

GENERAL CONTRACT PROVISIONS

SECTION 10
DEFINITIONS OF TERMS

10-03 DEFINITIONS.

DELETE the definition for BID and REPLACE with the following:

BID (OR PROPOSAL). The bidder's offer, on the prescribed forms, to perform the specified work at the prices quoted.

ADD The following five definitions:

BID FORMS. Department-furnished forms that a bidder must complete and submit when making a bid in response to an advertised project. Bid forms may include a bid schedule, certification forms, acknowledgment forms, and other documents.

DIGITAL SIGNATURE. An electronic signature that conforms to the Uniform Electronic Transactions Act, AS 09.80.010 et seq.

ELECTRONIC BID. A bid that a bidder (i) prepares on the Department's bid forms accessed through the Department's approved online bidding service and (ii) submits to the Department through use of that bidding service's online submittal process.

ELECTRONIC MAIL (EMAIL). A system for sending messages from one person to another via telecommunications links between computers or terminals using dedicated software.

MANUAL BID. A bid that a bidder (i) prepares on the Department's bid forms accessed either through the Department's approved online bidding service or obtained from the Department's Regional Contracts Office and (ii) submits to the Department in physical paper form by hand delivery, U.S. Mail, or courier service.

SECTION 20
PROPOSAL REQUIREMENTS AND CONDITIONS

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

Bidders shall:

- a. Enter all prices required on the Bid Schedule, in figures;
- b. Enter a unit price for each contract item for which a quantity is given;

- c. Enter the products of the respective unit prices and quantities in the column provided;
- d. Enter lump sum prices for lump sum contract items in the column(s) provided; and
- e. Enter the total amount of all contract items for the basic bid and, when specified, any alternates.

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

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

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

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

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

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

20-06 NONRESPONSIVE BIDS. DELETE the subsection in its entirety and replace with the following: A responsive bid conforms to all significant terms and conditions contained in the Department's invitation to bid.

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

- (1) Is not typed or completed in ink;
- (2) Fails to include an acknowledgement of receipt of each addendum by assigned number and date of issue; or
- (3) Is missing a bid price for any pay item, except when alternate pay items are authorized.

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

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

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

20-08 DELIVERY OF BIDS. DELETE the subsection in its entirety and replace with the following: Bids shall be submitted electronically through the online bidding service, or shall be submitted in a sealed envelope. When bids are submitted in a sealed envelope, the envelope shall clearly indicate its contents and the designated address, as specified on the Invitation to Bid. Bids for other work may not be included in the envelope. In the event of a bid delay, electronic bidders that have already submitted their bid prior to the bid delay must resubmit their bid utilizing all Bid Forms EBSX Files or their bid will not be received.

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

20-09 WITHDRAWAL OR REVISION OF BIDS. DELETE the subsection in its entirety and replace with the following: Manual Bids may be withdrawn or revised in writing delivered by mail, fax, or email, provided that the designated office receives the withdrawal or revision before the deadline stated in the in the Invitation To Bid. Withdraw requests must be signed and submitted by the bidder's duly appointed representative who is legally authorized to bind the bidder. Revisions shall include both the modification of the unit bid price and the total modification of each item modified but shall not reveal the amount of the total original or revised bids.

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

20-11 ADDENDA REQUIREMENTS. DELETE the subsection in its entirety and replace with the following: The Department will issue addenda if it determines, in its discretion, that clarifications or changes to the Contract documents or bid opening date are needed. The Department may send addenda by any reasonable method such as fax, email, or may post the addenda on its website or online bidding service. Unless picked up in person or included with the bid documents, addenda or notice that an addendum has been issued will be addressed to the individual or company to whom bidding documents

were issued and sent to the email address or fax number on the plan holders' list. Notwithstanding the Department's efforts to distribute addenda, bidders are responsible for ensuring that they have received all addenda affecting the Invitation To Bid. Bidders must acknowledge all addenda on the Bid Forms, by fax, or by email before the deadline stated in the Invitation to Bid.

20-12 RECEIPT AND OPENING OF BIDS. DELETE the subsection in its entirety and replace with the following: The Department will only consider bids, revisions, and withdrawals received before the scheduled deadline stated in the Invitation to Bid.

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

ADD the following subsection:

20-15 ELECTRONIC MAIL. Within its submitted bid, a bidder must include a current electronic mail (email) address of bidder's representative who possesses authority to receive, process, and respond to Department emails regarding the advertised project.

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

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

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

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

1. The date and time that the Department sent the email message;
2. The email address from which the Department sent the message;
3. The name and email address to which the Department sent the message;
4. A statement that the Department sent the email message and that the person signing the affidavit or certification believes the transmission to have been complete and without error; and
5. An attached copy of the subject email.

SECTION 30 AWARD AND EXECUTION OF CONTRACT

30-01 CONSIDERATION OF BIDS. ADD the following after the fourth paragraph:

WHOLLY STATE-FUNDED PROJECTS. On wholly state-funded projects, determination of the low bidder will include bidder preferences as required under AS 36.30.321, according to subsections a. – c. below. Alaska Bidder Preference, Alaska Veteran Preference, and Alaska Product Preference are not applicable on projects with federal funding.

- a. **Alaska Bidder Preference:** A bidder claiming this preference shall provide with their bid an Alaska Bidder Preference Certification, certifying they qualify as an Alaska bidder eligible for Alaska Bidder Preference according to AS 36.30.

If the bidder qualifies as an Alaska Bidder, a five percent (5%) preference will be applied to the price of the bid. "Alaska bidder" means a person who:

- (1) holds a current Alaska business license;
- (2) submits a bid for goods, services, or construction under the name appearing on the person's current Alaska business license;
- (3) has maintained a place of business within the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid;
- (4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company organized under AS 10.50 and all members are residents of the state, or is a partnership under former AS 32.05, AS 32.06, or AS 32.11 and all partners are residents of the state; and
- (5) If a joint venture, is composed entirely of ventures that qualify under (1) through (4), above.

- b. **Alaska Veteran Preference:** A bidder claiming this preference shall provide an Alaska Veteran Preference Certification, certifying they qualify as an Alaska bidder eligible for Alaska Veteran preference according to AS 36.30.

If a bidder qualifies as an Alaska bidder and is a qualifying entity, an Alaska Veteran Preference of five percent shall be applied to the bid price. The preference may not exceed \$5,000 (AS 36.30.321). A "qualifying entity" means a:

- (1) sole proprietorship owned by an Alaska veteran;
- (2) partnership under AS 32.06 or AS 32.11 if a majority of the partners are Alaska veterans;
- (3) limited liability company organized under AS 10.50 if a majority of the members are Alaska veterans; or
- (4) corporation that is wholly owned by individuals, and a majority of the individuals are Alaska veterans.

A preference under this section is in addition to any other preference for which the bidder qualifies.

To qualify for this preference, the bidder must add value by the bidder itself actually performing, controlling, managing and supervising a significant part of the services provided or the bidder must have sold supplies of the general nature solicited to other state agencies, governments, or the general public.

An Alaska veteran is a resident of Alaska who:

- (1) served in the Armed forces of the United States, including a reserve unit of the United States armed forces; or the Alaska Territorial Guard, the Alaska Army National Guard, the Alaska Air National Guard, or the Alaska Naval Militia; and
- (2) was separated from service under a condition that was not dishonorable.

- c. **Alaska Product Preference:** A bidder claiming this preference shall complete and sign the Alaska Product Preference Worksheet, according to the worksheet instructions, and submit the completed worksheet with their bid.

Except for timber, lumber and manufactured lumber products used in the construction project under AS 36.30.322(b), an Alaska products preference will be given as required under AS 36.30.326 - 36.30.332 when the bidder designates the use of Alaska products.

If the successful bidder/contractor proposes to use an Alaska product and does not do so, a penalty will be assessed against the successful bidder/contractor according to AS 36.30.330(a).

Each Alaska product declared on the Alaska Product Preference Worksheet must have an "Approval" date on the Alaska Product Preference Program List, that is on or before the bid opening date for this contract, and that does not expire before the bid opening date for this contract.

30-03 AWARD OF CONTRACT. DELETE the first two paragraphs of the subsection and REPLACE them with the following: The Department will award the Contract to the lowest responsible and responsive bidder unless it rejects all bids. The Department will notify all bidders in writing via email, fax, or U.S. Mail of its intent to award.

The Department will notify the successful bidder in writing of its intent to award the Contract and request that certain required documents, including the Contract Form, bonds, insurance and a completed Form 25D-159 (Certification for Tax Delinquency and Felony Convictions) be submitted within the time specified. The successful bidder's refusal to sign the Contract and provide the requested documents within the time specified may result in cancellation of the notice of intent to award and forfeiture of the bid security.

**SECTION 90
MEASUREMENT AND PAYMENT**

09-01 GENERAL. Insert the following after the second paragraph: Pay item numbers in the Bid Schedule are cross-referenced to the pay item numbers in all other contract documents. The cross-reference for pay item numbers is included in the Estimate of Quantities table on the plans.