220-RICR-30-00-12

TITLE 220 - DEPARTMENT OF ADMINISTRATION

CHAPTER 30 - PURCHASES

SUBCHAPTER 00 - N/A

PART 12 - Rhode Island Department of Transportation Projects

12.1 Authority

This Part is promulgated pursuant to R.I. Gen. Laws §§ 37-2-9 and 37-2-13 by the Department of Administration. The Director of the Department of Administration has the authority to delegate certain procurement authority to the Department of Transportation when such delegation is in the best interest of the State and the public pursuant to R.I. Gen. Laws Chapter 37-2.

12.2 Purpose

The purpose of this Part is to set forth specific procurement procedures for RIDOT projects due to the unique nature of RIDOT projects and the federal and state oversight over such projects.

12.3 Definitions

A. For purposes of this Part, unless otherwise specified, all terms shall have the same meanings as ascribed in the State Purchases Act, R.I. Gen. Laws Chapter 37-2 or as ascribed in Parts 1 through 11 of this Subchapter.

B. For the purposes of this Part, the following terms are defined as set forth below:

1. "Actual cost" means the cost actually incurred by the Contractor or subcontractor in the performance of work. Actual costs will include labor, material, actual ownership cost of equipment or invoiced rental rates, verified payroll burdens, verified general and administrative overhead, and profit. While the Contractor is required to establish such costs with competent documentation (including but not limited to invoices, certified payrolls, financial statements) RIDOT may rely upon an audit of the Contractor's financial records by a RIDOT appointed auditor.

2. "Award" means the written acceptance by the State of the successful Proposal consisting of the executed Contract Agreement and Purchase Order.

3. "Bid documentation" as used in this clause means all writings, working papers, computer printouts, charts, computer data files associated with the

preparation and/or submittal of a bid proposal, and all other data compilation which contains or reflects information, data or calculations used by the Contractor to determine its bid submitted for a project. The term "bid documentation" includes material relating to the determination and application of equipment rates, overhead rates, labor rates, efficiency or productivity factors, arithmetic extensions, schedules for time or any determination of time related to project overhead, as well as quotations from subcontractors and material suppliers to the extent that such rates and quotations were used by the Contractor in formulating and determining the amount of the bid. The term "bid documentation" also includes any manuals which are standard to the industry used by the Contractor in determining the bid for a project. These manuals may be included in the bid documentation by reference, and will show the name and date of the Publication and the Publisher. The term does not include bid documents provided by RIDOT for use by the Contractor in bidding on a project.

4. "Calendar day" means each and every day shown on the calendar, beginning and ending at midnight.

5. "Completion" of the project occurs when:

   a. the work has been satisfactorily completed in all respects in full accordance with the Contract,

   b. and the Contractor has satisfactorily executed and delivered to the Engineer all documents, certificates, and proofs of compliance as required by the Contract.

6. "Contract bonds" means the approved form of securities, executed by the Contractor and its Surety or Sureties, guaranteeing complete execution of the Contract and all supplemental agreements pertaining thereto, and the payment of all legal debts pertaining to the construction of the project.

7. "Contract time" means the number of work days or calendar days allowed for completion of the Contract including authorized time extensions. When calendar date of completion is specified in the Proposal, the Contract shall be substantially completed on or before that date.

8. "Dig safe" means a one-call damage prevention system, established and funded by public utilities that own and operate underground facilities within the State, for the purpose of receiving and giving notice of proposed excavation activity pursuant to R.I. Gen. Laws Chapter 39-1.2, Excavation Near Underground Utility Facilities.

9. "Division of Purchases" means the division in the Department of Administration of the State of Rhode Island, the head of which is the State Purchasing Agent.

10. "Equipment" means all machinery, tools, and apparatus, together with the necessary supplies for upkeep and maintenance, necessary for the construction and completion of the Contract.

11. "Equitable adjustment" means an adjustment in the Contract price and time occasioned by the performance of work beyond that required by the original Contract, including extra work, changes, differing site conditions and changes in quantities. The equitable adjustment of Contract price will be based on an agreed upon lump sum, agreed upon unit prices, force account, or the actual cost of the work. The equitable adjustment of the Contract time will be based on a comparison of the time demonstrated by the Contractor's schedule and the time required for the execution of the work.

12. "Financial statements" means a set of reports detailing, on an annual, semi-annual or other prescribed time period, the financial activity of a company, corporation or other business venture. For purposes of Post Qualification and Award, these shall include a complete set of audited financial statements certified by a Certified Public Accountant (CPA) or, in the case of contracts valued at $500,000 or less, a bidder's financial references and an original copy of its current financial statement.

13. "Highway", "Street", or "Road" means a public way for purposes of vehicular and pedestrian travel, including the entire area within the Right-of-Way.

14. "Holidays" means in the State of Rhode Island legal holidays occur on New Year's Day; Martin Luther King Day; Memorial Day; Independence Day; Victory Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; and Christmas. If any holiday listed above falls on a Sunday, the following Monday shall be considered a holiday.

15. "Materials" means any substances specified for use in the construction of the project.

16. "Notice to contractors" means a public announcement inviting bids for work to be performed and/or materials to be furnished. Such notice will indicate with reasonable accuracy the nature and location of the work to be performed; the time and place of the opening of Proposals; and any Contract statutory provisions required by the Federal Government.

17. "Notice of tentative selection" means a written communication from the State to the successful bidder indicating the conditional intention of the State to award the Contract. This communication instructs the successful bidder to arrange a meeting with the appropriate State official within 15 days of the receipt of said notice for the purpose of executing the Contract

Agreement and Contract Bonds, and for the delivery of the required Certificates of Insurance.

18. "Plans" means 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 performed.

19. "Project" means the specific section of the highway or other specific property on which construction is to be performed as described in the Contract.

20. "Proposal" means the written offer of a bidder, on prescribed forms generated by the RIDOT's approved proposal preparation computer software, to perform the stated work at the prices quoted. As used herein, "Proposal" is synonymous with "bid."

21. "Proposal form" means the prescribed form, generated by the Quest Lite or other approved procurement software bid preparation software, on which the offer of a bidder is submitted.

22. "Proposal guaranty" means the security furnished with a Proposal to assure that the bidder will enter into the Contract if the Proposal is accepted.

23. "Quest Lite" means a computer software used by bidders to prepare a bid proposal.

24. "RIDOT" means the Rhode Island Department of Transportation.

25. "Specifications" means the compilation of provisions and requirements for the performance of the prescribed work and consisting of the following:

    a. Standard Specifications. A book of specifications approved for general application and repetitive use. Specifically, the Rhode Island Standard Specifications for Road and Bridge Construction of latest revision, also known as the "Blue Book".

    b. Supplemental Specifications. Approved additions and revisions to the Standard Specifications.

    c. Special Provisions. Additions and revisions to the Standard and Supplemental Specifications applicable for an individual project.

    d. The Required Contract Provisions for Federal-Aid Projects, when applicable.

e. Federal Wage Rates. A schedule of prevailing rates of wages of labor for the geographical area in which the work of the Contract is to be performed; compiled by, and issued from time to time by the Secretary of the United States Department of Labor.

26. "Specified completion date" means the date stated in the Proposal on which the Contract work, or specified portion thereof, is to be substantially completed.

27. "Supplemental agreement" means a Contract Addendum signed by RIDOT and the Contractor for the performance of work which is beyond the scope of the original Contract but which RIDOT elects to perform in conjunction with the existing Contract.

28. "Surety" means the legal entity, or individual other than the Contractor, executing a bond or bonds furnished by the Contractor.

29. "Work" means the furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of the project in accordance with the Contract.

C. Any and all contract terms will be defined within individual contracts entered into by the State and RIDOT.

12.4 BIDDING REQUIREMENTS AND CONDITIONS

A. Prequalification of Bidders

1. Prequalification of bidders shall be done in accordance with 23 C.F.R. § 635.110 and R. I. Gen. Laws Chapter 37-2, together with this Part.

B. Contents of Proposal Forms

1. The completed Proposal Form is generated by RIDOT's Quest Lite or other approved procurement software, which is furnished to the prospective bidder on compact disk (CD) as part of the Contract Bid Package with the Plans, Specifications and additional contract bid documents in accordance with the instructions set forth in the Notice to Contractors.

2. The Proposal Form consists of three parts.

a. The first part, the "Preamble," outlines the various understandings and agreements required of the prospective bidder as conditions to its offer to perform the stated work.

b. The second part, the "Bid Schedule," is that portion of the form where the various items of work are listed in a numbered sequence,

and includes the unit prices entered by the bidder and total bid amounts of each item, which are computed by Quest Lite or other approved procurement software.

c. The third part of the form is the "Signature Page," which includes the "Total, or Gross Sum of Bid" and which must be signed by the bidder or his authorized signatory. This signature signifies the bidder's acceptance of all requirements and conditions of the Contract and its agreement to substantially complete the work by a calendar date certain.

3. The Plans, Specifications and other contract bid documents designated in the Proposal Form will be considered a part of the Proposal.

4. When applicable, prospective bidders will be required to pay the RIDOT the sum stated in the Notice to Contractors for each set of Contract Bid Packages taken out by said bidders.

5. In the case of joint ventures, Contract Bid Packages must be taken by the joint venture; this does not, however, preclude entities comprising the joint venture from taking out Contract Bid Packages independently. In addition, the joint venture must be independently registered as a user of the RIDOT's Electronic Bidding System known as Quest Lite or other approved procurement software.

C. Interpretation of Quantities in Bid Schedule.

1. The quantities appearing in the Bid Schedule are estimated and are used for the comparison of Proposals.

2. Payment to the Contractor will be made for the actual quantities of work performed and accepted or materials furnished in accordance with the Contract.

3. The estimated quantities of work to be performed and the materials to be furnished may be increased, decreased, or omitted as deemed necessary or advisable by the Engineer, or as hereinafter provided.

D. Examination of Plans, Specifications, Special Provisions, and Site of Work.

1. The bidder is expected to carefully examine the site of the proposed work, the Proposal, the Plans, the Rhode Island Standard Specifications for Road and Bridge Construction, Supplemental Specifications, Special Provisions, Distribution of Quantities and Contract Forms before submitting a Proposal.

a. The submission of a Proposal will be considered conclusive evidence that the bidder has made such an examination and is

satisfied as to the conditions to be encountered in performing the work and as to the requirements of the Contract as defined in the Contract documents.

2. Boring logs and other records of subsurface investigations are available for inspection by bidders.

   a. It is understood that these documents are obtained and used for RIDOT design and estimating purposes only.

   b. These documents are made available to bidders so all have access to identical subsurface information available to RIDOT.

   c. These documents are not intended as a substitute for personal investigation, interpretations, and judgment of the bidders.

3. The locations of all utilities as shown on the Plans are approximate.

   a. The Contractor shall seek to determine the exact location of all existing utilities, both underground and overhead, by notifying Dig Safe in accordance with State law.

   b. Damage to utilities which are shown on the Plans or located by the respective utilities in accordance with the Dig Safe process shall be the responsibility of the Contractor.

   c. Damage to utilities and their associated service connections which are not shown on the Plans or located by the respective utilities in accordance with the Dig Safe process, will be paid for by RIDOT.

E. Preparation of Proposal.

1. The bidder's attention is directed to the fact that:

   a. All Proposals must be generated by the RIDOT's Quest Lite or other approved procurement software;

   b. All Proposals must be submitted to the Division of Purchases in the form of an electronic file on a compact disk (CD), which should be labeled and identified, at a minimum, with the bidder's name and the Rhode Island construction contract number of the project being bid; and

   c. All proposals must be submitted in hard copy format on forms generated by the RIDOT's Quest Lite or other approved procurement software

2. The bidder shall specify a unit price in words and figures, for each pay item for which a quantity is provided.

   a. All pay items for which a bidder is required to specify a unit price shall have a bid price of at least one cent.

   b. The Quest Lite or other approved procurement software requires a unit price to be entered for each pay item and will not allow a unit price of less than one cent to be entered as a bid price for an individual pay item.

   c. The bidder shall show the products of the respective unit prices and quantities written in figures in the column provided for that purpose and the total amount of the Proposal obtained by adding the amounts of all items.

   d. The total bid price is to be based on the unit prices written in words, correctly extended and added. In case of a discrepancy between the unit prices written in words and those written in figures, the unit prices written in words shall govern. The State reserves other rights as noted in § 12.5(A) of this Part, Consideration of Proposals.

3. When the Proposal contains a choice to be made by the bidder, the bidder shall indicate its choice in accordance with the instructions for that particular item. Thereafter, no further choice will be permitted.

4. Erasures and alterations to the Proposal shall not be permitted.

5. A copy of the joint venture agreement must be included with the Proposal when submitted. The joint venture agreement must clearly identify the entities which comprise the joint venture and the Officers of the joint venture.

6. The bidder's hard copy Proposal generated from Quest Lite or other approved procurement software must be signed in ink by an authorized signatory of the partnership, joint venture, corporation, or by such other agent of the Contractor legally qualified and acceptable to the State as hereinafter provided.

7. If the Proposal is made by:

   a. An individual: his or her name and mailing address shall be shown;

   b. A partnership: the name and mailing address of each partnership member shall be shown;

   c. A joint venture: the name and mailing address of each member or officer of the firms represented by the joint venture shall be shown.

(1) In the case of partnership and/or joint venture, the names and addresses of each member or officer of the partnership or joint venture must be listed in a separate attachment to be included with the submitted proposal.

d. By a corporation: the name of the corporation and the business address of its corporate office shall be shown.

8. All certification documents are contained within the bid file that is used by the Quest Lite or other approved procurement software.

a. By utilizing Quest Lite or other approved procurement software, bidders are agreeing that they have executed all required certifications enumerated in the Proposal Report labeled "DOCUMENT(S)" which is located at the end of the Proposal Form.

b. Failure to comply with the requirements of the Quest Lite or other approved procurement software will not enable the bidder to successfully complete the preparation of a bid proposal.

F. Proposal Guaranty.

1. A Proposal will not be accepted or considered unless accompanied by a guaranty in the form of an original Bid Bond made payable to the State of Rhode Island.

a. Bid bonds must be provided by surety companies licensed and authorized to conduct business in the State of Rhode Island.

b. All surety companies must be listed with the current Department of the Treasury, Fiscal Services, Circular 570.

c. The amount of the Proposal Guaranty shall be as designated in the Notice to Contractors.

2. When the bidder is a joint venture, the Proposal Guaranty must be made out to the name of the joint venture and all parties of the joint venture must be named in the execution of the Proposal Guaranty made by the same thereon. If there is more than one surety to the Bid Bond, each surety shall be named and execution made by same thereon.

3. Execution of the Bid Bonds will not be considered complete unless accompanied by a certified copy of the power of attorney for the surety's attorney-in-fact.

G. Irregular Proposals.

1. Reasons for Disqualification. The Division of Purchases may in consultation with RIDOT declare a proposal non-responsive and disqualify a bidder for any of the following irregularities:

   a. If the Proposal Form is obtained from any party other than RIDOT. (Proposal Forms are non-transferable.)

   b. If the Proposal is:

      (1) On a form other than that generated by RIDOT's Quest Lite software or other approved procurement software; or

      (2) If the form is altered or any part thereof is detached or incomplete.

   c. If there are unauthorized additions, unauthorized conditional or alternate bids, or irregularities of any kind which may tend to make the Proposal incomplete, indefinite, or ambiguous as to its meaning.

   d. If the bidder adds any provisions reserving the right to accept or reject an award.

   e. If the Proposal is not completed using the Quest Lite or other approved procurement software.

   f. If RIDOT determines that the low bid is both mathematically and materially unbalanced.

   g. If the Proposal is received after the time designated for the opening of bids.

   h. If the bidder fails to execute the required certifications enumerated in the Proposal Report labeled "DOCUMENT(S)" located at the end of the Proposal.

   i. If the bidder fails to submit an original Bid Bond, properly executed.

   j. If the compact disk (CD) data files and the hard copy submission do not match, unless such a discrepancy is determined to be the result of an error or malfunction within the RIDOT's Quest Lite or other approved procurement software.

   k. If a compact disk (CD) is not submitted.

   l. If the Proposal pages generated by the Quest Lite or other approved procurement software have been altered in any way.

2. Other Reasons for Disqualification. RIDOT and the Division of Purchases reserve the right to declare a proposal non-responsive and may disqualify a bidder for any of the following irregularities:

   a. If the bidder fails to include at least a minimum amount where required for a particular item.

   b. If the Proposal does not contain a "total or gross sum of bid," written in words and figures, in the space provided.

   c. If the Proposal is not properly signed.

   d. If the bidder fails to comply in every detail with the instructions provided in § 12.4(E) of this Part.

   e. If the Proposal is not submitted in a sealed envelope and clearly labeled as to its contents.

   f. If the compact disk (CD) containing the bidder's Proposal is unreadable by the Quest Lite or other approved procurement software.

H. Delivery of Proposals. Proposals shall be submitted in sealed envelopes. The envelope shall be labeled to clearly indicate its contents. When sent by mail, the sealed Proposal shall be addressed in care of the official in whose office the bids are to be received, all as indicated in the Notice to Contractors. Proposals shall be filed prior to the time and at the place specified in the Notice to Contractors.

I. Withdrawal or Revision Of Proposals.

1. A bidder may withdraw or revise a Proposal after it has been deposited with the Division of Purchases, provided the request for such withdrawal or revision is received by the Division of Purchases, in writing or by telegram, not later than two (2) hours before the time set for opening proposals.

2. Upon presentation of its written request at the proper time, a bidder's Proposal will be returned unopened. If a Proposal is withdrawn in accordance with this provision, the proposal guaranty shall be returned to the bidder.

3. Whether or not Proposals are opened exactly at the time set for such opening, a Proposal will not be received, nor may any be withdrawn, after the time set for the opening of proposals.

4. RIDOT reserves the right to revise the Plans, Specifications, other Contract Documents, the Proposal, and bid opening date for any project at any time prior to the time set for opening of Proposals. Such revisions will

be made by addendum, duly numbered and dated, and made accessible to bidders through the Division of Purchases' website known as the R.I. Vendor Information Program (RIVIP) at http://www.purchasing.state.ri.us/.

J. Combination or Conditional Proposals.

1. If RIDOT so elects, Proposals may be issued for projects in combination or separately, so that Proposals may be submitted either on the combination or on separate units of the combination.

2. The RIDOT and Division of Purchases reserve the right to make awards on combination bids or separate bids to the advantage of the State. No combination of Proposals, other than those as specified by RIDOT, will be considered.

3. Separate contracts will be written for each individual project included in the combination.

4. Conditional proposals will be considered only when specified in the Special Provisions.

K. Public Opening of Proposals. Proposals will be opened and read publicly at the time and place indicated in the Notice to Contractors or as amended by duly authorized Contract Addenda. Bidders, their authorized agents, and other interested parties are invited to be present at the opening of Proposals.

L. Disqualification of Bidders and Rejection of Proposals.

1. Mandatory Reasons for Disqualification. RIDOT will declare a Proposal unresponsive and shall disqualify a bidder for any of the following reasons:

a. More than one Proposal for the same work from an individual, partnership, corporation or joint venture under the same or different name;

b. Evidence of collusion among bidders. Participants in such collusion will not be considered for future proposals until re-qualified by RIDOT;

c. The making of false statements on prequalification documents and/or other required bidder's certifications;

d. Failure to comply with any prequalification requirements as set forth in § 12.4(A) of this Part;

e. Debarment by Federal or State authorities (including but not limited to debarment pursuant to 290-RICR-10-00-2); or

f. Failure to provide a properly executed Contract Bond.

2. Other Reasons for Disqualification. RIDOT and the Division of Purchases reserve the right to declare a Proposal unresponsive and may disqualify a bidder for any of the following reasons:

a. Lack of competency and adequate machinery, plant and other equipment;

b. Uncompleted work under Contract which, in the judgment of RIDOT, might hinder or prevent the prompt completion of additional work, if awarded;

c. Failure to pay, or satisfactorily settle, all bills due for the Prime Contractor's labor and material on Contracts in force with RIDOT at the time of the Bid Opening;

d. Failure to pay or satisfactorily settle Subcontractor Payments as provided for under the Contract/Blue Book where good cause, as determined by RIDOT, has not been accepted. Determination of failure to pay or satisfactorily settle Subcontractor Payments will be made within 30 days of bid opening;

e. Provided however that the bidder shall have the right to either pay or settle any such claims within said 30-day period.

f. Failure to comply with any post qualification regulations or requirements of either the RIDOT or the Division of Purchases;

g. Default under previous contracts;

h. Unsatisfactory performance on a previously awarded contract; or

i. Failure to reimburse the State for monies owed on any previously awarded contracts including those where the prospective bidder is a party to a joint venture and the joint venture has failed to reimburse the State for monies owed.

M. Material Guaranty. The successful bidder may be required to furnish a complete statement of the origin, composition, and manufacture of any or all materials to be used in the construction of the work, together with samples to be tested for conformance with Contract provisions.

1. Domestic Steel Products. The bidder is advised of the "Buy American" requirements that apply to domestic steel products as set forth in the Contract/Blue Book.

N. Bidding Certifications.

1. Non-Collusive Bidding Certification

a. The Certificates. Every Proposal submitted to RIDOT shall contain an Anti-Collusion Certificate for Contract and Force Account (Unsworn Declaration), duly subscribed to and affirmed by the bidder as true under the penalties of law.

b. Certifications. By submission of a Proposal, each bidder and each person signing the Proposal, which includes the Anti-Collusion Certificate on behalf of the bidder, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

(1) The prices in this Proposal have been arrived at independently without collusion, consultation, communication, or agreement with any other bidder or with any competitor for the purpose of restricting competition.

(2) Unless required by law, the prices which have been quoted in this Proposal have not been knowingly disclosed and will not knowingly be disclosed by the bidder, directly or indirectly, to any other bidder or competitor prior to opening of Proposals.

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a proposal for the purpose of restricting competition.

c. Non-Compliance. The Quest Lite or other approved procurement software will not enable a prospective bidder to complete the preparation of a Proposal unless the bidder certifies that he or she is in compliance with §§ 12.4(N)(1)(b)((1)) through ((3)) of this Part, above.

(1) The fact that a bidder: has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same prices being bid, does not constitute a disclosure within the meaning of § 12.4(N)(1)(b)((1)) of this Part.

(2) The Proposal submitted to RIDOT will be considered as authorized by the board of directors of the bidder. Such authorization will be deemed to include the signing and submission of the Proposal and the inclusion therein of the certificate as to non-collusion on the part of the corporation.

(3) The signers of the Proposal hereby tender to RIDOT a statement that the named Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action to restrain free competitive bidding in connection with the Proposal.

2. Certification Regarding Debarment, Suspension and Other Responsibility Matters.

a. The Certificate. Every Proposal submitted to RIDOT shall contain a Certification Regarding Debarment, Suspension and Other Responsibility Matters, duly subscribed to and affirmed by the bidder as true under the penalties of law.

b. Certification. By submission of a Proposal, each bidder and each person signing the Proposal, which includes the Debarment Certification on behalf of the bidder, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;

(2) Have not, within a three-year period preceding the submission of a Proposal been convicted of or had a civil judgment rendered for commission of fraud or a criminal offense in connection with obtaining or performing a pubic contract or transaction;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity;

(4) Have not, within the prior three-year period, had one or more public transactions terminated for cause or default.

c. Non-Compliance. In the event a prospective bidder is unable to certify to one or more of the conditions above, the bidder must attach a list of exceptions to the hard copy proposal generated by the Quest Lite or other approved procurement software.

(1) Exceptions listed will not necessarily result in denial of award, but will be considered in determining contractor responsibilities.

(2) The Quest Lite or other approved procurement software allows a prospective bidder to either certify that he or she is in compliance with the provisions outlined in

§§ 12.4(N)(2)(b)((1)) through ((4)) of this Part, or to not certify these provisions and instead provide with his Proposal a list of exceptions to document the reason(s) why he or she is unable to certify his or her compliance with these provisions. In the latter case, the software will generate a statement on the signature page of the Proposal that additional documentation is attached in support of the bidder's inability to fully certify to the provisions.

3. Disadvantaged Business Enterprise Affirmative Action Certificate.

   a. The Certificate. For all contracts containing provisions for the participation of Disadvantaged Business Enterprises (DBEs), prospective bidders shall be required to complete a Certification affirming compliance with the U.S. Department of Transportation and applicable State of Rhode Island regulations regarding participation by Disadvantaged Business Enterprises in the contract as contractors, subcontractors and/or suppliers of materials and services.

   b. Certification. By submission of a Proposal, each bidder and each person signing a Proposal which includes the DBE Certification certifies that the organization shall affirmatively seek out and consider Disadvantaged Business Enterprises to participate in the contract, and develop and submit for approval to RIDOT, within ten days from the receipt of bids, a Disadvantaged Business Enterprise Program in accordance with the provisions of the DBE Certification.

   c. Non-Compliance. The Quest Lite or other approved procurement software will not enable a prospective bidder to complete the preparation of a bid Proposal unless the bidder completes the DBE Certification form in the Proposal.

4. Disclosure of Lobbying Activities.

   a. The Certificate. Every bidder shall be required to certify and disclose, through the bid preparation process, any lobbying of Federal agencies, employees, officers, Members of Congress, or officers or employees of Congress or Members of Congress in connection with a covered Federal action.

   b. Certification. By submission of a Proposal, each bidder and each person signing a Proposal certifies that, to the best of their knowledge and belief:

      (1) No Federal appropriated funds have or will be paid, by or on behalf of the prospective bidder, to any individual or entity for the purpose of influencing or attempting to influence any

Federal agency, employee or officer thereof in connection with the awarding of any Federal contract, the making of a Federal grant or load, or any other form of a contractual nature.

(2) If any funds other than Federal appropriated funds have been paid for the purpose of influencing any Federal agency, employee or officer thereof, the prospective bidder shall complete and submit as part of the bid Proposal submission, Standard Form LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.

(3) The prospective bidder also acknowledges by submitting a bid Proposal, that the requirements of this certification shall also apply to all lower tier subcontracts which exceed $100,000, and that all subcontractors shall certify and disclose accordingly.

c. Non-Compliance.

(1) The Quest Lite or other approved procurement software will not enable a prospective bidder to complete the preparation of a bid Proposal unless the bidder certifies that he has met the requirements of §§ 12.4(N)(4)(b)((1)) through ((3)) of this Part.

(2) In order to complete a bid Proposal, the bidder is required to certify that no Federal appropriated funds have been used for lobbying purposes, to certify whether other sources of funds have been used for lobbying and if so, to report this activity on Standard Form LLL, which is included in the Quest Lite or other approved procurement software.

12.5 AWARD AND EXECUTION OF THE 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 estimated quantities shown in the Proposal by the unit bid prices. The results of such comparisons will be made available to the public.

2. RIDOT and the Division of Purchases reserves the right to correct arithmetic errors in the Proposals prior to comparison of said Proposals. In the event of a discrepancy between unit bid prices and extensions, the unit bid price shall govern.

3. RIDOT and the Division of Purchases reserves the right to reject any or all Proposals, to waive technicalities or to advertise for new Proposals.

B. Post-Qualification Requirements and Award Of Contract.

1. Submission of Post Qualification Requirements

a. All post qualification requirements shall be submitted as specified in the Solicitation prior to the award of the Contract.

b. As part of the post qualification submission, the Contractor must designate on the Transportation Management Plan the Contractor's TMP Implementation Manager for the Contract. The Contractor's TMP Implementation Manager, together with RIDOT's TMP Implementation Manager are the persons with the primary responsibility and authority for implementation of the Transportation Management Plan.

2. Financial Statements. The successful bidder will be required to submit a complete set of audited financial statements certified by a Certified Public Accountant (CPA). For contracts valued at $500,000 and under, the successful bidder is required to submit only its financial references and an original copy of its current financial statement.

3. Award of Contract.

a. Contract award, if it be awarded, will be made within sixty (60) calendar days following the opening of Proposals, or within the time specified in the Notice to Contractors, to the lowest responsible and qualified bidder who submits the lowest responsive Proposal.

b. The successful bidder will first receive a Notice of Tentative Selection. This written communication will indicate the conditional intention of the State to award the Contract and instruct the successful bidder to arrange for the execution of the Contract Agreement and Contract Bond and for the delivery of the Certificates of Insurance, all as hereinafter provided.

c. On Contracts jointly bid, Contractors will be held jointly and severally liable for the entire Contract.

d. Corporate bidders must furnish documentary evidence that they have met all legal requirements to transact business in the State of Rhode Island as a condition precedent to approval of the Contract.

C. Cancellation of Notice of Tentative Selection

1. Both RIDOT and the Division of Purchases reserve the right to cancel the Notice of Tentative Selection prior to issuance of Purchase Order without any liability against the State of Rhode Island.

D. Return of Proposal Guaranty

1. RIDOT and the Division of Purchases reserves the right to retain the surety of all bidders until either the successful bidder enters into the Contract or until such time as the award or cancellation of the Contract is announced. At that point sureties will be returned to all bidders.

2. A Contractor will not be released from the bidding obligation because of an alleged error in the preparation of the Proposal unless RIDOT and the Division of Purchases returns the Contractor's Proposal Guaranty.

E. Contract Bond

1. At the time of the execution of the Contract, the successful bidder shall furnish a Contract Bond in a sum equal to the full amount of the Contract.

   a. The Contract Bond shall guarantee the following:

      (1) Complete performance of the Contract;

      (2) Full payment for all materials and equipment; and

      (3) Full payment of all wages of labor.

2. The form of the Contract Bond shall be acceptable to both RIDOT and the Division of Purchases. In the event the surety fails or becomes financially insolvent, the successful bidder shall file a new Bond in the amount designated by the RIDOT within thirty (30) days of such failures or insolvency.

3. The Bond submitted to RIDOT and the Division of Purchases shall be provided by a surety both acceptable to RIDOT and licensed and authorized to conduct business in the State of Rhode Island. All surety companies must be listed with the current Department of the Treasury, Fiscal Services, Circular 570. Subsequent to award of Contract, RIDOT or Division of Purchases may call for additional security as required. Changes, additions, and modifications to the Contract may be made without the consent of surety.

F. Execution and Approval of the Contract.

1. The Contract shall be executed by the successful bidder, hereinafter referred to as the Contractor, in accordance with the instructions contained in the Notice of Tentative Selection.

a. At the specified time and place, the Contractor shall deliver the Contract Bond and required Certificates of Insurance, execute the Contract Agreement, and comply with all other stipulations set forth in said notice.

2. Receipt by the Contractor of the executed Contract Agreement and a Purchase Order signed by the RIDOT Director and/or the Purchasing Agent and the State Controller constitutes the official "Award" of the Contract.

3. The Contract execution date may be extended by mutual agreement of RIDOT and the successful bidder.

G. Failure to Execute Contract.

1. Failure of State to Execute Contract.

a. If the Contract is not executed within fifteen (15) calendar days following execution of the Contract Agreement and Bond by the Contractor, said Contractor shall have the right to withdraw its Proposal without penalty.

2. Failure of the Bidder to Execute Contract.

a. Failure of the successful bidder to execute the Contract Agreement and Contract Bond, deliver the required Certificates of Insurance; and comply with other stipulations within fifteen (15) calendar days of receipt of the Notice of Tentative Selection shall be considered revocation of said notice and require forfeiture of the Proposal Guaranty to RIDOT and the Division of Purchases. Such forfeiture shall not be considered a penalty, but rather a liquidation of damages sustained by the State.

b. Furthermore, the RIDOT and the Division of Purchases will not issue or receive subsequent proposals for construction work from a bidder who fails to execute a Contract until said bidder demonstrates its ability to obtain the necessary bonding and insurance coverage to the complete satisfaction of RIDOT.

c. In the event a Contract is not executed with the first-designated responsible bidder, RIDOT may either award the Contract to the next lowest responsible bidder or reject all bids and re-advertise the Project for the purpose of soliciting new Proposals.

H. Escrow of Bid Documentation. The placing in escrow of bid documentation in accordance with this Section shall be required only when specifically called for in the Notice to Contractors. Otherwise, this Section shall not apply.

1. Scope and Purpose.

   a. The purpose of § 12.5(H) of this Part is to preserve the bid documents of the Contractor for use by the parties in any claims or litigation between RIDOT and Contractor arising out of a Contract.

   b. The Contractor shall submit to RIDOT a legible copy of bid documentation used to prepare the bid for the Contract. Such documentation shall be placed in escrow with a banking institution or other bonded document storage facility and preserved by that institution/facility as specified in the following Sections of this Part.

2. Submittal and Return of Bid Documentation.

   a. Prior to execution of the Contract, the Contractor shall submit to RIDOT the required bid documentation in a sealed container. The container shall be clearly marked "Bid Documentation" and shall also show on the face of the container the Contractor's name and address, the date of submittal, the Project Number, the Contract Number, and Project Name.

3. Affidavit.

   a. In addition to the bid documentation, the Contractor shall submit an affidavit, signed under oath by a representative of the Contractor authorized to execute bidding proposals, listing each bid document submitted by author, date, nature, and subject matter.

   b. The affidavit shall attest that the affiant has personally examined the bid documentation, that the affidavit lists all of the documents relied upon by the Contractor in preparing its bid for this project, and that all such bid documentation is included in the submission to RIDOT.

4. Duration and Use.

   a. RIDOT and the Contractor will jointly deliver the sealed container and affidavit to a banking institution or other bonded document storage facility selected by RIDOT for placement in a safety deposit box, vault or other secure accommodation.

   b. The agreement with the document depository shall reflect that the bid documentation and affidavit shall remain in escrow during the life of the Contract or until the Contractor notifies RIDOT of his or her intention to file a claim or initiate litigation against RIDOT related to the Contract.

(1) Notification of the Contractor's intention to file a claim, or initiation of litigation against RIDOT, shall be sufficient grounds for RIDOT to obtain the release and custody of the bid documentation.

(2) In the absence of such action and provided that the Contractor has signed the final Standard Release Form, RIDOT shall instruct the document depository to release the sealed container to the Contractor.

c. In accordance with its representation that the sealed container placed in escrow contains all of the materials relied upon by the Contractor in preparing its bid, the Contractor must agree to waive its right to use any bid documentation other than that placed in escrow in disputes arising out of the Contract.

5. Refusal or Failure to Provide Bid Documentation

a. Failure to provide bid documentation in accordance with the requirements of this Section shall be considered revocation of the notice of award and forfeiture of the Proposal Guaranty to the RIDOT and the Division of Purchases.

6. Confidentiality of Bid Documentation

a. The bid documentation and affidavit in escrow are, and will remain, the property of the Contractor.

b. RIDOT has no interest in, or right to, the bid documentation unless notification of the intention to file claim is received or litigation ensues between RIDOT and Contractor.

(1) In the event of such notification or litigation, the bid documentation and affidavit shall become the property of RIDOT; provided, however, that these materials, and all copies made by RIDOT, shall be returned to the Contractor at the conclusion of litigation, or final resolution of all outstanding claims, upon execution of a final release.

c. Moreover, RIDOT shall make every reasonable effort to ensure that bid documentation to which it has gained access will remain confidential within RIDOT and will not be made available to anyone outside RIDOT, or used by a former RIDOT employee.

7. Cost and Escrow Instructions

a. The cost of the escrow will be borne by RIDOT. RIDOT will provide escrow instructions to the document depository consistent with this clause.

b. There will be no separate payment for compilation of the data, container or cost of verification of the bid documentation. All costs shall be included in the overall Contract bid price.

220-RICR-30-00-12

TITLE 220 - DEPARTMENT OF ADMINISTRATION

CHAPTER 30 - PURCHASES

SUBCHAPTER 00 - N/A

PART 12 - RHODE ISLAND DEPARTMENT OF TRANSPORTATION PROJECTS (220-RICR-30-00-12)

Type of Filing: Refile Capabilities

Department of State

01/04/2022	N/A
Regulation Effective Date	Original Signing Date
E-SIGNED by Department of State on 2021-12-20 10:57:19 EST	December 20, 2021
Department of State Initials	Department of State Date