

Delete Section 102 in its entirety and insert the following:

**SECTION 102
BIDDING REQUIREMENTS AND CONDITIONS**

102.01 PREQUALIFICATION OF BIDDERS.

Only prequalified Bidders will be allowed to bid on any Project. Evidence consists of detailed information regarding the Bidder's finances, organization, equipment, and previous experience, provided on standard forms furnished by the Department. The prequalification forms shall be submitted not less than 7 days before the bid opening in which the Bidder desires to bid, and at such additional times as the Director may request or the Bidder elect. The prequalification shall be in force for the time period specified in the Department's written authorization.

The Director reserves the right to check any or all statements submitted by the Bidder, and to obtain additional pertinent information from other sources. The Department reserves the right to disqualify a prospective Bidder for any reasons stated in Section 102.13.

102.02 CONTRACTOR'S LICENSE.

A Bidder is not required to have a Contractor's license from the State of North Dakota to bid on a Project, however, a Contract will not be executed until the Contractor obtains an appropriate North Dakota Contractor's license.

102.03 CONTENTS OF PROPOSAL FORMS.

The Proposal Form will show the location and description of the contemplated construction, the estimate of the various quantities, the types of work to be performed or materials to be furnished, and the schedule of items for which Unit Bid Prices are invited. The Proposal Form will state the time in which the work must be completed; and the date, time, and place for opening of Proposals. The Proposal form will also include any Special Provisions or requirements which vary from or are not contained in the Standard Specifications.

The Plans, Specifications, other documents designated in the Proposal Form will be considered a part of the Proposal whether attached or not.

102.04 ISSUANCE OF PROPOSAL FORMS.

Proposal Forms will be issued in accordance with the Advertisement for Bids.

102.05 INTERPRETATION OF QUANTITIES IN BID SCHEDULE.

The quantities appearing in the bid schedule are estimates prepared for comparison of bids. Payment will be made for actual quantities of work performed and accepted or materials furnished according to the Contract. The estimated quantities of work and materials may be increased, decreased, or pay items may be eliminated in their entirety.

102.06 EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND SITE OF WORK.

The Bidder is to examine the site of the proposed work, the Proposal, Plans, Specifications, Supplemental Specifications, Special Provisions, and all other Contract forms before submitting a Proposal. The Bidder is responsible for all site conditions that should have been discovered with a Bidder site investigation. The submission of a proposal will be considered conclusive evidence that the Bidder is satisfied with the conditions to be encountered in performing the work and as to the requirements of the proposed Contract.

Boring logs and other records of subsurface investigations are available for inspection by Bidders. It is made available so all Bidders have access to identical subsurface information available to the Department, and is not intended as a substitute for personal investigation, interpretations, and judgment of the Bidders. This availability shall not relieve the Bidder of the responsibility stated in the preceding

paragraph. The Department will not be bound by any statement or representation concerning conditions made by any of its employees or agents before the execution of the Contract, unless included in the Proposal Form, Plans, Specifications, Supplemental Specifications, Special Provisions, or related Contract forms.

Any explanation desired by a Bidder regarding the meaning or interpretation of the Proposal Form, Plans, Specifications, etc., must be requested from the Central Construction Office in adequate time to allow a reply to reach all Bidders before submission of their Bids. Interpretations will be made by addendum. Oral explanations or instructions given before the bid opening will not be binding.

102.07 PREPARATION OF PROPOSALS.

- A. General.** The Bidder shall prepare the Proposal Form furnished by the Department utilizing the Expedite Files, unless the Department indicates that paper bids will be accepted.

The Department will provide bidding information, Plans, proposal forms, addenda and other documents on the Department's Web site. Bidders shall check the Department's Web site for addenda prior to submitting a bidder's proposal. The Department will post all addenda no later than 4:00 p.m. Central Time two days before the bid opening. An exception to this timeframe is the withdrawal of a project from the bid opening. Bidders shall acknowledge the receipt of all addendums as designated in the proposal form. Electronic bid files (Expedite files) are provided through the Bid Express on-line bidding exchange at www.bidx.com/ and the Department's Web site at www.dot.nd.gov/. Bidders shall ensure they have downloaded any addenda files prior to submitting their final bid. Bidders shall check either the Bid Express Web site or the Department's Web site after 5:00 p.m. Central Time two days before the bid opening, to ensure that all addenda files for the Expedite files have been downloaded before submitting the final bid.

Interested parties can subscribe to the Bid Express on-line bidding exchange by following the instructions provided at the www.bidx.com Web site or by contacting:

Info Tech Inc.
5700 SW 34th Street, Suite 1235
Gainesville, FL 32608-5371
email: <mailto:customer.support@bidx.com>

When an item on the Bid Schedule allows a choice of alternates, the Bidder shall indicate the choice for that particular item.

Proposals submitted by (1) an individual must be signed by that individual, (2) a partnership, must be signed by a partner, or (3) a corporation must be signed by an officer of the corporation with the officer's title. Proposals submitted by a joint venture must be signed by a legally qualified representative of each of the parties to the joint venture. A Proposal may be executed for an individual, a legal entity, or a joint venture by anyone having a power of attorney, provided a copy of the power of attorney is attached to the proposal or is previously filed with the Department.

A Bidder may submit bids on more Projects than they desire to accept. Each such bid proposal must be covered by a Proposal Guaranty. The Bidder may indicate the total work desired and the Director will determine which of the low bids will be accepted within the Bidder's indicated bid limitations. This limitation will apply only to Projects on which the Bid Limitation Section in the Proposal Form has been completed by the Bidder.

- B. Combination (Tied) Proposals.** Proposal Forms may be issued for Projects in combination or separately, so bids may be submitted either on the combination or on separate units of the combination. The Department reserves the right to make awards on combination bids or separate bids to the advantage of the Department. Combination bids, other than those specified, will not be considered. Separate Contracts will be written for each Project included in the combination.
- C. Electronic Bidding.** Prior to submitting bids via Bid Express, the Bidder shall obtain a bidder identification number from the Department. The Bidder shall create a digital ID by following the directions on the Bid Express website. The digital ID shall be on file and enabled with Bid Express. Using this digital ID shall constitute the Bidder's signature for proper execution of the Proposal. The

Department will not be responsible if Bidder cannot submit bid to Bid Express. Claims will not be accepted based on such failure.

1. Download the EBS files, DBE bin files and any addendums from the Bid Express or Department's Web site.
2. Use Expedite software to generate and prepare the Bidder's Proposal. Provide a unit price for each bid item, except as not required in the case of alternate bid items. Follow the software instructions and review the help screens provided on the Bid Express Web site to assure that the schedule of items is prepared properly.
3. Submit the bid according to the requirements of the Expedite software and the Bid Express Web site.

The Department will consider bids submitted over the Internet as accepted, at the time and date specified in the Notice to Bidders and not before such time and date.

- E. Paper Bids.** Paper bids under this section will only be accepted when the Department indicates that this method is allowed for a specific project. Proposals submitted on paper shall be signed and notarized in ink in the spaces provided on the Proposal Form.

The Bidder shall enter a unit price in numerals on the Bid Schedule for each bid item, except as not required in the case of alternate bid items. The Bidder shall enter the product of each unit price and respective quantity. The sum of the products (Total Sum Bid) shall be entered where indicated.

The paper bid schedule can be a printout generated by the current version of Expedite, used by the Department.

102.08 PROPOSAL GUARANTY.

An annual bid bond, single project bid bond, or certified or cashier's check shall accompany all proposals. Arrangements may be made with the Department to file Proposal Guaranties in advance of the bid opening.

A. Annual Bid Bond. The Bidder shall have a properly executed annual bid bond on file with the Department. An annual bid bond is filed on the Department's form titled Annual Bid Bond (SFN 50231) and applies to all proposals submitted by a Bidder in a calendar year.

Bid Bonds must be a sum equal to 10 percent of the full amount of the bid and must be executed on the Department's form titled Annual Bid Bond (SFN 50231).

B. Single Project Bid Bond. The Department may, upon request, allow for single project bid bond to be filed in advance of the bid opening.

Bid bonds under this section shall be a sum equal to 10 percent of the full amount of the bid executed by the Bidder as principal and by Surety company authorized to do business in North Dakota using the Department's form titled Bid Bond – Single Project (SFN 14196).

C. Certified Check or Cashier's Check. The Department may, upon request, allow a Bidder to file a certified check or cashier's check in advance of the bid opening on a solvent bank in a sum equal to 5 percent of the full amount of the bid.

If the successful bidder fails to sign a Contract with the Department within 10 days after the notice of an award, the Bidder's bid bond or the certified or cashier's check will be forfeited to the Department.

102.09 DELIVERY OF PROPOSALS.

The Bidder shall submit the Proposal Form furnished by the Department before the time and date designated in the Notice to Bidders.

- A.** Electronic bid on the internet using Bid Express. Bidders utilizing this bid submission method shall not sign, notarize, nor return the Proposal Form as described in other sections of the Specifications.
- B.** Paper bid on the Proposal Form furnished by the Department. Proposals shall be placed in a sealed envelope bearing the Bidder's name, and plainly marked to indicate its contents.

Proposals received after the time established for opening of Proposals will be returned unopened.

Mailed bids will be accepted, if all other bidding requirements have been met and the bids are received prior to the date and time designated on the Notice to Bidders. If a Proposal Guaranty check is required, as specified in Section 102.08 B, such check must accompany any mailed bid.

102.10 WITHDRAWAL OR REVISION OF PROPOSALS.

A Bidder may withdraw or revise a Proposal after delivery to the Department, provided the request for withdrawal or revision is received in writing before the time established for opening Proposals.

102.11 PUBLIC OPENING OF PROPOSALS.

Proposals will be publicly opened and announced at the time and place indicated in the Notice to Bidders.

102.12 IRREGULAR PROPOSALS.

A. Proposals will be considered irregular and will be rejected if:

1. The Proposal is not electronically signed by use of the digital ID; or in the case of a paper bid, it is not properly signed and notarized.
2. The Proposal is not submitted in accordance with Section 102.07 or Section 102.09.
3. The Bidder fails to provide a properly executed Proposal Guaranty.
4. 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 exclude a bid limiting the maximum gross amount of awards acceptable to any one Bidder at any one bid opening. Selection of awards will be made by the Department.

B. Proposals may be considered irregular and may be rejected if:

1. The submitted Proposal fails to comply with any other requirements of the "Notice to Bidders" or the issued Proposal itself.
2. There are unauthorized additions, conditional or alternate bids, or irregularities of any kind which may make the Proposal's meaning incomplete, indefinite, or ambiguous.
3. A price per unit cannot be determined from the bid proposal, except in the case of authorized alternate pay items.
4. The Proposal does not include a unit price for every bid item, except in the case of authorized alternate pay items.
5. It is determined that any of the unit prices are materially unbalanced to the potential detriment of the Department.
6. The Unit Prices on paper bids are not typed or entered in ink.
7. The check code printed on the bottom of the printout of the Expedite-generated schedule of items is not the same on each page.
8. There is non-compliance with the Disadvantage Business Enterprise (DBE) requirements.

102.13 DISQUALIFICATION OF BIDDERS.

The Department has the right to disqualify a Bidder after a proposal has been submitted.

- A. The following reasons will be considered sufficient for disqualifying a Bidder and rejecting a Proposal or Proposals.
1. Not prequalified in accordance with Section 102.01.
 2. Evidence of collusion among Bidders. Participants in collusion will not receive recognition as Bidders for future work with the Department until they are reinstated as a qualified Bidder.
 3. More than one Proposal for the same work from an individual, firm, or corporation under the same or different name.

4. Any other reason deemed proper by the Department.
- B.** The following reasons may be considered sufficient for disqualifying a Bidder and rejecting a Proposal or Proposals.
1. Uncompleted work which the Department determines might hinder or prevent prompt completion of additional work.
 2. Failure to promptly pay or satisfactorily settle all claims for labor and material on any Contract, including those Contracts where the Contractor is a party to a joint venture that has failed to settle such claims.
 3. Default under previous Contracts.
 4. Failure to repay monies due the Department resulting from overpayments.
 5. Unsatisfactory performance on previous work or current Contract(s), consisting of, but not limited to, repeated:
 - a. Noncompliance with Contract requirements, or Engineer's directives.
 - b. Failure to complete work on time.
 - c. Instances of substantial corrective work prior to acceptance.
 - d. Instances of completed work that requires acceptance at reduced pay.
 - e. Production of non-specification work or materials.
 6. Questionable moral integrity, as determined by the Attorney General of the State, or the Department.
 7. Disbarment from performing work on Federal Contracts.