

## SECTION 102—BIDDING REQUIREMENTS AND CONDITIONS

### 102.01 PREQUALIFICATION OF CONTRACTORS AND SUBCONTRACTORS—

(a) **General.** Unless otherwise stated in the proposal, contractors are required to prequalify before the date fixed for the opening of bids for State highway construction work. To do so, establish proof of competency and responsibility, according to 67 PA Code Chapter 457, Regulations Governing Prequalification of Prospective Bidders. Subcontractors are required to prequalify in the same manner, if listed in the proposal or if they subsequently undertake the partial or total construction of one or more items of work. To obtain a complete set of application forms, contact the Prequalification Officer, Contract Management Division, Bureau of Construction and Materials, Pennsylvania Department of Transportation, Harrisburg, Pennsylvania, 17120.

(b) **Business Partner Registration.** Unless otherwise stated, contractors are required to register with the Department as a business partner. To become a business partner, go to the Department's Engineering and Construction Management homepage. Instructions for registration are available on the website.

**102.02 CONTENTS OF PROPOSAL—**The proposal will specify the place for delivery of a bid; the date, time, and place of bid opening; and the location and description of the project to be constructed. The proposal will also show the approximate quantities of work to be performed and/or material to be furnished, the contract time in which the project is to be completed. The proposal will include any special provisions and attachments pertaining to the project.

**102.03 ISSUANCE OF PROPOSAL—**The proposal and plans will be furnished, upon written request, from the Department's Central Office or, if available, in the office of the District where the project is located. The prospective bidder will be required to pay the Department the amount stated in the Notice to Contractors, for copies of the proposal and for sets of plans. Also, the proposal and drawings will be available to bidders, for reference, at the Central Office, and at the office of the District where the project is located. Proposals and plans may also be available online through ECMS.

**102.04 INTERPRETATION OF APPROXIMATE ESTIMATE OF QUANTITIES—**The estimate of quantities, shown on the proposal, and in the contract, is approximate and is shown only as a basis for the calculation upon which the contract award is to be made. The Department does not assume any responsibility that the quantities will actually be required in the project construction, nor will the Contractor be allowed to plead misunderstanding or deception because of the quantity estimates or because of the character of the work, the location, or other conditions. The Department reserves the right to increase, to decrease, or to omit any of the quantities of work. An increase or decrease of the quantities of the items will not be sufficient grounds for granting an increase in the unit prices bid, except as specified in [Section 110.02](#).

**102.05 EXAMINATION OF PROPOSAL, PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND SITE OF WORK—**The Department's plans and specifications are complete and are prepared so any competent contractor is able to complete the proposed work. The bidder is required to carefully examine the proposal, plans, specifications, and project site before submitting a bid. The submission of a bid will be considered proof that the bidder has made such examination and understands the conditions to be encountered; the character, quality, and quantities of work to be performed; the material to be furnished; and the requirements of the plans, specifications, and proposal. The Department will make no allowance or concession for a bidder's failure to make the required examination.

The proposed slope lines shown on the cross sections are approximate and are subject to revision and change by the Representative, depending upon the stability of material encountered during construction.

Subsurface soil and geological information indicated is based upon soundings, dug test pits, and/or test borings. Such information concerning the character of subsurface material is of an exploratory nature and has been obtained, for the Department's use, as an aid in the project design. The information provided is representative of subsurface conditions only at the locations and depths where such information was obtained, and there is no expressed or implied agreement that uniformity of material exists between explored locations.

Preliminary construction schedules are intended to provide a general overview of the sequence of construction operations, based on currently available data. Such information is developed, for the Department's use, as an aid in the project design. Available construction scheduling information, if any, is being provided for informational purposes only. The Department makes no expressed or implied representation as to the completeness, accuracy, or correctness of the data, and accepts no responsibility for consequences resulting due to any actions undertaken based on the information provided. These schedules are not considered a part of the proposal.

## 102.06 PREPARATION OF BIDS—

(a) Submit properly completed bids for Department construction work in the electronic bidding format (i.e., online or diskette).

(b) Configure the electronic file for bidding to include Registered Business Partner Identification Number. For a joint venture bid, the lead joint venture will be required to furnish this information on behalf of the joint venture.

(c) Unless otherwise stated in the proposal, the Department will only accept bids from contractors who are prequalified on the date of the bid opening, as specified in [Section 102.01](#), and who bid for work which, based on their available financial capacity and approved work classification codes, does not exceed their prequalification eligibility. Unless otherwise approved by the Chief Engineer, Highway Administration (Prequalification Office), prequalification eligibility with regard to work classification will be determined using the applicable Work Classification Code(s) shown on the Design Items Screen with the corresponding item number. If a bid item has multiple Work Classification Codes, the bidder must be prequalified for only one of the Codes listed. With regard to available financial capacity, prequalification eligibility will be determined by ensuring that the bidder's current maximum financial capacity exceeds the total amount of the bid, less any credit for subletting as specified in [Section 108.01\(a\)](#), plus the total amount of all uncompleted work a bidder has under contract at the time of bid opening.

(d) Execute bids as follows:

When an item in the bid contains a choice to be made by the bidder, indicate this choice, according to the specifications for that particular item. When preparing the bid, leave blank the unit price(s) of the alternate(s) that are not bid. Thereafter, no further choice will be allowed.

**1. Online Bid.** Submit an online bid via the ECMS website by using the business partner password of an authorized general partner or corporate officer properly designated to execute and attest to bids. For a joint venture bid, submit an online bid via the ECMS website by using the business partner password of an authorized general partner or corporate officer properly designated to execute and attest to bids of the lead joint venture.

**2. Diskette Bid.** As an alternate to online submission, submit a diskette bid by preparing the bid using the EBS Expedite software, furnished by the Department. Submit the completed EBS Expedite bid file on a 3 1/2-inch diskette along with the required signature page(s). Sign the signature page(s), in ink. Type or legibly print the name of each signer under the signature.

If the bidder is a partnership, only one signature of an authorized general partner will be required.

If the bidder is a corporation, the signatures of authorized corporation officers, properly designated to execute and attest to contracts, are required. If the above signatures are not those of such authorized officers, either attach a current power of attorney or submit a current power of attorney annually to the Department.

For a joint venture bid, each participant is required to complete one signature page, as shown in the postscript at the bottom of the page.

**(e) Anti-Collusion Requirements.** The authorized signer of the bid, under penalty of perjury as provided in 18 Pa. C.S.A. Section 4904, or if applicable, 18 U.S.C., Section 1020, certifies that he or she is authorized to make and does make the following statement on behalf of the bidder:

1. The bid item prices and the total bid amount have been arrived at independently and without consultation, communication, or agreement for the purpose of restricting competition with any other contractor, bidder, or potential bidder.

2. Neither the item prices nor the total bid amount, and neither the approximate bid item prices nor approximate total bid amount, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening.

3. No attempt has been made or will be made to solicit, cause, or induce any firm or person to refrain from bidding on this project, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.

4. The bid submitted by the bidder is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

5. The bidder has not offered or entered into a subcontract or agreement regarding the purchase of materials or services from any firm or person, or offered, promised, or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit a complementary bid on this project.

6. The bidder has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for this firm's submitting a complementary bid, or agreeing to do so, on this project.

7. The authorized signer of the bid has made a diligent inquiry of all members, officers, employees, and agents of the bidder with responsibilities relating to the preparation, approval, or submission of this firm's bid on the project and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act, or other conduct inconsistent with any of the statements and representations made in this Statement.

8. No attempt has been made to take any action in restraint of free competitive bidding in connection with the bid.

9. It is understood that if any incidents resulting in conviction or being found liable are specified in [Section 102.06\(e\)10](#), the Pennsylvania Anti Bid Rigging Act, 73 P.S. 1611 et. seq. provided that it does not prohibit a governmental agency from accepting a bid from or awarding a contract to that person, but may be a ground for administrative suspension or debarment at the discretion of a governmental agency under rules and regulations of that agency.

10. The bidder, its affiliates, subsidiaries, officers, directors, and employees are not aware that they are currently under investigation by any governmental agency and have not in the last 3 years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as indicated on a separate page attached to the bid document.

The authorized signer of the bid hereby states that he or she understands and acknowledges that the above representations are material and important, and will be relied on by PENNDOT, in awarding the contract for which the bid is submitted. He or she and their firm understands that any misstatement in this statement is and shall be

treated as fraudulent concealment from PENNDOT of the true facts relating to the submission of bids for this contract.

**(f) Contract Unit Price.** Wherever an identical item number and description are used more than once, provide the same unit bid price for each bid entry. If the bidder provides different bid prices for an identical item number and description, the bid may be rejected.

#### **102.08 BID GUARANTY FOR EXECUTION OF CONTRACT—**

Bid guaranty is associated and supported by the bidder's prequalification requirements.

**102.09 DELIVERY OF BIDS—**Submit bid(s) to the location designated, before the hour of the opening date shown in the proposal.

Electronic online bids will not be accepted after the time for the opening date of the bids shown in the proposal. Bid(s) received after the time for opening of bids will be returned unopened to the bidder.

#### **102.10 WITHDRAWAL OR REVISION OF BIDS—**

**(a) Withdrawal of Bids Before Bid Opening.** Each bidder who submits a bid waives any right to withdraw it, except as provided herein. Bidders will be given permission to withdraw any bid, after it has been submitted to the Department, if the bidder electronically withdraws or makes the request in person or by an accredited personal representative, by telephone, or in writing to the Secretary. Deliver requests for withdrawal to the Secretary's office before the time set for opening bids.

A bidder may withdraw any bids, which have not been read, after having been declared the apparent low bidder on any other project. In withdrawing bids, make the withdrawal request to the official in charge of the bid opening, either in person or by an authorized representative, before any such bids are read. Provide satisfactory credentials, showing authority to act for the interested bidder, at the time that the official in charge requests that any contemplated withdrawals be made. The bid withdrawn by such a request will be returned to the bidder or the bidder's representative, and will not be considered by the Department.

**(b) Revision of Bids Before Bid Opening.** A bidder will be allowed to revise a bid after it has been submitted, if the bidder electronically withdraws the bid, or appears in person or provides an accredited personal representative to make the revision. Present all such requests to the Secretary's office expeditiously so that the revision can be completed and the bid resubmitted before the time set for opening bids.

**(c) Withdrawal of Bids After Bid Opening.** Withdrawal of erroneous bids after the bid opening but before award based on bid mistakes will be allowed by the written determination of the Secretary when the bidder requests relief and presents credible evidence that the reason for the lower bid price was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetical error or an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the bid. The request for relief and the supporting evidence must be received by the Secretary's office within three business days after the bid opening but before the award of the contract.

The Secretary will not allow a withdrawal of a bid if the withdrawal of the bid would result in the awarding of the contract on another bid of the same bidder, its partner or a corporation or business venture owned by or in which the bidder has a substantial interest. No bidder who is allowed to withdraw a proposal shall supply any material or labor to or perform any subcontract or other work agreement for any person to whom a contract or subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted without the written approval of the Secretary.

**102.11 JOINT VENTURE**—A joint venture bid will be considered a bid by each of the participants, jointly and individually, for the entire contract performance as a joint venture, according to the proposal terms and conditions.

In the proposal, contract, specifications, drawings, or any writing constituting a part of these, the term “Bidder” or “Contractor,” or any other term intending to refer to “Bidder” or “Contractor,” as defined in [Section 101](#), will include and mean each participant in any joint venture.

Designate in the bid, where specified, the items in whole or in part, to be undertaken by each participant and their total respective proportionate amounts.

Each participant will be evaluated for prequalification work classifications and capacity, based on the items designated, as specified in [Section 102.01](#).

**102.12 OPENING OF BIDS**—Bids will be opened and announced publicly at the time, on the date, and at the place shown in the proposal. Bidders and/or their authorized representatives and other interested persons are invited to be present.

In case of an emergency, which causes evacuation of the building at the time of the bid opening, the official in charge of the bid opening will publicly announce any necessary changes in the time of depositing, opening, and announcing of bids.

**102.13 DISQUALIFICATION OF BIDDERS AND REJECTION OF BIDS**—

(a) The following may be considered sufficient reasons for bidder disqualification and the rejection of the bids(s):

1. submittal of more than one bid for the same work from an individual, a firm, a partnership, an association, a subsidiary, an affiliate, or a corporation under the same or different name;
2. evidence of collusion among bidders. Any participant in such collusion will receive no recognition as a bidder for future work of the Department until the participant has been reinstated as a qualified bidder;
3. lack of competency, of adequate machinery, plant, or of other equipment;
4. inability, in the judgment of the Department, to promptly complete the project, because of uncompleted work;
5. failure to pay, or satisfactorily settle, all bills due for material furnished, for labor supplied or performed, for rental of equipment used, and for services rendered by public utilities;
6. failure to comply with any Department prequalification regulations;
7. judgment of default under a previous contract;
8. contractor currently debarred by Federal or State Authority; or
9. material or intentional failure to comply with contract, drawings, or specifications, or material or intentional failure to adequately maintain and control traffic during construction on a previous contract.

(b) In addition to rights under 67 Pa. Code, Chapter 457, the Secretary reserves the right to reject any or all bids if, in his or her judgment, the rejection is in the State's best interest.

1. In addition, bids will be rejected for any of the following reasons:

**1.a** failure to submit the bid using the electronic format furnished or approved by the Department;

**1.b** failure to properly sign the bid, the required affidavits, or certificates, or any other required documents as specified in the proposal;

**1.c** completed EBS Expedite bid file is unreadable;

**1.d** failure to include a price for each item on the bid schedule, except in the case of alternate bidding; in alternate bidding, failure to include a price for one of the required alternate items on the bid schedule; or

**1.e** the inclusion of conditions or qualifications not provided for in the proposal.

**2.** In addition, bids may be rejected for the following reasons:

**2.a** the proposal was not furnished or approved by the Department;

**2.b** part of the bid is detached;

**2.c** the bid contains omission(s) or alteration(s), addition(s) not specified, or deviation(s) of any other kind;

**2.d** the bid is materially unbalanced;

**2.e** the bid is not submitted under the name listed on the prequalification certificate;

**2.f** the bidder provides different bid prices for an identical item number and description;

**2.g** failure to submit Minority and/or Women Business Enterprise Participation Requirements as specified in the proposal; or

**2.h** failure to submit Disadvantage Business Enterprise Participation Requirements as specified in the proposal.

**2.i** failure to electronically acknowledge all addendums in the EBS Expedite bid file