

SECTION 00120

INSTRUCTIONS TO BIDDERS

PART 1 GENERAL

1.1 PREQUALIFICATION OF BIDDERS

- A. Applies to all projects where the Department Engineer's Estimate is greater than or equal to \$500,000.
- B. Provide experience information on the "Contractor's Application for Prequalification" form and a confidential financial statement certified by a certified public accountant.
 - 1. Include a complete report of the bidder's financial resources and liabilities, equipment, past record, and personnel. Department establishes prequalification amount and classification.
 - 2. Allow a minimum of 10 days for Department approval of the "Contractor's Application for Prequalification."
- C. Prequalify at least once a year.
 - 1. The Department may change the prequalification amount during that period upon the submission of additional favorable reports or upon evidence of unsatisfactory performance.
 - 2. The prequalification amount limits bidding to individual contracts of a given size or for a particular type of work.
- D. If bid exceeds prequalification amount, including work in progress, Contract may not be awarded.

1.2 REQUEST FOR BIDDING DOCUMENTS

- A. Prequalified bidders must purchase 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 make a written or verbal request to the Construction Division to receive bidding documents.
 - 1. Include a form entitled "Status of Work Under Contract" in the bidding documents. Show on the form the status of all work under contract and being prosecuted by the bidder both in and outside the State of Utah as of the date of the bidding proposal.

2. Complete, properly execute, and include the form in the bid proposal.
3. The Department declares Bid Proposals non-responsive if the Contractor's "Status of Work Under Contract" form:
 - a. Is not included in the bid proposal.
 - b. Does not show the sum of the amount of uncompleted work, both in and outside the State of Utah.
 - c. Shows that the estimate of the amount of work to be bid upon exceeds the amount for which the Contractor is prequalified.

1.3 JOINT VENTURE BIDDING

- A. Prior to submitting a joint proposal on a single project, submit a letter of intent to the Department's Prequalification Board Secretary at least 4 working days before the bid opening. The Department consolidates individual prequalification amounts for the bid.

1.4 CONTENTS OF BID PROPOSALS

- A. Contents:
 1. The location and description of the contemplated construction.
 2. The estimated quantities.
 3. A schedule of unit bid items.
 4. The time in which the work must be completed.
 5. The amount of the proposal guarantee.
 6. The date, time and place of the opening of proposals.
- B. The Department considers papers bound with or attached to the Bid Proposal as part of the Proposal, and does not detach or alter the documents when the Proposal is submitted.
- C. The Construction Division considers the plans, supplemental specifications, specifications and other documents that accompany the Bid Proposal as part of the Proposal whether attached or not, and they need not be returned as a part of the Bid Proposal.

1.5 ISSUANCE OF BID PROPOSALS

- A. The Department reserves the right to refuse to issue a Bid Proposal or award a Contract to a bidder for any or all of the following reasons:
 1. Lack of prequalification.
 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.
 8. Serious misconduct that adversely affects the ability to perform future work.
 9. Failure to reimburse for monies owed on any previously awarded Department contracts including contracts where the prospective bidder was a party in a joint venture which failed to reimburse the Department.
- 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 be 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 judgement. The Department obtained and used this information for 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 work site.
 2. The Engineer is available by appointment.

- D. The Department is bound only by written statements, representations, 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 Electronic Bid System (EBS).
 - 1. Obtain software free of charge when purchasing plans and specifications for submitting a bid.
 - 2. Contact the UDOT Construction Division at (801) 965-4346 or (801) 965-4344 for EBS training. Training will be scheduled the week prior to the bid opening.
- B. Prepare and submit Proposals using the Department's Electronic Bid System
 - 1. Specify a unit price in figures for each pay item for which a quantity is given.

2. The Electronic Bid System calculates the product of the respective unit prices, sub-totals and the total bid.
- 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 the bid to a diskette using the Departments' Electronic Bid System. Also print Bid Report using the Electronic Bid System.
 1. The signed, printed Bid Report is the Contractor's official bid. Follow all Standard Specification requirements for the preparation of a bid.
 2. If there are any differences between the data on the diskette and the printed Bid Report, the Department changes the electronic data to match the printed Bid Report.
 - E. Properly executed proposals consist of: Diskette, Bid Report, **and all required forms** printed from the Electronic Bid System Software.
 - F. A representative of the bidder authorized to execute bid proposals signs the Bid Report signature page in ink.
 - G. Confirm receipt of addenda.
 - H. 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

- I. By signing the Bid Report, bidders certify they understand and are in compliance with all provisions of this Section, article, "Non-Collusive Bidding Certification," and article, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions."

1.9 IRREGULAR BID PROPOSALS

- A. The Department considers a Bid Proposal irregular and rejects the Bid Proposal as non-responsive if:
1. It is in a format other than electronic format, or if any part is detached, altered, or incomplete.
 2. It contains unauthorized additions, conditional or alternate bids, or irregularities that make the Bid Proposal incomplete, indefinite, or ambiguous.
 3. It 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. It contains unit prices which are not typed or completed in ink, or are not legible.
 5. It 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.
 6. It contains changes in the unit prices such as erasures, strikeouts and white-outs that are not initialed in ink.
 7. It is not properly signed.
 8. It has a bid bond that is:
 - a. Submitted on a form that is not furnished by the Department.
 - b. Not properly signed.
 9. It contains a "Status of Work Under Contract" standard form for contractors who are prequalified for less than Unlimited:
 - a. Which 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.
 10. 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.
 11. The receipt of Addenda is not acknowledged.
 12. It does not comply with conditions of special provision for certification of Affirmative Action (DBE).

1.10 PROPOSAL GUARANTY

- A. The Department will not consider a Bid Proposal unless it is accompanied by a guaranty in the form of a certified check, cashier's check or guaranty bond for not less than 5 percent of the total amount of the bid made payable to the Utah Department of Transportation.
- B. Use the proposal guaranty bond form included in the Bid Proposal.

1.11 DELIVERY OF BID PROPOSALS

- A. Place Bid Proposals in a sealed envelope plainly marked to indicate a Bid Proposal. Include on envelope the project number, bid opening date, submitting contractor, and company address.
- B. Address envelope to: Engineer for Construction, 4501 South 2700 West, Salt Lake City, UT, 84114-8220.
- C. File the Bid Proposal before the time and at the place specified in the Advertisement.
- D. Bid Proposals received after the time specified for opening are returned unopened.

1.12 WITHDRAWAL OR REVISION OF BID PROPOSALS

- A. Bid Proposal may be withdrawn or revised after receipt by the Department.
- B. Provide the request for withdrawal or revision to the Department in writing or a telephone call followed by documented electronic communications 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 are opened and read publicly at the time and place indicated in the advertisement.

1.15 DISQUALIFICATION OF BIDDERS

- A. Department disqualifies a bidder and rejects a Bid Proposal for one or both 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 at the bottom of the Bid Schedule **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 6 months and up to 3 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 State Attorney General's Office. 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