

## **SECTION 20 PROPOSAL REQUIREMENTS AND CONDITIONS**

### **20-01 QUALIFICATION OF BIDDERS.** A bidder shall:

- a. When requested, submit a completed Contractor's Questionnaire (Form 25D-8) stating previous experience in performing comparable work, business and technical organization, financial resources, and equipment available to be used in performing the work;
- b. On wholly state-funded projects, submit evidence of a valid Department of Commerce, Community, and Economic Development certificate of Contractor Registration (Contractor Registration) under AS 08.18, and submit evidence of a valid Alaska Business License prior to award under AS 36.30.110(b); and
- c. On federal-aid projects, submit evidence of Alaska Business License and Contractor Registration prior to award.

All firms desiring to participate in DOT&PF construction projects must register annually by submitting a completed Bidder Registration (Form 25D-6).

**20-02 CONTENTS OF BID PACKAGE.** Upon request, the Department will furnish prospective bidders with a bid package, at the price stated in the Invitation To Bid.

The bid package includes the following:

- a. Location and description of the project;
- b. Estimates of quantities of work and materials to be furnished;
- c. Schedule of contract items for which bid prices are invited;
- d. Time in which the work must be completed
- e. Amount of the bid guaranty;
- f. Date, time, and place for the bid opening;
- g. Plans and specifications; and
- h. Bid forms.

Unless otherwise stated in the bid package, the Plans, Specifications, permits, forms and any other documents designated in the bid package are considered a part of the bid whether attached or not.

**20-03 INTERPRETATION OF QUANTITIES IN BID SCHEDULE.** Bid prices shall be based on the estimated quantities shown in the bid schedule. Quantities of work to be done and materials to be furnished are approximate and are prepared only for the comparison of bids. These quantities may increase, decrease, or be eliminated. Payment for unit price items will be made for the actual accepted quantities of work performed and materials furnished under the Contract, as determined using the method of measurement specified in the Contract.

**20-04 EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND WORK SITE.** Bidders shall examine the work site and all Contract documents before preparing a bid. Submitting a bid is a binding representation that the bidder has examined the work site, is aware of the conditions to be encountered, and has examined and understands all of the Contract documents.

Department records of subsurface and hydrological investigations, including but not limited to, boring logs, test results, soil investigation reports, material reports, and other supplemental information are made

available for information purposes only. These records are not part of the Contract. These records indicate subsurface conditions only at specific locations at the time sampled, and only to the depths penetrated. They do not necessarily reflect frozen state, or variations in soil, rock or hydrology that may exist between or outside such locations or at other times. Actual conditions, including ground water levels and saturation, may differ from what is shown in the records.

Material sources referenced in Department records may not contain materials of sufficient quantity or quality to meet project requirements. Sources may be subject to operational restrictions. The availability of these records does not constitute approval, nor guarantee suitability of soils or sources, or the right to use sources referenced in these records for this project. Department records shall not substitute for independent investigation, interpretation, or judgment of the bidder. The Department is not responsible for any interpretation or conclusion drawn from its records by the bidder. Bidders shall examine Subsection 60-02 Material Sources for further information.

Geotechnical reports referenced in the Notice to Bidders, or otherwise made available, may contain data, discussions, and references to material sources. The inclusion of material source information in these reports does not mean they are a Mandatory, Designated, or Available Source as described in Subsection 60-02. For a material source to be considered Mandatory, Designated, or Available, it must be included in the Special Provisions, or so described on the Plans.

Any questions about bidding procedures, site conditions, or Contract requirements must be submitted in writing according to the Invitation To Bid (Form 25D-7). Questions must be submitted in sufficient time to get a reply before submitting a bid. No oral responses or other oral statements are binding on the Department. Any response to a material question shall be issued by addendum sent to all bidders.

**20-05 PREPARATION OF BID.** A bidder shall prepare its bid using either the Department approved bid preparation software or the Department provided bid forms or legible copies of the Department's forms. All entries shall be legible and in ink or type. Bidders shall:

- a. Enter all prices required on the Bid Schedule, in figures;
- b. Enter a unit price for each contract item for which a quantity is given;
- c. Enter the products of the respective unit prices and quantities in the column provided;
- d. Enter lump sum prices for lump sum contract items in the column(s) provided; and
- e. Enter the total amount of all contract items for the basic bid and, when specified, any alternates.

When a bid item contains a choice to be made by the bidder, the bidder shall indicate a choice according to the Specifications for that item. No further choice is permitted.

The bid must be signed in ink or by digital signature by the person or persons authorized to sign the Contract for the bidder. If a bidder is a corporation, the bid must be signed by a corporate officer or agent with authority to bind the corporation. If a bidder is a partnership, a partner must sign. If the bidder is a joint venture, the bid must be signed by an officer or agent with authority to bind the joint venture. If a bidder is a sole proprietorship, the owner must sign. Each person signing the bid must initial any changes made to entries on the bid forms.

A bidder submitting an electronic bid agrees that its digital signature constitutes a binding signature.

The bidder shall make no claim against the Department in the event it is unable to submit its bid through approved online bidding service and/or approved online bidding service is unable to submit the bid(s) to the Department. The Department reserves the right to postpone the public bid opening in the event of technical problems.

For multiple-project bid openings, the bidder may limit the total dollar amount or number of projects to be accepted by completing and attaching the following statement with its bid for at least one of the projects. The Department will then determine which of the low bids it will accept, up to the total indicated.

*"We wish to disqualify all of our successful bids at this bid opening which exceed the total of \$\_\_\_\_\_ or \_\_\_\_\_ contracts and hereby authorize the Department to determine which bids to disqualify, based on this limit."*

**20-06 NONRESPONSIVE BIDS.**

- a. A bid shall be rejected as nonresponsive if it:
  - (1) Is not properly signed by an authorized representative of the bidder and in a legally binding manner;
  - (2) Contains unauthorized additions, conditional or alternative bids, or other irregularities that make the bid incomplete, indefinite, or ambiguous;
  - (3) Includes a reservation of the right to accept or reject any award, or to enter into a contract pursuant to an award, except for an award limitation under Subsection 20-05;
  - (4) Fails to include an acceptable bid guaranty with the bid;
  - (5) Is materially unbalanced
  - (6) Fails to meet any other material requirement of the Invitation To Bid; or
  - (7) Fails to include a materially complete Certification of Buy American Compliance (Form 25D-151 or Form 25D-152), except on wholly state-funded projects.
- b. A bid may be rejected as nonresponsive, in the Department's discretion, if it:
  - (1) Is not typed or completed in ink;
  - (2) Fails to include an acknowledgement of receipt of each addendum by assigned number and date of issue; or
  - (3) Is missing a bid price for any pay item, except when alternate pay items are authorized.

**20-07 BID GUARANTY.** Bids shall be accompanied by a bid guaranty in the amount specified on the Invitation To Bid. The guaranty shall be unconditionally payable to the State of Alaska and shall be in the form of an acceptable paper Bid Bond (Form 25D-14), an electronic bid bond acceptable to the Department and verified through its online bidding service, a certified check, a cashier's check, or a money order.

The surety of a Bid Bond may be any corporation or partnership authorized to do business in Alaska as an insurer under AS 21.09. A legible power of attorney shall be included with each paper Bid Bond (Form 25D-14).

An individual surety will not be accepted as a bid guaranty.

**20-08 RESERVED.**

**20-09 DELIVERY OF BIDS.** Bids shall be submitted electronically through the online bidding service, or shall be submitted in a sealed envelope. When bids are submitted in a sealed envelope, the envelope shall clearly indicate its contents and the designated address, as specified on the Invitation to Bid. Bids for other work may not be included in the envelope. In the event of a bid delay, electronic bidders that

have already submitted their bid prior to the bid delay must resubmit their bid utilizing all Bid Forms EBSX Files or their bid will not be received.

The Department will not accept a bid submitted by email or fax unless specifically called for in the Invitation to Bid.

**20-10 WITHDRAWAL OR REVISION OF BIDS.** Manual Bids may be withdrawn or revised in writing delivered by mail, fax, or email, provided that the designated office receives the withdrawal or revision before the deadline stated in the in the Invitation To Bid. Withdraw requests must be signed and submitted by the bidder's duly appointed representative who is legally authorized to bind the bidder. Revisions shall include both the modification of the unit bid price and the total modification of each item modified but shall not reveal the amount of the total original or revised bids.

Electronic Bids may be withdrawn or resubmitted through the online bidding service. Revisions to electronic bids delivered by mail, fax, or email will not be permitted. If electronic bid withdrawal is unsuccessful, electronic bids may be withdrawn in writing delivered by mail, fax, or email provided that the designated office receives the withdrawal before the deadline stated in the Invitation To Bid. Written withdrawal requests must be signed and submitted by the bidder's duly appointed representative who is legally authorized to bind the bidder.

**20-11 PROTEST OF INVITATION TO BID.** An interested party, as defined in AS 36.30.699, may protest an Invitation to Bid before the bid opening according to AS 36.30.560 and AS 36.30.565. Submit a protest to the Contracting Officer.

**20-12 ADDENDA REQUIREMENTS.** The Department will issue addenda if it determines, in its discretion, that clarifications or changes to the Contract documents or bid opening date are needed. The Department may send addenda by any reasonable method such as fax, email, or may post the addenda on its website or online bidding service. Unless picked up in person or included with the bid documents, addenda or notice that an addendum has been issued will be addressed to the individual or company to whom bidding documents were issued and sent to the email address or fax number on the plan holders' list. Notwithstanding the Department's efforts to distribute addenda, bidders are responsible for ensuring that they have received all addenda affecting the Invitation To Bid. Bidders must acknowledge all addenda on the Bid Forms, by fax, or by email before the deadline stated in the Invitation to Bid.

**20-13 RECEIPT AND OPENING OF BIDS.** The Department will only consider bids, revisions, and withdrawals received before the scheduled deadline stated in the Invitation to Bid.

The Department will assemble, open, and publicly announce timely-received bids at the time and place indicated in the Invitation to Bid, or as soon thereafter as practicable. The Department is not responsible for prematurely opening or failing to open bids that are improperly addressed or identified.

**20-14 RESPONSIBILITY OF BIDDERS.** The Department may find a bidder is nonresponsible for any one of the following reasons, but is not limited in its responsibility analysis to the following factors:

- a. Evidence of bid rigging or collusion;
- b. Fraud or dishonesty in the performance of previous contracts;
- c. More than one bid for the same work from an individual, firm, or corporation under the same or different name;
- d. Unsatisfactory performance on previous or current contracts;
- e. Failure to pay, or satisfactorily settle, all bills due for labor and material on previous contracts;
- f. Uncompleted work that, in the judgment of the Department, might hinder or prevent the bidder's prompt completion of additional work, if awarded;

- g. Failure to reimburse the state for monies owed on any previous contracts;
- h. Default under previous contracts;
- i. Failure to submit evidence of registration and licensing;
- j. Failure to comply with any qualification requirements of the Department;
- k. Engaging in any activity that constitutes a cause for debarment or suspension under the State Procurement Code (AS 36.30) or submitting a bid during a period of debarment;
- l. Failure to satisfy the responsibility standards set out in state regulations;
- m. Lack of skill, ability, financial resources, or equipment required to perform the contract; or
- n. Lack of legal capacity to contract.

Nothing contained in this section deprives the Department of its discretion in determining the lowest responsible bidder.

**20-15 FOREIGN TRADE RESTRICTION.** The Contractor by submission of an offer and/or execution of a contract, certifies that it:

- a. Is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. Has not knowingly entered into any contract or subcontract for this project with a contractor that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list; and
- c. Has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation according to 49 CFR 30.17, no contract shall be awarded to a contractor who is unable to certify to the above. If the Contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on the said list for use on the project, the FAA may direct, through the Department, cancellation of the contract at no cost to and with no damages available from the Department or the Federal government.

The Contractor shall incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Contractor shall require subcontractors to provide immediate written notice to it if the subcontractor learns that its certification was erroneous, or has become erroneous, by reason of changed circumstances. The Contractor may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The Contractor shall provide immediate written notice to the Department if the Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the FAA may direct, through the Department, cancellation of the contract or subcontract for default at no cost to, and with no damages available from, the Department or the Federal Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information

of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

**20-16 ELECTRONIC MAIL.** Within its submitted bid, a bidder must include a current electronic mail (email) address of bidder's representative who possesses authority to receive, process, and respond to Department emails regarding the advertised project.

The Department may send notices and information to a bidder by using the furnished email address of the bidder's authorized representative.

A bidder shall notify the Department if the bidder requests the Department to send email notices or information to an address different from the email address initially provided in its bid forms. The bidder shall notify the Department of such change by sending a request in writing to the Contract's point of contact identified on the Invitation to Bid that is signed by a representative who is authorized and empowered to legally bind the bidder.

Delivery of an email sent by the Department is complete upon receipt in the addressee's email account. An email sent after 4:30 pm shall be deemed to have occurred at the opening of business on the next working day.

If needed, the Department may demonstrate proof of email delivery by affidavit or certification that includes the following:

- a. The date and time that the Department sent the email message;
- b. The email address from which the Department sent the message;
- c. The name and email address to which the Department sent the message;
- d. A statement that the Department sent the email message and that the person signing the affidavit or certification believes the transmission to have been complete and without error; and
- e. An attached copy of the subject email.