



REQUEST FOR BID
RFB 2006-014

ADDENDUM NO. 2

To: Prospective Bidders

From: Llew F. Perry *Llew Perry*
Cooperative Educational Services

Date: March 31, 2006

CES received questions by e-mail on March 27, 2006 regarding its' solicitation RFB 2006-014 for JOC Construction Products and Services. The following items are in response to the questions asked.

Submitted By: Dan Gay
FacilityBuild
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Received March 27, 2006 2:32 PM

Question 1:

Contrary to what has been discussed in meetings with CES it is clear that this new RFB can and will be used for major construction & renovation work and is in direct competition with the previously awarded Contracts which FacilityBUILD, HB Construction and Centennial have been awarded. It is also contrary to the NM Procurement Code Section 1.4.1.6. And 1.4.1.15 (E). Since the contracts differ in allowing the use of the industry wide and acceptable standards regarding the use of General Conditions, the new contract is not comparable to the existing one. Any attempt at a comparison is not fair to the existing contract holders. It also adds an additional 3% fee to the School Districts of New Mexico's construction costs which seems to be contrary to what the State Procurement Code allows. Why should they pay more when they already have a contract which accomplishes the exact same goal for 3% less? Please explain your intent to cancel the previous contracts, run them concurrently or use the new one exclusively.

Background:

NMAC 1.4.1.6 OBJECTIVE: Section 13-1-29 C NMSA 1978 states that, the purposes of the Procurement Code are to provide for the fair and equal treatment of all persons involved in the public procurement, to maximize the purchasing value of public funds to provide safeguards for maintaining a procurement system of quality and integrity. The objective of this rule is to have the force and effect of law to implement, interpret or make statute law specific as it applies to the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978 and the purposes stated therein.

NMAC 1.4.1.15 COMPETITIVE SEALED BIDS REQUIRED:

All procurement shall be achieved by competitive sealed bids except procurement achieved pursuant to the following methods:

- A. competitive sealed proposals;
- B. small purchases;
- C. sole source procurement;
- D. emergency procurement;
- E. procurement under existing contracts; and
- F. purchases from anti-poverty program businesses.

CES Response:

RFB 2006-014 was developed, designed and issued as a different type of procurement vehicle that CES members could utilize to procure small and medium size construction projects. The following items will enumerate some of the program differences.

1. The Construction Task Catalog (CTC) has been developed specifically for each of the individual regions being bid and the unit cost are based on local labor and material costs.

In comparison the RS Means Book is based on national averages with regional adjustment multipliers by zip code.

2. As noted during the pre-bid conferences on pages 17 through 26 of the CTC book there is a clear explanation of how the unit costs were derived and what is and is not included as part of the unit cost. Also noted during the prebid conference the general conditions items are included by the bidder within their adjustment factor.

In comparison the RS Means book includes the overhead and profit as part of each line item and allows a variety of factors to effect the line item costs.

3. The soliciting for General Contractors to provide and perform the various construction tasks is just one part of the Job Order Contracting (JOC) program that CES is making available to its members. As part of the program CES issued a solicitation and awarded a contract to The Gordian Group to provide a web-based application that will be made available to all parties (Contractors/subcontractors, CES members and their consultants, CES, PSFA) to establish

project scope of works, prepare cost estimates and proposals, coordinate and administer the various JOC projects and conduct a majority of the transactions electronically. There are also consulting, training and support services being made available to all parties as part of the program to assist them with the various aspects of procurement process.

The existing construction program is a paper driven process and all parties do not have access to the RSM software/books. The other support services offered under the JOC program are not available under the existing program.

As can be seen by the above statements the programs offered are different and it is not CES' intention to have one program compete against the other, but to allow its' members to have two different procurement options available to them and based on their individual situations and requirements, to select the procurement option that best meets their needs.

In response to your comment regarding the 3% additional fee to the CES members. First, as noted above this is a different component of the CES/PSFA JOC program and they are paying a fee to receive access to the web-based application that will assist them in the development, coordination and administration of each individual project. They will have available to them a third party consultant to provide assistance in developing the project scope of work with the contractors and assisting in the review of the cost proposals to ensure that they are complete. The member is acquiring additional services, so you are correct in that there is no comparison. Finally, there are national statistics that indicate public agencies utilizing JOC programs across the country are experiencing ten to fifteen percent construction cost savings in acquiring those products and services.

It should also be noted that as in all of CES' programs offered to its' members, the member makes the decision on whether to utilize one of CES' programs or not.

In response to your concern regarding RFB 2006-014 being contrary to New Mexico Administrative Code NMAC 1.4.1.6 and NMAC 1.4.1.15 (E). The above explanations address the concerns expressed in this area.

Question 2:

The RFB is not clear on who provides the design work necessary for submitting for a permit. If your answer is that it is included in our multiplier please clarify in plain English how we are supposed to anticipate what the design price may be before we even know what the scope of work is.

Background:

Section II Scope of Work and Specifications, Categorical Terms and Conditions, Item 9, Page 53.

9. The procedure for initiating a job order (CES member's project) under the CES JOC program is as follows:

- a. As the need exists for performance by the contractor under the terms of this contract, the CES member will notify the Gordian Group's designated representative and the contractor of a project. The CES member and the contractor will schedule a site visit (Joint Scope Meeting) to discuss and develop a scope of work, determine the project requirement and compile all pertinent documents. From this meeting, the contractor and CES member shall come away at a minimum with the following:
- 1) Job order number and title
 - 2) The general scope of work
 - 3) Existing site conditions
 - 4) Definition and refinement of requirements
 - 5) Detailed scope of work
 - 6) Establishing requirements for design drawings, sketches, submittals, catalogue cuts, samples, shop drawings, etc.
 - 7) Tentative construction schedule (bar chart or critical path method [CPM] schedule)
 - 8) Preliminary quantity estimates
 - 9) Proposal due date
 - 10) Methods and alternatives for accomplishing work
 - 11) Access to the site and protocol for admission
 - 12) Staging area
 - 13) Presence of hazardous materials
 - 14) Liquidated damages

CES Response:

As noted within the solicitation and during the prebid conference, depending on the size and scope of the individual project the design paper work required to obtain approval of PSFA and NMCID can be handled two ways.

The CES member may have a design professional under contract and have them prepare and make available the design paperwork.

Or the CES member may ask the JOC contractor to provide the necessary design paper work to obtain PSFA approval and a permit form NMCID. In this case as noted during the prebid discussion, during the joint scope of work meeting the CES member will identify and indicate what design work will need to be provided by the JOC contractor and such work will be priced as a non pre-priced item within the JOC contractor's cost proposal. The design fees shall not be included within the adjustment factor.

Question 3:

The RFB has CES Terms and Conditions, PSFA Terms and Conditions, Gordians Terms and Conditions and District 3rd Party Agreements which have T&C's. They all have conflicts with each other. Whose T&C's are the final word?

Background:

Section II Scope of Work and Specifications, Item O RFB Special Terms and Conditions, Page 42

The terms and conditions listed below are in addition to the Listing of General Terms and Conditions listed herein and contain additional terms, conditions and specifications. If there is a conflict between the general terms and conditions and those listed below, the categorical terms and conditions will take precedence.

Exhibit 3: Agreement Between Owner, Buyer and Contractor, commonly referred to as a Three Party Agreement – Article I, The Contract Documents, Page 2

The Contract Documents consist of the RFB and Contractors response which resulted in Award to Contractor for these services and goods, this Agreement, Scope of Work, General Specifications, Time Lines, Budget, Addenda issued prior to execution of this agreement, and Preliminary Drawings and Modifications issued after execution of this Agreement. These form the Contract, and are fully a part of the Contract as if attached to this Agreement or repeated herein. The AIA Conditions of the Contract (General, Supplementary and other Conditions) are also incorporated as a part of this contract, where such items and terms are applicable. Should a conflict in these documents exist, then Articles in this contract, then the terms and conditions of the RFP shall prevail in said order. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modification, appears in Article 9.

CES Response:

Any disagreement or conflict in the terms and conditions stipulated for any individual project will be resolved as specified in the solicitation document and/or the CES Three Party Agreement.

Question 4:

Is this contract limited to PSFA funded projects only?

Background:

None Provided

CES Response:

No, this contract is not limited to PSFA funded projects.

Question 5:

Are you planning multiple awards?

Background:

Section I Instructions to Offerors, F. List of General Terms and Conditions, Page 26.

Multiple Awards: CES has determined that often contracts awarded to more than one supplier for comparable goods and services at various prices, best meet the many needs of the members. Hence, when in the opinion of CES, an award to one supplier would be impractical or fail to meet the total requirements of comparison or evaluation, multiple awards can be made.

Section IV Bid Forms, For I Comments of Multiple Awards and “Most favored-Customer” Contracts, Page 75.

"A multiple award is the award of a contract to two or more suppliers for furnishing an indefinite quantity of a like item or category of items, where more than one supplier is needed to meet the contract requirements for quantity, delivery, service, or product compatibility. It is important to understand that making multiple awards can evade central purchasing responsibilities for making buying decisions between and among products and vendors. Multiple awards transfer these decisions in large part or in whole to the program agencies, where they are likely to be made with less impartiality and purchasing proficiency. Written policy and rules are necessary to guard against laxness and abuses in connection with multiple awards."

CES Response:

As indicated within the solicitation and during the prebid conference, CES has established an evaluation committee for each region being solicited and it will be up to the committee to make a recommendation on the number of JOC contractors required to meet their needs within each region.

Question 6:

Are transportation costs allowable as a separate line item?

Background:

None Provided

CES Response

No. Transportation of materials to each jobsite is included within the unit cost for each item. The only transportation cost allowable in the CTC is the cost for hauling demolished debris to the nearest dump site.

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Received March 28, 2006 8:15 AM

Question 7:

Are subcontractors subject to CTC pricing and if so how do they add OH & P if needed?

Background:

None Provided

CES Response:

We suggest that the portions of the work that you intend to subcontract be reviewed by a local subcontractor to verify the CTC against local pricing. The subcontractor's review should include all associated cost when evaluating the CTC. The subcontractor should include all overhead and profit in the line item price. Therefore, any additional cost required above the CTC cost must be included in the respondent's adjustment factor.

Question 8:

Quotes & Proposals - Ref. Pg. 41, L-3 – Bonding & NMGRT shown as separate line items before or after G.C. multiplier. If after, how is 1% admin. fee to be included on these items? (Also reference “Administrative Fee” – Pg. 15).

Background:

Section II Scope of Work and Specifications, L Quotes and Proposals, Item 3, Page 41

Bonding cost and New Mexico Gross Receipt Tax (NMGRT) must be shown as separate line items at the bottom of the cost spreadsheet. This information can be handwritten or typed on the spreadsheet or can be entered and printed off of the JOC web-based application. The information submitted must clearly identify and contain all of the required details for each of the items make-up each individual construction project.

Section I Instruction to Offerors, F. Listing of General Terms and Conditions, Page 15.

Administrative Fee: CES' one percent (1%) administrative fee must be included in offeror's net price for construction, material, equipment item's price, labor rates, freight charges and bond costs. The CES administrative fee will be taken as a deduction off each line-item's cost when CES prepares its' purchase order to the contractor, unless an alternative pricing method has been approved by CES.

CES Response:

Bonding costs are to be included within the JOC contractor's adjustment factor and therefore please note the following change.

Section II Scope of Work and Specifications, L Quotes and Proposals, Item 3, Page 41

Change from:

Bonding cost and New Mexico Gross Receipt Tax (NMGRT) must be shown as separate line items at the bottom of the cost spreadsheet.

Change to:

New Mexico Gross Receipt Tax (NMGRT) must be shown as separate line items at the bottom of the cost spreadsheet. The management software, Progen®, allows the contractor the capability to create a single line item for the inclusion of the New Mexico Gross Receipt Tax (NMGRT).

Question 9:

Categorical Terms & Conditions:

- 9-1. Ref. Pg. 54, 2. d) – Clarify $F = \text{Allowable Profit} = (A+B+C) \times 10\%$ - This is to be used instead of the G. C. bid multiplier?
- 9-2 Clarify $G = \text{Subcontractor Allowance} = D \times 5\%$ - Is this the allowable G. C. mark-up on subcontractor price?
- 9-3. Does Administrative 1% fee apply to these non-priced tasks & if so where?

Background:

This question pertains to the use of a non prepriced item in a proposal. A non prepriced item is appropriate if the item cannot be found in the CTC. The formulas that are referenced on page 54 refer to the allowable markups for a non prepriced item.

CES Response:

Yes, the calculation in 9-1 is used instead of the G.C. multiplier.
Yes, the calculation in 9-1 is used as an allowable mark-up on the subcontractor.
Subsequently, the extension of this formula is then included in the cost proposal and no additional multiplier is applied, the item is entered with an adjustment factor of 1.00.

Question 10:

Offeror Qualifications - Ref. Pg. 61, D.1 – Evaluation Factors: Are these yes / no questions to be included in Tab 4 and does the vendor or reviewer answer these questions?

Background:

None provided

CES Response:

The above noted questions are provided to indicate to the respondents how their responses to the solicitation will be evaluated by the evaluation committee.

Please note Form J Offeror's Qualifications and Template – with the respondent's answers to all of the questions, along with any required backup documentation needs to be placed behind Tab 4.

Question 11:

Price & Cost Submittal: - Pg. 46, P4 – Define “environmental concerns”? Does environmental concerns need to reflect in the offeror's adjustment factor?

Background:

None provided

CES Response:

Environmental concerns are not included in the establishment of the unit price in the CTC. The Offeror is made aware that environmental concerns are not included in the price and therefore the Offeror must decide how to address this in the adjustment factor.