

Wyoming Stable Token Commission

General Agency, Board or Commission

Chapter 3: Procurement by Competitive Sealed Bidding, Competitive Negotiation, or Noncompetitive Negotiation

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Chapter 3

Procurement by Competitive Sealed Bidding, Competitive Negotiation, or Noncompetitive Negotiation

Emergency rules are in effect no longer than 120 days after filing with the Registrar of Rules.

Section 1. Authority.

(a) These rules are promulgated by the Wyoming Stable Token Commission, herein referred to as the Commission, in accordance with W.S. 40-31-105(b) and 40-31-110.

Section 2. Applicability.

(a) This chapter applies to the Commission's procurement of services or materials using competitive sealed bidding, competitive negotiation, or noncompetitive negotiation.

(b) This chapter shall not apply to the procurement of services or materials by request for proposal, which is covered in Chapter 2 of these rules.

Section 3. General provisions.

(a) The Commission reserves the right to use procurement software and related technology to meet any of the requirements of this chapter, including but not limited to opening, noting, and time stamping receipt of bids.

Section 4. Determination of procurement process.

(a) A contract for services or materials with an anticipated value of fifteen thousand dollars (\$15,000) or less shall be procured through competitive negotiation per Section 8 of this chapter.

(b) A contract for services or materials with an anticipated value in excess of fifteen thousand dollars (\$15,000) shall be procured through competitive sealed bidding per Sections 9 through 20 of this chapter.

(c) Paragraphs (a) and (b) shall not apply to a contract if:

(i) The Commission obtains an approved bid waiver under Section 5 of this chapter; or

(ii) The Commission is procuring the contract to respond to an emergency situation under Sections 5 and 6 of this chapter.

Section 5. Bid waivers.

(a) If the Director determines that competitive negotiation is not feasible for a contract with an estimated value equal to fifteen thousand dollars (\$15,000.00) or less, the

contract may be let by noncompetitive negotiation under Section 7 of this chapter without a bid waiver from the Commission or the Governor.

(b) If the Director determines that competitive sealed bidding is not feasible or practical for a contract with an estimated value in excess of fifteen thousand dollars (\$15,000), the Director may submit their written determination to the Commission and seek approval for the contract to be let by competitive negotiation under Section 8 of this chapter. The Commission may approve such a bid waiver in accordance with the following:

(i) The Director's written determination and request for approval of competitive negotiation shall be based on factors including, but not limited to:

(A) Whether the Commission attempted to advertise for competitive sealed bids but was unsuccessful despite its good faith attempts under Section 12 of this chapter. If the Commission received one or more bids, the Commission shall explain why the bids received were inadequate;

(B) Whether competitive sealed bidding is impractical or infeasible due to a lack of competition in the industry;

(C) Whether competitive sealed bidding is impractical or infeasible because only a small number of potential bidders are uniquely qualified for the work due to circumstances, geographic disparities, experience with the project, or proprietary techniques or technologies; or

(D) Whether competitive sealed bidding is impractical or infeasible due to time or other constraints that prevent completion of advertisement for competitive sealed bids or any other requirements under this chapter.

(ii) Except as otherwise outlined in this chapter, the Commission shall only approve bid waiver applications for competitive negotiation in limited circumstances, including but not limited to:

(A) Advertising or re-advertising the project for competitive sealed bid is not feasible or practical as determined by the Director;

(B) A situation in which only one source is available for the services or materials, whether due to bidder domicile or proprietary technology; or

(C) An emergency situation necessitates the immediate start of work or an expedited return to normal state service operations and the immediate commencement of the work is necessary for those operations to resume, and the Commission has complied with Section 6 of this chapter.

(iii) The Commission shall have ten (10) business days to review the Director's request and make a determination. The Commission may request additional information to reach a determination, which shall pause the review time until the requested

information has been submitted. If the requested information is not provided within five (5) business days, the Commission may make a determination based on available information.

(c) If the Director determines that competitive negotiation is not feasible or practical for a contract with an estimated value in excess of fifteen thousand dollars (\$15,000.00), the Director may submit their written determination to the Governor or the Governor's designee and seek approval for the contract to be let by noncompetitive negotiation under Section 7 of this chapter. The Governor or the Governor's designee may approve such a bid waiver request in accordance with subsection (b). The Director's written determination and its request for noncompetitive negotiation shall be based on factors including, but not limited to:

(i) Whether the Commission initiated a competitive negotiation process but received an inadequate number of responses to its solicitations despite the Commission's good faith attempts to secure bids as required in Section 8 of this chapter. If the Commission received one or more responses, the Commission shall explain why the bids received were inadequate;

(ii) Whether competitive negotiation is not practical or feasible because of a lack of competition in the industry;

(iii) Whether competitive negotiation is not practical or feasible because a single entity is uniquely qualified for the work due to circumstances, geographic disparities, experience with the project, or proprietary techniques or technologies;

(iv) Whether an emergency necessitates the immediate start of work to continue, or expedite the return to, normal state service operations and the Commission has complied with Section 6 of this chapter regarding emergency contracting; or

(v) Whether a prototype agreement exists where the Commission may reuse a previously developed design or product.

(d) The Director shall submit bid waiver applications on standard bid waiver forms adopted by the Commission.

(e) Upon approval of a bid waiver by the Commission, the Governor, or their designees, as applicable, the Commission may proceed to let the contract as stipulated in the bid waiver.

Section 6. Emergency contracting.

(a) In an emergency situation, the Commission may, in accordance with this section, procure services or materials without adhering to the notice, bid, and negotiation requirements in this chapter. The Director or their designee shall document to the Commission the emergency situation necessitating the procurement and an explanation of how and why it is necessary not to adhere to the notice, bid, and negotiation requirements in this chapter. When the Director or their designee decides not to follow the notice, bid, or negotiation requirements due to an emergency situation, that agency is immediately subject to review by the Commission.

(b) In the event that emergency work is initiated in response to an emergency situation, the Director or their designee shall notify the Commission by the next business day of any and all efforts undertaken by the Director or their designee(s) to obtain competition, and the emergency situation that justified reliance on this section. The Director, not the Commission, is responsible for any notification to Risk Management or other such agencies or entities as may be required by laws applicable to the Commission or emergency situation.

(i) For emergency work with an estimated value of fifteen thousand dollars (\$15,000) or more, a bid waiver shall be submitted as soon as possible, as required by Section 5 of this chapter, and shall be approved by the Governor or Governor's designee in accordance with Section 5(c).

(c) An emergency contract shall be limited to services or materials in such quantities as are necessary to address the emergency situation.

(d) The Director or their designee(s) shall seek to obtain as much competition as possible while letting an emergency contract. Approaches to increase competition may include:

(i) Telephonically-sourced quotes;

(ii) Online-sourced quotes;

(iii) Invitations to bid; and

(iv) Other methods that can be pursued while avoiding harm or risk of harm to the public health, safety, welfare, property, or impairing the ability of a public entity to function or perform required services; or the solvency, security, or integrity of the Wyoming Stable Token, its technical infrastructure, its underlying reserves held in trust, or any other critical underpinning at risk.

(e) Notwithstanding any confidentiality concerns, the Director or their designee shall publicly disclose the rationale and result of the emergency contracting to the agency website within five (5) business days of the emergency contracting.

Section 7. Noncompetitive negotiation.

(a) Noncompetitive negotiations (sometimes also known as "sole sourcing") may proceed when the Commission has:

(i) Obtained an approved waiver under Section 5 of this chapter; and

(ii) Secured a bid from a qualified bidder that meets the solicitation response requirements of Section 8.

Section 8. Competitive negotiation.

(a) "Competitive negotiation" means to negotiate for a contract through a request for proposals process or any other similar competitive selection process.

(i) A competitive negotiation conducted using a request for proposal process shall comply with Chapter 2 of these rules.

(b) A competitive negotiation conducted using a lowest bid process shall comply with the following:

(i) To initiate competitive negotiation, the Commission shall solicit not less than three (3) independent cost estimates.

(ii) A solicitation for bids shall be made to bidders in a standard format consistent with Commission policy that shall include the scope of desired work and the desired schedule or completion date. Solicitations shall clearly identify the services of materials that will be procured by competitive negotiation. The Commission shall determine the qualifications of bidders.

(iii) A solicitation for bids shall include a notification that the Commission's acknowledgement of receipt of a bid does not constitute acceptance of the bid, and an invitation to negotiate does not guarantee that the bidder's bid will be accepted or that the negotiations will result in a signed contract.

(iv) A solicitation shall require bidders to submit bids that include, at a minimum:

(A) A proposed work plan that demonstrates the bidder's understanding of the requested work with a detail level commensurate with the scope outlined in the solicitation for bids;

(B) A comprehensive proposed cost estimate inclusive of all materials, labor, overhead, and profit anticipated to be necessary for the completion of the work outlined in the solicitation; and

(C) A proposed timeline for the completion of work including major milestones.

(v) The Director or their designee shall negotiate with and let the contract to the lowest qualified bidder in accordance with any applicable requirements. However, if the contract's estimated value was equal to fifteen thousand dollars (\$15,000) or less, but all bids received are above fifteen thousand dollars (\$15,000), the Commission may:

(A) Engage in negotiations with all bidders for the purpose of scope clarification, resulting in a cost below fifteen thousand dollars (\$15,000);

(B) Reject all bids and advertise for competitive sealed bids per Section 12 of this chapter; or

(C) Request a bid waiver from the Governor or their designee per Section 5 of this chapter.

Section 9. Bidder prequalification for competitive sealed bidding.

(a) In a competitive sealed bidding process, Commission may, at its discretion, require all potential bidders to submit applications for prequalification prior to submitting bids on a project.

(b) Prequalification does not replace the use of evaluation criteria as allowed in Section 19(a) of this rule. The Commission may use prequalification in conjunction with the evaluation criteria even after prequalification has been completed.

(c) A call for prequalification applications shall be advertised, at a minimum, on the state procurement website or agency website for not less than two (2) consecutive weeks.

(d) To the extent applicable, based on the scope of work requested in the call for prequalification applications, an application for prequalification shall include, at a minimum:

- (i) Contact information;
- (ii) A statement of corporate history;
- (iii) A listing of the services or materials that the applicant believes it is qualified to provide;
- (iv) A concise description of relevant past work completed by the applicant within the last eighteen (18) months at minimum;
- (v) Proof of equipment, certifications, professional qualifications, or experience specific to the scope of project work;
- (vi) A signed affidavit stating the applicant's willingness to comply with applicable laws and policies, which may or may not be unique to the project or Commission; and
- (vii) Any other information required by the Commission in a notice requesting statements of qualifications.

Section 10. Prequalification term, status notification, and revocation.

(a) Prequalification for a competitive sealed bid process shall be designated on a per project basis. Designation of prequalification on one project shall not be construed as prequalification for any other project, nor shall prequalification on one project be accepted in lieu of required documentation for prequalification on another project.

(b) Upon completion of its review of all prequalification applications for a project, the Commission shall notify a prequalification applicant of the agency's decision with regards to the applicant's prequalification status, including the reason for the decision.

(c) Prequalification applicants that are determined by the Commission to have met the qualification requirements will be deemed a qualified bidder.

(d) The decision to revoke a prequalification granted to a qualified bidder is at the discretion of the Commission. The Commission shall follow the processes in Chapter 5, Section 4(c) of these rules if it revokes a qualified bidder's prequalification.

Section 11. Request for review of denial of prequalification application.

(a) A potential bidder denied prequalification status after filing an application for prequalification status may request the Commission to review the application decision. The potential bidder shall file a written request for review to the Commission including:

- (i) The name and address of the requesting potential bidder;
- (ii) A brief explanation of why the potential bidder's prequalification application should be granted;
- (iii) The statute, rule, or policy which the potential bidder believes was applied incorrectly or in error;
- (iv) Any additional facts the potential bidder would like to be considered, including any relevant exhibits, evidence, or documents of substantiation to support a requested change in the prequalification outcome.

(b) Requests shall be submitted to the Director or their designee.

(c) The Director or their designee shall acknowledge receipt of written review requests within three (3) business days of receipt, with a blind closed copy provided to the Commission.

(d) The Director or their designee may request additional information as part of the review. If requested information is not provided within three (3) business days, the review may be completed without such information.

(e) The Director shall provide written notice of any action taken in response to the review request, including a decision to take no action, within ten (10) business days and shall provide such notification to the Commission in blind closed copy.

(f) Notwithstanding the time limitations in subparts (c) and (e) above in this section, the Director shall make every attempt to resolve review requests in a timely manner, but is not under obligation to resolve requests prior to bid filing deadlines when such timeline would put an undue burden on the Director and detract from the execution of Commission operations.

Section 12. Advertising for competitive sealed bids.

(a) To initiate competitive sealed bidding for a project that has not required bidder prequalification (as allowed under Sections 9 and 10 of this chapter), the Commission shall advertise a notice to submit bids for the project. The advertisement for bids shall be published on the state procurement website or agency website for not less than two (2) consecutive weeks. If the Commission opts to utilize an online bidding site to publish project estimates and plans, it

shall provide a link to the bidding site on the state procurement website or agency website. An advertisement for bids shall contain, at a minimum, the following information:

- (i) The name of the Commission;
- (ii) A designated procurement point of contact with contact information;
- (iii) A description of the scope of the desired work;
- (iv) The location of the desired work;
- (v) An estimated project completion date;
- (vi) Procedures to submit bids;
- (vii) Methods to access plans and bid documents;
- (viii) Information regarding prebid meetings, if any, held at the discretion of the Commission;
- (ix) Deadline to submit bids and bid opening information; and
- (x) Sample contract and bidder affidavits.

(b) Because the Commission does not maintain a bid advertising notification list, potential bidders are responsible for checking the advertising methods listed in this section.

(c) If the Commission already advertised a call for prequalification applications for the project under Section 9 of this chapter, the Commission is not required to publicly advertise the advertisement for bids under this section. Instead, the Commission shall provide the advertisement for bids to the qualified bidders.

Section 13. Commission's addenda to bid advertisements.

(a) After a notice to submit bids is published, the Commission may issue addenda to the bid advertisement to respond to a potential bidder's request for clarification under Section 14 of this chapter, or for the purpose of making changes or increasing the level of detail to the:

- (i) Requested scope of work;
- (ii) Project completion date;
- (iii) Bid opening date;
- (iv) Qualification requirements;
- (v) Evaluation criteria; or

(vi) Other requirements in the advertisement that may affect the ability of a bidder to make a full and complete bid.

(b) Addenda shall be posted to the original online bidding site or agency website, and all known bidders shall be notified of the addenda.

(c) Addenda shall be identified as such and must be acknowledged by bidders as part of the bid submission.

(d) Addenda posted within five (5) calendar days of the bid opening shall require an extension to the bid opening date.

(i) At the discretion of the Director or their designee, the Commission may opt not to extend the bid opening deadline if the addenda do not change the character of the advertisement for bids.

(ii) An addendum may be considered to change the character of an advertisement for bids if the addendum alters:

(A) The scope of work;

(B) The timeline to complete the identified scope of work; or

(C) Other portions of the original advertisement such that the advertisement, as amended with the addendum, substantively differs from the original advertisement issued by the Commission.

Section 14. Requests for clarifications of bid advertisements.

(a) A potential bidder may submit a written request for clarification from the Commission on the advertisement for bids. A potential bidder that directly contacts the Commission or its representatives shall be directed to the appropriate forum for posing questions.

(b) The Director or their designee may, at their discretion, opt to provide such clarification so long as doing so would not restrict competition or provide an undue advantage to one or more potential bidders.

(i) If the Director or their designee grants the request, the Director or their designee shall answer the potential bidder's questions in a written addendum issued in accordance with Section 13 of this chapter. If necessary, the Director or their designee shall adjust the bid opening deadline in accordance with Section 13(d).

(ii) Only clarifications issued in accordance with this section shall be binding upon the Commission. Clarifying information provided at a prebid meeting shall not be considered binding on the Commission until the agency issues an addendum to the bid advertisement in accordance with Section 13 of this chapter.

(iii) In the event that one potential bidder may have been granted access to additional information about the bid advertisement, the Commission shall immediately release the information to other potential bidders in an addendum.

(c) If the Commission is unable or unwilling to provide the requested clarification, it shall respond to the requesting potential bidder in writing and explain its reasoning for refusing to provide the requested clarification.

Section 15. Access to bid documents.

(a) Any cost incurred to access and download bid documents shall be the responsibility of the potential bidder.

(b) Potential bidders are responsible for accessing plans directly from the location specified by the Commission to ensure accuracy and receipt of future addenda.

Section 16. Prebid conferences and site visits.

(a) The Commission may schedule prebid conferences and site visits for a project, and may designate a prebid conference or site visit as mandatory. Any bidder that fails to attend a mandatory prebid conference or mandatory site visit shall be ineligible to bid on that project.

(b) The Commission shall announce the time, date, and location of any prebid conference or site visit to all potential bidders in the bid advertisement or through an addendum to the bid advertisement. The Commission's announcement of a prebid conference or site visit shall state whether the prebid conference or site visit is mandatory.

(c) A prebid conference shall be held not less than two (2) business days after the bid advertising period has been completed per Section 12 of this chapter, but not less than ten (10) business days before bids are due. At the discretion of the Commission, the above time frame may be increased based on the technicality or dollar amount of the project.

(d) The Commission may hold a prebid conference in the following formats at the Commission's discretion:

(i) In person;

(ii) Teleconference;

(iii) Webinar; or

(iv) Other electronic medium approved by the Director and made available to potential bidders by the Commission, at the Commission's expense.

(e) For each prebid conference, the Commission shall maintain a record including, at a minimum:

(i) An attendance log including:

- (A) Attendee name;
 - (B) Attendee contact information; and
 - (C) The entity each attendee represents.
- (ii) Copies of documents distributed by the Commission to attendees; and
- (iii) Any verbal modifications made to any of the bid advertisement documents, all of which shall be reduced to writing and released as an addendum to the bid advertisement in accordance with Section 13 of this chapter.
- (f) The Commission may conduct prebid, in-person site visits at the site of the project being procured.

Section 17. Content of competitive sealed bids.

- (a) Competitive sealed bids submitted under this chapter shall include:
 - (i) A bid, developed on forms provided by the Commission, with all fields fully completed as specified on the forms, in dark ink or typed, and prepared electronically for upload; and
 - (ii) A signed affidavit from the bidder certifying:
 - (A) That bids have been developed independently;
 - (B) No effort has been made to restrict competition;
 - (C) The bidder is in receipt of all addenda;
 - (D) The person signing the bid is authorized to represent the organization for whom he or she is signing;
 - (E) The ownership and legal structure of the organization; and
 - (F) The bidder agrees to comply with all applicable regulations, policies, guidelines, and requirements;
 - (iii) Documentation required by subsection (b) of this section, if applicable; and
 - (iv) Any other information required by the Commission in the bid advertisement or its addenda.
- (b) If the Commission did not require prequalification applications for the project under Section 9 of this chapter, a competitive sealed bid shall also include:
 - (i) Contact information;

- (ii) A statement of corporate history;
- (iii) A listing of the services or materials that the applicant believes it is qualified to provide;
- (iv) A concise description of relevant past work completed by the applicant within the last eighteen (18) months at minimum;
- (v) Proof of equipment, certifications, professional qualifications, or experience specific to the scope of project work;
- (vi) A signed affidavit stating the applicant's willingness to comply with applicable laws and policies, which may or may not be unique to the project or Commission; and
- (vii) Any other information required by the Commission.

Section 18. Bid submission, modification, and withdrawal.

- (a) Deadlines. Bidders are solely responsible for meeting the bid submission deadline.
 - (i) For bids submitted electronically, bidders shall allow sufficient time to complete online forms and upload documents. The bid submission period shall end at the posted closing time and bidders shall not be permitted to complete in-progress submissions after that time.
 - (ii) For bids submitted by physical delivery, delays caused by the bidder's delivery service shall not be an acceptable reason for a bid or modification being late. All bids or modifications sent by physical delivery shall be date and time stamped by the Director or their designee upon receipt.
- (b) Modifications. A bidder may submit a modification to their previously submitted bid prior to the bid submission deadline. The Commission shall deny bid modifications submitted after the submission deadline. The waiver or correction of errors in a bid after the bid submission deadline shall be subject to Section 19(c) of this chapter.
- (c) Withdrawals. A bidder may withdraw a previously submitted bid prior to the bid submission deadline. For a bid withdrawn after the bid submission deadline, the Commission may pursue remedies against the bidder.

Section 19. Principles for evaluating bids, price or quantity discrepancies, and bid irregularities.

- (a) Evaluation criteria. The Commission shall develop and use qualifications and evaluation criteria for submitted bids to establish a reasonable certainty that the responsible low bidder can be expected to complete the work as proposed. Evaluation criteria may include but are not necessarily limited to a bidder's:

- (i) Ability to meet deadlines;
 - (ii) Qualifications;
 - (iii) Certifications;
 - (iv) Licensing;
 - (v) Experience;
 - (vi) Compliance with applicable laws and regulations;
 - (vii) Type of services provided;
 - (viii) Availability of product, equipment, supplies, or services;
 - (ix) References or other information on past project performance, including the experience of the Commission with that bidder or proposer; and
 - (x) Any other criteria deemed important by the Commission.
- (b) Price or quantity discrepancies in bids.
- (i) In the case of a discrepancy between the unit or hourly price and the total price, the unit or hourly price will prevail.
 - (ii) In the case of a discrepancy between the price written in words and the price written in figures, the price written in words will prevail.
 - (iii) Quantities listed in the bid documents are to be considered as approximate and only to be used for the comparison of bids. Payment to the successful bidder will be made only for the actual quantities of work performed in accordance with the plans and specifications of the project. If upon the completion of the work, the actual quantities of work performed show either an increase or decrease from the quantities given in the estimate, the prices or costs set forth on a unit or hourly basis in the bid shall prevail.
- (c) Bid irregularities.
- (i) The Director or their designee may work in conjunction with the Commission to reject a bid that contains bid irregularities, or to resolve or waive bid irregularities, except that the Commission shall reject bids containing the following irregularities:
 - (A) Improper or missing signatures; or
 - (B) Lack legible numerical values.
 - (ii) A request to waive or correct an error in a bid, other than a bid irregularity, shall be subject to the following:

(A) Provided there is no change in bid pricing or cost, errors may be corrected if it is in the best interest of the State and correcting the mistake maintains the fair treatment of other bidders.

(iii) If the Commission opts to waive a required condition or accept bids missing information required by the bid advertisement or its addenda, the waiver shall apply to all bidders.

Section 20. Evaluation of bids and award of contract.

(a) Procedures after bid submission. Upon closure of the bid submission period, the Director or their designee shall:

- (i) Note the date and time of receipt of all bids;
- (ii) Open all bids in the presence of one or more witnesses, at the time and place designated in the bid advertisement;
- (iii) Record each bid opened, including bidder name and bid total;
- (iv) Examine each bid for validity and completeness;
- (v) Prepare a summary of bids received;
- (vi) Provide the summary to the Commission or Evaluation Committee that includes the bidders and bid totals and provide notification that the Commission or Evaluation Committee may review and evaluate bids.

(b) Evaluation process. The Commission or Evaluation Committee shall:

- (i) Evaluate bids to determine which bidders are responsible in accordance with the evaluation criteria set forth in the advertisement for bids per Section 19(a) of this chapter;
- (ii) Determine which bid, submitted by a responsible, qualified bidder, offers the lowest cost to the state; and
- (iii) Draft a written recommendation specifying the apparent responsible, qualified low bidder including justification for that recommendation.

(c) Award of contract. The Commission shall be the final authority on the award of a contract per W.S. 40-31-105(c)(iii). The Commission reserves the right to reject any and all bids. The contract shall be awarded to the lowest qualified bidder whose bid meets the requirements and criteria set forth in the advertisement for bids, subject to the considerations below:

(i) Award to multiple bidders. The Commission may, at its discretion, award portions of a single advertised project to multiple bidders when it is in the best interest of the State to do so.

(ii) Higher quality item. A contract may not be awarded to a bidder submitting a higher quality item than that designated in the invitation for bids or request for proposals, unless such bidder is also the lowest bidder as determined by value analysis or life-cycle cost formulas. The Commission shall not apply a value analysis or life cycle cost formula unless the call for bids clearly stated that such analysis or formula would be applied.

(iii) Tie bids. In the event of tie bids, the contract shall be awarded to the bidder most reasonably able to complete the work based on the evaluation criteria set forth in the advertisement for bids per Section 9 of these rules.

(iv) Single bid received. If, at the time of bid opening, only one bid has been received, the Commission may:

(A) Determine that the bid submitted is a fair price and that other entities had sufficient opportunity to bid, and award the contract to the single bidder; or

(B) Determine that the bid submitted is not at a fair price or that sufficient opportunity was not given to encourage multiple bids, and reject the bid. The Commission's decision to cancel the procurement or re-advertise the project for bids under this paragraph is subject to review by the Governor or their designee at their discretion.

(v) Award to next lowest bidders. In the event the low bidder originally awarded the contract is unable to complete the work as bid, the Commission may award the contract to the second lowest bidder. If the second lowest bidder declines to accept the award, the Commission may:

(A) Offer the award to the next lowest bidder;

(B) Re-advertise for bids; or

(C) Cancel the advertisement for bids, pursuant to Section 21 of this chapter.

(d) Errors after award. Errors discovered in a successful bid after the award of a contract may only be corrected if, after consultation with the Director and the Attorney General's office, it is determined that the correction of the mistake does not violate the requirements of applicable laws. Any correction made under this subsection must be supported by a written determination signed by the Director.

Section 21. Cancellation of a bid advertisement.

(a) The Commission may cancel an advertisement for bids, subject to review by the Governor or their designee.

(b) Grounds for cancelling a bid advertisement may include, but are not limited to:

(i) A change in circumstances such that the project is no longer required or funding is no longer available;

- (ii) All bids received exceed available funding;
 - (iii) All responsible, qualified bids are at clearly unreasonable prices;
 - (iv) Reason to suspect collusion between bidders or submission of bids in bad faith;
 - (v) The advertisement did not provide for consideration of all factors of significance to the State; or
 - (vi) Proposed amendments to the advertisement are of sufficient impact that a new advertisement is desirable.
- (c) Upon cancellation of an advertisement, notice of cancellation shall be distributed through the same means as the initial advertisement.

Section 22. Cancellation of an award of a contract.

- (a) The Commission may cancel the award of a contract, subject to review by the Governor or their designee. A decision to cancel an award under this section shall be supported in a written document.
- (b) Reasons for cancelling an award of a contract may include, but are not limited to:
- (i) Project is no longer required;
 - (ii) Funding is no longer available;
 - (iii) Reason to suspect collusion between bidders or submission of bids in bad faith; or
 - (iv) The apparent low bidder is no longer able to complete the work as bid.
- (c) Cancellation of an award of a contract does not require cancellation of the underlying bid advertisement for the project awarded.
- (d) Cancellation of an award due to the fault of the bidder may result in the pursuit of remedies against the bidder.