

1 **UNBALANCED BID PRICE:** A unit or lump sum bid price that does not reflect reasonable  
 2 actual costs that the bidder anticipates for the performance of the item in question along with  
 3 a reasonable proportionate share of the bidder's anticipated profit, overhead costs and other  
 4 indirect costs.

5 **WORK:** Work shall mean the furnishing of all labor, materials, equipment and incidentals  
 6 necessary or convenient to the successful completion of the project, or any part, portion or  
 7 phase thereof, and the carrying out of all duties and obligations imposed by the contract.

8 **WORKING DRAWINGS:** Stress sheets, shop drawings, erection drawings, falsework  
 9 drawings, cofferdam drawings, catalog cuts, or any other supplementary drawings or similar  
 10 data that the Contractor is required to submit to the Engineer for review or approval.

## 11 SECTION 102

### 12 BIDDING REQUIREMENTS AND CONDITIONS

#### 13 102-1 INVITATION TO BID

14 After the advertisement has been made, an Invitation to Bid will be made available on the  
 15 Department's website to interested parties, informing them that bids will be received for the  
 16 construction of specific projects. Such invitations will indicate the contract identification  
 17 number, length, locations and descriptions; a general summary of the items and approximate  
 18 quantities of work to be performed; and the time and place for the public opening and reading  
 19 of the bids received. Information concerning the cost and availability of plans and proposals  
 20 will be indicated in the Invitation to Bid.

21 All projects will be advertised in daily newspapers throughout the state before the bid  
 22 opening.

#### 23 102-2 CONTRACTOR PREQUALIFICATION

24 Contractors desiring to perform work on Department projects shall prequalify with the  
 25 Department. Upon prequalification, contractors will be placed on the Department's  
 26 Prequalified Contractors' List. The requirements for prequalification are as follows:

##### 27 (A) Bidder Prequalification

- 28 (1) Applicant shall submit a completed Bidder Experience Questionnaire, along with any  
 29 additional supporting information requested by the Department, as noted in the  
 30 experience questionnaire package. Additional requirements for prequalification may  
 31 be set forth in the bid proposal.
- 32 (2) Applicant shall demonstrate that he has sufficient ability and experience in related  
 33 transportation construction projects to perform the work specified in the  
 34 Department's contracts, including the type and dollar value of previous contracts.
- 35 (3) Applicant shall demonstrate a history of successful performance and completion of  
 36 projects in a timely manner, subject to contract time adjustments.
- 37 (4) Applicant shall demonstrate the financial ability to furnish bonds as specified in  
 38 NCGS § 44A-26 and any other relevant statutes.
- 39 (5) Applicant shall demonstrate sufficient and readily available equipment to perform  
 40 transportation construction contracts in a timely manner.
- 41 (6) Applicant shall demonstrate sufficient available experienced personnel to perform  
 42 transportation construction contracts. The identities and qualifications of both  
 43 management and labor work force shall be provided.
- 44 (7) Applicant shall provide names and addresses of persons for whom the firm has  
 45 performed related work. Responses from the references shall be on Department  
 46 forms and shall be received by the Department before evaluating the request for  
 47 prequalification.

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1 (8) Applicant shall provide any information requested concerning the corporate and  
2 operational management structure of the company, the identity of persons or entities  
3 owning stock or other equity interest in the company, and the relationship between  
4 the applicant and any other company prequalified or applying for prequalification  
5 with the Department.

6 (9) Applicant shall demonstrate, at the time of application for prequalification, the  
7 financial capacity to successfully complete projects containing the work types they  
8 so designate.

9 (10) Applicant shall provide further information as may be required to determine that the  
10 firm is a responsible bidder.

11 (11) Applicant shall submit an original completed Pre-Bid Non-Collusion Affidavit,  
12 Debarment Certification and Gift Ban Certification in accordance with Article 102-9.  
13 These forms can be found on the Department's website.

14 (12) Applicant shall submit a completed Safety Index Rating Form with the Questionnaire  
15 and annually thereafter in accordance with Subarticle 102-2(D).

16 Bidders shall renew annually and shall requalify every 3 years in accordance with  
17 Subarticle 102-2(E).

18 The Bidder Experience Questionnaire shall be completed in its entirety and signed by  
19 an officer of the firm. The officer's signature shall be notarized. In addition to  
20 submitting the Bidder Experience Questionnaire, the prospective bidder shall submit  
21 supporting information in a format of his choosing to address the requirements listed  
22 above.

23 It is recommended that the prospective bidder file all required statements and documents  
24 with the State Contractual Services Engineer no less than 4 weeks before a given letting.  
25 A bid shall not be opened unless all prequalification requirements have been met by the  
26 bidder and have been found acceptable by the Engineer.

### 27 **(B) Purchase Order Contractor Prequalification**

28 Contractors who have been approved to be placed on the Prequalified Bidders' List as  
29 noted above may perform work for the Department as a Purchase Order Contractor and  
30 need not apply further. However, Purchase Order Contractors will not be placed on the  
31 Prequalified Bidders' List unless they submit through the prequalification process  
32 described above.

33 (1) Applicant shall submit a completed Department Purchase Order Contractor  
34 Application along with any additional supporting information requested by the  
35 Department, as noted in the application. Additional requirements for  
36 prequalification may be in the bid proposal.

37 (2) Applicant shall demonstrate that it has sufficient ability and experience in related  
38 transportation construction projects to perform the work specified in Department  
39 contracts, including the type and dollar value of previous contracts.

40 (3) Applicant shall demonstrate a history of successful performance and completion of  
41 projects in a timely manner, subject to contract time adjustments.

42 (4) Applicant shall demonstrate the financial ability to furnish bonds as specified in  
43 NCGS § 44A-26 if the applicant intends to pursue contracts exceeding \$500,000.

44 (5) Applicant shall demonstrate sufficient and readily available equipment to perform  
45 transportation construction contracts in a timely manner.

46 (6) Applicant shall provide further information as may be required to determine that the  
47 firm is a responsible contractor.

1 (7) Applicant shall submit an original completed Pre-Bid Non-Collusion Affidavit,  
2 Debarment Certification and Gift Ban Certification. These forms can be found on  
3 the Department's website.

4 (8) Applicant shall submit a completed Safety Index Rating Form with the application  
5 and annually thereafter in accordance with Subarticle 102-2(D).

6 Contractors shall renew annually and requalify every 3 years in accordance with  
7 Subarticle 102-2(E).

8 The application shall be completed in its entirety and signed by an officer of the firm.  
9 The officer's signature shall be notarized. In addition to submitting the application, the  
10 firm shall submit supporting information in a format of his choosing to address the  
11 requirements listed above.

12 It is recommended that the applicant file all required statements and documents with the  
13 State Contractual Services Engineer no less than 4 weeks before a given bid opening for  
14 their bid to be considered. A bid shall not be opened unless all prequalification  
15 requirements have been met by the applicant and have been found acceptable by the  
16 Engineer.

17 **(C) Subcontractor Prequalification**

18 Contractors who have been approved to be placed on the Prequalified Bidders' List or the  
19 POC Prime Contractors' List as noted above may perform work for the Department as  
20 a subcontractor and need not apply further. However, subcontractors will not be placed  
21 on the Prequalified Bidders' List unless they submit through the prequalification process  
22 described above.

23 (1) Applicant shall submit a completed Subcontractor Application along with any  
24 additional supporting information requested by the Department. Additional  
25 requirements for prequalification may be in the bid proposal.

26 (2) Applicant shall demonstrate sufficient ability and experience in related transportation  
27 construction projects to perform the work specified in Department contracts,  
28 including the type of previous contracts.

29 (3) Applicant shall demonstrate sufficient and readily available equipment to perform  
30 transportation construction contracts in a timely manner.

31 (4) Applicant shall submit a completed Safety Index Rating Form with the Subcontractor  
32 Application and annually thereafter in accordance with Subarticle 102-2(D).

33 (5) Applicant shall provide further information as may be required.

34 Subcontractors shall renew annually and shall requalify every 3 years in accordance with  
35 Subarticle 102-2(E).

36 The Subcontractor Application shall be completed in its entirety. In addition to  
37 submitting the Subcontractor Application, the prospective subcontractor shall submit  
38 supporting information in a format of their choosing to address the requirements listed  
39 above.

40 The subcontractor shall file all required statements and documents with the State  
41 Contractual Services Engineer no less than 4 weeks before beginning work.  
42 A subcontractor will not be allowed to begin work until all prequalification requirements  
43 have been met by the subcontractor and have been found acceptable by the Engineer.

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### (D) Safety Index

The Department will conduct a review of each firm's safety index. To be prequalified, each firm shall maintain a satisfactory safety index. An overall safety index of at least 60 is considered satisfactory. An index between 60 and 69 may be considered marginal and may result in an in-depth safety audit of a firm's safety practices. An overall safety index equal to or less than 59 is considered unsatisfactory and will prohibit prequalification of new firms.

A score of 59 or less for renewing or requalifying firms will result in disciplinary action pursuant to Subarticles 102-2(D)(1) through 102-2(D)(4). The Engineer may require the Contractor to state in writing the reason for the unsatisfactory rating and produce such supporting data as may be necessary to evaluate the circumstances surrounding the rating. When the Contractor cannot provide justification to raise the unsatisfactory safety index, the Engineer may invoke one or more of the following sanctions:

- (1) Removal of the firm from the Prequalified Contractors' List,
- (2) Placement of the firm on probation for up to 2 years,
- (3) Auditing of the firm's safety practices and
- (4) Giving a written warning to correct any safety deficiencies.

Firms not approved or disqualified to bid or perform subcontract work due to an unsatisfactory safety index will not be approved or reinstated to bid or perform subcontract work until they can provide adequate evidence that all safety deficiencies have been corrected to the satisfaction of the Engineer.

### (E) Renewal and Requalification

Renewal of firms shall occur annually on or before the firm's anniversary date. Renewal shall consist of submitting an updated application. Bids of firms who fail to submit these documents by their anniversary date will not be considered until such time as these documents are received and approved by the Engineer. The Engineer may review performance related issues when considering firms for renewal. Subcontractors who fail to submit these documents by their anniversary date will not be allowed to begin work on any new contracts until these documents are received and approved by the Engineer.

Requalifying of firms shall occur every 3 years. Requalifying shall consist of submitting an updated application. Bids of firms who fail to submit these documents by their anniversary date will not be considered until such time as these documents are received and approved by the Engineer. The Engineer may review performance related issues when considering firms for requalification. Subcontractors who fail to submit these documents by their anniversary date will not be allowed to begin work on any new contracts until these documents are received and approved by the Engineer.

It is recommended that the renewing or requalifying firm file all required statements and documents with the State Contractual Services Engineer no less than 4 weeks before a given letting for their bid to be considered. Following the anniversary date, a bid will not be opened unless all renewal or requalification requirements have been met by the bidder and have been found acceptable by the Engineer. Following the anniversary date, a subcontractor may not begin any new work unless all renewal or requalification requirements have been met by the firm and have been found acceptable by the Engineer.

### 102-3 PROPOSALS AND PLAN HOLDER LISTS

On Department projects advertised through the Raleigh Central Office, the bidder shall purchase a proposal for each project for which he intends to submit a bid. The prospective bidder will be required to pay the Department the sum stated in the Invitation to Bid for each copy of the proposal and set of plans purchased.

1 This proposal will state the location of the contemplated construction and show a schedule of  
2 contract items with the approximate quantity of each of these items for which bid prices are  
3 invited. It will set forth the date and time for the opening of bids. The proposal will include  
4 any special provisions or requirements that vary from, or are not contained in, the plans or  
5 *Standard Specifications*.

6 The plans, *Standard Specifications* and other documents designated in the proposal shall be  
7 considered a part of the proposal whether or not attached.

8 The names and identity of corporations, firms, partnerships, individuals, LLCs or joint  
9 ventures who have requested plans or proposals for the purposes of bidding shall be made  
10 public, except that a potential bidder who obtains a set of plans/proposals may, at the time of  
11 ordering, request that his name remain confidential.

#### 12 (A) Paper Bids

13 The proposal will include the printed contract forms and signature sheets for execution by  
14 both parties to the contract. In the event the bidder is awarded the contract, execution of  
15 the bid by the bidder is considered the same as execution of the contract.

16 All papers bound with the proposal are necessary parts thereof and shall not be detached,  
17 taken apart or altered.

#### 18 (B) Electronic Bids

19 The bidder shall bid in accordance with Subarticle 102-8(B).

### 20 102-4 COMBINATION BIDS

21 If the Department so elects, proposals may be issued for projects in combination or separately,  
22 so that bids may be submitted either on the combination or on separate units of the  
23 combination. The right is reserved to make awards on combination bids or separate bids to  
24 the best advantage of the Department. No combination bids, other than those specified by the  
25 Department in the proposal will be considered.

### 26 102-5 INTERPRETATION OF QUANTITIES IN PROPOSAL

27 The quantities appearing in the proposal are approximations only and are to be used solely for  
28 the comparison of bids. Payment to the Contractor will be made in accordance with the  
29 contract.

30 When revisions in the plans are made by the Engineer that affect the quantities shown for  
31 lump sum items, adjustment in compensation may be made under the provisions of  
32 Articles 104-3 or 104-7.

### 33 102-6 EXAMINATION OF PLANS, SPECIFICATIONS, CONTRACT AND SITE 34 OF WORK

35 The bidder shall examine carefully the site of the work contemplated, the plans and  
36 specifications, and the proposals and contracts therefor. The submission of a bid shall be  
37 conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be  
38 encountered; the character, quality and scope of work to be performed; the quantities of  
39 materials to be furnished; and the conditions and requirements of the proposal, plans and  
40 contract under which his bid is offered.

41 A bidder or contractor is cautioned to make such independent investigation and examination  
42 as he deems necessary to satisfy himself as to conditions to be encountered in the performance  
43 of the work and with respect to possible local material sources, the quality and quantity of  
44 material available from such property, and the type and extent of processing that may be  
45 required to produce material conforming to the contract.

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### 1 102-7 SUBSURFACE INVESTIGATION REPORT

2 If a subsurface investigation report is available on a project, a copy may be obtained by the  
3 plan holders upon request.

4 The subsurface report and the subsurface investigation on which it is based was made for  
5 study, planning and design and not for construction or pay purposes. The various field boring  
6 logs, rock cores and soil test data available may be reviewed or inspected in Raleigh at the  
7 office of the Geotechnical Engineering Unit. Neither the subsurface investigation report nor  
8 the field boring logs, rock cores, or soil test data is part of the contract.

9 General soil and rock strata descriptions and indicated boundaries are based on a geotechnical  
10 interpretation of all available subsurface data and may not necessarily reflect the actual  
11 subsurface conditions between borings or between sampled strata within the borehole. The  
12 laboratory sample data and the in-place test data can be relied on only to the degree of  
13 reliability inherent in the standard test method. The observed water levels or soil moisture  
14 conditions indicated in the subsurface investigations are as recorded at the time of the  
15 investigation. These water levels or soil moisture conditions may vary considerably with time  
16 according to climatic conditions including temperature, precipitation and wind, as well as  
17 other nonclimatic factors.

18 The bidder or contractor is cautioned that details shown in the subsurface investigation report  
19 are preliminary only; the final design details may be different. For bidding and construction  
20 purposes, refer to the contract for final design information on this project. The Department  
21 does not warrant or guarantee the sufficiency or accuracy of the investigation made, nor the  
22 interpretations made or opinions of the Department as to the type of materials and conditions  
23 that may be encountered. The bidder or contractor is cautioned to make independent  
24 subsurface investigations, as he deems necessary, to satisfy himself as to conditions to be  
25 encountered on this project. The Contractor shall have no claim for additional compensation  
26 or for an extension of time for any reason resulting from the actual conditions encountered at  
27 the site differing from those indicated in the subsurface investigation.

### 28 102-8 PREPARATION AND SUBMISSION OF BIDS

29 The bidder shall submit a unit or lump sum price for every item in the proposal other than  
30 items that are authorized alternates to those items for which a bid price has been submitted.

31 An amount bid shall be entered in the proposal for every item on which a unit price has been  
32 submitted. As an exception to the above, when the proposal permits a bidder to submit a bid  
33 on only a portion of the work covered by the entire proposal, the bidder shall then submit  
34 a unit or lump sum price for every item constituting that portion of the work on which the  
35 bidder has elected to place a bid other than items that are authorized alternates to those items  
36 for which a bid price has been submitted.

37 In the case of lump sum items, the price shall be written in figures in the Amount Bid column  
38 in the proposal.

39 The bid shall not contain any unauthorized additions, deletions or conditional bids.

40 The bidder shall not add any provision reserving the right to accept or reject an award or to  
41 enter into a contract pursuant to an award.

42 The bid shall not be an unbalanced bid.

#### 43 (A) Paper Bids

44 (1) The proposal provided by the Department shall be used and shall not be taken apart  
45 or altered. The bid shall be submitted on the same proposal that has been furnished  
46 to the bidder by the Department.

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- 1           The bid shall be accompanied by a bid bond on the form furnished by the  
2           Department or by a bid deposit. The bid bond shall be completely and properly  
3           executed in accordance with Article 102-10. The bid deposit shall be a certified  
4           check or cashier's check in accordance with Article 102-10.
- 5           (2) All entries including signatures shall be written in ink.
- 6           (3) The unit prices shall be rounded off by the bidder to contain no more than 4 decimal  
7           places.
- 8           (4) An amount bid shall be entered in the proposal for every item on which a unit price  
9           has been submitted. The amount bid for each item other than lump sum items shall  
10          be determined by multiplying each unit bid price by the quantity for that item and  
11          shall be written in figures in the Amount Bid column in the proposal.
- 12          (5) In the case of lump sum items, the price shall be written in figures in the Amount Bid  
13          column in the proposal.
- 14          (6) The total amount bid shall be written in figures in the proper place in the proposal.  
15          The total amount bid shall be determined by adding the amounts bid for each item.
- 16          (7) Changes in any entry shall be made by marking through the entry in ink and making  
17          the correct entry adjacent thereto in ink. A representative of the bidder shall initial  
18          the change in ink.
- 19          (8) The bid shall be properly executed. To constitute proper execution, the bid shall be  
20          executed in strict compliance with the following:
- 21               (a) If a bid is by an individual, it shall show the name of the individual and shall be  
22               signed by the individual with the word *Individually* appearing under the  
23               signature. If the individual operates under a firm name, the bid shall be signed  
24               in the name of the individual doing business under the firm name.
- 25               (b) If the bid is by a corporation, the President, Vice President, or Assistant Vice  
26               President shall execute it in the name of the corporation. The Secretary or  
27               Assistant Secretary shall attest it. The seal of the corporation shall be affixed. If  
28               the bid is executed on behalf of a corporation in any other manner than as above,  
29               a certified copy of the minutes of the Board of Directors of said corporation  
30               authorizing the manner and style of execution and the authority of the person  
31               executing shall be attached to the bid or shall be on file with the Department.
- 32               (c) If the bid is made by a partnership, it shall be executed in the name of the  
33               partnership by one of the general partners.
- 34               (d) If the bid is made by a limited liability company, it shall be signed by the  
35               manager, member or authorized agent and notarized.
- 36               (e) If the bid is a joint venture, it shall be executed by each member of the joint  
37               venturers in the appropriate manner set out above. In addition, the execution by  
38               the joint venturers shall appear below their names.
- 39               (f) The bid execution shall be notarized by a notary public whose commission is in  
40               effect on the date of execution. Such notarization shall be applicable both to the  
41               bid and to the Non-Collusion Affidavit, Debarment Certification and Gift Ban  
42               Certification that is part of the signature sheets.
- 43          (9) The bid shall be placed in a sealed envelope and shall have been delivered to and  
44          received by the Department before the time specified in the Invitation to Bid.

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### 1 (B) Electronic Bids

2 The Department will not be responsible if a bidder cannot submit his bid to Bid  
3 Express®. Claims will not be accepted for such failure.

4 (1) Obtain an account and valid Digital Signature from Bid Express® to bid  
5 electronically.

6 (2) Subarticle 103-2(B) will apply to Electronic Bidding.

7 (3) The bid shall be accompanied by an electronic bid bond or by a bid deposit. The bid  
8 bond shall be completely and properly executed in accordance with Article 102-10.  
9 The bid deposit shall be a certified check or cashier check in accordance with  
10 Article 102-10.

11 (4) The bidder shall provide a Non-Collusion Affidavit, Debarment Certification and  
12 Gift Ban Certification in accordance with Articles 102-2 and 102-9.

13 (5) All addenda and attachments will be considered part of the bid.

14 (6) All bids shall be submitted with an electronically affixed digital signature. Affixing  
15 a digital ID to the bid shall be the equivalent of signing before a notary public.

16 (7) By submitting an electronic bid, the bidder certifies that he has read, understands,  
17 accepts, acknowledges and agrees to comply with all statements, conditions and  
18 specifications in the electronic bid submittal.

19 (8) Bids will be decrypted, opened, printed to paper and read publicly in accordance  
20 with Article 102-13.

21 (9) The Contractor shall submit a fully executed Execution of Contract, signature sheet  
22 and payment and performance bonds within 14 calendar days of receipt of award  
23 letter in accordance with Article 102-9.

### 24 **102-9 NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND** 25 **GIFT BAN CERTIFICATION**

#### 26 (A) General

27 Prime Contractors and lower tier participants in each transaction involving public funds  
28 shall execute a Non-Collusion Affidavit, Debarment Certification and Gift Ban  
29 Certification. Transactions that require certifications from lower tier participants are:

30 (1) Transactions between a Prime Contractor and a person, other than for a procurement  
31 contract, for goods or services, regardless of type.

32 (2) Procurement contracts for goods and services, between a prime contractor and  
33 a person, regardless of type, expected to equal or exceed the Federal small purchase  
34 threshold fixed at 10 U.S.C. 2304(g) as revised [currently \$100,000] under a prime  
35 contract.

36 (3) Procurement contracts for goods or services between a prime contractor and  
37 a person, regardless of the amount, under which that person will have a critical  
38 influence on or substantive control over the transaction. Such persons include, but  
39 are not limited to, bid estimators and contract managers.

40 The certifications for both the Prime Contractor and the lower tier participants shall be on  
41 a form furnished by the Department to comply with Federal Highway Administration  
42 requirements, as published in 49 CFR Part 29. The Prime Contractor is responsible for  
43 obtaining the certifications from the lower tier participants and is responsible for keeping  
44 them as part of the contract records.



**(B) Non-Collusion Affidavit**

In compliance with applicable Federal and State laws and regulations, each and every bidder shall furnish the Department with an affidavit certifying that the bidder has not entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with his bid on the project. The affidavit shall conclusively indicate that the bidder intends to do the work with its own bona fide employees or subcontractors and is not bidding for the benefit of another contractor.

**(C) Debarment Certification**

In compliance with applicable Federal and State laws and regulations, each and every bidder shall furnish the Department with a debarment certification, stating that he is not debarred, or if he is debarred, an explanation shall be included. The explanation will not necessarily result in denial of participation in a contract. Failure to furnish a certification or an explanation will be grounds for rejection of a bid. If the prequalified bidder's status changes, he shall immediately submit a new fully executed debarment certification with an explanation of the change.

Failure to have a fully executed Non-Collusion Affidavit, Debarment Certification and Gift Ban Certification on file in the Contractual Services Office before submitting bids will cause those bids to be non-responsive.

**(1) Paper Bid**

Execution of Bid, Non-Collusion Affidavit, Debarment Certification and Gift Ban Certification forms will be included in the proposal as part of the signature sheets. Execution of the signature sheets will constitute Execution of the Bid, Non-Collusion Affidavit, Debarment Certification and Gift Ban Certification. The signature sheets shall be notarized.

**(2) Electronic Bids**

The prequalified bidder shall have a fully executed Non-Collusion Affidavit, Debarment Certification and Gift Ban Certification on file in the Contractual Services Office before submitting his bid. Forms may be downloaded from the Department's website.

The bidder shall provide a Debarment Certification in the electronic bid submittal. If a bidder cannot provide the Debarment Certification required, he shall provide an explanation in the Bid Express® miscellaneous folder within the .ebs file.

Within 14 calendar days after notice of award is received by him, the successful bidder shall submit a fully executed Execution of Contract, Non-Collusion Affidavit, Debarment Certification and Gift Ban Certification signature sheet.

**102-10 BID BOND OR BID DEPOSIT**

Each bid shall be accompanied by a corporate bid bond or a bid deposit of a certified or cashier's check in the amount of at least 5% of the total amount bid for the contract. When a bid is secured by a bid deposit, the execution of a bid bond will not be required.

If the bidder has failed to meet all conditions of the bid bond and the Department has not received the amount due under the bid bond, the bidder may be disqualified from further bidding as provided in Article 102-15.

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1 No bid will be considered or accepted unless accompanied by one of the foregoing securities.  
2 The bid bond shall be executed by a corporate surety licensed to do business in  
3 North Carolina. The certified check or cashier's check shall be drawn on a bank or trust  
4 company insured by the Federal Deposit Insurance Corporation. Both shall be made payable  
5 to the Department of Transportation in an amount of at least 5% of the total amount bid for  
6 the contract. The condition of the bid bond or bid deposit is: the Principal shall not withdraw  
7 its bid within 60 days after the opening of same and, if the Department shall award a contract  
8 to the Principal, the Principal shall, within 14 calendar days after the notice of award is  
9 received by him, give payment and performance bonds with good and sufficient surety as  
10 required for the faithful performance of the contract and for the protection of all persons  
11 supplying labor and materials in the prosecution of the work. In the event of the failure of the  
12 Principal to give such payment and performance bonds as required, then the amount of the bid  
13 bond shall be immediately paid to the Department as liquidated damages, or, in the case of a  
14 bid deposit, the deposit shall be forfeited to the Department.

15 Withdrawal of a bid due to a mistake made in the preparation of the bid, where permitted by  
16 Article 103-3, shall not constitute withdrawal of a bid as cause for payment of the bid bond or  
17 forfeiture of the bid deposit.

18 When a bid is secured by a bid bond, the bid bond shall be on the form furnished by the  
19 Department. The bid bond shall be executed by both the bidder and a corporate surety  
20 licensed under the laws of North Carolina to write such bonds. The execution by the bidder  
21 shall be in the same manner as required by Article 102-8 for the proper execution of the bid.  
22 The execution by the corporate surety shall be the same as is provided for by  
23 Subarticle 102-8(A)(8)(b), for the execution of the bid by a corporation. The seal of the  
24 corporate surety shall be affixed to the bid bond. The bid bond form furnished is for  
25 execution of the corporate surety by a General Agent or Attorney in Fact. A certified copy of  
26 the Power of Attorney shall be attached if the bid bond is executed by a General Agent or  
27 Attorney in Fact. The Power of Attorney shall contain a certification that the Power of  
28 Attorney is still in full force and effect as of the date of the execution of the bid bond by the  
29 General Agent or Attorney in Fact. If the bid bond is executed by the corporate surety, the  
30 President, Vice President or Assistant Vice President, and attested to by the Secretary or  
31 Assistant Secretary, then the bid bond form furnished shall be modified for such execution,  
32 instead of execution by the Attorney in Fact or the General Agent.

33 An electronic corporate surety bid bond for at least 5% of the total amount bid shall  
34 accompany each electronic bid, or the Contractor may submit a certified check or cashier's  
35 check instead of an electronic bid bond. The certified check or cashier's check shall be for at  
36 least 5% of the total amount bid, shall be received by 5:00 p.m. the last business day before  
37 the bid letting and shall be delivered to the Contract Officer at the address shown in the  
38 Invitation to Bid.

39 Contact either or both of the following bond management companies to acquire the necessary  
40 service to submit an electronic bid bond:

41 **(A) Surety 2000**

42 100 Terminal Dr., Plainview, NY 11803, 1-800-660-3263

43 **(B) Surepath (InSure Vision Technologies, LLC)**

44 5170 Sepulveda Blvd., Ste. 200, Sherman Oaks, CA 91403, 1-818-783-3460

45 **102-11 DELIVERY OF BIDS**

46 Paper Bids shall be delivered before the time and place specified in the contract. Bids  
47 received after such time will not be accepted and will be returned to the bidder unopened.

48 Electronic Bids shall be submitted via approved Department electronic bidding software in  
49 accordance with Article 102-8.

**102-12 WITHDRAWAL OR REVISION OF BIDS****(A) Paper Bid**

A bidder may, without prejudice to himself, withdraw a paper bid after it has been delivered to the Department, provided the request for such withdrawal is made, in writing, to the Contract Officer before the date and time set for the opening of bids. The bidder may then submit a revised bid provided it is received before the time set for opening of bids.

Only those persons authorized to sign bids under the provisions of Subarticle 102-8(A)(8) shall be recognized as being qualified to withdraw a bid.

**(B) Electronic Bid**

An electronic bid may be changed and resubmitted as many times as desired before the advertised bid opening time specified in the Invitation to Bid. The latest time stamped electronically submitted bid before the advertised bid opening time will constitute the bid.

Withdrawal of a bid after the date and time set for the opening of bids will be permitted only in accordance with Article 103-3.

**102-13 RECEIPT AND OPENING OF BIDS**

A bid will be received and opened from any bidder who:

**(A)** Is prequalified in accordance with the provisions of Article 102-2 and

**(B)** Has delivered the bid to the place indicated in the contract before the time indicated in the Invitation to Bid.

(1) Paper Bids will be opened and read publicly at the time and place indicated in the Invitation to Bid.

(2) Electronic Bids will be decrypted, opened, printed to paper and read publicly at the time and place specified in the Invitation to Bid.

Bidders, their authorized agents and other interested parties are invited to be present.

A bid received from a bidder who has not complied with the above requirements will be returned to the Bidder unopened and under no circumstances will be considered for award.

In the event of technical difficulties or adverse weather conditions, the Department reserves the right to postpone the reading of bids past the advertised bid opening time and date.

**102-14 REJECTION OF BIDS**

Any bid submitted that fails to comply with any of the requirements of Articles 102-8, 102-9 and 102-10 shall be considered irregular and may be rejected.

Irregularities due to apparent clerical errors and omissions may be waived in accordance with Article 103-2.

Any bid including any unit or lump sum bid price that is unbalanced to the potential detriment of the Department will be considered irregular and may be rejected. In the event the Board determines it is in the best public interest to accept such irregular bid, it may award the contract based on such bid subject to Subarticle 109-4(C).

All bidders shall comply with all applicable laws regulating the practice of general contracting as contained in Chapter 87 of the General Statutes of North Carolina, except where waived by the Department by project special provision for certain specialty work. Bidders shall comply with all other applicable laws regulating the practices of electrical, plumbing, heating and air conditioning and refrigeration contracting as contained in Chapter 87 of the General Statutes of North Carolina.

## Section 102

### 1 (A) State Funded Projects

2 The bidder shall be licensed by the North Carolina Licensing Board for General  
3 Contractors where the bid is \$30,000 or more. Bids received from bidders not meeting  
4 this requirement will be considered non-responsive and will not be considered for award.

### 5 (B) Federal Aid Projects

6 The bidder is not required to be licensed by the North Carolina Licensing Board for  
7 General Contractors to place a bid of \$30,000 or more. However, a project may not be  
8 awarded until the bidder provides evidence that the appropriate General Contractor  
9 license has been obtained. The license shall be obtained within 60 days of bid opening or  
10 the project may be awarded to another bidder or all bids rejected. No contract time  
11 extension will be considered for delays associated with obtaining a license.

12 The right to reject any and all bids shall be reserved to the Department.

### 13 102-15 DISQUALIFICATION OF BIDDERS

14 Any one of the following causes may be justification for disqualifying a Contractor from  
15 further bidding until he has applied for and has been requalified in accordance with  
16 Article 102-2:

17 (A) Unsatisfactory progress in accordance with Article 108-8.

18 (B) Being declared in default in accordance with Article 108-9.

19 (C) Uncompleted contracts which, in the judgment of the Engineer, might hinder or prevent  
20 the timely completion of additional work if awarded.

21 (D) Failure to comply with prequalification requirements.

22 (E) The submission of more than one bid for the same contract by individuals, partnerships,  
23 joint ventures, LLCs or corporations whom the Department determines are under  
24 sufficient common ownership and management control to warrant the firms be  
25 considered a single entity.

26 (F) Evidence of collusion among bidders. Each participant in such collusion will be  
27 disqualified.

28 (G) Failure to furnish a Non-Collusion Affidavit, Debarment Certification or Gift Ban  
29 Certification upon request.

30 (H) Failure to comply with Article 108-6.

31 (I) Failure to comply with a written order of the Engineer as provided in Article 105-1, if in  
32 the judgment of the Engineer, such failure is of sufficient magnitude to warrant  
33 disqualification.

34 (J) Failure to satisfy the Disadvantaged Business Enterprise requirements of the project  
35 special provisions.

36 (K) The Department has not received the amount due under a forfeited bid bond or under the  
37 terms of a performance bond.

38 (L) Failure to submit the documents required by Article 109-10 within 60 days after request  
39 by the Engineer.

40 (M) Failure to return overpayments as directed by the Engineer.

41 (N) Failure to maintain a satisfactory safety index as required by Article 102-2.

42 (O) Recruitment of Department employees for employment as prohibited by Article 108-5.

43 (P) False information submitted on any application, statement, certification, reports, records  
44 or reproduction.

1 (Q) Conviction of any employee of the company, of any applicable state or federal law, may  
2 be fully imputed to the business firm with which he is or was associated or by whom he  
3 was employed or with the knowledge or approval of the business firm or there after  
4 ratified by it.

5 (R) Being debarred from performing work with other Federal, State and city agencies.

6 (S) Failure to perform guaranty work within the terms of the contract.

7 (T) Failure to make prompt payment in accordance with Article 109-4.

8 Upon a determination that a contractor should be disqualified for one or more of the reasons  
9 listed above, the Department may, at its discretion, remove all entities which are considered as  
10 a single entity as described in Subarticle 102-15(E).

11 **SECTION 103**  
12 **AWARD AND EXECUTION OF CONTRACT**

13 **103-1 CONSIDERATION OF BIDS**

14 After the bids are opened and read, they will be compared on the basis of the summation of  
15 the products of the quantities shown in the bid schedule by the unit bid prices. The results of  
16 such comparisons will be immediately available to the public. In the event of errors,  
17 omissions, or discrepancies in the bid prices, corrections to the bid prices will be made in  
18 accordance with Article 103-2. Such corrected bid prices will be used for the comparison and  
19 consideration of bids.

20 The right is reserved to reject any or all bids, to waive technicalities, to request the low bidder  
21 to submit an up-to-date financial and operating statement, to advertise for new bids or to  
22 proceed to do the work otherwise, if in the judgment of the Department, the best interests of  
23 the State will be promoted thereby.

24 **103-2 CORRECTION OF BID ERRORS**

25 The provisions of this article shall apply in waiving irregularities and correcting apparent  
26 clerical errors and omissions in the unit bid price and the amount bid for bid items.

27 **(A) Paper Bid**

28 (1) Omitted Unit Bid Price--Amount Bid Completed--Quantity Bid on is One Unit

29 In the case of a bid item for which the amount bid is completed, but the unit bid price  
30 is omitted and the quantity shown in the proposal for the bid item is only one unit,  
31 the unit bid price shall be deemed to be the same as the amount bid for that bid item  
32 and shall constitute the contract unit price for that bid item.

33 (2) Omitted Unit Bid Price--Amount Bid Completed--Quantity Bid on is More Than  
34 One Unit

35 In the case of a bid item for which the amount bid is completed (extension of the unit  
36 bid price by the quantity) but the unit bid price is omitted and the quantity shown in  
37 the proposal for the bid item is more than one unit, the unit bid price shall be deemed  
38 to be the amount derived by dividing the amount bid for that item by the quantity  
39 shown in the proposal for that bid item and shall constitute the contract unit price for  
40 that bid item.