

102 - BIDDING REQUIREMENTS AND CONDITIONS

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 prospective 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 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. KDOT does not prequalify subcontractors but approves subcontractors under **subsection 105.9**.

b. Classifications of Work.

- A. All Earthwork.
- B. Earthwork-Minor: Less than 10,000 CUYD.
- C. Stabilized Subgrades and Base Courses: Subgrade Modification, Lime Treated Subgrade, Cement or Fly Ash Treated Subgrade, Crushed Stone Subgrade, Aggregate Base, Cement Treated Base, Granular Base.
- D. All Structures.
- E. Bridge Repair: Bridge Repair, Area Prepared for Patching, Multi-Layer Polymer Overlay, Slurry Polymer Concrete Overlay, Polymer Overlay Repair, Expansion Devices.
- F. Reinforced Concrete Box Structures.
- G. Retaining Wall Systems: Retaining Walls, Landscape Retaining Walls and MSE Fills.
- H. Retaining Walls-Cast-in-place.
- I. Misc. Concrete: Curb and Gutter, Sidewalk, Concrete Ditching Lining, Concrete Riprap, Flumes, Inlets.
- J. Pipe: Entrance, Cross Road, Erosion and Liner Pipe, Storm and Sanitary Sewer, Underdrains, Edge Drains.
- K. All Portland Cement Concrete Pavement.
- L. Portland Cement Concrete Pavement-Minor: Less than 10,000 SQYD, Pavement Patching (excluding Asphalt Patching).
- M. All Hot Mix Asphalt.
- N. Hot Mix Asphalt-Minor: Less than 2000 tons.
- O. Asphalt Treatments: Cold Recycled Asphalt Construction, Surface Recycled Asphalt Construction, Microsurfacing, Asphalt Prime Coat, Asphalt Sealing, Asphalt Surface Treatments, Ultrathin Bonded Asphalt Surface, Crack Seals, Crack Repairs.
- P. Aggregate Drainage Improvements.
- Q. Painting Structural Steel.
- R. Guardrail and Fencing.
- S. Pavement Marking.
- T. Signing and delineation: Structural signs.
- U. Signing-Minor: Post mounted signs, excluding structural signs.
- V. Electric Lighting and Traffic Signals.
- W. Rest Area Structures and Buildings.
- X. Planting and Seeding: Temporary Erosion and Pollution Control, Seeding, Mulching, Topsoil, Trees, Shrubs and other Plants.
- Y. Miscellaneous: Construction not otherwise classified.

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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 audits 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 be duly licensed at the time the CPA audits the financial statement.

The performance record should describe classification of work performed, work quality, work timeliness, payment of accounts, cooperation with owners and the public, public safety, work site safety, and contract compliance. Additionally, the Committee may consider whether the Contractor is in good standing with other state and federal agencies and the Contractor's compliance with legal obligations. 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 financial information contained in the Questionnaire is confidential and is not required to be disclosed under the Kansas Open Records Act, See K.S.A. 45-221(a)(33). 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 Qualified. Once qualified, a Contractor's eligibility to bid is valid for 1 year from the date of qualification. To remain qualified, 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 Kansas Judicial Review Act, 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:

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- Submit the audited financial statements of the consolidated entity with unmodified opinion of an independent Certified Public Accountant; or
- Submit audited financial statements of the separate entity with an independent Certified Public Accountant report with a modified opinion that, if qualified, is only qualified due to the lack of consolidation because of a Variable Interest Entity; or
- Submit consolidated audited financial statements and the schedule for consolidation that separates all entities including the separate entity that is desired to be prequalified; then
- The financial information for the separate entity will be considered in the prequalification process.

102.3 PROPOSAL FORM, PROPOSAL, AND CONTRACT

a. Proposal Forms. Acquire the Proposal Form from KDOT's website at (<http://www.ksdot.org>) by choosing the following selections: "Doing Business", "Bidding & Letting" and "Proposal Information" and then using the links provided in the Project information for the particular Project of interest. The Proposal Form consists of the following documents:

- (1) The Project electronic bidding system file (EBS file) on 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 Bidder 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 effect 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 Bidder is responsible for consulting the Special Provision List to identify which provisions are included in the 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 Proposal Form becomes the Bidder's Proposal after the Bidder 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 Bidder, project special provisions, special provisions, Standard Specifications, plans, exploratory work documents, any additional contract information, and any addenda are incorporated by reference into the Bidder's Proposal.

c. Contract. After the parties have executed a Contract, the Proposal becomes the Contract.

102.4 ISSUING PROPOSAL FORM

a. The Secretary will provide Proposal Forms in electronic format on KDOT's website at <http://www.ksdot.org> which can be viewed by choosing the following selections: "Doing Business", "Bidding & Letting" and "Proposal Information", and using the links provided in the Project information for the particular Project of interest. The current version of the Standard Specifications For State Road and Bridge Construction may be printed from KDOT's website at <http://www.ksdot.org> by choosing the following selections: "Doing Business",

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“Bidding & Letting” and “Specifications”. Paper copies of the current Standard Specifications may be requested of the Bureau of Construction and Materials and will be billed at the current fee.

b. Prime Contractor Bid Holders. Bidders 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. A Bidder shall furnish this notice by marking the “Bid Holders List” box contained in the Proposal Information for each Project on which the Bidder intends to bid. This notice is necessary for KDOT to determine a Bidder’s eligibility and approval to bid as a prime Contractor on the Project. A Bidder shall not be eligible to bid as a prime Contractor if, at the close of business on the Monday preceding the scheduled Letting Date, the Bidder:

- is not prequalified or qualified under **subsection 102.2;**
- does not have available bidding capacity, because the Engineer’s estimate for the Project alone or when combined with the Bidder’s outstanding contract work and subcontract work exceeds the Bidder’s qualification amount;
- is deemed unable to perform at least 30% of the contract amount, because the estimated dollar value of the classifications of work for which the Bidder is qualified do not equal at least 30% of the estimated dollar value of the Project, using the Engineer’s estimate. The Bidder shall not be allowed to manipulate this requirement by submitting mathematically unbalanced unit prices for mobilization and other contract items;
- did not attend a mandatory pre-bid conference for the Project;
- is prohibited from rebidding on a Project, because the Bidder withdrew from a previous award of contract for the Project without forfeiting its bid bond;
- is prohibited from rebidding on a Project, because the Bidder failed to enter into a Contract after award to that Bidder in the first Letting; or
- is currently suspended or debarred from bidding or under a notice of suspension or proposed debarment by KDOT, another Kansas state agency, other state government agency, FHWA, or other federal agency.

c. Addenda and Amendments. Proposal Forms include contract addendum and amendments. Addenda identify changes to the 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 Bidder. The Bidder is responsible for ensuring the EBS file that the Bidder uses to prepare its Proposal and submits to KDOT contains any amendments. The Bidder may accomplish the change by either loading the amendment into the Bidder’s saved EBS file or downloading an updated EBS file that contains the amendment. See InfoTech’s website (www.bidx.com) 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 Bidders of their interest in the Project. Subcontractors, suppliers, and other interested entities not needing 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 Bidders use to prepare their proposal.

e. Errors in Issuing Proposal Form. A Bidder’s obtaining of a Proposal Form by mistake of Bid Express or KDOT shall not be construed as a waiver of the contract requirements for qualification, eligibility, and responsibility as provided in **subsections 102.2, 102.4, and 102.18,** and the Bidder shall have no claim against KDOT for the mistaken issuance of a Proposal Form and corresponding rejection of the Bidder’s Proposal.

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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 Bidder 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 D, E and F work and not violating **subsections 102.5a.(2)(a) through (f)**.

(i) Projects containing Classification M, N, and O work and not violating **subsections 102.5a.(2)(a) through (f)**.

(j) Projects containing Classification S, T and U work and not violating **subsections 102.5a.(2)(a) through (f)**.

(k) Projects containing Classification G and H work and not violating **subsections 102.5a.(2)(a) through (f)**.

(l) Projects containing Classification I, J and P 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 Bidder 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 Bidder bids on more than one project:

(a) A maximum dollar amount of work the Bidder will undertake in a specific Letting.

(b) A maximum number of projects the Bidder 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 Bidder 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.

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(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 Bidder 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 Bidder 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 Bidder to price alternates for materials, methods of operation, contract items, work schedules, or other items.

(2) Alternate Work Schedules. The Secretary may offer a non-accelerated and an accelerated time for completion. Bid the non-accelerated 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 Bidder, has discretion to determine which alternate to accept.

102.6 START DATE

Before the Letting, obtain the earliest and latest starting dates for a Project from the KDOT website <http://www.ksdot.org> by choosing the following selections: “Doing Business”, “Bidding & Letting” and “Proposal Information”. The Notice to Proceed will be issued and the Contract Time will start within the earliest and latest starting dates (see **subsection 108.1**). The Engineer will not modify these dates except as allowed in **subsection 108.1**.

The earliest and latest starting dates for the twelve (12) months prior to the current Letting may be found on KDOT’s website <http://www.ksdot.org> by choosing the following selections: “Doing Business”, “Bidding & Letting” and “Earliest/Latest Start Date Archive”.

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 PROPOSAL FORM AND PROJECT SITE, INCLUDING EXPLORATORY WORK DOCUMENTS

a. Except when the contract requires the Bidder to provide plans or working drawings, the Secretary, a LPA, or both will prepare plans and specifications that enable a Bidder 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

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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 exploratory work KDOT, a LPA, or both 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 Bidders may obtain exploratory work documents from the KDOT website at <http://www.ksdot.org> by choosing the following selections: "Doing Business", "Bidding & Letting" and "Proposal Information", using the "Exploratory and Project Reports" link provided in the Project information for the particular Project of interest or from the Bureau of Construction and Materials.

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

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

e. KDOT and LPAs assume no responsibility to a Bidder for any understanding reached outside the Proposal Form between the Bidder and employees or agents of KDOT, LPAs, or both unless that understanding is put in writing and added to the Proposal Form before the Letting.

f. KDOT and LPAs assume no responsibility to a Bidder for any representation made outside the Proposal Form by employees or agents of KDOT, LPAs, or both unless that representation is put in writing and added to the Proposal Form before the Letting. Oral representations concerning the site conditions do not bind the Secretary, LPA, or both.

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

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, a LPA, or both provide.

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 website. The Bidder'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, regulations, rules, and ordinances that apply to the Project before submitting a bid. Include in the bid, costs to comply with such laws.

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102.10 PREPARING PROPOSALS

a. Rules for All Proposals.

- (1) Access Bidding Proposal Forms on KDOT's website. See **subsection 102.3a**.
- (2) Use the AASHTOWare Project software version of Expedite (most current version) and Bid Express to prepare and submit a Proposal.
 - (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 Bidder 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 Bidder 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 Bidder or third parties arising out of the Bidder's use of Bid Express or inability to use Bid Express.
- (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 Bidder shall perform the work), complete the required contract provisions contained in the EBS file, and electronically sign DOT Form No. 202 by 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 Bidder to the Proposal and all attached certifications.
- (4) Provide all information the Bidding Proposal Form requests or requires. Include costs for subsidiary and incidental work in the contract unit prices or lump sum prices.
- (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**.) 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 Bidder's existing EBS file and submit the revised Proposal using Bid Express.
- (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 Bidder's bid submitted through Bid Express.
- (8) 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 Bidder a new key.

102.11 BID BONDS

Submit an electronic Bid Bond that complies with the requirements of this **subsection 102.11**, with the 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 Bidder's 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 Bidder 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 Bidder forfeits to the Secretary the penal sum of the bond as liquidated damages if the Bidder fails to sign the contract or provide the required documents for reasons other than a nonjudgmental bid error. See **subsection 102.16**. The two lowest Bidders' Bid Bonds shall remain effective until the Secretary executes a contract or the Bidder forfeits the penal sum of the bond.

102.12 SUBMITTING PROPOSALS

a. Deliver a Proposal to KDOT by transmitting the Proposal through Bid Express using the Bid Express website (www.bidx.com) before the time set for receiving proposals expires. Assume all risk for the timely delivery to KDOT of the Proposal, transmitted through Bid Express.

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b. Bid Express includes in the 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 Proposal as stated in **subsection 102.11**.

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

102.13 WITHDRAWING PROPOSALS BEFORE THE LETTING

Before the time for receiving proposals expires, a Bidder may withdraw a Proposal in writing or by email directed to the Chief of the Bureau of Construction and Materials, without Bid Bond forfeiture.

102.14 REVISING PROPOSALS

a. Before the time for receiving proposals expires, a Bidder may revise its Proposal by making changes on its EBS file and resubmitting the Proposal to KDOT through Bid Express.

b. The Secretary's representatives will not revise Bidders' proposals and have no access to proposals before the Letting.

c. A Bidder shall not revise its Proposal after the Letting and the Secretary's representatives have no authority to revise proposals 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 proposals received unless KDOT has to delay the opening to accommodate internet or other technical difficulties in downloading proposals. KDOT invites all Bidders, their authorized agents and other interested parties to be present. If KDOT incurs a delay in downloading the proposals, KDOT will delay the public reading until KDOT has been able to download all 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 Bidders of KDOT's planned action on KDOT's website and on the Bid Express website. KDOT also will notify Bidders 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 Bidders are prequalified in the appropriate classifications and dollar value of work, and will determine the Bidders are otherwise responsible. The Bureau of Construction and Materials will notify a Bidder by email or other writing if the Secretary rejects the Bidder's Proposal.

102.16 WITHDRAWING PROPOSALS FOR BID MISTAKES AFTER THE LETTING

a. A Bidder shall not revise its Proposal after the Letting.

b. A Bidder 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 Bidder notifies KDOT of the nonjudgmental error within 2 business days after the Letting.

c. A Bidder 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 Bidder notifies KDOT of the nonjudgmental error more than 2 business days after the Letting.

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d. If the Bidder withdraws its Proposal without bid bond forfeiture as permitted in **subsection 102.16b.**, the Bidder 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.* governs 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 this **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 Bidder 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 reflect the reasonable actual costs (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) A bid amount in the Proposal which, when added to the unearned amounts of the Bidder's other outstanding contract obligations, exceeds the total dollar amount of the Bidder's qualification. The outstanding contract amount includes all contract and subcontract work that the Bidder performs with its own forces. (See **subsection 102.2).**

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

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

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

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

- (1) Include a unit price in the Unit Bid column for each line item of work listed in the Unit Prices List.
- (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.

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(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, unless the total value of KDOT-certified DBE's on this provision equals or exceeds the DBE Contract Goal.

(8) Include in the Proposal acceptable ties, riders, combinations, or alternates, if any, that comply with **subsection 102.5**.

(9) Use Expedite software to prepare the Bidder'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 Bidder, by email or other writing, that the Secretary rejects the Bidder's Proposal.

102.18 REJECTION OF PROPOSALS; NON-RESPONSIBLE CONTRACTOR

a. Even though a Bidder is prequalified under **subsection 102.2**, the Prequalification Committee may determine a Bidder 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 Bidder is non-responsible. The Prequalification Committee may determine a Bidder is non-responsible for reasons other than those identified in this **subsection 102.18**.

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

(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 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 Bidder'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.

(7) Has been suspended or debarred from bidding or been given a notice of suspension or proposed debarment from bidding by KDOT, another Kansas state agency, other state government agency, FHWA, or other federal government agency.

d. Before an award of contract occurs, the Prequalification Committee will provide the Bidder an initial written notice of non-responsibility, specifying the reasons the Committee has determined the Bidder is non-responsible. The Bidder may object to the Committee's determination in writing or by requesting an informal hearing. The Bidder shall identify the reasons for the Bidder's disagreement with the Committee's initial determination of non-responsibility. After receiving the Bidder'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 Bidder 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 Bidder's conduct represents such serious acts, omissions, or misconduct, calling into question the Bidder's ability to perform future work, the Prequalification Committee may decline to renew the Contractor's qualification and/or initiate suspension or debarment under **subsection 102.19** rather than repeatedly finding a Contractor is non-responsible under this **subsection 102.18**.

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g. The Secretary will reject a Proposal from a Bidder that is not properly prequalified or qualified under **subsection 102.2** or is not otherwise eligible to bid as a prime Contractor under **subsection 102.4** even though the electronic bidding system or a KDOT representative may have allowed the Bidder to obtain a Proposal Form and submit a Proposal.

102.19 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 Kansas or in a different state by a Kansas state agency, another state government agency, the FHWA, or another federal government agency.

(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 Bidder is non-responsible under **subsection 102.18.**

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