

SECTION 102 -- PROPOSAL REQUIREMENTS AND CONDITIONS AND AWARDING OF CONTRACTS ON STATE HIGHWAY WORK

102.01 -- Prequalification of Bidders

1. All persons (any individual, co-partnership, association, corporation or joint stock company) proposing to bid on a contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the Department of Roads shall submit a statement showing his/her experience, equipment, and financial condition; except that such statement shall not be required for contracts for repair and maintenance where the estimate of the Engineer for such repair and maintenance is less than \$2,500, or of an emergency nature. Such statement shall be under oath and on a form to be provided by the Department and shall be submitted not later than ten days before the letting of the contract or contracts. The statement shall develop fully the financial ability, adequacy of plant and equipment, organization, prior experience, and such other pertinent and material facts as may be desirable. The Department may require additional information at any time. The statements of Contractor's experience, equipment, and financial condition will not be retained in the active file of qualified bidders after the financial condition shown is of a date 15 months prior. Any person whose qualification rating will expire on or before the date of a letting must submit a new statement and request to be qualified at least ten days before the letting at which he/she desires to bid. Any person who desires a change in his/her qualification rating must submit a new statement or a request in writing at least ten days before the letting at which the change would be effective. Upon the compliance with all laws and rules and regulations relating thereto, such person will be qualified for the amount and class of work to which he/she is entitled. All information furnished the Department shall be confidential.

2. The financial showing required in such statement shall be certified by a public accountant holding a currently valid permit from the Nebraska Board of Public Accountancy or by any certified public accountant holding a currently valid permit.

3. The use of a "Letter of Credit" as an alternate means of showing financial condition will be allowed when the net amount of the "Letter of Credit" does not exceed \$250,000. The "Letter of Credit" must be from a licensed or chartered financial institution. The "Letter of Credit" shall be certified by a public accountant holding a currently valid permit from the Nebraska Board of Public Accountancy or by any certified public accountant holding a currently valid permit.

102.02 -- Qualification

1. Each person will be qualified upon such statement for an amount of work which he/she can perform properly as evidenced by his/her financial statement and supplementing documents and his/her competency and responsibility as evidenced by the amount, condition, and availability of equipment, experience of personnel, and previous record with this and other awarding authorities.

2. Each person will be notified of the "maximum qualification" rating established in his/her case by the Department. The "maximum qualification" rating established may be increased or decreased at any time if, as determined by the Department, the performance record of the Contractor warrants such action.

3. A new statement may be requested at any time if, in the opinion of the Department, significant changes in the responsibility or financial ability of the person qualified have occurred.

4. Ratings for any one or combination of the following groups of work will be given:

<u>Group Number</u>	<u>Work Class</u>
1	Grading
2	Aggregates
3	Concrete Pavement
4	Culverts
5	Landscaping
6	Bridges
7	Guardrail
7b	Fence
8	Specialty
8a	Building Construction
8b	Electrical
8c	Signing
8d	Painting
8e	Demolition
9	Bituminous
10	General (All Classes)

5. Any person who desires a change in the class or classes of work for which he/she is qualified to submit proposals must submit a request in writing for such change at least ten days before the letting at which he/she desires to bid with the new classification.

102.03 -- Drug-Free Workplace

1. The State of Nebraska requires that all Contractors and Subcontractors on any and all highway construction, maintenance, or improvement contracts must have on file with the Department a written Drug-Free Workplace Policy.

2. A Drug-Free Workplace Policy letter shall be submitted along with the other documents required to establish a Contractor's qualification to bid on Department contracts.

3. The Contractor shall certify the company's Drug-Free Workplace Policy by signing the Proposal Signature Page.

102.04 -- Current Rating

Each person desiring to bid on work for which prequalification of bidders is required shall submit a request for proposal forms and with such request shall submit, on forms provided by the Department, a complete report of all work then under contract, including subcontracts, and the amount of work not completed on all such contracts. A current qualification based on this statement and the Contractor's "maximum qualification" will be

established by the Department taking into account the rate of progress which is being made in performing the uncompleted work, the requirements for the performance of the work for which the Contractor desires to bid, and any other pertinent information that is available to the Department. This current qualification shall be the "current rating" which determines the amount of work for which any person is qualified at the particular letting and for which he/she may be awarded a contract or contracts, except that the Department may use a tolerance of not more than 25 percent of a bidder's current rating and award the contract or contracts in a total amount which does not exceed by more than 25 percent the current rating which is established by the Department.

102.05 -- Proposal Forms

1. Proposal forms for work for which prequalification of bidders is required will be issued only to those qualified to bid on each contract. A person will not be considered as qualified for any particular letting if his/her qualification rating will expire on or before the date of the letting.

2. Any person submitting two or more proposals in a total amount exceeding his/her current qualification by more than 25 percent shall submit the same subject to the limitations of his/her current rating plus a tolerance of 25 percent. Nothing in these rules and regulations shall be construed as depriving the Department of the right to reject any bid where, in the opinion of the Department, other circumstances and developments have changed the qualification or responsibility of the bidder.

3. If the qualification rating of the low bidder expires before the award of a contract, such contract will not be awarded until the qualification rating of the low bidder has been renewed.

4. Proposal forms for work for which prequalification of bidders is required will be labeled with the name of the bidder to whom they are issued and shall not be transferable. Any proposal which is submitted by a bidder other than the one to whom the proposal form was issued shall be void.

5. Proposal forms for work for which prequalification of bidders is required may be issued by the Department at its discretion for information only, but such proposal forms shall not be used for bidding and shall be stamped with the words "For information only, not to be used for bidding"; and bids submitted on such forms shall be void and not considered.

6. Proposal forms will not be issued to any bidder later than 5:00 p.m. of the day preceding the letting.

7. A proposal form for any contract for which prequalification of bidders is required may be issued, at the discretion of the Department, to two or more qualified bidders jointly if the classes of work for which the prospective bidders are qualified to perform satisfy, in the aggregate, the qualification requirements for the particular contract. Two or more qualified bidders may not bid jointly to perform any contract for which prequalification of bidders is required unless a proposal form is issued by the Department to those bidders jointly for that purpose.

102.06 -- Contents of Proposal Package

1. The Department will prepare a Proposal Package for each qualified Contractor desiring to bid. The package contains:

- a. All forms the bidder must submit.
- b. Those applicable special provisions that amend the *Nebraska Standard Specifications for Highway Construction*.
- c. Other special provisions that uniquely apply to the project.
- d. A schedule of unit price or lump sum bid items.
- e. A proposal guarantee bid bond.
- f. An envelope with separate pockets for the proposal and bid bond, respectively.
- g. A notarized proposal signature page.

2. The only bids the Department will accept are bidder completed Department Proposal Packages. The package must be submitted in the provided envelope.

3. Proposal forms will state the location and description of the contemplated work and will show the estimate of the various quantities and kinds of work to be performed and/or materials to be furnished. They will include the time in which the work must be completed. Also shown will be the date, time, and place of bid openings.

102.07 -- Interpretation of Quantities in Proposal Forms

The quantities listed in the proposal forms are to be considered as approximate, unless otherwise provided, and are to be used for the comparison of bids. Payments to the Contractor will be made for the actual quantities or plan quantities, if specified, of work performed or materials furnished in accordance with the plans and specifications. It is understood that the quantities of work to be done and materials to be furnished may each be increased, diminished, or omitted as hereinafter provided without in any way invalidating the unit bid prices, except as provided in Subsection 104.02.

102.08 -- Examination of Plans, Specifications, Special Provisions, and Site of Work

1. The Department will provide detailed plans and specifications. The bidder, before submitting a proposal, shall carefully examine:

- a. The site of the proposed work.
- b. The proposal.
- c. The plans.

- d. The *Specifications*.
- e. The Supplemental Specifications.
- f. The Special Provisions.
- g. The Contract Forms.
- h. The permit conditions.

2. The submission of a bid shall be considered conclusive evidence that the bidder made the examinations required in Paragraph 1. above and that the bidder is satisfied with and understands the conditions to be encountered in performing the work and other requirements in the contract.

102.09 -- Federally Funded Contracts - Equal Employment Opportunity

1. Each Contractor and Subcontractor submitting a proposal must certify that he/she has or has not participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Federal Executive Order 11246, and that he/she has or has not filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity all reports due under the applicable filing requirements.

2. The certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor [41 CFR 60-1.7(b)(1)], and must be submitted by bidders and proposed Subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts or subcontracts of \$10,000 or less are exempt.)

3. Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations. Standard Form 100 (EEO-1) must be filed by employers covered by Title VII of the Civil Rights Act of 1964 and employers covered by Federal Executive Order 11246 who have 100 or more employees in the payroll period for which they are reporting, normally any payroll period in December, January, or February preceding the filing of the report.

4. If Standard Form 100 (EEO-1) was not filed due to the Contractor not meeting the 100 or more employee requirement, it is proper for the Contractor to state that he/she has submitted all required compliance reports due.

5. Proposed prime Contractors and Subcontractors who have participated in a previous contract or subcontract subject to the Federal Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such Contractor submits a report covering the delinquent period or such

other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

102.10 -- Preparation of Proposal

1. All bidders shall submit their Department furnished proposal package.
2. The bidder must state the unit price for each item of work contemplated.
3. The blank spaces in the proposal must be filled in correctly, in ink or typed, for each and every item necessary to submit a complete bid.
4. If the unit price is left blank and the quantity of the item is one and an amount is shown in the "Bid Amount" column, then the amount in the "Bid Amount" column will be considered the unit price.
5. If the bidder enters an amount in the "Unit Price" column when "Lump" is shown in that column, the "Unit Price" shall govern in the extension of that item.
6. If both columns are left blank, the proposal will be considered incomplete and rejected.
7. If the unit price is indicated with a line, the unit price will be considered free no matter what amount is shown in the "Total Bid" column.
8. If the unit price is left blank and the quantity of the item is greater than one, the proposal is incomplete and the bid is rejected.
9. When the proposal schedule is divided into groups, a price shall be submitted on each and every item of work necessary to submit a complete bid for the group on which the bidder wishes to bid.
10. The bidder shall also show the product of the respective unit prices and quantities in the column provided for that purpose and the total amount for each group and combination of groups, as indicated in the proposal form, necessary for a complete bid for the work on which the bidder wishes to bid.
11. Failure of the bidder to properly sign the proposal shall make the proposal incomplete, and the bid will be rejected.
12. Each bidder, in signing and notarizing the signature page by or on behalf of the person, firm, association, or corporation submitting the bid, certifies that:
 - a. Such person, firm, association, or corporation has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid.
 - b. All equipment has been assessed for the current year.

c. The company is operating under a Drug-Free Workplace Policy, a copy of which being on file with the Department.

d. A bond for the contract amount will be furnished.

e. Reports have been filed regarding Equal Opportunity participation (Federally funded projects only).

f. Disadvantaged Business Enterprises (DBE) goals on designated Federally funded projects will be achieved or "good faith" documentation provided.

13. Failure to submit a signed and notarized proposal signature page as part of the bid proposal package will make the bid nonresponsive. False statements in any of the above certifications will constitute perjury.

102.11 -- Electronic Bid System (EBS) (Optional Procedure)

1. General Provisions:

a. (1) Bidders who wish to prepare and submit their bids using an electronic process must use the Electronic Bid System (EBS) furnished by the Department and must subscribe to the CompuServe State D.O.T. Forum.

(2) The Department will furnish these bidders with the necessary EBS software to install on their computers through the Nebraska Department of Roads' Forum on CompuServe.

(3) The *Bid Manager Guide* will be provided upon request.

b. Bidders using EBS must have an Advanced Payment Account with the Nebraska Department of Roads. Bidders using EBS to prepare and print their bid Schedule of Items must also submit an electronic diskette containing those bid(s). If a bidder fails to submit an electronic diskette containing the bid, the Advanced Payment Account will be assessed a fee for each bid missing from the diskette. All bids for a single letting shall be submitted on one 3 1/2 inch diskette.

c. The Department shall provide requesting bidders the following:

(1) The Bid Package(s).

(2) The Bid Bond Form(s).

(3) The Bid Envelope(s).

(4) EBS Software (Through CompuServe).

(5) EBS *Bid Managers Guide* (Through CompuServe).

d. The bid items for all projects in a letting will be distributed through the CompuServe State D.O.T. Forum.

e. (1) Electronic bids must comply with all plans, special provisions, the *Standard Specifications for Highway Construction*, supplemental specifications to the *Standard Specifications for Highway Construction*, and the *Rules and Regulations* of the Nebraska Department of Roads regarding bid preparation and bid submittal.

(2) Exceptions:

(i) Items of work for which the bidder intends to make no charge to the Department must have a zero (0) unit price entered.

(ii) Blank unit prices will be considered an invalid bid.

(iii) On alternate groups the Contractor is **not** bidding, DO NOT ENTER ZEROS. Leave these items blank.

2. Assembly of Bid Proposal:

a. Continuously-rolled printer paper must be separated into individual pages before it is inserted into the Bid Envelope.

b. The electronic diskette shall be submitted in a separate sealed envelope marked with the bidder's name and all call order numbers for which electronic bids are submitted. The Bid Proposal(s) including the computer-generated item sheets and bid bonds shall be submitted in their individual Bid Envelopes.

3. Format of EBS Bids and Other Electronic Bid Requirements:

a. The size of computer-generated bid item pages shall be 8 1/2 inches horizontal by 11 inches vertical.

b. Paper and printers used for each computer-generated bid item page shall be of a quality to maintain clear and concise images and to withstand frequent handling.

c. All computer-generated characters in the electronic bid must be clearly legible.

4. Discrepancy Between Information Submitted on the Diskette and the Bid Schedule of Items:

a. In the event there is a discrepancy between the information submitted on the diskette and the bid Schedule of Items submitted with the proposal, the figures on the bid Schedule of Items will prevail.

b. If the bidder completes and submits both the bid Schedule of Items in the original bid proposal package and the EBS-generated bid Schedule of Items and there is a discrepancy between them, the figures contained in the original bid proposal will prevail.

5. Rejection of EBS Bids by the Department:

Any of the following will be considered cause to reject an electronic bid:

- (1) Failure to submit the complete computer-generated bid Schedule of Items.
- (2) Failure to sign the Bid Proposal and the computer-generated signature page or any other forms requiring signatures.
- (3) Failure to complete each line of the computer-generated pages.

102.12 -- Ties and Limitations

1. Combination bids for two or more groups in any proposal may be submitted, except that any bridge group may be bid in combination only with a culvert group or another bridge group and that the culvert groups may be bid in combination with one or more bridge groups only when not bid in combination with other groups in the same proposal. The classification of two or more groups tied together by the Department shall be as stated in the "Notice to Contractors," and shall be considered as a group of that classification. A separate and complete bid for each group of items shall be included in the combination bid. If a bidder desires to tie his/her bid for two or more groups on any proposal, such tie shall be clearly indicated, in the space provided, by writing in the group numbers and by striking out the words which do not apply. The bidder shall not indicate a tie in words other than those shown and shall not alter or add to the words shown in order to provide other than one tie or condition. If a tie is indicated by writing in group numbers without striking out the words which do not apply, it will be interpreted that a tie was not intended and the bid will be considered on that basis, regardless of where the group numbers are placed in space provided. Underlining words or any other marking instead of striking out the words which do not apply will not be considered as indicating a tie. The bidder shall not insert a tie or condition in any other place in the proposal except in the space provided on the front cover of the proposal.

2. A proposal shall not be tied to any other proposal except as may be indicated on the front cover of the proposal form. If the bidder desires to tie his/her bid to his/her bid on any or all of the other proposals which may be indicated on the proposal form, such tie shall be clearly indicated in the space provided by striking out the words "is not tied" and the numbers which do not apply. The bidder shall not indicate a tie in words other than those shown. If the bidder indicates a tie between any proposal and one or more other proposals and the groups in the proposal for which the bid is submitted are not tied together by either the Department or the bidder, it will be assumed that the bids for the comparable individual groups only on the two or more proposals are tied.

3. If the bidder does not designate a preference in the space provided, it will be assumed that he/she does not desire to tie his/her bid to any of the proposals listed therein; and the bid will be considered on that basis. Underlining words, or any other marking, instead of striking out the words which do not apply will not be considered as indicating a tie. The bidder shall not insert a tie in any other place in his/her proposal except in the space provided on the front cover of the proposal form.

4. A Contractor may bid on all or any part of the work included in any one letting and for which he/she is prequalified, even though the total of all bids submitted exceeds his/her current qualification rating. In the event a bidder submits the low bids for more work than the amount of his/her qualification rating, contracts will not be awarded to him/her in excess of his/her current qualification rating plus 25 percent.

5. The Engineer reserves the right to make awards that will be in the best interest of the State, and any comment in a proposal limiting or qualifying this reserved right shall constitute an irregular bid. However, the bidder may specify one or more of the following:

- a. The maximum monetary value of awards that will be accepted.
- b. The total number of contracts that will be accepted.
- c. The number of contracts of any particular class or classes of work that will be accepted.

6. Such limitations must be indicated in the space provided on the front cover of the proposal form. Any limitation in the number of contracts of any particular class or classes of work that the bidder will accept will be considered as applying only to the class or classes of work mentioned.

7. The bidder shall not make a conditional deduction or reduction in any unit price in any proposal form.

102.13 -- Irregular Proposals

1. Any tie, statement, qualification, or limitation made by the bidder in violation of, or not allowed by, Subsection 102.12 will cause the bid to be considered void.

2. Proposals may be rejected if they show any alterations of forms, additions not called for, conditional bids, alternate bids, incomplete bids, erasures, or irregularities of any kind. Each bidder shall make an honest attempt to show correct extensions and totals in his/her bid. If, in the opinion of the Engineer, such an attempt is not made, such proposals may be rejected.

3. In the event of a discrepancy between unit bid prices, extensions, and/or totals, the unit bid prices shall govern.

4. Special provisions or documents bound with or attached to the proposal form shall be considered a part thereof and shall not be detached or altered. Any proposal not complying with this requirement shall be considered void.

102.14 -- Proposal Guaranty

Each proposal shall be accompanied by a bid bond made payable to the Department of Roads in an amount equal to at least 5 percent of the amount bid for any group of items or collection of groups for which the bid is submitted. The bid bond must be executed on the Department of Roads' bid bond form. Bid bonds must be executed by corporations authorized to contract as a surety in the State of Nebraska. Any alterations, conditions, or limitations added to the Department of Roads' bid bond form will be unacceptable and cause the bid not to be opened and read.

102.15 -- Delivery of Proposals

The proposal and bid bond shall be placed in separate sealed envelopes, attached to each other, furnished by the Department. The envelope containing the proposal shall be marked by the bidder to indicate its contents. Proposals shall be received until the date and hour set forth for the opening and must be, by that time, delivered to the place indicated in the "Notice to Contractors".

102.16 -- Withdrawal of Proposals

1. A bidder may withdraw an unopened proposal at any time before the bid opening time specified in the "Notice to Contractors".
2. To withdraw a proposal, the bidder shall provide written notice (letter, telegram, or FAX) to the Department's Construction Division before the time established for the bid opening.
3. The bidder may resubmit withdrawn proposals.
4. The Department will not accept resubmitted proposals after the bid opening time specified in the "Notice to Contractors".

102.17 -- Public Opening of Proposals

1. Proposals will be opened and read publicly at the time and place indicated in the "Notice to Contractors". Proposals not filed in the envelope provided for that purpose by the Department will not be opened and read. Proposals not accompanied by a bid bond filed in the envelope for that purpose will not be opened and read. Errors by the bidder in filing his/her proposal will not be cause for waiving any of the above requirements and will not be the responsibility of the Department.

2. The "Total Bid" for each proposal will be read publicly. The group totals and unit prices for individual proposals may be read at the sole discretion of the Department.

102.18 -- Disqualification of Bidders and Debarment Policy and Procedure

1. Disqualification. Any one or more of the following causes shall be considered as sufficient for the disqualification of a bidder and the rejection of his/her proposal or proposals:

a. More than one proposal on any class of work on any one project from an individual, a firm or partnership, a corporation, or an association under the same or different names. Reasonable grounds for believing that any bidder is interested in more than one proposal for the work contemplated will cause the rejection of all proposals in which such bidder is interested.

b. Evidence of collusion among bidders. Any or all proposals will be rejected if there is reason for believing that collusion exists among the bidders or if the bidder has been found unacceptable to bid due to collusion before award of the contract.

c. Proposals in which the prices are obviously unbalanced.

d. Proposals which are materially unbalanced. A bid is materially unbalanced if lump sum prices or unit bid prices do not reflect reasonable actual costs and there is a reasonable doubt that the lowest ultimate cost under the contract will be achieved.

e. Proposals which are accompanied by bid bonds on forms other than the Department's form or by a bid bond form which is incorrectly completed or is incomplete.

f. A proposal in which the affidavit form signature page is incorrectly completed or is incomplete.

2. Following conclusive evidence of collusion among bidders, participating bidders in such collusion will receive no recognition as bidders for any future work of the Department until such participants are reinstated as qualified bidders.

3. Debarment:

a. The Director-State Engineer may, at his/her sole discretion, debar an individual, a Contractor, or its affiliates from bidding, subcontracting, or supplying materials on Department of Roads' contracts for any illegal activity involving bidding evidenced by any of the following:

(1) Indictment or conviction of a bidding crime; any plea of guilty or nolo contendere to a charge of a bidding crime; any public admission of a bidding crime; any presentation of an unindicted co-conspirator; or any testimony protected by a grant of immunity of any Contractor in any jurisdiction indicating involvement in a bidding crime.

(2) Conviction of any offense indicating a lack of moral or ethical integrity as may reasonably be perceived to relate to or reflect upon the business practices of the bidders.

(3) Debarment by any other State or Federal agency for substantially any of the reasons listed above.

(4) Any other activities of an individual, Contractor, or its affiliates of a serious or compelling nature that are reasonably perceived to relate to their work as a Contractor.

(5) Making materially false statements on a bid proposal.

b. (1) An individual or a Contractor shall be given a debarment hearing if either so requests before or after debarment. The determination as to whether the debarment hearing will be held before or after debarment shall be at the sole discretion of the Director-State Engineer.

(2) The written request for a debarment hearing must be received by the Director-State Engineer no later than ten days after the receipt of the written notice from the Director-State Engineer. Unless otherwise mutually agreed in writing, the debarment hearing shall be held no later than 14 days after receipt of the individual's or Contractor's request for a debarment hearing.

(3) Debarment after hearing. In those situations where the Director-State Engineer decides to hold a debarment hearing before deciding whether debarment is proper, he/she shall send written notice to the affected individual, Contractor, or their agents by certified or registered mail stating:

(i) That debarment is being considered.

(ii) The general reasons that suggest the debarment.

(iii) That the Contractor will be afforded an opportunity for a debarment hearing if requested.

(4) Debarment before hearing. In those situations where the Director-State Engineer determines that debarment is appropriate before a debarment hearing, he/she shall send written notice to the affected individual, Contractor, or their agents by certified or registered mail stating:

(i) That the Contractor or individual has been debarred.

(ii) The general reasons for the debarment.

(iii) That the Contractor or individual shall be accorded the opportunity for a debarment hearing if they so request in writing within ten days of the receipt of the written notice of debarment.

(5) If the Contractor or individual notifies the Director-State Engineer that he/she desire a hearing, the debarment hearing will be held no later than 14 days after receipt of the individual's or Contractor's request unless mutually agreed otherwise in writing. The Director-State Engineer shall determine in writing whether the individual or Contractor will be reinstated.

c. The Director-State Engineer shall appoint a Hearing Examiner to conduct all debarment hearings. The Hearing Examiner shall make a recommendation to the Director-State Engineer, and such recommendation shall include findings of fact and conclusions of law.

d. Except as modified by the *Rules and Regulations* of the Nebraska Department of Roads, debarment hearings before the Hearing Examiner shall conform to the Code of Civil Procedure applicable to the District Courts of the State. Practice before the Hearing Examiner shall be governed by Department of Roads', *Rules and Regulations*, Title 407, Chapter 1.

e. Debarment shall be for a period of 36 months or, in the case of a reciprocal debarment as provided for under Subsection 102.18, Paragraph 3.a.(3), the term of the debarment shall be for the same period as the debarment imposed by the other State or the Federal government.

f. The Director-State Engineer may suspend a debarment at any time he/she determines it is in the public interest to do so. Mitigating circumstances may be considered in the decision to lift or suspend a debarment and may include, but shall not be limited to:

(1) The degree of culpability of the debarred individual or Contractor.

(2) Restitution by the debarred individual or Contractor to the State for any perceived overcharges or damages resulting from the actions of the debarred individual or Contractor.

(3) Cooperation by the debarred individual or Contractor with the State, the United States, and/or any other political governmental subdivision in the investigation of bidding crimes, including a full and complete account of the individual's or Contractor's particular involvement therein.

(4) Disassociation with individuals and firms that have been involved in a bidding crime.

g. The Director-State Engineer, at his/her discretion, may hold a hearing no later than 15 days before the last day of the debarment and require the debarred individual or Contractor to show cause why the debarment should not continue. If the Director-State Engineer, in his/her sole discretion, determines that a debarred individual or Contractor has failed to become a responsible bidder, then the Director-State Engineer may continue the debarment for up to 12 additional months. The same "show-cause" procedures shall continue for each successive extension of the original debarment until such time as the Director-State Engineer has determined that the debarred individual or Contractor meets the criteria of a responsible bidder.

h. For purposes of debarment, the conduct of a Contractor or an individual shall be fully imputed to:

- (1) Business firms with which they are or were associated.
- (2) Business firms by whom the individual was or is employed.
- (3) Parent or subsidiary companies of the Contractor.
- (4) Business firms in which the individual or Contractor has a controlling interest.

i. Debarment of a Contractor shall in no way affect the obligations of the Contractor to the State for services to the Department of Roads already under contract.

j. Every Contractor currently qualified by the Department of Roads to bid on its contracts shall have a duty to notify the Director-State Engineer if they or any of their employees, officers, board members, or associates are indicted or convicted of a bidding crime within 30 days of the indictment or conviction. Failure to do so is a serious and compelling offense sufficient to result in debarment.

k. Every Contractor qualified by the Department of Roads to bid on its contracts shall have a duty to notify the Director-State Engineer if the Contractor or any of his/her employees, officers, board members, or associates are contacted by any person with the purpose of engaging in any illegal activities in connection with bidding on State highway contracts or contracts involving federal aid. Notice shall include the name of the person making such overture or proposal, the time and place thereof, and the specific nature of the overture or proposal.

l. A copy of Section 003.15 of the Department's *Rules and Regulations* shall be mailed to each prequalified Contractor and to each Contractor heretofore debarred or suspended.

4. Procedures for Certification Regarding Debarment:

a. By signing and submitting a proposal, the bidder is providing the certification set out below.

b. The inability of a person to provide the certification required below will not necessarily result in denial of participation in a contract. The bidder shall submit an explanation of why he/she cannot provide certification. The certification or explanation will be considered in connection with the Department's or agency's determination of whether to enter into this transaction. However, failure of the bidder to furnish a certification or an explanation shall disqualify the bid.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the Department may terminate this transaction, cause prosecution for perjury, bring debarment proceedings, or any combination of the above.

d. The bidder shall provide immediate written notice to the Department if at any time the bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549. The Department may be contacted for assistance in obtaining a copy of those regulations.

f. The bidder agrees by submitting this proposal that, should the proposed covered transaction be entered into, he/she shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the Department.

g. The bidder further agrees by submitting this proposal that he/she will include this Subsection (102.18), without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A bidder in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction unless he/she knows that the certification is erroneous. A bidder may decide the method and frequency by which he/she determines the eligibility of his/her principals.

i. Except for transactions authorized under Subsection 102.18, Paragraph 3.f. of these *Specifications*, if a bidder in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this contract, in addition to other remedies available to the Federal government, the Department may terminate this contract for cause or default, cause prosecution for perjury, bring debarment proceedings, or any combination of the above.

j. The bidder swears, to the best of his/her knowledge and belief, that he/she and the principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or Agency.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for:

(i) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction.

(ii) Violation of Federal or State antitrust statutes.

(iii) Commission of embezzlement, theft, forgery, bribery, or falsification or destruction of records.

(iv) Making false statements.

(v) Receiving stolen property.

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in Subsection 102.18, Paragraph 4.j.(2) of this *Specification*.

(4) Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

k. Where the bidder is unable to certify to any of the statements in the certification, an explanation shall be attached to his/her proposal.

102.19 -- Consideration of Proposals

1. Following the bid opening, the Department will compare the responsive proposals. Unless otherwise defined in the proposal, the comparison will be based on the summation of the quantities and the unit bid prices shown in the bid Schedule of Items. The comparison will be available to the public after one NDR work day.

2. The right is reserved to reject any and all proposals and to waive technical errors as may be deemed in the Department's best interest.

3. The Department may consider both tied and untied bids to determine the lowest responsible bidder when entire projects have been tied at the option of the Contractor. When untied bids are not received on all tied projects, the Department may award the contract to a Contractor submitting the lowest tied bid, regardless of whether an untied bid on a single project is lower than the tied bid. The Department will act in the best interest of the State when making this determination.

4. The right is reserved to require from any or all bidders on any project, including the apparent low bidder, before award of the contract, all documents and information used in the preparation of their bids. Failure to furnish the documents and information shall result in a period of disqualification that is determined by the Engineer.