



Florida Department of Transportation

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MEMORANDUM

DATE: September 25, 2015

TO: Specification Review Distribution List

FROM: Daniel Scheer, P.E., State Specifications Engineer

SUBJECT: Proposed Specification: **0030000 Award and Execution of Contract.**

In accordance with Specification Development Procedures, we are sending you a copy of a proposed specification change.

This change was proposed by Alan Autry of the Contracts Administration Office to update the language for current Department practice.

Please share this proposal with others within your responsibility. Review comments are due within four weeks and should be sent to Mail Station 75 or online at <http://www2.dot.state.fl.us/ProgramManagement/Development/IndustryReview.aspx> . Comments received after **October 23, 2015**, may not be considered. Your input is encouraged.

DS/dt
Attachment

**AWARD AND EXECUTION OF CONTRACT.
(REV 9-17-15)**

SECTION 3 is deleted and the following substituted:

**SECTION 3
AWARD AND EXECUTION OF CONTRACT**

3-1 Consideration of Bids.

For the purpose of award, after opening and reading the ~~p~~P~~ro~~posals, the Department will consider as the bid the correct summation of each unit bid price multiplied by estimated quantities shown in the ~~p~~P~~ro~~posal. On this basis, the Department will compare the amounts of each bid and make the results of such comparison available to the public. Until the actual award of the Contract, however, the Department reserves the right to reject any or all ~~p~~P~~ro~~posals and to waive technical errors that the Department may deem best for the interest of the State.

The Department reserves the right to delete the bid portion of the utility relocation work from the Contract. When the Department deletes utility relocation work from the Contract, the Department will recalculate the Contract bid tabulations based on the remaining project quantities.

In the event that the Department deletes utility relocation work from the Contract, the utility owner will relocate such utilities in accordance with the backup Utility Relocation Schedule contained in the Contract Documents.

3-2 Award of Contract.

3-2.1 General: If the Department decides to award the Contract, the Department will award the Contract to the lowest responsible ~~b~~B~~id~~der whose ~~p~~P~~ro~~posal complies with all the Contract Document requirements. If awarded, the Department will award the Contract within 50 days after the opening of the ~~p~~P~~ro~~posals, unless the Special Provisions change this time limit or the ~~b~~B~~id~~der and the Department extend the time period by mutual consent.

Prior to award of the Contract by the Department, ~~a contractor~~the Bidder must provide proof of authorization to ~~de~~co~~nd~~uct business in the State of Florida.

3-2.2 Bids Exceeding ~~Contractor~~Bidder's Maximum Capacity Rating: Prior to award of the Contract, ~~t~~he Department will address bids exceeding a ~~Contractor~~Bidder's maximum capacity rating, and the resulting impact on the ~~Contractor~~Bidder's qualification to bid, in accordance with Florida Administrative Code Rules 14-22.003 and 14-22.009.

~~_____The bidder's proposal guaranties are binding for all projects awarded to the Contractor pursuant to the provisions of this Subarticle.~~

3-3 Cancellation of Award.

The Department reserves the right to cancel the award of any ~~e~~C~~on~~tract at any time before the execution of the ~~e~~C~~on~~tract by all parties, with no compensation due any of the ~~b~~B~~id~~ders.

3-4 Release of Proposal Guaranty.

The Department will release all ~~p~~P~~ro~~posal ~~g~~G~~uar~~anties except those of the two lowest ~~b~~B~~id~~ders immediately following the opening and checking of the ~~p~~P~~ro~~posals. The Department

will immediately release the pProposal guaranty of the two lowest bBidders after the successful bBidder delivers the executed eContract and a satisfactory Contract bBond to the Department, except that the Department will not retain the pProposal guaranty of the next-to-lowest bBidder longer than 50 days after the opening of the pProposals unless the Department awards the eContract to the next lowest bBidder prior to the expiration of this time limit.

3-5 Contract Bond Required.

3-5.1 General Requirements of the Contract bBond: Upon award, furnish to the Department, and maintain in effect throughout the life of the Contract, an acceptable surety Contract bBond in a sum at least equal to the amount of the Contract. Execute such Contract bBond on the form furnished by the Department. Obtain the Contract Bond from a surety that has a resident agent licensed to conduct business in the State of Florida, meetsing all of the requirements of the laws of Florida and the regulations of the Department, and hasving the Department's approval. Ensure that the surety's resident agent's name, address, and telephone number is clearly stated on the face of the Contract Bond form.

On eContracts of \$250,000 or less, the Department may waive the requirement for all or a portion of a surety Contract bBond if it determines that the project is of a noncritical nature and nonperformance will not endanger the public health, safety, or property. The Department may require alternate means of security if it waives the requirement for a surety Contract bBond.

3-5.2 Continued Acceptability of Surety: Provide a surety Contract bBond that remains acceptable to the Department throughout the life of the Contract. In the event that the surety executing the Contract bBond, although acceptable to the Department at the time of execution of the Contract, subsequently becomes insolvent or bankrupt, or becomes unreliable or otherwise unsatisfactory due to any cause that becomes apparent after the Department's initial approval of the company, then the Department may require that the Contractor immediately replace the surety Contract bBond with a similar Contract bBond drawn on issued by a surety company that is reliable and acceptable to the Department. In such an event, the Department will bear all costs of the premium for the new Contract bBond, after deducting any amounts that are returned to the Contractor from histheir payment of premium on the original Contract bBond.

3-5.3 Default by Contractor: In case of default on the part of the Contractor, the Department will charge against the Contract bBond all expenses for services incidental to ascertaining and collecting losses under the Contract bBond, including accounting, engineering, and legal services, together with any and all costs incurred in connection with renegotiation of the Contract.

3-5.4 Surety to Furnish Legal Defense as to Payment and Performance Claims or Suits: The surety company shall indemnify and provide defense for the Department when called upon to do so for all claims or suits against the Department, by third parties, pertaining to Contractor payment or performance issues arising out of the Contract where the Contractor has failed to timely do so. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved Contract amount, which shall be the original Contract amount as may be increased by subsequent Supplemental Agreements.

3-5.5 Liability for Wrongful or Criminal Act by Contractor: The principal and surety executing the Contract bBond shall be liable to the State in any civil action that might be instituted by the Department or any officer of the State authorized in such cases, for double any amount in money or property the State might lose, or be overcharged, or otherwise be defrauded of by any wrongful or criminal act of the Contractor, his agent or his employees.

3-6 Execution of Contract and Contract Bond.

Within 10 calendar days, excluding Saturdays, Sundays, and state holidays, after receipt of the Contract award, execute the necessary agreements to enter into a eContract with the Department and return the agreementContract along with a satisfactory suretyContract bBond and documentation evidencing all insurance required by 7-13 to the Department's Contracts Office that awarded the Contract. For each calendar day, excluding Saturdays, Sundays, and state holidays, ~~that~~ the successful bidderContractor is late in delivering to the Department's Contracts Office all required documents in properly executed form, the Department will deduct one day from the Contract Time as specified in 8-7.1. The Department will not be bound by any pProposal until itthe Department executes the associated Contract. ~~The Department will execute the Contract and bond in the manner stipulated in 3-5.1.~~

The Department will execute the Contract within 5 calendar days, excluding Saturdays, Sundays, and state holidays, after receipt of the Contract, necessary agreements, and Contract bBond, and all other required documents from the Contractor.

3-7 Failure by Contractor to Execute Contract and Furnish Bond.

In the event that the bidderContractor fails to execute the awarded Contract and to filesubmit an acceptable Contract bBond, as prescribed in 3-5 and 3-6, within 10 calendar days, excluding Saturdays, Sundays, and state holidays, of receipt of the Contract award, the Department may annul the award, causing the bidderContractor to forfeit the pProposal gGuaranty to the Department; not as a penalty but in liquidation of damages sustained. The Department may then award the Contract to the next lowest responsible bBidder, re-advertise, or accomplish the work using day labor.

3-8 Audit of Contractor's Records.

Upon execution of the Contract, the Department reserves the right to conduct an audit of the Contractor's records pertaining to the project. The Department or its representatives may conduct an audit, or audits, at any time prior to final payment, or thereafter pursuant to 5-13. The Department may also require submittal of the records from either the prime-eContractor, theor any subcontractor, ~~or both~~. As the Department deems necessary, records include all books of account, supporting documents, and papers pertaining to the cost of performance of the project work.

Retain all records pertaining to the Contract for a period of not less than three years from the date of the Engineer's final acceptance of the project, unless a longer minimum period is otherwise specified. Upon request, make all such records available to the Department or its representative(s). For the purpose of this Article, records include but are not limited to all books of account, supporting documents, and papers that the Department deems necessary to ensure compliance with the Contract provisions.

If the Contractor fails to comply with these requirements, the Department may disqualify or suspend the Contractor from bidding on or working as a subcontractor on future Contracts.

Ensure that the subcontractors provide access to their records pertaining to the project upon request by the Department.

3-9 Public Records.

Allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the Contractor in conjunction

with this Contract. Specifically, if the Contractor is acting on behalf of a public agency, the Contractor must:

1. Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the Contractor.

2. Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

4. Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

The Contractor shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of the Contractor and shall promptly provide the Department a copy of the Contractor's response to each such request. Failure to grant such public access will be grounds for immediate termination of this Contract by the Department pursuant to 8-9.1.