

**VERMONT AGENCY OF TRANSPORTATION**

**POLICIES AND PROCEDURES**

**ON**

**PREQUALIFICATION, BIDDING, AND AWARD OF CONTRACTS**

**AGENCY POLICY EFFECTIVE AUGUST 24, 2007**

**REVISION #6 EFFECTIVE JANUARY 1, 2018**

## REVISION #1 – DECEMBER 23, 2008

Item #	Section #	Description
1-1	1.01-E-2	References substantial completion for considering current work.
1-2	1.03-A	Updates composition of Committee
1-3	3.05-C	Adds work classification for Bridge Membrane/Paving
1-4	3.05-C	References Timber Covered Bridge Prequalification Questionnaire
1-5	7.01-A-5	Revised to reflect electronic bidding
1-6	7.02-B-3	Revised to reflect electronic bidding
1-7	7.02-B-4	Revised to reflect electronic bidding
1-8	7.05-B	Revised to reflect electronic bidding
1-9	7.07-C	Revised to reflect electronic bidding
1-10	7.08-A-1	Revised to reflect electronic bidding
1-11	7.08-B	Revised to reflect electronic bidding
1-12	7.08-C-2	Revised to reflect electronic bidding
1-13	7.09	Revised to reflect electronic bidding
1-14	Appendix A	Adds description for Bridge Membrane/Paving work classification

## REVISION #2 – JANUARY 1, 2013

Item #	Section #	Description
2-1	1.01-C	Deleted Columbus Day from listed Holidays
2-2	7.01-A-5	Revised to reflect notice by electronic posting
2-3	7.02-B-1	Revised to reflect notice by electronic posting
2-4	7.02-B-3	Revised to distinguish process for paper bids
2-5	7.02-B-3	Revised to distinguish process for electronic bids
2-6	7.02-B-5	Deleted to reflect notice by electronic posting
2-7	7.02-B-6	Deleted to reflect notice by electronic posting
2-8	7.02-B-7	Deleted to reflect notice by electronic posting

## REVISION #3 – APRIL 1, 2013

Item #	Section #	Description
3-1	1.03-A	Updates composition of Committee

## REVISION #4 – JANUARY 1, 2015\*

Item #	Section #	Description
4-1	1.01(C)	Adds definition of new position to reflect Agency restructure
4-2	1.01(C)	Deletes definition of position to reflect Agency restructure
4-3	1.01(C)	Revised to reflect electronic format and process
4-4	1.01(D)	Revised for clarity
4-5	1.02(C)	Revised for clarity
4-6	1.03(A)(3)-(8)	Revised to reflect Agency restructure
4-7	1.04(D)	Deleted language for clarity
4-8	2.02	Revised for clarity
4-9	3.05(B)(3)	Revised for clarity
4-10	5.01	Revised for clarity
4-11	5.02(B)	Revised to limit Exception to Deadline for Request for Proposal
	5.02(C) & (D)	Revised for clarity
4-12	5.03	Updated and revised for clarity
4-13	5.04	Revised for clarity
4-14	5.06	Revised for clarity; Deleted language to eliminate redundancy
4-15	5.07	Eliminates requirement for (joint venture) joint affidavit and certain information to be included in the request; clarifies members' respective maximum dollar capacity rating calculations.

4-16	6.05 & 6.06	Deleted for consistency in appeal process
4-17	7.02	Revised to reflect electronic, paperless format & process and distinguish from paper format
4-18	7.04(A)	Disclaimer language revised
4-19	7.04(C)	Language deleted
4-20	7.05(A)	Revised to distinguish paper and electronic proposal preparation
4-21	7.06(C)	Revised to reflect Agency restructure
4-22	7.09	Language added to last paragraph
4-23	7.11(B)	Revised to reflect electronic format and process
4-24	7.14(B)	Language added
4-25	7.14(C)	Subsection deleted
4-26	8.02	Revised for clarity of purpose
4-27	8.05(C)	Deleted to reflect electronic format and process

\* Minor scrivener's errors not flagged in Revision #4. When several Revision Items occur in a Section, one (1) item number is assigned for those Revisions Items.

### REVISION #5 – APRIL 15, 2015

Item #	Section #	Description
5-1	5.02(A)	Revised to clarify Deadline for Consideration
5-2	5.02(B)	Revised to clarify Exception to Deadline
5-3	8.02(C)	Revised to clarify appeal of award procedure

### REVISION #6 – JANUARY 1, 2018

Item #	Section #	Description
6-1	1.01(C)	Replace Holiday list with link to DHR website
6-2	1.01(C)	Revise Workday definition
6-3	1.03	Update to Prequalification Committee Composition
6-4	2.01(B)	Revised to clarify financial statement
6-5	2.01(C)	Revised to clarify (delete C)
6-6	3.05(A,2,b)	Additional explanation of calculation
6-7	3.05(A,4)	Added description of Per Work Classification Maximum Dollar Rating
6-8	3.05 (C, 1)	Added Roadway Rehabilitation classification
6-9	3.05 (C, 1)	Removed Wells classification
6-10	3.07	Revise Prequalification period to 16 months (Delete B & C)
6-11	4.01(S)	Added to address Act 54 (emp. misclassification)
6-12	4.01(T)	Added to include False Claims Act 54
6-13	5.01	Revised to clarify pro-rated balances of work on hand
6-14	5.03(C)	Revise Contract-specific Request evaluation criteria language
6-15	5.02	Remove exception language (Delete D)
6-16	5.03(H)	Clarify Subject to Prequalification determinations forwarded to Prequalification Committee
6-17	7.02(B, 3, b)	Discontinuation of Addendum acknowledgment table in electronic proposal
6-18	7.06(A,1)	Discontinuation of Addendum acknowledgment table in electronic proposal

**VERMONT STATE AGENCY OF TRANSPORTATION  
POLICIES & PROCEDURES FOR PREQUALIFICATION,  
BIDDING, AND AWARD OF CONTRACTS**

**AUGUST 24, 2007**

**REVISION #1 - DECEMBER 23, 2008**

**REVISION #2 - JANUARY 1, 2013**

**REVISION #3 - APRIL 1, 2013**

**REVISION #4 - JANUARY 1, 2015**

**REVISION #5 - APRIL 15, 2015**

**REVISION #6 – JANUARY 1, 2018**

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**STATE OF VERMONT  
AGENCY OF TRANSPORTATION  
POLICIES AND PROCEDURES FOR  
PREQUALIFICATION, BIDDING, AND AWARD OF CONTRACTS**

**Effective August 24, 2007  
Revision #1: December 23, 2008  
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**1 PREQUALIFICATION; DEFINITIONS; AUTHORITY; FUNCTIONS;  
CONFIDENTIALITY**

**1.01 GENERAL**

- A) History. Prequalification of contractors was adopted by the Vermont Department of Highways in 1951 and the Prequalification Committee has been functioning continually since that time. The process of prequalification is carried out in accordance with these Policies and Procedures which were approved by the Secretary of the Agency of Transportation. The prequalification function is under the purview of the Contract Administration Section and is administered by the Prequalification Administrator.
- B) Notice of Publication of List of Prequalified Contractors. The Agency of Transportation may make available to the public or post on its web site a list of all contractors that have obtained Annual Prequalification necessary to bid on Agency construction contracts.
- C) Definitions. Whenever in these Policies and Procedures the following terms or pronouns in place of them are used, the intent and meaning shall be as follows:

ADDENDUM - A supplement to the original proposal form covering additions, deletions, corrections, or changes in the bidding conditions that may be issued prior to the date of bid opening.

ADMINISTRATOR – See “PREQUALIFICATION ADMINISTRATOR”

ADVERTISEMENT - A public announcement inviting bids for work to be performed and/or materials to be furnished.

AGENCY - The State of Vermont Agency of Transportation; may also be referred to as “VTrans.”

ANNUAL PREQUALIFICATION – See “PREQUALIFICATION”

AWARD - The formal acceptance by the Agency of a proposal.

BID – See “PROPOSAL”

BID BOND – See “PROPOSAL GUARANTY”

BIDDER - An entity that is specifically prequalified to submit a bid proposal.  
See “ENTITY”

BID ESCROW - A process for securely storing the original documents used by a contractor in preparing its bid until either the information is needed or the work is complete.

CALENDAR DAY - Any day shown on the calendar, beginning and ending at midnight.

CHIEF ENGINEER OF THE HIGHWAY DIVISION – The person appointed and designated as the head of Highway Division.<sup>4-1</sup>

CHIEF OF CONTRACT ADMINISTRATION - The Agency employee authorized to administer the bidding and contract award processes set out in these Policies and Procedures.

CLASSIFICATION(S) – See “WORK CLASSIFICATION(S)”

COMMITTEE - The Prequalification Committee of the Vermont Agency of Transportation.

CONTRACT - The written agreement between the Agency and a contractor setting out the obligations of the parties to the contract for the performance of the work described therein.

CONTRACT BOND(S) - The approved forms of security, signed and furnished by the contractor and the contractor’s surety or sureties, guaranteeing signatures on the contract, performance of and compliance with the contract, and the payment of all legal debts pertaining to the construction of the contracted project(s).

CONTRACT BY CONTRACT RATING (CCR) – A rating in lieu of an NCCR (Number of Contracts Capacity Rating).

CONTRACTOR(S) – An entity that has Annual Prequalification status and/or an entity that has a contract with the Agency to perform construction work, including but not limited to an individual, partnership, firm, organization, association, corporation, or joint venture; a representative, trustee, or receiver of a contractor appointed by any court of competent jurisdiction.

CONTRACTOR'S EXPERIENCE QUESTIONNAIRE AND FINANCIAL STATEMENT – The approved form or forms upon which an entity shall furnish requested facts and information to the Prequalification Committee about the entity's ability to finance, support, and perform contracted work.

CONTRACTS AND SPECIFICATIONS ENGINEER – The Agency employee with full authority to schedule contract advertisements and bid openings, prepare contract proposal forms, including all specifications and contract requirements, solicit bids, declare responsibility of submitted bids, and process the award and signing of Agency contracts.

CONTRACT SPECIFIC PREQUALIFICATION – See “PREQUALIFICATION”

CPA - Certified Public Accountant - A person who is registered by the State of Vermont Standard of Public Accountancy as a CPA or whose home-state registration qualifications are equivalent to those established in Vermont.

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ELECTRONIC BID – A bid for an advertised contract submitted by utilizing the Bid Express electronic bidding services.

ENTITY – An individual, partnership, firm, organization, association, corporation, or joint venture able to contract under Vermont law.

EQUIPMENT - All machinery and equipment, together with all necessary supplies for upkeep and maintenance, and the tools and apparatus necessary for the construction and completion of specified work.

GENERAL SPECIAL PROVISIONS - Approved additions and revisions to the Standard Specifications for Construction.

HEARING OFFICER - An individual appointed by the Secretary of Transportation to hear appeals of actions of the Prequalification Committee and report the findings of fact, conclusions, and recommendations to the Secretary.

HOLIDAYS <sup>6-1</sup> – Refer to the Vermont Department of Human Resources website at the following link:

<http://humanresources.vermont.gov/benefits-wellness/holiday-schedule>

If a Holiday falls on a Sunday, the following Monday shall be considered the Holiday; if a Holiday falls on a Saturday, the Friday immediately preceding shall be considered the Holiday.

INVITATION FOR BIDS - An advertised invitation to contractors, through a bidding process, to submit a proposal on a specific construction contract for work and/or materials to be provided.



JOINT VENTURE - An association of two or more entities to carry out a single business enterprise, for which purpose they combine their capital, personnel, equipment, experience, skills and knowledge.

MAXIMUM DOLLAR CAPACITY RATING (MDCR) - The maximum dollar value of all uncompleted work that a contractor may have at any time for all clients. May include "MDCR Per Contract" and/or "MDCR Per Work Classification" ratings.

NUMBER OF CONTRACTS CAPACITY RATING (NCCR) - The maximum number of construction contracts for all clients that a contractor may have under contract and/or in progress at any one time.

PER CONTRACT MAXIMUM DOLLAR RATING (PCMDR) – The maximum

PER WORK CLASSIFICATION MAXIMUM DOLLAR RATING (PWCMDR) –  
The maximum

PREQUALIFICATION:

Annual Prequalification - The process by which an entity is generally approved to bid on contracts advertised by the Agency, but not yet approved to bid on any specific contract.

Contract Specific Prequalification - The process by which an entity is approved to bid on a specific contract advertised by the Agency.

PREQUALIFICATION ADMINISTRATOR – The Agency employee charged with administration of the prequalification process for the Prequalification Committee. The Prequalification Administrator serves as Secretary to the Prequalification Committee.

PROJECT - The specific portion or area of a transportation facility on which work is to be performed under one or more contracts and all the work to be performed there; also includes all projects for clients other than the Agency greater than \$100,000.

PROPOSAL - The offer of a bidder, on the prescribed form, either in paper format or, in the usual practice of electronic bidding, in electronic format, to perform work and/or provide materials at the prices quoted in the offer.

PROPOSAL FORM - The prescribed form on which the offer of a bidder is to be submitted. For electronic bidding, the form is in an electronic format and is part of the Electronic Proposal File.

PROPOSAL GUARANTY (BID BOND) - The security furnished with a bid by the contractor to ensure that the winning bidder will enter into a contract under the terms at which they bid.

QUESTIONNAIRE – See "CONTRACTOR'S EXPERIENCE QUESTIONNAIRE AND FINANCIAL STATEMENT"

RATINGS – See "MAXIMUM DOLLAR CAPACITY RATING (MDCR);" "NUMBER OF CONTRACTS CAPACITY RATING (NCCR);" "CONTRACT BY CONTRACT RATING (CCR);" PER CONTRACT MAXIMUM DOLLAR RATING (PCMDR);" and PER WORK CLASSIFICATION MAXIMUM DOLLAR RATING (PWCMDR)".

REQUEST FOR CONTRACT SPECIFIC PREQUALIFICATION (Form CA-82)  
- A request by an entity to be prequalified to bid on a specific contract.

SECRETARY - The Secretary of Transportation, the appointed head of the Vermont Agency of Transportation.

SPECIAL PROVISIONS - Additions and revisions to the Standard Specifications for Construction, Supplemental Specifications, General Special Provisions, Plans, or other documents that are part of a particular contract.

SPECIFICATIONS - The compilation of provisions and requirements for the performance of prescribed work including the Standard Specifications for Construction, Supplemental Specifications, General Special Provisions, Special Provisions, Plans, and other documents that are part of a particular contract.

STANDARD SPECIFICATIONS - The publication, available in electronic format or, upon request, in bound, print format,<sup>4-3</sup> entitled Standard Specifications For Construction and the specifications included therein, as Currently approved for general and repetitive use and application in Agency construction contracts.

STATE - The State of Vermont, acting through its authorized representative.

SUBCONTRACTOR - An individual or legal entity to which a contractor sublets a part of the work included in a contract.

SURETY - An individual or legal entity acceptable to the State executing the bond or bonds furnished by a bidder or contractor.

V.S.A. – Vermont Statutes Annotated.

WORK - The furnishing of all labor, materials, equipment, and incidentals necessary or convenient to the successful completion of a contract and the carrying out of all the duties and obligations imposed by a contract.

WORK CLASSIFICATION(S) – The types of construction and other work for which the Agency contracts pursuant to these Policies and Procedures, as listed in Subsection 3.05 and described in Appendix A.

WORKING DAY<sup>6-2</sup> – A day during which normal Agency operations could proceed for a major part of the daylight hours, and specifically excluding Saturdays, Sundays, and those days of the standard work week on which holidays are celebrated.

- D) Annual and Contract Specific Prequalification Required. Both Annual and Contract Specific Prequalification of an entity are required before the entity will be approved (or “prequalified”) to bid on a construction contract advertised by the Agency.<sup>4-4</sup>
- E) Becoming Prequalified. Prequalification status is achieved by the successful completion of two distinct and separate procedures.
- 1) Annual Prequalification. Annual Prequalification is the initial and annual process by which an entity obtains general permission to submit bids for Agency contracts. A prospective bidder must submit a signed and fully answered Questionnaire for consideration by the Committee. The Committee will use the information submitted in the Questionnaire to establish certain limitations (called ratings and classifications) for the dollar amounts, number of contracts, and the type of work on which a contractor is allowed to bid and be awarded contracts. Each contractor shall renew this qualification on an annual basis by submitting updated current information to the Committee.
  - 2) Contract Specific Prequalification. Contract Specific Prequalification is the process by which a contractor that has already achieved current Annual Prequalification status obtains permission to submit a bid for a particular contract. To bid on a specific contract, a prospective bidder must submit to the Administrator a properly prepared and signed Request for Contract Specific Prequalification (Form CA – 82.) This form includes a list of all work a prospective bidder has under contract or anticipates to be under contract at the time of signing, excluding contracts which are substantially complete as defined in the Standard Specifications for Construction.<sup>1-1</sup>

The two procedures, Annual and Contract Specific Prequalification, while separate and distinct, are often referred to – both collectively and individually – as “Prequalification.”

## 1.02 AUTHORITY OF THE SECRETARY OF TRANSPORTATION

The Secretary has the authority, pursuant to 19 V.S.A. Sections 7 and 10 to:

- A) Adopt and modify these Policies and Procedures;
- B) Appoint members to serve on a Prequalification Committee;
- C) Make exceptions to these Policies and Procedures when, in the Secretary’s<sup>4-5</sup> sole discretion, it is determined to be in the best interest of the State;

- D) Resolve all disputes relating to the prequalification of entities; and
- E) Resolve all disputes relating to bidding and the award of contracts.

### 1.03 PREQUALIFICATION COMMITTEE COMPOSITION AND ORGANIZATION

- A) Makeup of Prequalification Committee. All members of the Prequalification Committee shall serve at the pleasure and discretion of, and may be removed or replaced as deemed appropriate by the Secretary.

The Secretary has currently designated the following Agency personnel as members of the Committee:

Permanent Members: <sup>6-3</sup>

- 1) Director of Finance & Administration - Chair
- 2) Chief of Contract Administration
- 3) Chief Engineer of the Highway Division
- 4) Construction Manager
- 5) Construction Services Engineer
- 6) Director of Project Delivery Bureau
- 7) Accounting – Senior Accountant
- 8) Director of Policy, Planning & Intermodal Development<sup>3-1</sup>
- 9) Director of Municipal Assistance Bureau
- 10) Highway Safety & Design Manager
- 11) Structures Manager

Alternate Members:

With the approval of the Chair, a permanent member may designate an alternate as a long-term alternate or for specific meeting(s). An alternate shall serve in place of the permanent member listed above; an alternate shall serve as a designated alternate as directed or until such time as:

- 1) The designation is rescinded by the designating permanent member with the approval of the Chair,
- 2) The designating permanent committee member leaves the Committee, or
- 3) The alternate changes position within the Agency or is no longer employed in the Agency.

- B) Prequalification Administrator. The Administrator will serve as Secretary to the Committee. In their absence, a substitute designated by the Chair will assume the Administrator's duties.

- C) Committee Meetings. Committee meetings are typically held weekly or more frequently when Committee business requires. Special meetings may be held and/or Committee members may be polled to consider matters requiring immediate action. Polling may be performed personally, via telephone, or via other electronic media. The questions and results of polling will be presented at the next meeting.
- 1) Quorum. A quorum shall consist of not less than five (5) members, of whom at least three (3) shall be permanent or long-term alternate members.
  - 2) Absence of Chair. In the scheduled absence of the Chair, the Chair shall designate a substitute to act as Chair. In the absence of a designation, the first listed Permanent Member present in 1.03 (A) above shall act as Chair.
  - 3) Conduct: Meetings shall be conducted in accordance with “Robert’s Rules of Order.”
- D) Meetings Other Than In Person. When deemed appropriate, the Committee may conduct meetings, including interviews or hearings, by telephone, electronic mail, videoconferencing, or other suitable technology; if an entity specifically objects, and time allows, an in person interview or hearing will be conducted.

#### 1.04 FUNCTIONS AND DUTIES OF THE PREQUALIFICATION COMMITTEE

The Committee shall:

- A) Review Prequalification Questionnaires to establish Annual Prequalification and set ratings (both MDCR and NCCR) and work classifications for all entities desiring to bid on Agency construction contracts.
- B) Determine a contractor’s qualifications to bid on a specific contract when award of a given contract will exceed a contractor’s rating(s) and/or be outside of a contractor’s approved work classification(s).
- C) Meet with contractors aggrieved by their rating(s)/work classification(s) or a Committee decision denying a contractor’s qualification to bid on a specific contract, and make a final Committee determination thereon.
- D) Hear all appeals of decisions by the Administrator.<sup>4-7</sup>
- E) Meet with one or more entities to obtain information or gain insight into industry practices.
- F) Recommend modifications to these Policies and Procedures.
- G) Recommend exceptions to these Policies and Procedures.

## 1.05 CONFIDENTIALITY OF PREQUALIFICATION COMMITTEE FILES

- A) General. Discussions, records, and files of the Committee concerning financial information provided by an entity are considered confidential, as allowed by 1 V.S.A. Section 317. Any entity or its agent may review its own file.

All information provided by an entity to the Prequalification Committee shall be considered confidential as allowed by 1 V.S.A. Section 317.

- B) Information Available to the Public. All decisions of the Committee, including those relative to ratings and classifications of work, shall be public information; excepted from this provision is specific contract prequalification when three or fewer entities have been prequalified to bid on a specific contract.

- C) Agency Use of Prequalification Information. Except for the Agency's administration and review of the prequalification program and other administrative and contractual operations of the Agency, State, or respective Federal funding Agencies - such as electronic bidding, taxes, and contract claims – no use, reproduction, or disclosure will be made of information contained in prequalification submissions other than with the permission of the entity; except as provided herein, no person with access to an entity's prequalification information shall disclose that information to any other person.

## **2 CONTRACTORS' EXPERIENCE QUESTIONNAIRE & FINANCIAL STATEMENT**

### 2.01 CONTRACTORS' EXPERIENCE QUESTIONNAIRE & FINANCIAL STATEMENT

- A) Prequalification Questionnaire Required; Financial Statement; Sworn Statement; Use Thereof. Entities requesting Annual Prequalification, whether initial or renewal, must complete the Questionnaire provided by the Agency and must swear thereto before a Notary Public. The information provided will be used to determine the financial ability, the adequacy of plant and equipment, personnel and organizational capabilities, experience, and safety record, and any other issues relative to the entity's prospective performance of Agency contracts. To obtain maximum financial capacity ratings, an entity's financial statement must be prepared from data secured from an actual audit of the entity's records, and be prepared and certified by an independent CPA.
- B) Unaudited Financial Statement. Submission of a financial statement that is less than fully audited is acceptable, but will limit an entity's MDCR as provided in Section 3.05. Minimum level of acceptable financial information is a compiled statement or in-house balance sheets and statement of revenue/profit & loss. Tax returns are not acceptable. The Committee will not be responsible for any misinterpretation it makes of financial information that is in a format other than that required by these Policies. <sup>6-4</sup>

## 2.02 ADDITIONAL INFORMATION

Whenever the Committee is not satisfied with the information contained in a Contractor's Prequalification Questionnaire, it may refuse to furnish the entity an MDCR, an NCCR, work classification(s), and/or to prequalify the entity to bid on<sup>4-8</sup> one or more advertised contracts.

## **3 ANNUAL PREQUALIFICATION RATINGS AND WORK CLASSIFICATIONS**

### 3.01 SETTING ANNUAL PREQUALIFICATION RATINGS AND WORK CLASSIFICATIONS

Ratings and work classifications are set and may be reset or adjusted, based on an entity's ability to properly finance and perform the work as evidenced by the information in the Questionnaire, any other pertinent information and data available to the Committee, and an entity's experience on prior or current contracts with the Agency and other awarding authorities. The assigned rating(s) and classification(s) shall include the following components:

- A) Maximum Dollar Capacity Rating (MDCR)
- B) Number of Contracts Capacity Rating (NCCR)
- C) One or more Work Classifications

The Committee may demand or grant a personal interview with an entity prior to setting one or both rating(s) and/or classification(s).

### 3.02 ANNUAL PREQUALIFICATION DETERMINATION

- A) General. The Committee shall consider a request for Annual Prequalification after the request therefor has been reviewed by the Administrator.
- B) Administrator's Review. The Administrator's review shall consist of an evaluation of the financial condition, personnel, equipment and work history of the requesting entity. The Committee shall determine a Maximum Dollar Capacity Rating (MDCR) in dollar volume of construction for all clients and a Number of Contracts Capacity Rating (NCCR), collectively referred to as "Ratings," that a specific entity may have under construction for all clients at a given time. The Committee shall also determine the Work Classifications for which a contractor granted Annual Prequalification, is approved to bid.
- C) Interview. The Committee may require a personal interview with an entity when considering qualifications for rating(s) and/or work classification(s).

- D) Inactive Bidder List. An entity that applies for Annual Prequalification and has not submitted a bid to the Agency for an advertised contract within two years of the date the application is received will be placed on an inactive bidder list. Review of such an application and supporting materials by the Committee may not be made until the entity requests Contract Specific Prequalification. An entity on the inactive bidder list will only be given a Contract by Contract Rating (CCR) as a Number of Contracts Capacity Rating (NCCR).

### 3.03 TIME OF FILING

- A) Minimum of Annual Filing; Committee Demand. The Questionnaire shall be filed with the Agency at least annually, subject to the right of the Prequalification Committee to request additional information from a contractor at any time.
- B) Expiration of Annual Prequalification. Annual Prequalification expires one (1) year from the date of the end of the contractor's fiscal year included in the financial statement provided to the Committee; however, under Subsection 3.07, an entity shall have four (4) months from the end of its fiscal year to renew its Annual Prequalification. The information in a Questionnaire will not be considered current if any of the information in the financial portion is more than sixteen (16) months old.
- C) Most Recent Fiscal Year; Changes in Financial Condition. The financial information submitted in an entity's Questionnaire shall be as of the end of the entity's latest fiscal year. Financial Ratio analysis is used to assess potential risk to the Agency and any "going-concern" issues for which additional information may be requested. Any substantial change in the financial (health) condition of the entity between the date of the financial statement and the date of filing the Questionnaire shall be indicated and an explanation thereof provided. All other information provided in the Questionnaire shall be as of the date of filing.

### 3.04 TIME LIMITATION FOR SUBMITTING ANNUAL PREQUALIFICATION QUESTIONNAIRE AND REQUEST

All requests for Annual Prequalification, or renewals thereof, and Questionnaires in support thereof shall be submitted to the Administrator at least ten (10) working days prior to a scheduled bid opening for which an entity wishes to submit a bid. (See also 5.01 CONTRACT SPECIFIC PREQUALIFICATION.)



### 3.05 RATINGS AND CLASSIFICATIONS

#### A) Maximum Dollar Capacity Rating (MDCR)

- 1) Use. The MDCR is used to determine eligibility to bid on contracts. The MDCR is set by the Committee. Generally, the value of a contract will be evenly divided over the number of construction seasons, or fractions of construction seasons, the contract is expected to take for construction. (NOTE: For purposes of this subsection, the construction season shall be considered to be April 15 to December 1, inclusive, of a given year.)
- 2) Explanation; Computation; Limits.
  - a) The MDCR is based on the following factors:
    1. The average ratio of total revenues to total assets over the most recent five (5) year period; and
    2. The Adjustment Factor as provided in the table below for the type of financial information provided.

MDCR INFORMATION, ADJUSTMENT FACTOR, & LIMIT TABLE

TYPE OF FINANCIAL INFORMATION PROVIDED	ADJUSTMENT FACTOR	MDCR LIMIT
Fully Audited Financial Statement	100% of calculated value	N/A
Reviewed Financial Statement	85% of calculated value	\$4,000,000
In-house or Compiled Financial Information	70% of calculated value	\$2,000,000

- b) The MDCR for a contractor is determined by multiplying the appropriate adjustment factor immediately above by the most recent year's total and the average ratio developed in step 1 above <sup>6-6</sup>, subject to the limits as shown in the table above for the type of information provided and the Committee's judgment from considering the indicators in (c) below.
- c) The following indicators may also be considered by the Committee in setting an entity's MDCR:
  1. The ratio between all current assets and all current liabilities (current ratio); and/or
  2. The ratio between capital invested by owners and funds provided by lenders (i.e., debt to equity ratio.)

- 3) Per Contract Maximum Dollar Rating (PCMDR). The Committee may also set a PCMDR for a contractor. A PCMDR will be equal to or less than the total MDCR of a contractor.
  - 4) Per Work Classification Maximum Dollar Rating (PWCMDR). The Committee may also set a PWCMDR for a contractor. A PCMDR will be equal to or less than the total MDCR of a contractor. <sup>6-7</sup>
  - 5) Resetting or Adjusting Dollar Capacity Ratings. The Committee may reset or adjust a contractor's MDCR and/or PCMDR and/or PWCMDR based on performance for the Agency and/or other awarding authorities, interim or contract completion evaluations, claims history, and any other pertinent information and data available. The Committee may re-evaluate and change a contractor's rating(s) and/or work classification(s) whenever it is in the best interest of the State to take such action for one or more of the reasons outlined in subsection 4.01.
  - 6) Compiled, Reviewed, or Fully Audited Financial Statements. Compiled, reviewed, and fully-audited financial statements must be prepared and certified by an independent CPA.
  - 7) Limited MDCR. The Committee may establish a limited MDCR for a contractor. A limited MDCR will be equal to or less than the contractor's total MDCR.
- B) Number of Contracts Capacity Rating (NCCR)
- 1) Use. The NCCR is used to determine eligibility to bid on contracts. The NCCR is set by the Committee. Generally, this rating is set based on the number of qualified supervisory personnel the contractor has and the number of contracts constructed in a given year as shown in the Questionnaire and other information available to the Committee.
  - 2) Contract by Contract Rating In Lieu of an NCCR. The Committee may assign a contractor a Contract by Contract Rating (CCR) instead of an NCCR; a CCR may be assigned to a contractor that has:
    - a) Not recently performed work for the Agency; and/or
    - b) In the judgment of the Committee, financial and/or management issues that warrant a CCR rating; and/or
    - c) In the judgment of the Committee, performance issues and/or workload that warrants a CCR rating.
  - 3) Guidance to Administrator. For each contractor assigned a CCR rating, the Committee may issue guidance to the Administrator as to the approval for the contractor to bid<sup>4-9</sup> during the period covered by the contractor's Annual Prequalification.

C) Work Classification(s)

- 1) What It Is. Work Classifications are the types of construction for which a contractor is determined to be qualified to bid. Work classifications will be given for any one or a combination of the following types of work:

<u>Code</u>	<u>Description</u>
<b>AIR</b>	Airport Construction
<b>BC</b>	Building Construction
<b>BD</b>	Building Demolition
<b>BMP</b>	Bridge Membrane/Paving <sup>1-3</sup>
<b>BRC</b>	Bridge Construction
<b>BRP</b>	Bridge Painting
<b>BRR</b>	Bridge Rehabilitation
<b>BTP</b>	Bicycle and/or Pedestrian (Transportation) Path
<b>CS</b>	Crack Sealing/Pavement Maintenance
<b>D</b>	Drainage (Culverts, Underdrain, D/ICB Rehabilitation, Other)
<b>G</b>	Guardrail, Fencing & Signs
<b>H</b>	Hazardous Material Removal
<b>L</b>	Landscaping
<b>P&amp;R</b>	Park & Ride Lot
<b>PM</b>	Pavement Markings
<b>R</b>	Road and Highway (New Construction and Reconstruction on Alignment)
<b>RBRR</b>	Railroad Bridge Rehabilitation
<b>RHC</b>	Railroad/Highway Crossing
<b>RR</b>	Railroads
<b>RS*</b>	Roadway Rehabilitation (Reclaimed Stabilized Base, Other)* <sup>6-8</sup>
<b>RWS</b>	Roadway Safety (Interstate Safety Projects and 3R Projects except when paving comprises majority of work in terms of dollars)
<b>SR</b>	Surface Rehabilitation-BCP (Bituminous Concrete Overlays, , Other)
<b>SW</b>	Curb and Sidewalk
<b>TS</b>	Traffic Signals & Lighting

**Not applicable** Other  
 General descriptions of the Work Classifications can be found in Appendix A.

\*Roadway Rehabilitation is not a classification in Trns\*port but is used by the Prequalification Committee to differentiate from Surface Rehabilitation based on the depth of disturbed material.

- 2) When a contract could be classified using more than one Work Classification and the Agency has chosen to advertise using a single classification:
  - a) Contractors prequalified for one of the applicable classifications may request prequalification to bid on the contract, subject to all other prequalification requirements, and
  - b) Subcontractors may be required to be prequalified to perform the work for which they propose to subcontract.

### 3.06 NOTIFICATION BY COMMITTEE OF ANNUAL PREQUALIFICATION STATUS

The Committee will notify each applicant of its Annual Prequalification status, whether initial or a renewal, including its MDCR, NCCR, or lesser ratings as appropriate, and Work Classification(s).

### 3.07 EXPIRATION AND RENEWAL OF ANNUAL PREQUALIFICATION

- A) Expiration of Annual Prequalification. Annual Prequalification expires one (1) year and four (4) months from the date of the end of the contractor's fiscal year included in the financial statement provided to the Committee. Contractors will be notified in writing of the date their respective renewal periods begin.

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- D) Removal of Contractor's Name from Lists. A contractor's name will be removed from the Agency's list of prequalified bidders four (4) months after expiration of the contractor's Annual Prequalification. A contractor's name will be restored to the list of prequalified bidders if Annual Prequalification is renewed.

### 3.08 REVISION OF RATINGS AND CLASSIFICATIONS

- A) General. Except as otherwise provided, requests for revision of a rating(s) or work classification will be considered at any time provided information is submitted showing changed assets, equipment, supervisory personnel, and/or ability to perform work.
- B) Timing. To ensure consideration by the Committee for a particular bid opening, requests and all information must be submitted at least ten (10) working days prior to the bid opening.

- C) Disclaimer. Timely filing of a rating and/or work classification revision request does not guarantee that a contractor will be allowed to bid on a specific contract, or even that the request will be considered by the Committee prior to a specific bid opening. Therefore, the Agency urges that any request for such revisions be filed as soon as possible, but no later than ten (10) working days in advance of the bid opening for which the revision is requested. The ten (10) working day minimum period will be adequate only when no additional information is required and the contractor does not appeal the Committee's decision(s).
- D) Effect on Bid Process. A request for revision of rating(s) and/or work classification(s), like the Annual Prequalification process, is separate and distinct from the bidding process and will neither affect nor stay the bidding process for any advertised contract(s).
- E) Notice of Substantial Changes. Every entity shall immediately notify the Administrator of any substantial changes in the financial condition, qualified supervisory personnel, ownership, or organization of the entity. Failure to do so may result in reductions of ratings/classifications, suspension from bidding, debarment, or a combination of these actions for a period to be determined by the Committee.

### 3.09 ANNUAL PREQUALIFICATION OF SUBSIDIARY AND AFFILIATED COMPANIES

Subject to the following requirements, Annual Prequalification may be established for parent and a subsidiary company or companies:

- A) A parent and subsidiary company shall be considered as independent entities for which ratings and work classifications will be set on the basis of each company's own, independent financial assets, equipment, personnel, and experience.
- B) The respective Questionnaires for separate parent and subsidiary companies shall include assets, experience, personnel, and other information concerning only the specific parent or subsidiary company. Unless requested by the Committee during its review of a company's qualifications, information concerning affiliated companies will not be considered by the Committee.
- C) If one or more ratings and/or relevant work classifications are set for an entity using financial, experience, personnel, and/or equipment resources of an affiliated entity, the affiliated entity shall also be fully responsible for the contract(s) entered into by the entity benefited thereby.

#### **4 DENIAL, REDUCTION, OR REVOCATION OF ANNUAL PREQUALIFICATION RATINGS AND/OR WORK CLASSIFICATIONS**

##### **4.01 GROUNDS FOR DENIAL, REDUCTION, OR REVOCATION OF RATINGS AND WORK CLASSIFICATIONS**

Any of the following shall be sufficient grounds for denial, reduction, or revocation of the Annual Prequalification rating(s) and/or work classifications of a contractor:

- A) More than one (1) bid submitted for the same contract from an entity under the same or different names.
- B) Evidence of collusion with another contractor.
- C) Less than satisfactory performance on work for the Agency. Unsatisfactory performance shall include, but not be limited to, lack of timeliness in performing work, inferior or inadequate quality of work performed or materials provided, and/or violations of terms of a contract.
- D) Uncompleted work in progress which may be further delayed or which may hinder or prevent the timely completion of additional work if awarded.
- E) Deceptive, evasive, or untrue statements on the Prequalification Questionnaire, including any attachments; at any hearing before or meeting with the Committee; on a Request for Contract Specific Prequalification form; or any other submission to the Agency in support of a contractor's Annual Prequalification or Contract Specific Prequalification.
- F) Unreasonable refusal to settle damage claims on an Agency contract.
- G) Refusal or inability to pay, or to pay in a timely manner, all reasonable bills for labor, materials, and/or taxes on an Agency contract in a timely manner, pursuant to 9 V. S. A Chapter 102, the "Prompt Pay Act."
- H) Unreasonable refusal to resolve outstanding issues concerning Agency contracts.
- I) Failure to satisfy one (1) or more judgments relating to Agency contracts.
- J) Failure to advise the Committee immediately of substantial changes in the financial condition, ownership, supervisory personnel, obligations, safety record, or organization of the entity.
- K) Failure to provide information requested by the Committee within five (5) working days of the request.
- L) Other pertinent legal problems of the contractor, including but not limited to, suspension or debarment by another state or the federal government.

- M) Failure to meet the criteria for bidding as set out in these Policies and Procedures and as may otherwise be adopted by the Agency.
- N) Safety violation citations under the Vermont Occupational Safety and Health Act, the U.S. Occupational Safety and Health Act, or similar acts in other states.
- O) Failure to correct safety violations or infractions.
- P) Safety violations or infractions resulting in injury or death.
- Q) Insolvency, bankruptcy, or commission of an act of insolvency or bankruptcy.
- R) Current suspension, debarment, or voluntary exclusion under 49 Code of Federal Regulations (CFR) CFR Part 29, or other determination of ineligibility.
- S) Past violations, convictions or suspensions due to past performance and likely compliance with proper coding and classification of employees, per Vermont Act 54 of 2009, Section 32. <sup>6-11</sup>
- T) Violations under the Vermont False Claims Act as set forth in 32 V.S.A. § 630 et seq., or similar acts in other states. <sup>6-12</sup>

## **5 CONTRACT SPECIFIC PREQUALIFICATION**

### **5.01 CONTRACT SPECIFIC PREQUALIFICATION DESCRIPTION AND PROCEDURE**

Contract Specific Prequalification status is achieved when a currently Annually Prequalified contractor receives unconditional approval to bid on a contract.

When a contractor with current Annual Prequalification requests Contract Specific Prequalification, the Administrator will approve the request only if the estimated dollar value of the contract, combined with the dollar value of all work for all clients which the contractor is obligated to perform at the time of the request (all balances pro-rated to an annual value,<sup>6-13</sup>) is less than the contractor's MDCR, the contractor will not exceed its NCCR if it is the successful bidder, and the specific contract requires<sup>4-10</sup> a work classification for which the contractor has been qualified to bid.

### **5.02 TIME LIMITATION FOR SUBMITTING REQUEST FOR CONTRACT SPECIFIC PREQUALIFICATION**

- A) Deadline for Consideration. A Request for Contract Specific Prequalification, must be received by the Administrator by 12:00 Noon of the seventh (7th) working day prior to the day set for opening of bids for the contract (or prior to the adjusted day due to postponement.) Failure to comply with this section will result in the request not being considered. <sup>5-1</sup>

- B) Exception to Deadline. With the approval of the Committee and no later than 12:00 Noon on the second (2<sup>nd</sup>) working day prior to the day set for opening of bids for the contract (or prior to the adjusted day due to postponement;) the Chief of Contract Administration may grant an exception to the Deadline for Consideration if, in the Committee's judgment, it is in the best interest of the State and adequate time is available to complete the Contract Specific Prequalification process.<sup>5-2</sup> The Committee will not consider any request received subsequent to this Exception to Deadline cutoff point.<sup>4-11</sup>
- C) Entities Without Annual Prequalification Status. Entities that do not have current Annual Prequalification Status for whatever reason, including those seeking Annual Prequalification for the first time and contractors whose annual renewal period has expired, will not be approved to bid on a contract. <sup>6-14</sup>

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### 5.03 APPROVAL TO BID

The following shall apply for approval to bid on contracts advertised by the Agency:

- A) A request for approval to bid shall be made on the form provided by the Agency entitled "Standard Form - Request For Contract Specific Prequalification" (Form CA-82).
- B) A contractor will be approved to bid on a specific contract only if the contractor:
  - 1) Has current Annual Prequalification status; and
  - 2) Has not exceeded either its MDCR or NCCR, and will not likely do so if it is the low bidder on the specific contract; and
  - 3) Is considered qualified to bid by virtue of its approved work classification(s).
- C) When deciding whether to approve (prequalify) a prospective bidder, the Administrator shall consider the current volume, degree of completion, and amount to be reimbursed on a contract in relation to the prospective bidder's MDCR and NCCR, and whether the prospective bidder is approved for the specific work classification(s) required for the contract.
- D) Notwithstanding any other provision of these Policies and Procedures, the Agency, acting through the Prequalification Committee, reserves the right to refuse prequalification of a prospective bidder when, in the opinion of the Agency, circumstances, developments, and/or events have changed the capacity(ies) or qualification(s) of the prospective bidder to successfully perform pursuant to the specific contract being bid.



- E) When questions or issues arise concerning a prospective bidder's performance, personnel, workload, capacity(ies), or ability to successfully perform the work required pursuant to the proposed contract, the Committee may require a personal interview with the prospective bidder prior to deciding whether to approve the bidder.
- F) When a prospective bidder's dollar amount of all uncompleted work added to the Agency's estimate of the dollar amount of the work to be bid upon exceeds the MDCR of the prospective bidder, the prospective bidder will be approved to bid only with the specific authorization of the Committee.
- G) When the addition of the contract to the number of contracts already under contract to the prospective bidder will exceed the prospective bidder's NCCR, the prospective bidder will be approved to bid only with the specific authorization of the Committee.
- H) If provided documentation that a prospective bidder is not making satisfactory progress on, is performing unacceptable work on, and/or is otherwise not in compliance with the terms of a current contract, the Administrator may refuse to approve a prospective bidder otherwise within their established capacities, etc., deeming the request "Subject to Prequalification" and deferring to the determination of the Prequalification Committee. <sup>6-16</sup>
- I) Both a parent company and one or more of its subsidiaries may, in the Agency's sole discretion, be approved to bid on the same contract. <sup>4-12</sup>

#### 5.04 IDENTIFICATION OF PROPOSAL FORMS

Proposal forms will be labeled with the name and principal<sup>4-13</sup> business address of the potential bidder and are non-transferable.

#### 5.05 DOLLAR VALUE OF EACH CONTRACT; ENGINEER'S ESTIMATE

The engineer's estimate of the construction cost of a contract will be the value used to determine the bidding eligibility of a potential bidder.

A dollar value range for each proposed contract for which bids are solicited will be published in accordance with Subsection 7.01.

## 5.06 TWO OR MORE PROPOSALS IN EXCESS OF RATING(S)

### A) General.

- 1) A prospective bidder wishing to submit bid proposals for two (2) or more contracts, any one (or more) of which is (are) within the limit of that prospective bidder's current MDCR and/or its NCCR, but which together exceed the prospective bidder's current MDCR and/or NCCR, may do so; but if the prospective bidder is the apparent low bidder on the earlier(est) bid opened, the remaining bid(s) will not be considered for the subsequent opening(s).
- 2) A prospective bidder wishing to bid on two (2) or more contracts which are concurrently being advertised, but have different scheduled bid opening dates, any one (or more) of which is (are) within the limit of that prospective bidder's current MDCR and/or NCCR, but which together exceed one or both of the contractor's current ratings, may be approved to do so; but if the prospective bidder is the apparent low bidder on the earlier(est) bid opened, it will not be allowed to bid on the remaining contract(s) which are scheduled to be opened at later date(s).
- 3) In return for the opportunity to submit bids in excess of its MDCR and/or NCCR as described in this Section, a prospective bidder agrees to hold the Agency harmless for bids returned to the prospective bidder should an error be found during bid verification, other circumstances occur which rearrange the apparent bid results, or the Agency deems it appropriate not to award the contract to the apparent low bidder.

### B) Exceptions The Committee may grant an exception to Subsections (A)(1) and (A)(2), when in its judgment, such action is in the best interest of the Agency.

- 2) 4-14

## 5.07 JOINT VENTURE PREQUALIFICATION

### A) General. Two or more entities with current annual Prequalification may combine all or a portion of their assets, equipment, personnel, and experience for the purpose of bidding on a single Agency contract by providing a written request to obtain Contract Specific Prequalification as a Joint Venture for a specific contract.

### B) Necessary Information. All Joint Venture requests must include the following information:

- 1) The name of the Joint Venture as registered with the Vermont Secretary of State. This must match the information provided in obtaining a tax identification number.

- 2) The tax identification number of the Joint Venture obtained in accordance with the requirements of the United States Internal Revenue Service (I.R.S.).
- 3) The mailing address, street address, and telephone number of the Joint Venture, matching the information provided to the I.R.S. and the Secretary of State.
- 4) A copy of the agreement forming the Joint Venture.
- 5) The name(s) of the individual(s) with authority to sign contracts and obligate the Joint Venture and a copy(ies) of the power(s)-of-attorney for the designated individual(s).
- 6) A statement of the percentage of the dollar value of the contract that is to be attributed to each member of the joint venture.

**Note:** *The resulting value will be applied to the MDCR of each member of the joint venture. If the joint venture's bid is successful, each member's percentage will be attributed to its respective future MDCR calculations. Once the joint venture's request is approved by the Committee, the percentage cannot be changed.*

*Failure to provide the percent of value distribution in the Request for Proposal will result in the entire dollar value of the contract being charged against the MDCR of each of the entities at all appropriate times for all MDCR purposes.*

- 7) A designation of the lead entity and an outline of the responsibility of each member entity in the performance of the contract work.
- C) Work Classifications and MDCR of a Joint Venture. The members of a joint venture may combine their work classifications. The MDCR of a Joint Venture shall be the arithmetic sum of the MDCR's of the members minus the dollar value of all other work for all clients that the members are currently obligated to perform, both individually and as a part of joint ventures.
  - D) Filing Time. A Request for Proposal for joint venture prequalification for a specific contract must comply with the time limitations set forth in Section 5.02, above.
  - E) Prequalification Questionnaire Required If All Members Do Not Have Annual Prequalification. If one or more of the members of a requested Joint Venture do not have current Annual Prequalification, the request must be submitted to the Administrator at least ten (10) working days prior to the scheduled bid opening date and must include a fully completed Prequalification Questionnaire complete with all necessary information for each member not having Annual Prequalification.<sup>4-1</sup>

## **6 APPEALS; HEARINGS**

### **6.01 REQUEST FOR HEARING**

An entity aggrieved by an Administrator or Committee decision concerning its Annual or Contract Specific Prequalification or that has been otherwise limited by a decision of the Administrator or Committee, may request in writing a hearing before the Committee within five (5) calendar days of the date of the decision. The Committee shall endeavor to hold a hearing within five (5) working days of receipt of the request.

### **6.02 ENTITY'S DUTY AT HEARING**

The entity requesting a hearing shall be prepared to present, as needed, evidence or clarification of financial responsibility, personnel, organization, plant and equipment, and/or experience to justify a revision of the Administrator's or the Committee's decision. The Committee shall endeavor to issue a written decision within five (5) working days following a hearing.

### **6.03 APPEAL; TIME TO APPEAL**

An entity that is aggrieved by the action of the Committee pursuant to Paragraph 6.01 may appeal in writing to the Secretary of Transportation within five (5) working days of receipt of the Committee's action. The Secretary shall endeavor to render a decision within ten (10) working days of receipt of an appeal. The Secretary may appoint a hearing officer to hear such appeals.

### **6.04 APPEAL DOES NOT AFFECT COMMITTEE ACTION**

A Committee action shall be in effect unless and until it is overturned on appeal or changed by later action of the Committee. Appeals are independent from and shall neither affect nor stay the bid process of any advertised contract.

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### **6.05 RATING OR CLASSIFICATION CHANGES ON APPEAL; WHEN EFFECTIVE**

A rating or work classification change resulting from an appeal shall take effect no sooner than ten (10) working days subsequent to the date the request therefor was received by the Committee.

## 7 BIDDING REQUIREMENTS AND CONDITIONS

### 7.01 INVITATION FOR BIDS

- A) General. The Invitation for Bids for a contract contains a description of the proposed work to be performed and/or materials to be furnished. It will indicate with reasonable accuracy the quantity of work to be performed and/or the character and quantity of the material to be furnished, the Engineer's Estimate Category in accordance with Subsection 7.01(B) below, and the time and date for the opening of bids.

Information in Invitations for Bids will include:

- 1) How to obtain proposal forms, plans and specifications;
- 2) The amount and nature of the Proposal Guaranty;
- 3) Any prequalification requirements unique to the proposed contract;
- 4) Notice of the Agency's right to reject any and all bids; and
- 5) Notice of the Agency's right to waive any and all technicalities.

The Invitation for Bids will be posted on the Agency's web site on the day of advertising; however under special circumstances, in addition to posting on the Agency's web site, the Invitation for Bids may be e-mailed<sup>1-5</sup> to each entity currently on the Agency's list of prequalified bidders. <sup>2-2</sup> In addition, pertinent information included in the Invitation for Bids may be published in newspapers and trade publications in advertisement form.

- B) Engineer's Estimate. The Agency prepares an engineer's estimate for each contract. The estimates will not be made available to the public.

To help prospective bidders determine if a proposed contract is within the limits of their respective MDCRs, the Agency will classify each invitation for bid according to the following table:

Estimated Range	Category
Less than \$250,000	A
\$250,000 - \$500,000	B
\$500,000 - \$1,000,000	C
\$1,000,000 - \$2,500,000	D
\$2,500,000 - \$5,000,000	E
\$5,000,000 - \$10,000,000	F
\$10,000,000 - \$25,000,000	G
\$25,000,000 - \$50,000,000	H
\$50,000,000 - \$100,000,000	I
Over \$100,000,000	J

## 7.02 CONTENT OF PROPOSAL FILE (PROPOSAL FORM)

- A) General. The Electronic Proposal File needed for bid preparation may be obtained by completing the Request Electronic Plans form located at: <http://vtranscontracts.vermont.gov/ftpcc>. This form will provide access to the File Transfer Protocol ("FTP") where the Electronic Proposal File is found. The Proposal File (also referred to as the Proposal Form) includes:
- 1) Location and description of the work to be performed;
  - 2) Contract completion date;
  - 3) Approximate quantities;
  - 4) Classification(s) of work to be performed;
  - 5) Materials to be furnished;
  - 6) Other Contract provisions, specifications, and requirements;
  - 7) Amount of the Proposal Guaranty (Bid Bond) which is required to submit a bid; and
  - 8) Date and time of the bid opening.
- B) Revisions to Proposal File. The Agency reserves the right to revise the Proposal File and any of its contents, including any of the proposed contract documents at any time prior to the date and time set for opening the bids. Revisions will be made by a dated addendum, subject to the following procedures:
- 1) When an addendum is issued, the addendum information will be posted at the following locations: The Agency's web site at the same location as the Invitation for Bids; the Construction Contracting File Transfer Protocol (FTP) site; and, for electronic bids, the Bid Express web site. It is the responsibility of prospective bidders, subcontractors, and suppliers to check these locations for contract addenda. <sup>2-3</sup>
- For paper bids, each Proposal Form issued after the date of an addendum will have the addendum attached.
- 2) If the revisions made by an addendum require considerable change, the date set for bid opening may be postponed, in which case the addendum will include an announcement of the new date set for opening bids.

3) Each prospective bidder shall acknowledge receipt of each addendum that is not part of the original Proposal File by:

a) For paper bids, returning one copy of the issued addendum letter<sup>1-6</sup> prior to the time for submission of bids with the recipient's signature and the date of receipt thereon.<sup>2-4</sup>

2-5, 6-17

4) When submitting a paper Proposal Form as required by the Agency in accordance with Subsection 7.08, each<sup>1-7</sup> bidder shall also acknowledge the receipt of all addenda by entering the number and date of each addendum and signing in the designated place on the face of the bid envelope.<sup>4-17</sup>

2-6

2-7

2-8

### 7.03 INTERPRETATION OF ESTIMATE

The estimates of quantities of work to be performed and/or materials to be furnished as shown on the Proposal File are approximate and are provided only as a basis of calculation upon which the award of the contract is to be made.

Except as otherwise provided, the Agency disclaims responsibility, and shall not be held responsible, for the estimates of quantities, whether they be less than, equal to, or greater than the quantities used in the actual performance of the work.

The contractor shall not plead misunderstanding or deception because of the estimates of quantities or of the character, location, or other conditions pertaining to the estimates of quantities.

The Agency, in its sole discretion, reserves the right to increase or decrease any or all of the estimated quantities of work or to omit any of them as deemed necessary.

### 7.04 EXAMINATION OF PLANS, SPECIFICATIONS, PROPOSAL FORMS, SITE OF WORK, AND SUBSURFACE INFORMATION

A) General. Each and every bidder shall examine carefully the site of the work contemplated and the relevant plans, specifications, and Proposal forms . It is the responsibility of each and every bidder to investigate and become aware of:

1) The conditions to be encountered;

2) The character, quality, and quantities of the work to be performed;

- 3) The materials to be furnished; and
- 4) The requirements of the plans, specifications, proposal, and all other contract documents.

To assist in the design for a project, the Agency normally investigates subsoils, foundation conditions, and potential sources of material for character, quality, and/or quantity by various means, including borings, test pits, samples, tests, and classifications. Information concerning any investigations normally appears on the plans or in the contract proposal.

Disclaimer. Boring logs and other subsurface information on the plans, in the contract proposal, or otherwise provided to bidders were obtained with reasonable care and recorded in good faith by the Agency. This subsurface information has been conducted for the use of the Agency only, to assist the Agency in developing a design suitable for the subsurface conditions in the area of the foundation for the structure and/or for preparation of the Engineer's estimate. This subsurface information is made available to prospective bidders as a public document relating to a project. Such information is not intended to provide prospective bidders with a subsurface analysis for purposes of bid preparation. It is up to the prospective bidder to conduct whatever subsurface investigation may inform its bid preparation.

The Agency disclaims any liability for claims based upon a prospective bidder's reliance on the subsurface information provided by the Agency unless, following contract award, the contractor can establish by clear and convincing evidence that the subsurface information provided by the Agency was inadequate to support the structure as designed.<sup>4-18</sup>

- B) No Responsibility or Warranty by the Agency. Soil classifications have been made from laboratory tests of soil samples extracted and/or collected. Rock and soil descriptions, engineering properties, or classifications are from visual inspection and tests of rock cores and/or soil samples. Observed water levels and/or water conditions indicated are as recorded at the time of exploration and may vary considerably with time according to the prevailing rainfall and other factors.

The information provided may not represent existing conditions. The Agency is not responsible for the information. The Agency does not warrant in any way the completeness or accuracy of the information. Disclosure of the information is not a substitute for personal investigations, interpretations, and/or judgments by each prospective bidder. It is the responsibility of each prospective bidder and/or sub-contractor to satisfy itself, through its own independent investigations, concerning the conditions and materials to be encountered.



- C) Bidder's Obligation to Convey Information. It is the bidder's responsibility to convey any and all information relative to contract requirements to any proposed suppliers, fabricators, or subcontractors.

#### 7.05 PREPARATION OF PROPOSAL

- A) General. Bids shall only be submitted on Proposal Forms furnished by the Agency. Each submission must be completed and signed by an individual authorized to sign legal documents for the bidding entity or in the case of an electronic bid, by electronic Personal Identification Number ("PIN").<sup>4-20</sup>
- B) Paper Proposal: In submitting a paper Proposal as required by the VTrans in accordance with Subsection 7.08<sup>1-8</sup>, all blank spaces under the page(s) headed "Schedule of Items" must be filled in with ink or typewriter in both words and figures indicating the unit price for each respective bid item. The bid total shall also be entered in words and figures.

In case of a discrepancy between a unit price written in words and one entered in figures, the price written in words shall govern.

In case of a discrepancy between the bid total written in words and that entered as a figure, the adjusted figure, due to identified discrepancies in the unit prices and/or mathematical error, shall govern.

- C) Fraction of a Cent Unit Costs; Computing Bid Results. When Proposals have unit cost bid items submitted for a fraction of a cent, the total cost for the quantity of the item shall be determined by carrying price computations out through the fourth digit after the decimal point. The fifth digit shall be dropped with no rounding off onto the fourth digit. All bid results shall be computed on this basis for purposes of determining the low bidder.
- D) Bid Items With Zero and Other Obviously Below Cost Bids.
- 1) If a bidder submits a unit bid price of zero for a contract bid item, the bid will be declared informal.
  - 2) A bidder may submit a unit bid price that is obviously below the cost of the item. If the Agency awards and enters into a contract with a bidder that has submitted a unit bid price that is obviously below cost, the contractor shall be obligated to perform the work under such item as indicated in the contract documents and/or as directed by the Engineer.
- E) Optional Bid Items. When "Optional Bid Items" are indicated in the Proposal, bidders shall bid on only one pay item in each group of options, leaving the other pay items in the group without a unit bid price. If a bidder enters more than one unit price bid in a group of options, only the lowest total price will be considered as the basis of calculation for determining the low bidder and used in the contract.

- F) Alternate Bid Items. When "Alternate Bid Items" are indicated in the Proposal, bidders must bid on all pay items in each set of "Alternate Bid Items." Failure to bid on all of the "Alternate Bid Items" in the Proposal may result in rejection of the bid.
- G) Quantity of One; Unit Bid Price; Not a Bid Item. When the Schedule of Items for a contract contains one or more pay items which have a quantity of one (1) and a unit price and total price entered, the Agency has set a unit price in the event such an item is used. If such an item is determined to be needed by the Engineer, the work will be performed by the contractor according to the contract documents at the unit price listed.
- H) Incidental to Other Contract Items. When it is indicated in the contract documents that payment or costs of work and/or materials are incidental to one or more other contract items (but not to specific other items), such costs shall be included by the bidder in the price bid for all other contract items.
- I) Identification of Bidding Entity. If the Proposal is:
- 1) Made by an individual, the individual's name and post office address must be shown.
  - 2) Made by a partnership, the name and post office addresses of each member of the partnership must be shown.
  - 3) Made by a corporation, the person signing the Proposal must show the name of the State under the laws of which the corporation is chartered, the location of its principal office, its post office address, and whether or not the corporation is authorized to do business under the laws of the State of Vermont. Further, the Proposal must be signed by an official authorized to sign for the corporation and indicate the signer's position in the corporation and the official address of the corporation.
  - 4) Made by a Joint Venture, the information required in Subsection 5.07(B)(1) and (2) must be shown.
  - 5) Made by an organization or an association, the person signing the Proposal must show the name of the State under the laws of which the organization/association is organized, the location of its principal office, its post office address, and whether or not the organization/association is authorized to do business under the laws of the State of Vermont. Further, the proposal must be signed by an official authorized to sign for the organization/association and indicate the signer's position in the organization/association and the official address of the organization/association.

- J) Debarment and Non-Collusion Affidavit. All bidders must complete the Debarment and Non-Collusion Affidavit included in the furnished Proposal Form or the Electronic Proposal File prior to submitting a bid. This affidavit (a sworn statement signed by or on behalf of the entity to which a contract may be awarded) certifies that the entity, including all parties to a joint venture, has neither directly nor indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in conjunction with the proposed contract and has not been suspended, indicted, convicted, or had a civil judgment rendered against it within three (3) years of the bid opening date for the proposed contract. The statement must be sworn to before a person who is authorized to administer oaths.

The completed Debarment and Non-Collusion Affidavit must remain in and be submitted with the bid proposal.

- K) Electronic Bidding. The following shall apply to bidders submitting an electronic bid through Bid Express:
- 1) All bids shall be submitted with an electronically affixed digital signature or digital identification (ID). For the purpose of this provision, affixing a digital ID to the bid shall be the equivalent of signing before a notary public and placing in force the Debarment and Non-Collusion Affidavit certification on file with the Agency.
  - 2) By submitting an electronic bid, the bidder certifies that it has read, understands, accepts, acknowledges, and agrees to comply with all statements, conditions and specifications in the electronic bid submittal.

## 7.06 REJECTION OF PROPOSALS

- A) General.
- 1) Informal Bids. A Proposal may be declared "Informal," and hence rejected if it shows any alteration of form, omissions or additions not called for in the Proposal, lacks proper signature(s), is a conditional bid, has alternate bids unless required in the Proposal, has irregularities of any kind, has changes in the printed content, is submitted on a form not furnished by the Agency, is incomplete<sup>6-18</sup> or includes a clause in which the bidder reserves a right to accept or reject the contract award.
  - 2) Other Actions. A Proposal may be rejected at the time of bid opening or following analysis to confirm the proposals.
  - 3) Rejection of Proposals. The Agency may reject any or all Proposals, waive any or all technicalities, and/or advertise for new Proposals if in its sole judgment, or that of the awarding authority, the best interests of the State, or the awarding authority, will be served.

- B) Debarment and Non-Collusion Affidavit. A Proposal submitted without a completed Debarment and Non-Collusion Affidavit will be rejected.
- C) Unbalanced Bids; Rejection. The Agency will decide whether any bid prices are unbalanced above or below a reasonable cost analysis value as determined by its Chief Engineer of the Highway Division.<sup>4-21</sup> Proposals in which bid prices are unbalanced, mathematically and/or materially, may be rejected at the sole discretion of the Agency. For purposes of this subsection “mathematically unbalanced bid” and “materially unbalanced bid” shall have the same meaning as in 23 CFR Part 635 – Construction and Maintenance.
- D) Failure to Submit Bid Escrow Documents. If the Proposal Form requires the submission of bid documents into escrow and a bidder fails to submit the required documents for escrow as provided in Subsection 7.08(D) below, the Proposal will be rejected.

#### 7.07 PROPOSAL GUARANTY (BID BOND)

- A) General. A Proposal Guaranty, or bid bond, of the character and amount indicated on the cover sheet of the Proposal Form must accompany the proposal. The Proposal Guaranty shall be made payable to the: 1) Treasurer, State of Vermont, when the Agency is the awarding entity; or 2) Treasurer of the awarding entity if it is other than the Agency.
- B) Electronic Bids. A bidder submitting an electronic bid through Bid Express shall submit an electronic corporate surety bid bond. The corporate surety bond shall accompany each electronic bid.

A Bidder must arrange with its bonding agent to obtain an electronic bid bond and bid bond code. The bid bond code shall be submitted with the electronic bid. The bid bond must conform to the requirements in and on the Proposal.

- C) Paper Bids. When a bid is submitted in paper (or hard-copy) form as required by the Agency for submission of bids in accordance with Subsection 7.08<sup>1-9</sup>, the Proposal Guaranty shall be on the form furnished by the Agency. A bid bond on a form other than the one furnished by the Agency will not be acceptable.

#### 7.08 DELIVERY OF PROPOSALS

- A) Electronic Proposals
  - 1) General; Electronic proposals submitted utilizing the Bid Express online service. Unless otherwise required by the Agency in the proposal documents, all proposals shall be submitted electronically utilizing Bid Express.<sup>1-10</sup>

- 2) Electronic Signature. When a bid is submitted electronically through Bid Express, the bidder shall “sign” the bid with a digital identification code (the PIN described in Section 7.05) that has been provided to the Committee and the Administrator as part of the bidder’s Questionnaire submission or an approved change thereto.
  - 3) Bidder Responsible. A bidder submitting an electronic bid through Bid Express is solely responsible for that submission. Claims will not be accepted and bid openings will not be postponed due to default on the part of a bidder in preparing and submitting an electronic bid in a timely manner.
  - 4) Other bidding requirements apply. All other bidding requirements apply to the submission of electronic bids.
- B) Paper Proposals. Paper proposals, when required by the Agency for submission of bids,<sup>1-11</sup> must be submitted to the address indicated on the Proposal Form in a sealed envelope bearing on the outside:
- 1) The name of the awarding entity;
  - 2) The name of the bidder complete with the bidder's address;
  - 3) The name(s) and number(s) of the project(s) for which the bid is submitted;
  - 4) The scheduled opening date of the proposal; and
  - 5) A list of any addenda received.
- C) Timeliness Required
- 1) Electronic Bids. Electronic bids submitted through Bid Express after the time set of the bid letting will be rejected.
  - 2) Paper Bids. When required by the Agency for submission of bids, any<sup>1-12</sup> sealed, paper proposals received after the time set for submission of bids will not be considered and will be returned to the bidder unopened.
- D) Bid Escrow
- 1) General. The Agency may require the documents and quotations used to prepare the bids for a contract to be placed in escrow to preserve these documents for use by the parties in any claim or litigation concerning the bidding and/or performance of the contract.

If the Agency requires Bid Escrow for a contract, the specifications therefor will be included in the Special Provisions for that contract.

- 2) Failure to Comply with Bid Escrow Requirements. If an apparent low bidder fails to comply with all the requirements to escrow the bid documents within the time frame(s) set in the proposal, the bid will be rendered non-responsive and the bidder shall forfeit its proposal guaranty.

#### 7.09 WITHDRAWAL OR REVISION OF PROPOSALS (BIDS)

An electronic bid submitted through Bid Express may be changed and resubmitted as many times as desired prior to the time set for the opening of proposals specified in the Invitation for Bids. The latest time-stamped, electronically submitted, bid prior to the time set for opening bids will constitute the Bid.

Prior to the time set for the opening of proposals, a bidder may withdraw or revise its paper proposal by submission of a request for withdrawal or revision to the Chief of Contract Administration. A paper proposal<sup>1-13</sup> can be withdrawn only if a written request had been received and approved by the Chief of Contract Administration prior to the time set for the submission of proposals.

Once the time set for the opening of proposals has passed, a proposal cannot be withdrawn or revised.<sup>4-22</sup>

#### 7.10 COMBINATION AND CONDITIONAL PROPOSALS

- A) Combination Proposals. If the Agency so elects, Proposals may be issued for projects in combination or separately, so that bids may be submitted either for the combination or for one or more separate units of the combination. The Agency, in its sole discretion, shall make awards for combination bids or separate bids to the best advantage of the Agency.

Separate contracts may be written for each individual project included in combination proposals.

Whether or not a Combination Proposal is combined into one contract or made into separate contracts, it will be considered a single contract for the purpose of a bidder's NCCR.

- B) Conditional Proposals. Conditional Proposals will be considered only when provided under the Special Provisions for a proposed contract.

## 7.11 PUBLIC OPENING OF PROPOSALS; BIDS AVAILABLE TO PUBLIC

- A) General. Proposals will be opened publicly and total bid amounts read aloud at the time specified in the Proposal Form and the Invitation for Bids. Bidders, their authorized agents, and other interested parties are invited to attend. The time and/or place for receiving and opening bids may be changed; when this occurs, prospective bidders will be notified by issuance of an addendum in accordance with Subsection 7.02.
- B) Electronic Bids. Electronic bids submitted through Bid Express will be accessed, decrypted, printed to paper or otherwise made accessible in a readable format,<sup>4-23</sup> at the time specified in the Invitation to Bids.
- C) Technical Difficulties Involving Electronic Bids. In the event of technical difficulties in opening electronic bids for a contract, the Agency may postpone the reading of bids for that contract. All bids for a contract will be opened at the same time and location.
- D) Announcement of Apparent First and Second Low Bidders; Availability of Bids. Following the opening and reading aloud of the total bid amounts for all bids for a contract, the apparent first and second low bidders will be announced for the contract.

Apparent total bid amounts will be made immediately available to the public.

All bid results confirmed as formal after analysis will be published and made available, *e.g.*, posted on the Agency's web site.

## 7.12 DISQUALIFICATION OF PROSPECTIVE BIDDERS

Prospective bidders may be disqualified for various reasons, including:

- A) Submission of more than one Proposal for the same work by an entity under the same or different names;
- B) Evidence of collusion among bidders; or
- C) Any other cause for suspension or debarment as detailed in the Agency's Policy and Procedures on Debarment, Code of Vermont Rules (CVR) , Volume 8A, 14 010 004, Pages 1-10.

## 7.13 FAMILIARITY WITH LAWS, ORDINANCES AND REGULATIONS

- A) General. By submitting a bid an entity certifies that it is familiar with all Federal, State and local laws, ordinances and regulations which affect in any way the materials, equipment, haul roads used in or upon the work, the conduct of the work, and the persons engaged or employed in performance of the work to be performed pursuant to a contract.

- B) Duty to Report.
- 1) Inconsistency Or Conflict with Federal, State, or Local Law, Ordinance, or Regulation. By submitting a bid an entity certifies that it shall immediately report in writing to the Chief of Contract Administration any provision in the plans, proposal, specifications or proposed contract that the bidder/contractor believes is in conflict with or inconsistent with any Federal, State or local law, ordinance, or regulation.
  - 2) Differing Site Conditions. By submitting a request for a proposal (CA-82) a prospective bidder certifies that if, during its investigation of the work in the process of preparing its bid, it discovers or encounters subsurface or latent physical conditions at a project site differing materially from those indicated in the contract or unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, it shall notify in writing the Chief of Contract Administration of the specific differing conditions immediately upon discovering or encountering the differing site conditions.
  - 3) Failure to Notify: A prospective bidder further certifies that if it fails to notify the Chief of Contract Administration of any differing site conditions as described above, it shall waive any and all rights that it might have to additional compensation from the Agency for additional work as a result of the differing site conditions and that it shall not bring a claim for additional compensation because of the differing site conditions.
- C) No Claim or Defense of Ignorance or Misunderstanding. By submitting a Request for Contract Specific Prequalification (Form CA-82) a bidder certifies that no claim or defense of ignorance or misunderstanding concerning Federal, State, or local laws, ordinances, or regulations will be employed by a bidder or considered by the Agency in claims, litigation, alternative dispute resolution procedures, or other matters concerning the contract for which the bid is submitted.

#### 7.14 ERRORS AND/OR INCONSISTENCIES IN CONTRACT DOCUMENTS

- A) Duty to Report. By submitting a Request for Proposal (Form CA-82) a bidder certifies that it shall report in writing to the Chief of Contract Administration any error or inconsistency discovered in the plans, proposal, specifications, or contract documents immediately upon discovery of the error or inconsistency.
- B) Errors and Inconsistencies Not Used Against the State. By submitting a Request for Proposal (Form CA-82) a bidder certifies that it shall assert no claim, cause of action, litigation, or defense against the State unless notice was provided to the State in writing of any error or inconsistency found in the plans, proposal, specifications, or contract documents immediately upon discovery of such error or inconsistency. Failure to provide such notice to the Agency's



Chief of Contract Administration, in writing, within forty-eight (48) hours of such discovery constitutes reasonable grounds for disallowance and/or waiver of any claim or demand by the prospective bidder based, in whole or in part, directly on the existence of such error or omission.<sup>4-24</sup>

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## **8 AWARD AND SIGNING OF CONTRACT**

### **8.01 CONSIDERATION OF PROPOSALS AND CONFIRMATION OF BIDS**

Opened proposals will be considered and submitted bids confirmed on the basis of the summation of the products of the quantities shown in each Proposal's Schedule of Items multiplied by the unit prices bid. In the event of a discrepancy between a unit price bid and the calculated extension, the product based on the unit price bid and the mathematically correct summation of the products shall govern.

The Agency may reject any or all Proposals, waive any or all technicalities, or advertise for new Proposals if in its sole judgment, or that of the awarding authority, the best interests of the Agency, or the awarding authority, will be served.

### **8.02 AWARD OF CONTRACT**

- A) General. If a contract is to be awarded, the award will be made to the lowest responsible bidder that has submitted a Proposal that complies with all the provisions required to render it formal.
- B) Award Letter. An award letter will be sent to the successful bidder, at the address shown on the submitted Proposal, indicating that its specific bid has been accepted subject to signing of the contract by all parties.<sup>4-26</sup>
- C) Appeal of Award; Procedure. A bidder aggrieved by the award or likely award of a contract to an apparent low bidder may appeal to the Secretary.

A written appeal must be received by the Secretary within seven (7) calendar days following bid opening for the contract in question or following the Agency's notification to the apparent low bidder of the Agency's rejection of the apparent low bid; whichever is the last to occur.<sup>5-3</sup> The written appeal shall outline the nature of the grievance and include appropriate documentation supporting the bidder's position.

The Secretary will endeavor to render a decision on the appeal within twenty-one (21) calendar days of the bid opening. The Secretary may appoint a hearing officer to hear an appeal.

An award shall remain in effect unless and until it is overturned on appeal. Appeals are independent from, and shall neither affect nor stay, the award process of any contract.

### 8.03 PROPOSAL GUARANTIES

Proposal Guaranties of the two (2) lowest responsible bidders that have submitted proposals that comply with all the provisions required to render them formal will be retained until the contract and bonds have been signed by all parties.

Proposal Guaranties of all other bidders will be returned or released as soon as possible.

Should no award be made within thirty-one (31) calendar days following the opening of bids, thirty-two (32) if the thirty-first (31st) day is a State holiday, all Proposals may be rejected and all Guaranties may be returned.

### 8.04 CONTRACT BONDS

A successful bidder entering into a contract for any portion of the work included in a proposal shall provide the Agency sufficient surety in the form of; 1) a labor and materials bond, and 2) a compliance bond, both as required by 19 V.S.A. Section 10(8) and (9).

Each bond shall be in a sum equal to one-hundred percent (100%) of the contract awarded.

The labor and materials bond shall guarantee the payment in full of all bills and accounts for material and labor used in the work as well as other obligations incurred in carrying out the terms of the contract.

The compliance bond shall guarantee the faithful performance and completion of the work to be done under the contract as well as compliance with all provisions of the contract.

The form of bond shall be that provided by the Agency, and the surety shall be acceptable to the Secretary.

The bonds shall be procured from an insurance company registered and licensed to do business in the State of Vermont.

### 8.05 SIGNING OF CONTRACT

- A) General. The entity to which the Contract has been awarded shall sign the contract documents and return them to the Agency's Office of Contract Administration within fifteen (15) calendar days from the date of the award letter. No contract shall be considered effective until it has been fully signed by all of the parties.
  
- B) Cancellation of Award Prior to Signing of Contract. The Agency may cancel the award of a contract prior to the signing thereof by all parties; the Agency shall not be liable therefor for any reason.

#### 8.06 FAILURE TO SIGN CONTRACT BY ENTITY RECEIVING AWARD; FAILURE TO AWARD DUE TO INACTION OF LOWEST RESPONSIBLE BIDDER

- A) General. Failure to comply with any of the requirements of these Policies and Procedures relative to signing the contract or failure to furnish the required surety within fifteen (15) calendar days after notice of award shall be just cause for the annulment of the award or of the contract and/or forfeiture of the proposal guaranty/bid bond. Further, if the award or the contract is annulled, or if the contract is not awarded due to inaction of the lowest responsible bidder that has submitted a proposal that complies with all the provisions required to make it formal, the proposal guaranty accompanying the proposal shall become the property of the State, not as a penalty but as liquidated damages.
- B) Further Action by the Agency. If the award or the contract is annulled, the Agency may award the contract to the next lowest responsible bidder that has submitted a proposal that complies with all the provisions required to render it formal, advertise a new request for bids for the contract(s), or take other action as the Agency may decide is in its best interest.

If the contract is awarded to the second lowest responsible bidder that has submitted a proposal that complies with all the provisions required to make it formal, paragraph A immediately above, as applicable, shall be effective as to that bidder.

- C) Failure to Sign Contract Within Fifteen (15) Calendar Days Not a Reason for Time Extension. Failure by a contractor to sign the contract within the time provided by this Subsection shall not be reason for an extension of the completion date of the contract.

#### 8.07 AUTHORITY TO CONTRACT

Prior to signing a contract with the Agency, a contractor shall take all steps necessary for it to enter into contracts in the State of Vermont, including, but not limited to registration with the Vermont Secretary of State to do business in the State of Vermont.

For each contract, the contracting entity shall furnish the Chief of Contract Administration sufficient documentation showing delegation of authority to the person or persons signing the contract on behalf of the entity(ies).

### **9 MODIFICATIONS AND EXCEPTIONS**

#### 9.01 SECRETARY'S AUTHORITY TO MODIFY POLICIES AND PROCEDURES.

The Secretary has authority to modify these Policies and Procedures and substantive requirements pertaining to the signing and performance of contracts for application to future contracts through the adoption of revisions to these Policies and Procedures, the Standard Specifications for Construction, and other contract documents.

#### 9.02 SECRETARY'S AUTHORITY TO GRANT EXCEPTIONS

The Secretary has authority to grant exceptions to these Policies and Procedures when, in his/her sole discretion, it is determined to be in the best interest of the State.

## APPENDIX A - GENERAL DESCRIPTION OF WORK CLASSIFICATIONS

All classifications include a requirement that the contractor provide all necessary labor, equipment, materials, and, when required, engineering personnel and equipment for layout.

**Airport Construction** – This work shall consist of clearing, draining, excavating, filling, grading, installing ordinary drainage structures, and associated earthwork for the construction of runways, taxiways, parking areas, buildings, and safety zones at airports. It may also include the installation of lighting systems, fencing, automated weather stations, and various electrical appurtenances.

**Bicycle and/or Pedestrian Path** - This work shall consist of clearing, draining, excavating, filling, grading, installing ordinary drainage structures, and associated earthwork for the construction of bicycle and/or pedestrian paths.

**Bridge Construction** – This work shall consist of furnishing and constructing any non-wooden structure (whether single or multiple span), including supports, which spans over a depression or obstruction such as water, highway, or railway and has a track or passageway for carrying traffic (either pedestrian or mechanized or both) or other moving loads and has a clear span of more than 6 feet. The measurement of clear span shall be made along the center of the track or passageway between the faces of the abutments or the spring lines of arches or the extreme ends of openings for multiple boxes, and may include multiple pipes where the clear distance between openings is less than 50% of the diameter of an individual pipe opening. This work also shall include some minimal approach construction, and possibly some channel work.

**Bridge Membrane/Paving** – This work shall consist of removing and replacing bridge pavement and membranes and, where called for, the repair of the structure to a complete, safe, and functioning structure. This work may also include minimal approach construction, bridge joint and deck repair work .<sup>1-14</sup>

**Bridge Painting** – This work shall consist of cleaning, proper disposal, and painting wooden and/or structural steel surfaces, or other designated surfaces, on existing bridges or other structures without endangering the health, life, or property of the workers or the public.

**Bridge Rehabilitation** – This work shall consist of removing and disposing of all, or part, of an existing structure without endangering the health, life, or property of the workers or the public and, where called for, the replacement or/and repair of the structure to a complete, safe, and functioning structure. This work may also include some minimal approach construction, and possibly some channel work.

**Building Construction** – This work shall consist of the general construction of buildings, to include all framing and erection work, electrical work, utilities, site work, and all other incidentals relating to the construction of buildings.

**Building Demolition** – This work shall consist of the complete demolition of specific structures, proper disposal of the materials, recycling of appropriate materials, cleanup of the site, ground restoration, and the establishment of vegetation.

**Crack Sealing/Pavement Maintenance** – This work shall consist of sealing specified cracks in roadway pavements, installing asphaltic bridge expansion joints, patching holes in pavements, and/or placing liquid bituminous overlays and cover materials.

**Curb & Sidewalk** – This work shall consist of the construction of bituminous and concrete curbs and sidewalks.

**Drainage** – This work shall consist of excavating, installing pipes, backfilling, and any necessary grading and incidentals necessary to complete the work.

**Guardrail, Fencing, and Signs** – This work shall consist of furnishing, installing, resetting, and/or rehabilitating guardrail, bridge rail, rail end treatments, impact attenuators, fencing of any kind, fence corners, fence bracing, sign posts, sign structures, and/or signs of any type or construction at any location except at airports.

**Hazardous Material Removal**– This work shall consist of removing asbestos, lead paint, petroleum contaminated materials and/or soils, leaking or abandoned fuel or storage tanks and other designated health hazards or environmental contaminants; proper disposition of the removed materials and debris; and/or restoration of the landscape or surfaces from which contaminants were removed. The contractor shall have the services of an expert in the field of the removed item(s) on hand at all times while the work is being performed.

**Landscaping** – This work shall consist of furnishing and planting trees, shrubs, vines, ground covers, flowers, and/or grass, preparing seed or planting sites, fertilizing, mowing, placing topsoil, spreading soil amendments, tilling, mulching seeded areas, placing erosion prevention and sediment control items such as erosion matting, using chemicals or other means to remove or regulate plant growth, and watering when necessary.

**Park & Ride Lot** - This work shall consist of clearing, draining, excavating, filling, grading, installing ordinary drainage structures, placing base courses, and associated earthwork for the construction of a park and ride parking lot.

**Pavement Markings** –This work shall consist of furnishing and placing temporary and/or permanent pavement markings using paint, durables, or other specified materials or the removal of such existing markings when required.

**Railroad Bridge Rehabilitation** – This work shall consist of removing and disposing of all, or part, of an existing structure without endangering the health, life, or property of the workers, the railroad, or the public and, where called for, the replacement and/or repair of the structure to a complete, safe, and functioning structure.

**Railroad/Highway Crossing** – This work shall consist of furnishing and installing or rehabilitating existing railroad signal systems such as crossing warning signals, electronic switch warnings, communications systems, etc.

**Railroads** – This work shall consist of furnishing and installing ballast, ties, gauge rods, bumpers, rail-highway crossing, switches and other roadbed components of a railway system complete with all ordinary drainage, earthwork, and grading and other related work and/or the rehabilitation of all or parts of an existing railroad roadbed.

**Road and Highway (New Construction and Reconstruction on Alignment)** - This work shall consist of clearing, draining, excavating, filling, grading, installing ordinary drainage structures, placing base courses, and associated earthwork for the construction of roadways, streets, parking areas, and buildings. Ordinary drainage is a structure, enclosed on all sides for the purpose of containing and directing the flow of water, which has a maximum clear span of less than 20 feet, measured as set out above under Bridges.

**Roadway Safety** – This work may consist of the sign installation, guardrail upgrades, various bridge work, various roadway reconstruction efforts, and any other items that may be directly related to safety.

**Surface Rehabilitation** – This work shall consist of either patching and/or demolishing existing concrete roadway surfaces, replacing the removed material with new concrete, and, if necessary, grinding the surfaces to give a smooth ride or patching, crack sealing, or cold planing existing bituminous roadway surfaces and repaving the cold planed surfaces with new bituminous concrete as well as all other work necessary to provide a smooth, complete, and safe paved surface.

**Traffic Signals & Lighting** – This work shall consist of furnishing and installing the components to construct and/or reconstruct traffic control systems, lighting systems, beacon systems, and sign illumination systems at single or multiple locations including, but not limited to, signal poles, mast arms, pole foundations, signal controllers and housings, detectors, conduit, interconnection systems (both hard wired and transmitter), computer monitor systems, luminaries, and/or repairing existing fire alarm, telephone, or electricity systems, if required. The contractor shall have proper licenses on project for such work.

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**Other** – This category is reserved for any other work that may be advertised by the VTrans and does not fit the Classifications as outlined above.