

2890.2000 COMPETITIVE BIDDING REQUIREMENTS FOR CONSULTANT SERVICES PROPOSALS.

Subpart 1. **Generally; dollar cost bidding.** The applicant must get written competitive proposals for consultant services according to this part. Items on the consultant proposal must be bid by dollar amount per item.

Subp. 2. **Prevention of collusion; requests for proposals.**

A. The applicant may not request from a consultant or receive from a consultant, directly or indirectly:

- (1) a list of consultants from whom to request competitive proposals; or
- (2) any information concerning consultants from which to request competitive proposals.

B. The applicant may not request or allow a consultant to determine which other consultant receives a request for a proposal.

C. A proposal obtained in a manner prohibited by this subpart is not a valid competitive proposal for the purposes of this chapter.

Subp. 3. **Excavation and soil disposal oversight before investigation.** An applicant is not required to seek competing proposals from consultants for the following consultant services when the services are performed as part of excavation and soil disposal oversight that occur before the first limited site investigation or full remedial investigation of the leak site occurs:

- A. AST soil sampling;
- B. composted soil sampling;
- C. contaminated stockpile soil sampling;
- D. excavation report preparation;
- E. excavation soil sampling;
- F. field work notification and scheduling;
- G. groundwater sampling (other than permanent monitoring well);
- H. land-treated soil sampling;
- I. sample shipping and transportation;
- J. state duty officer emergency contact; and
- K. utility clearance.

Subp. 4. **Limited site investigation or full remedial investigation.** The applicant must get at least two written competitive proposals for services for a limited site

investigation or full remedial investigation according to parts 2890.1000 to 2890.2200. The proposals must be on a form prescribed by the board according to parts 2890.1000 to 2890.2200. The proposals must comply with the requirements of parts 2890.1000 to 2890.2200. Costs for the following contractor services may be included in a proposal for the limited site investigation or full remedial investigation step of services: air sample analysis; drilling; groundwater sample analysis; and soil sample analysis.

A. Standard scope: unless the applicant knows, determines, or reasonably suspects that an investigation conducted according to the following assumptions and scope of work would not meet its intended purpose, limited site investigation costs must be bid based on the following standard assumptions and scope of work:

(1) Assumptions:

- (a) push probe technology will be used;
- (b) groundwater depth is 20 feet;
- (c) the release is from a single source;
- (d) utilities and subsurface obstructions do not inhibit the advancement of borings;
- (e) water and soil gas samples will be collected immediately after completion of the borings;
- (f) free product is not present;
- (g) level D safety precautions are adequate; and
- (h) the work will be completed according to agency and Minnesota Department of Health guidance.

(2) Scope of work:

- (a) perform necessary administrative tasks, including the completion of a health and safety plan;
- (b) complete necessary field and receptor surveys and risk evaluations in accordance with agency guidance;
- (c) advance push probes in accordance with agency guidance by installing five push probes to ten feet below grade, four push probes to 25 feet below grade, and one push probe to 40 feet below grade;
- (d) collect necessary soil, groundwater, and soil gas samples in accordance with agency guidance; and
- (e) prepare and submit an investigation report (LSI only) to the agency.

B. Nonstandard scope: when the applicant knows or reasonably suspects that an investigation conducted according to the standard assumptions in item A would not meet its intended purpose, the applicant must get a minimum of two written competitive proposals for a limited site investigation or full remedial investigation based on identical assumptions about the characteristics of the site. The proposals must specifically state the assumptions of the proposal concerning:

- (1) scope of work to be performed;
- (2) drilling technology to be employed;
- (3) soil conditions;
- (4) groundwater depth;
- (5) number of borings to be advanced;
- (6) drilling depths;
- (7) drilling intervals;
- (8) number of monitoring wells to be installed, their construction, depth, and protective completion;
- (9) number of soil samples to be collected;
- (10) number and type of analytes for which soil samples will be analyzed;
- (11) number of groundwater samples to be collected;
- (12) number and type of analytes for which groundwater samples will be analyzed;
- (13) number of soil gas samples to be collected;
- (14) number and type of analytes for which soil gas samples will be analyzed;
- (15) number of rounds of groundwater sampling to be conducted; and
- (16) type of investigation report to be submitted to the agency.

Subp. 5. Subsequent steps of services.

A. After the limited site investigation or full remedial investigation step of services, the applicant must get a written proposal for each necessary subsequent step of services in accordance with part 2890.1000 but is not required to seek competing proposals.

Costs for the following contractor services may be included in the proposal: air sample analysis, drilling, groundwater sample analysis, soil sample analysis, and system installation. The proposal must be submitted to the board's staff for review before the commencement of the proposed work. The applicant must not approve the proposal until

it has been reviewed by the board's staff. In conducting its review, the board's staff will consider the following items, if applicable to the particular proposal:

- (1) information from the agency regarding the proposed schedule and the equipment required for remediation;
- (2) historical cost data on excavation and other tasks involved;
- (3) data from cost-estimating software for active remediation tasks;
- (4) hourly rates and analytical and sample costs set by this chapter; and
- (5) maximum costs for competitively bid contractor tasks set by this chapter.

B. A written proposal for active remediation-system installation, start-up, and operation and maintenance must include the proposed costs for up to one year of system operation and maintenance. When the time period covered by the proposal expires, the applicant must obtain a new proposal for up to one year of ongoing system operation and maintenance, if necessary, until the agency determines that operation of the system can stop.

Subp. 6. **Switching consultants.** When the applicant wishes to hire a different consulting firm, the applicant must follow the procedures in items A and B.

A. If the limited site investigation or full remedial investigation step of services has not been completed, the applicant must get competitive proposals for the limited site investigation or full remedial investigation step of services according to subpart 4.

B. If the limited site investigation or full remedial investigation step of services has been completed, the applicant must get a written proposal for the appropriate step of services from the new consultant according to subpart 5.

Subp. 7. **Lowest cost proposal.**

A. Except as provided in part 2890.2100, total costs for a step of services that exceed the total costs in the lowest competitive proposal for a step of services based on identical assumptions about the characteristics of the site are prima facie unreasonable, unless the applicant provides documented proof to demonstrate that the selected consultant's qualifications are superior to those of the consultant who gave the lowest competitive proposal and justify the selection of a higher cost proposal. Among the factors relevant to the qualifications of a consultant are education, experience, and certifications and registrations. A prior business relationship between the applicant and consultant is not relevant to the qualifications of a consultant. The board must consider the cost for a consultant service in the lowest overall competitive proposal as a reasonable amount to charge for a specific task or item if the cost for that task or item does not exceed the maximum cost stated in parts 2890.1300 to 2890.1850.

B. When the proposals obtained by the applicant for the limited site investigation or full remedial investigation step of services are not based on identical assumptions about the characteristics of the site, the proposals are not valid competitive proposals.

Subp. 8. **Exemptions from competitive bidding requirements.** The applicant may be granted an exemption from the competitive bidding requirement of this part if the board determines that the applicant has documented that:

A. only one consultant was reasonably available to perform the necessary services and that the costs are not substantially in excess of costs typically charged for similar services by comparable consultants in the same geographical area;

B. the necessary services were required by an emergency that did not allow the applicant sufficient time to get proposals for necessary services; or

C. a standard contract entered into via an annual bidding or evaluation process results in lower corrective action costs than obtaining proposals on a per-job basis.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227; 28 SR 383; 30 SR 1003*

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