

**Work Drawings.** Supplemental design sheets or similar data which the Contractor is required to furnish such as shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, and bending diagrams for reinforcing steel.

**Work Order.** A written order, signed by the Engineer, of a contractual status requiring performance by the Contractor without negotiation.

**Written Permission of the Engineer.** A letter signed by the Deputy Director for Engineer or an authorized representative granting specific permission and outlining limitations of the permission.

When these specifications indicate that work shall be “required, requested, directed, authorized, ordered, permitted, suspended, approved, accepted, or rejected,” it shall be understood that these expressions and others similar to them are followed by the phrase, “by the Engineer.”

## **SECTION 102 BIDDING REQUIREMENTS AND CONDITIONS**

### **102.01 PREQUALIFICATION OF BIDDERS.**

Only prequalified Bidders will be allowed to bid on any Project. A prequalified Bidder is one who has submitted evidence showing, to the Director’s satisfaction that this Bidder is responsible and competent to perform the proposed work according to all terms of the Contract. This evidence consists of detailed information regarding the Bidder’s finances, organization, equipment, and previous experience, provided on standard forms furnished by the Department. The application shall be submitted not less than 7 days before the bid opening in which the Bidder desires to bid, and at such additional times as the Director may request or the Bidder elect. The prequalification shall be in force for one year from the approval date. A supplemental statement, on a standard form furnished by the Department, stating the amount of work currently under contract, shall be submitted with each request for Proposal Forms.

The Director reserves the right to check any or all statements submitted by the Bidder, and to obtain additional pertinent information from other sources.

Prequalification is not required for Landscaping, Rest Area, Electrical, and other Specialty Work Contractors. Satisfactory evidence must be submitted before receiving Proposal Forms showing the proposed Bidder is competent and has an organization, and equipment sufficient to perform the work.

### **102.02 CONTRACTOR’S LICENSE.**

A bidder is not required to have a Contractor’s license from the State of North Dakota to bid on a Project, however, a Contract will not be awarded until the Contractor obtains an appropriate North Dakota Contractor’s license.

**102.03 CONTENTS OF PROPOSAL FORMS.**

The Proposal Form will show the location and description of the contemplated construction, the estimate of the various quantities, the types of work to be performed or materials to be furnished, and the schedule of items for which Unit Bid Prices are invited. The Proposal Form will state the time in which the work must be completed; and the date, time, and place for opening of Proposals. The Proposal form will also include any Special Provisions or requirements which vary from or are not contained in the Standard Specifications.

All papers bound with or attached to the Proposal Form are considered a part of the Proposal and must not be detached or altered when the Proposal is submitted. The Bidder may attach a computer-printed bid schedule according to Section 102.07 C.2.

The Plans, Specifications, other documents designated in the Proposal Form will be considered a part of the Proposal whether attached or not.

The prospective Bidder shall pay the amount stated in the Notice to Contractors for each copy of the Proposal Form and each set of Plans obtained from the Department.

**102.04 ISSUANCE OF PROPOSAL FORMS.**

The Department reserves the right to disqualify or refuse to issue a Proposal Form to a prospective Bidder for any of the following reasons:

- A. Lack of competency and adequate machinery, plant, and other equipment as revealed in the prequalification questionnaires required under Section 102.01, or as otherwise determined by the Department.
- B. Uncompleted work which the Department determines might hinder or prevent prompt completion of additional work.
- C. Failure to promptly pay or satisfactorily settle all claims for labor and material on any Contract, including those Contracts where the Contractor is a party to a joint venture that has failed to settle such claims.
- D. Failure to comply with any prequalification regulations.
- E. Default under previous Contracts.
- F. Failure to repay monies due the Department resulting from overpayments.
- G. Unsatisfactory performance on previous work or current Contract(s), consisting of, but not limited to, repeated:
  - 1. Noncompliance with Contract requirements, or Engineers' directives.
  - 2. Failure to complete work on time.
  - 3. Instances of substantial corrective work prior to acceptance.
  - 4. Instances of completed work that requires acceptance at reduced pay.

- 5. Production of nonspecification work or materials.
- H. Questionable moral integrity as determined by the Attorney General of the State, or the Department.
- I. Disbarment from performing work on Federal Contracts.

#### **102.05 INTERPRETATION OF QUANTITIES IN BID SCHEDULE.**

The quantities appearing in the bid schedule are estimates prepared for comparison of bids. Payment will be made for actual quantities of work performed and accepted or materials furnished according to the Contract. The estimated quantities of work and materials may be increased, decreased, or pay items may be eliminated in their entirety.

#### **102.06 EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND SITE OF WORK.**

The Bidder is to examine the site of the proposed work, the Proposal, Plans, Specifications, Supplemental Specifications, Special Provisions, and all other Contract forms before submitting a Proposal. The Bidder is responsible for all site conditions that should have been discovered with a site investigation. The submission of a proposal will be considered conclusive evidence that the bidder is satisfied with the conditions to be encountered in performing the work and as to the requirements of the proposed Contract.

Boring logs and other records of subsurface investigations are available for inspection by Bidders. It is made available so all Bidders have access to identical subsurface information available to the Department, and is not intended as a substitute for personal investigation, interpretations, and judgment of the bidders. This availability shall not relieve the Bidder of the responsibility stated in the preceding paragraph. The Department will not be bound by any statement or representation concerning conditions made by any of its employees or agents before the execution of the Contract, unless included in the Proposal Form, Plans, Specifications, Supplemental Specifications, Special Provisions, or related Contract forms.

Any explanation desired by a Bidder regarding the meaning or interpretation of the Proposal Form, Plans, Specifications, etc., must be requested from the Central Construction Office in adequate time to allow a reply to reach all Bidders before submission of their Bids. Interpretations will be made by addendum and will be furnished to all prospective Bidders by either certified letter, telegram, Facsimile (FAX), or other electronic transmission before the time set for opening of Bids. Oral explanations or instructions given before the bid opening will not be binding.

#### **102.07 PREPARATION OF PROPOSALS.**

- A. **General.** The Bidder shall submit the Proposal Form furnished by the Department. All Department addendums to the Proposal are also a part of the Bidder's Proposal.

When an item on the Bid Schedule allows a choice of alternates, the Bidder shall indicate the choice for that particular item.

Proposals submitted by (1) an individual must be signed by that individual, (2) a partnership, must be signed by a partner, or (3) a corporation must be signed by an officer of the corporation with the officer's title. Proposals submitted by a joint venture must be signed by a legally qualified representative of each of the parties to the joint venture. A Proposal may be executed for an individual, a legal entity, or a joint venture by anyone having a power of attorney, provided a copy of the power of attorney is attached to the proposal or is previously filed with the Department.

A Bidder may submit bids on more Projects than they desire to accept. Each such bid proposal must be covered by a Proposal guarantee. The Bidder may indicate the total work desired and the Director will determine which of the low bids will be accepted within the Bidder's indicated bid limitations. This limitation will apply only to Projects on which the Bid Limitation Section in the Proposal Form has been completed by the Bidder.

**B. Combination (Tied) Proposals.** Proposal Forms may be issued for Projects in combination or separately, so bids may be submitted either on the combination or on separate units of the combination. The Department reserves the right to make awards on combination bids or separate bids to the advantage of the Department. Combination bids, other than those specified will not be considered. Separate Contracts will be written for each Project included in the combination.

**C. Preparation of Bid Schedule.**

1. **Department-Furnished Bid Schedule.** The Bidder shall enter a unit price in numerals on the bid schedule for each bid item, and enter the product of each unit price and respective quantity. The sum of the products (Total Sum Bid) shall be entered where indicated.
2. **Computer-Printed Bid Schedule.** The Bidder may substitute a computer-printed spreadsheet bid schedule for the Bid Schedule found in the Proposal. The substitute schedule shall be attached to the last page of the Bid Schedule in the bound Bidders Proposal.

The computer-printed bid schedule shall be a printout (similar in format to the bid schedule in the Proposal) from an electronic bidding program authorized by the Department or shall meet the following requirements:

- a. Job Number (1, or 2, or 3, etc.)
- b. Date of Bid Opening
- c. Project Number(s)
- d. County
- e. Type of Work
- f. Page Number
- g. Bidder's Name and Address

The substitute bid schedule shall be printed on sheets of approximately the same size as the bid schedule in the Proposal, and the words and numerals

shall be clear and legible. Each page shall be arranged, numbered, and contain the same bid items as the corresponding bid schedule in the Proposal. Column headings shall be the same as those in the Department-Furnished Bid Schedule except that the Unit Designation (Tons, etc.) and the Approximate Quantity may be split into two columns.

Each bid item shall be separated from the bid items above and below it by one or more blank spaces. Solid lines for separating columns and items are not required, but dashed lines may be placed either vertically or horizontally.

The total sum of the bid shall be entered at the bottom of the last page of the computer-printed schedule, and entered in ink in the Total Sum Bid block on the last page of the Department's Bid Schedule.

The Bidder, or authorized representative, shall sign the substitute bid schedule in ink on the last page of the computer printout. The signer's name and title shall be printed below or beside the signature. The person signing the schedule above shall sign and complete the Affidavit in the Bidders Proposal, as regularly required.

In case of discrepancies between item descriptions or quantities in the bid schedule in the Proposal and those in the computer-printed bid schedule the bid schedule in the Proposal will govern.

#### **102.08 IRREGULAR PROPOSALS.**

A. Proposals will be considered irregular and will be rejected if:

1. The Proposal is not properly signed and notarized.
2. The entire authorized Proposal Form Booklet furnished by the Department is not submitted, or if the forms are altered, or any part is detached, except as provided for in Section 102.07 C.2.
3. The Bidder fails to provide a properly executed Proposal Guaranty.
4. The Bidder adds any provisions reserving the right to accept or reject an award, or to enter into a Contract pursuant to an award.

This does not exclude a bid limiting the maximum gross amount of awards acceptable to any one Bidder at any one bid opening. Selection of awards will be made by the Department.

B. Proposals may be considered irregular and may be rejected if:

1. The submitted Proposal fails to comply with any other requirements of the "Invitation to Bid" or the issued Proposal itself.
2. There are unauthorized additions, conditional or alternate bids, or irregularities of any kind which may make the Proposal's meaning incomplete, indefinite, or ambiguous.
3. A price per unit cannot be determined from the bid proposal, except in the case of authorized alternate pay items.

4. The Proposal does not include a unit price for every bid item, except in the case of authorized alternate pay items.
5. It is determined that any of the unit prices are materially unbalanced to the potential detriment of the Department.
6. The Unit Prices are not typed or entered in ink.

**102.09 PROPOSAL GUARANTY.**

A Proposal will not be considered unless accompanied by a Proposal Guaranty in a sum equal to 10% of the full amount of the bid, executed by the Bidder as principal and by a Surety company authorized to do business in North Dakota or by either a certified check or a cashier's check of the Bidder on a solvent bank in a sum equal to 5% of the bid. If within 10 days after notice of an award, the successful Bidder fails to sign a Contract with the Department, Bidder's certified or cashier's check will be forfeited to the Department, or the Principle and the Surety will forfeit to the Department the Proposal Guaranty accompanying the bid or bids on which there is a default.

Arrangements may be made with the Department to file Proposal guaranties in advance of the bid opening.

**102.10 DELIVERY OF PROPOSALS.**

Proposals shall be placed in a sealed envelope bearing the Bidder's name, and plainly marked to indicate its contents. Proposals received after the time established for opening of Proposals will be returned unopened.

**102.11 WITHDRAWAL OR REVISION OF PROPOSALS.**

A Bidder may withdraw or revise a Proposal after delivery to the Department, provided the request for withdrawal or revision is received in writing or by telegram before the time established for opening Proposals.

**102.12 PUBLIC OPENING OF PROPOSALS.**

Proposals will be opened and read publicly at the time and place indicated in the "Invitation for Bids."

**102.13 DISQUALIFICATION OF BIDDERS.**

The following reasons will be considered sufficient for disqualifying a Bidder and rejecting a Proposal or Proposals:

- A. More than one Proposal for the same work from an individual, firm, or corporation under the same or different name.
- B. Evidence of collusion among Bidders. Participants in collusion will not receive recognition as Bidders for future work with the Department until they are reinstated as a qualified Bidder.