

103 Contract Award and Execution

103.1 Consideration of Proposals

- (1) Following the public opening of the proposals received, the department will compare them based on the summation of the products of the quantities of work listed and the contract unit prices offered. In case of discrepancies, errors, or omissions, the department will make corrections as specified in [102.7.1](#). In awarding contracts, the department, in addition to considering the amounts stated in the proposals, may consider one or more of the following:
 1. The responsibility of the various bidders as determined from a study of the data required under [102.1](#).
 2. The responsiveness of the bid as determined under [102.6](#).
 3. Information from other investigations that the department may make.
- (2) The department will also review the proposals for the irregularities described in [102.7](#) and review the eligibility of the bidder as specified in [102.13](#). The department will determine whether irregularities are matters of form rather than substance and can be waived without prejudice to other bidders or the public interest.
- (3) The bidder may submit individual proposals for more than one contract being let. Although each individual proposal may not exceed the bidder's rating, a combination of more than one proposal and incomplete work currently under contract may exceed the bidder's rating. If the bidder exceeds its rating, the department may award a proposal or combination of proposals within the bidder's rating and most advantageous to the department.
- (4) The department may reject any or all proposals, or waive technicalities. The department, in its own interest, may re-advertise for bids or proceed with the work in another manner.

103.2 Awarding the Contract

- (1) Unless rejecting all proposals, the department will award the contract to the lowest responsible bidder whose proposal complies with [103.1](#). If two or more bidders submit identical low bids, the department will determine the successful bidder by flipping a coin.
- (2) The bidder, by written notice before the time set for opening of bids, may limit the bidder's total dollar volume of work or number of contracts to be awarded in a letting, and the department will determine which contract or contracts to award.
- (3) If the department does not make an award within 30 calendar days after opening the proposals, the lowest responsible bidder, after those 30 days, may request, in writing, that the department make the award. Stipulate a deadline of 10 business days or more, after the date of the request, for the department to make the award. If the department does not make the award within the stipulated time, the bidder is relieved of its obligation to execute a contract and contract bond.

103.3 Canceling the Award

- (1) The department may cancel a contract award before execution without liability.

103.4 Returning Proposal Guaranty

- (1) The department will return the proposal guaranties of all except the lowest responsible bidder within 5 business days after determining the lowest qualified bidder. The department will return the lowest responsible bidder's proposal guaranty as soon as the bidder executes and submits in the proper form the contract, contract bond, and other required documents.
- (2) If the department does not make the award within the time stipulated by the lowest responsible bidder as specified in [103.2\(3\)](#), the department will return their proposal guaranty within 5 business days after that deadline.

103.5 Contract Bond

- (1) At the time of submitting the contract for execution by the department, deposit a valid surety bond with the department in the amount designated on the bond form covering both performance and payment. Submit the contract bond on a department-furnished form.
- (2) Ensure that the surety is licensed to do business in Wisconsin and has an equivalent A.M. Best rating of A- or better. The surety is subject to the department's approval, and to the governor's approval, if required by law.

103.6 Executing and Approving the Contract

- (1) The bidder must execute the contract. The principal and the sureties must execute the contract bond. Present the contract, the contract bond, 30 percent rule documentation using department form WS1081, and all other department-required forms within 10 business days after the date of notice of the award of the contract. Department form WS1081 is available at:

- (2) The contract is not binding on the department until the final execution of the contract. The contract final execution date is the date the final signer signs the contract.

103.7 Failure to Execute Contract

- (1) The department may cancel the award if, within 10 business days after the date of notice of the award of the contract, the successful bidder does not do the following:
 - 1. Return required forms or supply other department-requested information.
 - 2. Execute a contract and contract bond, as provided in [103.6](#).
- (2) If the department cancels the award, the department may retain the proposal guaranty, not as a penalty, but in payment of liquidated damages the department sustains due to the bidder's failure to execute. If the retained proposal guaranty is a bid bond, pay the department the proposal guaranty amount within 10 business days of demand.

103.8 Nullifying the Award

- (1) The department will accept the bidder's request to nullify and will nullify the bidder's acceptance of the contract if the following conditions are met:
 - 1. The bidder files the required contract documents in proper form and order.
 - 2. The department does not execute the contract within 30 calendar days after the bidder files the required contract documents.
 - 3. The bidder files a written request to nullify with the department. Wait the 30 days specified in item 2 of 103.8(1) before filing that request. Stipulate in the request a deadline for the department to execute the contract. This deadline must be 10 business days or more after the filing date of the request.
 - 4. The department does not execute the contract within the stipulated deadline.
- (2) The department will notify the bidder, in writing, if the department agrees to nullify the award. The department's failure to act within the stipulated deadline also constitutes nullification.
- (3) The request to nullify is a voluntary act of the bidder. The department's nullification relieves the bidder, the bidder's surety, and the department of all obligations under the award.
- (4) Unless and until the bidder files a request to nullify, and until the department nullifies, the department may execute the contract without prejudice to any contract terms and conditions.