

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY
MANAGEMENT

SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES
CHAPTER XV: DEPARTMENT OF NATURAL RESOURCES

PART 1150

SELECTION OF CONTRACTORS AND CONSULTANTS FOR ABANDONED MINED
LANDS RECLAMATION PROJECTS

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AUTHORITY: Implementing and authorized by the Abandoned Mined Lands and Water Reclamation Act [20 ILCS 1920].

SOURCE: Adopted at 9 Ill. Reg. 6661, effective May 1, 1985; emergency amendment at 10 Ill. Reg. 1264, effective January 1, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 12534, effective July 8, 1986; 17 Ill. Reg. 11934, effective July 23, 1993; amended at 22 Ill. Reg. 15581, effective August 17, 1998.

SUBPART A: GENERAL PROVISIONS

Section 1150.10 Purpose

The Abandoned Mined Lands and Water Reclamation Act ("Act") [20 ILCS 1920] provides that the Illinois Department of Natural Resources shall administer a program for the reclamation of abandoned lands and waters in accordance with the Act. This Part describes standard procedures for the Department's Office of Mines and Minerals, Division of Abandoned Mined Lands Reclamation, for advertising, bidding and awarding contracts for construction on abandoned mined lands ("AML") reclamation projects. This Part also prescribes standard procedures for obtaining the necessary outside professional services as needed in the administration of the AML program. The purpose is to prescribe procedures which will implement the AML program in a way which satisfies the requirements of the various State of Illinois purchasing laws, as well as federal grant requirements for funding pursuant to the Surface Mining Control and Reclamation Act of 1977, as amended, (30 USC 1201 et seq.).

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

Section 1150.20 Scope

The Rules in this Part are non-conflicting supplements to the Standard Procurement Rules (44 Ill. Adm. Code 1), promulgated by the Department of Central Management Services, and all activities and interpretations shall be performed to give effect to both sets of rules. Procurement of other goods and services shall be in accordance with the Standard Procurement Rules promulgated by the Department of Central Management Services.

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

Section 1150.30 Applicability**a) General**

This Part applies to all contracts for reclamation construction and professional services required by the Division of Abandoned Mined Lands Reclamation.

b) Standard Construction Contracts

Subpart B applies to the advertising, bidding and awarding of contracts for construction on reclamation projects that have been planned and designed in the normal course of the AML program.

c) Emergency Construction Contracts

Subpart C applies to construction contracts that are necessary to abate emergency conditions which involve a danger to public health and safety and that cannot await abatement under normal program procedures.

d) Professional Services

Subpart D applies to the selection of Consultants to provide professional services covered by the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535].

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

Section 1150.50 Incorporation by Reference

No incorporation by reference in this Part pursuant to Section 5-75 of the Illinois Administrative Procedure Act [5 ILCS 100/5-75] contains any later amendment or edition.

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

SUBPART B: STANDARD CONSTRUCTION CONTRACTS**Section 1150.100 Definition of Terms**

Wherever in this Part the following terms or pronouns in place of them are used, words importing the masculine may be applied to females, and the intent and meaning shall be interpreted as follows:

"Advertisement" - The public announcement, as required by law inviting bids for work to be performed or materials to be furnished.

"AML" - Abandoned Mined Lands; of or pertaining to the Abandoned Mined Lands Reclamation program.

"AVS" or "Applicant Violator System" - The computer system maintained by OSM, in accordance with 30 CFR 773, to identify ownership or control links involving coal mining permit applicants, permittees, and persons cited in violation notices.

"Award" - The decision of the Department in the form of a letter of intent to accept the proposal of the lowest responsive and responsible bidder for the work, subject to the execution and approval of a satisfactory contract and bond to secure the performance as required by this Part, and to such other conditions as may be specified. A responsible bidder is a bidder who meets the standards set forth in 44 Ill. Adm. Code 1: Subpart H.

"Bid" - a Contractor's proposal.

"Bidder" - Any individual, firm, partnership or corporation submitting a proposal for the work contemplated, acting directly or through a authorized representative.

"Calendar Day" - Every day shown on the calendar.

"Consultant" - Any individual, sole proprietorship, firm, partnership, corporation, association, or other legal entity engaged in providing professional services in the practice of architecture, engineering, or land surveying as permitted by law.

"Contract" - The written Agreement between the Department and the Contractor setting forth the obligations of the parties to the contract, including, but not limited to, the performance of the work, the furnishing of labor and materials, and the basis of payment. The contract includes the invitation for bids, proposal, letter of award, contract form and contract bond, Specifications, Supplemental Specifications, Special Provisions, general and detailed plans, and any Agreements that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

"Contract Bond" - The approved form of security, furnished by the Contractor and his/her surety as a guaranty that the contractor will execute the work in accordance with the terms of the contract.

"Contractor" - The individual, firm, partnership or corporation contracting with the Department for performance of prescribed work.

"Department" - The Department of Natural Resources, Office of Mines and Minerals, Division of Abandoned Mined Lands Reclamation, of the State of Illinois, with principal offices of business at Springfield.

"Department of Transportation" - The Department of Transportation of the State of Illinois with principal offices of business at Springfield.

"Equipment" - All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the work.

"Invitation for Bids" - The advertisement for proposals for all work or materials on which bids are required. Such advertisement will indicate with reasonable accuracy the quantity and location of the work to be done or the character and quantity of the material to be furnished and the time and place of the opening of proposals.

"Materials" - Any substances specified for use in the construction of the project and its appurtenances.

"OSM" - The Office of Surface Mining, Reclamation and Enforcement, United States Department of the Interior.

"Pay Item" - A specifically described unit of work for which a price is provided in the contract.

"Plans" - The approved plans, profiles, typical cross sections, working drawings and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions and details of the work to be done.

"Proposal" - The offer of a bidder, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted. In Subpart D, "Proposal" means the letter of interest and designated portions of the Consultant's

Qualifications Packet submitted to the Department for consideration by the Department in selecting Consultants to provide professional services.

"Proposal Guaranty" - The security furnished with a bid to guarantee that the bidder will enter into the contract if his/her bid is accepted.

"Special Provisions" - Additions and revisions to the Standard and Supplemental Specifications covering conditions peculiar to an individual project.

"Specifications" - The body of directions, provisions and requirements contained in "Standard Specifications for Road and Bridge Construction" adopted by the Department of Transportation, or in any supplement adopted by the Department of Transportation, together with written agreements and all documents of any description made or to be made pertaining to the method or manner of performing and paying for the work, the quantities, or the quality of materials to be furnished under the contract.

"State" - The State of Illinois acting through the Department of Natural Resources, Office of Mines and Minerals, Division of Abandoned Mined Lands Reclamation, or such agency or department of State Government as the Department may designate.

"Structure" - Unless otherwise defined in the Specifications, structures shall comprise all objects constructed of materials other than earth, required by the contract to be built or to be removed.

"Subconsultant" - An individual, firm, partnership, or corporation who with the written consent of the Department, assumes obligation for performing specified professional services.

"Subcontractor" - An individual, firm, partnership, or corporation who with the written consent of the Department, assumes obligation for performing specified contract work.

"Supplemental Specifications" - Additions and revisions to the Standard Specifications for Road and Bridge Construction of the Illinois Department of Transportation, as modified and referenced in the proposal and contract.

"Surety" - The corporation, partnership or individual, other than the Contractor, executing the Contract Bond.

"Work" - Work shall mean the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the project and the carrying out of all the duties and obligations imposed by the contract.

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

Section 1150.200 Bidding Requirements and Conditions

a) Prequalification of Bidders

- 1) Each bidder shall be prequalified by the Department of Transportation and eligible to bid as provided in 44 Ill. Adm. Code 650 and described in Section 102 of the Standard Specifications for Road and Bridge Construction published by the Department of Transportation. Application for prequalification shall be made directly to the Department of Transportation.
- 2) The Department shall rely upon any determination and statement by the Department of Transportation that a bidder is not qualified or that the bidder's qualification has been suspended, without additional inquiry or verification. Any appeal, challenge, or dispute by a bidder relating to an adverse determination of the Department of Transportation shall be made to the Department of Transportation.
- 3) No error in any determination of a bidder's qualifications made by the Department of Transportation shall invalidate any decision of the Department of Natural Resources .
- 4) Independent of any determination by the Department of Transportation, the Department of Natural Resources by and through the Director of the Office of Mines and Minerals may declare a contractor ineligible for reclamation project contracts and suspend that contractor's eligibility for up to one year. The Contractor shall be sent written Notice of the Department's action. The following shall be sufficient grounds for suspension:
 - A) Material breach of contract.

- B) Delivery of materials or performance of services which do not comply with the specifications of the contractor's contract with the Department or any other State agency or department.
 - C) Failure to perform within the time specified in the contract.
 - D) Failure to keep offer firm for length of time specified by the bidder in his/her bid.
 - E) Failure to provide performance bond when required by invitation for Bids.
 - F) Collusion with other bidders or prospective bidders to restrain competitive bidding.
 - G) Giving information in an application for inclusion on a bidder's list that is later found to be false or materially misleading.
 - H) Any substitution of materials, even though of the same quality, without first securing the written consent of the State.
 - I) Bankruptcy or other evidence of insolvency of the bidder, such as the failure to timely pay suppliers and subcontractors.
 - J) Revocation of the Department of Human of Rights Public Contract number.
 - K) Failure to provide prevailing wages and benefits where required by law (Prevailing Wage Act [820 ILCS 130]).
 - L) Non-compliance with Equal Employment Opportunity contract provisions.
 - M) A recommendation from OSM that the contractor is not eligible for an AML contract under 30 CFR 874.16.
- 5) In all actions suspending a contractor's eligibility to bid on reclamation project contracts, the contractor may protest the Department's action by submitting to the Director of the Department a written statement of objection setting forth the facts and circumstances of the action which are alleged to be legally or otherwise objectionable. The written statement of

objection must be received by the Director within 14 calendar days after the objectionable action. The Director shall provide the Contractor with a hearing in accordance with procedures set forth in 17 Ill. Adm. Code 2530. Notwithstanding the provisions of Sections 2530.320 - 2530.350 concerning initiation of proceedings by the Department, the Contractor shall initiate the proceedings.

b) Notice to Bidders

- 1) Notice to Bidders and advertisement for bids shall be published in the "Illinois Procurement Bulletin" of the State of Illinois, inviting bids for the construction projects for which competitive bids may be received and which are in any one letting. Advertisements must appear at least once, no less than 14 days before the bid opening. The notice shall specify the date, time and place where bids are due; the date, time and place where the bids will be opened; the place where proposal forms may be obtained; the responsible State purchasing officer, the method of source selection, and information of how to obtain a comprehensive purchase description and any disclosure and contract forms.
- 2) The "Illinois Procurement Bulletin" of the State of Illinois for the Department will be the volumes published by the Department of Transportation.
- 3) A notice of all construction projects for which the Department is accepting bids at a Department of Transportation letting, shall be published in the Illinois Procurement Bulletin, at least 14 days prior to the time bids are due. The Bulletin is sent to all contractors who have prequalified with the Department of Transportation and to persons paying the established subscription price.

c) Contents of Proposal Forms

- 1) Upon request, the Department of Transportation will furnish the prequalified, prospective bidders a proposal form. This form will state the location and description of the contemplated construction and will show the estimate of the various quantities and kinds of work to be performed and/or materials to be furnished, and will have a schedule of items for which unit bid prices are invited. The proposal form will state the time in which the work must be completed, the amount of the proposal guaranty, labor requirements, and the date, time and place of the opening of

proposals. The form will also include Special Provisions and requirements that adapt the Standard Specifications to AML projects and provide for project specific conditions and requirements.

- 2) All papers bound with or attached to the proposal form are considered a part thereof and must not be detached or altered when the proposal is submitted.
- 3) The plans, specifications and other documents designated in the proposal form, including any addenda officially issued by the Department, will be considered a part of the proposal, whether attached or not.

d) Issuance of Proposal Forms

The Department shall direct the Department of Transportation to refuse to issue a proposal form for any of the following reasons:

- 1) Lack of competency and adequate machinery, plant and other equipment, as revealed by the financial statement and experience questionnaires required by the prequalification procedures of the Department of Transportation.
- 2) Uncompleted work which, in the judgment of the Department or the Department of Transportation, might hinder or prevent the prompt completion of additional work if awarded.
- 3) False information provided in the bidder's "Affidavit of Availability".
- 4) Failure to pay, or satisfactorily settle, all bills due for labor and material on former contracts in force at the time of issuance of proposal forms.
- 5) Failure to comply with any prequalification procedures of the Department of Transportation.
- 6) Default under previous contracts.
- 7) Unsatisfactory performance record as shown by past work, judged from the standpoint of workmanship and progress.

- 8) When the Contractor is suspended from eligibility to bid at a public letting where the contract is awarded by, or requires approval of, the Department of Transportation.
 - 9) When any agent, servant or employee of the prospective bidder currently serves as a member, employee or agent of a governmental body that is financially involved in the proposed work.
 - 10) When any agent, servant or employee of the prospective bidder has participated in the preparation of plans or specifications for the work.
- e) Amendment of Proposal Form
- 1) At any time prior to the time when proposals are due, the Department may amend the proposal form by deleting or adding items, changing quantities of any item, altering specifications or other elements of the proposal forms. In the event of a change of the proposal form, the Department shall notify all persons who have received proposal forms or have otherwise notified the Department of Transportation of an intention to submit a proposal, and shall, prior to the time proposals are due, provide all such persons with an amended proposal form. Any bidders who have already submitted a proposal shall be allowed to withdraw, resubmit or amend their proposal notwithstanding the provisions of subsection (m) of this Section. In amending a proposal form, the Department shall extend the time when the proposals are due when it determines that additional time will be required to compensate for the amendments.
 - 2) Unless the changes are so substantial that the initial invitation for bids no longer reflects an accurate estimate of the quantity of the work to be done or the character and quantity of the material to be furnished, no new invitation or advertisement shall be required.
- f) Interpretation of Quantities in Bid Schedule

The quantities appearing in the bid schedule are approximate and are prepared for the comparison of bids. Payment to the Contractor will be made only for actual quantities of work performed and accepted or materials furnished in accordance with the contract, unless bid quantities are accepted by both the Department and Contractor. The scheduled quantities of work to be done and materials to be furnished may each be increased, decreased, or omitted as provided in this Section.

- g) Examination of Plans, Specifications, Special Provisions and Site of Work
- 1) The prospective bidder shall, before submitting a bid, carefully examine the provisions of the contract. The bidder shall inspect in detail the site of the proposed work, investigate and become familiar with all the local conditions affecting the contract and fully acquaint itself with the detailed requirements of construction. Submission of a bid shall be a conclusive assurance and warranty that the bidder has made these examinations and that the bidder understands all requirements for the performance of the work. If his/her bid is accepted, the bidder will be responsible for all errors in the proposal resulting from his/her failure or neglect to comply with this subsection (g)(1). The Department will, in no case, be responsible for any costs, expenses, losses or change in anticipated profits resulting from such failure or neglect of the bidder to make these examinations.
 - 2) The bidder shall take no advantage of any error or omission in the proposal and advertised contract. Any prospective bidder who desires an explanation or interpretation of the plans, specification or any of the contract documents shall request an explanation or interpretation in writing from the Supervisor of Project Management in sufficient time to allow a written reply by the Department that can reach all prospective bidders before submission of their bids. Any reply given a prospective bidder concerning any of the contract documents, plans, and specifications will be furnished to all prospective bidders in the form determined by the Department including, but not limited to, an addendum, if the information is deemed by the Department to be necessary in submitting bids or if the Department concludes that the information would aid competition. Oral explanations, interpretations, or instructions given before the submission of bids unless at a prebid conference will not be binding on the Department.
- h) Preparation of the Proposal
- 1) Bidders shall submit their proposals on the form furnished by the Department of Transportation. The proposal shall be executed, and bids shall be made for all items indicated in the proposal form, except that when alternative bids are asked a bid on more than one alternate for each item is not required, unless otherwise provided. The bidder shall indicate, in figures, a unit price for each of the separate items called for in the proposal form; the bidder shall show the products of the respective

quantities and unit prices in the column provided for that purpose, and the gross sum shown in the place indicated in the proposal form shall be the summation of those products. All writing shall be with ink or typewriter, except the signature of the bidder which shall be written in ink.

- 2) If the proposal is made by an individual, that individual's name and business address shall be shown. If made by a firm or partnership, the name and business address of each member of the firm or partnership shall be shown. If made by a corporation, the proposal shall show the names, titles, and business addresses of the president, secretary, and treasurer, and the seal of the corporation shall be affixed and attested by the secretary.
- i) Combination Bids
- 1) A combination bid is a total bid received on two or more proposals. No combination bids other than those specifically set up by the Department will be considered. Separate proposal forms will be issued for each project in the combination so that bids may be submitted either on the combination or on separate units of the combination. The Department reserves the right to make awards on combination bids or separate bids to the best advantage of the Department.
 - 2) If a combination bid is submitted on 2 or more proposals, separate proposals on each individual contract shall also be submitted, and unless separate proposals are so submitted, the combination bid will not be considered. If the bidder desires to submit a combination bid, the bidder shall state, in the place provided in the proposal form, the amount of the combination bid for the entire combination.
 - 3) If a combination bid is submitted on any stipulated combination, and errors are found to exist in computing the gross sum bid on any one or more of the individual proposals, corrections shall be made, by the Department and the amount of the combination bid shall be corrected so that it will be in the same proportion to the sum of the corrected gross sum bid as the combination bid submitted was to the sum of the gross sum bid submitted.

The following provisions shall govern combination bidding:

- A) A combination bid which is submitted for 2 or more proposals and awarded on that basis shall have the bid prorated against each proposal in proportion to the bid submitted for each proposal.
- B) Separate contracts shall be executed for each individual proposal included in the combination.
- C) The completion date for all contracts awarded on a combination bid shall be the latest completion date designated in any one or more of the contracts included in the combination, unless otherwise provided in the contracts.

The working days for all contracts awarded on a combination bid shall be the largest number of working days designated in any one or more of the contracts included in the combination, unless otherwise provided in the contracts.

- D) An extension of time for any one or more contracts awarded on a combination bid shall automatically extend all contracts awarded on the combination.
- E) In the event the Contractor fails to complete any one or all of the contracts on the combination bid by the contract completion date plus any authorized extension, or the contract working days plus any authorized extension, the liquidated damages shall be determined from the schedule of deductions for each day of overrun in contract time as provided in the contract, based on the combination bid total, and shall be computed on the combination and prorated against the 2 or more individual contracts based on the dollar value of each contract.
- F) The plans and Special Provisions for each separate contract shall be construed separately for all requirements, except as described in subsections (a) through (e) above.

j) Rejection of Proposals

The Department reserves the right to reject proposals where the bidder has failed to meet the prequalification requirements of the Department of Transportation, or for any of the following reasons:

- 1) More than one proposal for the same work from an individual, firm, partnership, or corporation under the same or different names.
- 2) Evidence of collusion among bidders.
- 3) Unbalanced proposals in which the bid prices for some items are obviously out of proportion to the bid prices for other items.
- 4) If the proposal does not contain a unit price for each pay item listed, except in the case of authorized alternate pay items or lump sum pay items.
- 5) If the proposal form is other than that furnished by the Department of Transportation; or if the form is altered or any part thereof is detached.
- 6) If there are omissions, erasures, alterations, unauthorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the proposal incomplete, indefinite or ambiguous.
- 7) If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
- 8) If the proposal is not accompanied by the proper proposal guaranty.
- 9) If the proposal is prepared with other than ink or typewriter.
- 10) If the certifications contained in the proposal form are not completely executed.

k) Proposal Guaranty

- 1) Each proposal shall be accompanied by either a bid bond on the Department form contained in the proposal, executed by a corporate surety company satisfactory to the Department, pursuant to 44 Ill. Adm. Code 675.240, or by a bank cashier's check or a properly certified check for not less than five percent of the amount bid, or for the amount specified in the following schedule:

Amount of Bid	Proposal Guaranty
Up to 5,000	150

\$ 5,000 to	10,000	300
10,000 to	50,000	3,000
50,000 to	100,000	3,000
100,000 to	150,000	5,000
150,000 to	250,000	7,500
250,000 to	500,000	12,500
500,000 to	1,000,000	25,000
1,000,000 to	1,500,000	50,000
1,500,000 to	2,000,000	75,000
2,000,000 to	3,000,000	100,000
3,000,000 to	5,000,000	150,000
5,000,000 to	7,500,000	250,000
7,500,000 to	10,000,000	400,000
10,000,000 to	15,000,000	500,000
15,000,000 to	20,000,000	600,000
20,000,000 to	25,000,000	700,000
25,000,000 to	30,000,000	800,000
30,000,000 to	35,000,000	900,000
OVER	35,000,000	1,000,000

- 2) In the event that one proposal guaranty check is intended to cover two or more proposals, the amount must be equal to the sum of the proposal guaranties which would be required for each individual proposal.
- 3) If a combination bid is submitted, the proposal guaranties which accompany the individual proposals making up the combination will be considered as also covering the combination bid.
- 4) Bank cashier's checks or properly certified checks accompanying proposals shall be made payable to the Treasurer, State of Illinois.

1) Delivery of Proposals

Each proposal should be submitted in a special envelope furnished by the Department of Transportation. The blank spaces on the envelope shall be filled in correctly to clearly indicate its contents. When an envelope other than the special one furnished by the Department of Transportation is used, it shall be of the same general size and shape and be similarly marked to clearly indicate its contents. When sent by mail, the sealed proposal shall be addressed to the Department of Transportation at the address and in care of the official in whose office the bids are to be received. All proposals shall be filed prior to the time and at the place

specified in the Notice to Bidders. Proposals received after the time for opening of bids will be returned to the bidder unopened.

m) Withdrawal of Proposals

Permission will be given a bidder to withdraw a proposal if the bidder makes his/her request in writing before the time for opening proposals.

n) Public Opening of Proposals

Proposals will be opened and read publicly at the time and place specified in the Notice to Bidders. Bidders, their authorized agents, and other interested parties are invited to be present.

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

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 contract 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. 11581, effective August 17, 1998)

Section 1150.400 Contracts Involving an Expenditure of \$30,000 or Less

- a) When the contract for construction of a single reclamation project involves an expenditure of \$30,000 or less, the Department shall waive the prequalification and bidding requirements of Section 1150.300, where the imposition of such requirements would involve a disproportionate amount of work, time or cost in relation to the size and simplicity of the project.
- b) When full bidding procedures will not be utilized, the Department shall contact a minimum of three contractors, in the area in which the project is located, to request bids on the proposed work. The three contractors to be contacted shall be selected based upon proximity to the project, past experience, expertise and available equipment and manpower. The contract shall be awarded to the lowest responsible bidder considering conformity with specifications, availability for work and suitability of equipment.

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

SUBPART C: EMERGENCY CONSTRUCTION CONTRACTS

Section 1150.500 Emergency Contracting

- a) Waiver of Bidding Procedures

When any abandoned mine condition involves a danger to public health and safety and cannot await abatement under normal program procedures, the Department

shall waive the prequalification and bidding procedures of Section 1150.300 and the Department shall enter into construction contracts for abatement of the dangerous condition pursuant to the provisions of this Subpart.

- b) Use of Prequalified Contractors
 - 1) The Department shall maintain a list, revised at least annually, of contractors who are prequalified with the Department of Transportation for the type of construction work encountered in AML Emergency reclamation projects. The list shall also include Contractors who have demonstrated responsibility and competence through past performance on AML Emergency reclamation projects. Listed contractors shall be used on all projects unless:
 - A) the particular construction activity involved is not of a type normally performed by the listed Contractors; or
 - B) listed contractors cannot be contacted within a reasonable time; or
 - C) listed contractors are not available to begin work within a reasonable time.
 - 2) What constitutes a "reasonable time" shall be determined by the severity of the emergency or dangerous condition, and the cost of temporary protective measures.
 - 3) When listed contractors cannot be used, the Department may use any responsible contractor who appears to be qualified based upon the contractor's reputation, experience, and available equipment.
- c) Obtaining Bids
 - 1) When the full bidding procedures of Section 1150.300 will not be utilized, the Department shall attempt to contact at least three available Contractors to request proposals. The three Contractors to be contacted shall be selected based upon proximity to the project, past experience, expertise and available equipment and manpower.
 - 2) When inspection of the site conditions is necessary to understand the detail or complexity of the project, or when requested by a contractor, a pre-bid meeting may be held for interested contractors where the project will be

explained and proposal documents distributed. The pre-bid meeting shall be held at the project site whenever possible.

- 3) Interested contractors shall submit their proposals on the provided bid documents.
- d) Contents of Proposal Documents
 - 1) When full bidding procedures will not be utilized, the proposal documents will include:
 - A) The unsigned agreement, and all attachments thereto,
 - B) Plans, specifications, and any supplemental specifications, and
 - C) The itemized bid form to be filled out by the Contractor.
 - 2) The itemized bid form shall become the Contractor's proposal upon completion and execution by the Contractor.
- e) Award and Execution of Contract

The contract shall be awarded to the lowest responsible bidder considering conformity with specifications, availability for work and suitability of equipment.

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

Section 1150.600 Pre-Bidding Emergency Work

- a) Prequalification of Contractors
 - 1) When there exists a history of emergency events of a similar nature in a particular area, with a probability of continuing emergency events in that area, the Department may elect to pre-bid certain special items of construction and exploratory work, including, but not limited to:
 - A) exploratory drilling,
 - B) haulage of fill material, and
 - C) structural support work.

- 2) Only contractors or consultants who are prequalified with the Department of Transportation for the type of work involved, as set forth in Section 1150.200, or as provided in Section 1150.500(b), will be eligible to pre-bid for emergency work.
- b) Contracts for Pre-Bid Work
- 1) Items of work which are to be pre-bid shall be estimated as to labor, materials, equipment and incidentals required on a typical emergency project, and frequency of projects in a designated geographical area in a given time period.
 - 2) Bids shall be an offer to perform the work, according to specifications, for a specific cost per unit of work performed.
 - 3) Contracts for pre-bid work shall be bid, awarded and governed in accordance with the provisions of Subpart B.

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

SUBPART D: PROFESSIONAL SERVICES

Section 1150.700 Applicability

This Subpart is applicable to all architectural, engineering, or land surveying professional services provided to the Department pursuant to contract. This Subpart is limited in application to professional services which are covered by the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535]. Related services, that may be legally performed by persons not required to be licensed under the Illinois Architecture Practice Act of 1989 [225 ILCS 305], the Professional Engineering Practice Act of 1989 [225 ILCS 325], the Structural Engineering Licensing Act of 1989 [225 ILCS 340], or the Illinois Professional Land Surveyor Act of 1989 [225 ILCS 330], are not covered by this Subpart.

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

Section 1150.800 Prequalification

All architectural, engineering, or land surveying Consultants desiring to provide service to the Department in connection with the AML program, whether as prime Consultants or subconsultants, must be prequalified by the Department of Transportation for the categories of service identified within each project description.

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

Section 1150.900 Subcontracting

- a) Professional Services Consultants may subcontract no more than 50 percent of the project work.
- b) The Professional Services contract shall include the names and addresses of all subconsultants and the anticipated amount of money which they will receive pursuant to the contract. [30 ILCS 505/9.04]
- c) If at any time a Professional Services Consultant who had not intended to utilize the services of a subconsultant decides to utilize a subconsultant, the Department and the Consultant shall file an amendment to the original contract with the Comptroller stating the names and addresses of all subconsultants and the anticipated amount of money which they will receive pursuant to the original contract. [30 ILCS 505/9.04]

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

Section 1150.1000 Requests for Proposals

- a) Whenever an AML project requiring architectural, engineering, or land surveying services from outside the Department's professional staff is proposed, the Department shall provide no less than a 14 day advance notice published in the Illinois Procurement Bulletin setting forth the project(s) and services to be procured. The notice shall constitute a Request for Proposals and shall include a description of each project and shall state the time and place for interested Consultants to submit a letter of interest and designated portions of the Consultant's Qualifications Packet.
- b) Proposals received after the date and time specified in the Request for Proposals shall be returned unopened.

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

Section 1150.1100 Evaluation Procedure

- a) A selection committee, consisting of the Director of the Office of Mines and Minerals, the Manager of the AML Reclamation Division, and the Supervisor of the Project Management Section, or their designees, shall select firms to provide

architectural, engineering, and land surveying services on AML reclamation projects. The Committee shall evaluate the Proposals, taking into consideration the following qualification factors:

- 1) Ability of professional personnel.
 - 2) Past record and experience on AML projects and projects with similar professional disciplinary requirements.
 - 3) Performance data on file.
 - 4) Willingness to meet time requirements.
 - 5) Location of the Consultant's office in relation to the project site and the Department's AML office that will be managing the project.
 - 6) Workload of the Consultant.
 - 7) Any other qualifications based factors as the Department may determine in writing are applicable on a project specific basis.
- b) The Committee shall assign AML technical staff, having knowledge of the scope of work requirements, to provide preliminary technical review as necessary and appropriate to assure that all project considerations are taken into account.
- c) The Committee shall not seek formal or informal submission of verbal or written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation prior to selecting a firm for negotiation.
- d) The Committee may conduct discussions with and require public presentations by Consultants deemed to be the most qualified regarding their qualifications, approach to the project and ability to furnish the required services.

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

Section 1150.1200 Selection Procedure

- a) On the basis of evaluations, discussions and any presentations, the Committee shall select no less than three Consultants that it determines to be qualified to provide services for the project and rank them in order of qualifications to provide

those services. The Consultant ranked most preferred shall then be contacted in order to negotiate a contract for a fair and reasonable compensation.

- b) If fewer than 3 Consultants submit letters of interest and the Committee determines that one or both of those firms are so qualified, the Department may proceed to negotiate a contract as provided in Section 1300 of this Part.
- c) The decision of the Department shall be final and binding.
- d) Notice of Contract Awarded
Notice of each and every contract that is awarded shall be published in the next available Illinois Procurement Bulletin.

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

Section 1150.1300 Contract Negotiations

- a) The Department shall prepare a written description of the scope of the proposed services, entitled "Scope of Work", to be used as a basis for negotiations and shall negotiate a contract with the highest ranked qualified Consultant at a compensation that the Department determines in writing to be fair and reasonable. In making this decision, the Department shall take into account the estimated value, scope, complexity, and professional nature of the services to be rendered.
- b) If the Department is unable to negotiate a satisfactory contract with the Consultant that is most preferred, negotiations with that Consultant will be terminated. The Department shall then begin negotiations with the next ranked Consultant. If the Department is unable to negotiate a satisfactory contract with that Consultant, negotiations with that Consultant shall be terminated. The Department shall then begin negotiations with the next ranked Consultant.
- c) If the Department is unable to negotiate a satisfactory contract with any of the selected Consultants, then the Department shall re-evaluate the architectural, engineering, or land surveying services requested, including the estimated value, scope, complexity, and fee requirements. The Department shall then compile a second list of not less than three qualified Consultants and proceed in accordance with the provisions of this Subpart.
- d) A Consultant negotiating a contract with the Department shall negotiate any approved subcontracts for architectural, engineering, and land surveying services at compensation that the Consultant determines in writing to be fair and

reasonable based upon a written description of the proposed services of the subconsultant.

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

Section 1150.1325 Exemptions

a) Small Contracts

The provisions of Sections 1150.1000, 1150.1100, and 1150.1200 of this Part do not apply to architectural, engineering, and land surveying contracts of less than \$25,000.

b) The provisions of Sections 1150.1000, 1150.1100, and 1150.1200 of this Part do not apply to the procurement of architectural, engineering and land surveying services by the Department:

- 1) when the Department determines in writing that it is in the best interests of the State to proceed with the immediate selection of a firm; or
- 2) in emergencies when immediate services are necessary to protect the public health, safety and general welfare from the adverse effects of mining.

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

Section 1150.1350 Firm Performance Evaluations

The Department shall evaluate the performance of each Consultant upon completion of a contract. That evaluation shall be made available to the Consultant upon request, who may submit a written response, with the evaluation and response retained solely by the State. The evaluation and response shall not be made available to any other person or firm and is exempt from disclosure under the Freedom of Information Act [5 ILCS 140].

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

Section 1150.1400 Complaint Procedure

A complaint regarding any decision rendered by or action taken by the Department pursuant to this Part may be filed with the Department by submitting a written statement setting forth all the facts and circumstances together with the basis for making such complaint and specifically how

such decision or action is alleged to be in contradiction of this Part. Upon receipt of a complaint, the Department will determine whether, in the decision or action complained of, the Department or Staff has acted in accordance with this Part and advise the person submitting the written statement as to this determination and as to what additional action, if any, the Department will take. Provided, however, that any such complaint must be filed within 14 days from the time the person complaining becomes aware of the decision or the action is announced to the public, whichever occurs first.

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

Section 1150.1500 Equal Employment Opportunity; Nondiscrimination; Affirmative Action

It is the policy of the Department to execute and administer contracts hereunder in accordance with applicable State and Federal laws and regulations regarding nondiscrimination in the hiring of employees or firms, on the basis of race, color, religion, sex or national origin and regarding affirmative action. While every attempt is made to apprise potential consultants of the requirements this policy may impose upon them, the lack of such appraisal will not preclude the Department from requiring compliance with such applicable laws and regulations as a condition to continued payment for work completed under a contract with the Department; nor will the lack of such appraisal preclude the Department from requiring the return of such payments which would not have been made if, at the time of payment, the Department had been aware of any non-compliance. Applicable State and Federal laws and regulations are the Equal Employment Opportunity Clause contained in Section 202 of Executive Order 11246, as implemented by 41 CFR 60-1 (1985) and 43 CFR 17(1985); and the Illinois Department of Human Rights' "Procedures Applicable to All Agencies" (44 Ill. Adm. Code 750).

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