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STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

CONSTRUCTION CONTRACT
BIDDING AND AWARD MANUAL

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I. GENERAL STATEMENT OF PURPOSE

The purpose of this manual is to try to ensure that all parties involved or interested in the Department's construction contract bidding and awards will know and understand the Department's rules, requirements, policies, procedures, and practices regarding those matters. In this manual, the Department has brought together provisions concerning Department bidding and awards from various other documents (such as the Department's Administrative Memorandum No. 108 and portions of the Department's Standard Specifications) in order to establish a single document which interested parties may consult to learn about those subjects. This manual will supersede Administrative Memorandum No. 108, and if provisions of this manual conflict with provisions of other Department documents (not including statutes or regulations), the provisions of this document will govern.

This manual will also provide the Department with a vehicle for regularly updating the public's knowledge of any modifications that the Department makes in its bidding or award policies and practices. At all times, copies of the current version of this manual will be available from the Department's Transportation Manager of Contracts (the "Manager). The effective date of each edition of the manual will appear at the top of the first page of each such copy.

Modifications of rules set forth in this manual will not be applied retroactively, but only prospectively.

II. LIMITATIONS OF THIS MANUAL

It should be understood that there will be no point in time when this manual can be comprehensive. Circumstances are constantly arising with respect to bidding and awards which the Department has never confronted before, and often those circumstances will require the establishment of a new principle, or the modification of an existing one. On occasion, the

Department may also find cause to reconsider and reverse a past position. Any such change in practice or policy will, however, become effective from the time of its first application, and will remain in effect for all pending bids and awards until such time as the practice or policy may be changed again. In addition, the Department will make its best effort to record any such changes in policy or practice in the edition of this manual which is printed after such change is made.

It should be also understood that while bidders are required to know and to obey all applicable laws and other legal authorities that affect the bidding and award matters discussed in this Manual, the Department has not attempted to include or to cite in this Manual all of the applicable legal authorities; by their nature, such authorities already are matters of public, and published, information.

III. DEFINITIONS

"Affiliate" means a company over which another company has significant control, i.e., (1) one of the companies owns at least five percent (5%) of the voting stock of the other; (2) a director or officer of one of the companies owns at least five percent (5%) of the voting stock of the other; or (3) the two companies have at least one director or officer in common.

"Bid proposal form" means a document provided by the Department, on which a contractor is to make, in writing and figures, its bid to perform construction or demolition work in accordance with an advertised Department contract.

"Bidding capacity" means the monetary value of construction work, in the aggregate, which the Department deems itself reasonably assured that a particular contractor is capable of executing and completing successfully at a given time. This value is determined by applying a standard Department formula (provided in Section V[G][5]][b] of this manual) to certain financial information required and received from the bidder.

"Classification of work" means a type of construction work for which the Department may prequalify contractors to bid, such as, but not limited to, highway construction; bridge construction, rehabilitation and painting;

building construction, demolition and relocation; paving; landscaping; electrical work; other painting; line-striping; and fencing.

"Commissioner" means the Commissioner of Transportation of the State of Connecticut.

"Contractor" means any individual, partnership, corporation, joint venture, association or other legal entity which is engaged in the business of performing construction services.

"Contractor's prequalification statement" or "prequalification application" means a set of documents which satisfies or is intended by a contractor to satisfy the requirements of Section IV(G)(2) of this manual, which set of documents consists of a completed set of the documents commonly known as parts A and B of Department Form CON-16.

"Department" means the Department of Transportation of the State of Connecticut.

"Manager" means the Transportation Manager of Contracts for the State of Connecticut Department of Transportation.

"Prequalification" means (1) the review process by which the Department determines which contractors shall be deemed qualified to receive awards of Department construction contracts, and, more particularly, (a) the classifications of work for which each such contractor shall be deemed qualified and eligible to be awarded a contract, and (b) the bidding capacity of each such contractor; or (2) the status of having been prequalified, which enables a contractor to receive awards of Department construction contracts within the classifications of work and the bidding capacity determined by the Department.

"Project bid limit" means a monetary amount which may be set by the Department as an upper limit on the size of the contracts which a particular bidder shall be eligible to be awarded within a given classification of work; that is, a contractor may not be awarded a project contract if the Department engineer's estimate of the cost of the project exceeds the contractor's project bid limit for that classification of work.

IV. ORGANIZATION OF THE DEPARTMENT WITH RESPECT TO BIDDING AND AWARD ACTIVITIES

The Department's Contracts Section controls the advertising and award, through the public competitive bidding system, of contracts involving the construction of roads, bridges, buildings, transportation-related public works projects, demolition, supply of materials, or other transportation-related matters. The Transportation Manager of Contracts is the head of the Contracts Section. The Contracts Section is contained within the Department's Division of Contract Administration, and the latter is contained within the Department's Bureau of Finance and Administration. The Bureau Chief of the Bureau of Finance and Administration reports directly to the Commissioner.

The Contracts Section is divided into three operating units: (1) the Prequalification Unit, (2) the Pre-Bid Unit, and (3) the Post-Bid Unit. All three units function under the direction of the Manager, who reports directly to the Director of Contract Administration.

The Prequalification Unit is responsible for the prequalification of businesses that desire to bid as general contractors for Department contracts, and for the issuance of bid proposal forms.

The Pre- Bid Unit is responsible for the coordination and administration of all activities associated with pre-bid procedures such as solicitation of bids, the preparation and sale of plans and specifications, the issuance of contract addenda, and the bidding process. Technically, the responsibility of this unit ends with the opening of bids.

After the bids are publicly opened, checked for responsiveness in various respects, and read, they are turned over to the Post-Bid Unit for further processing. The Post-Bid Unit is responsible for the coordination of all post-bid activities, and for ensuring that all requirements necessary for the award of the contract are met.

Requests for prequalification applications or bid proposal forms; inquiries concerning the completion of prequalification applications or bid proposals forms; and inquiries concerning other bidding or award matters, should be submitted to the Manager. Any questions regarding the project requirements, bid conditions or proceedings, contract terms, or other matters related to a project contract for which bids have not yet been opened must be addressed in writing to the Manager.

V. REQUIRED USE OF FORMS PROVIDED BY THE DEPARTMENT

In those cases in which the Department provides a form on which a particular submission is to be made (such as the bid proposal form, the non-collusion affidavit, or the bid bond), only that form will be accepted. Altered versions of the form, or electronically-reproduced (as opposed to merely photocopied) versions of the form, will not be accepted and will not be considered valid for bidding purposes.

Privately-owned bidding and information services that provide such forms, or information regarding Department bid solicitations, via the Internet or other media have not been given authority to do so by the Department. It is possible that if such persons or entities publish or provide inaccurate, incomplete, or unacceptable forms or information to potential bidders, the former could be liable to the latter for damages incurred as a result of such actions.

VI. PREQUALIFICATION OF CONTRACTORS TO BID FOR DEPARTMENT CONSTRUCTION CONTRACTS

In accordance with the provisions of the Department's Standard Specification for Roads, Bridges and Incidental Construction (as revised) (the "Standard Specifications"), and pursuant to the duties and powers of the Commissioner as provided for in Section 13a-95 of the Connecticut General Statutes (as revised), and with few exceptions, only contractors prequalified by the Department are eligible to receive awards of Department construction contracts. (The current editions of the Standard Specifications are known as the Forms 814A [for non-metric projects] and 815 [for metric projects].) The only exceptions to this requirement are for projects that do not require prequalified bidders; in such cases, this will be noted in the bid specifications for the project contract.

The Department's process of prequalification is not a means for determining which contractors may receive bid proposal forms, or which contractors may submit bid proposals, or which contractors may have their bid proposals considered by the Department. It is, rather, a process designed to ensure that the Department can determine, on a timely basis, the

qualifications and responsibility of contractors who may be considered for contract awards. The Department would not have ample time to make those determinations, without undue delay and disruption of award and construction schedules, if it waited to begin the evaluation process until after a bidder was found to be the apparent lowest bidder for a Department contract. As a practical matter, therefore, bidders should understand that if they have not been prequalified prior to the bid opening for a contract award, they will not be awarded the subject contract.

Awards will be made only to bidders prequalified to perform the type of work required by the subject contract, and only if they have sufficient bidding capacity remaining after taking into account all outstanding work to be completed by the bidder. Contractors whose current Parts B and C as of the time of the bid opening for a given contract do not show that the contractor has sufficient bidding capacity to be eligible for award of that contract may be subject to a finding of nonresponsibility if the contractor becomes the apparent low bidder for that contract.

A. PREQUALIFICATION OF ORGANIZATIONS OR INDIVIDUALS OTHER THAN CONSTRUCTION COMPANIES

No individual as such, and no entity that is not itself a bona fide construction company, will be prequalified to bid for Department construction contracts either individually or as a joint venturer (except as provided in the following paragraph); nor will such an individual or entity be eligible for award of such a contract.

The one exception to this rule is that if at least one of the participants in a proposed joint venture is a heavy highway construction contractor, and is prequalified by the Department as such, that contractor may joint venture with one or more of its wholly-owned subsidiaries, provided that the majority of each such subsidiary's assets (equipment, materials, etc.), as reflected in the subsidiary's most recent certified financial statement prepared by an independent accountant, are assets that are or may be used in heavy highway construction; provided that the heavy highway construction contractor assumes responsibility for the performance and completion of at least fifty percent (50%) of the project work required to be done by the general contractor, under the terms of the required letter that accompanies the joint venture's request for a bid proposal (described in VIII [A] below).

The provisions of this subsection A shall apply to vertical construction

work as well, except that with regard to such work, the phrase "vertical construction" should be substituted for the phrase "heavy highway construction" in the two preceding paragraphs.

B. MINIMUM PERIOD OF PREVIOUS CONSTRUCTION ACTIVITY

To be eligible for prequalification, applicants must have been engaged in active business as a construction contractor for a minimum of one year under the name of the firm applying for prequalification, and must provide to the Manager a current one-year financial statement for that business.

NOTE:

This prohibition may not be absolute. If, for instance, a prequalified company that has one year of satisfactory construction experience merely changes its name, but maintains the same corporate structure, managers, and assets, that company will not likely be denied prequalification merely because of its name change. The same might be true for a family business which changes its name when one member of management leaves the business, provided that the departing manager's services had not been essential to the prior granting of Department prequalification.

If, however, a family construction business has, for instance, been divided into two new companies with new names and reduced or altered resources, the Department would likely require each to accumulate a year's experience in the construction business before prequalifying them individually, in order to gain knowledge and assurances regarding the competence and capabilities of each firm. If a contractor is not prequalified under its present or intended new name, and if any significant change has occurred in the corporate structure, financing, managerial staff, or assets of that contractor, the Department will likely require that the company accumulate a year's construction experience before the Department will grant or "renew" its prequalification.

This is necessarily a question of degree. The Department must, in its sole discretion, determine when it has sufficient assurance that a contractor has the competence and wherewithal to perform a given type and volume of Department work.

C. PREQUALIFICATION OF INTER-RELATED ENTITIES

Corporations related to each other through ownership interests or an interlocking directorate or in other significant respects, may not seek prequalification in combination, and may not submit consolidated financial statements in seeking prequalification. The legal independence of a corporation or joint venturer must be reflected in the presentation of information about its finances; e.g., in presenting the assets of an applicant corporation, one may include the value of the stock owned by the applicant in a wholly-owned corporate subsidiary, but not, for instance, the value of equipment owned by the subsidiary corporation. In addition, only organizations which the Department deems to be true construction contractors with respect to a classification of work for which they seek prequalification (i.e., organizations having sufficiently-experienced personnel, sufficient equipment and finances, etc. to perform construction work within that classification) may seek or be granted prequalification to bid for work within that classification. If the Department deems that a substantial portion of the resources of an organization seeking prequalification is devoted to activities other than construction work within the pertinent classification(s), the Department may make what it deems to be an appropriate adjustment of the organization's bidding capacity or of the classification(s) of work for which it is prequalified.

If a subsidiary of a contractor wants to bid as an independent entity, that subsidiary must furnish to the Manager a contractor's prequalification statement based on the discrete finances and experience of that subsidiary. No so-called consolidated financial statements will be accepted for such subsidiaries, or for companies having a common owner.

D. THE PREQUALIFICATION APPLICATION PROCESS

In order to become prequalified, a contractor must obtain from the Manager a prequalification application form, known as the Form CON-16. Detailed instructions for completing the application form are included within the CON-16, and are repeated below.

1. Time for Filing Contractor's Prequalification Statement

In order to help ensure that they may become prequalified in time for

the bid opening for a given contract, contractors should be certain to return the form with all necessary information, signatures and notarizations to the Manager at least thirty (30) calendar days before requesting a bid proposal form for that contract.

2. The Contractor's Prequalification Statement

a. Contents of the Prequalification Application

The prequalification application form (the CON-16) requires, among other items, the following information:

-- A statement as to the contractor's financial condition and resources, which statement shall set forth in detail the contractor's current assets and current liabilities, and shall include third-party verifications of any unsecured lines of credit extended to the contractor by banks or other financial institutions. The financial statement must be accompanied by a certified audited financial statement or, if the Department deems it acceptable, a certified public accountant's review of financial statements. Such financial statements shall provide information covering a one-year accounting cycle. The financial statements must be complete, with a balance sheet, and with a related statement of income, retained earnings, and cash flows. The financial statement must be certified by an independent certified public accountant, in a form prescribed or provided by the Department, and must conform with generally-accepted accounting principles.

-- A statement as to the contractor's plant and equipment, which shall give complete details as to the identity, age, condition, cost, and current book value of each piece of the contractor's construction equipment. In addition, the statement shall set forth the value of any outstanding loans for equipment identified therein.

-- A statement describing in detail the contractor's organization, setting forth the identity of the contractor's officers, principals, and owners, and the qualifications and prior experience of the firm and each of its officers, principals, and other key personnel.

-- A statement as to the contractor's prior construction experience, which shall indicate the length of time for which the contractor has been engaged in the construction business, and the nature of the contractor's

construction experience during that period. In addition, the statement shall include a complete record of all construction work completed in the five (5) prior years and shall identify, for each project undertaken in that period, the type of work performed, the project location, the contract price for work actually performed by the applicant firm itself rather than by subcontractors, and the name, address and current telephone number of the owner's project engineer or project manager in charge of each listed project.

-- A statement describing in detail any financial interest which the contractor has in any other construction-related business, as well as any financial interest which any of the contractor's officers, directors, or principal shareholders (i.e., those shareholders holding at least [5%] of either the common or the preferred shares of the company's stock) have in the contractor or in any other construction-related business. The statement shall also include the name, address, and relation to the contractor of any affiliated or subsidiary firms (as opposed to internal divisions) of the contractor.

-- A statement describing, in detail, for the five (5) previous calendar years, the circumstances of

(i) any criminal violation by, and any criminal indictment or conviction of, and any civil debarment or suspension of, the contractor or any of its officers or affiliates, or of any officer of such an affiliate, by a governmental entity in any jurisdiction;

(ii) any finding by a governmental entity in any jurisdiction that the contractor or an affiliate of the contractor was nonresponsible as a low bidder; or

(iii) any formal charge or proceeding concerning the possibility of any such debarment, suspension, or finding of nonresponsibility by a governmental entity in any jurisdiction.

In addition, the statement shall identify any liens, default notices or claims filed by or against, or any penalties or liquidated damages assessed against, the contractor with regard to any project performed by the contractor within the previous five (5) calendar years. The statement shall also disclose the details of any formal complaints by or against the contractor with respect to its alleged noncompliance with any federal labor laws or the labor laws of

any state.

-- A statement of the classifications of Department work for which the contractor wishes to be eligible for award of a contract, and a detailed description of the experience of the contractor and its key personnel in performing such types of work.

-- For corporations, a current Certificate of Incorporation (for domestic corporations) or current Certificate of Authority (for foreign corporations), whichever is applicable, from the Connecticut Secretary of the State. For limited liability companies (LLC's), certified documentation from the Secretary of State showing that the LLC has been legally formed and organized in accordance with the Connecticut General Statutes, and that the LLC is not in default for failure to have filed a proper annual report with the Connecticut Secretary of the State.

-- A current Society for Protective Coatings (SSPC) certification, if the applicant is seeking prequalification in surface preparation and painting classifications.

-- Documentation of the applicant's possession of a current Connecticut demolition license, if the applicant is seeking prequalification for demolition work.

The contractor's prequalification statement shall be based upon information which is current at the time of filing, except that the financial portion of the statement may be based upon the contractor's most recently-completed fiscal year for which data is available, provided that the ending date of that fiscal year is not more than six (6) months prior to the date on which the contractor's prequalification statement is received by the Department.

The contractor's prequalification statement and all amendments thereto shall be accompanied by a properly-notarized affidavit from an officer or principal of the contractor, attesting that all statements contained in the statement are true and accurate. All required signatures in the contractor's prequalification statement shall be provided by individuals duly-authorized to sign for the contractor in the pertinent capacity.

Any contractor's prequalification statement which is not accurate,

responsive, and complete may be rejected by the Department. Further, any contractor who makes, or causes to be made, a false, deceptive or fraudulent statement in the contractor's prequalification statement may be deemed a nonresponsible bidder and may be subject to disqualification from bidding for Department contracts for a period of no more than two (2) years, as the Commissioner deems appropriate.

If at any time the Department obtains information concerning a prequalified contractor which, had that information been disclosed in the contractor's last statement, would, in the Commissioner's judgment, have led him or her to establish a different prequalification status for the contractor, the Department may modify the contractor's prequalification status accordingly. This shall be true even if the new information did not exist or was not known when the contractor submitted its last statement to the Manager.

b. Directions for Completing the Prequalification Application

PART A

DETAILS OF ORGANIZATION AND EXPERIENCE - On pages 2-4 of the CON-16, the applicant must answer all questions and provide all items of information requested pertaining to the organization and experience of the firm.

EQUIPMENT OWNERSHIP - On page 5 of the CON-16, the applicant must list and identify all construction equipment owned by the applicant, indicating equipment age, condition, purchase price, and book value. For purposes of prequalification, the book value is defined as the purchase price minus the total accumulated depreciation.

PREQUALIFICATION WORK CLASSIFICATIONS - On page 6 of the CON-16, the applicant must mark the type(s) of work for which prequalification is sought. Specific project experience related to the work classifications indicated on page 6 must be listed on page 4.

PART B

CONTRACTOR'S FINANCIAL STATEMENT - On pages 7 - 9 of the CON-16, the applicant must complete the entire contractor's financial

statement for its latest fiscal period.

In addition, the applicant must submit a separate audited or reviewed financial statement prepared by an independent Certified Public Accountant (CPA) for the same fiscal period. The financial statement shall include at minimum, the CPA's opinion statement, balance sheet, profit and loss statement and all related notes.

ATTESTATION REPORTS - On pages 10 or 11 of the CON-16, the appropriate report must be signed by the independent CPA who completed the report. These forms may not be altered or substituted for without the consent of the Department's Office of External Audits. The applicant's CPA must attest that the information contained on pages 7-9 of the application is fairly stated in all material respects in relation to the financial statements taken as a whole.

CERTIFICATION OF CONTRACTOR'S PREQUALIFICATION STATEMENT - On page 12 of the CON-16, the statement must be properly completed and signed by a duly-authorized representative of the applicant; must bear the Corporate Seal, if applicable; and must be properly notarized.

CERTIFICATE OF AUTHORITY - On page 13 of the CON-16, the statement must be properly completed and must identify those individuals in the contractor's organization who have the authority to sign bonds, legal documents and contracts on behalf of the applicant organization. The individuals given such authority must affix their signatures and indicate their titles, if applicable, on page one of the CON-16 application. This form may not be altered or substituted for; must bear the Corporate Seal, if applicable; and must be properly notarized.

PART C

PROPOSAL REQUEST OR SUBMISSION FORM (PART C), page 14 - The Part C, Bid Proposal Request or Submission Form, must be completed and submitted for the project contract for which the contractor intends to bid. In order to be eligible for award of a given contract, a bidder must have an approved CON-16 on file with the Department at the time of the bid opening for that contract. The Part C form must list ALL outstanding private and public work, both bonded and unbonded, in-State and out-of-State, in any jurisdiction, and must be signed by individuals

authorized to sign on behalf of the bidder as indicated in the approved CON-16 on file for that firm. Bidders that fail to provide all requested information, or that misrepresent such information, may have their bid rejected as nonresponsive and, if they become the apparent low bidder for a contract, may be deemed nonresponsible as such.

The Department reserves the right to request any additional information deemed necessary to substantiate the information and documentation submitted in the CON-16.

3. Requests by the Department for Additional Information

The Department may at any time request that a contractor provide it with additional information pertaining to any of the matters addressed, whether directly or indirectly, in the CON-16. The Department shall have the right to prescribe the amount of time that the contractor will be allowed in which to provide such additional information. The provisions of this paragraph shall also apply to any requests that the Department may make for corrections in the form or contents of a contractor' s statement. In addition, the contractor's prequalification statement shall include such additional information pertaining to the contractor's responsibility and qualifications as the Manager may request in writing.

4. Questions about the Prequalification Application

Contractors should address any questions concerning the prequalification application to Mr. Francis Maerz at (860) 594-3123.

5. Evaluation of the Contractor's Prequalification Statement: Bidding Capacity and Approved Classifications of Work

Each contractor filing a contractor's prequalification statement with the Department will be prequalified according to the classifications of work which the Contractor is approved to perform, and according to its bidding capacity.

a. Classifications of Work

The Manager shall review the contractor's prequalification statement and shall determine, in consultation with the Department's Construction

Division, the classification or classifications of work which the contractor is qualified to undertake, based upon its record of construction work, the experience and expertise of its personnel, the adequacy of its plant and equipment, its past performance, and such other factors as may be deemed pertinent by the Department. Representatives of the Department may request, and must be allowed, to visit and inspect the applicant's home office, job sites, and storage sites as the Department deems necessary in order to verify information contained in the contractor's prequalification statement. If the Department deems it appropriate, the Department may prequalify a contractor for Department work within a particular classification of work, but establish a project bid limit for the contractor with respect to that classification of work, to be based on the complexity and monetary values of the projects which the contractor has previously performed within that classification.

b. Bidding Capacity

Based on the information provided, the Department will establish a bidding capacity for the applicant, and determine the classifications of work for which the applicant is prequalified to bid. That bidding capacity shall be determined by the Department according to the formula set forth in the following paragraph, and in accordance with other considerations which the Department may deem to be appropriate. The applicant will be notified in writing of this determination.

The Department will determine the contractor's Maximum Capacity Rating (i.e., bidding capacity) according to the following formula:

$$M=F(SE+50\%\ TAD)$$

IN WHICH:

M = Maximum Capacity Rating

F = Ability Factor, 10 is used for all contractors

SE = Total Owner's/Stockholder's Equity

TAD = Total Accumulated Depreciation

c. Revisions of Work Classifications or Bidding Capacity

The Department may reduce or revoke the contractor's prequalification status based on the contractor's performance record with regard to quality of work, timely completion, debarment by other public agencies, changed financial status, or other pertinent factors.

If, after filing a contractor's prequalification statement, changes occur in the contractor's organization, finances, other resources or experience, which a reasonable person would believe had significantly affected the classifications or amount of work for which the Department ought to prequalify the contractor, the contractor shall promptly give detailed written notice of said changes to the Manager. The Department may then alter the contractor's prequalification in any way which the Manager believes is warranted by said changes, and the Manager will notify the contractor of the Department's decisions regarding those matters.

A prequalified contractor that desires, in light of such changes, to have the Department change the classifications of work or bidding capacity for which it has been prequalified, may file a new or revised statement, and may then request reconsideration of its prequalification status. Such a revised statement and request for reconsideration may not, however, be submitted any earlier than six (6) months after the contractor's last submittal of a prequalification statement acceptable to the Department.

The Department may waive this six-month waiting period if, in the opinion of the Manager, changes have occurred in the applicant's circumstances which warrant such an exception. So that the Department has time to consider such a request prior to a scheduled bid opening, the Department asks that additional information supporting such a request be submitted to the Department a minimum of twenty (20) days prior to requesting a bid proposal for the subject contract.

In any event, the contractor's bidding capacity will be adjusted, if appropriate, whenever the contractor files a new Part B with its bid proposal. But bidders will not be allowed to increase their bidding capacity by infusing additional capital into the bidder, or by other means, for the purpose of becoming eligible for award of a contract being bid, once the bidding for that contract has been closed.

E. EFFECTIVE PERIOD OF PREQUALIFICATION

Once a contractor has submitted a prequalification statement and the Department has determined its bidding capacity and the classifications of work for which the contractor is deemed to be prequalified, the contractor's prequalification remains in effect for a period of sixteen (16) months beginning with the contractor's close-of-business date for the contractor's most recently completed fiscal year, as that date is identified in the contractor's initial CON-16 for that 16-month period.

F. TIME TO FILE APPLICATION FOR RENEWAL OF PREQUALIFICATION

Any application for renewal of prequalification must be submitted to the Manager at least thirty (30) days prior to the expiration date of the current prequalification, in order to allow the Department sufficient time for evaluating and processing the renewal application.

VII. BID SOLICITATION

A. ADVERTISING OF BID SOLICITATIONS

The Pre-Bid Unit's responsibility begins with the receipt of tracings, design reports and proposed estimates. Once received, the information needed for advertising is compiled, and work orders are initiated for advertising costs, personnel expenses, and costs for printing the plans and specifications. Once the work orders are completed, they are forwarded to the Fiscal Services Unit for processing. During this same period, bid proposal forms and plans and specifications are prepared and forwarded to printing services for reproduction. In addition, checks are made on the status of any related Rights-of Way or utility agreements, and required permits such as environmental or Army Corp of Engineers permits. If the subject project is a federal participation project (that is, a project that is funded in part by a federal agency), the Department makes inquiries to the applicable federal funding agency or agencies (usually the Federal Highway Administration ["FHWA"]) to determine the status of any necessary

concurrence or authorization to proceed. At this time, the Department also inquires about any necessary PS & E approval (plans, specifications and estimate) by the federal agency, and requests wage schedules from the Department of Labor pursuant to Section 31-53 of the Connecticut General Statutes, as revised.

Once any necessary authorization to advertise is received from each federal funding agency, advertisements soliciting bids are placed in local newspapers, as well as in newspapers having State-wide circulation, pursuant to Section 4a-57 of the Connecticut General Statutes, as revised. In addition, advertising space is purchased in various construction industry publications such as those of the Construction Industry of Massachusetts and the Connecticut Construction Industry Association. Advertisements are also placed in Brown's Letter, the Dodge Report, and Northeast Minority News, Inc.

B. NOTICE TO CONTRACTORS SUBSCRIPTION PROGRAM

The Pre-bid Unit also encourages interested parties to enroll in a unique program called the "Notice to Contractors Subscription Program," which is run by the Unit. This program provides its subscribers with a continuous flow of information about Department construction contracts for which bids are being solicited. The information provided through the program includes the date, time and place of bid openings, as well as pertinent project information which may help a contractor determine if it wants to bid for any of the listed project contracts. Contractors may enroll in this program by calling (860) 594-3390 or writing to the Manager.

C. ISSUANCE OF PLANS AND SPECIFICATIONS

After the Pre-Bid Unit advertises a contract for bidding, the Unit begins the process of issuing, distributing and selling plans and specifications to interested parties. The Unit often receives inquiries regarding recently-advertised contracts. In many instances, general inquiries can be and are answered over the telephone, but in any instance in which the response will provide the contractor with information that has not been given and is not available in public documents, the inquiry must be made to the Manager in writing. It will then be necessary for the Department to issue a notice or addendum to all bidders in order to clarify or resolve any related issue or problems.

Plans and specifications are sold in two (2) sizes, a large size which is drawn to scale and a small size which is not. The purchase price for the plans varies and is determined by the number of plan sheets for the particular project. Interested parties can order plans and specifications by mailing to the Department a completed order form (available from the Contracts Section) along with a check made out for the full amount, payable to the Treasurer, State of Connecticut. Plans and Specifications may also be purchased at our Plans and Specifications Sales Office, located at 160 Pascone Place, Newington, CT 06111.

D. REQUESTS FOR BID PROPOSAL FORMS

Contractors may submit to the Manager a request for bid proposal form, on a request form provided by the Department (referred to by the Department as Part C of the CON-16), in which the contractor shall specify, among other things, the project contract for which it expects to bid and for which it is seeking bid proposal forms.

Each request for a bid proposal form shall also list the then-current total dollar value and the percent-of-work-to-be-completed (both of these to be measured by contract dollar value of the work) of all private and public work, whether inside or outside of the State of Connecticut, (a) which the contractor has contracted to perform (including all work by the contractor as a subcontractor and all subcontractor work to be performed under the contractor's contracts) and which has not yet been completed; and (b) for which the contractor is the apparent low bidder, but for which no contract has yet been awarded.

In addition, the contractor shall provide with its request for a bid proposal form a written description of any suspension, debarment, or other adverse government action taken against the contractor which has occurred since the date of the contractor's last prequalification statement.

The information provided on the Part C shall be sworn to by an officer or principal of the contractor. If, however, the contractor has already provided such a written description of particular changes to the Manager, it need not submit that information to the Department with its request for a bid proposal form.

VIII. BIDDING

A. BIDDING AS A JOINT VENTURE

A lawful combination of contractors each of which is prequalified individually in accordance with the provisions of this manual, shall be permitted to bid jointly as a joint venture; but contractors prequalified only as an identified member of a particular joint venture shall be allowed to bid only as a member of that joint venture. Such combination shall be limited to a maximum of three participants, unless otherwise allowed by the Department. Equal shares of the value of any joint bid, or such other percentages of responsibility for the project as may be specified by the joint venturers in their jointly-made request for a proposal, shall be charged against the current bidding capacity of each joint venturer. Each participant in a joint venture must submit a letter with the venture's bid proposal request, stating the participant's agreement to bid as a joint venture with the other named joint venturer(s), and indicating the percentage(s) of the project work which is to be the responsibility of each of the joint venturers. With respect to joint ventures, the bidding capacity of the joint venture as such will be the total of the bidding capacities of the joint venturers.

If a joint venture submits a bid proposal, it shall be considered to be a proposal by each of the joint venturers, jointly and severally, for the performance of the entire contract as a joint venture in accordance with the terms and conditions of the contract.

B. BIDDING BY RELATED ENTITIES

No bidders that have mutual financial interests, or common ownership, directors, officers or principal shareholders (i.e., shareholders holding at least [5%] of either the common or the preferred shares of the company's stock) may bid for the same Department contract. Such proscribed bidders shall include, but not be limited to, affiliates and subsidiaries of each other. If any non-bidding party has an ownership interest in more than one bidder that is bidding for a given contract, either directly or through the former's ownership interests in another company, no matter how removed in a vertical or horizontal chain of ownership that party might be from the bidders, the bids of those bidders shall not be accepted. In

addition, with respect to any given Department contract that is advertised for bidding, no bidder owned by, or in the chain of ownership of, a bonding company may bid against a bidder for whom a bond has been or will be provided by that bonding company for the given contract bidding.

C. BIDDING BY DISADVANTAGED BUSINESS ENTERPRISES AND SMALL BUSINESSES

The Department hereby notifies all bidders that it will act affirmatively to ensure that for any Department contract DBE's, Small Contractors, and Small Contractor Minority Business Enterprises that have been prequalified as a prime contractor by the Department will be afforded full opportunity to submit bids in response to the bid solicitation, and that they will not be discriminated against on the grounds of race, color, national origin, sex, sexual orientation, mental retardation or physical disability, including but not limited to blindness, in the Department's award of the subject contract.

D. REQUIREMENT THAT BID BE SUBMITTED BY THE CONTRACTOR THAT WAS ISSUED THE BID PROPOSAL FORM BY THE DEPARTMENT

Bid proposal forms are nontransferable. Any prospective bidder that has been issued a proposal form and transfers the form to any other person, party or corporation may be found nonresponsible as an apparent low bidder for any pending Department bids, or may, subject to statutory requirements, be disqualified for up to two (2) years from bidding for Department or State contracts. Any bid proposal from a bidder who was not issued a proposal form directly by this Department may be rejected.

E. BID PROPOSAL CONTENTS AND SUBMISSIONS

The Department's bid proposal form states the location and description of the work to be done, the estimated quantities of the work to be performed and materials to be furnished, the number of calendar days in which (or the date by which) the construction work must be completed, and the scheduled date and time for the opening of bids for the subject contract. The bidder will be furnished with any special provisions or requirements which vary from or are not contained in the Standard Specifications.

F. EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS AND SITE OF WORK

The bidder is required to examine carefully the site of work, and the proposal form, plans, special provisions, specifications, supplemental specifications, Contract form and other Contract documents for the work contemplated; and it will be assumed that the bidder has judged for and satisfied itself as to the conditions to be encountered, as to the character, quality and quantities of the work to be performed, materials to be furnished, and as to the requirements of the above documents, and in particular, but not limited to, what is required under each Contract item, or under the general cost of the work, or under another or more general Contract item in the absence of particular items.

The subsurface information furnished is based on the interpretation by the Department of investigations made only at the specific locations indicated, and no assurance is given that these conditions are necessarily typical of other locations or that they have remained unchanged since the field data were obtained. No assurance is given that the presence or absence of water in subsurface explorations at the time of these explorations will be representative of actual conditions at the time of construction. Such subsurface information as was obtained by the Department for its use in the design of the Project will be available for inspection by bidders through the Division of Contracts. Also, if available, samples of the materials encountered in the subsurface explorations may be examined by bidders at a location specified by the Department under advance arrangements made through the Division of Contracts. The contractor shall be solely responsible for all assumptions, deductions, or conclusions it may make or derive from its examination of any Department subsurface information, document or sample. In furnishing or making available such information, the Department makes no warranty or representation as to the actual conditions that may be encountered or actual quantities or distribution of quantities of work which will be required.

G. BIDDERS' KNOWLEDGE OF APPLICABLE LAWS

Bidders shall be deemed to know and understand all federal, state and local laws, ordinances and regulations and municipal bylaws which in any

manner apply to projects for which they bid; such legal requirements shall include but not necessarily be limited to those which apply to the conduct of the Project work, the equipment and materials to be used on the Project, or the treatment of individuals or classes of individuals in relationship to their involvement with the Project. A Contractor's ignorance of such requirements shall not, in any internal Department proceeding or in any claims or other legal proceeding, constitute justification for the Contractor's failure to consider such requirements in formulating a bid proposal, or for the Contractor's failure to ensure that such legal requirements are met with regard to any Department project in which that Contractor participates.

H. PREPARATION OF PROPOSALS

The bidder must submit its proposal on the forms furnished by the Department. The blank spaces in the proposal must be filled in correctly where indicated, for each and every item given; and the bidder must state, both in words and in numerals, written or printed in ink, or typewritten, the unit prices for which the bidder proposes to do each item of the work contemplated. In case of a discrepancy between the words and the numerals, the words shall govern. Ditto marks are not considered writing, printing or typewriting, and shall not be used. The bidder shall also show the total amount of its bid in the space provided in the proposal form. In case of any discrepancy, the unit prices expressed in words shall govern in determining the correct amount of the bid (except under certain exceptional circumstances; see X[F][2]below). The bidders shall sign their proposal correctly. If the proposal is made by an individual, his or her name and post office address must be shown. If the proposal is made by a firm, partnership or corporation, the proposal must be signed by an official of the firm, partnership or corporation authorized to sign contracts, and must also show the post office address of the firm, partnership or corporation.

I. ADHERENCE TO THE BID PROPOSAL FORM AND ITS REQUIREMENTS

Proposals may be rejected if they show any irregularities, omissions, alteration of form or additions not called for, or do not comply with instructions to bidders, or contain conditional or alternate bids, unless alternate bids or bids on alternate materials are specifically called for in the proposal form.

J. ESTIMATED QUANTITIES IN BID PROPOSAL FORMS

The quantities shown on the proposal form are approximate only and are given as a basis of calculation upon which the award of the contract is to be made. The Department does not assume any responsibility that these quantities shall remain unchanged in the actual construction, and the contractor shall not plead misunderstanding or deception because of any variation between estimated and final quantities. The Department reserves the right to increase or decrease any or all of the quantities shown on the proposal form as may be necessary to properly complete the contract project.

K. BIDDER'S OBLIGATIONS IF IT DISCOVERS AN ERROR IN THE CONTRACT

Any bidder that discovers an error in the bid proposal or contract documents, including but not limited to the plans, must report that error in a letter to the Manager within two (2) business days of discovering the error. A failure to do so may result in the Commissioner's finding the contractor to be nonresponsible as the low bidder for one or more Department contracts, and may be subject to other adverse action by the Department.

L. SWORN STATEMENT BY BIDDER

The bidder submitting a proposal shall file with the Department a sworn statement executed by, or on behalf of, the person, firm, association, partnership or corporation submitting the proposal, certifying that such person, firm, association, partnership 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 such proposal.

This sworn statement shall be an affidavit on a form supplied by the Department, executed and sworn to before a person who is authorized by the laws of the State to administer oaths, and shall be filed with the Department at the time of bidding.

M. REQUIRED CERTIFICATION OF ELIGIBILITY TO BID

Except as a bidder may explain in a writing attached to its bid proposal, the signature on behalf of the bidder on its bid shall constitute certification that the bidder and all persons associated with it in the capacity of owner, partner, director, officer, manager, internal auditor, or in any position involving the control or use of funds received from a federal or state agency in connection with construction activities:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in contracts or other programs by any state or federal department or agency;

(b) have not, within a three-year period preceding preparation of the bid proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining or attempting to obtain a government contract, or performing under the terms of a government or quasi-governmental transaction or contract; and have not violated any laws concerning antitrust practices, embezzlement, theft, forgery, bribery, falsification or destruction of records, the making of false statements, or receiving of stolen property;

(c) have not been indicted for or otherwise charged by a governmental entity with commission of any of the types of offenses described in paragraph (b) above; and

(d) have not within a three-year period preceding the preparation of the bid proposal, had a government transaction or contract to which it was a party terminated for cause or default:

If a bidder is unable to make the certification described above, the bidder shall attach to its proposal a detailed explanation of the extent and reason for that inability.

Any bidder submitting a proposal shall ensure that each of the bidder's lower-tier participants in the project (including, among any others, each subcontractor, supplier, materialman, lessor and vendor) prior to each lower-tier party's participation in the project, makes the same certification that is required of bidders under the preceding provisions of this article. A

copy of the required certification shall be provided by the bidder to each of its proposed lower-tier participants.

If any such proposed lower-tier participant is unable to make the full required certification, it shall submit to the bidder a detailed explanation of the extent and reason for that inability and the bidder shall submit a copy of said explanation to the Manager. If no such explanation from any proposed lower-tier participant is submitted by a bidder, the bidder shall be deemed to have thereby certified that all of its proposed lower-tier participants in the project have made the full required certification as required under this article. By virtue of federal regulations, no person currently suspended, debarred or voluntarily excluded under 49 C.F.R. or otherwise determined to be ineligible, as defined by said regulations, will be eligible to bid for or participate in any federal-aid project administered by the Department. By submitting a proposal to the Department, the bidder agrees that if it should be awarded the contract for such a federal-aid project it will not knowingly enter into any lower-tier transaction on that project with a person (including entities) who, by virtue of federal law or regulation, or by voluntary agreement, is currently ineligible to participate in such a project, unless after disclosure of such ineligibility, such participation is authorized by appropriate federal and State authorities.

N. DELIVERY OF BID PROPOSALS

Each proposal must be submitted in a sealed envelope, furnished by the Department. The blanks showing the name of the town and the description of the work to be done must be correctly filled in, and the envelope must be delivered to the Contracts Section, on or before the hour and date set forth in the bid advertisement for the opening of proposals, unless the bidder is otherwise directed.

O. WITHDRAWAL OF BID PROPOSALS

A bidder will be given permission to withdraw any proposal after it has been deposited with the Manager, provided the bidder makes its request in writing to the Manager before the related bids are opened. At the time of the opening of the proposals, when such proposal is reached, it will be returned to the bidder unopened. All requests pertaining to the withdrawal of proposals must be presented to the Manager prior to the time of opening any proposals for the project in question.

P. CONFIDENTIALITY OF PREQUALIFICATION APPLICATIONS AND BID PROPOSALS

Contractors' statements and requests for bid proposal forms submitted to the Department will be treated as confidential, for official Department use only, and will not be open to public inspection, except as may be required by law. It is the Department's position that pursuant to Connecticut General Statutes Section 1-210(b) (5) such documents are exempt from disclosure under the Connecticut Freedom of Information Act, and that the Department will not disclose such documents in response to requests made under that Act. (Contractors should understand, however, that such documents could be subject to disclosure in the unlikely event that they are responsive to a proper discovery request made in a court proceeding or arbitration.)

Q. QUESTIONS ABOUT THE BIDDING OR THE CONTRACT

Contractors must exercise some judgment in deciding how and to whom they address questions concerning the bidding for, or the terms of, a particular contract, or regarding the contract project, prior to the bid opening. If the question concerns general matters or procedures, it may be answered over the telephone by a member of the Contracts Section staff. If, however, the question asks for information that is not a matter of public record already, or for information or a clarification concerning the terms of the advertised contract or the underlying project, the question must be posed to the Manager in writing. It will then be necessary for the Department to issue a written notice or contract addendum to all bidders in order to clarify or resolve any related issue or problem.

IX. BID OPENING

On the date and at the time and place designated in the bid advertisement and in the related Notice to Contractors or addendum notice, the sealed bid proposals are publicly opened, read and posted in the Bid Record Book. Unit prices of the apparent low bidder and the second and third bidders are read publicly. At the time that a bid proposal is opened, it is checked for "responsiveness" in various respects, to determine if it complies with applicable statutes, regulations, and the Department's Standard Specifications. Each bidder is required to include with its bid

proposal the following documents: the completed bid proposal form, the required bid bond, an employer report of staffing in compliance with all applicable affirmative action and nondiscrimination requirements, a non-collusion affidavit, an updated Part C, and any other information required by the bid documents or by the Manager.

X. REVIEW OF BID PROPOSALS AND AWARD OF CONTRACTS

After the proposals are opened and read, the quantities will be extended and totaled in accordance with the written bid prices of the various bidders; and the bids will be verified or corrected. These results will be made public. As required by the project specifications or as directed by the Manager, but in no case more than fourteen (14) calendar days after the bid opening, the low bidder shall furnish to the Manager all required pre-award submittals, properly executed on the forms provided by the Department, such as, but not limited to: Disadvantaged Business Enterprises or Small Business Enterprises documentation; a schedule of progress or a time chart for the project work, in triplicate; and a complete statement of the origin and manufacture of any manufactured materials to be used in construction of the project, in quadruplicate. If requested, samples of such materials will be furnished at the bidder's expense. They may be subjected to the tests provided for in the contract to determine their quality and fitness for the work.

The Department may reject a bid as nonresponsive if the bidder does not make all required pre-award submittals within the time designated by the Department.

Charts or listings shall be on forms either furnished by or approved by the Department. The schedule of progress or time charts will show the plan of construction and the proposed method of carrying out this work, including a full statement of the equipment to be used. Such charts and listing may be used in consideration of the bids, and after award of the contract may be used by the Department as a check on the actual progress.

The Commissioner reserves the right to do any of the following without liability: a) waive technical defects in bid proposals as he or she may deem best for the interests of the State; b) reject any or all bids; c)

cancel the award or execution of any contract prior to the issuance of the "Notice to Proceed;" and d) advertise for new bids.

A. RULES FOR AWARD OF CONTRACTS IF THE AGGREGATE AMOUNTS OF THE BIDS FOR WHICH A GIVEN BIDDER IS THE APPARENT LOWEST BIDDER ON A GIVEN DAY WOULD PLACE THAT BIDDER OVER ITS BIDDING CAPACITY

A contractor may be issued and may submit proposals for more than one bid to be opened on the same day, but any and all bids which place the contractor in the position of exceeding its bidding capacity may be rejected. If the contractor is found to be the apparent lowest bidder for a project, and its bid for that project does not place the contractor over its bidding capacity or project bid limit, the contractor may be awarded a contract for that project; but any and all subsequent bids opened on the same day which would place the contractor in the position of exceeding its bidding capacity will be rejected. Any contractor submitting more than one bid proposal to be opened on a given day must submit with each such proposal a written statement that if the contractor is found to be the low bidder for a project on that day, and if its bidding for that project places it over its bidding capacity, it shall be deemed to have withdrawn from that bid and from any and all further bids to be opened that day which would place the contractor over its bidding capacity. If a bidder proves to be the apparent low bidder for more than one contract on a given day, but its capacity is adequate only for the award of one of the contracts, the bidder shall not have the power to choose which contract to accept; the bidder will be awarded the contract(s) in the order in which the bids for them were opened, until the bidder's bid capacity is insufficient to cover the "next" contract.

If a bidder proves to be the apparent low bidder for more than one contract for which bids are opened on a given day, and if that bidder has sufficient bidding capacity to be awarded more than one of those contracts, **but** the bidder believes that it will not have sufficient other resources to perform all of its obligations under more than one of those contracts, it may submit a written request to the Manager, explaining its lack of adequate resources and asking to withdraw from consideration for the award of more than one of those contracts. The decision to grant or deny such a request will lie in the sole discretion of the Department, and such a request will not

likely be granted, except under unusual circumstances of understandable mistake, improbable events, or other exceptional cause. The contractor may not, in any event, choose which of the contracts it will enter into from that day's bidding; it must accept them in the order of the bidding until its available resources are insufficient to meet the obligations of the "succeeding" contract.

B. NON-COLLUSION AFFIDAVITS

An affidavit of non-collusion on the form provided by CONNDOT (which complies with the requirements of Title 23, CFR Part 635.112) must be completed and returned with the submitted bid. Failure to return a properly-executed affidavit of non-collusion with the proposal will result in rejection of the bid as nonresponsive.

C. ADDITIONAL PART C

The Part C statement of outstanding work required when requesting a bid package for bids must still be submitted as a pre-bid requirement. In addition, a current Part C must be submitted with the bid proposal. The information in the Part C submitted with the bid must have been gathered or produced no more than two (2) weeks prior to the submission of the bid proposal.

It is understood that some bidders' record-keeping and accounting systems may not generate, or be able to generate, reports of outstanding work frequently enough to produce "new," up-to-date information within that time frame, in which case the bidder should submit the most recent information or report generated by its "system." The latter will be acceptable to the Department, however, only if the information submitted with the bid (a) was "pulled from the system" within two weeks prior to submission of the bid, and (b) the underlying information was accurately updated by the bidder's "system" no more than one-month before the bid submission. The Part C must be completed, notarized and signed by an individual authorized to sign legal documents and contracts on behalf of the bidder.

Failure to comply with these requirements will result in the bid being rejected as nonresponsive. If the Commissioner deems that a failure to provide timely and accurate information about its outstanding work was

intentional on a contractor's part, and was designed to deceive the Department as to the contractor's true bidding capacity or in some other respect, the Commissioner may deem that failure to be sufficient cause for finding the contractor nonresponsible if it should become the apparent low bidder for a Department contract.

In submitting a Part C, a contractor may, in lieu of providing on the Part C itself all of the information required under "NOTE" in the Part C, provide that information on a spreadsheet or other such supplemental form which shall be attached to the Part C. Such a supplement must, however, provide all of the information required under "NOTE" in the Part C, and the Part C must contain a statement specifically incorporating the contents of the attached supplement. In addition, the totals on the supplement must also be entered in the "Total" columns of the Part C, and the Part C itself still must be completed, notarized, sealed and signed by a duly-authorized representative of the contractor.

A photocopy of the Part C may be used for a submission, provided that it is a clear and complete reproduction of the Department's form. Prospective bidders that submit an altered original or altered photocopy of the form, or that submit some other type of reproduction of the form (produced by computer or other means), however, may have their bids rejected as nonresponsive, and may, if they become the apparent low bidder for a contract, be deemed nonresponsible as such.

D. BONDING

Except when otherwise specified, no proposal will be considered unless accompanied by a proposal guaranty in the form of a bond from a surety company, satisfactory to the Commissioner, on the form furnished by the Department, in an amount equal to at least 1/3 of the amount of the bid (rounded upward to the nearest penny), or unless the bidder has on file in the Contract Section an annual bid bond in the proper amount. If a bid proposal is not accompanied by a properly completed bid bond that meets all Department requirements for such, the bid proposal will be rejected as nonresponsive.

1. Bid Bonds and the United States Treasury Listing

No bid bond will be accepted by the Department unless: (a) it is

written by a bonding company that appears in the United States Department of the Treasury's current listing of sureties approved to issue bonding for federal construction projects, and (b) the bond is written for an amount that does not exceed the bonding company's underwriting limitation as stated in the current edition of said listing. Any bid proposal which includes a bid bond that does not meet these requirements will be rejected as nonresponsive.

2. Annual Bid Bonds

In lieu of submitting a bid bond for each individual contract project for which a contractor bids, the contractor may file with the Manager, on the form provided by the Department, an annual bid bond to cover any Department contracts for which the contractor becomes the apparent low bidder during the year covered by the bond. If the unused amount of an annual bid bond is insufficient to meet the bonding requirement for a given bid, the bidder must submit with its bid proposal a separate bid bond in the full amount required for that bid; the remaining portion of the annual bid bond may not be applied toward the bid bond requirement for the subject bid.

3. Defects in Bid Bonds

Any defect in a bid bond submitted with a bid proposal may result in the rejection of the related bid proposal. Any defect in the bond which the Department deems to be material will result in the automatic rejection of the bid. No such material defect may be cured once the bid is opened, since the desired coverage must take effect at the moment the bid is opened.

4. Reinsurance and Coinsurance

No reinsurance or comparable offering or arrangement will be accepted in connection with bid, payment, or performance bonds. Neither will coinsurance be acceptable with respect to bid bonds. Coinsurance will be acceptable, however, for payment and performance bonds, subject to the following limitations:

(a) For contracts with a bid price of less than ten million dollars ($10,000,000), no coinsurance will be accepted.

(b) For contracts with a bid price of between ten million dollars ($10,000,000) and fifty million dollars ($50,000,000), a maximum of two (2) insurers may provide the bonding as coinsurers.

(c) For contracts with a bid price of more than fifty million dollars ($50,000,000), a maximum of three (3) insurers may provide the bonding as coinsurers.

Proposed coinsurers must understand and agree that the Department will be entitled to hold all sureties which execute Payment and Performance Bonds as coinsurers jointly and severally liable for the entire obligation set forth by the bonds which they provide as coinsurers. Sureties will not be allowed to limit their individual obligations under such bonds to anything less than liability for the full amount of the bond.

E. UNBALANCED BIDS

While it is often impossible to designate precisely the dividing line between a balanced bid and an unbalanced bid, contractors should be aware that in some cases the Department may regard the unbalancing of a bid as so extreme, undeniable, or detrimental to the interests of the State that it may question the contractor about the apparent unbalancing of the bid proposal, and may, if the contractor cannot provide a satisfactory explanation of the apparent unbalancing, reject the bid as nonresponsive.

F. BIDS WITH ERRORS REGARDING STATEMENT OF PRICES

1. Bid Proposals in Which the Bidder Has Left One or More Spaces Blank in the Listing of Unit and Total Prices for Contract Line Items.

With respect to such bids, it has been the Department's practice to reject any bid proposal in which the bidder has neglected to fill in a unit price for more than one line item. The reason for this is that it is not the proper business of the Department to formulate bid prices for bidders who neglect to submit them. If more than one such price is missing from a bid proposal, we cannot use the provided figures to calculate what each of the missing figures would "need" to be. If only one unit price or total line item price is missing, however, one can calculate what the missing figure must be in order for the sum of the line item prices to equal the total bid price. Such

calculation provides at least a very strong indication of what the bidder intended.

But when both the unit and total price for more than one line item is missing, the Department has no reliable evidence of what each of the bidder's intended prices were at the time of the bidding. It is not enough to have the total bid price, since the Department needs to know what to pay for each unit or line item, particularly since the estimated quantities are likely to vary from the final, actual quantities.

In those instances in which the price for only one unit or line item is missing, and in which the missing figure seemingly can be derived by an arithmetical calculation from the figures given, the Department has looked at certain factors in deciding whether or not to recommend that the bid be rejected. (In doing so, the Department has borne in mind [a] that the law does not require a government contracting authority to accept any nonresponsive bid, no matter how minor or technical the defect which makes it nonresponsive; and [b] that such an authority may accept a defective bid if the defect is merely technical and therefore waiveable. See Department Standard Specifications § 1.03.01(a). The following are questions and factors that the Department has considered in such instances:

(a) If the missing figure can be calculated from the supplied figures, does that calculation provide a line item price that is mathematically consistent with the total bid price?

(b) Is the figure which is derived arithmetically from the supplied figures consistent with market prices for the subject item? In considering this question, the Department usually (i) compares the derived price to the prices for that item that were provided by the other bidders, and (ii) asks people in the Construction Division if, based on their experience, the derived price would be reasonable for the item in question.

(c) If the answers to the questions in (a) and (b) above are affirmative, the Department then asks the bidder to answer the following questions in writing: (i) Had the bidder intended to fill in the blank(s) that it left in the listing of proposed prices? (ii) If so, what figure(s) had the bidder intended to place in the blank(s)? (iii)

If the bidder had intended to supply the missing figure(s), why did it fail to do so?

If the bidder (i) answers the questions in (a) and (b) in the affirmative, (ii) confirms in writing that it had intended to provide the missing price information in its bid, (iii) identifies in writing an intended price that is the same as the price(s) that we derived arithmetically from the supplied information, and (iv) provides in writing a plausible and excusable reason for having failed to supply the missing information at the time of bid, then the Department will likely waive the defect and accept the bid – barring the presence of some other factor which would make it inappropriate or unfair to do so.

2. Bid Proposals in Which the Unit Price Provided in Words for a Contract Line Item and the Unit Price Provided in Numbers for That Item Conflict with Each Other or with the Total Price Given for That Line Item.

In some instances, the Department has made decisions that might seem to conflict with this provision of § 1.02.05 of the Standard Specifications: "In case of a discrepancy between the words and the numerals [provided by the bidder for unit prices], the words shall govern."

In many instances, the Department would apply this provision strictly as written. The exceptions have been for instances in which (a) the unit price given in words or the total price for the line item is not consistent with the estimated quantity and the unit price given in numbers; (b) the price which is inconsistent with the other figures is indisputably unreasonable as an estimate of the unit or item's cost; (c) the bidder, in writing, confirms that it made a mistake in supplying the inconsistent number, explains how the mistake was made, and informs the Department what the bidder intended the price to be; (d) the figure provided in that writing is arithmetically consistent with the other figures provided for the line item in question and for the total bid price; and (e) the figure provided is reasonable in light of the market price of the item, as reflected in the other bidders' prices for the item and in the experience of the Department's construction personnel.

When the price apparently and allegedly provided by mistake would be an outlandish price for the item in question, and when the difference between the bidder's total bid price using the mistaken figure and its total

bid price using the presumed, corrected figure would not make a difference in the bid order, the Department likely will use the corrected price in reviewing the bid, and will not reject the bid because of the discrepancy. If, however, the decision as to which figure to use could change the bid order, so that the identity of the low bidder depends upon it, the Department scrutinizes the bid even more strictly, and rejects it if there is any significant doubt about its acceptability.

If, in the judgment of the Department, the difference between the words and the numbers is not outlandish, is not plainly the result of a mistake, or would not make a difference in the identity of the low bidder, or if the totality of the circumstances do not, in the Department's opinion, establish the clear intent of the bidder, then the effective bid price or prices will be determined according to the rules set forth in Article 1.02.05 of the Standard Specifications, even if the bidder claims, after the bid opening, that the price or prices in question were supplied by mistake.

The pertinent portion of Article 1.02.05 provides: "... In case of a discrepancy [in the listing of unit prices in a bid proposal] between the words and the numerals, the words shall govern. Ditto marks are not considered writing, printing or typewriting, and shall not be used. The bidder shall also show the total amount of its bid in the space provided in the proposal form. In case of any discrepancy, the unit prices shall govern in determining the correct amount of the bid."

G. REJECTION OF BIDS OR BIDDERS

1. Nonresponsive Bids

The Commissioner may reject a **bid** proposal as **nonresponsive** if, for instance:

(a) the contractor's project bid limit, if any, is not greater than or equal to the Department's Engineer's estimate of the cost of the proposed work; or if the contractor's bidding capacity is not equal to or greater than the estimated project cost combined with the value of all other work

(i) which the contractor has undertaken but not yet completed and

(ii) for which the contractor is the apparent low bidder, but for which the contractor has not yet been awarded a contract;

(b) the contractor has failed to file with the Department a current contractor's prequalification statement and request for proposal which comply with this manual;

(c) the contractor, since its last submittal of a contractor's prequalification statement to the Department, has failed to provide the Department with revised information required under the provisions of this manual within such time as may have been prescribed by the Department for that purpose;

(d) the contractor has failed in some other way to provide accurate information or documents as and when requested by the Department (if, however, the Department deems a failure of this kind to have been designed to conceal or falsify the truth of a pertinent matter, that failure may constitute cause for finding the bidder);

(e) the bid bond or the non-collusion affidavit submitted with the bid proposal is defective or incomplete;

(f) the contractor has not submitted to the Department an affirmative action plan which is currently acceptable to the Department;

(g) the contractor has altered the bid proposal without the written consent of the Manager to do so;

(h) the contractor submits an alternate bid when the bid solicitation and proposal form do not call for one;

(i) the contractor has submitted a bid which the Department regards as unbalanced in a way that is extreme, undeniable, or detrimental to the interests of the State; or

(j) the contractor has submitted a bid proposal which in some way fails to make a full commitment to satisfy all requirements of the subject contract, including all applicable plans and specifications (such failures would include, but is not limited to, any alteration by the bidder of the terms of the bid proposal, the submission of a defective or unenforceable bond,

and the failure to provide pricing or other information required by the Department's bid proposal form).

2. Nonresponsible Bidders

The Commissioner may reject an apparent low **bidder** as **nonresponsible** if, for instance:

(a) in the opinion of the Commissioner, the contractor should not, for other reasons, be deemed to be qualified to receive an award of the pending contract under applicable laws and regulations;

(b) in the opinion of the Commissioner, the contractor does not have a satisfactory record of compliance with federal, state and local laws and regulations, including, but not limited to, those pertaining to the environment, discrimination, affirmative action obligations, occupational safety and health standards, labor and employment, and the prompt payment of subcontractors and suppliers;

(c) the contractor, or one or more individuals among the contractor's personnel, has been involved in acts of unethical business conduct, criminal conduct, or other wrongdoing;

(d) the contractor or an affiliate of the contractor is currently suspended or debarred by a government entity from bidding for contracts in a jurisdiction within this state or in any other jurisdiction;

(e) in the opinion of the Commissioner, the contractor lacks the necessary and sufficient organization, experience, equipment, skilled employees or agents, or the ability to obtain such equipment or personnel in a timely manner, which would enable the contractor to complete the project in accordance with the contract;

(f) in the opinion of the Commissioner, the contractor does not have a satisfactory record on one or more of its previous projects with any owner

(i) of performance in accordance with contract provisions, and

(ii) of cooperation with parties for or with whom it has worked, whether those projects were inside or outside of the State of

Connecticut, and whether those parties were public or private entities;

(g) in the opinion of the Commissioner, the contractor lacks the financial strength, resources or liquidity necessary to prosecute and complete the project in a timely and satisfactory manner;

(h) in the opinion of the Commissioner, the contractor lacks managers with the experience, knowledge, and good judgment in financial, business, and construction matters which the Commissioner deems necessary to ensure the satisfactory and timely completion of the project;

(i) in the opinion of the Commissioner, the contractor has made significant misrepresentations of fact to or about the Department; or

(j) the Commissioner deems, in his sole discretion, that there is reason to doubt that the contractor will fulfill all requirements of the contract and the law; that the contractor has the financial, managerial, and other resources necessary to do so; or that the contractor will exhibit integrity, honesty, cooperativeness, professionalism, and skill in all dealings related to the performance of the contract, and in all dealings that would arise from or relate to the contract or the underlying project.

XI. AWARD OF CONTRACTS

A. PERFORMANCE CONTRACT BOND AND PAYMENT BOND

The successful bidder, at the time of the execution of the contract, must deposit with the Transportation Manager of Contracts a surety company bond for the satisfactory completion of the work and surety company bond for the payment of debts pertaining to materials, rental of equipment, and labor used or employed in its performance under the Contract. These bonds shall each be in an amount equal to the amount of the Contract award. The forms of the bonds shall be those provided by the Department.

The surety must be a corporate surety licensed to sign surety bonds in the State of Connecticut. The costs of these bonds shall be included in the general costs of the Project, and the State shall not reimburse the Contractor for them under any listed Contract item.

B. FAILURE TO EXECUTE CONTRACT

Any bidder that fails, after ten (10) calendar days notice being given of acceptance of its bid, to enter into the contract and furnish the required surety bonds and insurance, shall forfeit its claim to the work; and its proposal guaranty shall be retained and used by the State, not as a penalty, but as liquidated damages.

XII. WITHDRAWALS OF CONTRACTS OR PROJECTS

As bidders should understand, the Department will also not award the subject contract to an apparent low bidder in those cases in which the Department decides to reject all bids and solicit new bids for the contract, or else to withdraw the project with no current plans to readvertise it. Possible reasons for withdrawing a project include, but are not limited to: losses of anticipated project funding, failure to obtain a necessary permit prior to bid or award, discovery of a mistake in estimated bid quantities or a defect in project design, pre-bid or pre-award design changes that significantly change the project, failure to include a necessary contract item in the bid proposal form, elimination of the first two or three lowest bids, failure to receive a bid price within the available funding limits, or failure to receive enough bids to assure the Department that it has received a competitive or reasonable proposal. In cases of such withdrawals for the best interests of the State or for purposes of maintaining the integrity of the bidding process, complaining bidders may or may not be afforded a meeting with Department representatives to discuss the Department's decision.

In some instances, events may have occurred which delayed the award of the contract for so long that it would not make economic sense for the Department to award the pending contract; **i.e.,** to do so would almost certainly result eventually in the contractor's filing a claim against the Department for substantial delay damages. Such a situation may arise, for instance, because the Department has had unexpected difficulty in obtaining a permit which is necessary for the project. In such instances, as an alternative to its withdrawing and readvertising the project contract, the Department may offer a responsible low bidder the opportunity to sign an agreement waiving all possible claims that might be based in part on the delay of the contract signing.

XIII. SUBMISSION AND REVIEW OF COMPLAINTS REGARDING BIDDING OR AWARDS

Connecticut law does not require the Department to provide for bid protests concerning its contract bid and award decisions, and the following does not establish any formal or enforceable right on the part of bidders to hearings on or appeals from the Department's bid and award decisions. Nonetheless, the Department is concerned that all such decisions be made on a sound, fair, and consistent basis. The Department gives, and will continue to give, serious consideration to all complaints from bidders concerning construction contract bids and awards. As most bidders know, the following describes the Department's longstanding practice regarding such complaints.

Any complaints regarding bids or proposed awards should be addressed in writing to the Transportation Manager of Contracts, Contracts Section, 2800 Berlin Turnpike, Room Number 1319, Newington, CT 06111. Such complaints must identify the pertinent project contract, and must state clearly and fully the nature of the complaint, all reasons for the complaint, and any action or remedy sought by the complainant.

Bids are reviewed initially by the staff of the Department's Contracts Section. Any decision to reject a bid as nonresponsive will be reviewed, in addition, by the Manager. If the Manager affirms such a decision, he or she will send (by mail and facsimile transmission) a letter to the bidder in question, informing it that its bid has been rejected, and explaining the reason(s) for said rejection.

If the bidder wishes to persuade the Department that its bid ought not to be rejected, or wishes to discuss related matters with Department representatives, the bidder must, within five (5) business days following the date of the Department's rejection letter, send to the Manager (by mail and facsimile transmission) a letter stating (1) the bidder's reasons, if any, for believing that its bid ought not to be rejected; (2) any questions that the bidder wants to pose to Department representatives regarding the matter; and (3) the bidder's request, if any, for a meeting with Department representatives to discuss the matter. Following receipt of such a letter, the contents of the letter will be examined and considered by the Director of the Division of Contract Administration, or some higher Department official.

The Department will then either (1) respond in writing to the complainant's letter, affirming or elaborating upon the Manager's initial decision, or modifying or reversing that decision, with an explanation of the reason(s) for doing so; or (2) offer the complainant a meeting with Department representatives at Department headquarters in Newington, at a specified time on a specified date. The complainant may bring legal counsel to such meeting. At such meeting, the complainant may make to Department officials whatever presentation it reasonably deems appropriate, and the complainant should submit copies of any documents that it wants the Department to consider in reviewing pertinent matters or requests.

An apparent low bidder may also be denied award of the subject contract if the Commissioner deems the bidder unqualified or otherwise nonresponsible as such. Causes for nonresponsibility may include, but shall not be limited to, those described in Section X(G)(2) above.

In any instance in which Department representatives believe that there is reason to be concerned about the responsibility of an apparent lowest bidder, one or more internal meetings to inquire into and discuss the causes for that concern will be held among officials from the Department's Bureau of Finance and Administration, and other affected Department bureaus or divisions. If the consensus of those in attendance is that there is good cause for such concern, a letter will be sent to the bidder by the Bureau Chief (the "Bureau Chief") of the Bureau of Finance and Administration, identifying the subject contract, stating the nature and cause of the Department's concerns, and inviting the bidder to a meeting ("nonresponsibility meeting") with Department representatives. If the bidder wishes to persuade the Department that the Commissioner should not deem it nonresponsible, or wishes to question Department officials as to what the bidder needs to do in order to avoid being found nonresponsible as the apparent lowest bidder for any future Department contracts, the bidder should accept the invitation in the manner prescribed in the Bureau Chief's letter.

Such a nonresponsibility meeting will be presided over by the Bureau Chief or by the Bureau Chief's delegee, and will be attended by other Department officials or employees involved with the causes for concern. Officials or employees from the bidder who have knowledge of matters related directly to the Department's concerns must attend the meeting. The bidder may also be represented at the meeting by any other individuals of its

choosing, including legal counsel. (Depending on the circumstances, the Bureau Chief may decide that more than one such meeting is necessary or appropriate.)

Subsequent to such meeting, the Bureau Chief, in consultation with other Department representatives, will make a decision as to whether or not to recommend to the Commissioner that the bidder should be deemed nonresponsible. If the Bureau Chief recommends such a finding, he or she will transmit to the Commissioner a memorandum setting forth the recommendation and specifying the reasons and support for that recommendation. The Commissioner will then review the recommendation and findings with other Department officials, and will inform the bidder of the Commissioner's decision by letter, either adopting the Bureau Chief's memorandum of recommendation and findings (which, in such case, shall be attached to the Commissioner's letter), or directing the Bureau Chief to continue the process of awarding the subject contract to the bidder.

If (1) the causes for the Department's concern regarding the bidder's responsibility have been the subject of prior meetings or correspondence between the Department and the bidder, (2) the Commissioner deems that the bidder has already had ample notice of those concerns and an ample opportunity to be heard in that connection, and (3) time constraints (such as those imposed by funding deadlines, public safety hazards, or scheduling sequences) make it impracticable to hold a nonresponsibility meeting of the kind described above, the Department may choose not to hold such a nonresponsibility meeting with representatives of the bidder before the Bureau Chief recommends a finding to the Commissioner.

If a bidder for a contract, although it was not itself an apparent lowest bidder for that contract, desires to pursue a complaint about the Department's decision **not** to reject another bidder's bid as nonresponsive, or **not** to find another bidder nonresponsible as the apparent low bidder for that contract, the complaining bidder should follow the same procedures described above for the complaints of apparent low bidders who are refused an award.