

**Top of earthwork.** The uppermost surface of the embankment excavation, exclusive of select material, that is shaped to conform with the typical section.

**Traveled way.** The portion of the roadway for the movement of vehicles, exclusive of shoulders.

–V–

**Vouchered.** The action of approval by the Department; constitutes the date of release to the State Comptroller for payment.

–W–X–Y–Z–

**Wearing course.** See **Surface course.**

**Work.** The furnishing of all materials, labor, tools, equipment, and incidentals necessary or convenient for the successful completion of the project and the carrying out of the duties and obligations specified in the Contract.

**Working drawings.** Stress sheets, shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data the Contractor is required to submit to the Engineer for review.

**Work order.** A written order issued by the Engineer to the Contractor that specifies changes in the plans or quantities or both within the scope of the Contract and that establishes the basis of payment and time adjustments for the work affected by the changes.

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

### **102.01—Prequalification of Bidders.**

Prospective bidders shall prequalify with the Department and shall have received a certification of qualification in accordance with the rules and regulations adopted by the Board. However, unless otherwise required in the proposal, prequalification will not be required for items noted in the proposal as “Specialty Items.”

The names of persons authorized to sign bids shall be on file with the Department. A name will be considered to be on file if it appears as that of an officer, a partner, or an owner on the current Contractor’s Financial Statement. Requests by the bidder to revise the list of persons authorized to sign bids shall be submitted in writing and approved prior to the date bids are opened. A bid signed by someone whose name is not on file may be rejected.

The bidder shall certify on the Bidder Certification of Prequalification Classification and Work Capacity Form provided in the proposal that the necessary classification, type, and current maximum capacity rating are sufficient to cover the amount of the bid and any uncompleted work under contract. Allowance will be made for subcontract work only on contracts with the Department, and then only if the work is listed on the Contractor's Proposal to Subcontract Form provided in the proposal.

Unless otherwise designated by the bidders, the bid amount of a joint venture will be divided equally to determine if the maximum capacity rating for each bidder is within each bidder's range.

When an individual is prequalified to bid jointly only with a specific company, the joint venture will be considered a unified entity for qualification purposes.

A bidder who makes a false certification on the Bidder Certification of Prequalification Classification and Work Capacity Form will be subject to forfeiture of the bid bond or disqualification from bidding on future work for a 90-day period, or both.

Bidders intending to submit bids consistently shall prequalify at least once a year. However, the maximum capacity rating or classification, or both, may be changed during that period if additional favorable reports are submitted or upon unsatisfactory performance. The Department may require a Contractor to furnish a current financial and experience statement at any time.

A Contractor may be temporarily disqualified from bidding on contracts with the Department when the dollar value of work completed on a current contract is more than 10 percent less than the dollar value of the work that should have been completed on the basis of the Contractor's latest approved progress schedule. Progress will be determined at the time of the monthly progress estimate. If the Contractor is delinquent by more than 10 percent, he may be notified that if the next monthly progress estimate shows a delinquency of more than 10 percent, his name may be removed from the list of prequalified bidders unless he can establish that the delinquency was attributable to conditions beyond his control. If his name is removed, the Contractor will not be reinstated as a prequalified bidder until the Engineer deems that his progress has improved to the extent that the work can be completed within the contract time limit or until final acceptance.

Temporary disqualification of a Contractor as provided herein will result in the temporary disqualification of each member of a joint venture and any affiliate, having substantially the same operational management or drawing from the same equipment or labor resource pool. Temporary disqualification will also result in non-approval of the Contractor and each member of a joint venture, and affiliates as defined herein, for performance of work as subcontractors, which, in the opinion of the Engineer, could adversely affect other work under contract to the Department.

When the dollar value of the work completed has reached 90 percent of the dollar value of the Contractor's latest approved progress schedule, progress will be deter-

mined at the time of the monthly progress estimate by comparing the percentage of time used with the percentage of work completed. When the percentage of time used exceeds the percentage of work completed by 10 percent or more, a notice of potential loss of prequalification may be issued. If the Contractor does not complete the work within 30 days or does not establish that the delinquency was attributable to conditions beyond his control, he may be removed from the list of prequalified bidders until final acceptance.

The Contractor shall return Form No. C-53 with the proposal documents listing subcontractors that supplied quotes for work on the specific project. This form shall show the vendor numbers and legal names of subcontractors. Bids received by the Department that do not contain a Form C-53 will be considered non-responsive and will be rejected.

### **102.02—Content of Proposal.**

Upon request, the Department will furnish a proposal to any interested party. The proposal will specify the location and description of the contemplated construction, the estimate of the various quantities and kinds of work to be performed or materials to be furnished, and a schedule of items for which unit bid prices are invited. The proposal will specify the time in which the work shall be completed and the date and time by which bids must be filed. The proposal will also include any applicable supplemental specifications, special provisions, or special provision copied notes.

Papers bound with or attached to the proposal will be considered a part of the bid. Unless otherwise permitted, they shall not be detached or altered when the bid is submitted. The plans, specifications, and other documents specified in the proposal will be considered a part of the proposal whether or not they are attached.

### **102.03—Interpretation of Quantities in Proposal.**

The quantities appearing in the proposal are approximate only. The Contractor will be paid for the quantities of work accepted and materials furnished in accordance with the requirements of the Contract. The scheduled quantities of work to be performed and materials to be furnished may be increased, diminished, or omitted as hereinafter provided. When payment of any item in the Contract is indicated to be on the basis of plan quantities, the Contractor will be paid in accordance with the requirements of Section 109.02. When all types of pipe of one size are combined into one bid item in the proposal, one bid price shall be submitted for each size of pipe to be used.

The Contractor shall include the latest dated Acknowledgment of Revision Sheet (C-78) as part of the submission of the bid when revisions are made to the contract documents prior to receipt of bids. Revision sheets when applicable, that are not included with the bid will be considered non-responsive and will be rejected.

**102.04—Examination of Site of Work and Proposal.**

The submission of a bid will be considered conclusive evidence that the bidder has examined the site of the proposed work, proposal, plans, standard drawings, specifications, supplemental specifications, special provisions, special provision copied notes, and any other documents specified in the proposal before submitting a bid and is satisfied as to the conditions to be encountered in performing the work and requirements specified in the proposal.

Subsurface data may be available for review by the bidder in the office of the District or State Materials Division Administrator. Such data are accurate with regard to test holes and are made available to the bidder in good faith in order to apprise him of information in possession of the Department. Any conclusions drawn by the Department concerning subsurface conditions are based solely on the data and are merely indications of what appear to be existing subsurface conditions. The Department does not warrant these conclusions to be correct, either expressly or by implication. Nor does the Department warrant the condition, amount, or nature of the material that may be encountered or the sufficiency of the data, either expressly or by implication. The bidder shall make his own interpretation of the subsurface data that may be available and satisfy himself with regard to the nature, condition, and extent of the material to be excavated, graded, or driven through. The submission of a bid will be considered conclusive evidence that the bidder is satisfied with regard to the subsurface conditions to be encountered in the work.

If a word, phrase, clause, or any other portion of the proposal is alleged to be ambiguous, the bidder shall submit written notice of the same to the Contract Engineer at least 10 days prior to the date bids are to be received and shall request an interpretation. Authorized interpretations will be issued by the Contract Engineer to each person who received a proposal and will be mailed to the address registered at the Contract Engineer's office when the proposal was requested. The Department will not be responsible for any other explanations or interpretations of the proposal. No employee or agent of the Department shall have the authority to furnish any other explanation or interpretation, verbal or written.

If the bidder fails to give written notice and request an interpretation of the alleged ambiguity within the specified time, he shall waive any right he may have had to his own interpretation of the alleged ambiguity. The true meaning of the alleged ambiguity will be as interpreted by the Department through the Contract Engineer.

**102.05—Preparation of Bid.**

The bidder shall submit his bid on the proposal form. The bidder shall furnish a unit or lump sum price as called for in the proposal, in numerical figures, for each pay item listed. The bidder shall also show the products of the unit prices and quantities in numerical figures in the column provided for that purpose and the total amount of the bid. Figures shall be written in ink or typed. The bidder may submit an electronically generated proposal form (C-7A) provided the bidder has written approval from the Contract Engineer.

If there is a discrepancy between the unit price and its extensions, the unit price will govern. If a unit or lump sum price is omitted, the bid will be rejected. In the event there is a discrepancy between the bidder's electronically generated proposal form (C-7A) and the proposal form as furnished by the Department, the Department proposal form will govern.

When design options are shown in the proposal, the bidder shall submit a bid price for at least one design option. The award of the Contract will be made on the basis of the lowest responsible bid submitted. Except as otherwise specified in the proposal, when regular and alternate designs are shown in the proposal, the bidder shall submit a bid price for at least one design. The Department may award the Contract to the bidder who submitted the lowest bid for the regular design or the lowest bid for the alternate design, whichever is deemed to be in the best interest of the State.

The bid shall be signed in ink by the individual, one or more members of a partnership, or one or more of the officers of a corporation, whichever is applicable. For a joint venture, the bid shall be signed in ink by each individual involved, each partnership through one or more of its members, or each corporation through one or more officers of the corporation, whichever is applicable.

If the bid is made by an individual, the name and address of the individual shall be shown; if by a partnership, its name and address and the name and title of the partner signing the bid shall be shown; if by a corporation, the name of the corporation, its address, and the name and title of the officer signing the bid shall be shown; if by a joint venture, the aforementioned information shall be shown for each party.

A sworn statement shall be executed by the bidder or his agent on behalf of each person, firm, association, or corporation submitting a bid. The statement shall certify that the person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action to restrain free competitive bidding in connection with the proposal. The sworn statement shall be in the form of an affidavit furnished by the Department and shall be sworn to before a person who is authorized by the laws of the State to administer oaths. The original of the sworn statement shall be filed with the Department when the bid is submitted.

#### **102.06—Irregular Bids.**

Bids will be considered irregular and may be rejected for *any* of the following reasons:

- (a) if the bidder fails to comply with the requirements of Sections 102.05 and 102.07
- (b) if the bid is not written in ink or typed
- (c) if the bidder adds any provisions reserving the right to accept or reject an award or enter into a contract pursuant to an award except as otherwise permitted in these specifications

- (d) if the bid is not totaled
- (e) if the bid is not properly signed
- (f) if erasures or alterations in the bidder's entries are not initialed by the bidder
- (g) if there are unauthorized additions, conditional or alternate bids, or irregularities of any kind that may make the bid incomplete, indefinite, or ambiguous
- (h) if the unit prices in the bid are obviously unbalanced, either in excess or below the cost analysis values as determined by the Department
- (i) if any papers included in the bid are detached or altered when the bid is submitted except as otherwise provided for herein
- (j) if bids are submitted in envelopes showing a designation for a project other than the project for which the bid is made
- (k) if the bidder fails to submit a statement concerning collusion

#### **102.07—Proposal Guaranty.**

A bid in excess of \$100,000.00 will not be accepted or considered unless accompanied by a guaranty in the form of a bid bond made payable to the Treasurer of Virginia. A bid bond will be accepted only if executed on a form which contains the exact wording as the form furnished by the Department. Any bid accompanied by a bond having wording which differs in any respect from that furnished by the Department may be rejected. The amount of the proposal guaranty shall be 5 percent of the total bid.

When the principal is a joint venture, each party thereof shall be named and shall execute the proposal guaranty. Each surety to the bid bond shall be named and shall execute the bid bond. The bid bond shall be accompanied by a certified copy of the power of attorney for the surety's attorney-in-fact.

#### **102.08—Disqualification of Bidder.**

*Any* of the following causes may be considered sufficient for the disqualification of a bidder and rejection of his bid:

- (a) more than one proposal for the same work from an individual, partnership, corporation or joint venture under the same or different name. A proposal submitted by an affiliate of an individual, partnership, corporation or any party of a joint venture will be considered as more than one proposal submitted for the same work.

affiliate as used here is defined as: Any business entity which is closely associated to another business entity so that one has the power to control the other either directly or indirectly; or, when a third party has the power to control both; or, where one business entity has been so closely allied with another through an established course of dealings, including but not limited to the lending of financial wherewithal or engaging in joint ventures, so as to cause a public perception that the two firms are one entity.

- (b) evidence of collusion among bidders; participants in such collusion will not be considered for future bids until requalified by the Board
- (c) incompetency or inadequate machinery, plants, or other equipment as revealed by the bidder's financial and experience statements required by these specifications
- (d) unsatisfactory workmanship or progress as demonstrated by performance records of current or past work for the Department, other agencies or departments of the State, or agencies or departments of other states in the United States or federal government
- (e) uncompleted work with the Department that in the judgment of the Engineer might hinder or prevent prompt completion of additional work if awarded
- (f) failure to pay or settle satisfactorily all bills for materials, labor, equipment, supplies, or other items specified in contracts in force at the time the new work comes before the Board for award
- (g) failure to comply with any prequalification regulation of the Department
- (h) failure to cooperate properly with representatives of the State supervising construction or disorderly conduct toward any such representative
- (i) default under a previous contract

### **102.09—Delivery of Bid.**

Each bid may be submitted in the envelope furnished by the Department. The blank spaces on the envelope shall be filled in correctly. When any other envelope is used, it shall be the same general size and shape as the envelope furnished by the Department and shall be marked to indicate its contents clearly. Bids shall be sealed in an envelope and addressed to: Contract Engineer's Office, VDOT, 1401 E. Broad Street, Richmond, VA 23219.

Bids shall be filed prior to the time and at the place specified in the Notice of Advertisement. Bids received after that time will be returned to the bidder unopened. The date for the opening of bids may be deferred by the Department, in which case the bidders will be notified.

**102.10—Withdrawal of Bid.**

A bidder may withdraw a bid in accordance with the following.

- (a) **Standard Withdrawal:** A bidder may withdraw a bid provided the request for the withdrawal is written and signed by a person(s) who qualifies to execute the bid in accordance with the requirements of Section 102.05. The request must be received by the Contract Engineer at least 1 hour prior to the time specified for receiving bids.
  
- (b) **Conditional Withdrawal:** A bidder who desires to bid on more than one project for which bids are to be opened on the same date and desires to protect himself against receiving an award of more projects than he is equipped to handle may secure the protection desired by completing the forms for the conditional withdrawal of bids included in the proposal.

**102.11—Combination or Conditional Proposals.**

If the Department so elects, proposals may be issued for projects in combination or separately. Bids may be submitted for either the combination or separate units of the combination. The Department may make awards on combination bids or separate bids to its best advantage. Combination bids other than those set up in the proposals by the Department will not be considered.

Conditional bids will be considered only when so stated in the proposal.

**102.12—Public Opening of Bids.**

Bids will be opened and read publicly at the time and place specified in the Notice of Advertisement. Interested parties are invited to be present.

**102.13—Material Guaranty.**

Before a contract is awarded, a bidder may be required to furnish a complete statement concerning the origin, composition, and manufacture of the materials to be used in the work, together with samples.

**102.14—Use of Debarred Suppliers.**

In accordance with the requirements of Section 200.02, the Engineer will not approve for use any material furnished by a supplier debarred by the Department. The bidder shall ascertain from the Department's listings which suppliers are debarred. Listings will be posted in the Contract Engineer's office, VDOT, 1401 E. Broad Street, Richmond, Virginia, and in each district office.

If a previously debarred supplier is reinstated to eligibility subsequent to the award of a contract, the Engineer may approve the use of the supplier when requested by the Contractor.

## **SECTION 103—AWARD AND EXECUTION OF CONTRACTS**

### **103.01—Consideration of Bids.**

After bids have been opened and read, they will be compared on the basis of the summation of the products of the approximate quantities shown in the bid schedule and the unit bid prices.

The Department may correct arithmetical errors in the bid prior to such comparison. The results of the comparisons will be available to the public after the determination has been made by the Board to award the Contract.

The Board reserves the right to reject any or all bids, waive technicalities, advertise for new bids, or proceed to do the work otherwise if it deems that the best interest of the State would be promoted thereby.

### **103.02—Award of Contract.**

If the Contract is awarded, the award will be made to the lowest responsive and responsible bidder without discrimination on the grounds of race, color, sex, or national origin. In the event of tie bids, preference will be given to Virginia persons, firms, or corporations; otherwise, the tie will be decided by lot. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia. The award date will not be later than midnight on the 60th day after the opening of bids. If the Board has not awarded the Contract within this period, the bidder may withdraw his bid without penalty or prejudice unless the time limit is extended by mutual consent.

### **103.03—Cancellation of Award.**

The Board may cancel the award of any contract at any time before the execution of the contract by all parties without liability to the State.

### **103.04—Return of Proposal Guaranty.**

Proposal guaranties, except those of the two lowest bidders, will be returned immediately after the examination of bids. The proposal guaranties of the two lowest bid-