

## Chapter Adm 21

## ADVERTISING, BIDDING AND AWARD OF CONSTRUCTION CONTRACTS

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**Adm 21.01 Authority.** (1) Section 16.855 (15), Stats., empowers the department to adopt rules to implement the advertising and award of contracts for construction projects.

(2) These rules shall apply to all state construction projects when the estimated construction cost exceeds the threshold prescribed in s. 16.855 (1), Stats.

**History:** Cr. Register, March, 1979, No. 279, eff. 4-1-79; CR 05-069: am. (2) Register May 2006 No. 605, eff. 6-1-06; CR 08-025: am. (1) Register August 2010 No. 656, eff. 9-1-10.

**Adm 21.02 Definitions.** In this chapter:

(1) "Advertise for proposals" means a written notice announcing that sealed bids will be received for a specific construction project, inviting prospective bidders to obtain or review drawings and specifications for the purpose of submitting a bid to do work. The advertisement for proposals shall contain as a minimum, the following information:

- Location of the work.
- Identification of owner.
- Scope of the work, which describes such items as square footage, number of floors and primary function(s) of the project.
- A 10% bid guarantee is required.
- Date and time receipt of bids will close and public opening will occur.
- Location where bids will be received.
- Date and place where drawings and specifications will be available.

(2) "Bid" means the completed standard bid form on which the bidder has set forth the price or prices for which the bidder is willing to enter into a contract to perform and complete the work bid, in full compliance with the contract documents.

(3) "Bid guarantee" means a properly executed department form of bid bond, a bank certified check, or a cashier's check, in an amount equal to 10% of the highest combination base bid(s) and alternate bids submitted. In the event the federal government participates in a state project, the bid guarantee shall be as specified by the federal government, but not less than 10%.

(4) "Bidder" means an individual, partnership, or corporation that submits a bid.

(5) "Bidder's authorized representative" means an individual who has been provided in writing, the authority to act in the bidder's behalf.

(6) "Bidding period" means that time span from the date of first publication of the advertisement for proposals to the date of bid opening.

(7) "Department" means the Wisconsin department of administration.

(8) "Lowest qualified responsible bidder" shall be defined to include all of the following which must be met to be considered for award of contract:

(a) *Lowest bidder.* The lowest bidder is one whose bid contains the lowest total dollar amount when compared with other bids submitted for the same work. Should the specifications require

evaluation of other factors in conjunction with lowest dollar amount to determine the lowest bidder, a formula shall be specified which will permit the conversion of evaluation factors to a dollar value.

(b) *Qualified bidder.* A qualified bidder is one who meets the following conditions:

1. Has completed one or more projects of at least 50% of the size or value of the division of work being bid and the type of work completed is similar to that being bid. If a greater magnitude of experience is deemed necessary, other than size or value of the work, such requirements will be described in the specifications.

2. Has access to all necessary equipment and has organizational capacity and technical competence necessary to enable performance of the work properly and expeditiously.

3. Consideration will be given to associations consisting of 2 or more contracting firms organized for the purpose of entering into a construction contract as a single entity, providing the assignment of and provisions for continuity of the various responsibilities within the association are agreed upon prior to award of contract and further providing that either of the individual firms constituting the association is qualified as defined herein.

4. In the event that the project is of such magnitude as to limit competition as a result of the conditions established for qualification, the department may waive the condition for bidder qualification.

5. The department may require bidders to submit sworn statements as to financial ability, equipment and experience in construction and require other such information as may be necessary to determine their competency. Bidders failing to submit required sworn statements shall be deemed not qualified.

(c) *Responsible bidder.* A responsible bidder is one who meets the following conditions:

- Maintains a permanent place of business.
- Provides a sworn statement upon request, which evidences the bidder has adequate financial resources to complete the work being bid, as well as all other work the bidder is presently under contract to complete.
- Is bondable for the terms of the proposed contract.
- Has a record of satisfactorily completing past projects. Criteria which will be considered in determining satisfactory completion of projects by contractors and subcontractors will include:

a. Completed contracts in accordance with drawings and specifications.

b. Diligently pursued execution of the work and completed contracts according to the established time schedule unless extensions are granted by the owner.

c. Fulfilled guarantee requirements of the contract documents.

d. Established and diligently maintained a satisfactory affirmative action program in accordance with the contract provisions.

e. Established and diligently maintained a satisfactory safety program in accordance with the contract provisions.

5. Is not presently on an ineligible list maintained by the department for noncompliance with equal employment opportunities and affirmative action requirements as provided for in s. 16.765 (9), Stats., or on any other agency list for construction related violation of statutes or administrative rules.

(9) "Omission, error or mistake" are terms used interchangeably and synonymously, constituting a neglect to provide something that is required or a departure from accuracy.

(10) "Supporting documents" means those documents packaged with a bid including, but not limited to, bid guarantee, power of attorney if bid bond is submitted as bid guarantee, affidavit form and other information specifically requested. Materials submitted with the bid form that are unsolicited are deemed to be fugitive materials and shall not be considered in determining the lowest bidder or award of contract.

**History:** Cr. Register, March, 1979, No. 279, eff. 4-1-79; r. (1) (c), renum. (1) (d) to (h) to be (1) (c) to (g), Register, October, 1983, No. 334, eff. 11-1-83; CR 05-069: r. and recr. Register May 2006 No. 605, eff. 6-1-06; **CR 08-025: am. (3), renum. (7) to (9) to be (8) to (10) and am. (8) (c) 5., cr. (7) Register August 2010 No. 656, eff. 9-1-10.**

**Adm 21.03 Advertising. (1)** All drawings and specifications for the project shall be available for distribution to prospective bidders on or before the date upon which the advertisement for proposals will be published.

(2) The department shall advertise for proposals by publication of a class 1 notice under ch. 985, Stats., in the official state newspaper. The notice shall be published a minimum of 30 days prior to bid opening, unless the department indicates in writing that the bidding period will be for a lesser period of time.

(3) In addition to the class 1 notice required in sub. (2), the department may solicit and advertise for proposals by either or both of the following methods:

(a) An advertisement for proposals may be placed in trade publications, or newspapers within the locale of the project, which would have the potential of reaching prospective bidders.

(b) An advertisement for proposal may be mailed directly to potential bidders, if such measure is deemed necessary to encourage adequate competition in bidding.

**History:** Cr. Register, March, 1979, No. 279, eff. 4-1-79; **CR 08-025: am. (2) and (3) (intro.) Register August 2010 No. 656, eff. 9-1-10.**

**Adm 21.04 Issuance of addenda. (1)** The department may issue addenda during the bidding period to correct, alter, or to provide clarification of the drawings and specifications for the project being bid or to extend the bidding period. No oral correction, alteration or clarification of said documents shall be considered valid.

(2) Each addendum issued shall be identified by project number and title, date of addenda, and assigned an addendum number which will indicate consecutive issue.

(3) Addenda shall be distributed to every recipient of drawings and specifications for the project being bid including all locations where drawings and specifications are available for public inspection.

(4) No addenda shall be issued during the last 7 calendar days prior to the published bid opening date, unless such addenda include an extension of the bid opening date for a minimum of 7 additional calendar days.

**History:** Cr. Register, March, 1979, No. 279, eff. 4-1-79; am. (4), Register, October, 1983, No. 334, eff. 11-1-83; **CR 08-025: am. (1) Register August 2010 No. 656, eff. 9-1-10.**

**Adm 21.05 Submittal and receipt of bids. (1)** All bids shall be submitted electronically or in sealed envelopes.

(a) Electronic bids received by the department shall be submitted via a secured, authorized electronic transfer that provides

for time and date verification as well as proper security in the transfer of data and information. Bids shall conform to project specification bid forms and include all information required by the specification as well as this section. The bidder shall submit all supporting and original documentation requested by the department within 3 calendar days of the request.

(b) Sealed envelope bids shall be enclosed in distinctly marked special envelopes provided by the department. Should the bidder not possess the special envelope provided by the department, the bidder shall place all of the following information on the face of the outermost envelope containing the bidder's proposal:

1. This envelope contains a sealed bid.
2. Project name.
3. Project number.
4. Location of project.
5. Division(s) of work being bid.
6. Bid date.
7. Name and address of bidder.

(2) The bidder is responsible for the bid described in sub. (1) (a) or (b) being delivered to the place designated in the published advertisement for proposals, on or before the date and time specified.

(3) All bids received by the department shall be stamped electronically or upon the face of the envelope indicating the date and time the bid was received.

(4) Bids received by the department after the date and time designated in the advertisement for proposal shall be returned to the bidder unopened.

(5) The department shall determine bids that conform with this section in the best interests of the state.

**History:** Cr. Register, March, 1979, No. 279, eff. 4-1-79; CR 05-069: am. (2) and (5) Register May 2006 No. 605, eff. 6-1-06; **CR 08-025: r. and recr. Register August 2010 No. 656, eff. 9-1-10.**

**Adm 21.06 Withdrawal of bids. (1)** At any time prior to the date and time of bid opening, a bidder or the bidder's representative may withdraw the bid without prejudice to the right of the bidder to submit a new bid. Withdrawal of a bid may be accomplished in one of the following methods:

(a) A written request submitted by the bidder on the bidder's letterhead stationery.

(b) Personal appearance of the bidder or the bidder's authorized representative, whereby the identity and authority of the person may be ascertained by the department. After authority and identity is established, the individual shall be required to sign a receipt for the withdrawn bid.

**History:** Cr. Register, March, 1979, No. 279, eff. 4-1-79; **CR 08-025: am. (1) (b) Register August 2010 No. 656, eff. 9-1-10.**

**Adm 21.07 Bid opening. (1)** A representative of the department shall preside at the bid opening as the bidding officer. At the date and time for bid opening, the bidding officer shall announce the following to those in attendance:

(a) Bidding is officially closed and public opening and reading of bids will commence.

(b) The following rules will be observed when reading the bids:

1. Following identification of each bid to be read, it shall be publicly stated whether bid guarantee has or has not accompanied the bid. If bid guarantee has not accompanied the bid, the remainder of the bid contents shall not be read.

(2) The bidding officer shall identify the project title for which the bid shall be read and the category of work being bid, prior to the reading of bids grouped under each category of work.

(3) The following bid information shall be publicly read aloud by the bidding officer and recorded in the official bid tabulation form as bids are read:

- (a) The name of bidder whose bid is being read.
- (b) State whether a bid guarantee has or has not accompanied the bid. If the bid guarantee has not accompanied the bid, the remainder of the bid shall not be read.
- (c) The price quotation for the base bid and alternate bid(s).
- (d) If offered, the price quotation of a combined bid and identification of the base bids which constitute the work proposed under the combined bid submitted.

**(4)** Upon completing the public reading of bids, the bidding officer shall announce that the bid opening for the specific project is officially closed and the results of the bid opening will be available at a later date after bidding information has been checked and validated. The disposition of any informalities, omissions, errors or mistakes shall be resolved during the validation of bids. Refer to s. Adm 21.02 for definition.

**History:** Cr. Register, March, 1979, No. 279, eff. 4-1-79; r. (5), Register, October, 1983, No. 334, eff. 11-1-83; **CR 08-025: am. (1) (intro.), (3) (c) and (d), r. (1) (b) 2, Register August 2010 No. 656, eff. 9-1-10.**

**Adm 21.08 Rejection of bids. (1)** The department shall reject any bid which evidences any of the following conditions:

- (a) The base bid amount(s) and alternate bid(s) amounts as requested in the specifications have not been entered on the bid form.
- (b) The bid form has not been signed by the bidder.
- (c) The bid guarantee has not accompanied the bid form.
- (d) Receipt of an addendum applicable to the award of contract has not been acknowledged on the bid form.
- (e) The bid form has been altered or changed in such a way that it incorporates unsolicited material, either directly or by reference, which would alter any essential provision of the contract documents or require consideration of the unsolicited material in determining the award of contract.
- (f) The bid is submitted by a bidder who, through investigation, is found not to be qualified or responsible within the definition of these rules, s. Adm 21.02 (8) (b) and (c).

**(2)** The department may reject any bid if the included documents have any of the following informalities, unless such informalities are waived by the department and corrected by the bidder within 3 working days from date and time of bidder notification:

- (a) Submittal of bid bond on a form other than that contained in the specification volume.
- (b) No power of attorney submitted with bid bond.
- (c) Date of power of attorney precedes date of bid bond.
- (d) Bonding company is not licensed to do business in Wisconsin.
- (e) Failure to submit an affidavit, affirming that bidder is not guilty of collusion or fraud with regard to bid submittal.
- (f) Failure to submit any other document which is specifically requested in the specifications to be submitted with the bid form, acceptance of which would not constitute a correction or alteration of the bid.

**(3)** The department may reject all low bids constituting the total lowest construction cost when such amount exceeds the authorized funds available.

**(4)** The department reserves the right to reject any or all bids, if in the opinion of the department the best interest of the state will be served.

**(5)** Rejection of either a combined bid or the separate bids which correspond to the combined bid, as submitted by the bidder, shall not invalidate the other.

**(6)** The reason(s) for rejection of a bid, if due to any of the conditions stated in this section, shall be sent to the bidder in writing within 30 calendar days after the date of bid opening.

**(7)** The department, with the approval of the attorney general, may settle or dispose of cases or issues arising out of errors, omissions, or mistakes contained in a bid which result in the bidder giving written notice of the bidder's intent not to execute the contract. However, if no such settlement is obtained, the bidder is not entitled to recover the bid guarantee unless the bidder proves in circuit court for Dane county that in making the mistake, error or omission the bidder was free from negligence.

**History:** Cr. Register, March, 1979, No. 279, eff. 4-1-79; **CR 08-025: am. (1) (intro.), (f), (2) (intro.), (3), (4) and (7) Register August 2010 No. 656, eff. 9-1-10.**

**Adm 21.09 Award of contracts. (1)** The department will award contracts to the lowest qualified responsible bidder or bidders that result in the lowest total construction cost for the project and such amount does not exceed the available funds authorized for the project. Final determination as to which bidders are the lowest qualified responsible bidders is vested with the department.

**(2)** In cases where the bidding documents provide a formula for evaluation analysis in conjunction with the base bid or alternate bid(s), the department will award to the lowest qualified responsible bidder(s) whose bid(s) produce the lowest bid when combined with the dollar value derived from the formula for converting evaluation factors. (See s. Adm 21.02 (8) (a).)

**(3)** Factors which may be the subject of evaluation include, but are not limited to the following:

- (a) Low net annual operating cost.
- (b) Low unit cost of capacity.
- (c) Highest performance per unit or cost.
- (d) Annual maintenance and service costs.

**(4)** Should the total of the proposals submitted by the lowest qualified responsible bidder(s) exceed the limits imposed by authorized funds, the department may negotiate deductive changes in the lowest qualified bid for each contract to bring the bids within funding limits.

**(5)** The department may consider any unsolicited material accompanying the bid of the lowest qualified responsible bidder only after contracts have been awarded on the basis of the information contained in the bid form. Such consideration may be given to unsolicited material only if it is in the best interest of the state to do so, and does not warrant rejection due to any of the conditions stated in s. Adm 21.08 (1) (e).

**(6)** Award of a contract will not be finalized until the required performance payment bond and certificate of insurance have been received and approved by the department.

**(7)** Any contractor or subcontractor who enters into a contract on a state construction project shall assume an obligation to take whatever affirmative action is necessary to assure equal employment opportunity in all aspects of employment, irrespective of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01 (5), Stats., or national origin. It is expected that all contractors and subcontractors will carry out that part of their contract pertaining to equal employment opportunity and affirmative action with the same amount of thought and diligence as with any other part of the contract.

**Note:** See Adm 21.02 (8) (c) 5. and 21.08 (1) (f).

**History:** Cr. Register, March, 1979, No. 279, eff. 4-1-79; am. (6) and (7), Register, October, 1983, No. 334, eff. 11-1-83; CR 05-069: am. (4) Register May 2006 No. 605, eff. 6-1-06; **CR 08-025: am. (1), (2), (4), (5) and (6) Register August 2010 No. 656, eff. 9-1-10.**