

NOTICE OF RULE ADOPTION—FINAL RULE
STATE OF MISSISSIPPI
Bureau of Building, Grounds and Real Property Management

FILE COPY

Bureau of Building, Grounds and RPM
c/o Tricia Weir, Contract Analyst Senior
501 North West Street, Suite 1401B
Jackson, Mississippi 39201 Handmail
601-359-3621 weirt@dfa.state.ms.us

Specific Legal Authority authorizing the Promulgation of
Rule: none
Reference to Rules repealed, amended or suspended by the
Proposed Rule: none

Date Rule Proposed: January 9, 2009



Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule: see attached

1. Added lines for phone, fax, and email plus landscape license number (if applicable) on the bid proposal in Division 0
2. This is a change to the Proposal Form in Division 0 of the manual
Mississippi Department of Agriculture & Commerce Bureau of Plant Industry
Landscape License Number _____ (for prime landscaping projects) MS Code 69-19-1 - 69-19-15
Change is "(for prime landscaping projects)" changed from "(as applicable)"
3. This is a change mainly to the Proposal Form in Division 0 of the manual
 - a. second page of proposal form - clarified mechanical and electrical Contractors (with notes and changing sub-contractor to contractor)
 - b. this change in #1 slightly affects 3.05 of bid checklist (sub-contractor to contractor)
 - c. added wording on the second page of the proposal form by Addendum 1 indicating that Addendum 1 (the Bureau's Memo) is included in the bid documents - Professional will need to add the date since it varies from project to project
 - d. this change in #3 slightly affects 1.2.3 on page 10 of the contract
4. Added "LLC" as one of the choices on page 9 of Division 0 in the incorporation section for Contractor
- 5
 - a. changed 3.01 of Instructions to Bidders deleting the requirement for a duplicate proposal form at bid opening
 - b. amended 2.04 of Instructions to Bidders adding (1) a line regarding base bid being written out in words and figures; and (2) that "written out carries" for base bid and all alternates
- 6
 - a. 3.01 of Instructions to Bidders Check List about written out carries and no duplicate copy of proposal form is necessary
 - b. added the words on the proposal form "Write in the amount of the base bid in words and numbers. The written word shall govern" and "Write in the amount of all of the alternates in words and numbers. The written word shall govern" on the proposal form.
 - c. Section 400.11 regarding Energy and Sustainability was added to the Manual and approved by SOS on 7/13/08. The following sections are amended to agree with Section 400.11
 - a. Added Sections 400.10 and 400.11 to Manual Index. (400.10 was added to Manual on 1/23/2001 but not to the Index; and 400.11 was added to Manual on 7/13/08 but not to the Index)
 - b. Manual Section 500.5.7 Energy Energy and sustainability considerations (400.11) (added the words in bold)
 - c. Manual Section 600.3.7 Energy Energy and sustainability considerations (400.11) (added the words in bold)

The Agency Rule Making Record for this rule including any written comments received during the comment period and the record of any oral proceeding is available for public inspection by contacting the Agency at the above address.

An oral proceeding was held on this rule:

Date: {Insert Date}
Time: {Insert Time}
Place: {Insert Place}

An oral proceeding was not held on this rule.

The Agency has considered the written comments and the presentations made in any oral proceedings, and

This rule as adopted is without variance from the proposed rule.

This rule as adopted differs from the proposed rule as there are minor editorial changes which affect the form rather than the substance of the rule.

The rule as adopted differs from the proposed rule. The differences however are:
Within the scope of the matters in the Notice of Proposed Rule Adoption, the logical outgrowth of the contents of the Notice of Proposed Rule Adoption and the comments submitted in response thereto, and
The Notice of Proposed Rule Adoption provided fair warning that the outcome of the proposed rule adoption could be the rule in question.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Effective Date of Rule: February 9, 2009

Charles R. Snowden

Charles R. Snowden, Director
Bureau of Building, Grounds and Real Property Management

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 - b. amended 2.04 of Instructions to Bidders adding (1) a line regarding base bid being written out in words and figures; and (2) that “written out carries” for base bid and all alternates
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6. Section 400.11 regarding Energy and Sustainability was added to the Manual and approved by SOS on 7/15/08. The following sections are amended to agree with Section 400.11:
 - a. Added Sections 400.10 and 400.11 to Manual Index. (400.10 was added to Manual on 1/25/2001 but not to the Index and
400.11 was added to Manual on 7/15/08 but not to the Index)
 - b. Manual Section 500.5.7. Energy: Energy and sustainability considerations (400.11) (added the words in bold)
 - c. Manual Section 600.5.7. Energy: Energy and sustainability considerations (400.11) (added the words in bold)

The following Standard Form of Agreement Between the Owner and the Contractor Page 9 pertains to #1 and #4 on the Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule.

The following Standard Form of Agreement Between the Owner and the Contractor Page 10 pertains to #3.d on the Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule.

**STANDARD FORM OF AGREEMENT BETWEEN
THE OWNER AND THE CONTRACTOR
SECTION 00500**

This Agreement made the _____ day of _____, 20____ between the Owner,

Bureau of Building, Grounds and Real Property Management
501 North West Street, Suite 1401B [Woolfolk Building]
Jackson, Mississippi 39201

created by Section 7-1-451 et seq., and Section 31-11-1, et seq., **Mississippi Code of 1972, Annotated**, and acting for the State of Mississippi; and the Contractor:

Business Name _____
Address _____
City/State/Zip _____ Fax: _____ Email: _____

The Contractor is a (check and complete one of the following):

_____ CORPORATION solely organized and existing under the laws of the State of _____ and having its principal office in _____, _____, _____
(City) (County) (State)

_____ PARTNERSHIP of the following (list all partners):

_____ OTHER = _____ SOLE PROPRIETORSHIP OR _____ LLC

For the following Project:

This Agreement entered into as of the day and year first written above:

OWNER: BUREAU OF BUILDING, GROUNDS AND
REAL PROPERTY MANAGEMENT

CONTRACTOR:

By: _____
(Signature)

By: _____
(Signature)

Charles R. "Rick" Snowden, Director
(Name and Title)

(Name and Title)

APPROVED AS TO FORM:

By: _____
(Signature of Attorney)

THE OWNER AND THE CONTRACTOR AGREE AS SET FORTH IN PAGES ONE THROUGH THREE, ARTICLES ONE THROUGH FIVE, AS FOLLOWS:

Division 0

ARTICLE 1: THE WORK AND CONTRACT DOCUMENTS

THE WORK

1.1.1 The Contractor will perform all the work required by the Contract Documents for the Project indicated above.

1.2 THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents which constitute the entire Agreement between the Owner and the Contractor, are enumerated as follows:

1.2.2 Project Manual dated _____

BIDDING REQUIREMENTS

- Advertisement for Bids
- Instructions to Bidders
- Proposal Form

STANDARD FORM OF AGREEMENT BETWEEN THE OWNER AND THE CONTRACTOR

CONTRACT BOND

POWER OF ATTORNEY

CERTIFICATE OF INSURANCE

CONDITIONS OF THE CONTRACT

- General Conditions
- Supplementary Conditions
- Labor Requirements
- Addenda

SPECIFICATIONS (check the specs listed on the contents and included in the manual)

- Division One: General Requirements
- Division One Supplements
- Division Two: Site Work
- Division Three: Concrete
- Division Four: Masonry
- Division Five: Metals
- Division Six: Wood and Plastics
- Division Seven: Thermal and Moisture Protection
- Division Eight: Doors and Windows
- Division Nine: Finishes
- Division Ten: Specialties
- Division Eleven: Equipment
- Division Twelve: Furnishings
- Division Thirteen: Special Construction
- Division Fourteen: Conveying Systems
- Division Fifteen: Mechanical
- Division Sixteen: Electrical

1.2.3 Addenda

- Addendum No. 1, dated _____ included in bid documents
- Addendum No. 2, dated _____
- Addendum No. 3, dated _____
- Addendum No. 4, dated _____
- Addendum No. 5, dated _____

1.2.4 Drawings dated

- Sheets No. _____ through _____
- Sheets No. _____ through _____
- Sheets No. _____ through _____
- Sheets No. _____ through _____
- Sheets No. _____ through _____

1.2.5.1 Other documents, dated _____

Division 0

The following Instructions to Bidders Section 00100 Page 3 pertains to 2.04 and #5.b on the Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule.

The following Instructions to Bidders Section 00100 Page 4 pertains to 3.01 and #5.a on the Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule.

The following Instructions to Bidders Section 00100, Part 5 – Bidder’s Checklist Page 6 pertains to 5.01 and #5.c and 5.05 and 3.b on the Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule.

INSTRUCTIONS TO BIDDERS

SECTION 00100

PART 1 - GENERAL

- 1.01 **QUESTIONS:** Questions should be directed to the Professional. Should a Bidder find discrepancies in, or omissions from, the Drawings or Project Manual, or be in doubt as to their meaning, the Bidder should immediately notify the Professional. The Professional will send written instruction(s) or interpretation(s) to all known holders of the documents. Neither the Owner, nor the Professional, will be responsible for any oral instruction or interpretation.
- 1.02 **BIDDER'S QUALIFICATIONS:**
- A. **Certificate of Responsibility:** The Mississippi State Board of Contractors is responsible for issuing Certificates of Responsibility to Contractors. To be awarded a Contract for public work, Sections 31-3-15 and 31-3-21 of the **Mississippi Code 1972, Annotated** requires a Contractor to have a current Certificate of Responsibility at bid time and during the entire length of the job. The Certificate of Responsibility number issued becomes a significant item in all public bidding.
 - B. **Bid Under \$50,000:** If a Bidder submits a bid not exceeding \$50,000, no Certificate of Responsibility number is required; however, a notation stating the *bid does not exceed \$50,000* must appear on the face of the envelope, or a Certificate of Responsibility number.
 - C. **Bid Over \$50,000:** Each Bidder submitting a bid in excess of \$50,000 must show its Certificate of Responsibility number on the bid and on the face of the envelope containing the bid.
 - D. **Joint Venture Bid:** When multiple Contractors submit a joint venture bid in excess of \$50,000, a *joint venture* Certificate of Responsibility number must be shown on the bid and on the face of the envelope containing the bid. If the Multiple-Contractor joint venture has no *joint venture* Certificate of Responsibility number, each of the Contractors participating in the bid must indicate their individual Certificate of Responsibility numbers on the bid and on the face of the envelope.
- 1.03 **NON-RESIDENT BIDDER:** When a non-resident Bidder (a Contractor whose principal place of business is outside the State of Mississippi) submits a bid for a Mississippi public works project, one of the following is required and shall be submitted with the Proposal Form:
- A. **Copy of Law:** If the non-resident Bidder's state has a resident Bidder preference law, a copy of that law shall be submitted with the Proposal Form.
 - B. **Statement:** If the state has no such law then a statement indicating *the State of (Name of State) has no resident Contractor preference law* shall be submitted with the Proposal Form.
- 1.04 **DISQUALIFICATION OF BIDDER:** A Bidder may be disqualified for any of the following reasons:
- A. Bidder being in arrears on existing Contracts.
 - B. Bidder being in litigation with the Owner, or the Using Agency.
 - C. Bidder having defaulted on a previous Contract.
- 1.05 **CONDITIONS OF WORK:** Each Bidder must fully inform himself of all conditions relating to the construction of the Project and employment of labor thereon. Failure to do so will not relieve a successful Bidder of obligations to furnish all material and labor necessary to carry out the provisions of the Contract. Insofar as possible, the Bidder must employ methods, or means, which will not cause interruption of, or interference with, the work of any other Bidder, or Contractor.
- 1.06 **EXAMINATION OF SITE:** All Bidders, including the general Contractor and Subcontractors, shall visit the building site, compare the Drawings and Project Manual with any work in place and be informed of all conditions. Failure to visit the site will in no way relieve the successful Bidder from furnishing any materials or performing any work required to complete work in accordance with Drawings and Project Manual without additional cost to the Owner.
- 1.07 **LAWS AND REGULATIONS:** The Bidder's attention is directed to the fact that all applicable Mississippi state laws, rules and regulations of all authorities having jurisdiction over construction of the Project apply to the Contract.

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- 1.08 **OBLIGATION OF BIDDER:** At the bid opening, each Bidder will be presumed to have inspected the site, read and become thoroughly familiar with the Drawings and the Project Manual, including all addenda.
- 1.09 **BID DOCUMENT DEPOSIT AND RETURN:** The deposit amount is indicated in the Advertisement for Bids. Upon returning the documents to the Professional within ten (10) days of the bid date and in good condition, all document holders will be refunded one-half (1/2) of the deposit. Any general contractor submitting a bid and all mechanical and/or electrical Subcontractors will be refunded one hundred percent (100%) of the deposit on one (1) set and fifty percent (50%) for each additional set. No partial sets of documents will be issued. Selected plan rooms will be issued one (1) set of documents without charge.

PART 2 - PROPOSAL FORM

- 2.01 **METHOD OF BIDDING:** Lump sum, single bids received on a general contract will include general, mechanical and electrical construction and all work shown on Drawings or specified in the Project Manual.
- 2.02 **PROPOSAL FORMS:** The Bidder shall make all proposals on forms provided and shall fill all applicable blank spaces without interlineations or alteration and must not contain recapitulation of the work to be done. No oral or telegraphic proposals will be considered.
- 2.03 **TIME OF COMPLETION:** The Bidder shall agree to commence work on, or before, a date specified in a written *Notice to Proceed* and fully complete the Project within the calendar days indicated on the Proposal Form.
- 2.04 **BASE BID AND ALTERNATES:**
- A. On the Proposal Form, the Bidder shall write out the Base Bid amount in words and include the numerical amount. The written word shall govern.
 - B. The Proposal Form shall contain a brief description of each alternate modifying the scope. The Bidder shall write out the amount in words and include the numerical amount for each alternate. The written word shall govern. Refer to Section 01030 entitled *Alternates* for additional information.
- 2.05 **SUBSTITUTIONS:** No substitutions, qualifications or redefining of the Specification requirements are allowed to be marked on the Proposal Form, unless specifically required by the Bid Documents. Refer to Section 01630 entitled *Substitutions and Product Options* which covers procedures after the award of Contract.
- 2.06 **ADDENDA:** Any addenda to the Drawings or Project Manual issued before or during the time of bidding shall be included in the proposal and become a part of the Contract. The Proposal Form will have ample space to indicate the receipt of addenda. When completing the Proposal Form, the Bidder shall list the Addendum number and the date received in spaces provided.
- 2.07 **BIDDER IDENTIFICATION:**
- A. **Signature:** The Proposal Form shall be signed by any individual authorized to enter into a binding agreement for the Business making the bid proposal.
 - B. **Name of Business:** The name appearing on the Proposal Form should be the same as the name appearing in the current Mississippi State Board of Contractors Roster.
 - C. **Legal Address:** The address appearing on the Proposal Form should be the same address appearing in the current Mississippi State Board of Contractors Roster.
 - D. **Certificate of Responsibility Number(s):** The Certificate of Responsibility Number(s) appearing on the Proposal Form should be the same number appearing in the current Mississippi State Board of Contractors Roster.
- 2.08 **BID SECURITY:** The Bid Security shall be in the form of a Bid Bond, or a Certified Check:
- A. **Bid Bond:** The Bidder may submit a Bid Bond by a Surety licensed in Mississippi in the amount of five percent (5%) of the base bid. The Bid Bond shall be duly executed by the Bidder, the Surety and a Mississippi resident agent. (No standard form is required for the Bid Bond.)
 - B. **Certified Check:** The Bidder may submit a certified check made out to the *Bureau of Building, Grounds and Real Property Management* in the amount of five percent (5%) of the base bid. All checks received from Bidders will be returned upon request, unless a Bidder is one (1) of the three (3) apparent low Bidders. The three (3) apparent low Bidder's checks will be held for forty-five (45) days, unless a Contract is awarded and executed in less time.

Division 0

2.09 **POWER OF ATTORNEY:** Each bid security must be accompanied by an appropriate Power of Attorney. No Power of Attorney is necessary with a certified check.

PART 3 - SUBMITTING THE PROPOSAL FORM

3.01 **SUBMITTAL:** A bid must be delivered to the address indicated on the Advertisement for Bids prior to the time and date stated. Only one original of Bid Proposal shall be submitted which should be sealed in an opaque envelope marked, mailed or hand-delivered as follows: (beginning 1/1/09 and for a reasonable time period, a duplicate copy will not disqualify your bid, but the second copy, without comparison, will be destroyed in the bid opening, not read aloud nor used thereafter, in order to prevent inadvertent differences in the duplicate forms):

<p><i>(In upper left hand corner)</i> Name of Firm (As it appears in the current Mississippi State Board of Contractors Roster)</p>	<p><i>(Bid shall be addressed and delivered to)</i> Bureau of Building, Grounds and Real Property Management 501 North West Street, Suite 1401B [Woolfolk Building] Jackson, Mississippi 39201</p>
<p><i>(In lower left hand corner)</i> Bid for Project # _____ Title _____ Using Agency _____ Certificate of Responsibility # _____ (for over \$50,000.00) Under \$50,000.00 (add statement)</p>	

If the Bid is mailed, the bid envelope shall be placed inside a second envelope to prevent inadvertent premature opening of the Proposal.

3.02 **MODIFICATION TO BID:** A bidder may modify the bid prior to the scheduled closing time indicated in the Advertisement for Bids in the following manner:

- A. **Notification on Envelope:** A modification may be written on the outside of the sealed envelope containing the bid.
- B. **Facsimile:** A facsimile (fax) will not be acceptable.

3.03 **WITHDRAWAL OF BID:** Any bid may be withdrawn prior to the scheduled time for opening of bids. However, bids may not be withdrawn until forty-five (45) days after bid opening.

PART 4 - BID OPENING AND AWARD OF CONTRACT

4.01 **OPENING OF BIDS:** Bids will be publicly opened shortly after the time stated in the Advertisement for Bids. Bidder representatives are invited; however, attendance is not mandatory.

4.02 **IRREGULARITIES:** The omission of any information requested on the Proposal Form may be considered as an informality, or irregularity, by the awarding public body when in their opinion the omitted information does not alter the amounts contained in the submitted bid proposal, or place other Bidders at a disadvantage.

4.03 **PROTEST:** Any protest must be delivered in writing to the Owner within twenty-four (24) hours after the bid opening.

4.04 **ERRORS:** Any claim of error and request for release from bid must be delivered in writing to the Owner within twenty-four (24) hours after the bid opening. The Bidder shall provide sufficient documentation with the written request clearly proving an error was made.

