

## SECTION 00120

# INSTRUCTIONS TO BIDDERS

## PART 1 GENERAL

### 1.1 PREQUALIFICATION OF BIDDERS

- A. Applies to all projects where the Department Engineer's advertised Estimate is greater than or equal to \$500,000.
- B. Provide experience information on the Contractor's Application for Prequalification and a confidential financial statement attested to by a certified public accountant.
  - 1. Include a complete report of the bidder's financial resources and liabilities, equipment, work history, and personnel. Department establishes prequalification amount and work classification.
  - 2. Allow a minimum of 10 days for Department approval of the Contractor's Application for Prequalification and financial statements to assure acceptance of a valid bid.
- C. Renew prequalification a minimum of once a year.
  - 1. The Department may change the prequalification amount during that period upon the submission of an application and additional favorable reports or upon evidence of unsatisfactory reports or performance.
  - 2. The prequalification amount limits bidding to individual contracts of a given size or for a particular type of work.

### 1.2 BIDDING DOCUMENTS

- A. Prequalified bidders must acquire and submit all proposals in the identical name used on their prequalification statement, or in accordance with a filed affidavit of change in firm name or personnel.
- B. Bidders must reference the UDOT Website to acquire bidding documents.

### **1.3 JOINT VENTURE BIDDING**

- A. Prior to submitting a joint proposal on a single project, and at least 4 working days before the bid opening, submit a letter of intent to the Department's Prequalification Board Secretary indicating the precise name of the joint venture and the designated administrative partner. The Department will consolidate individual prequalification amounts for the joint venture bid.

### **1.4 CONTENTS OF BID PROPOSAL**

- A. Contents:
  - 1. Location and description of the contemplated construction.
  - 2. Estimated quantities.
  - 3. Schedule of unit bid items.
  - 4. The time in which the work must be completed.
  - 5. Amount of the proposal guarantee.
  - 6. The date, time and place of the opening of proposals.
  - 7. DBE requirements, as required.
  - 8. Mandatory Pre-Bid Conference, as required.
- B. The Department considers all forms associated to the Bid Proposal as a required part of the Proposal.

### **1.5 ACCEPTANCE OF BID PROPOSALS**

- A. The Department reserves the right to refuse a Bid Proposal for any or all of the following reasons:
  - 1. Lack of or insufficient amount of prequalification or unauthorized work classification.
  - 2. Uncompleted work under contract that the Department determines will hinder or prevent the prompt completion of additional work if awarded.
  - 3. Failure to pay or settle claims.
  - 4. Failure to comply with any qualification regulations.
  - 5. Default under previous contracts.
  - 6. Unsatisfactory performance on previous or current Contract(s)
  - 7. Debarment by the Department or the Federal Government.
  - 8. Serious misconduct that adversely affects the ability to perform future work.
  - 9. Failure to reimburse for monies owed on any previously awarded Department contract including contracts where the prospective bidder was a party in a joint venture that failed to reimburse the Department.
  - 10. Bid Guarantee received after date and time specified.
  - 11. Non-attendance to a mandatory pre-bid meeting.

12. Proposal received after date and time for the opening of bids.
  13. DBE non-compliance.
  14. Not submitted using UDOT's current EBS program.
- B. If the Department refuses to issue a Bid Proposal for any of the foregoing reasons, bidder may appeal in writing to the UDOT Deputy Director.
1. Specify the basis for the appeal in the written request.
  2. The Deputy Director may schedule either an informal or formal hearing.

## **1.6 INTERPRETATION OF QUANTITIES IN BID PROPOSAL**

- A. Proposal quantities are estimates used for comparison and may be increased, decreased, or eliminated in their entirety. Department pays for actual work performed and accepted, and materials furnished.

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

- A. Examine proposed work site and all documents before submitting a Bid Proposal.
1. Bidder is responsible for all site conditions that should have been discovered had a reasonable site investigation been performed.
  2. The Department considers submitting a Bid Proposal as conclusive evidence the bidder knows the conditions to be encountered in performing the work and the requirements of the proposed Contract.
- B. All Department boring logs and other records of subsurface investigations are available for information purposes only and are not substitutes for bidder's own investigation, interpretation, and judgment. It is understood such information was obtained and used for Department design and estimating purposes only.
- C. Bidder is permitted to converse with Department personnel knowledgeable of the project, plans, specifications, materials sites, or conditions generally prevailing in the area of the proposed work to aid in pre-bid investigations.
1. Bidder conducts independent investigation, including a visit to the site of work.
  2. The Engineer is available by appointment.
- D. The Department is bound only by written statements, representations, or descriptions of conditions and work. No oral explanations or instructions are binding.

- E. To request explanations of the written proposal documents, contact the Engineer 14 days prior to bid opening to allow a reply before proposal submission. The Department responds to written requests from prospective bidders by certified letter or electronic communications before the specified time for opening proposals.
- F. Bidder acknowledges that he/she has investigated the nature and location of the work and knows the general and local conditions that can affect the work or its cost, including but not limited to:
  - 1. Conditions bearing upon transportation, disposal, handling, and storage of materials.
  - 2. The availability of labor, water, electric power, and roads.
  - 3. Uncertainties of weather, river stages, irrigation channel flow, lake and reservoir levels, or similar physical conditions of the ground.
  - 4. The type of equipment and facilities needed preliminary to and during work performance.
- G. The character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is ascertainable from an inspection of the site, as well as from the drawings and specifications and all exploratory work made available by the Department.
- H. Failure to take the actions described and acknowledged in this Article does not relieve the Contractor of the responsibility for estimating the difficulty and cost of successfully performing the work, or from proceeding to successfully perform the work without additional cost to the Department.

## **1.8 UDOT ELECTRONIC BID SYSTEM**

- A. Obtain UDOT's newest version of the Electronic Bid System (EBS) from the UDOT website. Refer to <http://www.udot.utah.gov/index.php/m=c/tid=719>.
  - 1. Contact the UDOT Construction Division for Contractor ID and EBS training.
- B. Prepare and electronically submit bid Proposals using the Department's current Electronic Bid System prior to the specified opening date and time for bid.
  - 1. Complete all electronic bid documents specified on the Bid Submission Check List and Forms.
- C. When the Proposal permits a choice (alternate items) to be made, indicate the choice in the Electronic Bid System. The program will not permit an additional choice.
- D. Save Electronic bid documents until project has been awarded.

- E. Submit bid Guarantee using the current version of EBS. Apparent low bidder delivers original guarantee if in the form of cashier's or certified check within 3 working days of bid opening.
- F. Confirm receipt of addenda.
- G. Provide the name and address of the individual signing the Proposal as well as the following names and addresses, as applicable.

Type of Bidder	Names and Office Addresses Required
Individual	Individual and Post Office address
Partnership	Each Member of the Partnership and each Post office address
Joint Venture	Each Member or officer of Firms represented and each post office address
Corporation	Corporation Name and corporate address

- H. By signing the Bid Report (electronically or manually), bidders certify they understand and are in compliance with all contract standard and special provisions.

**1.9 IRREGULAR BID PROPOSALS**

- A. The Department considers a Bid Proposal irregular and rejects the Bid Proposal as non-responsive if:
  - 1. The Proposal is incomplete or in a format other than the newest version of the electronic bid system.
  - 2. Contains unauthorized additions, conditional or alternate bids, or irregularities that make the Bid Proposal incomplete, indefinite, or ambiguous.
  - 3. Includes added provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
    - a. This does not exclude a bid proposal limiting the maximum gross amount of awards acceptable to any one bidder at any one bid letting.
    - b. Department selects awards.
  - 4. Does not contain a unit price for each pay item listed and the amount for each lump sum item, except in the case of authorized alternate pay items.
  - 5. Unsigned or not properly signed (electronically or manually).
  - 6. A bid guarantee that is not submitted in accordance with this Section, article 1.10, Proposal Guarantees.

7. Does not contain a Status of Work Under Contract if required, reflecting the contractor's current prequalification status or:
  - a. Is incomplete and improperly executed.
  - b. Indicates the sum of the amount of all uncompleted work plus the estimate of the amount of work to be bid upon exceeds the amount for which the Contractor is prequalified.
8. Any of the unit bid prices are significantly unbalanced to the potential detriment of the Department. The Department may require written justification for the basis of the unit prices before making a decision as to whether the bid is irregular.
9. The receipt of Addenda is not acknowledged.
10. Proposal does not comply with conditions of current special provision for certification of Affirmative Action (DBE).
11. Manually submitted diskette is bland or unreadable.
12. Surety Company is not listed in Department of Treasury Circular 570.

#### **1.10 PROPOSAL GUARANTEES**

- A. Provide a proposal guaranty in the form of a certified check or an electronic guaranty bond for not less than 5 percent of the total amount of the bid made payable to the Utah Department of Transportation and issued from a surety company listed on the Department of Treasury Circular 570.
  1. Use UDOT approved surety clearing house for electronic guaranty bond.
  2. Use current version of the UDOT EBS program.
  3. Apparent low bidder delivers proposal guaranty in the form of cashier's or certified check within 3 days of bid opening.

#### **1.11 ELECTRONIC DELIVERY OF BID PROPOSALS**

- A. Electronically transmit the Bid Proposal prior to the time specified in the Notice to Contractor.
- B. A manually submitted bid takes precedence over an electronically submitted bid.

#### **1.12 WITHDRAWAL OR REVISION OF BID PROPOSALS**

- A. Prior to the 2:00 p.m. advertised bid opening date, a bid proposal may be withdrawn.
- B. Provide the request for withdrawal to the Department in writing to include a company authorized signature and the UDOT Contractor ID, or a telephone call followed by documented electronic communications to include a company authorized signature and the UDOT Contractor ID before the time set for opening bid proposals.

### **1.13 COMBINATION OR CONDITIONAL BID PROPOSALS**

- A. Bid Proposals may be issued for projects in combination or separately.
  - 1. Bid Proposals may be submitted either on the combination or on separate units of the combination.
  - 2. The award of combination bid proposals or separate bid proposals are made to the advantage of the Department.
  - 3. The Department will not consider combination bid proposals other than those specifically set up in the Bid Proposal.
  - 4. The Department writes separate contracts for each individual project included in the combination.
- B. The Department considers conditional bid proposals only when specified in the advertisement.

### **1.14 PUBLIC OPENING OF BID PROPOSALS**

- A. Bid Proposals will be downloaded from the third party repository and publicly opened at the time indicated in the advertisement.

### **1.15 DISQUALIFICATION OF BIDDERS**

- A. Department disqualifies a bidder and rejects a Bid Proposal for any of the following:
  - 1. More than one Proposal for the same work from an individual, firm, or corporation under the same or different names.
  - 2. Evidence of collusion among bidders. Collusion participants are not recognized as bidders for future work until they are reinstated as a qualified bidder.

### **1.16 NON-COLLUSIVE BIDDING CERTIFICATION**

- A. By submitting this Bid Proposal, each bidder and each person signing on behalf of any bidder certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
  - 1. The prices in this Bid Proposal have been arrived at independently without collusion, consultation, communication, or agreement with any other bidder or with any competitor for the purpose of restricting competition.
  - 2. Unless required by law, the prices that have been quoted in this bid proposal have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before opening of Bid Proposals.

3. No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a Bid Proposal for the purpose of restricting competition.
  4. The signers of the Bid Proposal will tender to the Department a sworn statement that the named Contractor(s) has not, whether directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action to restrain free competitive bidding in connection with this Proposal.
- B. The Department considers no a Bid Proposal for award, nor makes any award where there has not been compliance with this article, paragraph A, except as follows:
1. If the bidder cannot make the foregoing certification, the bidder must furnish with the bid proposal a signed statement that describes in detail the reasons why the certification cannot be made.
  2. The Executive Director, or designee, determines that such disclosure was not made for the purpose of restricting competition.
- C. Any of the following does not constitute a disclosure within the meaning of this article, paragraph A, line 1:
1. A bidder has published price lists, rates, or tariffs covering items being procured.
  2. A bidder has informed prospective customers of proposed or pending publication of new or revised price lists for such items.
  3. A bidder has sold the same items to other customers at the same prices being bid.
- D. A Bid Proposal made by a corporation is considered authorized by the board of directors of the bidder. Authorization is defined as signing and submitting the bid proposal, and includes the declaration of non-collusion on the part of the corporation.
- E. UTAH DEPARTMENT OF TRANSPORTATION NON-COLLUSIVE BIDDING CERTIFICATION
- “I declare under penalty of perjury under the laws of the United States and the State of Utah that neither I, nor to the best of my knowledge any member or members of my firm or company have either directly or indirectly restrained free and competitive bidding on this project by entering into any agreement, participating in any collusion, or otherwise taking any action unauthorized by the Utah Department of Transportation, with regard to this Contract.”
- F. Signing the Bid Proposal (manually or electronically) certifies compliance with all provisions of this Non-Collusive Bidding Certification.

## 1.17 DEBARMENT

- A. The Department may debar a Contractor from performing any work on Department or Department administered projects if:
1. The Contractor or an affiliate (defined as an owner, director, manager, officer or fiscal agent of the Contractor) has been convicted of or entered a plea of guilty or *nolo contendere* to a bid-related or a contract-related crime in any Court of competent jurisdiction.
  2. The Contractor or an affiliate has made a public admission of any bid-related or contract-related crime.
  3. The Contractor or an affiliate has falsified information or submitted deceptive or fraudulent statements in connection with prequalification, bidding, or performance of a contract.
  4. The Contractor or an affiliate has violated relevant antitrust laws covering bid rigging, collusion or restraint of free competition among contractors; (Violations covered by the Sherman Antitrust Act, 15 U.S.C. 1, *et seq.* and Title 76, Chapter 10, Section 911, *et se.*, U.C.A. 1953, as amended).
  5. The Contractor or an affiliate has demonstrated willful wrongdoing reflecting a lack of integrity in bidding or performing public projects.
  6. The Contractor, joint venturer, stockholder of 5 percent or more of the Contract, an affiliate, or any immediate relatives of the aforementioned, has been debarred or affiliated with another debarred person or contractors by the Federal Government or by another State government.
  7. The UDOT Deputy Director has reasonable grounds to believe and finds that the Contractor has acted in collusion with others to perform work on a project that supposedly satisfies disadvantaged business enterprise goals or requirements through other than *bona fide* disadvantaged business entities in any combination of individuals, firms or corporations.
  8. The Contractor or affiliate has defaulted under previous contracts.
  9. The Contractor or affiliate has unsatisfactory performance on previous work or current Contract(s) consisting of, but not limited to:
    - a. Noncompliance with Contract.
    - b. Failure to complete work on time.
    - c. Instances of substantial corrective work before acceptance.
    - d. Instances of completed work that requires acceptance at reduced pay.
    - e. Production of non-specification work or materials, and when applicable, required price reductions or corrective work.
    - f. Failure to provide adequate safety measures and appropriate traffic control that endangered the safety of the work force and public.
  10. The Contractor or an affiliate has questionable moral integrity as determined by the Department, the Attorney General of Utah or the Attorney General of the United States.

11. Failure to reimburse the State for monies owed on any previously awarded contract including those where the prospective bidder is a party to a joint venture and the joint venture has failed to reimburse the State for monies owed.
12. The UDOT Deputy Director has reasonable grounds to believe and finds that the public health, welfare or safety imperatively requires such action.

#### **1.18 STATUS PENDING DEBARMENT**

- A. Contractor notified of proposed debarment as provided above is not permitted to contract with the Department, nor act as a subcontractor unless a request for either an information or formal hearing is pending.
- B. The proposed debarment period does not commence until the Department decision has been issued following the said hearing or hearings.

#### **1.19 LENGTH OF DEBARMENT**

- A. Debarment is for a term of not less than six months and up to three years as determined by the Deputy Director.
- B. Department may adjust the period of debarment for mitigating circumstances including but not limited to the following:
  1. Degree of culpability.
  2. Restitution of damages to the State.
  3. Cooperation in the investigation of other bidding crimes.
  4. Disassociation with those involved in bidding crimes.
  5. Protection of the State that may be required.
  6. If such action would have unintended adverse consequences on competition.
- C. Debarment in no way affects the obligation of a Contractor to the Department to perform under existing contracts.
- D. The Department also reserves the right to declare a debarred Contractor in default on any existing contracts for adequate cause as provided in such contracts.

#### **1.20 DEBARMENT - PROCEDURES**

- A. The procedure described in this Section, article Debarment applies if it is found that a contractor or an affiliate thereof is violating the prohibited activities.

- B. The Engineer for Construction notifies the Contractor in writing and by certified mail of the Department's intention to debar. Written notice specifies:
  - 1. The grounds for such intended debarment.
  - 2. The date debarment becomes effective and the intended period of debarment.
  - 3. The procedure to follow if the Contractor desires to challenge the debarment or to offer information to the Department in mitigation of its alleged actions.
  
- C. Within 15 calendar days of receiving the notice of intended debarment, the Contractor may request either:
  - 1. An informal hearing before the Engineer for Construction.
  - 2. A formal hearing before the UDOT Deputy Director.
  
- D. The Contractor who elects to proceed at an informal hearing has the opportunity to appear at a mutually agreed upon time and location.
  - 1. Contractor may supply information in support of their position and has the opportunity to review the Department's evidence, present evidence, and discuss matters informally.
  - 2. No legal counsel is permitted for either party at the informal hearing.
  
- E. The UDOT Deputy Director of Transportation or designee conducts a formal hearing with assistance from the Department's legal counsel. The Contractor who appears may be represented by counsel and has the opportunity to review the Department's evidence, and to present evidence in rebuttal either by sworn affidavit or by sworn testimony.
  
- F. Following either a formal or informal hearing, the Department representative conducting the hearing issues a written decision no later than 30 calendar days following the hearing.
  
- G. The decision of the UDOT Deputy Director following a formal hearing is administratively final and specifies the facts justifying the Department's actions and conclusion.
  
- H. If the Engineer for Construction's decision is to be appealed, the Contractor files notice in writing with the UDOT Deputy Director within 20 calendar days after receiving the decision from the Engineer for Construction. The Deputy Director then schedules a formal hearing as specified above.

**PART 2      PRODUCTS      Not used**

**PART 3      EXECUTION      Not used**

END OF SECTION