

## 103 - AWARD AND EXECUTION OF CONTRACT

### SECTION 103

#### AWARD AND EXECUTION OF CONTRACT

##### 103.1 AWARD OF CONTRACT

###### a. Lowest Responsible and Responsive Bidder.

(1) If awarded, the Secretary will award the contract to the lowest, responsible, and responsive Bidder. The lowest bidder is the Bidder who offers to complete the Project at the lowest dollar cost as determined in **subsection 103.1b**.

A responsible Bidder is a Bidder who is prequalified before the Letting date and who has the skills, abilities, and integrity to perform the work at the time the Secretary awards the contract. See **subsection 102.2** for prequalification. See **subsection 102.18** for determinations of non-responsibility.

A responsive Bidder is a Bidder who has complied with all Bidding Proposal Form requirements. See **subsection 102.17** for determinations of non-responsiveness.

(2) The Secretary may award a contract to a responsible and responsive lone Bidder.

###### b. Calculating Lowest Dollar Cost.

(1) Base Bid. To determine the lowest dollar cost, the Secretary will sum the products of the estimated quantities by the unit bid prices (base bid).

(2) Combination Bids. For allowed combination bids, the Secretary will determine the base bid for each project and compare each project's base bid with the sum of the projects' base bids. The Secretary will award the contract based on whichever base bid or combination results in the lowest overall cost to KDOT or the LPA.

(3) Tied Bids. For allowed tied bids, the Secretary will determine the base bid for each project and compare each project's base bid with the sum of the projects' base bid. The Secretary will award the contract based on whichever base bid or tie results in the lowest overall cost to KDOT or the LPA.

(4) Bids involving Riders. For allowed deducts under **subsection 102.5c.(1)(c)**, the Secretary will determine the base bid for each project and compare each project's base bid with the sum of the projects' base bids as adjusted by the deduct(s). The Secretary will award the contract based on whichever base bids or combination results in the lowest overall cost to KDOT or the LPA.

For allowed deducts under **subsection 102.5c.(1)(d)**, the Secretary will not combine the projects' base bids to determine the lowest overall cost to KDOT or the LPA. Rather, the Secretary will determine the lowest responsible bidder on the project for which an award was mandatory (the primary project or Project A) using the base bids on Project A. If the lowest bidder on Project A is the bidder offering the deduct, the Secretary will apply the deduct to Project B and then determine the lowest bidder on Project B. If the lowest bidder on Project A is not the bidder offering the deduct, the Secretary will ignore the deduction offered on Project B and determine the lowest bidder using the base bids on Project B with no deducts. KDOT reserves the right to ignore deducts in situations in which KDOT is unable to administer application of the deducts equitably. For instance, one bidder's Project A may be another bidder's Project B and produce a conflict among the primary projects.

(5) Bids with Time Costs. If the Bidding Proposal Form requests or requires A+B bidding or lane-rental bidding, the Secretary will add to the base bid the product of the time for performance by the daily road user cost or lane rental cost. The Secretary will use this total to determine the lowest bid but will not use this total to determine the contract amount. Instead, the contract amount is the base bid and the Contract Time is the number of days the Bidder bid.

(6) Alternate Bids. If the Bidding Proposal Form requests or requires an alternate bid, the Secretary may award the contract based upon the lowest cost of whichever alternate the Secretary determines is in the best interests of the state of Kansas. For example, with an accelerated work schedule alternate bid, the Secretary may award the contract either to the lowest, responsible and responsive base Bidder or to the lowest, responsible and responsive accelerated Bidder.

(7) Unbalanced Bids. See **subsections 102.17d.(6) and (7)**.

(a) The Secretary may determine that a mathematically unbalanced price(s) or a materially unbalanced bid does not reflect the lowest dollar cost to KDOT and reject a Proposal containing such unbalancing.

(b) Mathematically unbalanced price(s). A Proposal is mathematically unbalanced when the Proposal contains lump sum prices or unit prices that do not reflect the reasonable, actual cost (plus reasonable profit, overhead costs, and other indirect costs) to construct the item.

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- (c) 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, an LPA, or both.
- (d) If KDOT suspects the bidder has submitted mathematically unbalanced price(s) or a materially unbalanced bid, the Bureau Chief of Construction and Materials will request that the bidder submit an explanation and documentation that demonstrates why the prices or bid are not unbalanced.
- (e) If the bidder is unable to demonstrate that the prices or bid are not unbalanced, the Bureau Chief of Construction and Materials will notify the Secretary who has complete discretion to accept or reject the bidder's Proposal.
- (f) If the Secretary accepts a Proposal that, in the Secretary's judgment, contains a mathematically unbalanced price(s), the Bidder waives the right to seek compensation beyond the contract unit price or lump sum price for the work if such item overruns or underruns. Thus, **subsections 104.2 and 104.3** shall not apply to a mathematically unbalanced item(s).

**c. Notice of Award.** The Secretary will provide the successful Bidder notice of award of contract within 45 calendar days after the Letting. The Secretary may extend the time within which the award is made if the apparent lowest, responsible and responsive Bidder agrees to such extension. A Bidder other than the apparent lowest, responsible and responsive Bidder may agree to a time extension for award or may withdraw a bid without forfeiting its bond.

### 103.2 CANCELLATION OF AWARD

Before the Secretary signs the contract, the Secretary may cancel the award of contract with no liability. Assume the risk for costs incurred, materials ordered, or work started before the Secretary signs the contract.

### 103.3 CONTRACT BOND REQUIREMENTS

**a.** Provide a contract bond on D.O.T. Form 282, for contract performance and payment of labor, materials, supplies, and other items as specified in D.O.T. Form 282. Secure a penal sum that equals the contract amount. Obtain the contract bond from an insurer or Surety the Kansas Commissioner of Insurance has authorized to do business in Kansas and the Secretary approves. Within 5 business days after the insurer or Surety fails or becomes financially insolvent, file a new contract bond executed by an approved insurer or Surety.

**b. Payment Bond Claims.** Subcontractors and suppliers may file a claim on the contract bond before the Project is completed and a maximum of 6 months after the Project is completed. For purposes of this provision and K.S.A. 68-410, the Project is completed on the date the Engineer issues the Notice of Acceptance of Contract under **subsection 105.16**. This Notice of Acceptance date may follow an observation or establishment period.

### 103.4 EXECUTING THE CONTRACT

**a.** Within 10 business days after notice of the award of contract or within any time extension the Bureau Chief of Construction and Materials has granted:

(1) Provide to the Secretary the contract bond, certificate(s) of insurance, authorization to do business in Kansas, and other documents the Proposal Form requires. To obtain authorization to do business in Kansas, register with the appropriate state agencies. If the Bidder is not domiciled in Kansas then appoint an individual or organization, other than a government employee, as the Bidder's resident agent in Kansas for service of process.

See **subsection 107.10** for liability insurance requirements that must be in place before the parties execute the contract.

See **subsection 107.11** for railroad protective liability insurance requirements. Though not a prerequisite to contract execution, the railroad protective liability policy must be in place and approved before the Contractor begins work at railroad crossings, work adjacent to railroad right-of-way, or work within 50 feet of the centerline of a railroad track; and

(2) Sign and return to KDOT the contract and contract bond. Persons with the Contractor's Power of Attorney may sign the contract, contract bond, or both in lieu of an authorized Contractor representative. Persons with the Surety's Power of Attorney may sign the contract bond in lieu of an authorized Surety's representative. Submit the required Powers of Attorney with the contract and contract bond. Select one of the following methods

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and advise the Contract and Proposal Coordinator in the KDOT Bureau of Construction and Materials of the method the Bidder has selected.

- Sign the contract and contract bond at the Office of the Bureau of Construction and Materials.
- Request that KDOT electronically transmit the contract and contract bond to an e-mail address the Bidder has designated. Print the contract and contract bond. Sign and return by mail the contract and contract bond to the Contract and Proposal Coordinator in the Bureau of Construction and Materials.

**b.** The Secretary will not sign the contract until the Bidder has provided the documents required under **subsection 103.4a**. The date the Secretary signs the contract becomes the effective contract date.

### 103.5 FAILING TO EXECUTE THE CONTRACT

If the Bidder fails to provide required documentation or fails to sign the contract according to **subsection 103.4**, the Secretary will cancel the award of contract to that Bidder and either re-award the contract to the next lowest, responsible, and responsive Bidder or re-let the Project. The Bidder shall forfeit its Bid Bond as liquidated damages for the delay, re-letting expenses or both. The Bidder shall not perform subcontract work on the Project and shall not re-bid if the Secretary re-lets the Project.

### 103.6 ASSIGNMENT OF CONTRACT

**a. General.** A Contractor may assign the entire contract to another prequalified Contractor if the following conditions are met:

- (1) The Secretary finds the Assignment has a valid business purpose and is in the best interests of the State of Kansas; and
- (2) Either the existing Surety agrees to continued liability on the contract bond or a new Surety executes a contract bond assuming all contract obligations as of the contract execution date. The Secretary will not recognize any Assignment until the Secretary and Surety or Sureties have consented in writing to the Assignment.

**b. Reorganization of Contractor's Business Organization.** A partnership change or a Contractor's reorganization as an individual proprietorship, partnership, or corporation shall not prevent the reorganized partnership, or company from completing pending contracts with the Secretary if the following conditions are met:

- (1) The Surety on the contract bond executes a supplemental agreement, endorsement, or rider assuming liability for the reorganized partnership or company; and
- (2) The original partners or original organization remains liable on the contract and contract bond, and the new partners and new organization assume liability for future contract performance; or
- (3) The new partners and new organization assume liability for past contract performance and future contract performance.

**c. Death.** If the Secretary and Surety on the contract bond approve, the heirs, executor or administrator of a sole proprietorship's estate may complete the deceased Contractor's contract.