



SECTION 103

AWARD AND EXECUTION OF CONTRACT

103.1 Consideration of Bids. After bids are opened and the bid totals read, the bids will be compared on the basis of the summation of the products of the approximate quantities shown in the bid schedule multiplied by the unit bid prices. The results of such comparisons will be immediately available to the public.

103.2 Award of Contract.

103.2.1 The contract will be awarded by the Commission to the lowest responsible bidder as soon as practical after the opening of the bids. The responsibility of the contractor will be determined by the Commission based on, but not limited to, previous work, financial standing and record for the payment of the contractor's obligations. No contract will be executed by the Commission unless the contractor has on file with the Commission a valid contractor questionnaire in accordance with [Sec 102.2](#). The successful bidder will be notified by letter mailed to the address shown on the bid that the bid has been accepted and the contract has been awarded.

103.2.2 The Commission may make a contingent award to the second lowest responsible bidder. If the low bidder fails to execute the contract in accordance with this section, the contract will be offered to the second lowest responsible bidder in accordance with the contingent award made by the Commission within 25 days after the original award date. The second low bidder shall then be bound by the same requirements as specified for the lowest responsible bidder. The Notice to Proceed may be extended by the number of days between the original Commission award and the day the contract has been mailed to the second lowest responsible bidder. If the contract time for completion of the work is set solely by completion date, then the completion date may be extended by the number of days between the original Commission award and the day the contract was mailed to the second lowest responsible bidder. The new contract will be adjusted to reflect these changes, if appropriate.

103.2.2.1 If the second low bidder is not able to perform the work at the unit prices bid by the second low bidder due solely to the fact that the low bidder is unable to perform as a subcontractor in accordance with [Sec 103.6](#), and the second low bidder based its bid upon an offer by the low bidder to perform subcontract work for the second low bidder, the second low bidder will not be required to forfeit its bid bond, providing the second low bidder submits to the Commission proper documentation that its bid was based on the low bidder's quote. Proper documentation shall include, but is not limited to, a letter to the Commission describing the work that was to be performed by the low bidder as a subcontractor, all quotes the contractor received and all documentation for the work in question.

103.2.2.2 When the second low bidder is required to execute the contract and the low bidder was a DBE firm that was identified on the second low bidder's Identification of Participating DBE's, the second low bidder shall attempt to replace the low bidder with another DBE firm. If the second low bidder is unsuccessful in attaining another DBE firm for that work, the second low bidder shall certify that a good faith effort was made in accordance with 49 CFR 26.53. The DBE goal will be adjusted accordingly.

103.2.3 When the tabulated lowest bids are equal in all respects, including price, the successful bidder will be determined by a formal drawing of lot limited to the tied bidders. Tied bidders will be notified of the location and time of the drawing and have the opportunity to attend, but attendance will not be required.

103.2.4 Alternate Bids. In making the award, if alternate bids have been requested, that alternate that will be in the best interest of the Commission will be used.

103.2.5 Federal Concurrence. If the USA or any agency thereof is paying all or a portion of the cost of construction of the project, the award made by the Commission will be tentative until proper federal concurrence therein has been received.

103.3 Return of Bid Guaranty. The bid guaranty, whether check or bid bond, of the low bidder will be retained until the contract has been executed by the successful bidder, all insurance requirements have been met and a satisfactory contract bond furnished. The check of the low bidder will then be returned. The bid guaranty of the second low bidder will be returned when the Commission has determined that award will not be made to that firm. If errors or irregularities appear in the bid of either of the two lowest bidders that creates doubt as to the status of such a bid, the bid guaranties of other bidders may be retained. When the two lowest bidders have been definitely established, the checks of the other bidders will be returned. Any bid bond furnished as a bid guaranty will be returned only upon request of the bidder furnishing the bid bond. If an award is not made, all checks will be returned to the bidders.

103.4 Contract Bond Required.

103.4.1 The successful bidder shall, at the time of the execution of the contract, furnish a contract bond in a sum equal to the contract price. The bond shall be to the State of Missouri, in a form and with surety or sureties acceptable to the Commission, to ensure the proper and prompt completion of the work in accordance with the provisions of the contract, the contractor's compliance with all of the terms and conditions of the contract, all obligations on the contractor's part to be performed and payment of all obligations to the Commission by the contractor, including any indebtedness, liquidated or unliquidated, for any reason relating to or arising from the contract, and to ensure payment for all labor performed and material consumed or used in the work. The bond, if executed by a surety that is a corporation organized in a state other than Missouri, shall be signed by an agent or broker licensed by the Missouri Department of Insurance. All bids shall be submitted on the basis of furnishing a contract bond executed by an approved surety or sureties, as herein set out. The surety's liability under the contract bond and contract shall not be limited to the penal sum as set forth in the contract bond. The surety shall be liable and responsible to the Commission for the contractor's entire performance and of all obligations arising under or from the contract, which shall include, but is not limited to any change orders issued under the contract that increase the cost of the contract.

103.4.2 Certificate of Authority. Any surety company that proposes to execute a bond as required by the contract shall have on file with or furnish to the Commission a certified copy of the surety's certificate of authority to transact business in the State of Missouri.

103.4.3 Surety Acceptability. A surety will be acceptable to the Commission if the surety is listed in the current United States Department of the Treasury, Fiscal Service, Department Circular 570, *Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies*. Individual contract bonds may not be in excess of the underwriting limitation listed in the circular.

103.5 Execution of Contract. The individual, partnership, corporation or joint venturer awarded the contract shall return the prescribed copies of the contract and bond, properly executed, to the office of the Commission within 15 days after the unexecuted contract has been mailed to the bidder. No bid shall be considered binding upon the Commission until the contract has been awarded by the Commission, and until the successful bidder has executed and returned the contract and a satisfactory bond. No contract will be effective until the contract has been executed by all parties.

103.6 Failure to Execute Contract. Failure to execute the contract or to file an acceptable contract bond within 15 days after the unexecuted contract has been mailed to the bidder will be just cause for the cancellation of the award and the forfeiture of the bid guaranty. A bidder failing to file an acceptable bid or contract bond from an approved surety or failing to execute the contract within the time provided resulting in a cancellation of the award to that bidder, disqualifies that bidder, and any other firm having common ownership or control with that bidder, from performing any work on the Commission project or projects that are the subject of that bid, as a prime contractor, a subcontractor or a supplier.