

SECTION 102 BIDDING REQUIREMENTS AND CONDITIONS

102.01 QUALIFICATION OF BIDDER

The Department will only consider a proposal from a prequalified Bidder. Obtain prequalification from the Department in accordance with the *Contractor's Prequalification Statement (SFN 9384)*. The Department must receive the Contractor's Prequalification Statement at least 10 business days before the bid opening.

The Department may check any statements submitted by a Bidder on the Contractor's Prequalification Statement and obtain additional pertinent information from other sources. The Department may disqualify a Bidder for any reason stated in Section 102.13, "Disqualification of Bidder."

102.02 CONTRACTOR'S LICENSE

The Department will not require a Bidder to have a contractor's license from the State to submit a proposal; however, the Department will only award a contract to a Bidder that has an appropriate contractor's license from the State.

102.03 ISSUANCE AND CONTENTS OF PROPOSAL PACKAGE

The Department will issue the proposal package in accordance with the advertisement and notice to bidders. The notice to bidders is available on the Department's website at (www.dot.nd.gov).

The Department will issue all addenda no later than 4:00 p.m. central time 2 business days before the bid opening, except the Department may withdraw the project from the bid opening at any time. Before submitting a proposal, check the most current proposal package, including addenda.

The proposal package will contain the following:

1. The request for proposals, which contain the following:
 - a. The proposal forms, which contain the following:
 - (1) The location and description of the work;
 - (2) A list of bid items and estimated quantities;
 - (3) The contract time; and
 - (4) The date, time, and location of the bid opening.
 - b. The supplemental specifications,
 - c. The special provisions, and
 - d. Other requirements that vary from or are not contained in the Standard Specifications;
2. The Plans:
 - a. The project plans; and

- b. The standard drawings.
- 3. The Standard Specifications;
- 4. Any addenda; and
- 5. Other documents designated in the proposal package.

102.04 INTERPRETATION OF QUANTITIES IN BID ITEM LIST

The quantities in the bid item list are estimates only that the Department prepares for comparing proposals. The Department will measure and pay for accepted quantities of work in accordance with Section 109, "Measurement and Payment."

102.05 EXAMINATION OF PROPOSAL PACKAGE AND PROJECT

Examine the proposal package and the project, including locations identified in the proposal package, before submitting a proposal. The Department will consider a Bidder's submission of a proposal as conclusive evidence that the Bidder has investigated and is satisfied as to the conditions to be encountered; the character, quality, and scope of work to be performed; the quantities of materials to be furnished; and the conditions and requirements of the proposal package. Make such independent investigation and examination as necessary to be satisfied as to conditions to be encountered in the performance of the work and with respect to possible local material sources, the quality and quantity of material available from such property, and the type and extent of processing that may be required to produce material conforming to the contract. Independent investigation and examination includes knowledge of the State's physical geography, geology, and hydrology, and of the available publications on that subject matter.

If conditions at the project site are inconsistent with the proposal package or there are discrepancies, conflicts, errors, omissions, or ambiguities within the proposal package, immediately submit a request for explanation to the Department's Construction Services Division. The Department must receive requests for explanation in adequate time to allow the Department to reply. The Department will issue interpretations by addendum and make them available on the Department's website and the Bid Express website at least 2 business days before the bid opening. Before the Department's approval and execution of the contract, any statements, explanations, or representations concerning the project made by any of the Department's employees or agents are not binding, unless specifically included in the proposal package.

102.06 SUPPLEMENTAL INFORMATION

A. General.

Any information that is not included in the proposal package is considered supplemental information and will not become part of the contract.

The Department provides supplemental information on an "as-is" basis. Supplemental information is data that is used or generated by the Department for use in project development and is not part of the proposal package and will not become part of the contract.

Items designated as supplemental information are preliminary only and may

differ from final design details. The Department does not warrant supplemental information to be free of errors or deficiencies and does not warrant the information as being fit for any particular use.

Refer to the contract for final construction information for bidding and construction purposes.

Any available supplemental information will be located on the Department's website alongside the proposal package. If no supplemental information is available, a statement to that effect will be included in the area that would contain the supplemental information.

B. Soil Information and Boring Logs.

The Department does not warrant or guarantee the sufficiency or accuracy of the boring logs or the interpretations made or opinions of the Department as to the type of materials and conditions that may be encountered.

General soil and rock strata descriptions and indicated boundaries are based on a geotechnical interpretation of all available subsurface data and may not reflect the actual subsurface conditions between individual borings or between sampled strata within the bore hole. The laboratory data and the in-place data can be relied on only to the degree of reliability inherent to the standard test method. The observed water levels or soil moisture conditions may vary considerably with time according to climatic conditions including temperature, precipitation, and wind, as well as other non-climatic factors.

Make independent subsurface investigations, as necessary, to become satisfied with the conditions to be encountered on the project.

C. Electronic Design Data.

Electronic design data is subject to change by the Department without notice.

The use of electronic design data in preparation of a proposal or in performance of the work does not allow relief from obligations under the contract or from complete and proper fulfillment of the contract requirements. The Department does not warrant or guarantee the accuracy of the electronic design data or the consequences related to the use, retention, distribution, alteration, or deletion of the electronic design data.

The use of electronic design data does not entitle the Contractor to compensation or an extension of time for damages or losses which could be attributed to the use of electronic design data.

Electronic design data will be accessible through the Department's ftp site. A notice will be placed with the remaining supplemental information with instructions detailing how to access the electronic design data.

102.07 PREPARATION OF PROPOSAL

A. General.

Prepare the proposal using the Bid Express website in accordance with Section 102.07 B, "Electronic Proposal," unless the notice to bidders states that the Department will accept a paper proposal in accordance with Section 102.07 C, "Paper Proposal."

Acknowledge the receipt of all addenda in accordance with the proposal forms.

Execute the proposal as follows:

1. For an individual, signed by that individual;
2. For a partnership, signed by a partner;
3. For a corporation, signed by an officer of the corporation with the officer's title;
4. For a joint venture, signed by a legally qualified representative of each of the parties to the joint venture; and
5. For an individual, a partnership, a corporation, or a joint venture, signed by anyone having a power of attorney. Provide a copy of the power of attorney with the proposal, or arrange with the Department to file the power of attorney with the Department before submitting the proposal.

B. Electronic Proposal.

Before preparing and submitting a proposal using the Bid Express website at www.bidx.com, obtain a Bidder identification number from the Department. Create a digital ID by following the directions on the Bid Express website. The digital ID must be on file and enabled by Bid Express. Use of this digital ID constitutes the Bidder's signature for execution of the proposal. The Department is not responsible for the Bidder's inability to submit a proposal using Bid Express.

Prepare the proposal using Bid Express as follows:

1. Download the most current "Expedite Project Files" and "DBE Roster File" from the Bid Express or Department website; and
2. Use the Expedite software to generate and prepare the proposal forms. Follow the Expedite software instructions and review the help screens provided on the Bid Express website to ensure that the bid item list is prepared properly. Provide a unit price for each bid item.

If the proposal forms contain alternate or optional bid items, provide unit prices for those bid items as follows:

- a. For alternate bid items, provide a unit price for each bid item included in the Bidder's preferred alternate; and
- b. For optional bid items, provide a unit price for all bid items under all options.

C. Paper Proposal.

The Department will only consider a paper proposal if the proposal package states that the Department will accept a paper proposal.

Enter a unit price in numerals for each bid item on the bid item list, except as not required in the case of alternate bid items. Enter the product of each unit price and respective quantity. Enter the total sum bid at the bottom of the last page of the bid item list.

The paper bid item list may be a computer-printed bid item list from the current

version of Expedite. Execute the proposal by signing and notarizing in ink and in the space provided on the proposal forms.

102.08 BID LIMITATION

If the Bidder desires to submit a proposal on more than one project as part of the same bid opening (date and time), and desires to avoid receiving an award of more projects than the Bidder is equipped to handle, the Bidder may submit proposals on multiple projects and limit the total amount of work awarded to the Bidder on selected projects by completing the “Bid Limitation” section in the proposal forms.

The bid limitation can be made by declaring the total amount of work or total number of projects.

If a Bidder makes a limiting statement on any proposal, the statement will apply to all proposals submitted by the Bidder as part of that bid opening. If the bid limitation statements on more than one proposal differ, the Department will use the lower bid limitation amount or number.

Do not attempt to reserve the right to choose the contract or contracts.

When considering all projects with bid limitations, the Department will select those proposals that provide the lowest overall cost to the Department.

102.09 PROPOSAL GUARANTY

A. General.

Provide a proposal guaranty in the form of an annual bid bond in accordance with Section 102.09 B, “Annual Bid Bond,” a single project bid bond in accordance with Section 102.09 C, “Single Project Bid Bond,” or a certified or cashier’s check in accordance with Section 102.09 D, “Certified or Cashier’s Check.” Contact the Department’s Construction Services Division to obtain bond forms.

B. Annual Bid Bond.

Before submitting a proposal, file an executed annual bid bond with the Department on the *Annual Bid Bond (SFN 50231)*, in an amount equal to 10 percent of the total sum bid, and from a surety company authorized to do business in the State. Execute the annual bid bond as principal.

The annual bid bond applies to all proposals submitted by a Bidder in a calendar year.

C. Single Project Bid Bond.

Upon request, the Department may allow the Bidder to file a single project bid bond with the Department before the bid opening.

Before the date and time of the bid opening, submit an executed single project bid bond on the *Bid Bond – Single Project (SFN 14196)*, in an amount equal to 10 percent of the total sum bid, and from a surety company authorized to do business in the State. Execute the single project bid bond as principal.

D. Certified or Cashier’s Check.

Upon request, the Department may allow the Bidder to file a certified check or

cashier's check before the bid opening.

Before the date and time of the bid opening, submit a certified check or cashier's check in an amount equal to 5 percent of the total sum bid and from a solvent bank.

102.10 SUBMISSION OF PROPOSAL

Submit the proposal so that the Department receives the proposal before the date and time of the bid opening. The Department will allow the following two methods of submitting a proposal:

A. Electronic Proposal.

Follow the instructions on the Bid Express website to submit an electronic proposal. If submitting an electronic proposal, do not sign, notarize, or submit a paper proposal.

The Department will not consider proposals submitted electronically as received until the date and time of the bid opening.

B. Paper Proposal.

The Department will only consider a paper proposal if the notice to bidders states that the Department will accept a paper proposal.

Seal the executed paper proposal in an envelope and label the envelope with the following:

1. The Bidder's name,
2. The Project Number, and
3. The date and time of the bid opening.

Submit the sealed envelope to the Department.

If the Department receives a proposal after the bid opening, the Department will return the unopened proposal to the Bidder.

102.11 BID OPENING

The Department will publicly open and announce proposals at the bid opening.

102.12 IRREGULAR PROPOSAL

The Department will consider a proposal irregular and reject it if:

1. The Bidder fails to prepare the proposal in accordance with Section 102.07, "Preparation of Proposal," or submit the proposal in accordance with Section 102.10, "Submission of Proposal."
2. The Bidder fails to provide an executed proposal guaranty in accordance with Section 102.09, "Proposal Guaranty."
3. The Bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award. This does not apply to bid limitations made in accordance with Section 102.08, "Bid Limitation."

4. The Bidder fails to complete the “Non-Collusion and Debarment Certification” section of the request for proposals.

The Department may consider a proposal irregular and reject it if:

1. The Bidder fails to comply with any requirements of the proposal package.
2. The Bidder makes unauthorized additions to the proposal forms, makes unauthorized conditional or alternate proposals, or there are irregularities of any kind that could make the meaning of the proposal incomplete, indefinite, or ambiguous.
3. The Bidder fails to acknowledge addenda as required in the proposal forms.
4. The Department cannot determine a unit price for every bid item, except in the case of authorized alternate bid items.
5. The Department determines that any unit price is materially unbalanced.
6. On a paper proposal, the Bidder fails to type or use ink to enter all information on the bid item list.
7. For a paper proposal, the check code printed on the bottom of the printout of the Expedite-generated bid item list is not the same on every page of the printout.
8. The Bidder fails to comply with the Disadvantage Business Enterprise (DBE) requirements.

102.13 DISQUALIFICATION OF BIDDER

Department will disqualify a Bidder and reject their proposal(s) for the following reasons:

1. A Bidder fails to obtain prequalification in accordance with Section 102.01, “Qualifications of Bidder.”
2. The Department finds evidence of collusion among Bidders. The Department will not recognize a participant in collusion as a Bidder for future projects until that Bidder obtains prequalification.
3. A Bidder submits more than one proposal for the same project as an individual, firm, or corporation under the same or different name.
4. Any other reason deemed proper by the Department.

The Department may disqualify a Bidder and reject their proposal(s) for the following reasons:

1. The Bidder has incomplete work that the Department determines might hinder or prevent prompt completion of proposed work.
2. The Bidder fails to promptly pay or satisfactorily settle all claims for labor and material on another Department contract, including those projects where the Bidder is a party to a joint venture that has failed to settle such claims.

3. The Bidder defaults on another Department contract.
4. The Bidders fails to repay the Department for overpayments on another Department contract.
5. The Bidder fails to perform satisfactory work on another Department contract as follows:
 - a. Fails to comply with contract requirements or Engineer's directives.
 - b. Fails to complete work on time.
 - c. Performs substantial corrective work before acceptance.
 - d. Performs work that requires pay reductions.
6. The Attorney General of the State or Department determines that the Bidder has questionable moral integrity.
7. The federal government has disbarred the Bidder from performing work on federal contracts.