CHAPTER 4-12-07
MANAGING CONTRACTUAL RISK

4-12-07-01. Risk management analysis.

In preparing a solicitation or contract, the procurement officer will consider the potential risks involved in the contract for procurement of commodities or services to determine reasonable measures that can be taken to mitigate those risks, including the use of insurance, bonding, or other types of security.

History: Effective August 1, 2004.
General Authority: NDCC 54-44.4-04
Law Implemented: NDCC 54-44.4-01, 54-44.4-04

4-12-07-02. Insurance requirements.

As a result of a risk management analysis, it may be determined that the contractor will be required to acquire and maintain insurance. The insurance requirements must be stated in the solicitation.

History: Effective August 1, 2004.
General Authority: NDCC 54-44.4-04
Law Implemented: NDCC 54-44.4-01, 54-44.4-04

4-12-07-03. Bid security.

1. As a result of a risk management analysis prior to the solicitation being issued, security may be required to protect the interests of the state and ensure that a vendor will not withdraw a bid or proposal prior to contract award. In this circumstance, a bid bond, certified check, or cashier's check drawn on the Bank of North Dakota or a federally insured bank, or other form of bid security acceptable to the purchasing agency, may be required to accompany the bid or proposal.

2. When a bid bond is required, the bid or proposal must specify the form and amount of the bond, up to five percent of the full amount of the bid or proposal, unless it is in the best interest of the state to specify another amount.

3. The bidder or offeror must sign any bid bond as principal, and the bond must be signed by a surety company licensed by the insurance commissioner to do business in the state. If the surety on a bond has its authority to do business in this state revoked or if for any reason it ceases to do business in the state, the bidder or offeror must promptly obtain another surety on the bond. The bond must be noncancelable, regardless as to whether the bonding company remains licensed in the state, and must remain in effect until a replacement bond is filed.

4. The bond must be conditioned on full performance of all obligations imposed on the bidder or offeror, including the obligation to keep the price firm for the period specified in the solicitation and the obligation to file a performance bond when required. The bond must provide that upon failure to perform any obligations the state will recover from the bidder and the surety, or either, any damages suffered because of failure to perform.

5. The purchasing agency may allow a vendor to file a continuing bond good for all bids or proposals made during a certain period of time up to a stated amount.

6. Bid bonds or other form of bid security submitted by unsuccessful bidders or offerors will be returned as soon as possible after the award is made. The purchasing agency may retain the bid bonds of those unsuccessful bidders or offerors determined to be reasonably susceptible for award for use in the event of default by the successful bidder or offeror. The bid bond or other form of security submitted by the successful bidder or offeror will be returned as soon as possible after the contract is awarded or as soon as the successful bidder or offeror has filed a performance bond if one is required.

History: Effective August 1, 2004.
General Authority: NDCC 54-44.4-04
Law Implemented: NDCC 54-44.4-01, 54-44.4-04

4-12-07-04. Performance bonds.

1. As a result of a risk management analysis prior to the solicitation being issued, the successful bidder or offeror may be required to file a performance bond, certified check, or cashier's check drawn on the Bank of North Dakota or a federally insured bank, or other form of surety deposit acceptable to the purchasing agency.

2. The state may require that the bond, certified check, or cashier's check be filed within a specified number of days after the award is made or the contract may be canceled and the vendor will be liable for any damages caused by failure to file the bond, certified check, or cashier's check.

3. When a performance bond is required, the solicitation must specify the form and amount of the bond. The amount of the performance bond must be adequate to cover the risk assumed by the state, depending on the nature and circumstances of the contract, up to one hundred percent of the contract amount.

4. The successful bidder or offeror must sign any bid bond as principal, and the bond must be signed by a surety company licensed by the insurance commissioner to do business in the state. If the surety on a bond has its authority to do business in this state revoked or if for any reason it ceases to do business in the state, the bidder or offeror must promptly obtain another surety on the bond. The bond must be noncancelable, regardless as to whether the bonding company remains licensed in the state, and must remain in effect until a replacement bond is filed.

5. The bond must be conditioned on full performance of all obligations imposed on the vendor by the contract with the state. The bond must provide that if the vendor fails to perform any obligations, the state may recover from the vendor and the surety, or either of them, any damages suffered because of failure to perform.

History: Effective August 1, 2004.
General Authority: NDCC 54-44.4-04
Law Implemented: NDCC 54-44.4-01, 54-44.4-04

4-12-07-05. Payment bonds.

1. A payment bond may be required by the purchasing agency for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of work provided for in the contract.

2. When a payment bond is required, the bid or proposal must specify the form and amount of the bond, up to one hundred percent of the contract amount.

History: Effective August 1, 2004.
General Authority: NDCC 54-44.4-04
Law Implemented: NDCC 54-44.4-01, 54-44.4-04