

TITLE 409, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 1

NEBRASKA DEPARTMENT OF TRANSPORTATION
CONSTRUCTION DIVISION

RULES AND REGULATIONS CONCERNING
CONTRACTS, PROPOSAL FORMS, AND QUALIFICATIONS OF BIDDERS FOR
STATE HIGHWAY WORK – ENGLISH (METRIC) SYSTEM MEASUREMENTS

TITLE 409 – NEBRASKA DEPARTMENT OF TRANSPORTATION – CONSTRUCTION DIVISION

Chapter 1 - Contracts, Proposal Forms, and Qualifications of Bidders for State Highway Work – English (Metric) System Measurements

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001 ABBREVIATIONS AND DEFINITIONS USED IN CONTRACTS AND PROPOSAL FORMS. Whenever in the Nebraska Standard Specifications for Highway Construction or in other contract documents, the following terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

001.01 ABBREVIATIONS: Whenever the following abbreviations and acronyms are used in the Standard Specifications or in the Plans, they are to be construed the same as the respective expressions represented:

AAN	American Association of Nurserymen
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute
ASTM	American Society for Testing and Materials
AWG	American Wire Gage
AWPA	American Wood Preservers Association
AWS	American Welding Society
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprises
EBS	Electronic Bidding System
FHWA	Federal Highway Administration
ICEA	Insulated Cable Engineers Association
IMSA	International Municipal Signal Association
ITE	Institute of Transportation Engineers
MUTCD	Manual on Uniform Traffic Control Devices
NDOT	Nebraska Department of Transportation
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
SAE	Society of Automotive Engineers
SSPC	Steel Structures Painting Council
UL	Underwriters Laboratories
VEP	Value Engineering Proposal

001.02 Common engineering and construction abbreviations for measurements and work items are:

Items of Work and Units of Measurement

A	Ampere
a	Acre
cd	Candela
cm	Centimeter
Conc.	Concrete
m ³	Cubic Meter
m ³ /s	Cubic Meters per Second
ea	Each
ft	Foot/Feet

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ft ² or SF	Square Feet
ft ³ or CF	Cubic Feet
FC	Foot-Candle
ft-lb	Foot-Pound
gal, G or g	Gallon
gps	Gallons per Second
gpm or GPM	Gallons Per Minute
h	Hour
Hz	Hertz
in	Inch
J	Joule
kg	Kilogram
kip	1000 Pounds
km/h	Kilometers per hour
kN	Kilonewton
kPa	Kilopascal
lb	Pound
LF	Linear Foot
L	Liter
L/h	Liters per Hour
L/min.	Liters per Minute
L/s	Liters per Second
lm	Lumen
LS	Lump Sum
lx	Lux
MGal	1000 Gallon
Mg	Megagram
MHz	Megahertz
MPa	Megapascal
M	Meter
µm	Micrometer
mil	1/1000 Inch
Mi or M	Mile
MPH	Miles Per Hour
mm	Millimeter
N	Newton
Pa	Pascal
PVC	Polyvinyl Chloride
psi	Pounds Per Square Inch
s	Second
m ²	Square Meter
Sta	Station
StaM	Station (Metric)
St.	Steel
T	Ton
V	Volt
W	Watt

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yd ³ /s	Cubic Yards Per Second
yd ² or SY	Square Yards

001.03 DEFINITIONS

001.04 ACCESS CONNECTION: Any roadway facility by means of which vehicles can enter or leave an arterial highway. Included are intersections at grade, private driveways, and ramps or separate lanes connecting with cross streets or frontage roads.

001.05 ADDENDUM: A written and/or graphic document, issued to all bidders and identified as an addendum prior to bid opening, which modifies or supplements the bid documents and becomes a part of the contract.

001.06 ADVERTISEMENT: A public announcement inviting bids for work to be performed or materials to be supplied.

001.07 ARTERIAL HIGHWAY: A highway primarily for through traffic, usually on a continuous route.

001.08 AUXILIARY LANE: The portion of the roadway adjoining the traveled way for parking, speed change, or for other purposes supplementary to through traffic movement.

001.09 AWARD: The decision of the Department to accept the bid of the lowest responsible bidder for the work, subject to the execution and approval of a satisfactory contract therefore and bond to secure the performance thereof, and to such other conditions as may be specified or otherwise required by law.

001.10 BACKSLOPE: The surface of a cut that slopes downward toward the roadway.

001.11 BALANCE FACTOR: A ratio used to equate the amount of excavation to the amount of fill. Excavation generally will exceed the amount of fill because, in handling, soil shrinkage occurs.

001.12 BID: A bidder's offer on Department provided forms to perform stated work at the quoted prices. It includes all documents as set forth in paragraph 003.04.

001.13 BIDDER: Any individual, firm, corporation, or joint venture of individuals, firms, or corporations submitting a bid for the work contemplated, acting directly or through a duly authorized representative.

001.14 BORROW SITE: The source of approved material required for the construction of embankments, or other portions of earthwork requirements, from locations shown in the Plans or approved by the Engineer.

001.15 BRIDGE: A structure, including supports, erected over a depression or any obstruction, as a water course, highway, or railway, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the centerline of a roadway of more than 20 feet (6.0 m) between undercopings of abutments or extreme ends of openings for multiple boxes.

001.16 BRIDGE LENGTH: The overall length along the centerline of the bridge from end to end of the bridge floor.

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001.17 CALENDAR DAY: Every day shown on the calendar, including Sundays and holidays, beginning and ending at midnight.

001.18 CHANGE ORDER: A written order issued by the Engineer to the Contractor, covering changes within the scope of the contract.

001.19 CHANNEL: A natural or artificial waterway.

001.20 COMMISSION: The Nebraska State Highway Commission.

001.21 CONTRACT:

001.21A The written agreement executed between the Department and/or any other political subdivision and the successful bidder, covering the performance of the work and the furnishing of labor and material, by which the bidder is bound to construct, reconstruct, improve, maintain and/or repair roads, bridges, buildings, and their appurtenances and furnish the labor and materials, and by which the Department is obligated to compensate him/her therefore at the mutually established and accepted rate or price.

001.21B The Contract includes the “Notice to Contractors”, proposal form, bid, contract form and contract bond, Standard Specifications, supplemental specifications, special provisions, general and detailed plans, notice to proceed, and any change orders and agreements that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

001.22 CONTRACT BOND: The security executed by the bidder and the bidder’s surety or sureties furnished to the Department or political subdivision to guarantee complete performance of the contract.

001.23 CONTRACT ITEM: An item of work specifically described and for which a price, either unit or lump sum, is provided. It includes the performance of all work and the furnishing of all labor, equipment, and materials described in the text of the Standard Specification item included in the contract or described in any subdivision of the text of the Supplemental Specification or Special Provision of the Contract.

001.24 CONTRACTOR: The prequalified individual or legal entity contracting with the Department and/or any other political subdivision for the construction, reconstruction, improvement, maintenance, and/or repair of roads, bridges, and their appurtenances.

001.25 CONTRACT PERIOD: The period from the specified date of commencing work to the date that the specified number of working days or calendar days, as the case may be, has elapsed, both dates inclusive, or from the specified date of commencing work to the specified date for completion, both dates inclusive, as specified in the contract.

001.26 CONTRACT TIME OR COMPLETION DATE: The number of working or calendar days specified in the proposal form as the time allowed for the completion of the work contemplated in the Contract, including authorized time extensions. When a calendar date of completion is shown in the proposal form, in lieu of a number of working or calendar days, the work contemplated shall be completed by that date.

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001.27 CONTROL OF ACCESS: The condition where the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

001.27A FULL CONTROL OF ACCESS: The authority to control access is exercised to give preference to through traffic by providing access connections with selected roads only and by prohibiting crossings at grade or direct private driveway connections.

001.27B PARTIAL CONTROL OF ACCESS: The authority to control access is exercised to give preference to through traffic to a degree that, in addition to the access connections with selected public roads, there may be some crossings at grade and some private driveway connections.

001.28 COUNTY: The County in which the work is to be done, represented by its Board of Commissioners or Supervisors. Reference to any County officer shall be taken to mean such officer of the County as now defined.

001.29 CULVERT: Any structure not classified as a bridge which provides an opening under any roadway.

001.30 CURRENT CONTROLLING OPERATION: The operation that must be performed on the current day to prevent delay in the final completion of the work.

001.31 DEPARTMENT: The Nebraska Department of Transportation.

001.32 DETOUR: A temporary official route using existing roads to divert traffic around a roadway project. Detours are maintained and marked by the State or other proper authority.

001.33 DIVIDED HIGHWAY: A highway with separated roadways for traffic in opposite directions.

001.34 EARTHWORK MEASURED-IN-EMBANKMENT: The calculated volume of the embankment shown in the Plans where balance factors do not apply.

001.35 EASEMENT (RIGHT-OF-WAY): A right acquired by public authority to use or control property for a designated highway purpose.

001.36 EMBANKMENT: A raised soil structure.

001.37 EMPLOYEE: A person working on a Department project for the Contractor.

001.38 ENGINEER: The Director, acting directly or through a representative duly authorized by the Director, such representative acting within the scope of the particular duties assigned to him/her or of the authority given to him/her.

001.39 EQUIPMENT: All machinery and supplies necessary for the construction, performance, and completion of the Contract.

001.40 EXPRESSWAY: A divided arterial highway for through traffic with full or partial control of access and which may have grade separations at intersections.

001.41 EXTRA WORK: An item of work and/or provisions for materials not included in the original contract.

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001.42 FEDERAL AGENCIES AND OFFICERS: Agencies, officers, and their successors of the United States Government.

001.43 FINAL ACCEPTANCE: Final acceptance is the date a final payment document is drawn by the Department.

001.44 FINAL TENTATIVE ACCEPTANCE: Final tentative acceptance is the date of the “Final Tentative Acceptance” letter to the contractor accepting all of the work. The Engineer’s “Final Tentative Acceptance” letter relieves the contractor of responsibility for the care and maintenance of the completed work; of public liability; and for damages due to the actions of the elements or the action of traffic.

001.45 FORESLOPE: The surface sloping downward and away from shoulder line.

001.46 FREEWAY: An expressway with full control of access.

001.47 FRONTAGE STREET OR FRONTAGE ROAD: A local street or road adjacent to a highway for service to abutting property.

001.48 GRADE SEPARATION: A crossing of two highways at different elevations.

001.49 HIGHWAY: A road or street, including the entire area within the right-of-way, which has been designated a part of the State Highway System.

001.50 HOLIDAYS: Nebraska legal holidays occur on January 1, the third Monday in January and February, the last Friday in April, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday and the following Friday in November, and December 25. If the date falls on Sunday, the following Monday shall be the holiday. If the date falls on Saturday, the preceding Friday shall be the holiday. All dates are subject to possible revision by State Statute or by proclamation of the Governor.

001.51 INSPECTOR: The Engineer’s authorized representative assigned to make detailed inspections of the work performed and materials furnished by the Contractor.

001.52 LABORATORY: The testing laboratory of the Department or any other testing laboratory which may be designated by the Engineer.

001.53 LETTING: The public opening and reading of bids received from prequalified bidders for work advertised by the Department.

001.54 MATERIALS: Any substance specified for use in the construction of the project. All materials shall be new unless otherwise stated in the Plans or Special Provisions.

001.55 MEDIAN: The portion of a divided highway separating the traveled ways.

001.56 MEDIAN LANE: A speed-change lane within the median to accommodate left-turning vehicles.

001.57 MITIGATION SITE: Those areas that will replace waterways, including wetlands, impacted in highway construction. The mitigation site must be constructed to insure that it meets the criteria of a wetland.

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001.58 NOTICE TO CONTRACTORS: The advertisement of the provisions, requirements, and instructions pertaining to the work on which bids are to be received, manner and time of submitting bids as prepared for the information of bidders.

001.59 NOTICE TO PROCEED: A written notice to the Contractor establishing the date the Contractor shall begin the contracted work.

001.60 PAVEMENT STRUCTURE: The combination of sub-base, base course, foundation course, and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

001.61 PLANS: The official Plans, profiles, typical cross sections, general cross sections, summary of soil and materials survey information, aerial photo maps, earthwork computations, design data, and supplemental drawings, or exact reproductions thereof, approved by the Engineer, which show the location, character, dimensions and details of the work to be done, and which are to be considered as a part of the contract supplementary to the Standard Specifications.

001.62 POINT OF DELIVERY: A place, determined by the contract or the Engineer, where materials will be received or placed.

001.63 PROFILE GRADE: The trace of a vertical plane intersecting the top of the proposed wearing surface, usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of the trace depending on the context.

001.64 PROJECT: The construction to be performed under the contract.

001.65 PROPOSAL FORM: Includes the description of the location of the work, time and place where bids will be accepted, the general conditions and special provisions. It also includes, by reference, the plans and specifications.

001.66 PROPOSAL GUARANTY BID BOND (BID BOND): A bond provided by the bidder and obtained from a Surety Company authorized to contract in Nebraska, which secures the bidder's bid until the Contract Bond becomes effective.

001.67 QUALITY ASSURANCE: All those planned and systematic actions the Department takes to determine that a product or service will satisfy specified quality requirements.

001.68 QUALITY CONTROL: All Contractor/supplier operational techniques and activities that are performed or conducted to fulfill the Contract requirements.

001.69 RAMP: A connecting roadway between two intersecting highways at an interchange.

001.70 RIGHT-OF-WAY: Real property used for transportation purposes.

001.71 ROAD: A public way for the purposes of vehicular travel, including the entire area within the right- of-way. A road designated as part of the State Highway System may be called a highway, while a road in an urban area may be called a street.

001.72 ROADBED: That portion of a roadway upon which the base course, surface course, shoulders and medians are constructed. Divided highways are considered to have two roadbeds.

001.73 ROADSIDE: The area within the right-of-way, excluding the traveled way, auxiliary lanes, and the shoulders.

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001.74 ROADSIDE DEVELOPMENT: Improvements placed or constructed for the preservation or enhancement of landscape features, rehabilitation and prevention of erosion, and increasing the effectiveness and enhancing the appearance of the highway.

001.75 ROADWAY: The portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

001.76 ROADWAY WIDTH: The clear width measured at right angles to the centerline and measured between the bottom inside face of the curbs, rails, or shoulder breaks.

001.77 SCHEDULE OF ITEMS: A list of the contract items for which the bidder is to provide a price to complete the work described by that item.

001.78 SETBACK LINE: A line outside of the right-of-way, established by public authority, on the highway side of which the erection of buildings or other permanent improvements is controlled.

001.79 SHOOFLY: A Contractor built, marked, and maintained route around a specific construction site. When an entrance and/or exit ramp must be built to provide access to a “DETOUR,” the ramps will be considered to be shooflies. Maintenance excludes snow removal.

001.80 SHOULDERS: The portion of the roadway contiguous with the traveled way for accommodation of vehicles stopped for emergencies and for lateral support of the pavement structure.

001.81 SOIL: Those materials listed in Bureau of Reclamation and Corps of Engineers Unified Soil Classification System.

001.82 SPECIAL PROVISIONS: Additions and revisions to the Nebraska Standard Specifications for Highway Construction and Supplemental Specifications To The Standard Specifications for Highway Construction.

001.83 SPECIFICATIONS: The general term comprising all the directions, provisions, and requirements contained in the Nebraska Standard Specifications for Highway Construction, together with such as may be added or adopted as Supplemental Specifications To The Standard Specifications for Highway Construction or Special Provisions, all of which are necessary for the proper performance of the Contract.

001.84 SPEED-CHANGE LANE: An auxiliary lane, including tapered areas, primarily for the acceleration or deceleration of vehicles entering or leaving the through traffic lanes.

001.85 STATE: The State of Nebraska acting through its authorized representatives.

001.86 STATION: The point on the ground which is part of the line defining the profile of the survey. Distance between full stations is 100 feet (100 m). The beginning point of a survey is station 0, unless otherwise designated.

001.87 STREET: A public way for the purpose of vehicular travel in a city or village and shall include the entire area within the right-of-way.

001.88 SUBCONTRACTOR: Any individual, firm, or corporation to whom the Contractor or Subcontractor, with the written consent of the Department, sublets any part of the contract.

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001.89 SUBGRADE: The upper portion of the roadbed, upon which the pavement structure and shoulders are constructed. Usually the subgrade depth is 6-inches (150 mm).

001.90 SUBSIDIARY: Work and material requirements that are not measured for payment and for which no direct payment is made. The bidder must include the cost of performing these requirements in another item that is identified in the Plans or Specifications.

001.91 SUBSTRUCTURE: The part of the structure below:

001.91A The simple and continuous span bearings.

001.91B The bottom of the girder or bottom slab soffit.

001.91C Construction joints at the top of vertical abutment members or rigid frame piers.

(Substructures include endwalls, wingwalls, barriers, railings attached to the wingwalls, and cantilever barriers and railings.)

001.92 SUPERINTENDENT: The Contractor's authorized representative in responsible charge of the work.

001.93 SUPERSTRUCTURE: The entire structure above the substructure.

001.94 SUPPLEMENTAL AGREEMENTS: Written agreements executed by the Contractor and the Department or other contracting agency, subsequent to having entered into the contract, covering alterations in the Plans or unforeseen items of construction.

001.95 SUPPLEMENTAL SPECIFICATIONS: Specifications adopted subsequent to the current edition of the Nebraska Standard Specifications for Highway Construction. Supplemental Specifications shall prevail over those published in the Nebraska Standard Specifications for Highway Construction whenever in conflict therewith.

001.96 SURETY: The corporate body registered and/or licensed to do business in Nebraska bound with and for the bidder for the acceptable performance of the contract, the completion of the work, and for the payment of all just claims arising therefrom.

001.97 TRAFFIC LANE: The portion of a traveled way for the movement of a single line of vehicles.

001.98 TRAVELED WAY: The portion of the roadway for the movement of vehicles, exclusive of shoulders.

001.99 UNBALANCED BID, MATERIALLY: A bid that generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Department. May cause a bid to be disqualified.

001.100 UNBALANCED BID, MATHEMATICALLY: A bid containing lump sum or unit bid items that do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

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001.101 VALUE ENGINEERING PROPOSAL: A proposal developed by the Contractor for modifying the Plans, Specifications, or other requirements of the Contract for the purpose of reducing the total cost of the construction without reducing the design capacity or quality of the finished product.

001.102 WEIGHT:

001.102A Weight is a measure of force in the English (Metric) system and the units are pounds (Newtons). Mass is measured in slugs or pounds (grams). Most scales used in the highway construction industry measure an object's gravitational force at the scale location. However, the unit of measurement on most scales is grams and these readings are generally not corrected for the existing gravitational force to allow conversion of the measured force to the object's true mass.

00.102B Certified scale measurements are considered by the Department to be acceptable measures of an object's mass.

001.103 WETLANDS: Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. (Wetlands generally include swamps, marshes, bogs, and similar areas.)

001.104 WORK: Work shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the project by the Contractor and the carrying out of all duties and obligations imposed by the Contract.

001.105 WORKING DAY

001.105A A working day is any calendar day, Monday through Friday, when the Contractor is not prevented by weather, soil conditions, or other conditions beyond his/her control from working on the current controlling operation for more than 50 percent of the hours in his/her normal schedule with more than 80 percent of his/her normal working force.

001.105B If any work requiring engineering or inspection by the Department is performed on a Sunday, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, or Christmas Day, then that day will be considered a working day.

001.105C Except as noted in Section 001.105B above, Saturdays, Sundays, and Nebraska holidays will not be counted as working days.

001.106 WORKING DRAWINGS: Shop drawings, shop plans, erection plans, falsework plans, framework plans, cofferdam cribbing and shoring plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data, including a schedule of submittal dates for working drawings where specified, which the Contractor must submit to the Engineer.

001.107 WORK ORDER: A written order directing the performance of work or furnishing of materials not included in the original contract.

002 REQUIREMENTS FOR BIDDERS ON CONTRACTS AWARDED BY THE DEPARTMENT

002.01 PREQUALIFICATION OF BIDDERS

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002.01A All persons, (any individual, co-partnership, association, corporation or joint stock company) proposing to bid on a contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges and their appurtenances to be let by the Department shall submit a statement showing his/her experience, equipment, and financial condition; except that such statement shall not be required for contracts for repair and maintenance where the estimate of the Engineer for such repair and maintenance is less than twenty-five hundred dollars, or of an emergency nature. Such statement shall be under oath and on a form to be provided by the Department and shall be submitted not later than ten days before the letting of the Contract or Contracts. The statement shall develop fully the financial ability, adequacy of plant and equipment, organization, prior experience, and such other pertinent and material facts as may be desirable. The Department may require additional information at any time. The statements of bidder's experience, equipment, and financial condition will not be retained in the active file of qualified bidders after the financial condition shown is of a date fifteen months prior. Any person whose qualification will expire on or before the date of a letting must submit a new statement and request to be qualified at least ten days before the letting at which he/she desires to bid. Any person who desires a change in his/her qualification must submit a new statement or a request in writing at least ten days before the letting at which the change would be effective. Upon the compliance with all laws and rules and regulations relating thereto, such person will be qualified for the amount and class of work to which he/she is entitled. All information furnished the Department shall be confidential.

002.01B The financial showing required in such statement shall be certified by a public accountant holding a currently valid permit from the Nebraska Board of Public Accountancy or by any certified public accountant holding a currently valid permit.

002.01C The use of a "Letter of Credit" as an alternate means of showing financial condition will be permitted when the net amount of the "Letter of Credit" does not exceed five hundred thousand dollars. The "Letter of Credit" must be from a licensed or chartered financial institution. The "Letter of Credit" shall be certified by a public accountant holding a currently valid permit from the Nebraska Board of Public Accountancy or by any certified public accountant holding a currently valid permit.

002.02 QUALIFICATION

002.02A Each person will be qualified upon such statement for an amount of work which he/she can perform properly as evidenced by his/her financial statement and supplementing documents, and his/her competency and responsibility as evidenced by the amount, condition, and availability of equipment, experience of personnel, and previous record with this and other awarding authorities.

002.02B Each person will be notified of the "maximum qualification" established in his/her case by the Department. The "maximum qualification" established may be increased or decreased at any time if, as determined by the Department, the performance record of the bidder warrants such action.

002.02C A new statement may be requested at any time if, in the opinion of the Department, significant changes in the responsibility or financial ability of the person have occurred.

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002.02D The Department may determine that a bidder is qualified to bid on any one or combination of the following groups of work:

<u>Group Number</u>	<u>Work Class</u>
1	Grading
2	Aggregates
3	Concrete Pavement
4	Culverts
5	Landscaping
6	Bridges
7	Guard Rail
7b	Fence
8	Specialty
8a	Building Construction
8b	Electrical
8c	Signing
8d	Painting
8e	Demolition
9	Bituminous
10	General (All Classes)

002.02E Any bidder who desires a change in the class or classes of work for which he/she is qualified to bid must submit a request in writing for such change at least ten days before the letting at which he/she desires to bid with the new classification.

002.03 DRUG-FREE WORKPLACE The State of Nebraska requires all bidders on all construction, maintenance, or improvement contracts let by the Department to file a written Drug-Free Workplace Policy with the Department. By signing the bid signature page the bidder certifies that the company is operating under a written Drug-Free Workplace Policy on file with the Department.

002.04 EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND SITE OF WORK

002.04A The Department will provide detailed Plans and Specifications. The bidder, before submitting a bid, shall carefully examine:

002.04A1 The site of the proposed work.

002.04A2 The proposal form.

002.04A3 The Plans. 002.04A4 The Specifications.

002.04A5 The Supplemental Specifications.

002.04A6 The Special Provisions.

002.04A7 Other required forms.

002.04A8 The permit conditions.

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002.04A9 The addendums.

002.04B The submission of a bid is considered conclusive evidence that the bidder made the examinations required in Section 002.04A above and that the bidder is satisfied with and understands the conditions to be encountered in performing the work and other requirements in the Contract.

002.05 FEDERALLY FUNDED CONTRACTS - EQUAL EMPLOYMENT OPPORTUNITY

002.05A Each Contractor and Subcontractor submitting a bid must certify that he/she has or has not participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Federal Executive Order 11246, and that he/she has or has not filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity all reports due under the applicable filing requirements.

002.05B The certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7 (b)(1)), and must be submitted by bidders and proposed Subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts or subcontracts of \$10,000 or less are exempt.)

002.05C Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations. Standard Form 100 (EEO-1) must be filed by:

002.05C1 Employers covered by Title VII of the Civil Rights Act of 1964 and employers covered by Federal Executive Order 11246 who have 100 or more employees in the payroll period for which they are reporting, normally any payroll period in December, January, or February preceding the filing of the report.

002.05C2 If Standard Form 100 (EEO-1) was not filed because the bidder has less than the 100 employees requirement, it is proper for the bidder to state that he/she has submitted all required compliance reports due.

002.05D Bidders who have participated in a previous contract or subcontract subject to the Federal Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7 (b)(1) prevents the award of contracts and subcontracts unless such bidder submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

002.06 CURRENT QUALIFICATION

Each bidder desiring to bid on work for which prequalification of bidders is required shall submit a request for proposal forms and with such request shall submit, on forms provided by the Department, a complete report of all work then under contract, including subcontracts, and the amount of work not completed on all such contracts. A current qualification based on this statement and the bidder's "maximum qualification" will be established by the Department taking into account the rate of progress which is being made in performing the uncompleted work, the requirements for the performance of the work for which the bidder desires to bid, and any other pertinent information

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that is available to the Department. This current qualification determines the amount of work for which any person is qualified at the particular letting and for which he/she may be awarded a contract or contracts, except that the Department may use a tolerance of not more than twenty-five percent of a bidder's current qualification and award the contract or contracts in a total amount which does not exceed by more than twenty-five percent the current qualification established by the Department.

002.07 AFFIRMATIVE ACTION

The Department, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the Regulations of the Department of Transportation (49 CFR, Part 21), issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that the Contract entered into will be awarded to the lowest responsible bidder without discrimination on the grounds of race, color, sex, or national origin.

003 BIDS

003.01 BID REQUIREMENTS

003.01A A proposal form for work for which prequalification of bidders is required will be issued only to those qualified to bid. A bidder will not be considered as qualified for any particular letting if the bidder's qualification will expire on or before the date of the letting.

003.01B Bidders submitting two or more bids in a total amount exceeding their current qualification by more than 25 percent shall submit the same, subject to the limitations of their current qualification, plus a tolerance of 25 percent. Nothing in these Rules and Regulations shall prevent the Department from rejecting any bid where, in the opinion of the Department, other circumstances and developments have changed the qualification or responsibility of the bidder.

003.01C If the qualification of the low bidder expires before the award of a contract, such contract will not be awarded until the qualification of the low bidder has been renewed.

003.01D A proposal form for work for which prequalification of bidders is required will be labeled with the name of the bidder to whom they are issued and shall not be transferable. Any bid submitted by a bidder other than the person or company to whom the proposal form was issued shall be void.

003.01E A proposal form will not be issued to any bidder later than 5:00 p.m. of the day preceding the letting.

003.01F A proposal form for any contract for which prequalification of bidders is required may be issued, at the discretion of the Department, to two or more qualified bidders jointly if the classes of work for which the prospective bidders are qualified to perform satisfy, in the aggregate, the qualification requirements for the particular contract. Two or more qualified bidders may not bid jointly to perform any contract for which prequalification of bidders is required unless a proposal form is issued by the Department to those bidders jointly for that purpose.

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003.02 INTERPRETATION OF QUANTITIES IN THE SCHEDULE OF ITEMS

The quantities listed in the schedule of items are considered to be approximations, unless otherwise provided, and are to be used for the comparison of bids. Payments to the Contractor will be made for the actual quantities or Plan quantities, if specified, of work performed or materials furnished in accordance with the contract. It is understood that the quantities of work to be done and materials to be furnished may each be increased, diminished, or omitted as hereinafter provided without in any way invalidating the unit bid prices, except as provided in Subsection 104.02 of the current edition of the Nebraska, Standard Specifications for Highway Construction or Supplemental and Special Provisions.

003.03 PREPARATION OF BIDS

003.03A The bidder shall use the Department authorized Electronic Bidding System Software when submitting a bid.

003.03B The bid shall be submitted in the envelopes provided by the Department, or submitted by using a Department authorized online bidding exchange, or as directed by the Department.

003.03C The Department may reject a bid if an error or warning message appears in the electronic bidding submission received by the Department.

003.03D In the event there is a discrepancy between the information submitted on the diskette or any electronic submission and the paper copy of the schedule of items submitted with the bid, the figures on the paper copy of the schedule of items will prevail.

003.03E The bidder shall pay applicable fees charged by the company providing the electronic bidding software or user fees for Internet services to submit a bid.

003.03F The blank spaces in the schedule of items must be filled in correctly, in ink, typed, or electronically for each item and document necessary to submit a complete bid.

003.03G The bid shall be clearly legible or it shall be rejected.

003.03H Signatures.

003.03H1 Written signatures must be in ink on the line provided in the form. Printed names below the line provided or located in other areas of the form will not be considered. All corrections and other entries not made by the EBS software must be in ink or typed.

003.03H2 Bids submitted over the internet must be signed using electronic signatures as provided by the Department-authorized internet service provider.

003.03H3 Failure of the bidder to properly sign the bid shall make the bid incomplete, and the bid will be rejected.

003.03I The Schedule of Items must be properly completed. The following rules will apply:

003.03I1 The schedule of items must state the unit price for each item of work contemplated.

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003.0312 If the unit price is left blank and the quantity of the item is one and an amount is shown in the “Bid Amount” column, then the amount in the “Bid Amount” column will be considered the unit price.

003.0313 If the bidder enters an amount in the “Unit Price” column when “Lump” is shown in that column, the “Unit Price” shall govern in the extension of that item.

003.0314 The bidder shall also show the product of the respective unit prices and quantities in the column provided for that purpose and the total amount for each group and combination of groups, as indicated in the schedule of items, necessary for a complete bid for the work on which the bidder wishes to bid.

003.0315 If the unit price is indicated with a line, the unit price will be considered free no matter what amount is shown in the “Bid Amount” column.

003.0316 If the unit price is left blank and the quantity of the item is greater than one, the bid is incomplete and the bid is rejected.

003.0317 If the “Unit Price” and “Bid Amount” columns are left blank, the bid will be considered incomplete and rejected except when alternate or single groups are bid and a bid is not being submitted for those items which were left blank.

003.0318 When the schedule of items is divided into groups, a price shall be submitted on each item of work within the group on which the bidder wishes to bid.

003.0319 On alternate groups when the bidder does not intend to submit a bid for a group, the bid for that group must be left blank.

003.04 CONTENTS OF BID The bidder shall include the following in each bid submitted to the Department. Failure to submit any of the following shall cause the bid to be rejected.

003.04A A Schedule of Items.

003.04B Required DBE Participation form (if applicable).

003.04C Certification of Previous EEO Performance (if applicable).

003.04D Equipment Assessment Certification (if applicable).

003.04E Hiring Practice Certification.

003.04F Drug-Free Workplace Policy Certification.

003.04G Noncollusion Declaration.

003.04H Compliance Certification for Standard Specifications for Highway Construction Sections 102 and 103.

003.04I Bid Bond or approved confirmation of a Bid Bond (See subsection 003.08).

003.04J Other forms, as required by the Department.

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003.04K An envelope with separate pockets for the bid and bid bond respectively when required by the Department.

003.04L Bid Signature Page. Written bid signature pages must be signed and notarized. Electronic signatures must have authorized digital signatures. Each bidder, in signing the bid signature page by or on behalf of the person, firm, association, or corporation submitting the bid, certifies that:

003.04L1 Such person, firm, association, or corporation has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid.

003.04L2 All equipment has been assessed for the current year.

003.04L3 The company is operating under a Drug-Free Workplace Policy, a copy of which is on file with the Department.

003.04L4 A contract bond for the contract amount will be furnished.

003.04L5 Reports have been filed regarding Equal Opportunity participation (Federally funded projects only).

003.04L6 Disadvantaged Business Enterprises (DBE) goals on designated Federally funded projects will be achieved or “good faith” documentation provided.

003.04M Failure to submit a bid signature page as part of the bid will make the bid nonresponsive. False statements in any of the certifications will constitute perjury.

003.05 BID SUBMISSION Bids must comply with all plans, special provisions, addendums, the Specifications (as defined in paragraph 001.83), Supplemental Specifications To The Standard Specifications for Highway Construction, and the Nebraska Rules and Regulations regarding bid preparation and bid submittal.

003.05A Bids shall be received until the date and hour set forth for the opening and must be, by that time, delivered to the place indicated in the “Notice to Contractors.” At the Department’s discretion there are two options to submit bids. The bidder can deliver to the Contracts Office a bid (as defined in paragraph 003.04) in the Department provided envelopes or authorized bidders can submit the bid electronically over the Internet.

003.05A1 OPTION 1 - The bid and Bid Bond shall be placed in separate sealed envelopes, attached to each other, and furnished by the Department. If an “Annual Bid Bond” is applicable the bidder shall indicate this in writing on the Bid Bond envelope. The envelope containing the bid shall be marked by the bidder to indicate its contents.

003.05A2 OPTION 2 - Bidders may submit bids electronically over the Internet using a Department authorized on-line bidding service.

003.05B The Department retains the discretion to accept as responsive a non-electronic bid.

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003.06 TIES AND LIMITATIONS

003.06A A bid shall not be tied to any other bid except as may be indicated in the proposal form. If the bidder desires to tie his/her bid to his/her bid on any or all of the other bids which may be indicated in the proposal form, such tie shall be clearly indicated in the space provided. The bidder shall not indicate a tie by means other than those shown.

003.06B If the bidder does not designate a preference in the space provided, it will be assumed that he/she does not desire to tie his/her bid to any of the bids listed therein; and the bid will be considered on that basis. The bidder shall not insert a tie in any other place in his/her bid except in the space provided in the bid.

003.06C The Engineer reserves the right to make awards that will be in the best interest of the State, and any comment in a bid limiting or qualifying this reserved right shall constitute an irregular bid. However, the bidder may specify one or more of the following:

003.06C1 The maximum monetary value of awards that will be accepted.

003.06C2 The total number of contracts that will be accepted.

003.06C3 The number of contracts of any particular class or classes of work that will be accepted.

003.06E Such limitations must be indicated in the space provided in the bid. Any limitation in the number of contracts of any particular class or classes of work that the bidder will accept will be considered as applying only to the class or classes of work mentioned.

003.06F The bidder shall not make a conditional deduction or reduction in any unit price in any bid.

003.07 IRREGULAR BIDS

003.07A Any tie, statement, qualification, or limitation made by the bidder in violation of, or not permitted by, Section 003.06 will cause the bid to be considered void.

003.07B Bids may be rejected if they show any alterations of forms, additions not called for, conditional bids, alternate bids, incomplete bids, erasures, or irregularities of any kind. Each bidder shall make an honest attempt to show correct extensions and totals in his/her bid. If, in the opinion of the Engineer, such an attempt is not made, such bids may be rejected.

003.07C In the event of a discrepancy between unit bid prices, extensions, and/or totals, the unit price shall govern.

003.08 PROPOSAL GUARANTY BID BOND (BID BOND)

003.08A Each bid shall be bonded with a bid bond made payable to the Department in an amount equal to at least five (5) percent of the amount bid. Bid bonds must be executed by corporations authorized to contract as a surety in the State of Nebraska. Any alterations, conditions, or limitations added to the Department's bid bond form will be unacceptable and cause the bid not to be opened and read. All bid bonds must be current as of the time

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of the letting and must contain a provision preventing termination of such bond no later than 5 days prior to the letting. There are three options to submit the proposal guaranty bid bond. In the event the low bidder fails to comply with any requirement regarding the execution of the contract, the Department shall immediately be entitled to recover the full amount of the bid bond as liquidated damages.

003.08A1 OPTION 1 - (Project Specific Paper Bid Bond). The bid bond shall be executed on the Department bid bond form, copies of which may be obtained from the Department. The bid bond shall be delivered to the Department with the bid.

003.08A2 OPTION 2 - (Project Specific Electronic Bid Bond). The Department, at its discretion, may allow a bidder to authorize a bonding company to register the bid bond with a Department authorized on-line bond registry service and provide the Department access to the bid bond data to confirm the existence of the bid bond specific to the project and to document that the bond is valid. The bidder must indicate in the bid submittal to the Department that their bid bond is posted on the bond registry service.

003.08A3 OPTION 3 - (Annual Bid Bond). The Department at its discretion may allow a bidder to place an “Annual Bid Bond” on file with the Department. This bond would cover all projects the bidder bids for a 12-month period shown in the bond. The bidder must indicate in the bid submittal to the Department that their “annual bid bond” applies to the submitted bid. The annual bid bond shall be executed on the Department of Transportation Bid Bond Form, copies of which may be obtained from the Department.

003.09 WITHDRAWAL OF BIDS

003.09A A bidder may withdraw an unopened bid at any time prior to the bid opening time specified in the “Notice to Contractors.”

003.09B To withdraw a bid, the bidder shall provide written notice (letter, telegram, or FAX) to the Department’s Contracting Office prior to the time established for the bid opening. The notice shall be signed by a person authorized to bid.

003.09C An agent authorized by the bidder in writing (letter, telegram or FAX) may resubmit withdrawn bids.

003.09D The Department will not accept bids after the bid opening time specified in the “Notice to Contractors.”

003.10 PUBLIC OPENING OF BIDS

003.10A Except when specifically authorized in writing by the Department and except as authorized in paragraph 003.09, bids will be opened and read publicly at the time and place indicated in the “Notice to Contractors.” Bids and bid bonds not filed with the Department as authorized in paragraphs 003.05 and 003.08 will not be opened and read. Errors by the bidder in filing his/her bid will not be cause for waiving any of the above requirements and will not be the responsibility of the Department.

003.10B The “Total Bid” for each bid will be read publicly. The group totals and unit prices for individual bids may be read at the sole discretion of the Department.

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004 DISQUALIFICATION OF BIDDERS AND DEBARMENT POLICY AND PROCEDURES

004.01 DISQUALIFICATION

Any one or more of the following causes shall be considered as sufficient for the disqualification of a bidder and the rejection of his/her bid or bids:

004.01A More than one bid on any one project from an individual, a firm or partnership, a corporation, or an association under the same or different names. Reasonable grounds for believing that any bidder has interest in more than one bid for the work contemplated will cause the rejection of all bids in which such bidder is interested.

004.01B EVIDENCE OF COLLUSION AMONG BIDDERS Any or all bids will be rejected if there is reason for believing that collusion exists among the bidders or if the bidder has been found unacceptable to bid due to collusion prior to award of the contract. Following conclusive evidence of collusion among bidders, participating bidders in such collusion will receive no recognition as bidders for any future work of the Department until such participants are reinstated as qualified bidders.

004.01C Bids in which the prices are obviously unbalanced.

004.01D BIDS WHICH ARE MATERIALLY UNBALANCED A bid is unbalanced if lump sum prices or unit bid prices do not reflect reasonable actual costs and there is a reasonable doubt that the lowest ultimate cost under the contract will be achieved.

004.01E Bids which are accompanied by bid bonds on forms that are not authorized by the Department or by bid bond forms which are incorrectly completed or are incomplete.

004.01F Bids in which the bid signature page is incorrectly completed or is incomplete.

004.02 DEBARMENT

004.02A The Director may, in his/her sole discretion, debar an individual, a bidder, or its affiliates from bidding, subcontracting, or supplying materials on Department contracts for any illegal activity involving bidding evidenced by any of the following:

004.02A1 An indictment or conviction of a bidding crime; any plea of guilty or nolo contendere to a charge of a bidding crime; any public admission of a bidding crime; any presentation of an unindicted co-conspirator; or any testimony protected by a grant of immunity of any bidder in any jurisdiction indicating involvement in a bidding crime.

004.02A2 Conviction of any offense indicating a lack of moral or ethical integrity as may reasonably be perceived to relate to or reflect upon the business practices of the bidders.

004.02A3 Debarment by any other State or Federal agency for substantially any of the reasons listed above.

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004.02A4 Any other activities of an individual, bidder, or its affiliates of a serious or compelling nature that are reasonably perceived to relate to their work as a Contractor.

004.02A5 Making materially false statements on a bid.

004.02B An individual or a bidder shall be given a debarment hearing if either so requests before or after debarment. The determination as to whether the debarment hearing will be held before or after debarment shall be at the sole discretion of the Director.

004.02B1 The written request for a debarment hearing must be received by the Director no later than ten days after the receipt of the written notice from the Director. Unless otherwise mutually agreed in writing, the debarment hearing shall be held no later than fourteen days after receipt of the individual's or bidder's request for a debarment hearing.

004.02B2 DEBARMENT AFTER HEARING In those situations where the Director decides to hold a debarment hearing prior to deciding whether debarment is proper, he/she shall send written notice to the affected individual, bidder, or their agents by certified or registered mail stating:

004.02B2a That debarment is being considered.

004.02B2b The general reasons that suggest the debarment.

004.02B2c That the bidder will be afforded an opportunity for a debarment hearing if requested.

004.02B3 DEBARMENT BEFORE HEARING In those situations where the Director determines that debarment is appropriate prior to a debarment hearing, he/she shall send written notice to the affected individual, bidder, or their agents by certified or registered mail stating:

004.02B3a That the bidder or individual has been debarred.

004.02B3b The general reasons for the debarment.

004.02B3c That the bidder or individual shall be accorded the opportunity for a debarment hearing if they so request in writing within ten days of the receipt of the written notice of debarment.

004.02B4 If the bidder or individual notifies the Director that he/she desires a hearing, the debarment hearing will be held no later than fourteen days after receipt of the individuals or bidder's request unless mutually agreed otherwise in writing. The Director shall determine in writing whether the individual or bidder will be reinstated.

004.02C The Director shall appoint a Hearing Examiner to conduct all debarment hearings. The Hearing Examiner shall make a recommendation to the Director, and such recommendation shall include findings of fact and conclusions of law.

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004.02D Except as modified by the Rules and Regulations of the Department, debarment hearings before the Hearing Examiner shall conform to the Code of Civil Procedure applicable to the District Courts of the State. Practice before the Hearing Examiner shall be governed by the Department's Rules and Regulations, Title 407.

004.02E Debarment shall be for a period of thirty-six months or, in the case of a reciprocal debarment as provided for under Subsection 004.02A3, the term of the debarment shall be for the same period as the debarment imposed by the other State or the Federal government.

004.02F The Director may suspend a debarment at any time he/she determines it is in the public interest to do so. Mitigating circumstances may be considered in the decision to lift or suspend a debarment and may include, but shall not be limited to:

004.02F1 The degree of culpability of the debarred individual or bidder.

004.02F2 Restitution by the debarred individual or bidder to the State for any perceived overcharges or damages resulting from the actions of the debarred individual or bidder.

004.02F3 Cooperation by the debarred individual or bidder with the State, the United States, and/or any other political governmental subdivision in the investigation of bidding crimes, including a full and complete account of the individual's or bidder's particular involvement therein.

004.02F4 Disassociation with individuals and firms that have been involved in a bidding crime.

004.02G The Director, at his/her discretion, may hold a hearing, no later than fifteen days prior to the last day of the debarment, and require the debarred individual or bidder to show cause why the debarment should not continue. If the Director, in his/her sole discretion, determines that a debarred individual or bidder has failed to become a responsible bidder, then the Director may continue the debarment for up to twelve additional months. The same show cause procedures shall continue for each successive extension of the original debarment until such time as the Director has determined that the debarred individual or bidder meets the criteria of a responsible bidder.

004.02H For purposes of debarment, the conduct of a bidder or an individual shall be fully imputed to:

004.02H1 Business firms with which they are or were associated.

004.02H2 Business firms by whom the individual was or is employed.

004.02H3 Parent or subsidiary companies of the bidder.

004.02H4 Business firms in which the individual or bidder has a controlling interest.

004.02I Debarment of a bidder shall in no way affect the obligations of the bidder to the State for services to the Department already under contract.

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004.02J Every bidder currently qualified by the Department to bid on its contracts shall have a duty to notify the Director if it, any of its employees, officers, board members, or associates are indicted or convicted of a bidding crime within thirty days of the indictment or conviction. Failure to do so is a serious and compelling offense sufficient to result in debarment.

004.02K Every bidder qualified by the Department to bid on its contracts shall have a duty to notify the Director if the bidder, any of its employees, officers, board members, or associates are contacted by any person with the purpose of engaging in any illegal activities in connection with bidding on contracts let by the Department or contracts involving federal aid. Notice shall include the name of the person making such overture or bid proposal, the time and place thereof, and the specific nature of the overture or bid proposal.

004.02L A copy of Section 004 of these Rules shall be mailed to each prequalified bidder and to each bidder heretofore debarred or suspended.

004.03 PROCEDURES FOR CERTIFICATION REGARDING DEBARMENT

004.03A By signing and submitting a bid, the bidder is providing the certification set out below.

004.03B The inability of a person to provide the certification required below will not necessarily result in denial of participation in a contract. The bidder shall submit an explanation of why he/she cannot provide certification. The certification or explanation will be considered in connection with the Department's or agency's determination whether to enter into this transaction. However, failure of the bidder to furnish a certification or an explanation shall disqualify the bid.

004.03C The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction, cause prosecution for perjury, bring debarment proceedings, or any combination of the above.

004.03D The bidder shall provide immediate written notice to the Department if at any time the bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

004.03E The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "bid proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549. The Department may be contacted for assistance in obtaining a copy of those regulations.

004.03F The bidder agrees by submitting this bid that, should the proposed covered transaction be entered into, he/she shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the Department.

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004.03G The bidder further agrees by submitting this bid that he/she will include Section 004, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

004.03H A bidder in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction unless he/she knows that the certification is erroneous. A bidder may decide the method and frequency by which he/she determines the eligibility of his/her principals.

004.03I Except for transactions authorized under Section 004.03F of these instructions, if a bidder in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this contract, in addition to other remedies available to the Federal Government, the Department may terminate this contract for cause or default, cause prosecution for perjury, bring debarment proceedings, or any combination of the above.

004.03J The bidder swears, to the best of his/her knowledge and belief, that he/she and the principals:

004.03J1 Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or Agency.

004.03J2 Have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them for:

004.03J2a Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction.

004.03J2b Violation of Federal or State antitrust statutes.

004.03J2c Commission of embezzlement, theft, forgery, bribery, or falsification or destruction of records.

004.03J2d Making false statements.

004.03J2e Receiving stolen property.

004.03J3 Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in Section 004.03J2 of these Regulations.

004.03J4 Have not within a three-year period preceding this bid had one or more public transactions (Federal, State, or local) terminated for cause or default.

004.03K Where the bidder is unable to certify to any of the statements in the certification, an explanation shall be attached to his/her bid.

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005 REQUIREMENTS FOR CONTRACT AWARD, CANCELLATION, AND EXECUTION

005.01 CONTRACT AWARD

The award of the contract will be made in Lincoln, Nebraska, by the Director to the lowest responsible bidder whose bid complies with all the requirements prescribed. The award will not be made until all necessary investigations have been made into the responsibility of the bidder to whom it is proposed to award the contract; but, in any case, the award shall be made within thirty days after the opening of the bids. The right is reserved to limit the work awarded one bidder to the amount that he/she is considered capable of handling, taking into account both his/her capacity to perform work and contracts in force. The successful bidder will be notified by letter, mailed to the address shown on his/her bid, that his/her bid has been accepted and that he/she has been awarded the contract.

005.02 CONSIDERATION OF BIDS

005.02A Following the bid opening, the Department will compare the responsive bids. Unless otherwise defined in the bid, the comparison will be based on the summation of the quantities and the unit bid prices shown in the bid schedule. The comparison will be available to the public after one working day.

005.02B The right is reserved to reject any and all bids and to waive technical errors as may be deemed in the Department's best interest.

005.02C The Department may consider both tied and untied bids to determine the lowest responsible bidder when entire projects have been tied at the option of the bidder. When untied bids are not received on all tied projects, the Department may award the contract to a bidder submitting the lowest tied bid, regardless of whether an untied bid on a single project is lower than the tied bid. The Department will act in the best interest of the State when making this determination.

005.02D The right is reserved to require from any or all bidders on any project, including the apparent low bidder, prior to award of the Contract, all documents and information used in the preparation of their bids. Failure to furnish the documents and information shall result in a period of disqualification that is determined by the Director.

005.03 CANCELLATION OF AWARD

The Department reserves the right to cancel the award of any contract any time before the execution of the said contract by all parties without any liability against the Department.

005.04 REQUIREMENTS WITH RESPECT TO CONTRACT BOND

The bidder to whom the Contract is awarded shall furnish within thirty days after the award a Contract bond in a sum equal to the full amount of the Contract. The Contract bond must be executed on the form furnished by the Department. Contract bonds must be executed by corporations authorized to contract as a surety in Nebraska.

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005.05 EXECUTION OF CONTRACT

The Contract shall be signed by the successful bidder and returned, together with a satisfactory bond, within thirty days from the date of award. The Department will not execute a contract until satisfactory bonds, certificate of insurance, and other required documents have been received. No bid shall be considered binding upon the Department until the execution of the Contract.

005.06 FAILURE TO EXECUTE CONTRACT

005.06A A contract is not executed if the bidder:

005.06A1 Fails to file an acceptable contract bond within 30 days from the date of award.

005.06A2 Fails to complete and submit all required forms and documents within 14 days after the opening of bids.

005.06A3 Gives written notice expressing intent not to execute the Contract.

005.06B When a contract is not properly executed, the Department may:

005.06B1 Annul the award and cancel the bid with forfeiture of the proposal guaranty bid bond (forfeiture not imposed as a penalty, but in liquidation of damages sustained).

005.06B2 Proceed with the execution of the Contract after the 30-day period when all required documents have been correctly submitted and adjust the bidder's prequalification downward as specified in Section 002.02B.

005.06B3 Award to the lowest, succeeding, responsive bidder and recover the differences from the defaulting bidder.

005.07 SPECIAL ARRANGEMENTS

The right is reserved, unless otherwise stated in the proposal form, to consider bids and award separate contracts for each group of items as shown in the proposal form. All awards under the Standard Specifications are subject to the approval of the Department before becoming effective as contracts.

005.08 MATERIAL GUARANTY

Before any contract is awarded, the successful bidder may be requested to furnish a complete statement of the origin, composition, and manufacture of any materials to be used in the construction of the work, together with samples which may be subjected to the tests provided for in the Standard Specifications to determine their quality and fitness for the work.

ANNOTATION

Title 409
Chapter 1

Enabling Legislation
§39-102 and 39-1351
through 39-1353
Neb. Rev. Stat.

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