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Section 102. BID SUBMISSION, AWARD, AND EXECUTION OF CONTRACT

102.01. Prequalification of Bidders. Unless otherwise provided, Bidders must be prequalified for the categories of work on which they submit a bid. A Bidder's net prequalification must be equal to or greater than that required for the proposed contract. When required in the proposal, the Bidder must designate other prequalified Contractors to whom they will subcontract those categories of work for which they lack prequalification, in accordance with subsection 108.01.

102.02. Contents of Proposal. The Proposal will provide the following information:

- A. Location and description of the contemplated work;
- B. Estimate of the various item quantities and kinds of work to be performed and/or materials to be furnished;
- C. Schedule of items for which proposed unit prices are invited;
- D. Specified days or date in which the work must be completed;
- E. Amount of the bid guaranty;
- F. Date, time and place for the electronic submittal and downloading of bids;
- G. Special provisions, supplemental specifications or other requirements that vary from or are not contained in the standard specifications or on the plans; and
- H. Applicable wage rate schedules.

The plans, specifications, and other documents designated in the Proposal are considered part of the Proposal whether attached or not.

102.03. Interpretation of Bid Items in the Proposal. The Department will use estimated quantities in the Schedule of Items to compare bids.

102.04. Examination of Plans, Specifications, and Work Site. Prior to submitting a bid, the Bidder must:

- A. Examine the proposal, plans, and the work site to understand the local conditions affecting the work and the detailed requirements of construction.
- B. Upon discovery of uncertainties, inconsistencies, errors, omissions, or conflicts during the examination of the proposal, plans and work site, notify the Department representative identified in the proposal using Department-approved procedures.

C. Be familiar with all requirements of federal, state, and local laws, ordinances, and permits that may directly, or indirectly, affect performance of the work.

The Department considers the submission of a bid proposal as prima facie evidence that the Bidder examined the proposal, plans, and the project site, and understands the requirements of the proposal package and conditions at the project site.

The Bidder must not take advantage of errors or omissions in the proposal that could make the bid mathematically or materially unbalanced. Failure to notify the Department of errors and omissions may result in the Department's rejection of the bid, reduction in or suspension of the bidder's prequalification, or both.

102.05. Preparation of Bid. The bid must be prepared using current Department software and in accordance with current Department procedures.

The Bidder must include, and will be deemed to have included, in its bid and contract price all applicable taxes that have been enacted into law as of the date the bid is submitted.

102.06. Irregular Bids. By submitting a bid, the Bidder agrees to the Department's procedures and standards for accepting or rejecting irregular bids. Unless the proposal modifies this subsection, the Department will take the following actions for irregular bids.

A. The Department will consider a bid irregular and will reject it for any of the following reasons:

1. The bid does not contain a unit price for each pay item listed in the Unit Prices column or lump sum price in the bid amounts column, as applicable. While a blank space is unacceptable, the explicit quotation of zero does constitute a price and, if awarded the contract, the Bidder would be bound to perform that pay item for zero payment and to do so to the same extent as if a positive numeric price had been quoted.
2. All addenda issued for the project have not been incorporated into the bid as submitted.
3. The bid is not electronically submitted by an authorized representative of the Bidder who has been designated in writing in accordance with current Department procedures.

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4. The Bidder, except as otherwise provided in this section, is not prequalified or has insufficient prequalification for the specified category(s) of work required for the purposes of submitting a bid.
5. The Department finds evidence of collusion.
- B. The Department will consider a bid irregular and may reject it for any of the following reasons:
 1. There is an unauthorized addition, deletion, or alteration to the bid.
 2. There is an unauthorized alternate bid or conditional bid.
 3. There is an irregularity of any kind that tends to make the bid incomplete, indefinite, or ambiguous as to its meaning.
 4. The bid fails to comply with any other bid requirement.
 5. Any provision is added to the bid reserving the right, for the Bidder, to accept or reject an award of the contract.
 6. The bid is mathematically unbalanced as defined in subsection 101.03. The Department will perform further analysis to determine whether the bid is also materially unbalanced as defined in subsection 101.03. Decisions to accept or reject a materially unbalanced bid will be made in accordance with Department procedures and the Department's best interest.
 7. Affiliated Bidders submit bids on the same project.
- C. The Department may waive irregularities in accordance with subsection 102.06.B and accept the lowest qualified bid whenever the considerations set forth in this subsection do not justify rejection of the bid. In determining whether to waive an irregularity and accept a bid, the Department will consider whether the nature or extent of the irregularity is such that acceptance of the bid might:
 1. Confer on the Bidder an unfair advantage or possibility for bid manipulation;
 2. Jeopardize funding for the project;
 3. Impose unreasonable administrative burdens on the Department; or otherwise
 4. Undermine the integrity of a fair, open, and honest competitive bidding process.

If the irregularity will not result in any of the conditions listed under subsection 102.06.C, the Department may accept the bid and allow the Bidder to remedy the irregularity. In remedying the irregularity, the Bidder must not increase or decrease any unit price bid.

Only a Bidder whose bid has been rejected pursuant to this subsection and who would otherwise be the lowest Bidder has an opportunity to appeal a proposed rejection in accordance with subsection 102.11 and subsection 102.12. Once all administrative appeals are exhausted under

subsection 102.11 and subsection 102.12, the decision of the Department or the Commission is final and binding on all Bidders.

102.07. Delivery of Bid. The Bidder must submit the bid using current Department software and before the deadline specified in the proposal.

Only an authorized representative of the Bidder, with a digital ID, may submit a bid to the Department. An authorized representative of the Bidder is an individual identified on the *MDOT Prequalification Application* form under "Person Authorized to Execute Contracts." This form must be properly completed and submitted in accordance with the Bureau of Finance and Administration's *Administrative Rules Governing the Prequalification of Construction Contractors*.

102.08. Withdrawal or Revision of Bid. The Bidder may withdraw or revise a bid before the deadline for downloading or submission of bids. The Department will consider only the last bid submitted by a Bidder, identified by date and time.

102.09. Downloading of Bids. The Department will download the bids and display the total bid amount of each bid on the Department's website as "As Submitted" bid results. If a Bidder has a system-generated receipt of submission and the Department did not receive the bid, the Department may accept a bid after the deadline in accordance with Department procedures and pending an investigation. The Department will handle these situations on a case-by-case basis.

102.10. Bid Review. The Department will review bids for mathematical accuracy to determine the apparent low Bidder. The Department will review the bid of the apparent low Bidder to verify compliance with the bidding requirements. If the Department determines the apparent low Bidder's bid is subject to rejection due to bidding irregularities, in accordance with subsection 102.06, the Department will repeat the verification process with the next apparent low Bidder until a bid meets the bidding requirements. The Department will refer bids of apparent low Bidders subject to rejection to the Bid Review Committee for review and decision. After the Department determines an acceptable low bid, it will publish the "As Checked" bids and bid prices.

102.11. Bid Rejection. If the Bid Review Committee rejects a Bidder's bid, the Administrator of the Contract Services Division, or designee, will notify the Bidder of the following:

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- A. The rejection of its bid,
- B. The reasons for the rejection,
- C. The availability of an appeal to the Bid Appeal Committee, and
- D. The appeal procedure.

If circumstances warrant and allow, the Administrator of the Contract Services Division, or designee, may discuss with the Bidder, the problem and the Bidder's position. If the Bid Review Committee rejects an apparent low bid in accordance with subsection 102.06, the Bidder may file an appeal in accordance with subsection 102.12. If the Department makes successive rejections of low bids, each apparent low Bidder may file an appeal in accordance with subsection 102.12.

102.12. Bid Rejection Appeal. The Department will expedite the appeal process so as not to delay the award of a contract. The Department must receive a Bidder's written appeal of a bid rejection at the office of the Administrator of the Contract Services Division, within 5 calendar days after the Department notifies the Bidder of the decision to reject the bid.

The Administrator of the Contract Services Division, or designee, may designate a shorter time period for the submission of an appeal. If the Department deems circumstances warrant a time period of less than 5 calendar days for filing the appeal, the Administrator of the Contract Services Division, or designee, will notify the Bidder of the shortened period with the notice of rejection of the bid.

In the appeal, the Bidder must identify why it disputes the decision and supply pertinent information.

A. **Bid Appeal Committee.** The Administrator of the Contract Services Division, or designee, will assemble and submit all relevant information, including the decision of the Bid Review Committee, along with material and information submitted by the Bidder, to the Bid Appeal Committee.

The Bid Appeal Committee will review the information provided by the Administrator of the Contract Services Division, or designee, conduct any further inquiry, and make a decision. The Bid Appeal Committee usually makes a decision on the basis of written appeal, but the Bid Appeal Committee may request the Bidder meet with the Committee to review the issue.

The Deputy Director of the Bureau of Finance and Administration, or designee, will notify the Bidder, and other relevant personnel, in writing,

of the Bid Appeal Committee's decision. If the Commission must approve the contract, the Department will also notify the Bidder of its right to file an appeal with the Commission and the appeal procedure. If the contract does not require the Commission's approval, the Bid Appeal Committee's decision is final and binding.

B. Appeal to the Commission. The Bidder must file a written appeal of the Bid Appeal Committee's decision on contracts that the Commission must approve no later than 5 calendar days after the Bid Appeal Committee renders its decision, or by 3:00 p.m. on the day immediately preceding the date the Commission is scheduled to consider approval of the contract, whichever is sooner. If the Bidder receives verbal or written notice of the Bid Appeal Committee's decision less than 24 hours before the appeal submission deadline, the Bidder may file the written appeal no later than 9:00 a.m. on the day the Commission is scheduled to consider approval of the contract.

The Commission will review the information provided by the Department and the Bidder and make a decision. The Commission's decision is final and binding.

102.13. Consideration of Bids. To determine the low Bidder, the Department will compare the bids on the basis of the total bid amounts (the sum of lump sum amounts and the products of the estimated quantities and unit prices). For a discrepancy between the calculated total and the total shown in the bid, the Department will use the unit prices entered in the bid and correct the errors found in the calculations.

The Department may consider a Bidder eligible for award, even though its total bid amount exceeds the Bidder's net prequalification, if the Bidder was properly granted eligibility to bid and the Department determines the Bidder to be the low Bidder on only one project. If the Department determines a Bidder to be the low Bidder on more than one project, and the total amount of the multiple low bid proposals exceeds the Bidder's net prequalification, the Department will award the contract(s) in the Department's best interest.

The Department may reject bids, waive irregularities in accordance with subsection 102.06, advertise for new bids, or do the work in other ways in the Department's best interest. The decision by the Department to act in its best interest will not entitle Bidders to payment for preparing bids or anticipated profits.

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102.14. Construction Progress Schedule. In addition to any progress clause in the proposal, the Department will require the determined low Bidder to submit a progress schedule prior to award of the contract and perform work per that schedule in accordance with subsection 108.05. The Department may require a critical path method (CPM) schedule and, upon approval by the Department, the CPM schedule will replace the progress schedule. Upon Department approval, the progress schedule or CPM schedule will become part of the contract.

102.15. Execution and Award of Contract. The Department will provide the contract and bond forms to the determined low Bidder, at the address on file with the Department. Within 28 calendar days of transmittal, the Bidder must return, and the Department must receive the fully executed contract, bond forms, and other documents required by the Department. The Department may grant an extension of that deadline, if the extension would not impair the Department's interests. If the Department executes a contract received after the deadline, an extension will be deemed to have been granted.

If the Department does not receive the signed contract, bond forms, and other documents required within 28 calendar days of transmittal, or an extended deadline, the Department may award the contract to the next low Bidder, or otherwise exercise its discretion in accordance with subsection 102.13.

If the Department does not execute the contract within 49 calendar days after the deadline for bid submission (including Department-approved extensions), the determined low Bidder may withdraw its bid without penalty. If the Department is responsible for the delay in award of the contract, the determined low Bidder may agree to extend the deadline for the execution of the contract for an agreed upon time period.

The Department considers the contract awarded and binding when signed by the determined low Bidder and executed by the Department.

102.16. Requirements of Contract Bonds. The determined low Bidder must furnish performance and lien bonds each for not less than 100 percent of the total contract price. The bonds must be on the forms provided by the Department. The bonds must meet the requirements of Michigan law and of the Department and include other items such as the powers of Attorney and Endorsement as specified by the Department. The same surety responsible for writing the performance bond must write the lien bond. It is the determined low Bidder's responsibility to ensure

that the lien bond conforms with the terms of 1905 PA 187, supra, except the lien bond must give the time within the notice of lien claim as follows, and secure the payment of claims:

- A. Liable under the terms of 1905 PA 187, MCL 570.101 et seq;
- B. Notice of which is not given by subcontractors within the statutory period, but
 - 1. Notice of which is given by subcontractors within 60 calendar days after notice of the payment of the final estimate or post final estimate having been made by the Department; or
 - 2. In the case of a supplier to the contractor or a subcontractor, within 120 calendar days after the materials are last furnished.

102.17. Bid Guaranty Payment. The determined low Bidder's failure to sign the contract and submit satisfactory bonds and other required documents for the award of the contract within the 28 calendar day period provided, or within a Department-approved extension to that period, will result in the payment of the bid guaranty to the awarding authority.

Each Bidder has a positive duty to carefully prepare and check the accuracy of its bid. The Department will return the bid guaranty only if the Bidder clearly demonstrates the following:

- A. The Bidder made a substantial error and signing the contract would impose a substantial and unjustified hardship on the Bidder, given the size and nature of the project; or
- B. Extraordinary circumstances beyond the control of the Bidder exist in which signing the contract would impose a substantial and unjustified hardship on the Bidder, given the size and nature of the project.

A Bidder's mistake in judgment in preparing the bid will not warrant non-payment of the bid guaranty absent a compelling showing that enforcing payment of the guaranty would be unconscionable under all circumstances. The Bidder is responsible for clearly and convincingly satisfying the criteria for non-payment of the bid guaranty.

The Bidder must make requests for the return of the bid guaranty in writing to the Administrator of the Contract Services Division, or designee. The Bid Appeal Committee will consider and render a decision on the request for non-payment. The Bidder must file the written request with the Department within 15 calendar days after the Department mails notice that the Bidder must forfeit the bid guaranty.

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The Committee may require that the Bidder produce original bid documentation and submit other information to enable the Committee to decide if the Bidder is entitled to the return of the bid guaranty. The Committee may also request that Department staff review the documentation and other information and make a recommendation to the Committee. Where the Committee, in its sole determination, finds the documentation and other information provides a partial justification, the Committee may make a correspondingly partial reduction of the bid guaranty. The Committee's decision is final and binding.

If the Committee makes an adverse decision, or the Bidder fails to file a timely request for return, or cancellation, of the bid guaranty, the Bidder must make the bid guaranty payment within 20 calendar days after the Department mails a final demand for payment. If the Bidder does not make the payment within 20 calendar days, the Department will withhold the payment sum from money owed the Bidder, or may become due and owing to the Bidder.

Bidding practices, competitive considerations and last minute price changes commonly result in item prices that, in isolation, could be mischaracterized as bid errors. The Department intends payment of the bid guaranty to deter Bidders from manipulating the competitive process by mischaracterizing such item prices as bid errors to justify withdrawal of low bids, after the downloading of all bids. Payment of the bid guaranty also constitutes liquidated damages for failure to sign the contract, since it is difficult to determine the actual damages for the breach, as they are uncertain in nature and impossible to estimate with certainty. The damages include the various administrative costs as well as other losses, damages, and costs resulting from the failure of the Bidder to sign the contract.

102.18. Subletting Contract Work to Disadvantaged Business Enterprises (DBEs). The DBE portion of work set for a project, as specified in the notice of advertisement, must be made available to certified Disadvantaged Business Enterprises (DBEs). Compliance with the designated DBE participation goal must be met by the utilization of DBEs to perform commercially useful functions as required by 49 CFR 26.55.

The names of the DBEs and the description of work to be performed by each must be submitted by the apparent low Bidder to the Contract Services Division of the Department after the furnishing of the contract and bond forms to the apparent low Bidder. This information must be

submitted on the forms provided by the Department. A Bidder who fails to meet the DBE participation goal will be deemed ineligible for award of the contract subject to the provisions of subsection 102.18.A.

A. Pre-Award Waivers or Modifications. If an apparent low Bidder is unable to meet the DBE participation goal, a request for waiver or modification of the DBE participation goal may be submitted in accordance with current Department DBE Program Procedures. The contract will not be awarded until a determination is made by the Department.

B. Post-Award Waivers or Modifications. The Contractor may, after award, request a waiver or modification of the DBE participation goal in accordance with current Department DBE Program Procedures. Prime Contractors may not terminate for convenience an approved DBE working on a federally-assisted contract, and then perform the work of the terminated DBE. The Contractor must notify the Department immediately of a DBE's inability to perform any or all of its work and the Contractor's intent to obtain a substitute DBE.

C. Appeals. A Contractor receiving an adverse determination, related to their request for waiver or modification of the DBE participation goal, may appeal the determination in accordance with current Department DBE Program Procedures.

The Department reserves the right to modify any requirement or shorten any time period where the need to place the project under contract is such that the public interest warrants such action and would be impaired by further delay. If the Department waives any of these requirements, except the length of a time period, it will assure that no Bidder is given a material competitive advantage by these actions.

D. Reports. The prime Contractor is required to submit to the Engineer a statement of DBE subcontractor payments in accordance with the contract.

E. Penalties. Failure to fulfill the DBE subcontracting requirement may result in the Department exercising the rights and remedies available in accordance with the provisions of the contract and may be considered a breach of contract. These may also include suspension, reduction, or removal of the Contractor's prequalification as stated in the *Administrative Rules Governing the Prequalification of Construction Contractors*.