

**KANSAS DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION TO THE
STANDARD SPECIFICATIONS, EDITION 2007**

Page 100-7, subsection 101.3, delete the definitions PROPOSAL and PROPOSAL FORM, and replace with the following:

PROPOSAL – A bidder’s offer, on the prescribed form (electronic internet) to perform the work at the prices quoted.

PROPOSAL FORM – The prescribed form (electronic internet) that the Secretary provides and that the Secretary requires a bidder to use in preparing its offer or Proposal.

Page 100-10, delete SECTION 102 and replace with the following:

SECTION 102

BIDDING REQUIREMENTS AND CONDITIONS

102.1 NOTICE TO CONTRACTORS (ADVERTISEMENT)

The Secretary will publish a “Notice to Contractors” in the official “Kansas Register” website at http://www.kssos.org/pubs/pubs_kansas_register.asp. The Notice will notify prospective Contractors of a letting. The Notice describes the contemplated work, informs the Contractor to obtain Bidding Proposal Forms from KDOT’s website, identifies the location of plans and specifications, identifies the time and place for the public opening and reading of electronic internet proposals and reserves the Secretary’s right to reject bids.

102.2 PREQUALIFYING CONTRACTORS

a. Prequalification Requirements. Before submitting a proposal, be prequalified to bid as a Contractor upon one or more classifications of work.

To prequalify, submit to the KDOT Director of Operations in Topeka, Kansas, a completed Qualification Statement and Experience Questionnaire (Questionnaire) DOT Form No. 208 at least 10 business days before the letting at which the Contractor plans to bid. If not incorporated in Kansas, register with the Secretary of State’s office to do business in Kansas as a foreign corporation. Appoint an individual or organization, other than a government employee, as the corporation’s process agent. KDOT does not prequalify subcontractors but approves subcontractors under **subsection 105.9**.

b. Classifications of Work.

- A. Grading.
- B. All structures.
- C. Reinforced concrete box structures, culverts, and other miscellaneous concrete.
- D. Light surfacing-subgrade modification, asphalt sealing, asphalt surface treatments, and aggregate surfaces.
- E. Base courses-pugmill type bases including aggregate base courses and road mix and excluding plant mix asphalt base courses.
- F. Plant mix asphalt mixtures.
- G. Portland cement concrete pavement.
- H. Seeding and roadside improvement, excluding rest area structures and buildings.
- I. Rest area structures and buildings.
- J. Electric lighting and traffic signals.
- K. All signing and delineation.

- L. Minor signing (post mounted).
- M. Pavement marking.
- N. Guardrail and fencing.
- O. Bridge or structure painting.
- P. Miscellaneous (light construction not otherwise classified).

c. Qualification Rating. The KDOT Prequalification Committee (Committee) will assign a qualification rating after reviewing the prospective Contractor's Questionnaire and, if available, the Contractor's performance record. The Questionnaire solicits the prospective Contractor's financial worth, equipment, and experience.

The Questionnaire requires the Contractor to submit a financial statement showing the Contractor's net worth (see **subsection 102.2h**). If a Certified Public Accountant (CPA) meeting the requirements below certifies the financial statement, the Contractor's qualification rating and qualification amount will be determined using the Contractor's audited net worth and the Contractor's equipment, experience, and performance record. If the Contractor submits an unaudited financial statement, the Contractor's qualification amount will be a maximum of \$3,000,000.00 for all projects. To meet the requirements of this **subsection 102.2**, a CPA shall have a valid certificate at the time the CPA certifies the financial statement. To be valid, the certificate must have been issued by Kansas or by a state that has a reciprocity agreement with the State of Kansas.

The performance record may describe work quality, work timeliness, payment of accounts, cooperation with owners and the public, public safety, work site safety, and contract compliance. The Committee will consider both owned and leased equipment when determining which classifications of work the Contractor may perform.

The Committee will notify the prospective Contractor of its qualification rating. This qualification rating includes the dollar value and classifications of work the prospective Contractor may have under contract at a given time. KDOT will protect from disclosure the assigned qualification rating and confidential information contained in the Questionnaire. The qualification rating will remain effective for 1 year unless the Committee revises the rating under **subsections 102.2d**.

d. Revised Qualification Rating. At annual renewal, at the Contractor's request, or at any other time the Committee deems appropriate, the Committee may revise the Contractor's qualification rating based on the Contractor's updated, performance record, or changes in financial conditions, ownership, or organizational structure.

e. Remaining Prequalified. To remain prequalified, submit a completed Questionnaire annually, at other times the Committee requests, and within 30 calendar days after a change in business ownership. The Committee will not issue a proposal form to a Contractor who has failed to renew the Contractor's qualification status. The Contractor's prequalification under this **subsection 102.2** does not limit the Secretary's authority to determine the Contractor is non-responsible under **subsection 102.18**.

f. Committee's Reconsideration of Qualification Rating and Secretary's Review. If dissatisfied with an initial or revised qualification rating, submit to the Committee a written request for reconsideration within 10 calendar days after receiving notice of the initial or revised qualification rating. Explain why the Committee should reconsider the assigned rating. The Committee will hold a hearing and provide the Committee's final decision within 30 calendar days after receiving the request for reconsideration. If still dissatisfied, submit a written appeal to the Secretary within 10 calendar days after receiving the Committee's final decision. Explain why the Secretary should overturn the assigned rating. The Secretary, or the Secretary's designee, will hold a final hearing. The Secretary, or the Secretary's designee, will provide KDOT's final decision within 15 calendar days after the final hearing. The Contractor may have legal representation at both the Committee's hearing and the Secretary's hearing. See K.A.R. 36-30-3(b). The decision of the Secretary, or the Secretary's designee, under this **subsection 102.2f** is considered final agency action under the KJRA, K.S.A. 77-601 *et. seq.*

g. Qualification Rating for Joint Ventures. For a joint venture's qualification rating, the Committee will adjust the Contractor's combined qualification on each Contractor's individual experience in the classifications of work being considered. This rating will not exceed the sum of the Contractor's separate qualification ratings.

h. Financial Statements (Audited or Unaudited).

(1) The financial statements shall present the net worth of the enterprise as of a date not more than 1 year prior to the date that the Questionnaire is submitted.

(2) The name of the enterprise identified in the financial statements (except as noted in **subsection 102.2h.(3)** below) shall be the same name used for prequalification, bidding and contracting with KDOT.

(3) If a Contractor desires to be prequalified as a separate entity of the enterprise, then the requirements are as follows:

- Submit the audited financial statements of the consolidated enterprise with an unqualified opinion of an independent Certified Public Accountant; and
- Submit audited financial statements of the separate entity with an opinion of an independent Certified Public Accountant that, if qualified, is only qualified due to the lack of consolidation; then
- The financial information for the separate entity will be considered in the prequalification process.

102.3 BIDDING PROPOSAL FORM, PROPOSAL, AND CONTRACT

a. Bidding Proposal Forms. Acquire the Bidding Proposal Form from KDOT's website at <http://www.ksdot.org/burconsmain/contracts/proposal.asp> using the links provided in the Project information for the particular Project of interest. The Bidding Proposal Form consists of the following documents:

(1) The Project electronic bidding system file (EBS file) on KDOT's website or the Bid Express website that contains:

- (a) DOT Form No. 202 with a description of the location and type of construction; the time for performance, and the date, time, and place for opening proposals.
- (b) The Unit Prices List which consists of price sheets that list the project's bid items and estimated quantities for each bid item and spaces for the contractor to insert its unit price and total price for each bid item.
- (c) Required contract provisions that require information from the Contractor and apply to the Project as identified on the Special Provision List.
- (d) Amendments that KDOT makes after KDOT first placed the Bidding Proposal Form on KDOT's website. (See **subsection 102.4.c.**)

(2) The Special Provision List, if any, in affect at the time of the letting. The Special Provision List identifies all required contract provisions, project special provisions, and special provisions that apply to the Project. The EBS file may not contain all required contract provisions. The EBS file may contain provisions that do not apply to the Project. The Contractor is responsible for consulting the Special Provision List to determine the provisions that are included in the Bidding Proposal Form.

(3) The required contract provisions, project special provisions and special provisions identified in the Special Provision List, if any.

(4) Bid Bond that complies with **subsection 102.11**.

(5) The Standard Specifications.

(6) The project plans, if any.

(7) The exploratory work documents, if any.

(8) All remaining, attached and unattached documents relating to the Project, including but not limited to addenda and amendments, if any.

b. Proposal. The Bidding Proposal Form becomes the Contractor's Proposal after the Contractor completes the EBS file (which includes DOT Form No. 202, the Unit Prices List, and applicable required contract provisions), electronically signs the Proposal where required on DOT Form No. 202, and delivers the completed EBS file documents, the EBS data file, and bid bond to KDOT using Bid Express. The Special Provision List, required contract provisions not requiring information from the Contractor, project special provisions, special provisions, Standard Specifications, plans, exploratory work documents, any additional contract information, and any addenda are incorporated by reference into the Contractor's Proposal.

c. Contract. After the parties have executed a contract, the proposal becomes the contract.

102.4 ISSUING BIDDING PROPOSAL FORM

a. The Secretary will provide Bidding Proposal Forms in electronic format on KDOT's website at <http://www.ksdot.org/burconsmain/contracts/proposal.asp> using the links provided in the Project information for the particular Project of interest. The Secretary will not print and mail any of the documents included in the Proposal

Form except the 2007 Standard Specifications For State Road and Bridge Construction found at <http://www.ksdot.org/burconsmain/specprov/specifications.asp>. Cost of the 2007 Standard Specifications For State Road and Bridge Construction will be at the current fee. Payment of the amount billed is due in full within 30 days of billing.

b. Prime Contractor Bid Holders. Contractors wanting to bid as a prime Contractor shall identify themselves on the website in **subsection 102.4a.** as a Bid Holder no later than the close of business on the Monday preceding the scheduled Letting Date. Contractors shall furnish this notice by marking the “Bid Holders List” box contained in the Proposal Information for each Project on which the contractors intend to bid. This notice is necessary to obtain KDOT’s approval to bid as a prime Contractor on that Project.

c. Addenda and Amendments. Bidding Proposal Forms include contract addendum and amendments. Addenda identify changes to the Bidding Proposal Form that KDOT makes after initial advertising on KDOT’s website. Amendments are addenda that change the documents contained in the EBS file (DOT Form No. 202’s time for performance and the Unit Prices List). An addendum will be sent by email to all Bid Holders and the Bid Holders shall acknowledge receipt of the addendum by either return email or facsimile. The addendum will also be included on the KDOT website above. Addenda (other than amendments) are incorporated by reference into the Proposal. Amendments are included in the Proposal’s EBS file by Bid Express or the Contractor. The Contractor is responsible for ensuring the EBS file that the Contractor uses to prepare its Proposal and submits to KDOT contains any amendments. The Contractor may accomplish the change by either loading the amendment into the Contractor’s saved EBS file or downloading an updated EBS file that contains the amendment. See InfoTech’s website for further instructions on accomplishing these changes. The Secretary may reject Proposals that fail to include amendments. (See **subsection 102.17**).

d. Non-bid Holders. Subcontractors, suppliers, and other interested entities may identify themselves as a Non-bid Holder in the space provided on KDOT’s website to inform Contractors of their interest in the project. Subcontractors, suppliers, and other interested entities not needing Bidding Proposal Forms may use the Non-Bidding EBS file link provided in the Project Information on KDOT’s website to view a pdf copy of the Project EBS file rather than downloading the EBS file that Contractors use to prepare their proposal.

102.5 COMBINATION BIDS, TIES, RIDERS AND ALTERNATE BIDS

a. Combination Bids. A combination bid is the act of joining two or more projects by tying the projects or by taking a dollar deduction on a project(s) if awarded more than one project.

(1) Only the Secretary may combine projects located in different Highway Districts, regardless of the funding source.

(2) The Secretary will accept combination bids for:

- (a) Projects the Secretary requires the Contractor to tie, including projects located in different Highway Districts.
- (b) Federal-Aid-funded state projects in the same Highway District.
- (c) Kansas-funded state projects in the same Highway District.
- (d) County-funded projects in the same county.
- (e) City-funded projects in the same city.
- (f) Kansas-funded state projects “tied to” Federal-Aid funded state projects.
- (g) Projects containing the same classification of work and not violating **subsections 102.5a.(2)(a)** through **(f)**.
- (h) Projects containing Classification B and Classification C work and not violating **subsections 102.5a.(2)(a)** through **(f)**.
- (i) Projects containing Classification D, E, and F work and not violating **subsections 102.5a.(2)(a)** through **(f)**.
- (j) Projects containing Classification K, L, and M work and not violating **subsections 102.5a.(2)(a)** through **(f)**.

(3) Designate combined bids in the space provided on the first page of the proposal (DOT Form No. 202). The Secretary will accept only combined bids the Contractor identifies in the space provided on DOT Form No. 202.

b. Ties.

(1) Unless the Bidding Proposal Form prohibits tied bids or unless the tie would result in an unacceptable combination bid, the Secretary will accept the following ties:

- Project A and Project B "are tied" - Two-way tie. Neither A nor B can be awarded without the other.
- Project A "tied with" Project B - Two-way tie. Neither A nor B can be awarded without the other.
- Project A "tied to" Project B – One-way tie. Project B can be awarded without awarding Project A (but Project A cannot be awarded without also awarding Project B).

(2) Only the Secretary may tie projects located in different Highway Districts.

(3) Designate ties in the space provided on the first page of the Proposal (DOT Form No. 202). The Secretary will accept only ties that are identified in the space provided on DOT Form No. 202.

c. Riders.

(1) The Secretary will accept the following riders when the Contractor bids on more than one project:

(a) A maximum dollar amount of work the Contractor will undertake in a specific letting.

(b) A maximum number of projects the Contractor will undertake in a specific letting.

(c) Deductions from Projects in Same Funding Source. A monetary deduction to a unit price on one or more items of work for projects in the same funding source when the following requirements are met:

- The projects are located in the same Highway District;
- The projects contain the same classifications of work or like classifications of work as permitted in **subsections 102.5a.(2)(g)** through **(j)**; and
- The Contractor includes in the space provided for riders on DOT Form No. 202 the following language “Deduct (Amount of dollars from line item #) from project B if awarded project A.” These are combination bids. See **subsection 103.1b.(4)** for the Secretary’s method of calculating the lowest dollar cost.

(d) Deductions from Projects in Different Funding Sources. A monetary deduction to a unit price on one or more items of work for projects with different funding sources when the following requirements are met:

- The projects are located in the same Highway District;
- The projects contain the same classifications of work or like classifications of work as permitted in **subsections 102.5a.(2)(g)** through **(j)**;
- The Contractor includes in the space provided for riders on DOT Form No. 202 the following language: “Deduct (Amount of dollars from line item #) from project B if awarded project A.”; and
- The Contractor making the deduct shall be determined the lowest responsible and responsive bidder on Project A, the primary project, standing alone and regardless of the deduct on Project B. Deducts from projects in different funding sources are not combination bids as the Secretary does not join the bids in calculating the lowest dollar cost. See **subsection 103.1b.(4)** for the Secretary’s method of calculating the lowest dollar cost.

(2) Do not make monetary deductions across Highway Districts, regardless of the funding source.

(3) Designate riders in the space provided on the first page of the proposal (DOT Form No. 202). The Secretary will accept only riders that are identified in the space provided on DOT Form No. 202.

d. Alternate Bids.

(1) The Secretary will accept alternate bids when the Bidding Proposal Form allows or requires the Contractor to price alternates for materials, methods of operation, contract items, work schedules, or other items.

(2) Alternate Work Schedules. The Secretary may offer an unaccelerated and an accelerated time for completion. Bid the unaccelerated time for completion, placing a unit price in each unit price column, and summing the products of the unit prices and estimated quantities (Base Bid). Bid the accelerated time for completion in the Line Item, "Accelerated Work Schedule". Include in the lump sum price for "Accelerated Work Schedule" all mobilization, overhead, traffic control, and other costs necessary to meet the accelerated schedule. Complete the

Special Bid Summary on the Unit Price List sheets, identifying the Base Bid and the Accelerated Bid total (obtained by combining the Base Bid and the Accelerated Work Schedule bid item).

(3) The Secretary, not the Contractor, has discretion to determine which alternate to accept.

102.6 START DATE

Before the bid letting, obtain the earliest and latest starting dates for a project from the KDOT website <http://www.ksdot.org/burconsmain/contracts/proposal.asp>. Historical data for six (6) months prior to the current letting is on <http://www.ksdot.org/burconsmain/earlylatearchive.asp>.

102.7 ESTIMATED AND UNDETERMINED QUANTITIES

The quantities in the Unit Prices List sheets are estimates. The Secretary may increase, decrease, or eliminate these quantities. If the Secretary finds it impossible or impractical to estimate the quantity of an item, the Secretary may set a unit price for this item. The set price will become the unit price.

102.8 EXAMINING BIDDING PROPOSAL FORM AND PROJECT SITE, INCLUDING EXPLORATORY WORK DOCUMENTS

a. Except when the contract requires the Contractor to provide plans or working drawings, the Secretary will prepare plans and specifications that enable a Contractor to construct the project.

b. Examine the Bidding Proposal Form before submitting a bid. Notify the Construction Letting Engineer in the Bureau of Construction and Materials of errors, omissions, or ambiguities in the Bidding Proposal Form before the letting. The Secretary will pay no claims for obvious errors, omissions, or ambiguities in the Bidding Proposal Form.

c. Examine the project site before submitting a bid. Refer questions to the Construction Letting Engineer in the Bureau of Construction and Materials regarding the scope of work and project site conditions. Review and analyze exploratory work documents in conjunction with visiting the project site.

(1) The Bidding Proposal Form includes all exploratory work KDOT or a LPA prepared or had prepared for the project. This exploratory work may include geotechnical foundation investigation reports; soils reports; geology reports; hydraulic investigations; hydrological investigations; bridge reports; earthwork computations; boring logs; surveys; rock investigations; soils investigations; environmental investigations; building investigations; bridge investigations; and other geological, geotechnical, or design information for the project.

(2) The Contractor may obtain exploratory work documents from the KDOT Internet at www.ksdot.org or from the Bureau of Construction and Materials.

(3) The Contractor shall be responsible for utilizing the most recent exploratory work documents in preparing its Proposal. KDOT will not notify Contractors of a change in the exploratory work documents made after KDOT has placed these documents on the website.

d. KDOT and LPA's assume no responsibility for the conclusions or interpretations the Contractor forms based upon information KDOT or LPA's make available to the Contractor. The Contractor understands that persons performing exploratory work and persons preparing geotechnical, geological, or design information are exercising their own professional judgment.

e. KDOT and LPA's assume no responsibility for any understanding reached outside the Bidding Proposal Form between the Contractor and the owner's employees or agents unless that understanding is put in writing and added to the Bidding Proposal Form before the letting.

f. KDOT and LPA's assume no responsibility for any representation made outside the Bidding Proposal Form by KDOT's employees or agents or by LPA's employees or agents unless that representation is put in writing and added to the Bidding Proposal Form before the letting. Oral representations concerning the site conditions do not bind the Secretary or LPA.

g. Do not use the information KDOT or LPA's make available as a substitute for the exercise of the Contractor's or its agents' professional judgment. Do not use the information KDOT or LPA's make available to excuse the Contractor's obligation to determine the means and methods of constructing the project. The existence of exploratory work documents does not excuse the Contractor from performing a project site examination and using the Contractor's own interpretation and judgment concerning the site. The Secretary will pay no site condition claims for conditions the Contractor discovered or should have discovered in a project site examination.

h. Before the letting, notify the Construction Letting Engineer in the Bureau of Construction and Materials of any discovered errors, omissions, or ambiguities in the geotechnical, geological, or design information KDOT or a LPA provides.

i. Before the letting, notify the Construction Letting Engineer in the Bureau of Construction and Materials of any perceived inadequacies in the geotechnical, geological, or design information KDOT or a LPA provides.

j. Obtain the exploratory work documents from the Bureau of Construction and Materials if unable to retrieve some or all of the exploratory work on the KDOT Internet. The Contractor's inability to obtain exploratory work documents on the internet does not excuse the obligation to review all exploratory work documents before submitting a bid for the project.

102.9 FAMILIARITY WITH LAWS AND ORDINANCES

Examine Federal, State, County, and Municipal laws that apply to the project before submitting a bid. Include in the bid, costs to comply with such laws.

102.10 PREPARING PROPOSALS

a. Rules for All Proposals.

- (1) Access Bidding Proposal Forms on KDOT's website at:
<http://www.ksdot.org/burconsmain/contracts/proposal.asp>.
- (2) Use the Expedite software on the Bid Express website to prepare an electronic internet proposal.
- (3) To prepare a Proposal, download the electronic bidding system file [EBS file] for the project, insert on the Unit Prices List in the EBS file the unit price for each bid item in the blank spaces after each item (showing the sum of money for which the Contractor shall perform the work), complete the required contract provisions contained in the EBS file, and electronically sign DOT Form No. 202. Include costs for subsidiary and incidental work in the contract unit prices or lump sum prices.
- (4) Provide all information the Bidding Proposal Form requests or requires.
- (5) Assume responsibility for the accuracy of the electronic forms and include all amendments that KDOT makes before the letting. (See **subsection 102.4.c**).
- (6) Do not alter the Bidding Proposal Form except to comply with contract addenda or amendments as provided in **subsection 102.4.c**.
- (7) Assume all risk for the timely delivery to KDOT of the Contractor's bid submitted through Bid Express.

b. Electronic Internet Proposals.

- (1) Prepare an electronic internet proposal using the AASHTOWare Project software version of Expedite (most current version). Submit the electronic internet proposal using Bid Express.
 - (a) Bid Express is a subscription-based Web Site service developed by Info Tech.
 - (b) To establish an account with Bid Express, contact Bid Express at www.bidx.com.
 - (c) Obtain a digital I.D. (key) from Info Tech that enables the Contractor to submit an electronic internet bid. (It takes Info Tech approximately 3 to 5 business days to issue this key.)
 - (d) KDOT is not a party to the Agreement between the Contractor and Bid Express. KDOT does not warrant that the Bid Express internet services will be uninterrupted, error free, or completely secure. KDOT assumes no liability for damages to the Contractor or third parties arising out of the Contractor's use of Bid Express or inability to use Bid Express.

(2) For electronic internet proposals, upon being notified of a contract amendment, download from the Bid Express website a new EBS file that contains the amendment or load the amendment from the Bid Express website onto the Contractor's existing EBS file and submit the revised electronic internet proposal using Bid Express.

(3) Sign the electronic internet proposal using an electronic identification on the blank space provided on DOT Form No. 202. If the proposal is made by a partnership or corporation, include the name and address of the partnership or corporation and title of person signing for the partnership or corporation. The one signature binds the Contractor to the proposal and all attached Certifications.

(4) Contractors do not submit a printed version of their electronic internet proposal to KDOT when using Bid Express.

(5) Joint Ventures.

(a) Indicate which company is the lead on the joint venture to receive the necessary documents and identify the individuals that are authorized to digitally sign the electronic internet bid for the joint venture.

(b) Obtain KDOT's approval to bid as a joint venture and a new contractor number for the joint venture.

(c) Obtain a new digital I.D. (key) from Info Tech for the joint venture. KDOT must approve the joint venture before Info Tech will issue the Contractor a new key.

102.11 BID BONDS

Submit an electronic bid bond that complies with the requirements of this **subsection 102.11**, with the electronic internet proposal. Contact a company that has an agreement with Bid Express to submit bid bonds electronically and include the required bid bond information on the Contractor's electronic internet proposal before submitting the proposal.

The Surety executing the bid bond shall be authorized to transact business as a Surety in Kansas. Guaranty the Secretary that within 10 business days after notice of the award of the contract, the Contractor shall sign the contract and provide the required contract bond and insurance coverages. The penal sum of the bid bond is 5% of the amount bid. The Contractor forfeits to the Secretary the penal sum of the bond as liquidated damages if the Contractor fails to sign the contract or provide the required documents for reasons other than a nonjudgmental bid mistake. See **subsection 102.16**. The two lowest Contractors' bid bonds shall remain effective until the Secretary executes a contract or the Contractor forfeits the penal sum of the bond.

102.12 SUBMITTING PROPOSALS

a. Deliver electronic internet proposals by transmitting the proposals through Bid Express before the time set for receiving proposals expires. Assume all risk for the timely delivery to KDOT of the proposal, transmitted through Bid Express.

b. Electronic Internet Proposals. Submit a sealed electronic internet proposal to KDOT using the Bid Express website (www.bidx.com). Bid Express includes in the electronic internet proposal the Project's completed EBS data file saved in .ebs format which contains DOT Form No. 202, the Unit Prices List, and required contract provisions. Submit the bid bond with the electronic internet proposal as stated in **subsection 102.11**.

c. Allowing the Contractor to submit some rather than all proposal documents is for the Contractor's convenience and expense. The Contractor is bound to all provisions in the proposal whether incorporated physically or by reference into the Contractor's proposal.

102.13 WITHDRAWING PROPOSALS BEFORE THE LETTING

Before the time for receiving proposals expires, a Contractor may withdraw a proposal in writing, by facsimile, or verbally in person, without bid bond forfeiture.

102.14 REVISING PROPOSALS

a. Electronic Internet Proposals. Before the time for receiving proposals expires, a Contractor may revise its electronic internet proposal by making changes on the electronic form and resubmitting the electronic internet proposal to Bid Express.

b. The Secretary's representatives will not revise Contractors' proposals.

c. A Contractor shall not revise its proposal after the letting.

102.15 PUBLIC OPENING OF PROPOSALS

KDOT will open and read in public at the time and place indicated in the Bidding Proposal Form, all electronic internet proposals received unless KDOT has to delay the opening to accommodate electronic internet proposals. KDOT invites all Contractors, their authorized agents and other interested parties to be present. If KDOT incurs a delay in downloading the electronic internet proposals, KDOT will delay the public reading until KDOT has been able to download all electronic internet proposals from the Internet. If KDOT incurs technical difficulties that prevent KDOT from reading some or all proposals on the letting date, KDOT will postpone the reading of proposals to another day or change the letting date. KDOT will notify Contractors of KDOT's planned action on KDOT's website and on the Bid Express website. KDOT also will notify Contractors directly by e-mail.

Following the public reading, KDOT will take the proposals to the Bureau of Construction and Materials. At this time, the Bureau of Construction and Materials will check the proposals for compliance with the Contract Documents (responsiveness), will verify the Contractors are prequalified, and will determine the Contractors are otherwise responsible. The Bureau of Construction and Materials will notify a Contractor in writing if the Secretary rejects the Contractor's proposal.

102.16 WITHDRAWING PROPOSALS FOR BID MISTAKES AFTER THE LETTING

a. A Contractor shall not revise its proposal after the letting.

b. A Contractor may withdraw its proposal after the letting for a nonjudgmental error (See **subsection 102.16e.** for definition) without forfeiting its bid bond if:

(1) The nonjudgmental error is evident on the face of the proposal or established by clear and convincing evidence; and

(2) The Contractor notifies KDOT of the nonjudgmental error within 2 business days after the letting.

c. A Contractor may withdraw its proposal after the letting but will forfeit its bid bond as liquidated damages if:

(1) The error is a judgmental error (See **subsection 102.16f.** for definition); or

(2) The error is a nonjudgmental error, but the Contractor notifies KDOT of the nonjudgmental error more than 2 business days after the letting.

d. If the Contractor withdraws its proposal without bid bond forfeiture as permitted in **subsection 102.16b.**, the Contractor shall not perform subcontract work on the project and shall not re-bid if the Secretary re-lets the project.

e. A nonjudgmental error is a mathematical error, a clerical error, or an error not involving the use of judgment or reason.

f. A judgmental error is an error resulting from incorrect or flawed reasoning, assessments of facts, or assumptions on how to satisfy contract requirements.

g. K.S.A. 75-6901 *et. seq.* govern this **subsection 102.16.**

102.17 REJECTION OF PROPOSALS; NON-RESPONSIVENESS

a. Before the award of contract and without liability, the Secretary has full authority to reject all proposals and either re-let or cancel the project.

b. Before the award of contract and without liability, the Secretary has full authority to waive technicalities and irregularities (non-conformities) in individual proposals except for those identified in **subsection 102.17f.** and **g.**

c. Before the award of contract and without liability, the Secretary may reject an individual proposal as non-responsive for failing to comply with a contract requirement or for changing a contract requirement. The Secretary's authority to reject a proposal as non-responsive under **subsection 102.17c.** is not limited to the non-conformities identified in **subsections 102.17d., e., f.** and **g.**

d. The Secretary may reject a proposal as non-responsive if the Contractor submitted an(a):

- (1) Altered form.
- (2) Unapproved form.
- (3) Unauthorized conditional bid.
- (4) Unacceptable combination.
- (5) Unauthorized alternate bid.
- (6) Mathematically unbalanced unit price(s). A proposal is mathematically unbalanced when the proposal contains lump sum or unit prices that do not reasonably reflect the actual cost (plus reasonable profit, overhead costs, and other indirect costs) to construct the item. See **subsection 103.1b.(7).**
- (7) Materially unbalanced bid. A materially unbalanced bid is a bid that generates reasonable doubt that award to that bidder would result in the lowest ultimate cost to KDOT, a LPA, or both. See **subsection 103.1b.(7).**
- (8) Dollar value of work that combined with unearned amounts on the Contractor's unfinished, outstanding contracts exceeds the Contractor's qualification amount. The outstanding contract amount includes all contract and subcontract work that the Contractor performs with its own forces.

e. The Secretary may reject a proposal as non-responsive if the Contractor failed to:

- (1) Identify itself as a Bid Holder and obtain KDOT's approval to bid as a Contractor (see **subsection 102.4b.**) even though the Contractor is prequalified.
- (2) Follow instructions on a KDOT addendum.

f. The Secretary will reject a proposal as non-responsive if the Contractor added language, giving the Contractor a right to reject or accept an award of contract.

g. The Secretary will reject a proposal as non-responsive if the Contractor failed to:

- (1) Include a unit price in the Unit Bid column for each line item of work listed in the Unit Prices List. Exceptions: KDOT will accept the unit price shown in either the Unit Bid column or Amount Bid column if the line item has a quantity of one and a unit of each or if the line item has a quantity of one and a unit that is lump sum.
- (2) Insert a principal's electronic signature on an electronic internet proposal. (DOT Form No. 202).
- (3) Submit a completed electronic internet bid bond as **subsection 102.12** requires.
- (4) Complete Required Contract Provision dated 08-10-66 (latest revision), Certification-Noncollusion and History of Debarment.
- (5) Complete Required Contract Provision dated 04-30-82 (latest revision), Certification-Prequalified Financial Amount.
- (6) Complete Required Contract Provision dated 07-19-80 (latest revision), DBE Contract Goals, for all Federal Aid Projects.
- (7) Submit only KDOT-certified DBE's on Required Contract Provision dated 07-19-80 (latest revision), DBE Contract Goals, for all Federal Aid Projects.
- (8) Include in the proposal acceptable ties, riders, combinations, or alternates, if any.
- (9) Use Expedite software to prepare the Contractor's proposal.
- (10) Include in the proposal amendments, if any, as **subsection 102.4** requires.
- (11) Have a current Tax Clearance Certificate at the time of award of contract.

h. The Bureau of Construction and Materials will notify a Contractor, in writing, that the Secretary rejects the Contractor's proposal.

102.18 REJECTION OF PROPOSALS; NON-RESPONSIBLE CONTRACTOR

a. Even though a Contractor is prequalified under **subsection 102.2**, the Prequalification Committee may determine a Contractor is otherwise non-responsible as lacking the skills, abilities, or integrity to perform the work.

b. Before the award of contract and without liability, the Prequalification Committee has full authority to determine a Contractor is non-responsible. The Prequalification Committee may determine a Contractor is non-responsible for reasons other than those identified in this **subsection 102.18**.

c. The Prequalification Committee may determine a Contractor is non-responsible and reject the Contractor's proposal if the Contractor:

(1) Made false, deceptive or fraudulent statements in the "Contractor's Qualification Statement and Experience Questionnaire" or in a qualification hearing.

(2) Owes outstanding labor and materials bills on a current contract without a good cause exception for non-payment as permitted in **subsection 109.6d**.

(3) Owes the Secretary monies on a current contract and has no good cause exception for failing to reimburse the Secretary for the monies owed.

(4) Performed unacceptable work on a current or recent project(s), calling into question the Contractor's ability to perform future, quality work.

(5) Performed work unsatisfactorily on a current contract regarding the timeliness of work and the award of additional work could affect timely completion of the current contract work.

(6) Lacks financial resources, equipment, experience, or supervision to perform classifications of work.

d. Before an award of contract occurs, the Prequalification Committee will provide the Contractor an initial written notice of non-responsibility, specifying the reasons the Committee has determined the Contractor is non-responsible. The Contractor may object to the Committee's determination in writing or by requesting an informal hearing. The Contractor shall identify the reasons for the Contractor's disagreement with the Committee's initial determination of non-responsibility. After receiving the Contractor's written arguments or holding an informal hearing, the Prequalification Committee will issue either a final notice of responsibility or a final notice of non-responsibility. If issuing a final notice of non-responsibility, the Committee will specify the reasons the Committee has determined the Contractor is non-responsible.

e. The Prequalification Committee's final notice of non-responsibility under **subsection 102.18d** is considered final KDOT agency action under the KJRA, K.S.A. 77-601 *et. seq.*

f. If a Contractor's actions represent such serious acts, omissions, or misconduct, calling into question the Contractor's ability to perform future work, the Prequalification Committee will pursue suspension or debarment under **subsection 102.19** rather than repeatedly finding a Contractor is non-responsible under this **subsection 102.18**.

g. The Secretary will reject a Proposal from a non-prequalified Contractor (see **subsection 102.2a**) even though the electronic bidding system may have allowed the non-prequalified Contractor to obtain a Bidding Proposal Form and submit a Proposal.

102.19 DISQUALIFYING CONTRACTORS BY SUSPENSION OR DEBARMENT

a. Definitions.

(1) Debarment. An exclusion or bar from contracting with or bidding on contracts let by the Secretary for a specified period.

(2) Suspension. An exclusion or bar from contracting with or bidding on contracts let by the Secretary for a temporary period of time, pending the completion of legal or debarment proceedings.

- b.** The Secretary may impose debarment on a Contractor if the Contractor:
- (1) Makes false, deceptive, or fraudulent statements in the "Contractor's Qualification Statement and Experience Questionnaire" or in a qualification hearing.
 - (2) Lacks financial resources, equipment, experience, or supervision to perform classifications of work.
 - (3) Fails to pay the Secretary monies owed on previous contracts.
 - (4) Is suspended or debarred in another state or by the FHWA.
 - (5) Submits more than one proposal for the same project under the same or different names.
 - (6) Commits fraud, anti-trust violations, theft, labor violations, wage law violations, illegal discrimination, or other actions indicating a lack of business integrity or business honesty. The Secretary may rely upon a criminal conviction, an adverse civil judgment, the Contractor's admission, or other evidence as proof of the offense.
 - (7) Violates a contract the Secretary let or violates an associated subcontract by:
 - (a) Willfully failing to comply with the Contract Documents.
 - (b) Failing to perform one or more contracts within a reasonable time preceding the decision to suspend or debar and the Contractor's actions or actions within the Contractor's control substantially caused this failure to perform.
 - (c) Unsatisfactorily performing work (quality or timeliness) on one or more contracts within a reasonable time preceding the decision to suspend or debar and the Contractor's actions or actions within the Contractor's control substantially caused this unsatisfactory performance.
 - (d) Failing to pay labor or material bills on one or more contracts.
 - (e) Performing any other act or omission that affects the Contractor's responsibility as a Contractor or subcontractor.

c. The Secretary may suspend a Contractor from bidding if the Secretary has evidence that raises a reasonable suspicion that the Contractor has committed any of the acts set forth in **subsection 102.19b**, and if the Secretary determines that the suspension is in the best interests of the state of Kansas. The Secretary may impose suspension instead of or prior to debarment.

d. Before suspending or debaring a Contractor, the Secretary will give the Contractor notice of suspension or debarment and hold hearings as K.A.R. 36-31-2 and K.A.R. 36-31-3 require.

e. Nothing in this **subsection 102.19** limits the Secretary's authority to determine the Contractor is non-responsible under **subsection 102.18**.

f. The Secretary will reject a Proposal from a Contractor suspended or debarred at the time of letting even though the electronic bidding system may have allowed the suspended or debarred Contractor to obtain a Bidding Proposal Form and submit a Proposal.