

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.

Section 103

(3) Discrepancy in the Unit Bid Price and the Amount Bid

In the case of a bid item in which there is a discrepancy between the unit bid price and the extension for the bid item (amount bid), the unit bid price shall govern.

As an exception to the above, on bids for contracts not funded with any federal funds, the extension for the bid item (amount bid) shall govern when the discrepancy consists of an obvious clerical mistake in the unit bid price consisting of the misplacement of a decimal point. The correction to the unit bid price will be made only when the following two conditions are met:

(a) The corrected unit bid price multiplied by the quantity equals the amount bid for the bid item.

(b) The corrected unit bid price is closer to the average of the engineer's estimate and the individual bids for the contract item than the uncorrected unit bid price.

(4) Omitted Unit Bid Price and Omitted Amount Bid--Deemed Zero Bid

(a) State Funded Projects

In the case of omission of the unit bid price and the omission of the amount bid for any one item except Mobilization and, in the case of the omission of the amount bid where a lump sum price is called for, the amount bid and the unit bid price shall be deemed to be zero where the value of the omitted amount bid is 1% or less of the total amount bid for the entire project (excluding the omitted item). The value of the omitted amount bid will be derived by determining the average of the engineer's estimate and the individual bids for that contract item.

Where the unit bid price is deemed to be zero as provided in this subarticle, such zero unit bid price shall constitute the contract unit price for the affected bid item.

Where the amount bid for a lump sum bid item is deemed to be zero except Mobilization, as provided in this subarticle, such zero amount bid shall constitute the contract lump sum price for that bid item.

In the case of omission of the amount bid for Mobilization, the bid shall be deemed irregular and may be rejected.

(b) Federally Funded Projects

In the case of omission of the unit bid price and the omission of the amount bid for any one item and, in the case of the omission of the amount bid where a lump sum price is called for, the bid will be considered nonresponsive and will not be considered for award.

(5) Unit Bid Prices Containing More Than Four Decimal Places

In the case of a Bid Item for which the amount bid contains more than 4 decimal places for the Unit Bid Price, only the whole number and the first 4 decimal places shall constitute the Contract Unit Price for that Bid Item.

(B) Electronic Bids

(1) Enter a unit price in schedule of items. Totals will be generated automatically.

(2) Data incorrectly entered may not be recognized, and the bid item may remain blank until entered correctly.

(3) Enter no more than 4 decimal places for unit price.

- 1 (4) Do not enter zero (0) in any unit price field unless zero is the intended bid for that
 2 item. Zero will be considered a valid bid. However, where zeros are entered for
 3 items that are authorized alternates to those items for which a non-zero bid price has
 4 been submitted, zeros will be deemed invalid.
- 5 (5) When the proposal allows alternate bids, the bidder shall submit a unit or lump sum
 6 price for every item in the proposal other than items that are authorized alternates to
 7 those items for which a bid price has been submitted. Where the bidder submits
 8 a unit price other than zero for all items of an authorized alternate, the Department
 9 will determine the lowest total price based on the alternate bid.

10 **103-3 WITHDRAWAL OF BIDS--MISTAKE**

11 **(A) Criteria for Withdrawal of Bid**

12 The Department of Transportation may allow a bidder submitting a bid pursuant to
 13 NCGS § 136-28.1 for construction or repair work to withdraw his bid after the scheduled
 14 time of bid opening upon a determination that:

- 15 (1) A mistake was in fact made in the preparation of the bid.
- 16 (2) The mistake in the bid is of a clerical or mathematical nature and not one of bad
 17 judgment, carelessness in inspecting the work site or in reading the contract.
- 18 (3) The mistake is found to be made in good faith and was not deliberate or by reason of
 19 gross negligence.
- 20 (4) The amount of the error or mistake is equal to or greater than 3% of the total amount
 21 bid.
- 22 (5) The notice of mistake and request for withdrawal of the bid by reason of the mistake
 23 is communicated to the Engineer within 48 hours after the scheduled time of bid
 24 opening. Upon proper notification of a mistake and request for withdrawal of bid,
 25 the bidder shall submit within 48 hours written notice of mistake accompanied by
 26 copies of bid preparation information to the Engineer. The notification of a mistake,
 27 request for withdrawal of bid and copies of bid preparation information shall be
 28 submitted to the State Contract Officer or Engineer.
- 29 (6) The Department will not be prejudiced or damaged except for the loss of the bid.

30 **(B) Hearing by the Engineer**

31 If a bidder files a notice of mistake along with a request to withdraw his bid, the Engineer
 32 will promptly hold a hearing thereon. The Engineer will give to the requesting bidder
 33 reasonable notice of the time and place of any such hearing. The bidder may appear at
 34 the hearing and present the original working papers, documents or materials used in the
 35 preparation of the bid sought to be withdrawn, together with other facts and arguments in
 36 support of his request to withdraw his bid. The bidder shall be required to present
 37 a written affidavit that the documents presented are the original, unaltered documents
 38 used in the preparation of the bid.

39 **(C) Action by State Highway Administrator**

40 A determination may be made by the Administrator that the bidder meets the criteria for
 41 withdrawal of the bid as set forth in Subarticle 103-3(A) upon presentation of clear and
 42 convincing evidence by the bidder. The Engineer will present his findings to the State
 43 Highway Administrator for action on the bidder's request. The Engineer will advise the
 44 bidder of the Administrator's decision before the Department's consideration of award.

Section 103

1 (D) Bid Bond

2 If a bid mistake is made and a request to withdraw the bid is made, the bid bond shall
3 continue in full force and effect until there is a determination by the Administrator that
4 the conditions in Subarticle 103-3(A) have been met. The effect of the refusal of the
5 Contractor to give payment and performance bonds within 14 calendar days after the
6 notice of award is received by him, if award has been made by the Department after
7 consideration and denial of the Contractor's request to withdraw his bid, shall be
8 governed by the terms and conditions of the bid bond.

9 103-4 AWARD OF CONTRACT

10 (A) General

11 The North Carolina Department of Transportation, in accordance with the provisions of
12 Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the Regulations of the
13 Department of Transportation (49 CFR, Part 21), issued pursuant to such act, hereby
14 notifies all bidders that it will affirmatively insure that contracts entered in pursuant to
15 advertisements, if awarded, will be made by the Department to the lowest responsible
16 bidder without discrimination on the grounds of race, color or national origin. The lowest
17 responsible bidder will be notified by letter that his bid has been accepted and that he has
18 been awarded the contract. This letter shall constitute the notice of award. Where award
19 is to be made, the notice of award will be issued within 60 days after the opening of bids;
20 except with the consent of the lowest responsible bidder, the decision to award the
21 contract to such bidder may be delayed for as long a time as may be agreed upon by the
22 Department and such bidder. In the absence of such agreement, the lowest responsible
23 bidder may withdraw his bid at the expiration of the 60 days without penalty if no notice
24 of award has been issued.

25 Award of a contract involving any unbalanced bid price may be made in accordance with
26 Article 102-14.

27 (B) Award Limits

28 A bidder who desires to bid on more than one project on which bids are to be opened on
29 the same date and who desires to avoid receiving an award of more projects than he is
30 equipped to handle, may bid on any number of projects but may limit the total amount of
31 work awarded to him on selected projects by completing the form Award Limits on
32 Multiple Projects for each project subject to the award limit. In the event that a bidder is
33 the lowest responsible bidder on projects subject to the award limit and the value of such
34 projects is more than the award limit established by such bidder, the Department will not
35 award such bidder projects from among those subject to the award limit which have
36 a total value exceeding the award limit. The projects to be awarded to the bidder will be
37 those projects on which award will result in the lowest total cost to the Department.

38 In determining the lowest total cost to the Department, the options of rejecting a bid or
39 readvertising for new bids may be considered.

40 All bids submitted without the properly executed form Award Limits on Multiple
41 Projects will not be subject to the award limit. In the event that there is a discrepancy
42 between the completed award limit forms submitted by the same bidder for the different
43 projects in a letting, the Department reserves the right to declare all such award limit
44 forms invalid or to make such interpretation of the discrepancy as may be in the best
45 interests of the Department. However, the presence of such discrepancy shall not be
46 reason for declaring any bid irregular nor shall it invalidate the conditions of his bid bond
47 or bid deposit.

1 Where a prequalified Contractor bids individually (as opposed to a Joint Venture) on one
 2 or more projects and bids on one of more projects as part of a Joint Venture, such
 3 individual bidder and such Joint Venture will be considered separate bidders in applying
 4 the provisions of this article.

5 (1) Paper Bids

6 This form will be bound within each proposal. This form will not be effective unless
 7 the amount is filled in and the form is properly signed.

8 (2) Electronic Bids

9 This form is located in the .ebs miscellaneous data file of Expedite. The bidder shall
 10 click on yes or no to indicate whether or not the bidder desires to limit the award.

11 **103-5 CANCELLATION OF AWARD**

12 The Department reserves the right to rescind the award of any contract at any time before the
 13 receipt of the properly executed contract bonds from the successful bidder.

14 **103-6 RETURN OF BID BOND OR BID DEPOSIT**

15 Checks that have been furnished as a bid deposit by all bidders, other than the 3 lowest
 16 responsible bidders, will be retained not more than 10 calendar days after the date of opening
 17 of bids. After the expiration of such period, the checks that were furnished as a bid deposit
 18 will be returned to all bidders other than the 3 lowest responsible bidders.

19 Checks that have been furnished as a bid deposit by the 3 lowest responsible bidders will be
 20 retained until after the contract bonds have been furnished by the successful bidder at which
 21 time the checks that were furnished as a bid deposit will be returned to the 3 lowest
 22 responsible bidders.

23 Paper bid bonds will be retained by the Department until the contract bonds are furnished by
 24 the successful bidder after which all such bid bonds will be destroyed unless the individual
 25 bid bond form contains a note requesting that it be returned to the bidder or the Surety.

26 **103-7 CONTRACT BONDS**

27 The successful bidder, within 14 calendar days after the notice of award is received by him,
 28 shall provide the Department with a contract payment bond and a contract performance bond
 29 each in an amount equal to 100% of the amount of the contract. All bonds shall be in
 30 conformance with NCGS § 44A-33. The corporate surety furnishing the bonds shall be
 31 authorized to do business in the State.

32 **103-8 EXECUTION OF CONTRACT**

33 As soon as possible following receipt of the properly executed contract bonds, the Department
 34 will complete the execution of the contract, retain the original contract and return one certified
 35 copy of the contract to the Contractor.

36 **103-9 FAILURE TO FURNISH CONTRACT BONDS**

37 The successful bidder's failure to file acceptable bonds within 14 calendar days after the
 38 notice of award is received by him shall be just cause for the forfeiture of the bid bond or bid
 39 deposit and rescinding the award of the contract. Award may then be made to the next lowest
 40 responsible bidder or the work may be readvertised and constructed under contract or
 41 otherwise, as the Department may decide.