

## **102 BIDDING REQUIREMENTS AND CONDITIONS**

### **102.00 Field Office Responsibilities During Bidding**

When the Department advertises a project, the Resident Engineer and the Project Supervisor may receive calls from potential bidders with questions about the Project Plans, Special Provisions, and other contract requirements. The Special Provisions will contain extra requirements for Federal Aid projects. After careful review of all the contract documents, the Resident Engineer and Project Supervisor should answer questions with the intent of clarifying what is contained in the contract. The Resident Engineer and the Project Supervisor should not change or modify the contract requirements without a contract addendum.

To obtain the most competitive bids, the Department needs to ensure that each Contractor is bidding the same project with the same understanding of how to construct the work. When answering questions from potential bidders, Resident Engineers and Project Supervisors can keep the playing field level for all bidders by following these do's and don'ts:

#### Do's:

- Do be consistent in what you tell each Contractor.
- Offer widely accepted interpretations to ambiguous specifications.
- Do point out new contract provisions or unusual design requirements that most Contractors may be unfamiliar with.
- Do communicate to the Project Manager and the Project Designer your discussions with bidders.
- Do request addenda to be issued if all bidders need to be aware of changes in contract requirements that may significantly affect their bids.

#### Don'ts:

- Don't answer questions that involve value engineering portions of the work.
- Don't waive contract requirements or contradict provisions in the contract documents even if past practices are different.
- Avoid speculating on how the Department would enforce key contract provisions that would significantly affect the price of the work.
- Don't guess at a question. Find somebody who can answer the question accurately.

Questions related to project design and the design details should be handled by ADOT's Project Manager or the Project Designer.

Sharing information about the project site conditions may help ensure the Department receives competitive prices for the work it advertises. Cross sections, geotechnical reports, aerial photographs, and survey information should all be shared with the bidders.

Withholding information about site conditions or unusual regulatory requirements may lead to lower initial prices, but the low bidder will be quick to ask for extra work as soon as he or she finds actual site conditions different than anticipated. With ADOT's partnering environment, the Department, in the end, usually pays for the withheld information in the form of change orders and resolved contract claims.

Potential bidders should be allowed to review the cross sections for the project. Cross sections can be obtained from the ADOT Roadway Design Control Desk. Cross sections may not be available for pavement preservation projects (AC overlays, etc.), or small projects with very limited earthwork quantities (intersection improvements, etc.). For large earthwork projects, the Resident Engineer may want to have the survey crew stake the roadway centerline and any borrow limits. The staking can help bidders visualize the project work in relationship to its surroundings and the existing site conditions.

### **102.06 Interpretation of Quantities in the Bidding Schedule**

Bid quantities are only approximate. They are not intended to precisely define the amount of work the Contractor needs to do. The Contractors should perform detailed takeoffs from the plans and specifications to accurately determine the required amount of work and quantity of materials.

The bid quantities are presented in the contract for three reasons:

1. They standardize the bid requirements so that each Contractor is bidding for the same amount of work.
2. They provide a method of measurement for portions of the work so partial payments can be made.
3. They help to equitably adjust the contract amount when work needs to be added or deleted.

Contractors should compute their own quantities when estimating work. Contractors who rely on bid quantities for pricing their work do so at their own risk.

The problem of relying on bid quantities becomes particularly acute for Subcontractors and Material Suppliers who may not have easy access to the project plans and specifications. ADOT's Contracts & Specifications Section (C&S) will sell Project Plans and Special Provisions to anyone at a nominal price (usually the printing cost). In addition, the lobby area of C&S contains large tables where people can review plans and specifications without having to purchase them.

### **102.07 Examination of Plans, Specifications and Site of Work**

The previous two subsections mentioned that ADOT has an obligation to Contractors and their suppliers to both disclose all available site information and make contract documents readily available. The Contractors have a reciprocal obligation to thoroughly examine all of this information, visit the project site, and ask for clarification of anything they don't understand about the project. The intent of this specification is that both partners have a shared responsibility to produce accurate bids that truly reflect what the Department wants built and the costs associated with that work.

#### **Taking Advantage of Errors**

Occasionally the Inspector or Project Supervisor may feel that the Contractor is taking advantage of an error in the plans or specifications. This usually happens when the Contractor is being paid an excessive amount for some portion of the work. The reason may be due to a large quantity variation or a change in the nature of the work not contemplated by Designers. Sometimes Designers miscalculate quantities or simply misjudge what is required to accomplish the work.

Regardless of the reason, in order to get the Contractor to equitably adjust unit prices, the Department must show that the error or omission was readily apparent at the time of bidding. If the error or omission becomes apparent during construction, then the Department has no case under 102.07.

Other recourses the Department may pursue in this situation include:

- a reverse differing site condition under 104.02(B);
- a breach of the covenant of good faith and fair dealing described in 104.01(A); or
- a violation under 105.06 if the Contractor is taking advantage in some other way.

#### **Oral Explanations**

As mentioned above, ADOT staff needs to be careful about what they say to Contractors during the project bidding period. The intent is not to inadvertently change the contract requirements or to give an unfair advantage to one

or more bidders.

Although 102.07 contains a waiver about oral explanations or instructions, Contractors will still defend the legitimacy of oral explanations, especially if documentation or other evidence substantiating the communication can be produced. During prebid conferences, the discussions between the Department and potential bidders are recorded and transcribed. These discussions are no longer interpreted to be oral explanations or instructions since a written version does exist.

The bottom line is that representatives of the Department need to be very careful about what they say to bidders. This means researching and discussing questions internally, then answering accurately and consistently.

Keeping silent can be inappropriate especially when tough questions are asked about glaring defects in the plans or specifications. The intention shouldn't be to conceal, but to be honest and open to the bidders.