**Section 1150.300 Award and Execution of Contract**

a) Consideration of Proposals

1) After the proposals are opened and read, they will be compared on the basis of the summation of the products of the quantities shown in the bid schedule by the unit bid prices. In the event of a discrepancy between unit bid prices and extensions, the unit bid price shall govern. In awarding contracts, the Department will, in addition to considering the amounts stated in the proposals, take into consideration the responsibility of the various bidders as determined by the Department of Transportation under Section 1150.200(a), and from other investigations which the Department shall make when it has reason to believe that any of the conditions found in Sections 1150.200(a)(4) and (j) exist.

2) The right is reserved to reject any or all proposals, to waive technicalities, or to advertise for new proposals, if, in the judgment of the Department, the best interests of the Department will be served.

b) Award of Contract

1) The award of contract will be made within 45 calendar days after the opening of proposals to the lowest responsible and qualified bidder whose proposal complies with all the requirements prescribed. The successful bidder will be notified by letter of intent that his/her bid has been accepted, and that, subject to subsections (b)(2) and (3) of this Section, the bidder will be the Contractor.

2) An approved contract executed by the Department is required before the State is bound. An award may be cancelled by the Department any time prior to execution in order to protect the public interest and integrity of the bidding process or for any other reason if, in the judgment of the Department, the best interest of the Department will be served.

3) If a contract is not awarded within 45 days after the opening of proposals, a bidder may file a written request with the Department for the withdrawal of his/her bid, and the Department will permit such withdrawal. Provided, however, if the Notice to Bidders specifies a period longer than 45 days after the opening of proposals, to delay the award of contract to coincide with the AML federal grant award, then the time shall be as specified for withdrawal of bids.

c) Notice of Contract Awarded

Notice of each and every contract that is let or awarded shall be published in the next available Illinois Procurement Bulletin.

d) Return of Proposal Guaranty

1) The proposal guaranty checks of all except the two lowest bidders will be returned promptly after the proposals have been checked, tabulated, and the relation of the proposals established. Proposal guaranty checks of the two lowest bidders will be returned as soon as the contract and contract bond of the successful bidder have been properly executed and approved. Bid bonds will not be returned.

2) After a period of 3 working days after the date of opening proposals has elapsed, the Department shall permit the two lowest bidders to substitute for the bank cashier's checks or certified checks submitted with their proposals as proposal guaranties, bid bonds on the Department forms executed by corporate surety companies satisfactory to the Department.

e) Applicant Violator System

1) Under 30 CFR 874.16, every successful bidder for a federally funded AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by the federal Office of Surface Mining, Reclamation and Enforcement's automated Applicant/Violator System (AVS) for each contract to be awarded.

2) At the time the successful bidder is notified by letter of intent that his/her bid will be accepted, the Department will provide to the bidder an Ownership/Control ("O/C") information package. The bidder shall completely fill out the forms and return the completed forms to the Department. The Department will forward the completed forms to OSM at the Lexington, Kentucky AVS office for data entry and compliance check.

3) All subcontractors who will receive 10% or more of the total contact funding will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check, prior to receiving the Department's approval of subcontractor.

4) Any contract inspector, selected through a bidding process, regardless of the percentage of contract funding, will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check.

5) The Department shall deny a contract and cancel the award upon OSM's recommendation that the successful bidder is not eligible for an AML contract. The Department shall deny approval of subcontractor upon OSM's recommendation that the subcontractor is not eligible for an AML contract. The Department shall deny an inspection contract upon OSM's recommendation that the contract inspector is not eligible for an AML contract.

6) Any person denied an AML contract, or participation in an AML funded project, shall appeal the decision and recommendation of OSM directly to OSM. Appeal should be made to establish eligibility for future AML projects. The Department will not delay a project pending appeal. The Department's role in the AVS compliance check process is ministerial and does not involve exercise of independent judgment or review of OSM's decision and recommendation. The Department shall not be responsible for any damages sustained by any person by reason of OSM's determination as to eligibility for AML contracts.

7) After a Contractor, subcontractor, or contract inspector has once submitted an O/C information package and has been entered into the AVS in connection with an AML project, the Department may, in connection with subsequent projects, provide dated AVS printouts reflecting the information submitted and the current AVS recommendation, along with an AML Contractor O/C Data Certification form. The Contractor, subcontractor, or contract inspector shall complete and submit the certification in place of the O/C information package, in the same manner as provided above.

8) Any potential AML Contractor, subcontractor or contract inspector may submit O/C information directly to OSM at the Lexington AVS Office, to predetermine eligibility for AML contracts.

f) Requirement of Contract Bond

The Contractor shall furnish the Department a performance and payment bond with good and sufficient sureties in the full amount of the contract as the penal sum. The surety shall be acceptable to the Department, shall waive notice of any changes and extensions of time, and shall submit its bond on the form furnished by the Department.

g) Execution of Contract

1) The contract shall be executed by the successful bidder and returned, together with the Contract Bond, within 15 days after the contract has been mailed to the bidder.

2) If the bidder to whom award is made is a corporation organized under the laws of a State other than Illinois, the bidder shall furnish the Department a copy of the corporation's Certificate of Authority to do business in the State of Illinois with the return of the executed contract and bond. Failure to furnish such evidence of a Certificate of Authority within the time required will be considered as just cause for the annulment of the award and the forfeiture of the proposal guaranty to the State, not as a penalty, but in payment of liquidated damages sustained as a result of such failure.

h) Failure to Execute Contract

1) If the contract is not executed by the Department within 15 days following receipt from the bidder of the properly executed contracts and bonds, the bidder shall have the right to withdraw his/her bid without penalty.

2) Failure of the successful bidder to execute the contract and file acceptable bonds within 15 days after the contract has been mailed to the bidder shall be just cause for the cancellation of the award and the forfeiture of the proposal guaranty which shall become the property of the Department, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsible bidder, or the work may be readvertised considering the time available for readvertisement, the number of bids received and the variance in the amount of the bids received.

i) Termination of Contracts

1) The Department shall, by written order, terminate the contract or any portion thereof after determining that for reasons beyond the control of the parties, the Contractor is prevented from proceeding with or completing the work as originally contracted for, and that termination would, therefore, be in the public interest. Such reasons for termination may include, but need not be necessarily limited to, Executive Orders of the President relating to prosecution of war or national defense, national emergency which creates a serious shortage of materials, orders from duly constituted authorities relating to energy conservation, and restraining orders or injunctions obtained by third-party citizen action resulting from national or local environmental protection laws or where the issuance of such order or injunction is primarily caused by acts or omissions of persons or agencies other than the Contractor.

2) When contracts, or any portion thereof, are definitely terminated or cancelled, and the Contractor released before all items of work included in his/her contract have been completed, payment will be made for the actual number of units of items of work completed at contract unit prices, or as specified in the contract for partially completed items, and no claims for loss of anticipated profits shall be considered. Reimbursement for organization of the work and moving equipment to and from the job will be made when the volume of the work completed is too small to compensate the Contractor for these expenses under the contract unit prices, the intent being that an equitable settlement will be made with the Contractor.

3) Acceptable materials, obtained by the Contractor for the work, that have been inspected, tested and accepted by the Department, and that are not incorporated in the work shall be purchased from the Contractor at actual costs as shown by receipted bills and actual cost records at such points of delivery as may be designated by the Department, when the Department determines that the materials cannot be returned or resold by the Contractor and the Department or other State agency can make use of such material.

4) Termination of a contract, as stated above, will not relieve the Contractor or his/her surety of the responsibility of replacing defective work as required by the contract.

(Source: Amended at 22 Ill. Reg. 15581, effective August 17, 1998)