

## **SECTION 102**

### **BID, AWARD, AND EXECUTION OF CONTRACT**

**102.01**     **ACQUISITION REGULATIONS** - This subsection is supplemented to include CNMI Procurement Regulations, dated May 24, 2001.

**102.02**     **PREPARATION OF BIDS** – Add the following to this subsection:

Bids shall be submitted on the forms furnished, or copies thereof, and must be signed in ink. Erasures or other changes in a bid must be explained or noted over the signature of the bidder. Bids containing any conditions, omissions, unexplained erasures or alterations or items not called for in the bid or irregularities of any kind may be rejected as incomplete. Telegraphic bids will not be considered.

The "Bid Form" may require for submission of a price or prices for one or more items. It may be lump sum bids, or scheduled bid items, resulting in a bid or a unit of construction or a combination of it. Failure to bid on items that are required will cause disqualification of bid. In the event that items are not required the bidder must insert the word "**No Bid**" in the space provided.

Submitted bids may be modified only if modification is received before the scheduled bid opening.

Each bid must give the full business address of the bidder and be signed by him with his usual signature. Bids by partnership must furnish the full names of all partners and must be signed in the partnership name by one of the members of the partnership or by an authorized representative followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the State of incorporation and by the signature and designation of the president, secretary or other person signing, which shall also be typed or printed below the signature. A bid by a person who affixes to this signature the word president, agent or other designation without disclosing his principal may be held to the bid of the individual signing. When requested by the Owner, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

Bids with bid guarantee shall be enclosed in a sealed envelope and shall be addressed to the Office of the Director, Division of Procurement & Supply, located at the former Emergency Management Office, Ascension Drive, Building No. 1301, Capitol Hill, Saipan and marked "**Route 38 (Chalan Galaide) Improvements & Waterline Replacements, Saipan Project No. TQ-THS-0310 (301)**".

**102.03**     **BID GUARANTEE** - Delete this subsection and substitute the following:

Bids shall be accompanied by a bid guarantee of not less than fifteen percent (15%) of the total bid price for which an award can be made. Bid, guarantee may be bid bond (form enclosed), certified check or cashier's check. Bid, bond shall be signed by the bidder or two major officers of the Surety and Resident General Agent. If the Surety is a foreign or alien surety and shall be accompanied with copies of current

Certificate of Authority to do business on Commonwealth of the Northern Mariana Islands issued by the Department of Revenue and Taxation, Power of Attorney issued by the Surety to the Resident General Agent and Power of Attorney issued by two major officers of the Surety to whoever is signing on their behalf. Certified check or cashier's check must be issued by a banking institution licensed to do business in Commonwealth of the Northern Mariana Islands and shall be made payable to the Treasurer of Commonwealth of the Northern Mariana Islands. Such bid bond or check shall be submitted with the understanding that it shall guarantee that the bidder will not withdraw his bid for one hundred twenty (120) calendar days after the scheduled closing time for the receipt of bids; that if his bid is accepted, he will enter a formal contract with the Owner according to the form of agreement included as a part of the contract documents, and that the required performance and payment bond will be given; and that in case of the withdrawal of said bid within said period, or the failure to enter said contract and give said bond within twenty-one (21) calendar days after he has received notice of the acceptance of his bid, the bidder shall be liable to the Owner for the full amount of the bid guarantee as representing the damage to the Owner due to the default of the bidder in any particular hereof. The bid guarantee will be returned to all bidders except the three lowest bidders within three days after the bid opening. The bid guarantee of the second and/or third low bidder will be returned thirty (30) calendar days after the bid opening date upon request, provided that he has not been notified by the Owner of the acceptance of his bid prior to the date of request. The bid guarantee of the lowest qualified bidder shall be returned within forty-eight (48) hours after the Owner and the qualified bidder have executed the contract.

**102.05      PUBLIC OPENING OF BIDS** - This subsection is modified as follows:

Bids will be publicly opened at the time and place specified in the "Invitation to Bid." The bid content will be made public for the information of bidders and other interested parties who may be present, either in person or by representative.

**102.06      PERFORMANCE AND PAYMENT BONDS** - This subsection is modified as follows:

Performance and Payment Bond equivalent the contract amount must be furnished by the Contractor at the time specified in the Intent of Award letter. Contractor should follow the requirements and forms of the bonds as stated under the Invitation to Bids.

The copies of the Form of Performance Bond and Form of Payment Bond enclosed are incorporated under the Contract Documents section for references and are made a part hereof to the same extent as though fully set forth herein.

The successful bidder must deliver to the Owner an executed Performance and Payment Bond (form attached) in an amount at least equal to 100% of the accepted bid as security for the faithful performance of the contract and as security for the payment of all persons performing labor and furnishing materials concerning this contract.

The sureties of all bonds shall be such surety company or companies as are approved by the Owner, and as authorized to transact business in the State where the proposed project is located. The Owner must approve the Bonds prior to execution of the formal contract.

Add the following subsection to this Section:

**102.07      AWARD OF CONTRACT** - The Government reserves the right to waive any informality in the bids received when such waiver is in the interest of the Government.

Award of contract will be made to the lowest qualified bidder whose bid, conforming to the "**Invitation to Bid**" is most responsive and advantageous to the Government, price and other factors considered.

1. **ENTIRE AGREEMENT:** With respect to the subject matter of the Contract, the Contract, as expressed in the Contract Documents, represents the entire agreement between the Commonwealth and the Contractor, and supersedes all prior agreements and understandings. No revision to the express terms of the contract shall be implied, except as required by law.
2. **CONTRACT NOT ASSIGNABLE:** The Contract and all of its covenants shall inure to the benefit of and be binding respectively upon the Commonwealth and the Contractor and its partners, successors, assigns and legal representatives. The Contractor may not assign, transfer, encumber, or sublet its interest or obligations under the Contract without written consent of the Commonwealth. No mechanic, subcontractor, supplier, or other person shall be permitted to contract for or in any other manner have or acquire any lien upon the services covered by the Contract, or the construction to which the services pertain, or the land upon which the construction is situated.
3. **INDEPENDENT CONTRACTOR:** For purposes of the application of Article 6, "Ethics in Public Contracting" of the CNMI Procurement Regulations, the Contractor and its employees, agents, subcontractors, and representatives shall be considered employees of the Commonwealth government, as provided by §1-201(8) of the CNMI Procurement Regulations.

Except as stated in the CNMI Procurement Regulations or authorized in writing by the Contracting Officer and only under the terms so stated or authorized, neither the Contractor nor its employees or subcontractors shall act for, represent, or bind the Commonwealth in any capacity or manner whatsoever, or be deemed or considered an employee, agent, or representative of the Commonwealth, or be deemed to have any relationship with the Commonwealth other than that of independent contractor.

4. **NO WAIVER BY COMMONWEALTH:** The failure of the Commonwealth in any one or more instances to insist upon strict performance of any of the items of the Contract, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or options on any future occasion.
5. **INTERPRETATION AND VALIDITY:** This contract shall be interpreted under the laws of the Commonwealth of the Northern Mariana Islands. Where no local law is available to resolve a particular issue, reference shall be had to U.S. federal

procurement law and cases similar to the matter in dispute, including the Federal Acquisition Regulation and decisions interpreting it, as well as scholarly treatises on U.S. Federal Procurement Law.

All provisions of this Contract shall, to the extent practical, be interpreted to be consistent with the CNMI Procurement Regulations. In the event of irreconcilable conflict between any provision of the contract and the CNMI Procurement Regulations, the CNMI Procurement Regulations shall govern the Contract.

In the event of a conflict between any provision of the Contract and Agreement document and with any contract documents, the Contract and Agreement document shall govern the Contract. If the contract documents include a "Special Contract Requirement" document, that documents shall be interpreted to supplement some provisions of the contract and shall prevail in the event of a conflict.

In the event the contract or the procurement action resulting in the contract is found to be in violation of the CNMI Procurement Regulations, then the Contract will not be valid under the laws of the Commonwealth of the Northern Mariana Islands, and may be found to be legally voidable. The Commonwealth will seek to have any liability asserted against it by a contractor directly results from improper acts of a government employee to be determined judicially to be the individual liability of the employee who committed the wrongful acts. (Reference CNMI Procurement Regulations §§1-107, 1-108.)

**102.08**     **PRE-BID CONFERENCE** - A Pre-Bid Conference among the prospective bidders will be held at the time and place specified in the "Invitation for Bid." Questions concerning the plans and specifications of Special Provisions shall be submitted at the time specified in the Invitation for Bids. All interpretations made at the conference will be issued as addendum to the contract provisions and forwarded to all prospective bidders including but not limited to request for information/clarification. Written acknowledgment of receipt of all addenda will be required on all bids to be submitted by each prospective bidders. No other interpretations of any data will be made before award of contract.

**END OF SECTION 102**