

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-

ders will be returned within 5 days after a satisfactory bond has been furnished and the Contract has been duly executed. Proposal guaranties in the form of bid bonds will be retained by the Department if the bidder does not request their return. When the Contractor withdraws his bid prior to award, after being the low bidder, the bid bond will be forfeited in accordance with the requirements of Section 11-57 of the *Code of Virginia*.

103.05—Requirements of Contract Bond.

Within 15 calendar days after notification, the successful bidder shall furnish the following bonds for contracts in excess of \$100,000:

- (a) a performance bond in the sum of the Contract amount, conditioned upon the faithful performance of the Contract in strict conformity with the plans, specifications and conditions of the Contract, and
- (b) a payment bond in the sum of the Contract amount, conditioned upon the prompt payment for all labor, materials, public utility services and rental of equipment used in the prosecution of the work for the Contract.

Bidders will not be awarded an unbonded contract when their bid plus the balance of other unbonded contracts exceed \$100,000.00 or if their current Ability Factor is less than 8.0, as determined by their prequalification status.

The bonds shall be made on official forms furnished by the Department and shall be executed by the Contractor and a surety company authorized to do business in Virginia in accordance with the laws of Virginia and the rules and regulations of the State Corporation Commission. In order to be considered properly executed, the bonds shall include authorized signatures and titles.

In lieu of payment or performance bonds, the Contractor may furnish a certified check or cash escrow in the face amount required for each of the bonds, which will be held for the full statutory period as applicable for each bond.

Upon written request from the Contractor, the contract bonds may be reduced on contracts having planting items with an establishment period after acceptance of all contract work and during the establishment period. The amount of contract bonds for the duration of the remaining establishment period shall be equal to 35 percent of the total contract price of the planting items.

103.06—Contract Documents.

The portion of the executed Contract submitted by the Contractor shall include the following documents unless the filing of any of them at a later date is specifically permitted by other sections of these specifications or by special provisions:

- (a) **Contract:** The Contract shall include the schedule of prices submitted by the bidder, plans, standard drawings, these specifications, supplemental

specifications, special provisions, special provision copied notes, and the standard form of the Contract, all as furnished by the Department.

- (b) **Contract Bonds:** Contract bonds shall conform to the requirements of Section 103.05.
- (c) **Affidavits and Documents:** Affidavits and documents shall include those required to be made a part of the Contract by any federal or state law in effect on the date of the Notice of Advertisement.
- (d) **Workers' Compensation Insurance Certificate:** The certificate shall be filed on forms furnished by the Department within 15 calendar days after notification of award of the Contract. The certificate shall be executed by an approved and authorized insurance company as required by state law and shall cover the Contract it accompanies.

The Contractor shall file notice with the Department at least 30 days prior to the cancellation of any required workers' compensation coverage. If any of his insurance of this class is cancelled, the Contractor shall cease operations on the date of the cancellation and shall not resume operations until new insurance is certified as being in force.

- (e) **Progress Schedule:** The Contractor shall submit a progress schedule on forms furnished by the Department. The schedule shall set forth the best estimate of the time required for completion of the items of work specified in the Contract. The schedule shall be submitted no later than 30 days after the date specified in the Notice to Proceed and prior to the first monthly progress estimate. The progress schedule shall be duly executed by the Contractor after it has been accepted by the Engineer. If conditions change that would require a change in the Contractor's operations, the Contractor shall submit a revised progress schedule that has been mutually agreed on.

The Contractor shall attend a conference called by the Engineer at which the Contractor's planned or contemplated operations will be discussed. The Contractor shall keep the Engineer informed of his planned or contemplated operations on a continuing basis. Every 30 days, the Contractor shall meet with the Engineer and establish the approximate date for starting each critical inspection stage during the following 30 days. At least once a week, the Contractor shall advise the Engineer of the approximate timing for anticipated critical stages for the subsequent week. The Engineer shall be advised at least 24 hours in advance of any changes in planned operations or critical staging mentioned herein and in Section 105.12.

The review and acceptance by the Department of the Contractor's progress schedule shall in no way relieve the Contractor of his responsibility to complete the work within the contract time limit, adjusted in accordance with the requirements of Section 108.09.

Delays in work resulting from the Contractor's failure to provide the progress schedule will not be considered just cause for extension of the contract time limit or for additional compensation.

- (f) **Contractor's Bodily Injury and Property Damage Liability Insurance:** The Contractor shall procure and maintain at his own expense, until final acceptance of the work covered by the Contract, insurance of the kinds and in the amounts specified herein. The minimum limits of liability for this insurance shall be as follows:

**A Combined Single Limit for Bodily Injury Liability
and Property Damage Liability**

\$1,000,000	Each Occurrence
\$2,000,000	Aggregate

Evidence of insurance in compliance with the above shall be filed on forms approved by the Department within the time specified in Section 103.06(d). The evidence shall be executed by an approved and authorized insurance company authorized to do business in Virginia and with a minimum "Best Rating" of "B", and shall cover the Contract it accompanies.

The Contractor shall file notice with the Department at least 30 days prior to the cancellation or reduction of the required insurance, and shall cease operations on the date of the cancellation or reduction until new insurance is in force and the same evidence of insurance is provided to the Department.

The Contractor's Bodily Injury and Property Damage Liability Insurance shall cover liability of the Contractor for damage because of bodily injury to, or death of persons and damage to, or destruction of property, which may be suffered by persons other than the Contractor's own employees as a result of the negligence of the Contractor in performing the work covered by the Contract.

Insurance provided in compliance with this section shall include liability of the Contractor for damage to or destruction of property, which may be suffered by persons other than the Contractor's own employees as a result of blasting operations of the Contractor in performing the work covered by the Contract.

If any part of the work is sublet, insurance meeting the same requirements shall be provided by or in behalf of the subcontractors and evidence of such insurance shall be submitted with the sublet request.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor or subcontractor(s) for liability in excess of such coverage, nor shall it preclude the Commonwealth from

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taking such actions as is available to it under any other provision of this Contract or otherwise in law.

103.07—Execution and Approval of Contract.

The bid as submitted by the Contractor, including the documents specified in Section 103.06(a), shall constitute the Contract upon submittal of the contract bond and workers' compensation insurance certificate and the final execution by the Department. If the Contract is not awarded within the time limit specified in Section 103.02, the bidder may withdraw his bid without penalty or prejudice. No contract shall be considered effective until it has been fully executed by all parties.

103.08—Failure To Furnish Bonds or Certificate of Insurance.

Failure by the successful bidder to furnish the Department acceptable bonds, workers' compensation insurance or the Contractor's Bodily Injury and Property Damage Liability Insurance policy within 15 calendar days after being notified of the award of the Contract shall be considered just cause for cancellation of award and forfeiture of the proposal guaranty. In such event, the proposal guaranty shall become the property of the State, not as a penalty but in liquidation of damages sustained. The Contract may then be awarded to the next lowest responsible bidder, or the work may be readvertised or constructed otherwise, as determined by the Board.

No plea of mistake in the bid shall be available to the bidder for the recovery of his proposal guaranty or in defense of action taken by the Department as a result of his neglect or refusal to execute the Contract.

In the event the successful Bidder on a non-guaranteed contract is unwilling or unable to fulfill the contract and fails to notify the Department prior to execution of the contract by the Department the Bidder will be declared in default in accordance with the requirements of Section 108.13. In the event the Bidder notifies the Department prior to execution of the contract by the Department of such unwillingness or inability to fulfill the contract, the Bidder will be enjoined from bidding on contracts without furnishing guarantee for a period of no less than 90 days from the date of notice by the Department. A Bidder who has never been enjoined or defaulted on a non-guaranteed contract and who notifies the Department prior to contract execution of an unwillingness or inability to fulfill the contract will not be enjoined for the first occurrence; however, such Bidder will not be permitted to rebid or perform work on this contract.

SECTION 104—SCOPE OF WORK

104.01—Intent of Contract.

The intent of the Contract is to provide for completion of the work specified therein.