids shall be submitted on the forms included with the Bidding Documents.

§ 4.1.1.1 Bids shall be executed upon the current Indiana State Board of Accounts Form No. 96, "Contractors Bid for Public Works" together with the Supplemental Bid Proposal Forms (if required) provided, and all sections in the forms shall be filled. The signature shall be legible and the completed form shall be without interlineations, alteration, or erasure. Each Bidder is required to bid every item required on his Bid Form, including alternative and unit costs, if any are requested.

§ 4.1.1.2 Each bid, and each exact copy thereof, must be accompanied by a completed Indiana State Board of Accounts Form No. 96. A copy of the Bidder's current financial statement and all other required information and attachments shall be provided with each copy of the Bid. The Bidder shall include information confirming his construction experience, size and history of the organization, and equipment and other resources available to complete the work contemplated.

§ 4.1.1.3 Proposals (Form 96) and the Supplemental Bid Proposal Form shall be accompanied by the following supplemental documents:

1. Bid Security
2. AIA form A305, Contractor's Qualification Statement
3. Non-Collusion Affidavit
4. Most Recent Financial Statement
5. Written Drug Testing Plan per Indiana law
6. Certificate of Authority from Secretary of State (Indiana).
7. Documentation showing pre-qualification by the Indiana Public Works Certification Board

§ 4.1.2 All blanks on the Bid form shall be legibly executed in a non-erasable medium.

§ 4.1.2.1 Each Bidder shall enumerate in the space provided in his bid the addenda he has incorporated into his proposal.

§ 4.1.2.2 It is the Bidder's responsibility to include in his bid, all costs necessary for a complete and finished product as it relates to his contract category (s). Bids on partial or incomplete contract category (ies) will be considered non-responsive and will be rejected.

§ 4.1.2.3 By submitting a bid, the Bidder confirms that he/she can complete the work in the duration scheduled and in accordance with the Owner's construction schedule.

§ 4.1.2.4 Submit Bids with Bid Security, and other requested supplemental material attached in DUPLICATE; the documents shall be properly and completely executed.

§ 4.1.3 Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

§ 4.1.4 Any interlineations, alteration, or erasure will be grounds for rejection of the proposal. Proposal shall contain no recapitulation of the work to be done.

§ 4.1.4.1 Proposals shall be based on the materials, construction, equipment, and methods named or described in the specifications and on the drawing and any addenda issued prior to bidding.

§ 4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change."



**§ 4.1.5.1** Each Bidder, in addition to the submission of his lump sum base bid, shall submit Bids for alternative Bids called for as they relate to the prime contract (s) being bid; failure to submit said Bids shall be sufficient cause for the Owner to reject the Bid in its entirety. The Owner may consider alternative Bids in the awarding of a Contract. This is not mandatory and the acceptance of alternates will depend on available funds.

**§ 4.1.5.2** Each Bidder shall be responsible for bidding Alternatives which affect the work of the Contract Categories he is bidding, regardless of whether listed or not listed on the Proposal Form. If an applicable alternative (s) is not listed on the Proposal Form, the Bidder shall submit on his letterhead the cost of said alternative (s). No additional monies will be allowed after signing of contracts for failure to bid applicable Alternatives.

**§ 4.1.5.3** The Owner retains the right to include or exclude work required by alternatives for the sums established exercisable within **60** calendar days from and including the date of signing the Contract Documents.

**§ 4.1.6** Combined Bids (if advertised)

**§ 4.1.6.1** Bids shall be submitted for each individual Bid Category. Bids may be submitted for a combination of two or more Bid Categories, provided that individual Bids are submitted for each Bid Category in the combination. A single lump sum combination bid without the individual Bids is not acceptable.

**§ 4.1.6.2** Separate Bids and combination Bids may be submitted in the same bid envelope. Clearly indicate on the envelope what Bid Categories and Combination Bids are included.

**§ 4.1.6.3** A single bid bond is acceptable if the amount of the bond is for the maximum amount of any individual bid or combination bid, including alternates.

**§ 4.1.7** Each copy of the Bid shall state the legal name of the Bidder and the nature of legal form of the Bidder. The Bidder shall provide evidence of legal authority to perform within the jurisdiction of the Work. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

**§ 4.1.8** Proposals shall be signed personally by the Bidder, by a partner, member, or by duly authorized officer for a corporation, and shall give the Bidder's business address, email, and telephone number.

**§ 4.1.8.1** Certified copies of resolutions and power of attorney authorizing various individuals to sign the proposals shall be enclosed with proposal.

**§ 4.1.8.2** Proposals submitted by a non-Indiana corporation shall be accompanied by a certificate of good standing issued by the Indiana Secretary of State.

**§ 4.1.9** Bids, which are not signed by the individuals making them, shall have attached thereto a Power of Attorney evidencing authority to sign the Bid in the name of the person for whom it is signed. Bids, which are signed for a partnership, shall be signed by the partners, or by an attorney-in-fact. If signed by an attorney-in-fact, there shall be attached to the Bid a Power of Attorney evidencing authority to sign the Bid, executed by the partners.

**§ 4.1.10** Bids, which are signed for a corporation, shall have the authorized officer of the corporation manually written below the corporate name, following the word "By". If such a bid is manually signed by an officer other than the president or vice president of the corporation, a certified copy of a resolution by the Board of Directors evidencing the authority of such official to sign the Bid shall be attached to it. The bid shall also bear the attesting signature of the secretary of the corporation and the impression of the corporate seal.

## § 4.2 BID SECURITY

§ 4.2.1 Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the Instructions to Bidders. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract Documents and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the Bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. The amount of the Bid security shall not be forfeited to the Owner in the event the Owner fails to comply with Section 6.2.

§ 4.2.1.1 The Bid Security shall be in the amount shown in the Advertisement for Bids and applicable law.

§ 4.2.1.2 Bid security of Bidders, except the 3 selected best qualified in each category, may be returned within 14 days after the opening of Bids, at the Owner's or Architect's option.

§ 4.2.2 If a surety bond is required, it shall be written on AIA Document A310, Bid Bond, unless otherwise provided in the Bidding Documents, and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney.

§ 4.2.3 The Owner will have the right to retain the Bid security of Bidders to whom an award is being considered until either (a) the Contract Documents have been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.

§ 4.2.3.1 Bid security of up to three apparent lowest responsible and responsive bidders in each category may be held by the Owner, following the Bid opening, for not more than the maximum number of days stipulated in the Notice to Bidders, unless the Owner and the Bidders agree otherwise; except that in the event a qualified bidder has been awarded the Contract for the Work, and has failed to execute the Contract Documents acceptable to Owner, and furnish performance bond, then the Bid security of such bidder will be subject to forfeit, and the next qualified bidder, if tendered the Contract for the Work, will be subject to the same provisions as hereinbefore set forth. Should the award fall to the third qualified bidder because of a default of the previous two qualified bidders, the same condition will apply to the third bidder as hereinbefore set forth.

§ 4.2.3.2 The bid security of the unsuccessful bidders of each Contract category will be returned after the Form of Agreement has been executed by the Owner.

§ 4.2.3.3 In the event that the Owner should decide to reject all Bids in connection with a given Contract or Contracts, the Bid securities in connection with the Contracts will be returned within 3 business days following such decision.

## § 4.3 SUBMISSION OF BIDS

§ 4.3.1 All copies of the Bid, the Bid security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

§ 4.3.1.1 The bid envelope shall be identified as follows:

\*\*\*SEALED BID\*\*\*

TO:  
Brian Tomamichel  
Westfield Washington Schools  
1143 East 181st Street  
Westfield, IN 46074-8926

BID ON: Bid Category Name and Number  
PROJECT NAME:  
SUBMITTED BY: Company Name and Address  
BID DATE AND BID OPENING TIME: \_\_\_\_\_

§ 4.3.2 Bids shall be deposited at the designated location prior to the time and date for receipt of Bids or prior to any extension thereof issued by addenda. Bids received after the time and date for receipt of Bids will be returned unopened.

§ 4.3.3 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

§ 4.3.4 Oral, telephonic, telegraphic, facsimile or other electronically transmitted Bids will not be considered.

§ 4.3.5 Taxes. Materials and supplies purchased by contracts with the Owner that become a permanent part of the structure or facilities constructed are currently not subject to the Indiana Gross Retail Tax (Sales Tax). The Contractor shall obtain a copy of the Owner's exemption certificate and then issue copies of this certificate to his suppliers when acquiring materials and properties for use on each Project. The Contractor shall enforce this exemption clause for his purchases and for those of his Subcontractors.

§ 4.3.6 Out-of-State Contractors

§ 4.3.6.1 Proof of payment by out-of-state Contractors of Indiana Gross Income Tax, as provided in Chapter 370, Section 2, Subsection E, Acts of 1947, shall be submitted before final payment will be approved. Out-of-state Contractors should be authorized to do business in the State of Indiana and their Bid shall be accompanied by a "Certificate of Authority" issued by the Indiana Secretary of State. Forms may be obtained by contacting the Secretary of State, State of Indiana, Indianapolis, Indiana, and proof thereof submitted with the Bidder's proposal at the time of bidding.

§ 4.3.6.2 If the out-of-state Contractor is not a corporation, or is a corporation but does not obtain authorization to do business in the State of Indiana, applicable taxes will be withheld by the Owner.

§ 4.4 MODIFICATION OR WITHDRAWAL OF BID

§ 4.4.1 A Bid may not be modified, withdrawn or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.

§ 4.4.2 Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. Written confirmation over the signature of the Bidder shall be received, and date- and time-stamped by the receiving party on or before the date and time set for receipt of Bids. A change shall be so worded as not to reveal the amount of the original Bid.

§ 4.4.3 Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

§ 4.4.4 Bid security, if required, shall be in an amount sufficient for the Bid as resubmitted.

**ARTICLE 5 CONSIDERATION OF BIDS**

**§ 5.1 OPENING OF BIDS**

§ 5.1.1 The Notice to Bidders indicates the time and place fixed for opening Bids



§ 5.1.2 Bids received prior to the time of opening will be securely kept, unopened. The officer whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be accepted or considered responsive.

§ 5.1.3 No responsibility will be attached to an officer for the premature opening of a bid not properly addressed and identified.

§ 5.1.4 Every bid received within the time fixed for the receiving of Bids will be opened and read aloud. Bidders and other interested persons may be present in person or by representative.

§ 5.1.5 The amounts involved in alternatives requested will be read or disclosed as part of the requirements of this Article. Voluntary alternates will not be read or considered.

§ 5.1.6 The Owner reserves the right to delay the time for opening of Bids when, in his judgment, it is desirable or necessary.

§ 5.1.7 The Bids will be reviewed for completeness and irregularity by the Owner and Architect after the Bid opening.

## § 5.2 REJECTION OF BIDS

§ 5.2.1 The Owner shall have the right to reject any or all Bids. A Bid not responsive, accompanied by a required bid security, or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.

§ 5.2.2 The Owner reserves the right to reject each and every bid, to reject all Bids in a given category, to waive formalities and informalities in bidding, to accept and reject alternatives, regardless of their order or sequence.

§ 5.2.3 The right is reserved to reject a bid where an investigation of the available evidence of information does not satisfy the Owner that the Bidder is responsible, responsive, or qualified to complete the Work or properly carry out the terms of the Contract Documents.

§ 5.2.4 Bona fide Bids in a definite stated amount for a complete Contract Category without special clauses governing price of labor and material increases, shall be the only ones that will be considered. No contract shall be entered into carrying what is commonly known as an "Escalator Clause".

§ 5.2.5 Bids which contain qualifications or conditions that are contrary to the text or intent of the Contract Documents, do not comply with applicable public works and public contract laws, and which are inserted in the Bid for the purpose of limiting or otherwise qualifying the responsibility of the Bidder, outside of the text or intent of the Contract Documents, will be subject to disqualification.

§ 5.2.6 Failure to submit the requested information with the Bid may be grounds for rejecting the Bid.

§ 5.2.7 In determining whether a bidder is a responsible bidder, the Owner may consider the following factors: 1. The ability and capacity of the bidder to perform the work. 2. The integrity, character, and reputation of the bidder. 3. The competence and experience of the bidder. The Owner also reserves the right to reject the Bid of a Bidder who has previously failed to perform properly or to complete Contracts of a similar nature on time, who is not in a position to perform the Contract, or who has habitually, and without just cause neglected the payment of bills or otherwise disregarded his obligations to subcontractors, suppliers, vendors, materialmen or employees.

## § 5.3 ACCEPTANCE OF BID (AWARD)

§ 5.3.1 It is the intent of the Owner to award a Contract to the lowest responsible and responsive Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

In determining whether a bidder is responsive, the Owner may consider the following factors: (A) Whether the bidder has submitted a bid or quote that conforms in all material respects to the specifications. (B) Whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders. (C) Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract. In determining whether a bidder is a responsible bidder, the Owner may consider the following factors: (A) The ability and capacity of the bidder to perform the work. (B) The integrity, character, and reputation of the bidder. (C) The competence and experience of the bidder.

**§ 5.3.1.1** In determining the lowest responsible and responsive bidder, the following elements, in addition to those above mentioned, will be considered. Whether the Bidder involved (1) maintains a permanent place of business in Indiana (2) has adequate material, supplies, labor, and equipment available to do the Work properly and expeditiously, (3) has suitable financial resources to meet the obligations incidental to the Work, and (4) has appropriate technical experience and compliance with DOL and EEOC requirements.

**§ 5.3.2** The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted.

**§ 5.3.2.1** Unit prices, if requested, will not be considered in the award and determination of the lowest bid.

**5.4** The Contract shall be deemed as having been awarded when formal "Notice to Proceed" shall have been duly served upon the intended Awardee.

**§ 5.5** Time of Commencement and Completion

**§ 5.5.1** The Contractor shall commence Work within five (5) business days after receipt of notice-to-proceed or as indicated on the Milestone Schedule, and shall complete the Work within the time limitations established by the Contract Documents, Owner's schedule and the most current project schedule.

## **ARTICLE 6 POST-BID INFORMATION**

### **§ 6.1 CONTRACTOR'S QUALIFICATION STATEMENT**

Bidders to whom award of a Contract is under consideration shall submit to the Architect and Owner, upon request, a properly executed AIA Document A305, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted as a prerequisite to the issuance of Bidding Documents.

*(Paragraphs deleted)*

**§ 6.1.1** The Owner will have the right to take such other steps as he deems necessary to determine the ability of the Bidder to perform the Work, and the Bidder shall furnish the Owner requested documentation for this purpose.

### **§ 6.3 SUBMITTALS**

**§ 6.3.1** The

*(Paragraphs deleted)*

apparent lowest bidder for each contract, and the 2nd and 3rd lowest bidders for each contract, shall provide a completed "Subcontractor and Material Supplier List", no later than one (1) business day after the time set for receipt of Bids.

**§ 6.3.1.1** The Owner and Architect have the right to choose the Subcontractor, Material, Supplies, or Equipment for any particular item where the Bidder fails to list same.

**§ 6.3.1.2** When products are named and a list of acceptable manufactures is included in the specifications, Bidders shall select one of the named manufacturers in his Subcontractors and Materials List.

**§ 6.3.1.3** After the submission and approval of this Subcontractors and Materials List by the Architect and Owner, the Contractor shall make no changes or alterations without the written approval of the Architect, and Owner.

**§ 6.3.2** The Bidder will be required to establish to the satisfaction of the Architect and Owner the qualifications, reliability, and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

**§ 6.3.3** Prior to the execution of the Contract, the Architect and Owner will notify the Bidder in writing if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

**§ 6.3.4** Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.

## **ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND**

### **§ 7.1 BOND REQUIREMENTS**

**§ 7.1.1** If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract, completion of the Work, and payment of all obligations arising thereunder. Bonds may be secured through the Bidder's usual sources.

**§ 7.1.2** If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of Bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

*(Paragraph deleted)*

**§ 7.1.3** The successful prime Bidder, awarded the contracts on the Work and prior to the execution of the Form of Agreement, shall be required to provide a Performance Bond and Labor and Materials Payment Bond, covering completion of the Work, the faithful performance of the contract, and the payment of obligations arising there under in a penalty sum equal to One Hundred percent (100%) of the amount of the contract sum. Said bonds shall remain in effect for 24 months after date established as start of two-year guarantee period.

**§ 7.1.4** Bonds shall be submitted on AIA Document A312 or adequate and proper surety company form conforming to the AIA Document A312.

**§ 7.1.5** It is required that the surety company complies with the following:

**§ 7.1.5.1** Be listed in the Federal Register, latest applicable issue, by the U.S. Department of the Treasury, Fiscal Service, Bureau of Government Financial Operations (Circular #570).

**§ 7.1.5.2** Not exceed, at the time of bidding or issuance of a Contract for his project, the underwriting limitations (on any one risk) as stipulated in the Federal Register.

**§ 7.1.5.3** Be acceptable to the Owner and Indiana State Board of Accounts

### **§ 7.2 TIME OF DELIVERY AND FORM OF BONDS**

**§ 7.2.1** The Bidder shall deliver the required bonds and insurance forms to the Architect and Owner with the executed Contract Documents to be forwarded to the Owner.

**§ 7.2.2** Bonds shall be executed and be in force on the date of the Notice to Proceed or Contract date if a Notice-to-Proceed is not issued..

**§ 7.2.3** The Bidder shall require the attorney-in-fact who executed the required bonds on behalf of the Surety to affix thereto a certified and current copy of his power-of-attorney indicating the monetary limit of such power..

*(Paragraph deleted)*

## **ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**§ 8.1.1** AIA Document series, Standard Form of Agreement Between Owner and Contractor – , modified by the Owner for the Work, is to be used. The agreement must contain terms and conditions acceptable to Owner, will be modified to comply with applicable laws, and add a listing Contract Documents, which are to be part of the Terms and Conditions of the Agreement (i.e. List of Drawings, Specifications, etc.).

**§ 8.1.2** The failure of the Awardee to execute the Contract and to supply the required bonds when the Agreement is presented for signature, or within such extended period as the Owner may grant, based upon reasons determined adequate by the Owner, shall constitute a default; and the Owner may either award the Contract to the next lowest responsible and responsive bidder or re-advertise for Bids. In the event of a default, the Owner shall have the right to declare the amount of the Bid security forfeited. It shall be a further condition that the Owner shall not collect more on a defaulted bid that the difference between the defaulted bid amount and the Bid of the firm to which the award is made, after giving due weight and consideration to alternatives accepted.

## **ARTICLE 9 MISCELLANEOUS REQUIREMENTS**

**§ 9.01** Wage rates shall not apply to each Project. All Bidders and Sub-Contractors must agree to and shall comply with the provisions of Indiana Code, public work statutes, and public contract statutes as applicable to the Work.

**§ 9.02** All Bidders and Sub-Contractors must agree to and shall comply with the applicable provisions of Indiana Code §§ 5-16-6, 5-16-13, *et seq*, and 36-1-12, *et seq*.

**§ 9.03** The Bidder must certify before entering into a contract with Owner that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into a contract with Owner by any federal agency or by any department, agency or political subdivision of the State of Indiana.

**§ 9.04** The Bidder must agree it shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the Owner becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on a project, the Owner may request in writing the replacement of any or all such individuals, and the Bidder shall grant such request.

**§ 9.05** The Bidder shall implement the employee drug testing program submitted as part of its Bid. The Bidder must also covenant and agree to make a good faith effort to provide and maintain a drug-free workplace and conduct criminal background checks on any personnel present on Owner's property.

**§ 9.06** The Bidder must warrant the Bidder and its subcontractors, will obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all insurance, unemployment, workers compensation, health, safety, and environmental statutes, rules, or regulations in the performance of work activities.

**§ 9.07** The Bidder must swear and affirm under the penalties of perjury it does not knowingly employ an unauthorized alien and complies with Ind. Code § 22-5-1.7

**§ 9.08** When the Owner makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of the Contract, Bidder understands the Contract shall be

canceled at Owner's option.

**§ 9.09** The Bidder must agree to indemnify, defend, and hold harmless the Owner, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Bidder and/or its subcontractors, in the performance of this Contract. The Owner shall not provide such indemnification to the Bidder.

**§ 9.10** The Bidder must agree to comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included in the Contract Documents will be incorporated by reference.

**§ 9.11** The Bidder must agree to warrant and guarantee all materials and equipment incorporated in the Work shall be new unless otherwise specified, and all Work will be of the highest quality, free from faults and defects, and in strict conformance with the Contract Documents for a period of two years from the date of substantial completion. Any work not so conforming to the Contract Documents may be considered defective. If required by the Owner, the Bidder must agree to furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranties and guarantees outlined in this document and elsewhere in the Contract Documents shall be in addition to and not in limitation of any other warranty or guarantee or remedy called for the Contract Documents, allowed by the manufacturer, or otherwise prescribed by law. The Bidder, together with the Architect and representatives from the Owner, shall review the Work nine (9) months after the date of substantial completion to determine any work not in compliance with the Contract Documents. The Bidder must agree to correct such non-complying work prior to the expiration of the two year warranty.



# Additions and Deletions Report for AIA<sup>®</sup> Document A701<sup>™</sup> – 1997

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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## PAGE 1

Carey Ridge Elementary School  
16231 Carey Road, Westfield, IN 46074  
&  
Oak Trace Elementary School  
16504 Oak Ridge Road, Westfield, In 46074

*(Name, legal status and address)*

Westfield Washington Schools  
1143 East 181st Street  
Westfield, IN 46074-8926

...

not applicable

## PAGE 2

**§ 1.1** Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, Supplementary Instructions to Bidders, the ~~bid~~ Bid form, and other sample bidding and contract forms. The proposed Contract Documents consist of the ~~form~~ Form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Addenda issued prior to execution of the Contract.

**§ 1.2** Definitions set forth in the General Conditions of the Contract for Construction, ~~AIA Document A201,~~ Document, or in other Contract Documents are applicable to the Bidding Documents.

...

**§ 1.4** A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding ~~Documents.~~ Documents and applicable laws.

...

**§ 1.10** All communications to the Architect, noted above, shall be in writing.

...

**§ 2.1.1** The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of ~~the~~ that Project, if any, being bid concurrently or presently under construction.

§ 2.1.2 The Bid is made in compliance with the Bidding Documents and applicable laws.

...

§ 2.1.3.1 No claims for extra compensation shall be allowed due to failure of any Bidder to examine conditions, which exist at the building site nor for conditions of difficulties encountered in execution of Work, which may have been avoided by such prior examination.

§ 2.2 Each Bidder by submitting a Bid also agrees that, if accepted by the Owner, his Bid will be the basis for an agreement directly with the Owner and agrees to enter into such agreement in accordance with the intent of the Contract Documents and the Work.

§ 2.3 It is the purpose and intent of the Contract Documents, that a complete job be accomplished. It shall be each Bidder's responsibility to include costs necessary to provide labor, services, equipment, supplies, and materials for that portion of the Work bid upon, including incidentals, whether or not specifically called for in the Specifications and Drawings.

§ 2.4 The Bidder has carefully examined the documents and the construction site and informed himself of the limitations and conditions related to the Work covered by his Bid, and shall include in his Bid a sum to cover the cost of such items. Contractors will not be given extra payments for conditions, which could have been determined by examining the site and documents.

§ 2.5 Each Bidder by making his Bid represents that he has read and understands the Bidding requirements for the Work and contract categories he is submitting a bid on, and further that he has read and understands the Work of other contract categories which require interface with the contract category (s) upon which he is bidding.

### PAGE 3

§ 3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement or Invitation to Bid in the number and for the deposit sum, if any, stated therein. The deposit will not be refunded to any prospective Bidders or for Bidders who submit a bona fide Bid and return the Bidding Documents in good condition within ten days after receipt of Bids. ~~The cost of replacement of missing or damaged documents will be deducted from the deposit.~~ A Bidder receiving a Contract award may retain the Bidding Documents ~~and~~ but the Bidder's deposit will not be refunded.

...

§ 3.1.3 Bidders shall consult applicable permit standards, certification standards, accrediting standards, and building standards, and any other laws, rules, or regulations governing the Work to be provided and use complete sets of Bidding Documents in preparing Bids; neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the lack of familiarity with standards, laws, rules, or regulations governing the Work or use of incomplete sets of Bidding Documents.

...

§ 3.2.1 The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Architect and Owner errors, inconsistencies or ambiguities discovered.

§ 3.2.2 Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Architect at least seven days prior to the date for receipt of Bids.

§ 3.2.2. Prospective Bidders in doubt as to the true meaning of a part of the Drawings, Specifications, or other Contract Documents shall submit to the Architect and Owner, not less than 10 business days prior to the date for receipt of Bids a written request for interpretation and clarification. Request for "or equal" product approvals shall be addressed in the same manner and shall be submitted on the required form. No verbal answer, solution, interpretations nor acceptance of an "or equal/substitution" shall be honored. Only information issued as part of the Owner's published documents, including addenda, shall be considered as part of the project.

§ 3.2.4 Bidders are instructed to inform the Architect and Owner if the Contract Documents call for materials, equipment or methods, which adversely affect quality of that project, or are unavailable.

§ 3.2.5 Cooperation during Bidding Period:

§ 3.2.5.1 Each Bidder shall contact the Architect and Owner when questions arise in analyzing the Drawings and Specifications, and when clarification or additional information is needed. All such communication shall be in writing and through the Architect and Owner via email

§ 3.2.5.2 The Architect will provide information required, provided the Architect's ethical and legal responsibilities to the Owner are not encroached upon. This will include assisting Bidders, upon request, in locating the suppliers of unique products specified, and other assistance as may be helpful in the preparation of a proper, competitive Bid.

**PAGE 4**

§ 3.3.2 No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Architect and Owner at least ten (10) business days prior to the date for receipt of Bids. Such requests shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of the Work, including changes in the work of other contracts that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's Architect and Owner's decision of approval or disapproval of a proposed substitution shall be final.

§ 3.3.3 If the Architect approves and Owner approve a proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.

...

§ 3.4.1.1 A copy of the addenda will be mailed, emailed, faxed or delivered (at the Architect and Owner's option) to each prime Bidder of record, and to each prospective prime Bidder requesting a copy. Prime Bidders who request and are sent such documents are considered "Prime Bidders of Record".

**PAGE 5**

§ 3.4.4.1 Bidders are responsible for acquiring any Addenda and to incorporate those requirements into their Bid.

...

§ 4.1.1.1 Bids shall be executed upon the current Indiana State Board of Accounts Form No. 96, "Contractors Bid for Public Works" together with the Supplemental Bid Proposal Forms (if required) provided, and all sections in the forms shall be filled. The signature shall be legible and the completed form shall be without interlineations, alteration, or erasure. Each Bidder is required to bid every item required on his Bid Form, including alternative and unit costs, if any are requested.

**§ 4.1.1.2** Each bid, and each exact copy thereof, must be accompanied by a completed Indiana State Board of Accounts Form No. 96. A copy of the Bidder's current financial statement and all other required information and attachments shall be provided with each copy of the Bid. The Bidder shall include information confirming his construction experience, size and history of the organization, and equipment and other resources available to complete the work contemplated.

**§ 4.1.1.3** Proposals (Form 96) and the Supplemental Bid Proposal Form shall be accompanied by the following supplemental documents:

1. Bid Security
2. AIA form A305, Contractor's Qualification Statement
3. Non-Collusion Affidavit
4. Most Recent Financial Statement
5. Written Drug Testing Plan per Indiana law
6. Certificate of Authority from Secretary of State (Indiana).
7. Documentation showing pre-qualification by the Indiana Public Works Certification Board

**§ 4.1.2** All blanks on the bid-Bid form shall be legibly executed in a non-erasable medium.

**§ 4.1.2.1** Each Bidder shall enumerate in the space provided in his bid the addenda he has incorporated into his proposal.

**§ 4.1.2.2** It is the Bidder's responsibility to include in his bid, all costs necessary for a complete and finished product as it relates to his contract category (s). Bids on partial or incomplete contract category (ies) will be considered non-responsive and will be rejected.

**§ 4.1.2.3** By submitting a bid, the Bidder confirms that he/she can complete the work in the duration scheduled and in accordance with the Owner's construction schedule.

**§ 4.1.2.4** Submit Bids with Bid Security, and other requested supplemental material attached in DUPLICATE; the documents shall be properly and completely executed.

...

**§ 4.1.4** ~~Interlineations, alterations and erasures must be initialed by the signer of the Bid.~~ Any interlineations, alteration, or erasure will be grounds for rejection of the proposal. Proposal shall contain no recapitulation of the work to be done.

**§ 4.1.4.1** Proposals shall be based on the materials, construction, equipment, and methods named or described in the specifications and on the drawing and any addenda issued prior to bidding.

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**§ 4.1.5.1** Each Bidder, in addition to the submission of his lump sum base bid, shall submit Bids for alternative Bids called for as they relate to the prime contract (s) being bid; failure to submit said Bids shall be sufficient cause for the Owner to reject the Bid in its entirety. The Owner may consider alternative Bids in the awarding of a Contract. This is not mandatory and the acceptance of alternates will depend on available funds.

**§ 4.1.5.2** Each Bidder shall be responsible for bidding Alternatives which affect the work of the Contract Categories he is bidding, regardless of whether listed or not listed on the Proposal Form. If an applicable alternative (s) is not listed on the Proposal Form, the Bidder shall submit on his letterhead the cost of said alternative (s). No additional monies will be allowed after signing of contracts for failure to bid applicable Alternatives.

**§ 4.1.5.3** The Owner retains the right to include or exclude work required by alternatives for the sums established exercisable within 60 calendar days from and including the date of signing the Contract Documents.

§ 4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall make no additional stipulations on the bid form nor qualify the Bid in any other manner. Combined Bids (if advertised)

§ 4.1.6.1 Bids shall be submitted for each individual Bid Category. Bids may be submitted for a combination of two or more Bid Categories, provided that individual Bids are submitted for each Bid Category in the combination. A single lump sum combination bid without the individual Bids is not acceptable.

§ 4.1.6.2 Separate Bids and combination Bids may be submitted in the same bid envelope. Clearly indicate on the envelope what Bid Categories and Combination Bids are included.

§ 4.1.6.3 A single bid bond is acceptable if the amount of the bond is for the maximum amount of any individual bid or combination bid, including alternates.

...

§ 4.1.8 Proposals shall be signed personally by the Bidder, by a partner, member, or by duly authorized officer for a corporation, and shall give the Bidder's business address, email, and telephone number.

§ 4.1.8.1 Certified copies of resolutions and power of attorney authorizing various individuals to sign the proposals shall be enclosed with proposal.

§ 4.1.8.2 Proposals submitted by a non-Indiana corporation shall be accompanied by a certificate of good standing issued by the Indiana Secretary of State.

§ 4.1.9 Bids, which are not signed by the individuals making them, shall have attached thereto a Power of Attorney evidencing authority to sign the Bid in the name of the person for whom it is signed. Bids, which are signed for a partnership, shall be signed by the partners, or by an attorney-in-fact. If signed by an attorney-in-fact, there shall be attached to the Bid a Power of Attorney evidencing authority to sign the Bid, executed by the partners.

§ 4.1.10 Bids, which are signed for a corporation, shall have the authorized officer of the corporation manually written below the corporate name, following the word "By". If such a bid is manually signed by an officer other than the president or vice president of the corporation, a certified copy of a resolution by the Board of Directors evidencing the authority of such official to sign the Bid shall be attached to it. The bid shall also bear the attesting signature of the secretary of the corporation and the impression of the corporate seal.

§ 4.2.1 Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the Instructions to Bidders. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract Documents and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid-Bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. The amount of the bid-Bid security shall not be forfeited to the Owner in the event the Owner fails to comply with Section 6.2.

§ 4.2.1.1 The Bid Security shall be in the amount shown in the Advertisement for Bids and applicable law.

§ 4.2.1.2 Bid security of Bidders, except the 3 selected best qualified in each category, may be returned within 14 days after the opening of Bids, at the Owner's or Architect's option.

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§ 4.2.3 The Owner will have the right to retain the bid-Bid security of Bidders to whom an award is being considered until either (a) the Contract Documents have been executed and bonds, if required, have



been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.

§ 4.2.3.1 Bid security of up to three apparent lowest responsible and responsive bidders in each category may be held by the Owner, following the Bid opening, for not more than the maximum number of days stipulated in the Notice to Bidders, unless the Owner and the Bidders agree otherwise; except that in the event a qualified bidder has been awarded the Contract for the Work, and has failed to execute the Contract Documents acceptable to Owner, and furnish performance bond, then the Bid security of such bidder will be subject to forfeit, and the next qualified bidder, if tendered the Contract for the Work, will be subject to the same provisions as hereinbefore set forth. Should the award fall to the third qualified bidder because of a default of the previous two qualified bidders, the same condition will apply to the third bidder as hereinbefore set forth.

§ 4.2.3.2 The bid security of the unsuccessful bidders of each Contract category will be returned after the Form of Agreement has been executed by the Owner.

§ 4.2.3.3 In the event that the Owner should decide to reject all Bids in connection with a given Contract or Contracts, the Bid securities in connection with the Contracts will be returned within 3 business days following such decision.

...

§ 4.3.1 All copies of the Bid, the bid-Bid security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

§ 4.3.1.1 The bid envelope shall be identified as follows:

\*\*\*SEALED BID\*\*\*

TO: \_\_\_\_\_  
Brian Tomamichel  
Westfield Washington Schools  
1143 East 181st Street  
Westfield, IN 46074-8926  
BID ON: Bid Category Name and Number  
PROJECT NAME: \_\_\_\_\_  
SUBMITTED BY: Company Name and Address  
BID DATE AND BID OPENING TIME: \_\_\_\_\_

§ 4.3.2 Bids shall be deposited at the designated location prior to the time and date for receipt of Bids. Bids or prior to any extension thereof issued by addenda. Bids received after the time and date for receipt of Bids will be returned unopened.

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§ 4.3.4 Oral, telephonic, telegraphic, facsimile or other electronically transmitted bids will not be considered. Bids will not be considered.

§ 4.3.5 Taxes. Materials and supplies purchased by contracts with the Owner that become a permanent part of the structure or facilities constructed are currently not subject to the Indiana Gross Retail Tax (Sales Tax). The Contractor shall obtain a copy of the Owner's exemption certificate and then issue copies of this certificate to his suppliers when acquiring materials and properties for use on each Project. The Contractor shall enforce this exemption clause for his purchases and for those of his Subcontractors.

§ 4.3.6 Out-of-State Contractors

§ 4.3.6.1 Proof of payment by out-of-state Contractors of Indiana Gross Income Tax, as provided in Chapter 370, Section 2, Subsection E, Acts of 1947, shall be submitted before final payment will be approved. Out-of-state Contractors should be authorized to do business in the State of Indiana and their Bid shall be accompanied by a "Certificate of Authority" issued by the Indiana Secretary of State. Forms may be obtained by contacting the Secretary of State, State of Indiana, Indianapolis, Indiana, and proof thereof submitted with the Bidder's proposal at the time of bidding.

§ 4.3.6.2 If the out-of-state Contractor is not a corporation, or is a corporation but does not obtain authorization to do business in the State of Indiana, applicable taxes will be withheld by the Owner.

...

~~At the discretion of the Owner, if stipulated in the Advertisement or Invitation to Bid, the properly identified Bids received on time will be publicly opened and will be read aloud. An abstract of the Bids may be made available to Bidders.~~

§ 5.1.1 The Notice to Bidders indicates the time and place fixed for opening Bids

§ 5.1.2 Bids received prior to the time of opening will be securely kept, unopened. The officer whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be accepted or considered responsive.

§ 5.1.3 No responsibility will be attached to an officer for the premature opening of a bid not properly addressed and identified.

§ 5.1.4 Every bid received within the time fixed for the receiving of Bids will be opened and read aloud. Bidders and other interested persons may be present in person or by representative.

§ 5.1.5 The amounts involved in alternatives requested will be read or disclosed as part of the requirements of this Article. Voluntary alternates will not be read or considered.

§ 5.1.6 The Owner reserves the right to delay the time for opening of Bids when, in his judgment, it is desirable or necessary.

§ 5.1.7 The Bids will be reviewed for completeness and irregularity by the Owner and Architect after the Bid opening.

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~~The Owner shall have the right to reject any or all Bids. A Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.~~

§ 5.2.1 The Owner shall have the right to reject any or all Bids. A Bid not responsive, accompanied by a required bid security, or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.

§ 5.2.2 The Owner reserves the right to reject each and every bid, to reject all Bids in a given category, to waive formalities and informalities in bidding, to accept and reject alternatives, regardless of their order or sequence.

§ 5.2.3 The right is reserved to reject a bid where an investigation of the available evidence of information does not satisfy the Owner that the Bidder is responsible, responsive, or qualified to complete the Work or properly carry out the terms of the Contract Documents.

§ 5.2.4 Bona fide Bids in a definite stated amount for a complete Contract Category without special clauses governing price of labor and material increases, shall be the only ones that will be considered. No contract shall be entered into carrying what is commonly known as an "Escalator Clause".

**§ 5.2.5** Bids which contain qualifications or conditions that are contrary to the text or intent of the Contract Documents, do not comply with applicable public works and public contract laws, and which are inserted in the Bid for the purpose of limiting or otherwise qualifying the responsibility of the Bidder, outside of the text or intent of the Contract Documents, will be subject to disqualification.

**§ 5.2.6** Failure to submit the requested information with the Bid may be grounds for rejecting the Bid.

**§ 5.2.7** In determining whether a bidder is a responsible bidder, the Owner may consider the following factors: 1. The ability and capacity of the bidder to perform the work. 2. The integrity, character, and reputation of the bidder. 3. The competence and experience of the bidder. The Owner also reserves the right to reject the Bid of a Bidder who has previously failed to perform properly or to complete Contracts of a similar nature on time, who is not in a position to perform the Contract, or who has habitually, and without just cause neglected the payment of bills or otherwise disregarded his obligations to subcontractors, suppliers, vendors, materialmen or employees.

...

**§ 5.3.1** It is the intent of the Owner to award a Contract to the lowest ~~qualified~~ responsible and responsive Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests. In determining whether a bidder is responsive, the Owner may consider the following factors: (A) Whether the bidder has submitted a bid or quote that conforms in all material respects to the specifications. (B) Whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders. (C) Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract. In determining whether a bidder is a responsible bidder, the Owner may consider the following factors: (A) The ability and capacity of the bidder to perform the work. (B) The integrity, character, and reputation of the bidder. (C) The competence and experience of the bidder.

**§ 5.3.1.1** In determining the lowest responsible and responsive bidder, the following elements, in addition to those above mentioned, will be considered. Whether the Bidder involved (1) maintains a permanent place of business in Indiana (2) has adequate material, supplies, labor, and equipment available to do the Work properly and expeditiously, (3) has suitable financial resources to meet the obligations incidental to the Work, and (4) has appropriate technical experience and compliance with DOL and EEOC requirements.

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**§ 5.3.2.1** Unit prices, if requested, will not be considered in the award and determination of the lowest bid.

**5.4** The Contract shall be deemed as having been awarded when formal "Notice to Proceed" shall have been duly served upon the intended Awardee.

## **§ 5.5** Time of Commencement and Completion

**§ 5.5.1** The Contractor shall commence Work within five (5) business days after receipt of notice-to-proceed or as indicated on the Milestone Schedule, and shall complete the Work within the time limitations established by the Contract Documents, Owner's schedule and the most current project schedule.

...

Bidders to whom award of a Contract is under consideration shall submit to the ~~Architect~~, Architect and Owner, upon request, a properly executed AIA Document A305, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted as a prerequisite to the issuance of Bidding Documents.

## **§ 6.2 OWNER'S FINANCIAL CAPABILITY**

The Owner shall, at the request of the Bidder to whom award of a Contract is under consideration and no later than seven days prior to the expiration of the time for withdrawal of Bids, furnish to the Bidder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Unless such reasonable evidence is furnished, the Bidder will not be required to execute the Agreement between the Owner and Contractor.

§ 6.1.1 The Owner will have the right to take such other steps as he deems necessary to determine the ability of the Bidder to perform the Work, and the Bidder shall furnish the Owner requested documentation for this purpose.

§ 6.3.1 The Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, after notification of selection for the award of a Contract, furnish to the Owner through the Architect in writing:

- .1 — a designation of the Work to be performed with the Bidder's own forces;
- .2 — names of the manufacturers, products, and the suppliers of principal items or systems of materials and equipment proposed for the Work; and
- .3 — names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work, apparent lowest bidder for each contract, and the 2nd and 3rd lowest bidders for each contract, shall provide a completed "Subcontractor and Material Supplier List", no later than one (1) business day after the time set for receipt of Bids.

§ 6.3.1.1 The Owner and Architect have the right to choose the Subcontractor, Material, Supplies, or Equipment for any particular item where the Bidder fails to list same.

§ 6.3.1.2 When products are named and a list of acceptable manufactures is included in the specifications, Bidders shall select one of the named manufacturers in his Subcontractors and Materials List.

§ 6.3.1.3 After the submission and approval of this Subcontractors and Materials List by the Architect and Owner, the Contractor shall make no changes or alterations without the written approval of the Architect, and Owner.

§ 6.3.2 The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability qualifications, reliability, and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

§ 6.3.3 Prior to the execution of the Contract, the Architect and Owner will notify the Bidder in writing if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

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§ 7.1.1 If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the ~~Contract~~ Contract, completion of the Work, and payment of all obligations arising thereunder. Bonds may be secured through the Bidder's usual sources.

§ 7.1.2 If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of ~~bids~~ Bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

§ 7.1.3 If the Owner requires that bonds be secured from other than the Bidder's usual sources, changes in cost will be adjusted as provided in the Contract Documents.

§ 7.1.3 The successful prime Bidder, awarded the contracts on the Work and prior to the execution of the Form of Agreement, shall be required to provide a Performance Bond and Labor and Materials Payment Bond, covering completion of the Work, the faithful performance of the contract, and the payment of

obligations arising there under in a penalty sum equal to One Hundred percent (100%) of the amount of the contract sum. Said bonds shall remain in effect for 24 months after date established as start of two-year guarantee period.

**§ 7.1.4** Bonds shall be submitted on AIA Document A312 or adequate and proper surety company form conforming to the AIA Document A312.

**§ 7.1.5** It is required that the surety company complies with the following:

**§ 7.1.5.1** Be listed in the Federal Register, latest applicable issue, by the U.S. Department of the Treasury, Fiscal Service, Bureau of Government Financial Operations (Circular #570).

**§ 7.1.5.2** Not exceed, at the time of bidding or issuance of a Contract for his project, the underwriting limitations (on any one risk) as stipulated in the Federal Register.

**§ 7.1.5.3** Be acceptable to the Owner and Indiana State Board of Accounts

**§ 7.2.1** The Bidder shall deliver the required bonds to the Owner not later than three days following the date of execution of the Contract. If the Work is to be commenced prior thereto in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1, and insurance forms to the Architect and Owner with the executed Contract Documents to be forwarded to the Owner.

**§ 7.2.2** Unless otherwise provided, the bonds shall be written on AIA Document A312, Performance Bond and Payment Bond. Both bonds shall be written in the amount of the Contract Sum. Bonds shall be executed and be in force on the date of the Notice to Proceed or Contract date if a Notice-to-Proceed is not issued..

**§ 7.2.3** The bonds shall be dated on or after the date of the Contract. Bidder shall require the attorney-in-fact who executed the required bonds on behalf of the Surety to affix thereto a certified and current copy of his power-of-attorney indicating the monetary limit of such power..

**§ 7.2.4** The Bidder shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

## **ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**§ 8.1.1** AIA Document series, Standard Form of Agreement Between Owner and Contractor – , modified by the Owner for the Work, is to be used. The agreement must contain terms and conditions acceptable to Owner, will be modified to comply with applicable laws, and add a listing Contract Documents, which are to be part of the Terms and Conditions of the Agreement (i.e. List of Drawings, Specifications, etc.).

**§ 8.1.2** The failure of the Awardee to execute the Contract and to supply the required bonds when the Agreement is presented for signature, or within such extended period as the Owner may grant, based upon reasons determined adequate by the Owner, shall constitute a default; and the Owner may either award the Contract to the next lowest responsible and responsive bidder or re-advertise for Bids. In the event of a default, the Owner shall have the right to declare the amount of the Bid security forfeited. It shall be a further condition that the Owner shall not collect more on a defaulted bid that the difference between the defaulted bid amount and the Bid of the firm to which the award is made, after giving due weight and consideration to alternatives accepted.

## **ARTICLE 9 MISCELLANEOUS REQUIREMENTS**

**§ 9.01** Wage rates shall not apply to each Project. All Bidders and Sub-Contractors must agree to and shall comply with the provisions of Indiana Code, public work statutes, and public contract statutes as applicable to the Work.

**§ 9.02** All Bidders and Sub-Contractors must agree to and shall comply with the applicable provisions of



Indiana Code §§ 5-16-6, 5-16-13, *et seq.*, and 36-1-12, *et seq.*

**§ 9.03** The Bidder must certify before entering into a contract with Owner that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into a contract with Owner by any federal agency or by any department, agency or political subdivision of the State of Indiana.

**§ 9.04** The Bidder must agree it shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the Owner becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on a project, the Owner may request in writing the replacement of any or all such individuals, and the Bidder shall grant such request.

**§ 9.05** The Bidder shall implement the employee drug testing program submitted as part of its Bid. The Bidder must also covenant and agree to make a good faith effort to provide and maintain a drug-free workplace and conduct criminal background checks on any personnel present on Owner's property.

**§ 9.06** The Bidder must warrant the Bidder and its subcontractors, will obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all insurance, unemployment, workers compensation, health, safety, and environmental statutes, rules, or regulations in the performance of work activities.

**§ 9.07** The Bidder must swear and affirm under the penalties of perjury it does not knowingly employ an unauthorized alien and complies with Ind. Code § 22-5-1.7

**§ 9.08** When the Owner makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of the Contract, Bidder understands the Contract shall be canceled at Owner's option.

**§ 9.09** The Bidder must agree to indemnify, defend, and hold harmless the Owner, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Bidder and/or its subcontractors, in the performance of this Contract. The Owner shall not provide such indemnification to the Bidder.

**§ 9.10** The Bidder must agree to comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included in the Contract Documents will be incorporated by reference.

**§ 9.11** The Bidder must agree to warrant and guarantee all materials and equipment incorporated in the Work shall be new unless otherwise specified, and all Work will be of the highest quality, free from faults and defects, and in strict conformance with the Contract Documents for a period of two years from the date of substantial completion. Any work not so conforming to the Contract Documents may be considered defective. If required by the Owner, the Bidder must agree to furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranties and guarantees outlined in this document and elsewhere in the Contract Documents shall be in addition to and not in limitation of any other warranty or guarantee or remedy called for the Contract Documents, allowed by the manufacturer, or otherwise prescribed by law. The Bidder, together with the Architect and representatives from the Owner, shall review the Work nine (9) months after the date of substantial completion to determine any work not in compliance with the Contract Documents. The Bidder must agree to correct such non-complying work prior to the expiration of the two year warranty.**ARTICLE 8 – FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

Unless otherwise required in the Bidding Documents, the Agreement for the Work will be written on AIA Document A101, Standard Form of Agreement Between Owner and Contractor Where the Basis of Payment Is a Stipulated Sum.

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:03:50 ET on 05/30/2019 under Order No. 6947390835 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A701™ – 1997, Instructions to Bidders, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*