

contents are for convenience only. They do not control interpretation and do not relieve the parties of the obligation to read the Bid Documents or Contract as a whole.

101.3.5 Calculated Dimensions Control In the case of discrepancy between calculated dimensions and scaled dimensions, calculated dimensions shall control.

101.3.6 Priority of Conflicting Contract Documents If the Contractor discovers any ambiguity, error, omission, conflict, or discrepancy (“ambiguity, etc.”) related to the Contract Documents that may significantly affect the cost, quality, Conformity, or timeliness of the Work, the Contractor must comply with Section 104.3.3 - Duty to Notify Department If Ambiguities Discovered. In the case of ambiguity, etc., the following components of the Contract Documents shall control in the following descending order of priority:

Bid Amendments (most recent to least recent)

Project Specific Permit Requirements

Special Provisions

Notes on Plans

Plans

Supplemental Specifications

Supplemental Standard Details

Standard Specifications

Standard Details

101.3.7 Multiple Pay Items When there is more than one Pay Item for similar Work governed by one Specification, the item number in the Specification may be appended with additional digits to differentiate such multiple Pay Items. For example, Specification item 900.06 also covers Pay Items 900.061, 900.062, 900.0601, and 900.0602, etc. unless the context clearly indicates otherwise.

## SECTION 102 - BIDDING

Scope of Section This Section includes requirements related to eligibility to Bid and the Bidding process from advertisement for Bids, through Bid Opening, to the analysis of Bids.

## 102.1 Eligibility to Bid

102.1.1 Basic Requirements To be eligible to Bid, prospective Bidders must (A) comply with the Prequalification Procedure adopted by the Department, (B) not have been debarred or suspended from Bidding, and (C) not be in Default with respect to any outstanding Contract with the Department, unless the Department grants written permission to Bid despite such Default. For related provisions, see Sections 102.9 - Bid Opening and 103.3 - Post-Bid Qualification.

102.1.2 Suspension From Bidding The Department may suspend the right of a Contractor to submit Bids as the general Contractor on construction Projects being developed by the Department's Bureau of Project Development for up to two years pursuant to Department's "Rules Regarding Suspension From Bidding".

102.1.3 Debarment The Department may debar a Contractor from Bidding, subcontracting, or being employed in any capacity regarding any Project administered by the Department pursuant to "Rules Regarding Debarment of Contractors", Maine Department of Transportation Register 17-229, Chapter 102 (October 2, 1985).

102.2 Advertisement - Notice to Contractors A Notice to Contractors will provide a solicitation or an invitation to bid and be advertised in printed or electronic media pursuant to Maine law. Such Notice will contain a brief and general description of the nature and location of the Work and information about how to Bid and how to provide any prequalification requirements.

102.3 Examinations of Documents, Site and Other Information Before submitting a Bid, the Bidder is responsible for: (A) obtaining and examining the Plans, Specifications, all Bid Amendments, and all other Bid Documents; (B) examining the Geotechnical Information and all other information provided or referenced in the Bid Documents; (C) examining the site(s) of Work and making other examinations and investigations that are needed to Make the Bidder fully aware of the conditions that would be encountered in performing the Work, and (D) communicating with the Department as provided in Section 102.5 - Communication Before Bid Opening. For a related provision, see Section 102.7.2 - Effects of Signing and Delivery of Bid.

102.4 Estimated Quantities Quantities shown in the Bid Documents are estimates only to be used for the preparation and comparison of Bids. They may be increased,

decreased, or eliminated in their entirety. For related provisions, see Sections 109.1- Changes in Quantities and 109.2 - Elimination of Items.

### 102.5 Communication Before Bid Opening

102.5.1 Questions From Bidders Bidders shall direct all technical or Engineering questions, including requests for explanations or interpretation, in writing to the Bid Contact Person noted in the Notice to Contractors, typically the Project Manager. All questions must be in writing/facsimile and must be received at least 48 hours before Bid Opening. General questions relating to the Bidding process may be referred to the Department's Contracts Section. For a related provision, see Section 102.5.3 - Bid Amendments.

102.5.2 Bidder's Duty To Notify Department If Ambiguities Discovered Bidders shall not take advantage of any ambiguity, error, omission, conflict, or discrepancy ("ambiguity, etc.") relating to the Bid Documents, Geotechnical Information, site conditions, or any other information that may significantly affect the cost, quality, Conformity, or timeliness of the Work. If a Bidder discovers any such ambiguity, etc., it must notify the Bid Contact Person immediately in writing. Failure to provide such notice constitutes a waiver of any claim for entitlement for additional compensation or time related to such ambiguity, etc.

102.5.3 Bid Amendment The Department will interpret or modify the Bid Documents only by written Bid Amendment or other writing issued by the Department's Contracts Section. The Department is not bound by any other oral or written representations, including information exchanged verbally at pre-Bid meetings. The Department will issue written Bid Amendment in response to questions from Bidders when the answers: (A) relate to ambiguous, incorrect, or missing information in the Bid Documents; (B) are not apparent to Contractors experienced in the type of Work covered by the potential Contract; and (C) could have a significant impact on the cost, quality, Conformity or timeliness of the Work. For a related provision, see Section 102.5.1 - Questions From Bidders.

102.6 Bid Guaranty Bids must be accompanied by a Bid Guaranty that complies with all the requirements of this Section, unless noted otherwise in the Notice to Contractors and the Bid Documents.

The Bid Guaranty must be: (A) in the amount specified in the Notice to Contractors and the Bid Documents; (B) made payable to the "Treasurer - State of Maine"; and (C) one of the following types: a Bid Bond Conforming to the next paragraph, a cashier's check, a certified check, or a United States Postal money order.

Bid Bonds must be: (A) issued by an insurance company licensed or approved by the State of Maine, Department of Business Regulation, Bureau of Insurance, to do business in the State of Maine; (B) properly signed by the Bidder (as Principal) and a duly authorized representative of the insurance company referenced above, and (C) on the Department's Bid Bond form (or an exact copy thereof) OR must not contain any significant variations from said form as determined in the sole discretion of the Department.

### 102.7 Delivery of Bids

102.7.1 Location and Time The Bidder must Deliver its Bid and Bid Guaranty in a sealed envelope to the exact location and before the precise time (as determined by the Department) specified in the Notice to Contractors or any applicable Bid Amendment. The Bid and Bid Guaranty must be signed by duly authorized individuals. The sealed envelope must be labeled with the Bidder's name, the Project location, PIN, and the words "Bid Enclosed". For a related provision, see Section 102.11 - "Bid Responsiveness".

### 102.7.2 Effects of Signing and Delivery of Bids

A. Offer and Agreement to Pre-execution Terms The signing and Delivery of a Bid represents: (1) an offer by the Bidder to perform the Work for the price(s) submitted within the time(s) specified and in Conformity with all provisions of the Bid Documents; and (2) the Bidder's Agreement to all the provisions of the Bid Documents governing requirements and procedures applicable before Contract Execution. The Bidder's offer shall be irrevocable until the expiration of the time for Contract Execution by the Department set forth in Section 103.8, except as provided in Sections 102.8 and 102.10 regarding withdrawal of Bids.

B. Bidder Representations By signing and Delivering a Bid, the Bidder represents that: (1) the Bidder has performed the examinations required by Section 102.3 - Examinations of Documents, Site and Other Information; (2) the Bidder has given the

Department written notice of all ambiguities, etc. discovered by the Bidder as required by Section 102.5.2 - Bidder's Duty to Notify Department if Ambiguities Discovered; and (3) the Bidder has sufficient knowledge of the Bid Documents, Geotechnical Information, the site, and other conditions to properly price, schedule, plan, and perform the Work.

C. Certifications By signing and Delivering a Bid on federally funded or partially federally funded Contract, the Bidder certifies as provided in all federal certifications set forth in Appendix A including those set forth in Section 1 thereof. By signing and Delivering a Bid, the Bidder further certifies as provided in Section 105.10.2(F) - Certification of Continuing EEO Efforts.

102.8 Withdrawal of Bids Before the Time Specified for Bid Opening A Bidder may withdraw a Bid after Delivery, provided the request for such withdrawal is made in writing or in person before the time set for Bid Opening in the Notice to Contractors. The Bidder may revise and resubmit a Bid so withdrawn before the time specified for Bid Opening.

102.9 Bid Opening Bids will be opened and publicly read at the time and place specified in the Notice to Contractors or any applicable Bid Amendments. The Department will normally read publicly only the total Bid Price of each Bid. Unit and lump sum prices are available for inspection by the Bidders immediately after the Bid Opening process.

The public reading of a Bid does not constitute a determination by the Department of whether the Bid is responsive or of whether the Bidder is responsible, though the Department may refuse to read Bids that are obviously non-responsive. Accordingly, the Department may reject a Bid as non-responsive and/or determine a Bidder is not responsible or ineligible to Bid even if that Bidder's Bid is read at Bid Opening.

102.10 Withdrawal of Bids in Multiple Bid Context Bids may not be withdrawn after the time of Bid Opening, except under the limited circumstance set forth in this Section 102.10.

If a Bidder has submitted Bids on multiple Projects that have the same Bid Opening time, and if after the reading of Bids the Bidder has submitted the apparent low Bid on one Project, then the Bidder may withdraw any Bids on other Projects for which no Bids

have yet been read. Such a request for withdrawal must be made in person or in writing. Bids withdrawn will not be considered. The Bidder assumes sole responsibility for the risk that the Bidder's apparent low Bid is rejected as non-responsive or that the Bidder is determined to be not responsible.

### 102.11 Bid Responsiveness

102.11.1 Non-curable Bid Defects The Department **WILL REJECT** Bids as non-responsive if ANY ONE of the following occurs.

- A. The Bid and Bid Guaranty are not Delivered to the precise location and by the precise time set forth in the Notice to Contractors or any applicable Bid Amendment.
- B. The Bidder is not eligible to Bid as set forth in Section 102.1 - Eligibility to Bid.
- C. The Bid is not signed by a duly authorized representative of the Bidder.
- D. A Bid Guaranty Conforming to Section 102.6 - Bid Guaranty is not submitted.
- E. The unit or lump sum price for any item is not provided or is illegible as determined by the Department.
- F. The Bidder fails to indicate the Bidder's choice where the Bid Documents clearly require a choice.
- G. The Bid contains any conditional or alternate Bidding language including the right to accept or reject an Award of the Contract.
- H. The Bidder submits more than one Bid for the same Contract, or the Bidder and any Related Entity each submit a Bid for the same Contract.
- I. The Department has substantial evidence of collusion by the Bidder.
- J. The Bidder fails to comply with any provision in the Bid Documents that

expressly indicates that such non-compliance will cause Bid rejection.

The Bidder will have no opportunity to cure the above Non-curable Bid Defects.

102.11.2 Curable Bid Defects Unless the Department waives a curable Bid defect, the Bidder must cure, within the time stated in the written notice by the Department, but not less than 24 hours, all other Bid Defects not listed in Section 102.11.1 - Non-curable Bid Defects that are identified by the Department. Failure to cure such Defects within said time may result in forfeiture of the Bidder's Bid Guaranty. Upon such failure, the Department may take any action in the best interests of the Department including those set forth in Section 103.6 - Failure to Fulfill Award Conditions.

Such curable Bid Defects include, but are not limited to, the following.

- A. The Bidder only signs one of the Contract Agreement Offer & Award forms.
- B. The Bid is not submitted on forms provided by the Department or identical copies thereof.
- C. Missing total sum of the items provided in the Schedule of Items.
- D. The prices or signatures on the Bid or Bid Guaranty are not in ink or other non-erasable substance.
- E. Failure to acknowledge Receipt and consideration of all Bid Amendments.
- F. All other Defects that do not create a significant question as to the Bidder's total Bid amount or the Bidder's ability to complete the Work within the Contract Time or by the Contract Completion Date as determined by the Department.

Materially unbalanced Bids may create a significant question as to the Bidder's ability or will to complete the Work within the Contract Time in accordance with the requirements of the Contract; see Section 103.1.2 - Unbalanced Bids.

Contractors prequalified for the general category stated in the Notice to Contractors may be determined non-responsive by the Department based on recent or new data

provided since the last determination of prequalification for that Contractor.

## SECTION 103 - AWARD AND CONTRACTING

Scope of Section This Section includes requirements related to the final determination of Bid responsiveness and Award and execution of the Contract.

### 103.1 Analysis of Bids

103.1.1 Unit Prices Govern After Bid Opening, the Department will review the mathematics of all apparently responsive Bids. In the event of a discrepancy between (A) unit and lump prices and (B) extensions and/or the total Bid Price, the unit and lumps sum prices shall govern and the total Bid Price will be adjusted accordingly.

### 103.1.2 Unbalanced Bids

A. Definitions An Unbalanced Bid is a Bid that is Mathematically Unbalanced and that may also be Materially Unbalanced. Mathematically Unbalanced means a Bid containing lump sum or Unit Prices, which do not reflect reasonable direct costs plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs. Materially Unbalanced means a Mathematically Unbalanced Bid, which generates a reasonable doubt that said Bid, will represent the lowest ultimate cost to the Department.

B. Comparison and Possible Bid Rejection The Department will compare the price of items contained in the Bid of the Apparent Successful Bidder with the estimate prepared by the Department. If the Bid is Mathematically Unbalanced, the Department may, in its discretion, notify the Apparent Successful Bidder and request an explanation. There shall be no negotiation or changes in prices. If the Bidder fails to provide a reasonable explanation, and if the Department finds the Bid is Materially Unbalanced, the Department may reject the Bid as non-responsive and may take any action that is in the best interests of the Department including those set forth in Section 103.6 - Failure to Fulfill Award Conditions.

103.1.3 Waiver of Defects and Technicalities; Right to Reject Bids The Department reserves the right to reject any or all Bids and to advertise for new Bids if doing so is in