

## SECTION 103—AWARD AND EXECUTION OF CONTRACT

**103.01 CONSIDERATION OF BIDS**—After the bids are opened, the total bid amount and the name of the apparent low bidder will be publicly announced. Bids will then be promptly verified and, if determined by the Secretary to be satisfactory, the results of the determination of the lowest responsive and responsible bidder will be made available to the public.

A Diskette Bid will supercede all Online Bids regardless of the time or order the bids were submitted.

**(a) Submission of Component Item Schedule.** The apparent low bidder is required to complete and submit a Component Item Schedule for each lump sum item requiring a Component Item Schedule (CIS) in the bid, providing quantities and unit prices for the component items associated with that lump sum pay item. The completed CIS becomes part of the contract.

The proposal will include a CIS for each applicable “as-designed,” lump sum item. When the proposal indicates that an equivalent structure or facility of an alternate design may be constructed in lieu of the “as-designed” structure or facility and the alternate design is bid, the necessary CIS must be prepared by the bidder.

The apparent low bidder is required to submit CIS electronically using the ECMS website after the bid opening. If the CIS is not submitted within 14 calendar days after the bid opening, the contract may be awarded without the CIS. No payments will be made for any item of work until the CIS is submitted and approved.

In the event a deficiency is discovered in the information provided on the CIS, the bidder will be notified to correct the deficiency. In the event the apparent low bid is rejected, the next lowest bidder will be notified to prepare and submit the CIS in the manner as specified herein.

**103.02 AWARD OF CONTRACT**—When a bid received has been determined by the Secretary to be satisfactory, a contract will be awarded in writing to the lowest responsive and responsible bidder within 60 days from the opening date of the bids. Thirty-day extensions of the award date may be made by the mutual written consent of the Representative and the lowest responsive and responsible bidder. The Department will base the award exclusively on the total in the bid schedule and on compliance with all the bidding requirements. No prices will be negotiated due to any extensions.

Contract award on a joint venture bid will place upon the joint participants complete liability, jointly and individually, for contract performance.

Contracting corporations, which are chartered in a state other than Pennsylvania, as well as individuals or firms doing business under fictitious names, are required to register with the Secretary of the Commonwealth and obtain a certificate authorizing them to do business in Pennsylvania, before they can be awarded a contract.

**103.03 CANCELLATION OF AWARD**—The Secretary reserves the right to cancel the award of any contract at any time before its approval by the Chief Counsel, the General Counsel, and/or the Attorney General, or their designees, when such cancellation is in the best interests of the State. In the event of such cancellation, payment will be made only for the documented costs of insurance and surety bonds required under Sections [103.04](#) and [103.05](#). No payment will be made for damages of any other kind including, but not limited to, lost profits.

**103.04 SURETY BONDS**—When awarded the contract, furnish a Performance Bond, with sufficient surety or sureties, in an amount equal to 100% of the contract price. Have the bond specify that the contracted work will be completed in a manner satisfactory to the Secretary. Have the bond state that the State is not liable for any expenses incurred through the failure to complete the work as specified, nor liable for any damages growing out of the carelessness of the Contractor, the Contractor’s employees, or subcontractors. Also furnish a Payment Bond in the amount of 100% of the contract price. Have a corporate surety, legally authorized to transact business in the State and satisfactory to the Secretary, execute both bonds. If the Secretary decides the bond surety is unsatisfactory, promptly furnish any additional required security to protect the State’s interests and the interests of all persons, firms, or corporations who/which have furnished material, provided equipment on rental, or supplied/performed labor or services on, or in connection with, the performance of the work for this contract.

Have participants in a joint venture submit a single Performance Bond and a single Payment bond, each signed by both the joint participants and by their surety. These bonds are to cover their joint and individual liability.

**103.05 EXECUTION AND APPROVAL OF CONTRACT**—Sign the awarded contract and return it to the Secretary of Transportation, Harrisburg, Pennsylvania, within 10 days after notification by the Secretary. With the contract, include properly executed surety bonds and an insurance certificate or certificates, listing the project number, naming the State as an additional insured party, and proving property damage and public liability insurance is adequate to cover any loss that might accrue.

Procure only occurrence-based insurance coverage and so note on the certificate or demonstrate exhaustive efforts to purchase such insurance where it is unavailable. If able to demonstrate factual impossibility of obtaining occurrence-based insurance, then purchase insurance in a form and amount to be determined by the Department.

(a) When the joint bidder returns the signed contract for a joint venture, to be signed by the Secretary, a certified copy of a resolution of the board of directors of each participating corporation must be included. Have the resolution authorize the joint venture with the other party participant(s) for the specific contract. Have the corporation also submit a copy of its corporate powers. Have the participants in any joint venture make the designation in writing, addressed to the Secretary, with a copy directed to the Deputy Secretary for Highway Administration.

The designations are as follows:

1. The name of the person who will be in charge of the project for the joint contractors. Give this person complete authority to speak for and bind the joint contractors in all matters relating to the contract. It is this person to whom all notices, orders, directions, and determinations concerning the project may be given by the Secretary or the Representative. Notices, orders, directions, or determinations given to this designated person, or to one of the joint contractors, will be considered to have been given to all parties.

No change in the person designated to be in charge of the project will be recognized by or be binding upon the Secretary or the Representative, until the participants in the joint venture give written notice of such change. In the event of the death or disability of the person in charge of the project, it is the responsibility of the joint contractors to advise the Secretary or the Representative, in writing, over their joint signatures, of such death or disability within 24 hours after the occurrence, and then to designate a successor.

2. A mailing address for the receipt of all estimates, acceptance and final settlement certificates, payments, notices, orders, directions, and determinations for the performance of the work. The mailing address will be considered the joint contractors' address and any communications directed to such address will be considered to have been received by the joint contractors.

All checks for the payment of estimates and the final settlement certificate will be made to the order of the joint contractors in the same form in which they have signed the contract and will be mailed to the designated mailing address.

Change of the mailing address will not be recognized by or be binding upon the Secretary or the Representative, until written notice, signed by the joint contractors, has been received by the Secretary or the Representative.

(b) No bid will be considered binding upon the State or fully executed until the form and legality of the contract is approved by the Chief Counsel, the General Counsel, and/or the Attorney General, or their designee. If any proposal includes work to be contracted with more than one agency, the contracts will be entered into as specified in the proposal.

**103.06 FAILURE TO EXECUTE CONTRACT**—If the contract, together with the Surety Bonds and the Insurance Certificate(s) providing adequate insurance coverage, as provided in [Section 103.05](#), is not properly executed and returned, liquidated damages may be assessed and/or the Contractor's prequalification may be suspended according to 67 PA Code, Chapter 457, Regulations Governing Prequalification of Prospective Bidders.

**103.07 CANCELLATION OF CONTRACT**—The contract may be cancelled by either party if the notice to proceed date is not within 30 days of award of the contract. Extension(s) of the 30-day period will be made only by mutual written consent of the parties to the contract provided such written consent is given before the expiration of the 30-day period. Prices will not be renegotiated. The Secretary also reserves the right to cancel the contract any time before the Notice to Proceed date. If the contract is cancelled, payment will be made only for the documented

costs of insurance and surety bonds required under Sections [103.04](#) and [103.05](#). No payment will be made for damages of any other kind including, but not limited to, lost profits.

**103.08 ASSIGNMENT OF ANTI-TRUST CLAIMS**—It is recognized that in actual economic practice, overcharges by suppliers resulting from violations of State or Federal antitrust laws are in fact borne by the State. As part of the consideration for the award of the contract, and intending to be legally bound, the Contractor assigns to the State all right, title, and interest in and to any current claims or claims hereafter acquired under State or Federal anti-trust laws relating to the subject matter of the contract.