

Item 3L

Award and Execution of Contract

# Award of Contract

The Owner or original award authority will award, reject, or defer the Contract within 90 days after the opening of the proposal. The Owner reserves the right to reject any or all proposals and to waive technicalities in the best interest of the Owner.

## **Award**. The Owner or original award authority will award the Contract to the low Bidder as determined in accordance with Article 2L.11., “Tabulating Bids.” The Owner may award a Contract to the second lowest Bidder when the following requirements have been met:

* the low Bidder withdraws their bid or fails to enter into Contract,
* the second lowest Bidder agrees to perform the work at the unit bid prices of the low Bidder,
* the Owner recommends in writing the award of the Contract to the second lowest Bidder, and
* the Owner’s governing body agrees with the Owner recommendation for award to the second lowest Bidder.

## **Rejection**. The Owner or original award authority will reject the Contract if:

* collusion may have existed among the Bidders. Collusion participants will not be allowed to bid future proposals for the same Contract,
* the low bid is mathematically and materially unbalanced. The Bidder will not be allowed to bid future proposals for the same Contract,
* the lowest bid is higher than the Owner’s estimate, and re-advertising for bids may result in a lower bid,
* the low bid contains a bid error that satisfies the requirements and criteria in Article 2L.12., “Consideration of Bid Errors,” or
* rejection of the Contract is in the best interest of the Owner.

## **Deferral**. The Owner may defer the award or rejection of the Contract when deferral is in the best interest of the Owner.

# Rescinding of Award

The Owner or original award authority reserves the right to cancel the award of any Contract before Contract execution with no compensation due when the cancellation is in the best interest of the Owner. The Owner will return the proposal guaranty to the Contractor.

# Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE)

Submit all DBE and SBE information in the timeframe specified when required by the proposal.

# Execution of Contract

Provide the following within 15 days after written notification of award of the Contract.

## **Contract**. Execute the Contract as prescribed by the Owner.

## **Bonds**. Execute and date the performance and payment bond in the full amount of the Contract with the powers of attorney. Provide bonds in accordance with Table 1. Furnish the payment and performance bonds as a guaranty for the protection of the claimants and the Owner for labor and materials and the faithful performance of the work.

Table 1

Bonding Requirements

|  |  |
| --- | --- |
| Contract Amount | Required Bonds |
| Less than $25,000 | None |
| $25,000–$100,000 | Payment |
| More than $100,000 | Performance and payment |

## **Insurance**. For construction and building Contracts, submit a certificate of insurance showing coverages in accordance with the Contract requirements.

Insurances must cover the work for the duration of the Contract and must remain in effect until final acceptance. Provide project-specific insurance, not listed in Table 2, until acceptance of the work covered by the project-specific insurance or as approved by the Engineer. Failure to obtain and maintain insurance for the contracted work may result in suspension of work or default of the Contract. If the insurance expires and coverage lapses for any reason, stop all work until the Owner receives an acceptable certificate of insurance.

Provide the Owner with a certificate of insurance verifying the types and amounts of coverage shown in Table 2. The certificate of insurance must be in a form approved by the Texas Department of Insurance. Certificates of insurance for commercial general liability, auto liability, and workers’ compensation must include the Contractor’s prequalified name in the “Insured” field. Any certificate of insurance provided must be available for public inspection.

Table 2

Insurance Requirements

|  |  |
| --- | --- |
| Type of Insurance | Amount of Coverage |
| Commercial general liability insurance | Not less than:  $600,000 each occurrence |
| Business automobile policy | Not less than:  $600,000 combined single limit |
| Workers’ compensation | Not less than:  Statutory |
| All risk builder’s risk insurance  (for building-facilities contracts only) | 100% of Contract price |

By signing the Contract, the Contractor certifies compliance with all applicable laws, rules, and regulations pertaining to workers’ compensation insurance. This certification includes all subcontractors. Pay all deductibles stated in the policy. Subcontractors must meet the requirements shown in Table 2, either through their own coverage or through the Contractor’s coverage.

The workers’ compensation policy must include a waiver of subrogation endorsement in favor of the Owner.

For building-facilities contracts, provide all risk builder’s risk insurance to protect the Owner against loss by storm, fire, or extended coverage perils on work and materials intended for use on the project, including the adjacent structure. Name the Owner under the Lost Payable clause.

For contracts with railroad requirements, see project-specific details for additional insurance requirements.

Provide a substitute Surety on the Contract bonds in the original full Contract amount within 15 days of notification if the Surety is declared bankrupt or insolvent, the Surety’s underwriting limitation drops below the Contract amount or the Surety’s right to do business is terminated by the Owner. The substitute Surety must be authorized by the laws of the Owner and acceptable to the Owner. Work will be suspended until a substitute Surety is provided. Working day charges will be suspended for 15 days or until an acceptable Surety is provided, whichever is sooner.

The work performed under this Section will not be measured or paid for directly, but will be subsidiary to pertinent Items.

## **Business Ownership Information**. Submit the names and Social Security numbers of all individuals owning 25% or more of the firm, or firms in the case of a joint venture, on the Owner’s form.

## **Railroad Documents**. Provide all required documents for satisfaction of railroad requirements for projects that have work involving railroad right of way. Comply with the requirements of Article 5L.8., “Cooperation with Railroads.”

# Failure to Enter Contract

If the Contractor fails to comply with all the requirements in Article 3L.4., “Execution of Contract,” the proposal guaranty will become the property of the Owner, not as a penalty, but as liquidated damages. The Contractor forfeiting the proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in design of the work.

# Approval and Execution of Contract

The Contract will be approved and signed under authority of the Owner.

# Return of Proposal Guaranty

The proposal guaranty check of the low Bidder will be retained until after the Contract has been rejected or awarded and executed. Bid bonds will not be returned.

# Beginning of Work

Do not begin work until authorized in writing by the Owner.

Verify all quantities of materials shown on the plans before ordering.

# Assignment of Contract

Do not assign, sell, transfer, or otherwise dispose of the Contract or any portion of the rights, title, or interest (including claims) without the approval of the Owner or original award authority. The Owner must deem any proposed assignment justified and legally acceptable before the assignment can take place.

# Excluded Parties

The Contractor certifies by signing the Contract that the Contractor will not enter into any subcontract with a subcontractor that is debarred or suspended by the Owner or any federal agency.