

CHAPTER 400 BIDDING AND CONTRACTING

SECTION 401 FORMAL CONTRACTS vs INFORMAL CONTRACTS

[GS 143-128](#) and [129](#) govern construction contracting for public work in NC. The terms *formal* and *informal* are not clearly established in the statutes except to prescribe dollar limits and to define informal bids as requested in writing, without public advertising, and submitted in writing. The terms are used herein to describe what is required by statute (formal) and what is not specifically required by statute (informal). The total dollar value of the project and/or the total construction costs is the limitations defining the terms. These limitations impact how a project's construction documents and contracts are written and organized as well as the method and procedures for bidding and award of a public project. **Note: A project may not be subdivided or phased with the purpose or the intent to evade the formal contract requirements.** [GS143-133](#)

SECTION 402 FORMAL CONTRACTS (>\$300,000) [GS143-129](#)

- A. Projects where the total construction contracting value will be greater than \$300,000 are referred to as *formal* in this manual.
- B. A single, public advertisement is required "in a newspaper having general circulation in the State of NC." "Bids may not be received until at least seven (7) days have lapsed from the date of advertisement." GS143-129 (b)

Note: Seven-day bid times are only used in re-bid situations. There are numerous requirements for more time such as the MBE program, pre-bid conferences, addenda, etc. Typical bid periods are 3-5 weeks.
- C. Bid security, bid bond or cash, in the amount of 5% of the total bid is required with the bid. A bid will not be read or considered without a valid bid security. GS143-129(a) Bid security, Proposal Form and MBE form(s) are all that is required with the bid. DO NOT require any other material with the bid.
- D. **Receipt of 3 bids on any contract is required to open bids on the first advertisement.** If an insufficient number of bids are received, then bids shall not be opened and the project shall be re-advertised and bids received again in no less than 7 days from re-advertisement. Do not make any changes to the bid documents between 1st and 2nd opening. Whatever number of bids received at the second opening may be opened and read, if desired, or the project may be bid again at a later time. ([GS143-132](#))
- E. State General Conditions and all forms, formats and guidelines and must be used to ensure consistency in the process of design, contracting and construction across state government agencies and institutions. All forms are available on the SCO website.
- F. MBE Requirements ([GS143-128](#) (f)) – The State has a 10% goal for minority participation in State projects. MBE Guidelines and Affidavit forms are required in the project manual and provide MBE program information and instructions for MBE Forms. Department of Administration HUB website has additional HUB program information.
- G. Performance and Payment Bonds are required on formal projects on any prime construction contracts awarded over \$50,000. ([GS44A-26](#))
- H. Note: Should the low bid in a formal project be <\$300,000 the formal award process would still apply. If a formal project is bid, it cannot be changed and awarded as an informal one.

SECTION 403 INFORMAL CONTRACTS (\$30,000 - \$300,000)

An SCO [Informal Contract](#) format is available on the SCO Website. It is a simplified and condensed form with a Notice to Bidders, abbreviated OC-15 General Conditions, a Supplementary General Conditions page for Designer edits and a simplified combination proposal and contract form. An Informal Contract in no way implies that plans and specifications may be less than fully developed or inadequately describe the work to be done.

- A. On projects where construction cost will be less than \$300,000, a public advertisement, bid bonds, performance bonds and payment bonds are not required but may be included if the Owner desires.
- B. The receipt of 3 bids is not required to open bids. But, for the advantages of competitive bids, at least 3 bids should be solicited. Bids may be faxed or sent electronically to the Owner.
- C. If the low bid exceeds \$300,000, then the project scope or the bid, *if reasonable and practical*, may be negotiated below \$300,000 for an award of an informal contract. If this is impractical or unreasonable to do, then the project shall be re-bid under the formal contract process. Depending on the project, unreasonable and impractical may be considered if the project exceeds 5%-10% over \$300,000.
- D. MBE requirements and 10% goal also apply on *informal contracts* BUT the Owner has the responsibility to make a good faith effort to solicit minority bids and to attain the goal. ([GS 143-131\(b\)](#)). Documentation and data on MBE participation is required for informal projects and must be reported annually to the Department of Administration – HUB Office. A reporting form is available on the [HUB website](#).
- E. Senate Bill 914 (2002) revised the State Building Commission statutory powers and duties (GS143-145.26) to include adoption of rules to coordinate the review and approval process, provide for specific time frames for review and for exemption from review of specified types of projects. A State Building Commission subcommittee has proposed a rule to exempt from SCO review and approval* projects whose contract costs are under the \$300,000 informal limit. See Chapter 300 – 301.2.c.

***Important Note:** The exemption from review does not apply to the Department of Insurance review of State owned facilities nor affect or change any other statutory or regulatory requirements. Informal projects must still follow SCO prescribed procedures for OC25, design contracts, bidding and construction contracting and monitoring.

SECTION 404 BIDDING METHODS AND CONTRACTING - ([GS143-128](#))

The State under GS143-128 has required, since the 1930's, that public construction contracts be divided into at least 4 subdivisions or branches of work – General, Plumbing, HVAC and Electrical contracts. “Separate plans and specifications” are required. There have been occasions when Elevators, Fire Protection Systems, Communications Systems and other Specialty Construction have been separate prime contracts as well but not required by statute. In 2001, Senate Bill 914 made major revisions and consolidations to all statutes concerning public construction. Effective January 1, 2002, multiple bidding and contracting methods were allowed; dollar thresholds for contracts, bonds, and professional licenses were raised; Owner preferred alternates revised; and MBE requirements and procedures strengthened. Following are the 4 major methods of bidding and contracting public work currently available for public entities.

Note: “Separate drawings and specifications” means that the Designer shall identify the scope of work required for each category in the specifications and on the drawings.

404.1 SINGLE PRIME BIDDING AND CONTRACTING – ([GS143-128](#))

A single prime bid and contract with the Owner is permitted for any construction contracts of any dollar amount. GS143-128 requires a single prime bidder to identify on the proposal form the subcontractors selected for the subdivisions or branches of work for: (1) General construction; (2) HVAC; (3) Plumbing; and (4) Electrical. The sub's license number is not required by statute but may be requested. The subcontractor bid quote to the prime bidder shall not be requested.

The single prime contractor whose bid is accepted shall not substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except by permission of the Owner and in accordance with the statute. (See the Proposal Form format for listing of subcontractors.)

NOTE: Under GS 87-1, a contractor that superintends or manages construction of any building, highway, public utility, grading, structure or improvement shall be deemed a “general contractor” and shall be so licensed. Therefore a single prime project that involves other trades as subcontractors will require the single prime contractor to hold a proper General Contractor license. This is not an issue under separate prime but when a single prime PM&E project, such as a large central chiller plant, has the PM or E contractor as the single prime, that contractor would have needed to hold a general contractor's license as well to subcontract other work.

A 2004 revision to GS87.1.1 allows a PM or E contractor under GS 87 to contract directly (as single prime) with a public Owner and subcontract to other contractors *provided* the total general construction work does not exceed 25% of the total construction costs. (See [GS 87-1](#) and [NCLB GC Rules 0200.0210](#).)

404.2 SEPARATE PRIME/MULTI PRIME - BIDDING AND CONTRACTING ([GS143-128](#))

Separate prime bids and contracts are still an option for the Owner. GS 143-128 has established the basic subdivisions of work as General, Plumbing, HVAC, and Electrical contracts. The Owner signs separate prime construction contracts with each subdivision contractor. Project documents shall have “separate specifications and drawings” prepared for each subdivision. The Owner shall designate one contractor, typically the General or the contractor having the largest contract, as the “Project Expediter” to coordinate and schedule the work. The project expeditor *has no contract* with the other primes so the general contractor definition in GS 87-1 does not apply. (There may be legal issues with the Owner as an un-licensed “general contractor” under the separate prime scenario.)

404.3 DUAL BIDDING – ([GS143-128](#) (D1))

A combination bidding that permits both single prime and separate prime bids to be received together on one project and permits the Owner to contract with the lowest separate prime bids **OR** the lowest single prime bid. The lowest bid overall does not have to be accepted but, awarding to other than the low bidder should have reasonable justification. Separate drawings and specifications shall be prepared for the dual method as well.

NOTE: Dual bids are to be received **one hour apart**. Separate prime bids are received on the first hour but **not** opened. Then single prime bids are received on the second hour and all bids received are then opened and read. Ex: 2:00 - Separate prime bids received but not opened. 3:00 - Single prime received. If sufficient bids are received per [SBC procedures](#), then all bids may be opened. (A bidder may withdraw or change his bid up until the first bid is opened.)

404.4 CONSTRUCTION MANAGER / CONSTRUCTION MANAGER-AT RISK ([GS 143-128.1](#))

A **Construction Manager (CM)** is not a construction contracting method. The CM is an “agent” of the Owner similar to the Designer and is selected on a qualification-based solicitation and has a negotiated contract. The CM, working with the Owner and Designer, provides constructability input and cost estimating advice during design. He prepares the trade packages and solicits the bids for the Owner and then provides scheduling and construction administration. However, all construction contracts are with the Owner, not the CM. This is separate prime contracting, but may involve many more construction trade contracts with the Owner than just the P, M & E contracts.

A **Construction Manager “at risk” (CM-R)** is selected on a qualification-based solicitation typically at the beginning of the design process and may perform the same pre-bid design services as a construction manager - up until bidding. When the construction documents are reviewed and approved by regulatory agencies, the CM-R provides a GMP (guaranteed maximum price) to perform all the work as the single prime contractor. The Owner may accept, negotiate or decline the GMP offering and bid the work under another option. If the GMP is accepted, the CM-R is required by [GS143-128.1](#) (a-d) to act as a fiduciary of the Owner in the bid process. He shall publicly advertise for and may pre-qualify all “first tier subcontractors”, shall comply with the state MBE program requirements and publicly open all bids received, which become public records. He may self perform work only under limited circumstances. The Designer should familiarize himself with the scope of his work under this delivery method and address this in his design contract if necessary. SCO Design Review Section reviews and approves the construction document plans and specifications for GMP. The Designer does not prepare the bid forms and bid packages. He does interpret the documents, approves products, issues addenda, change orders, etc and does contract administration.

404.5 ALTERNATIVE CONTRACTING METHODS – (STATE BUILDING COMMISSION)

A written request and presentation may be made to the State Building Commission for consideration of a variance of the systems above or another alternate contract delivery system. Application procedures are available from SCO.

Examples of alternate methods are design build, performance contracting, separate prime bidding-single prime award and joint ventures.

SECTION 405 PROJECT MANUAL - BID FORMS AND DOCUMENTS FOR REVIEW

When all regulatory reviews have been completed and approvals have been obtained, the project is ready for advertisement and bidding. The Designer and Owner, in consultation with the State Construction Office-Design Review Section, shall establish a bid date and provide SCO with an electronic copy of the [Notice to Bidders](#) to post on the State IPS system.

The following section is intended to describe the documents, forms and formats to be used and edited for projects under the jurisdiction of the SCO. For Construction Document review all forms shall be edited as required for the specific project complete, and ready for bidding except for the bid date. Forms are available in electronic format in MSWord (.doc) or Acrobat (PDF) on the SCO website. [SCO List of Forms](#)

405.1 PREQUALIFICATION OF BIDDERS

[GS143-135.8](#). *Pre-qualification - Bidders may be pre-qualified for any public construction project. (1995, c. 367, s. 8.)* (May be the shortest statute).

If the Designer or Owner wishes to pre-qualify bidders prior to issuing bid documents, a request for letters of interest shall be prepared using an edited advertisement for bidders format. Newspaper ads, plan rooms and state websites shall be used to solicit letters of interest from bidders. The notice should provide the scope of work and a reasonable set of qualifications that are specific to the project type of construction, size, complexity, etc. as well as the bidder's business history, financial statement or the AIA Contractor Qualification form. (See Section 404 for additional bidding requirements.)

405.2 ADVERTISEMENT IN NEWSPAPER (AND [WEBSITES](#) -)

- A. Where the contract is to be let by a board or governing body of the State government or of a State institution, proposals shall be invited by advertisement in a newspaper having general circulation in the State of North Carolina." ([GS 143-129\(b\)](#))

The Sunday editions of the major newspapers in the State are usually selected for their larger circulation. Other days are not excluded but may be less effective in attracting bidders.

(NOTE) Where the contract is to be let by a political subdivision of the State (county, city, town), proposals shall be invited by advertisement in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to advertise solely by electronic means, whether for particular contracts or generally for all contracts that are subject to this Article, shall be approved by the governing board of the political subdivision of the State at a regular meeting of the board.

- B. The newspaper advertisement shall be prepared in the SCO format, which complies with required statutory language for a "public notice". The ad shall be published in one issue of the newspaper. The completed ad shall be included with the construction document submittal for review. The ad needs to include name of the Owner, the type contract being solicited, project name and a basic description of the scope. The Owner and Designer's names should be included as contacts. Please use discretion in the size of the ad (\$) relative to the project size. The newspaper ad does not need to fully describe the project and all the details and information that are included in the Notice to Bidders. *Use the Notice to Bidders as an advertisement only on projects with a large scope and complexity.*
- C. The ad shall be prepared in the SCO format, which complies with required statutory language,

and provided with the construction document submittal. . Please use discretion in the size of the ad (\$\$) relative to the project size. A period of three (3) to six (6) weeks between advertising and receipt of bids is a general policy. The statute requires a minimum of at least seven (7) full days shall lapse between the date of publication and the date of the opening of bids. An MBE requirement is 21 days for a project. A copy of the actual advertisement shall be furnished with affidavit of publication to the Owner. Payment for advertisement shall be by the Owner.

- D. All contractors who desire to bid shall be furnished complete sets of plans and specifications upon payment of a plan deposit when required. Plan deposit amount shall reflect the cost of replacement should the documents not be returned in good usable condition. Plan deposit shall be returned in accordance with the Notice to Bidders. Cost of mailing plans and specifications to the bidder shall be borne by the Designer. The Designer shall take into consideration the fact that it is necessary for a bidder to mark-up plans on those portions of the work that he is submitting a bid.
- E. **NOTE:** When prime contractors are pre-qualified, the Advertisement for Bidders shall be published as described but shall include only a listing of the pre-qualified prime contractors. Subcontractors will know who are the prime bidders and plans and specifications shall be made available as described in the Notice to Bidders
- F. In addition to the newspapers, the State Interactive Purchasing System ([IPS](#)) is the electronic notification system for all State purchasing, Designer solicitations and construction bidding.

Upon approval to bid by SCO, provide an [e-copy](#) of the final completed [Notice to Bidders](#) for inclusion in the [IPS website](#). [UNC system universities](#) also advertise on a [UNC central website](#).

405.3 NOTICE TO BIDDERS

In addition to the newspaper advertisement, full information on the details and requirements of bidding the project shall be provided in a Notice to Bidders. The SCO format contains the appropriate language and the items to be edited for the project by the Designer. Considerations for editing are:

- A. Identify the "Owner" as the [State of North Carolina](#) (or the Trustees of --community college) through the using agency, department, institution, etc. including the [location](#) of the project.
- B. Identify the specific physical location where bids will be received -building name, floor, room name/number etc. Ensure adequate access or parking is available for bidders. The bid opening must be held in a "public place" meaning publicly owned facility and not a private facility or office. There must be a "physical address" for use by delivery services or postal service (no PO Box). Many state facilities have centralized mail service that can be problematic in timely delivery of bids. A delivery service is recommended for timely delivery. If the pre-bid location is the same as the bid opening, then bidders are less likely to have delivery problems on bid day.
- C. The [AIA/AGC](#) Joint Cooperative Committee recommendation for bid openings is Tuesdays thru Thursdays 1:00 to 4:00 with 3:00 being traditional. Dual bidding is required to be separated by 1 hour. (Note: AIA/AGC Recommendations may not agree with State requirements in some instances and SCO requirements shall be followed.)
- D. Identify the project contract type being bid – single prime, separate, dual, etc.
- E. The Preferred Alternates ([GS133-3](#)) open meeting may be held in conjunction with the project pre-bid meeting and a Notice to Bidders format is available on the SCO website that can be

used for both meetings.

- F. A deposit is required from prime bidders for sets of bid documents. The deposit amount shall be limited to the cost of reproduction, handling and delivery.
- G. **IMPORTANT - DO NOT REQUIRE** any additional information or material for bidders to include with the bid proposal except for the proposal form, the bid security and MBE forms. Do not ask for copies of a warranty, vendor names, products, manufacturer certifications, etc, as it can cause unnecessary protests and dollars if the low bidder fails to include the additional material.

405.4 INSTRUCTIONS TO BIDDERS AND GENERAL CONDITIONS OF THE CONTRACT – ([OC-15](#))

This is a generic, standard form used in all State and Community College formal contracts. This document is provided in PDF format and must not be edited. The latest edition is to be used and is available on the website. Any edits must be made in the Supplementary General Conditions described below. UNC System universities use a slightly modified version of the same document for their projects under \$2 million.

405.5 SUPPLEMENTARY GENERAL CONDITIONS

The Supplementary General Conditions must be created by the *Designer* to address those articles of the standard General Conditions that need to be modified to be specific to the project. There are Articles in the General Conditions that have the statement “if required by the Supplementary General Conditions” that may need to be addressed. There should be no “Special Conditions”, “technical specifications” nor “general requirements” included in the Supplementary General Conditions.

See 308.6 for additional SGC information.

NOTE: SGC Article 40 items should only identify the responsibilities for utilities and then make reference to Division One for detailed requirements. An Owner’s General Requirements specification sections are more appropriate for procedures, materials, methods, specifications, parking, fencing, utility connections, security, etc.

405.6 MBE GUIDELINES AND AFFIDAVITS

Minority Business Enterprise Guidelines, a contractor list form and Affidavits A, B, C, D and Appendix E are available on the SCO Website and require no editing. The Guidelines and Appendix E should follow the Supplementary General Conditions in the manual. The List and Affidavits A-D should follow the Proposal Form. The [MBE guidelines](#) and [MBE forms](#) provide all necessary instructions for use and are available on the SCO Website.

MBE Identification List [and](#) either **Affidavit A** [or](#) **Affidavit B** must be submitted with the bid.

405.7 PROPOSAL FORM

A Proposal Form in MSWord **format** is available on the SCO Website. The proposal form will require important editing for a project. Maintain the existing text and edit the material in red or italics. Delete portions of the form not used on a specific project such as separate primes, alternates and unit prices, etc.

405.8 BID BOND (REQUIRED WITH THE BID AT THE BID OPENING) ([GS143-129\(B\)](#))

“No proposal for construction or repair work may be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein.”

The Bid Bond form required is available on the SCO Website and shall be included in the bid documents.

405.9 PERFORMANCE AND PAYMENT BONDS ([GS 44A-26.](#))

(a) When the total amount of construction contracts awarded for any one project exceeds three hundred thousand dollars (\$300,000), a performance and payment bond as set forth in (1) and (2) is required by the contracting body from any contractor or construction manager at risk with a contract more than fifty thousand dollars (\$50,000). In the discretion of the contracting body, a performance and payment bond may be required on any construction contract as follows:

*(1) A **performance bond** in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the contracting body that is constructing the project.*

*(2) A **payment bond** in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which a contractor, subcontractor, or construction manager at risk is liable.*

(b) The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the construction contract. (1973, c. 1194, s. 1; 1983, c. 818; 1987 (Reg. Sess., 1988), c. 1108, s. 10; 1995, c. 367, s. 3; 2001-496, s. 7.)

Sample forms are available on the SCO Website for use in the bid documents to inform the bidder of the intended bond format and language, or the contractor may provide his bonding company form provided there are no conflicts with the State form requirements.

405.10 FORM OF CONSTRUCTION CONTRACTS

The format for the standard Construction Contract is available on the SCO Website. Selecting the form will also download the following associated documents and forms. This package of forms may be incorporated into the project manual without editing. The Designer will edit and prepare the forms after the award of contract is approved.

A Construction Contract Checklist for use by Designer and contractor for formal contract preparation is attached but should not be included in the bid documents.

A. [Standard Construction Contract](#) for formal bid projects.

Performance Bond form

Payment Bond form

Sheet reminder for attaching Power of Attorney

Sheet reminder for attaching Insurance Certificates

Attachment page for Approval of the Attorney General and Certification by the Office of State Budget and Management

NOTE: Construction Contract, Performance and Payments Bonds, Insurance Page, Power of Attorney and the Attorney General Approval/Budget Office Approval are all “bundled under” [“Construction Contract”](#) under “Forms, on the SCO Website.

[Standard Construction Manager at Risk \(CMR\) Contract](#) The CMR contract is typically negotiated prior to or during the early design stages of the project. Technical specifications and drawings are reviewed and approved by SCO and DoI. Bid forms, advertisement and contracts are provided by the CMR. Only the General Conditions for CMR is included in the Project Manual. The CMR provides a guaranteed maximum contract price (GMP) based on the Final approved set of construction drawings and specifications. If accepted by the Owner, the CMR, per statute, assumes responsibility for publicly advertising, bidding and bonding the project. A Construction Manager at Risk Checklist for contract preparation is available on the SCO [Website](#).

SECTION 406 BIDDING PROCEDURES

GS143-129 establishes considerable requirements for the public bidding process and is the basis for many of the rules and forms created for this most important part of the capital construction process. Statutory rules and procedures are intended to be fair and equitable to all parties participating in the process, as well as providing good stewardship in the use of public funds.

406.1 PREQUALIFICATION OF BIDDERS

[GS143-135.8](#). Prequalification - Bidders may be prequalified for any public construction project. (1995, c. 367, s. 8.)

This process must be accomplished prior to issuance of bid documents. See 405.1

406.2 PLAN ROOMS AND WEBSITES

The following material shall be included in the SCO Final submittal for review and in the Bid sets issued for bidders. The same material is included in the standard format for the SCO Notice to Bidders and in the SCO Construction Document review letter Preface.

A. SCO Notice to Bidders format:

Complete plans, specifications and contract documents will be open for inspection in the offices of (Owner and the Designer) and in the plan rooms of the Associated General Contractors, Carolinas Branch, (City) in the local North Carolina offices of McGraw-Hill Dodge Corporation, and in the Eastern Regional Office of Reed Construction Data in Norcross, GA and in Minority Plan Rooms in ---(Edit list below) ---

or may be obtained by those qualified as prime bidders, upon deposit of _____ dollars (\$_____) in cash or certified check. The full plan deposit will be returned to those bidders provided all documents are returned in good, usable condition within ten (10) days after the bid date.

Note: Reed is now an electronic plan room.

B. SCO Construction Document review letter Preface page:

Projects within the following counties: **Buncombe, Haywood, Henderson, Jackson, Madison and Swain** shall have bid documents (Plans and Specifications) submitted to the Asheville Business Development Center, 70 Woodfin Place, Suite 305, Asheville, NC 28801, Phone: 828-252 2516.

Projects within the following counties: **Durham, Person, Orange, Chatham and Wake** shall have bid documents submitted to NC Institute of Minority Economic Development, Inc. at MCTAP/NCIMED, Inc., 114 West Parrish Street, 4th Floor, Durham, NC. 27701. (919-956-8889)

Projects within the following counties: **Mecklenburg, Cabarrus, Iredell, Union, Gaston, Anson, Rowan and Lincoln** shall have bid documents submitted to Minority Contractors Resource Center, 418 W. Trade St., Charlotte, NC 28202. Ph. (704)-332-5746 Fax (704)-332-5990

Projects in the **Greenville/Eastern NC areas**: shall have bid documents submitted to East Coast Digital (ECD) Plan Room, Minority Plan Room Provider, 210 E 14th. St., STE. D, Greenville, NC 27858, Tel. 252-758-1616, Fax 252-758-7311

406.3 SUBSTITUTIONS

GS133-3 requires bidder proposed substitutions be submitted and approved prior to bid receipt. These would be bidder's "desired or voluntary" substitutions. Necessary or required substitutions can occur later when specified products are not available, late delivery, model changes, etc. then substitutions can be made after contract award per usual procedure in the General Conditions. Bidder proposed substitutions should be submitted no later than 10 days prior to bid date for Designer evaluation and inclusion in the last addenda that may be issued no later than 7 days prior to bid date.

406.4 PRE-BID MEETINGS

- A. Pre-bid meetings are not required but may be useful to bidders in visiting the site of work and locating the place to receive bids. Project requirements may be explained and discussed and questions asked. Attendance sign-in sheets should be provided and questions and answers recorded for use in minutes and in an Addendum.
- B. *Mandatory* attendance may be required in the Notice to Bidders if desired by the Owner but it can be problematic to the bid process. An attendance record must be made and it must be made clear in the notice to bidders and at the pre-bid meeting that any prospective bidder not attending would not be permitted to submit a bid on the project.
- C. MBE Guidelines, bid forms and affidavits shall be discussed and clarified.
- D. Owner Preferred Alternate(s) may be presented and approved at the pre-bid meeting since it is a publicly advertised, open meeting as required by GS133-3. See [GS133-3 Recommended Procedures](#) under Guidelines on SCO website.
- E. Prebid meetings should be scheduled *no later than 10 days* prior to the bid opening to allow sufficient time for the Designer to prepare pre-bid minutes and any addenda that may need to be issued as a result of the meeting. The results of the Owner preferred presentation must also be issued and made public

406.5 ADDENDA

- A. Addenda are changes made to the contract documents after project bid sets have been issued to bidders. Addenda are issued to all plan rooms and plan holders. Copies shall also be provided to the Owner, SCO, and DoI including any other regulatory or review agencies involved.
- B. No addenda shall be issued later than 7 days prior to bid opening. Should significant changes or issues arise prior to or after that time, an addendum may be issued to delay or postpone the bid opening as necessary to resolve and then properly inform bidders of such changes.

406.6 BID OPENING (SEE NOTICE TO BIDDERS FORMAT)

- A. Location and time: Bid openings must be in a "public place" such as the owner's facility, a public library or similar publicly owned and accessible facility. Not a private office such as Designer's office or privately owned facility.
- B. Dual Bidding: Under dual bidding method, separate prime and single prime *split bidding time* is required in public projects. Separate prime bids are received one hour prior to single prime bids

to allow time for single prime bidders to receive quotes from the other bidders and subcontractors. All bids may be opened and read only after receipt of the single prime bids. No bids may be withdrawn after any bid is opened.

Note: §GS143-128 was amended in 1998 to *require* Public Schools (K-12) dual bids be separated by 3 hours. SB 914 in 2002 revised the time to one hour for all public entities using dual bidding.

- C. Bid tabulation forms shall be provided by the Designer to all parties present at the bid opening with adequate space and spaces to record base bids, all alternates, license numbers and bid bonds that may affect the bid award.
- D. Bid clock time shall be determined as accurately as possible by the Owner/Designer. No further bids will be received after the designated time. If there is a “serious” event beyond the control of bidders and that is impacting a *significant* number of bidders being able to meet the bid deadline, then the Designer may postpone the opening a short time to allow the problem to be resolved. (Phone outage, fire alarm, traffic jam, Designer missing, etc.)

406.7 CLOSE OF BIDDING

- A. At the appointed time the Owner, Designer or SCO representative will declare the receipt of bids closed. The Designer shall have sorted bids into single prime and separate prime bid categories. A determination as to whether sufficient bids have been received to open will be made in accordance with “Guidelines for Opening of Public Construction Bids” in Appendix (XX). The State Construction Office is available by phone should any clarifications be required during the bid opening process.
- B. If sufficient bids are available to proceed with the bid opening, then the following will be asked:
 - Whether bidders (present) have received all addenda issued.
 - Whether anyone was denied the right to bid.
 - Whether there are any objections to proceeding with the bid opening.
- C. If there is an objection to the opening of bids then the Designer/Owner shall determine the merits and implications of the objection and shall:
 - Attempt to address and satisfy the objection; or
 - Secure complete information as to the objection and proceed with opening of bids under protest, for later disposition by proper authority; or
 - Postpone the bid opening to a later date to allow sufficient time for the objection to be addressed; or
 - Rule the objection as an informality and proceed with the opening of bids.

406.8 CHANGE OR WITHDRAWAL OF BID

- A. Prior to the opening of any bids, a bid may be changed or withdrawn. Example: Should a bidder not have received an addendum, he will have an opportunity to read the addenda to determine the impact on his work or bid. Then, he may change his bid, leave his bid as is or withdraw his bid.
- B. Once any bid is opened, there shall be no changes or withdrawal of any bids by any bidder, nor bids returned to any bidders.

- C. After the bid opening, a bidder may withdraw his bid from consideration without forfeiture of his bid security when the provisions of GS143-129.1 are followed and applicable.

A written request must be made in writing to the Owner or Designer prior to award of contract and no later than 72 hours after the bid opening.

A hearing will be held to determine if 143-129.1 is applicable and whether the bid security may be returned.

Note: Once a letter requesting withdrawal is received, the bidder may no longer participate in the project in any manner. He may not be a supplier of materials or labor, subcontractor at any level or bid the project should it be re-bid, without the prior written approval of the Owner. GS143-129.1

406.9 OPENING OF BIDS

- A. All bids shall be read aloud. The Designer shall state the name of bidder, license number, bid security, base bid and all alternates. Unit prices are not typically read as they are not considered in the award of the contract. Any irregularities noted should also be stated during the reading of bids.
- B. No announcements on low bidder(s) or decisions on irregularities should be made at the bid opening. State that bids will be reviewed and validated and decisions will be made public at a later time.

406.10 RE-ADVERTISEMENT (IF REQUIRED)

If insufficient bids are received at the first bid opening, a new bid date may be set as early as possible; however, the minimum advertising period shall be seven (7) days. At the re-bid, any number of bids received may be opened. This is the only occasion, insufficient number of bids at first opening, that less than 3 bids may be opened. Bid Postponement by addendum, cancellation or rejection of bids, and a second bidding after a scope change are not considered a re-bids.

406.11 NEGOTIATIONS (VALUE ENGINEERING)

GS143-129 --- *"In the event the lowest responsible bids are in excess of the funds available for the project or purchase, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, ---"*

The State Construction Office considers a 10-15% reduction of the bid price as being "reasonable changes" to the project. If more than a 15% reduction, the consensus has been the better value would be to make changes to the project and re-bid.

"If a contract cannot be let under the above conditions, the board or governing body is authorized to re-advertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project or purchase within the funds available---"

Adding additional funds to a project whose low bid exceeds the construction funds available is not a desirable situation for the Owner or may not be an option. Having to re-design a project to get it within the construction funds available is not a desirable situation for the Designer. Negotiating a project to get the price within the construction funds available is not advantageous to the Owner in value of dollar saved.

A suggested method to control the ability to award a contract is to "estimate" the base bid at 90% of

the Construction Funds Available with add alternates provided to 110% of those funds to permit flexibility and ability to award contracts without negotiating down, which is not advantageous to the Owner. Deduct alternates are discouraged as they may have the same disadvantage to the Owner as negotiating or value engineering

SECTION 407 CONSTRUCTION CONTRACT AWARD

The following procedures will be followed in the award of construction contracts: ([Checklist](#))

- A. The Designer shall provide the Owner with a certified bid tabulation, a Bid Summary Sheet, a copy of the recommended bidder's Proposal Form, an Affidavit of MBE participation and the *Designer's* recommendations concerning disposition of bids. The Bid Summary Sheet shall include the gross square footage of the new or renovated project, and/or other pertinent information of the project that will enable the State Construction Office to develop realistic cost data. If bids are in excess of funds available, the Designer shall redesign and rebid the project or under provisions of G.S. 143-129 bring the project within the authorized budget. All negotiations are subject to approval of the State Construction Office. Negotiations shall show complete price breakdowns, including quantities of materials, material cost, labor, etc. Proposed negotiations shall be submitted to the State Construction Office for evaluation not less than ten (10) days prior to bid expiration date.
- B. The Owner shall provide the State Construction Office with a *copy* of the certified bid tabulation, a Bid Summary Sheet, a *copy* of the recommended bidder's Proposal Form, an Affidavit of MBE participation and the *Owner's* recommendations concerning disposition of bids. The State Construction Office will review the documents for completeness and correctness and provide them to the Office of State Budget and Management
- C. Upon approval of the Office of State Budget and Management and, when required, the approval of the State Building Commission, the State Construction Office shall issue an award letter to the Owner which shall detail the complete budget for the project including construction cost, Designer's fee, contingency reserve, movable equipment and any other specific reserves. The State Building Commission may delegate to the Department of Administration authority to award contracts for construction of buildings and other projects, which are not required by G.S. 143-129 to be publicly advertised for proposals.
- D. The Designer, upon receipt of the notification of award, shall notify the responsible low bidder(s) in writing and will prepare the contract documents which shall include:
 - A copy of the contractor's proposal;
 - Form of Construction Contract;
 - Form of Performance Bond in the amount of 100 percent of the contract (G.S. 44A, Art. 3);
 - Form of Payment Bond in the amount of 100 percent of the contract (G.S. 44A, Art. 3);
 - Power of attorney (an instrument of a surety indicating that the person signing the performance and payment bonds is authorized to act in its behalf);
 - Public liability and property damage insurance and builder's risk policy, as required in the General Conditions of the Contract; and
 - Approval of the Attorney General and certification by the Office of State Budget and Management.
- E. Upon completion and execution of the documents by the contractor, the Designer shall forward them to the Owner for execution. The Owner shall then forward them to the State Construction

Office for approval. The State Construction Office shall obtain approval by the Attorney General for form and a certification of availability of funds by the Office of State Budget and Management.

- F. Approved contract documents shall be returned to the Designer by the State Construction Office for distribution. The Designer shall coordinate with the State Construction Office the date of the pre-construction conference. No pre-construction conference or starting date will be scheduled until all contracts have been approved and distributed.

Upon award of the project construction contract(s), the SCO Construction Administration Section will assign a project monitor to represent the State Construction Office at the project during construction until completion and acceptance. See Chapter 5