

INSTRUCTIONS TO BIDDERS

Section 00 2113

1.0 DEFINITIONS AND TERMS

1.1 Terms used in these Bidding Documents which are defined in the Instructions to Bidders and in the Conditions of the Contract for Construction (General, Supplementary, and Other Conditions) have the meanings assigned to them in those documents.

- A. ADDENDUM:** A written or graphic instrument issued prior to the opening of Bids which clarifies, corrects, or changes the Bidding Documents or Contract Documents. Plural: addenda.
- B. ALTERNATE BID:** If requested by the Bidding Documents, the Amount to be added to the Base Bid if the corresponding change in the project scope, materials, and/or methods of construction is awarded by the Owner.
- C. BASE BID:** Amount stated in the Bid as the sum for which the Bidder offers to perform the work, excluding alternate Bids.
- D. BID:** The offer of the bidder submitted on the prescribed form setting forth the prices for the work to be performed in conformance with the Bidding Documents.
- E. BID LOT:** A major item of work for which a separate quotation or proposal is requested.
- F. BIDDER:** One who submits a Bid directly to the Owner, as distinct from a subcontractor who submits a bid to a contractor.
- G. BIDDING DOCUMENTS:** The Bidding Requirements and the Contract Documents.
- H. BID FORM:** A form which includes a specific space in which the bid price shall be inserted and which the Bidder shall sign and submit along with all other necessary submissions. A Bidder may submit a reasonable facsimile of the Bid Form. - Bids received by facsimile or in electronic format will not be accepted.
- I. BIDDING REQUIREMENTS:** Notice of Invitation to Bid, Prebid Information, Instructions to Bidders, Information Available for Bidders, the Bid Form, Supplements to the Bid Form, and portions of Addenda relating to any of these.
- J. DAY:** Day shall mean calendar day unless defined otherwise.
- K. INVITATION FOR BID:** All documents including those attached or incorporated by reference or utilized for soliciting sealed bids.
- L. RESPONSIBLE BIDDER:** A Bidder who is properly licensed in accordance with the Construction Industries Licensing Act and submits a Responsive Bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services, construction, or items of tangible personal property described in the Invitation for Bid.
- M. RESPONSIVE BID:** A bid which conforms in all material respects to the requirements set forth in the Invitation for Bid.
- N. SUCCESSFUL BIDDER:** The lowest Responsible Bidder to whom the Owner, on the basis of the Owner's evaluation, makes an award. A Successful Bidder does not become the contractor until an agreement with the Owner is signed.

2.0 EXAMINATION OF BIDDING DOCUMENTS AND SITE

2.1 Before submitting a Bid, each Bidder must, in accordance with the General Conditions with special attention to Article's 1 and 3.:

- A.** Examine the Bidding Documents thoroughly;
- B.** Visit the site to familiarize himself with local conditions that may in any manner affects cost, progress, or performance;
- C.** Familiarize himself with Federal, State, and local laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the Work; and
- D.** Study and carefully correlate the Bidder's observations with the Bidding Documents.

2.2 On request, the Owner will provide each Bidder access to the site to conduct such investigations and tests as each Bidder deems necessary for submission of his Bid.

2.3 The lands upon which the Work is to be performed, rights-of-way for access thereto, and other lands designated for use by the Contractor in performing the work are identified in the Bidding Documents.

2.4 The submission of a Bid will constitute an incontrovertible representation by the Bidder that he has complied with every requirement of this Section and that the Bidding Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

3.0 BIDDING DOCUMENTS

3.1 COPIES OF BIDDING DOCUMENTS

3.1.1 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Invitation may be obtained from the Design Professional (unless another issuing office is designated in the Invitation for Bid). The deposit will be refunded to Bidders who submit a bona-fide bid and return the bidding Documents in good and complete condition within fifteen (15) calendar days after opening of Bids.

3.1.2 Complete sets of Bidding Documents shall be used in preparing bids; neither the Owner nor the Design Professional assumes responsibility for errors or misinterpretations resulting from the use of incomplete or partial Bidding Documents.

3.1.3 The Owner and Design Professional, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

3.2 INTERPRETATIONS

3.2.1 All questions about the meaning or intent of the Bidding Documents shall be submitted to the Design Professional in writing. Replies will be issued by Addenda and mailed or delivered to all parties recorded by the Design Professional as having received the Bidding Documents. **Questions received less than seven (7) days prior to the date for opening of Bids will not be formally answered.** Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

3.2.2 Bidders and Subcontractors shall promptly notify the Design Professional of any ambiguity, inconsistency, or error which they may discover upon examination of the Bidding Documents or of the site and local conditions.

3.3 SUBSTITUTE MATERIAL AND EQUIPMENT

The contract, if awarded, will be on the basis of material and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "**or-equal**" item of material or equipment may be furnished or used by the contractor if acceptable to the Design Professional, application for such acceptance will not be considered by the Design Professional unless submitted to the Design Professional with a detailed itemized comparison of the proposed substitution against the specified product at least **ten (10) days prior to the date for opening Bids**. Any product with a 5 (five) year or greater extended warranty must be submitted no less than **forty-five (45) days prior to the opening of Bids, along with the same itemized comparison, to be considered by the Design Professional**. Any allowance of substitutions will be published to all prospective Bidders via addendum. The procedure for submittal of any such application by the Contractor and consideration by the Design Professional is set forth in the Contract Documents.

3.4 ADDENDA

3.4.1 Addenda will be mailed or delivered to all who are known by the Design Professional to have received a complete set of Bidding Documents.

3.4.2 Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

3.4.3 Addenda will be issued no later than four (4) days prior to the date for receipt of Bids, except an addendum withdrawing the request for bids or one which includes postponement of the date for receipt of Bids.

4.0 BIDDING PROCEDURES

4.1 FORM AND STYLE OF BIDS

4.1.1 Bids shall be submitted on forms identical to the form included with the Bidding Documents.

4.1.2 All blanks on the Bid Form shall be filled in by typewriter or manually in ink.

4.1.3 Where so indicated by the makeup of the Bid Form, sums shall be expressed in both words and figures, and, in case of discrepancy between the two, the amount written in words shall govern.

4.1.4 Any interlineation, alteration, or erasure must be initialed by the signer of the bid.

4.1.5 All requested Additive Alternate Bids shall be bid. If no change in the Base Bid is required, enter "No Change." Deductive Alternates shall not be used.

4.1.6 Where there are two or more major items of work (identified as "Bid Lots") for which separate quotations are requested, the Bidder may, at his discretion, submit quotations for any or all items, unless otherwise specified. Additionally, the Bidder may submit a lump sum price for all lots for which the Bidder has submitted separate quotations.

4.1.7 Each copy of the bid shall include the complete name of the Bidder and a statement that the Bidder is a sole proprietor, a partnership, a corporation, or some other legal entity. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the State of incorporation and have the applicable New Mexico Certificate of Incorporation number or Certificate of Authority number. The Bid shall include the current contractor's license number and type, Department of Workforce Solutions Minimum Wage Act registration number (DWS#), and the current Contractor's preference number. A bid submitted by an agent shall have a current Power of Attorney attached certifying the agent's authority to bind the Bidder.

4.1.8 The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form).

4.1.9 The address to which communications regarding the Bid are to be directed must be shown.

4.1.10 The Project Name and Number, as well as the Invitation to Bid Number, shall be clearly shown on the outside of the envelope in which the sealed Bid is submitted.

4.2 BID SECURITY

4.2.1 Bid security in an amount equal to at least five percent (5%) of the amount of the Bid shall be a bond provided by a surety company authorized to do business in this State, or the equivalent in cash, a cashier's check, or otherwise supplied in a form satisfactory to the Owner (Section 13-1-146, NMSA 1978) and approved in writing by the Owner in advance. All General Contractor, or Primary Contractor, or Construction Manager at Risk Bonds shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, United States Treasury Department.

4.2.2 The bid security shall be in the amount of five percent (5%) of the highest Bid amount submitted, unless otherwise stipulated, pledging that the Bidder will enter into a Contract with the Owner on the terms stated herein and will furnish bonds covering the faithful performance of the Contract and payment of all obligations arising there under. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty.

4.2.3 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until:

- A. the Contract has been executed and bonds have been furnished,
- B. the specified time has elapsed so that Bids may be withdrawn, or
- C. all Bids have been rejected.

4.2.4 When the Bidding Documents require bid security, noncompliance by the Bidder requires that the Bid be rejected (13-1-147A, NMSA 1978).

4.2.5 If a Bidder is permitted to withdraw his Bid before award, no action shall take place against the Bidder or the bid security (13-1-147B, NMSA 1978).

4.2.6 The Owner may reduce bid security requirements authorized by the Procurement Code (13-1-28 to 13-1-199, NMSA 1978) to encourage procurement from small businesses. Reduction, if any, and the manner thereof will be stipulated in Paragraph 7. Reduction of the amount of bid security, if any, shall in no way reduce requirements for Performance, Payment, or other Bonds referenced in the Bidding Documents.

4.3 PREBID CONFERENCE

4.3.1 The Design Professional of Record shall conduct a **Prebid Conference** approximately **fifteen (15), but not less than ten (10) days prior to the bid opening** date stated in the Invitation to Bid.

4.3.2 The Design Professional of Record and his consultants, as applicable, shall be represented. Prospective Bidders, Prospective Subcontractors, and Prospective Vendors are encouraged to attend and should be prepared to ask questions regarding substitutions and to request clarification of the Bidding Documents. The failure of a Bidder, Subcontractor, or Vendor to attend shall be interpreted to mean that the Bidding Documents are clear and acceptable to all non-participants at the Prebid Conference. Such clarity and acceptability shall be presumed with respect to all Bidders.

4.3.3 Questions and requests for clarification presented in written form will receive written response, and if warranted, issued as Addenda. No verbal response shall be binding.

4.4 RESIDENT OR VETERAN CONTRACTOR'S PREFERENCE

4.4.1 When Bids are received from nonresident contractors and resident or veteran contractors and the lowest responsible Bid is from a nonresident contractor, the contract shall be awarded to the resident or veteran contractor whose Bid is nearest to the bid price of the otherwise low nonresident contractor if the Bid price of the resident or veteran contractor is made lower than the Bid price of

the nonresident contractor when multiplied by the appropriate factor as established by the NM Taxation and Revenue Department.

4.4.2 No contractor shall be treated as a resident or veteran contractor in the awarding of public works contracts by the Owner unless the contractor has qualified with the NM Taxation & Revenue Department as a resident or veteran contractor pursuant to this section by making application to the NM Taxation & Revenue Department and receiving a certification number. Previous certification as a resident or veteran contractor by the NM General Services Department is valid until January 1, 2012. For convenience, and without warranty that the process is current, the procedure for application and certification is as follows:

A. The contractor seeking to qualify as a resident or veteran contractor shall complete the application form and submit it to the NM Taxation & Revenue Department prior to the submission of a Bid on which the contractor desires to be given a preference (see Pages 00000-2 thru 00000-6);

B. The NM Taxation & Revenue Department shall examine the application and, if necessary, may seek additional information or proof so as to be assured that the Prospective Contractor is indeed entitled to certification as a resident or veteran contractor pursuant to Section 13-1-22, NMSA 1978. If the application is in proper form, the NM Taxation & Revenue Department shall issue the contractor a distinctive certification number, which is valid for three years from the date of issuance and which, when used on Bids and other purchasing documents for State agencies or local public bodies, entitles the contractor to treatment as a resident or veteran contractor under Subparagraph 4.4.1 of this section; and

C. The certification number issued pursuant to Subparagraph B of this section may be revoked by the NM Taxation & Revenue Department by making a determination that the contractor no longer meets the requirements of a resident or veteran contractor as defined in Section 13-1-22, NMSA 1978.

4.5 SUBCONTRACTORS

4.5.1 The bidder shall list the Subcontractors he proposes to use for all trades or items on the Subcontractor Listing Form attached to the Bidding Documents. This requirement does not apply to second tier subcontractors, material suppliers, or subcontractors whose contract is for an amount no greater than the listing threshold described by Subsection A of 13-4-34 below. Requirements for Subcontractors pursuant to Chapter 18, Laws of 1988, 2nd Session; are as follows:

AN ACT

RELATING TO CONSTRUCTION INDUSTRIES; ENACTING THE SUBCONTRACTOR FAIR PRACTICES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

13-4-31 SHORT TITLE

Section 1 through 12 of this act may be cited as the "Subcontractors Fair Practices Act".

13-4-32 LEGISLATIVE FINDINGS

The legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration and repair of public works projects often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among contractors and subcontractors and lead to insolvencies and loss of wages to employees.

13-4-33 DEFINITIONS

As used in the Subcontractors Fair Practices Act:

- A. "contractor" means the prime contractor on a public works construction project who contracts directly with the using agency;
- B. "subcontractor" means a contractor who contracts directly with the contractor;
- C. "listing threshold" means the dollar amount, stipulated in the bidding documents, above which subcontractors must be listed;
- D. "notice" means information, advice or a written warning intended to apprise a contractor, subcontractor or using agency of some proceeding in which the contractor's, subcontractor's or using agency's interests are involved or to inform him of some fact that is his right to know. Notice may be sent to a contractor, subcontractor or using agency by certified or registered mail and shall be deemed to be completed upon date of mailing; and
- E. "using agency" means any state agency or local public body requiring services or construction.
- (F.) (added for clarity from 13-4-13.1) "listed subcontractor" means a subcontractor who is currently registered with the labor and industrial commission.

13-4-34 LISTING OF SUBCONTRACTORS; REQUIREMENTS

- A. Any using agency taking bids for any public works construction project shall provide in the bidding documents prepared for that project a listing threshold which shall be five thousand dollars (\$5,000) or one-half of one percent of the architect's or engineer's estimate of the total project cost, not including alternates, whichever is greater. If the bidding documents do not include a listing threshold, then the using agency shall supply the listing threshold. If the listing threshold has not been included, the bid opening shall be postponed until the using agency has complied with this section. Any contractor or subcontractor interested in bidding may apply to the district court in the county in which the project will be located for an injunction preventing the bid opening until the using agency has complied with this section. Any person submitting a bid shall in his bid set forth:
 - (1) the name and the city or county of the place of business of each subcontractor under subcontract to the contractor who will perform work or labor or render service to the contractor in or about the construction of the public works construction project in an amount in excess of the listing threshold; and
 - (2) the category of the work that will be done by each subcontractor. The contractor shall list only one subcontractor for each category as defined by the contractor in his bid.
- B. A bid submitted by a contractor who fails to comply with the provisions of Subsection A of this section is a non-responsive bid which shall not be accepted by a using agency.

13-4-35 EXEMPTION

With the exclusion of that portion of work covering street lighting and traffic signals, the Subcontractors Fair Practices Act shall not apply to contracts for the construction, improvement or repair of streets or highways, including bridges, underground utilities within easements including but not limited to water lines, sewer lines and storm sewer lines.

13-4-35.1 APPLICATION OF ACT

The Subcontractors Fair Practices Act shall not apply to any transaction occurring after the contractor and the listed subcontractor have executed a subcontract unless subsequent action on the subcontract relates to subcontractor listing requirements.

13-4-36 SUBSTITUTION OF SUBCONTRACTOR

- A. No contractor whose bid is accepted shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except that the using agency shall consent to the substitution of another person as a subcontractor:
 - (1) when the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general

terms, conditions, plans and specifications for the project involved and the terms of such subcontractor's written bid, is presented to him by the contractor;

(2) when the subcontractor listed in the original bid becomes bankrupt or insolvent prior to execution of a subcontract;

(3) when the using agency refuses to approve the subcontractor listed in the original bid, provided such approval has been reserved in the bidding documents;

(4) when the subcontractor listed in the original bid fails or refuses to perform his subcontract;

(5) when the contractor demonstrates to the using agency or its duly authorized officer that the name of the subcontractor was listed as the result of an inadvertent clerical error;

(6) when a bid alternate accepted by the using agency causes the listed subcontractor's bid not to be low;

(7) when the contractor can substantiate to the using agency that a listed subcontractor's bid is incomplete;

(8) when the listed subcontractor fails or refuses to meet the bond requirements of the contractor; and,

(9) when it is determined that the listed subcontractor does not have a proper license to perform the work and the contractor has submitted the name of the subcontractor along with proof that the subcontractor bid work for which he was not licensed by the Construction Industries Division of the Regulation and Licensing Department.

(10) when it determined by the using agency, the prime contractor or the director of the labor and industrial division of the labor department that a listed subcontractor is not a registered subcontractor on the date bids are unconditionally accepted for consideration.

B. Prior to approval of the contractor's request for substitution of a subcontractor, the using agency shall give notice in writing to the listed subcontractor of the contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five (5) working days within which to submit written objections to the substitution to the using agency. Failure to file written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, the using agency shall give at least five (5) working days' notice in writing to the listed subcontractor of a hearing by the using agency on the contractor's request for substitution.

C. No contractor whose bid is accepted shall permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid without the consent of the using agency.

D. No contractor whose bid is accepted, other than in the performance of change orders causing changes or deviations from the original contract, shall sublet or subcontract any portion of the work in excess of the listing threshold as to which his original bid did not designate a subcontractor unless:

(1) the contractor fails to receive a bid for a category of work. Under such circumstances, the contractor may subcontract. The contractor shall designate on the listing form that no bid was received; or

(2) the contractor fails to receive more than one bid for a category of work. Under such circumstances, the contractor may subcontract. The contractor shall state on the listing form that only one subcontractor's bid was received, together with the name of the subcontractor. This designation shall not occur more than one time on the subcontractor list.

13-4-37 BOND REQUIREMENTS (This requirement to be modified by Invitation to Bid – Section 00 1116- Page 3

A. It is the responsibility of each subcontractor submitting a bid to a contractor to be prepared to submit a faithful performance and payment bond if so requested by the contractor.

B. In the event any subcontractor submitting a bid to a contractor does not, upon the request of the contractor and at the expense of the contractor at the established charge or premium therefore,

furnish to the contractor a bond issued by a corporate surety authorized to do business in New Mexico in accordance with the New Mexico Insurance Code (59A-1-1 to 59A-1-18, NMSA 1978) and listed in the United States treasury department circular 570 wherein the contractor is named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the contractor may reject the bid and make a substitution of another subcontractor subject to the provisions of Section 13-4-36, NMSA 1978. Such bond may be required at the expense of the subcontractor only if the contractor in his written or published request for subcontract bids:

- (1) specifies that the expense for the bond shall be borne by the subcontractor; and
- (2) clearly specifies the amount and requirements of the bond.

13-4-38. FAILURE TO SPECIFY SUBCONTRACTOR

If a contractor fails to list a subcontractor in excess of the listing threshold and he does not state that no bid was received or that only one bid was received, he represents that he is fully qualified to perform that portion of the work himself and that he shall perform that portion of the work himself. If after the award of the contract the contractor subcontracts any portion of the work, except as provided in the Subcontractors Fair Practices Act, the contractor shall be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided in Section 13-4-41 NMSA 1978.

13-4-39. INADVERTENT CLERICAL ERROR

A. The contractor, as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor, shall within four working days after the time of the prime bid opening by the using agency, give written notice to the using agency and to both the subcontractor he claims to have listed in error and the subcontractor who had bid to the contractor prior to bid opening.

B. Any listed subcontractor who has been notified by the contractor in accordance with the provisions of this section as to an inadvertent clerical error shall be allowed twelve working days from the time of the prime bid opening within which to submit to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error. Failure of the listed subcontractor to file written notice within the twelve working days shall be primary evidence of his agreement that an inadvertent clerical error was made.

C. The using agency shall, in the absence of an objection to the contrary by the listed subcontractor in the original bid, consent to the substitution of the intended subcontractor if:

- (1) the contractor, the listed subcontractor listed in error and the intended subcontractor each submit an affidavit to the using agency, along with such additional evidence as the parties may wish to submit, that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within twelve working days from the time of the prime bid opening; or
- (2) affidavits are filed by both the contractor and the intended subcontractor within the specified time but the subcontractor whom the contractor claims to have listed in error does not submit, within twelve working days from the time of prime bid opening, to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error as provided in this section.

D. If affidavits are filed by both the contractor and the intended subcontractor but the listed subcontractor has, within twelve working days from the time of the prime bid opening, submitted to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error, the using agency shall investigate the claims of the parties and hold a hearing to determine the validity of the claims, within thirty days after the receipt of the contractor's written objection. Any determination made shall be based on facts contained in the affidavits submitted by all three parties and supported by testimony under oath and subject to cross-examination. The using agency may, on its motion or that of any other party, admit testimony of other contractors, any bid

registries or depositories or any other party in possession of facts that may have a bearing on the decision of the using agency.

13-4-40. EMERGENCY SUBCONTRACTING

Subcontracting any portion of the work in excess of the listing threshold as to which no subcontractor was designated in the original bid shall be permitted only in the case of public emergency or necessity and then only upon a written finding by the using agency setting forth the facts constituting the emergency or necessity.

13-4-41. PENALTIES

A. When a contractor violates any provision of the Subcontractors Fair Practices Act except Section 13-4-34 NMSA 1978, the using agency shall:

(1) in the case of a contractor who substitutes another subcontractor in violation of Section 13-4-36 NMSA 1978, for the subcontractor originally included in the bid, assess the contractor a penalty in an amount equal to the greater of ten percent of the amount bid by the listed subcontractor or the difference between the amount bid by the listed subcontractor and the amount bid by the substituted subcontractor;

(2) in the case of a contractor substituting a listed subcontractor for another subcontractor, and the substituted subcontractor knowingly participated in a violation of Section 13-4-36 NMSA 1978, assess the substituted subcontractor a penalty in an amount equal to the greater of ten percent of the amount bid by the listed subcontractor and the difference between the amount bid by the listed subcontractor and the substituted subcontractor; or

(3) in the case of a contractor who fails to list a subcontractor in excess of the listing threshold as defined in Section 13-4-38 NMSA 1978, assess the contractor a penalty of eight percent of the amount of the subcontract issued for the first violation and thirty percent of the amount of the subcontract issued for any violation thereafter, on any one project.

B. Penalties assessed pursuant to the provisions of this section shall be deposited into the fund from which the contract was awarded.

C. In a proceeding under this section, the contractor shall be entitled to a hearing after notice.

D. A violation of the provisions of the Subcontractors Fair Practices Act constitutes grounds for disciplinary action against a contractor or a subcontractor, pursuant to regulations of the construction industries division of the regulation and licensing department.

E. A contractor or a subcontractor who attempts to circumvent the provisions of the Subcontractors Fair Practices Act shall be subject to the penalties established pursuant to this section.

F. Any listed subcontractor removed in violation of the Subcontractors Fair Practices Act may bring an action in the district court for damages, injunctive or other relief.

13-4-42. COVERAGE OF HOME RULE MUNICIPALITIES

Any home rule municipality or H class county chartered under the provisions of Article 10, Section 6 of the constitution of New Mexico is expressly denied authority to legislate regulation of the subject matter covered in the Subcontractors Fair Practices Act that conflicts with the provisions of that act.

13-4-43. DISPUTE RESOLUTION

Once the using agency has determined the existence of a valid claim under the provisions of the Subcontractors Fair Practices Act, the using agency or agent of the using agency may:

A. hold a public hearing for the purpose of providing an informal resolution of the dispute by preparing a "form of dispute" which shall be available to all parties. The form shall state concisely, in numbered paragraphs, the matter at issue or dispute which the complainant expects to be determined. The agent or the using agency shall evaluate the issues presented by both sides of the dispute and render a decision within ten days after the hearing, and provide the parties with a written copy of the decision by certified mail, return receipt requested; or

B. refer the matter in dispute to be resolved through arbitration.

4.5.2 The Bidder shall not list himself as the supplier or as the Subcontractor for any trade unless he has previously performed work of this type or can prove to the Design Professional and the Owner's satisfaction that he actually has, or will obtain, fully adequate ability to perform the work with his own forces.

4.5.3 Omission or non-compliance with the intent of the Subcontractor Listing (Section 00430) will be grounds for considering a bid as non-responsive.

4.5.4 Prior to the award of the Contract, the Design Professional will notify the Bidder in writing if either the Owner or the Design Professional, after due investigation and written findings of fact, has reasonable and substantial objection to any person or organization on such list. If the Owner or Design Professional has reasonable and substantial objection to any person or organization on such list and refuses in writing to accept such person or organization, the Bidder may, at his option:

- A.** withdraw his Bid, or,
- B.** submit an acceptable substitute Subcontractor.

In the event of withdrawal under this paragraph, bid security will not be forfeited.

4.5.5 The Successful Bidder shall, within ten (10) days of Notice of Award of the Contract for the Work, submit to the Design Professional all of the requirements of Subparagraph 6.1.

4.5.6 The Successful Bidder will be required to establish to the satisfaction of the Design Professional and the Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the work described in the Bidding Documents.

4.5.7 Persons and organizations proposed by the Bidder and to whom the Owner and the Design Professional have made no reasonable objection under the provisions of Paragraph 4.5.6 must be used on the work for which they were proposed and shall not be changed except with the written consent of the Owner and the Design Professional. In an effort to gain consent, provide, if possible, a written request from the person or organization wishing to be replaced by the Bidder explaining the need for the replacement.

4.5.8 No Successful Bidder shall be required to employ any Subcontractor, other person, or organization against whom he has reasonable objection.

4.6 SUBMISSION OF BIDS

4.6.1 Bid, bid security, Subcontractors Listing Form, and other required documents listed in the Bidding Documents shall be submitted in an opaque sealed envelope marked in accordance with Subparagraph 4.6.2 below.

4.6.2 The Bid envelope shall be addressed as required by Section 00_2114 – Instructions to Bidders – Part B.

4.6.3 Bids received after the date and time for receipt of bids will be returned unopened.

4.6.4 The Bidder shall assume full responsibility for timely delivery of bids to the Owner, including those Bids submitted by mail or otherwise. Bids hand delivered to the Bid Opening Address shall be received beginning one hour prior to the bid. Bids will be clocked in at the time received, which must be prior to the time specified. Bids will then be held for public opening.

4.6.5 Oral, telephonic, or telegraphic bids are invalid and will not receive consideration.

4.7 CORRECTION OR WITHDRAWAL OF BIDS

4.7.1 A bid containing a mistake discovered before Bid Opening may be withdrawn by a bidder prior to the time set for Bid Opening by delivering verbal, written or telegraphic notice to the location designated in the Invitation for Bid as the place where bids are to be received.

4.7.2 Bid security, if required, shall be in an amount sufficient for the bid in conformance with Section 4.2.

4.7.3 Withdrawn Bids may be resubmitted up to the time and date designated for the receipt of Bids, provided they are then fully in conformance with the Bidding Documents.

4.7.4 After Bid Opening time, no modifications in bid prices or other provisions of bids shall be permitted.

4.7.5 After Bid Opening, a low Bidder alleging a material mistake of fact which makes his Bid non-responsive may be permitted to withdraw his Bid if the:

A. mistake is clearly evident on the face of the Bid Document; or

B. Bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

Any decision by the Owner to permit or deny the withdrawal of a Bid on the basis of a mistake contained therein shall be supported by a written determination setting forth the grounds for the decision. If withdrawal is permitted, bid security will not be forfeited.

4.8 NOTICE OF CONTRACT REQUIREMENTS BINDING ON BIDDER

4.8.1 In submitting this bid, the Bidder represents that he has familiarized himself with the nature and extent of the following requirements and of the Conditions of the Construction Contract (General, Supplementary, Project and Other Conditions):

4.9 REJECTION OR CANCELLATION OF BIDS

An Invitation for Bid may be canceled, or any or all Bids may be rejected in whole or in part, when it is in the best interest of the Owner. A determination containing the reasons therefore shall be made part of the Project file. Bid security for rejected Bids shall be returned to the Bidder.

4.10 CONSIDERATION OF BIDS

4.10.1 RECEIPT, OPENING, AND RECORDING

Bids received on time will be opened publicly and will be read aloud, and an abstract of the amounts of the Base Bids and Alternates or bid items, if any, will be made available to the Bidders. Each Bid shall be open to public inspection (13-1-107, NMSA 1978).

4.10.2 BID EVALUATION AND AWARD

4.10.2.1 The Owner shall have the right to waive technical irregularities in the form of the Bid of the low Bidder which do not alter the price, quality, or quantity of the services, construction, or items of tangible personal property bid (13-1-132, NMSA 1978).

4.10.2.2 It is the intent of the Owner to award a contract to the lowest responsible bidder, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents. The unreasonable failure of a Bidder to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Bidder is not a responsible Bidder (13-1-133, NMSA 1978). See Section 6 as to Post-Bid Information that may be required of a Contractor as to qualifications.

4.10.2.3 If the Base Bid is within the amount of funds available to finance the construction, contract award will be made to the responsible Bidder submitting the low Base Bid; except that, if sufficient funds are available to fund alternates, the Owner may award the contract to the responsible Bidder submitting the low combined Bid within the amount of funds available (Base Bid plus or minus alternates. If

the award is based on alternates, the Owner shall accept them in the order in which they are listed on the Bid Form.

4.10.2.4 Discrepancies in the Bid Form between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

4.10.2.5 Conditional Bids or Bids with additional terms will not be accepted.

4.11 NOTICE OF AWARD

A written Notice of Award shall be issued by the Owner after review and approval of the bid and related documents by the Owner with reasonable promptness (13-1-100 and 13-1-108, NMSA 1978).

4.12 CANCELLATION OF AWARD

When in the best interest of the public, the Owner may cancel the award of any contract at any time before the execution of said contract by all parties without any liability against the Owner.

5.0 PROTESTS

5.1 Any bidder, offerer, or contractor who is aggrieved in connection with this procurement (Bid) may protest to the Owner's Central Purchasing Agent and the Owner in accordance with the requirements of General Services Department Rule 93-601. The protest should be made in writing within twenty-four (24) hours after the facts or occurrences giving rise thereto, but in no case later than fifteen (15) calendar days after the facts or occurrences giving rise thereto (13-1-172, NMSA 1978).

5.2 In the event of a timely protest under Subparagraph 4.10.1 (13-1-172, NMSA 1978 of the Procurement Code), the Owner's Central Purchasing Agent and the Owner shall not proceed further with the procurement unless the Owner's Purchasing Agent or the Owner makes a determination that the award of contract is necessary to protect substantial interests of the Owner (13-1-173, NMSA 1978).

5.3 The Owner's Central Purchasing Agent or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved bidder, offerer, or contractor concerning a procurement.

5.4 The Owner's Central Purchasing Agent or his designee shall promptly issue a determination relating to the protest. The determination shall:

- A.** state the reasons for the action taken; and
- B.** inform the protestant of the right to judicial review of the determination pursuant to Section 13-1-183, NMSA 1978 of the Procurement Code (13-1-175, NMSA 1978).

5.5 A copy of the determination issued under Section 13-1-175, NMSA 1978 of the Procurement Code shall immediately be mailed to the protestant and other bidders or offerers involved in the procurement (13-1-176, NMSA 1978).

6.0 POST-BID INFORMATION

6.1 SUBMITTALS TO DESIGN PROFESSIONAL

Within ten (10) days of Notice of Award and prior to construction, the following shall be submitted to the Design Professional:

- A.** the Contractor required bonds and Certificates of Insurance;

- B. for the Owner's consideration for approval, a resume and Statement of Qualification of proposed Superintendent(s) and assistants until acceptable individuals are selected in accordance with Subparagraph 3.9.2 of the General Conditions to the Construction Contract;
- C. signed Subcontractors List including contract amount of each, evidence of required bonds, costs of each bond, and beneficiary of each bond; evidence of DOL registration, evidence of CID licensure;
- D. Assignment of Antitrust Claims (required for the Contractor, all Subcontractors, and all Suppliers);
- E. Certificate of Insurance;
- F. State W-9;
- G. evidence of other bonds or documents as specified in the Bidding Documents; and
- H. Schedule of Values and required supporting data in accordance with Paragraph 9.2 of the General Conditions to the Construction Contract.

6.2 RETURN OF BID SECURITY

All Bid Security in the form of checks, except those of the two lowest Bidders, will be returned immediately following the opening and checking of the Bids. The retained bid security of the unsuccessful of the two lowest bidders, if in the form of a check, will be returned within fifteen (15) days following the award of contract. The retained bid security of the Successful Bidder, if in the form of a check, will be returned after a satisfactory contract bond has been furnished and the Contract has been executed. Bid Securities in the form of Bid Bonds will be returned only upon the request of the unsuccessful Bidder, but will be released by the Purchasing Agent for the District after the Notice of Award is sent by the Owner.

6.3 EXECUTION AND APPROVAL OF CONTRACT

The Contract shall be signed by the Successful Bidder and returned, together with both the Contract Bonds and Certificate of Insurance, within fifteen (15) days after the date of the Notice of Award. If the Contract is not executed by the Owner within forty-five (45) days following receipt from the Bidder of the signed Contract with Bonds and Certificate, the Bidder shall have the right to withdraw his proposal without penalty unless the Bidder has previously agreed to extend the date for acceptance by the Owner. No Contract shall be effective until it has been fully executed by all of the parties thereto.

6.4 NOTICE TO PROCEED

The Owner will issue a written Notice to Proceed to the Contractor stipulating the date from which Contract Time will be charged and the date Contract Time is to expire, subject to valid modifications of the Contract authorized by Change Order.

6.5 FAILURE TO EXECUTE CONTRACT

Failure to return the signed Contract with acceptable Contract Bonds and Certificate of Insurance within fifteen (15) days after the date of the Notice of Award shall be just cause for the cancellation of the award and the forfeiture of the Bid Security, which shall become the property of the Owner, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsible Bidder, or the Work may be re-advertised and constructed under contract or otherwise, as the Owner may decide.

6.6 CONTRACTOR'S QUALIFICATIONS STATEMENT

Bidders to whom award of a contract is under consideration shall submit, upon request, information and data to prove that their financial resources, production or service facilities, and service reputation and experience are adequate to make satisfactory delivery of the services, construction, or items of personal property described in the Bidding Documents (13-1-82, NMSA 1978). The Contractor shall always submit the requirements of Subparagraph 3.9.2 of the General Conditions to the Construction Contract and also in accordance with Paragraph 6.1-B above.

7.0 OTHER INSTRUCTIONS TO BIDDERS

7.1 The bid will be awarded in accordance with Subparagraph 4.10.2.3. The Owner may accept from the apparent low bidder prior to the Award, a reduction to the bid cost or time and, may discuss with the apparent low bidder for potential deductive modifications to the Work prior to the Award however, the Award shall be made on the un-modified Construction Documents with alternates accepted in accordance with this Paragraph 7.0.

7.2 If the lowest responsible bid has otherwise qualified, and if there is no change in the original project scope, terms or conditions, the lowest bidder may negotiate with the purchaser for a lower total bid in order to avoid rejection of all bids for the reason that the lowest bid was up to ten percent higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent over budgeted project funds.