



## IRREGULARITIES ON CONTRACT BIDS

### **Purpose**

The purpose of this policy is to implement Board policy 4071 authorizing the Director to create and apply a method of processing irregularities in competitive bidding.

### **Legal Authority**

- Idaho Code 40-902(3) - The Department has the right to reject any and all bids.
- 23 Code of Federal Regulations, Part 635 - Construction and Maintenance of Highways; Contract Procedures.

### **Written Requirement**

The content of Administrative policy 5071, Irregularities on Contract Bids, shall be communicated to the bidder by inclusion in the specifications.

### **Review for Irregularities and Notification of Bidder**

The Division of Engineering Services Division Administrator or a delegate shall review the bid proposal of the apparent low bidder to determine if an irregularity is present. The review of the bid shall be conducted under the provisions of Section 100 of the Idaho Transportation Department Standard Specifications for Highway Construction. Bid proposals and supporting documentation that are noted to be irregular shall be reviewed by the Attorney General's office. If the bid proposal is declared irregular, the contractor shall be notified.

### **Types of Irregularities**

#### **Discretionary Bid Proposal Irregularities**

A bid proposal for an Idaho Transportation Department Public Works Contract may be rejected if:

- The proposal does not constitute a definite and unqualified offer to meet the terms of the bid invitation.
- The bid is materially unbalanced, or any of the unit prices are excessively unbalanced to the potential detriment to the Department.
- Any other bid irregularity provides the bidder with a competitive advantage over other bidders.

#### **Apparent Low Bid Proposal Irregularities**

The following bid proposal irregularities shall constitute grounds for rejection of the apparent low bid:

- Alterations are made to the proposal form (not including acknowledging addenda or correction of an ITD-caused mistake).
- The proposal is not typed or in ink, properly signed by an authorized agent of the bidder, and notarized.
- Material Addenda are not included or acknowledged with the bid package.

- Unit pricing is missing (except when pay item is lump sum).
- The proposal fails to comply with naming statute.
- The bid is not on the required ITD form.
- The proposal bond (if used) is not on the Department's form (or does not use the same contractual language), is not properly executed, and does not have attached an original power of attorney.
- The cashier's check or certified check (if used) is not made payable to the Idaho Transportation Department and is not drawn on a bank in the state of Idaho.
- The bid security (either check or bond) does not unconditionally guarantee five percent (5%) of the bid. (AIA A-310 bid bonds are not acceptable.)
- The contractor submits multiple proposals on the same project.
- There is evidence of collusion among bidders.
- A conditional bid, except for providing a limitation of multiple awards.

#### **Bidder Irregularities**

The bidder shall be deemed not responsible and the bid proposal rejected if:

- The bidder, for non-federal-aid projects, is not properly licensed at the time of submitting the bid.
- The bidder is debarred by either the state of Idaho or the federal government.
- The bidder is not qualified to perform the work.
- The bidder has other uncompleted ITD work that might hinder or prevent the prompt completion of the proposed work.

#### **Protesting a Rejected Bid Proposal**

Within five (5) working days of the bid opening, any bidder who wishes to protest the rejection of their bid proposal, or the waiver of a bid irregularity of an apparent low bid, shall submit a protest in writing to the Division of Engineering Services Division Administrator. The Division of Engineering Services Division Administrator may meet with the protesting bidder, reject the protest, or take action deemed to be in the best interest of the Department.

\_\_\_\_\_  
Signed  
Brian W. Ness  
Director

Date: August 11, 2014