

SECTION 30 AWARD AND EXECUTION OF CONTRACT

30-01 CONSIDERATION OF BIDS. After the bids are opened and read, the bids will be mathematically checked and compared on the basis of the sum of the products of the bid schedule quantities and the unit bid prices. The unit bid prices govern if there is an error in extending the unit bid prices, or in totaling the extensions, or if an extension is missing. The results of the bid comparisons will be made available to the public as soon as practicable.

Until the Award, the Department may reject any or all bids, waive minor informalities or advertise for new bids without liability to any bidder if the Department, in its discretion, determines that to do so is in the best interests of the state.

A bidder may request withdrawal of a bid after opening and before the Award only according to AS 36.30.160(b) and State procurement regulations. Submit the request to the Contracting Officer.

An interested party, as defined in AS 36.30.699, may protest a proposed Award of contract as per AS 36.30.560 and AS 36.30.565. Submit the protest to the Contracting Officer.

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. – d. 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 an entity that:

- (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.

- d. **Alaska Military Skills Preference:** A bidder claiming this preference shall provide an Alaska Military Skills Preference Certification, Form 25D-21, certifying they qualify as an Alaska bidder eligible for Alaska Veteran preference according to AS 36.30.321.

If a bidder qualifies as an Alaska bidder and is a qualifying entity, an Alaska Military Skills Preference of 2 percent shall be applied to the bid price. The preference may not exceed \$5,000 (AS 36.30.321(f)). A "qualifying entity" means an entity that:

- (1) employs at least one person who is currently enrolled in, or within the previous two years graduated from, a United States Department of Defense SkillBridge or United States Army Career Skills Program for service members or spouses of service members that offers civilian work experience through specific industry training, pre-apprenticeships, registered apprenticeships, or internships during the last 180 days before a service member separates or retires from the service; or
- (2) has an active partnership with an entity that employs an apprentice through a program described in (1) of this subsection.

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.

30-02 SUBCONTRACTOR LIST. The apparent low bidder shall submit a completed Subcontractor List, Form 25D-5, within five working days following receipt of written notification by the Department that it is the low bidder.

An apparent low bidder who fails to submit a completed Subcontractor List form within the time allowed will be declared nonresponsible and may be required to forfeit the bid security. The Department will then consider the next lowest bidder for award of the Contract.

If a bidder fails to list a subcontractor, or lists more than one subcontractor for the same portion of work, and the value of that work is in excess of one-half of one percent of the total bid amount, the bidder agrees to perform that portion of work without a subcontractor and represents that it is qualified to perform that work.

A bidder who lists as a subcontractor another contractor who, in turn, sublets the majority of the work required under the Contract, violates this subsection.

On federal-aid projects, subcontractors must obtain an Alaska business license and certificate of contractor registration prior to award of the Contract.

On wholly state-funded projects, all subcontractors listed by the Contractor shall have a valid Alaska business license and a valid certificate of registration as a contractor, as defined in AS 08.18, at the time the bid is opened. If a subcontractor listed by the Contractor does not have a valid business license and certificate of registration at the time the bid is opened, the Contractor shall replace the subcontractor with a subcontractor that had a valid Alaska business license and a valid certificate of registration as a contractor under AS 08.18 at the time the bid was opened.

A bidder or Contractor may, without penalty, replace a listed subcontractor who:

- a. Fails to comply with licensing and registration requirements of AS 08.18;
- b. Fails to obtain a valid Alaska business license;
- c. Files for bankruptcy or becomes insolvent;
- d. Fails to execute a subcontract for performance of the work for which the subcontractor was listed, and the bidder acted in good faith;
- e. Fails to obtain bonding acceptable to the Department;
- f. Fails to obtain insurance acceptable to the Department;
- g. Fails to perform the subcontract work for which the subcontractor was listed;
- h. Must be replaced to meet the bidder's required state or federal affirmative action requirements;
- i. Refuses to agree or abide with the bidder's labor agreement; or
- j. Is determined by the Department to be not responsible.

In addition to the circumstances described above, a Contractor may in writing request permission from the Department to add a new subcontractor or replace a listed subcontractor. The Department will approve the request if it determines in writing that allowing the addition or replacement is in the best interest of the State.

A bidder or Contractor shall submit a written request to add a new subcontractor or replace a listed subcontractor to the Contracting Officer a minimum of five working days before the date the new subcontractor is scheduled to begin work on the construction site. The request must state the basis for the request and include supporting documentation acceptable to the Contracting Officer.

If a bidder or Contractor violates this subsection, the Contracting Officer may:

- a. Cancel the Contract after Award without any damages accruing to the Department; or
- b. After notice and a hearing, assess a penalty on the bidder or Contractor in an amount not exceeding 10 percent of the value of the subcontract at issue.

30-03 AWARD OF CONTRACT. 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, except on wholly state-funded projects, 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.

If an award is made, it will be made as soon as practicable and usually within 40 days after bid opening. Award may be delayed due to bid irregularities or a bid protest, or if the award date is extended by mutual consent. Bids shall be valid for 120 days after bid opening, and may be extended by mutual consent.

For AIP contracts, no award shall be made until the FAA has concurred in the Department's recommendation to make such award and has approved the Department's proposed contract to the extent that such concurrence and approval are required by 49 CFR Part 18.

30-04 RETURN OF BID GUARANTY. The Department will return bid guaranties, other than bid bonds:

- a. To all except the two lowest responsive and responsible bidders, as soon as practicable after the opening of bids; and
- b. To the two lowest responsive and responsible bidders immediately after Contract award.

30-05 PERFORMANCE AND PAYMENT BONDS. The successful bidder shall furnish all required Performance and Payment Bonds on forms provided by the Department for the sums specified in the Contract. If no sum is specified, the successful bidder shall comply with AS 36.25.010. The Surety on each bond may be any corporation or partnership authorized to do business in the state as an insurer under AS 21.09 or two individual sureties approved by the Contracting Officer.

If individual sureties are used, two individual sureties must each provide the Department with security assets located in Alaska equal to the penal amount of either the performance bond or the payment bond. Any costs incurred by the Contractor and the individual Surety are subsidiary and shall be borne by the Contractor or the individual Surety. In no event will the Department be liable for these costs.

Individual sureties shall provide security by one, or a combination, of the following methods:

- a. **Escrow Account.** An escrow account with a federally insured financial institution, in the name of the Department. Acceptable securities include, but are not limited to, cash, treasury notes, bearer instruments having a specific value, or money market certificates.
- b. **Irrevocable Letters of Credit.** Irrevocable letters of credit with a financial institution approved by the Contracting Officer, with the Department named as beneficiary.

- c. **Cashiers or Certified Check.** A cashier's check or certified check made payable to the State of Alaska issued by financial institutions approved by the Contracting Officer.

These bonds and security assets, as applicable, shall remain in effect for 12 months after the date of final payment or, if longer, until all obligations and liens under this Contract are satisfied, including, but not limited to, obligations under Subsection 70-19.

The Department may, in its discretion, notify the bonding company or Surety of any potential default or liability.

The Contractor shall substitute, within five working days, another bond or surety acceptable to the Department if an individual Surety or the Surety on any bond furnished in connection with the Contract:

- a. Becomes insolvent or is declared bankrupt;
- b. Loses its right to do business in any state affecting the work;
- c. Ceases to meet Contract requirements;
- d. Fails to furnish reports of financial condition upon request; or
- e. Otherwise becomes unacceptable to the Department.

When approved by the Contracting Officer, the Contractor may replace:

- a. An individual surety with a corporate surety; or
- b. Posted collateral with substitute collateral.

Failure to maintain the specified bonds or to provide substitute bonds when required under this section may be grounds for withholding contract payments until substitute bonding is obtained, and may, in the Department's discretion, be grounds for declaring the Contractor in default.

30-06 INSURANCE REQUIREMENTS. The Contractor shall provide evidence of insurance with an insurance carrier or carriers satisfactory to the Department covering injury to persons and property suffered by the State of Alaska or by a third party as a result of operations under this contract by the Contractor or by any subcontractor. The Contractor's insurance shall provide protection against injuries to all employees of the Contractor and the employees of any subcontractor engaged in work under this Contract. All insurance policies shall be issued by insurers that (i) are permitted to transact the business of insurance in the State of Alaska under Title 21 of the Alaska Statutes and (ii) have a financial rating acceptable to the Department. A certificate of insurance must be furnished to the Department prior to award. The certificate of insurance must provide for notice of cancellation or non-renewal in accordance with policy provisions.

Where specific limits and coverages are shown, it is understood that they shall be the minimum acceptable. The requirements of this subsection shall not limit the Contractor's indemnity responsibility under Subsection 70-13. Additional insurance requirements specific to this contract are contained in the Special Provisions, when applicable.

The Contractor shall maintain the following policies of insurance with the specified minimum coverages and limits in force at all times during the performance of the Contract:

- a. **Workers' Compensation:** as required by AS 23.30.045, for all employees of the Contractor engaged in work under this Contract. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor who performs work under this Contract. The coverage shall include:

- (1) Waiver of subrogation against the state;

- (2) Employer's Liability Protection at \$500,000 each accident/each employee and \$500,000 policy limit;
 - (3) "Other States" endorsement if the Contractor directly utilizes labor outside of the State of Alaska;
 - (4) United States Longshore and Harbor Workers' Act Endorsement, whenever the work involves activity over or about navigable water; and
 - (5) Maritime Employer's Liability (Jones Act) Endorsement with a minimum limit of \$1,000,000, whenever the work involves activity from or on a vessel on navigable water.
- b. Commercial General Liability:** on an occurrence policy form covering all operations, including contractual liability and products-completed operations, with combined single limits not less than:
- (1) \$1,000,000 Each Occurrence;
 - (2) \$1,000,000 Personal Injury;
 - (3) \$2,000,000 General Aggregate; and
 - (4) \$2,000,000 Products-Completed Operations Aggregate.
- c. Automobile Liability:** covering all vehicles used in Contract work, with combined single limits not less than \$1,000,000 each occurrence.
- d. Umbrella Coverage:** for Contract amounts over \$5,000,000 not less than \$5,000,000 umbrella or excess liability. Umbrella or excess policy shall include products-completed operations coverage and may be subject to \$5,000,000 aggregate limits. Further, the umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

The State of Alaska shall be named as an additional insured on policies required by paragraphs **b** thru **d** above. All of the above insurance coverages shall be considered to be primary and non-contributory to any other insurance carried by the State of Alaska, whether through self-insurance or otherwise.

In any contract or agreement with subcontractors performing work, the Contractor shall require that all indemnities and waivers of subrogation it obtains, and any stipulation to be named as an additional insured it obtains, shall also be extended to waive rights of subrogation against the State of Alaska and to add the State of Alaska as an additional named indemnitee and as an additional insured.

The apparent low bidder shall furnish evidence of insurance to the Department before award of the Contract. The evidence shall be issued to the Department and shall be either a certificate of insurance or the policy declaration page with all required endorsements attached and must:

- a. Denote the type, amount, and class of operations covered;
- b. Show the effective (and retroactive) dates of the policy;
- c. Show the expiration date of the policy;
- d. Include all required endorsements;
- e. Be executed by the carrier's representative; and
- f. Provide that the Department shall receive written notice of cancellation or non-renewal in accordance with policy provisions.

The Department's acceptance of deficient evidence of insurance does not constitute a waiver of Contract requirements.

Failure to maintain the specified insurance or to provide substitute insurance if an insurance carrier becomes insolvent, is placed in receivership, declares bankruptcy, or cancels a policy may be grounds for withholding Contract payments until substitute insurance is obtained, and may, in the Department's discretion, be sufficient grounds for declaring the Contractor in default.

30-07 EXECUTION AND APPROVAL OF CONTRACT. The successful bidder shall execute and return the Contract Form and all other required documents to the Department within the time specified, or within 15 days after receipt by the bidder if no time is specified. A contract is awarded only after it has been signed by the Contracting Officer.

30-08 FAILURE TO EXECUTE CONTRACT. If the successful bidder fails to appropriately execute and return the Contract Form and other documents within time specified, as required above, the Department may cancel the intent to award and keep the bid guaranty. The Department will then, in its discretion, award the Contract to the next lowest responsive and responsible bidder or readvertise the work.

30-09 ORAL STATEMENTS. The written terms of the Contract are binding. No oral statement of any person shall, in any manner or degree, modify or otherwise affect, change, or amend the terms of the Contract.

30-10 INTEGRATED CONTRACT. This Contract is an integrated document and contains the complete agreement and understanding of the parties. There are no unwritten agreements or understandings between the parties. Changes ordered or agreed upon, Directives given, or Equitable Adjustments issued under this Contract, and all other matters affecting the Contract, must be in writing in order to be binding and effective.