

CHAPTER 62-787

POLLUTION ACTION RESPONSE CONTRACTS FOR THE WASTE CLEANUP PROGRAM

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62-787.100 Applicability and Purpose.

(1) Purpose. This chapter establishes a process for procuring pollution action response contracts for the Department of Environmental Protection's Waste Cleanup Program, as defined below.

(2) Applicability. The following procedures shall be followed for the procurement of Continuing Contracts for pollution action response contracts. These rules do not apply to procurements for: 1) a contract for a single Project or Site that can be identified prior to the procurement or 2) a contract for a Project or Site where the construction cost or Professional Services fee exceed the limits set forth in s. 287.055(2)(g), F.S.

(a) In the event the Department declares a valid emergency the Department may enter into a contract with Firms who are not on a Continuing Contract.

(3) Within four years of the effective date of this rule, the Department will evaluate this rule to determine if the Department needs to repeal this rule in accordance with the procedures set forth in s. 120.54, F.S.

Rulemaking Authority 287.0595, 376.303, Law Implemented 287.055, 287.0595, 376.30, 376.301, 376.303, 376.305, 376.307, 376.3078 FS. History New _____.

62-787.200 Definitions.

All words and phrases defined in Sections 287.012, F.S. and 376.301, F.S., shall have the same meaning when used in this chapter.

(1) "Continuing Contract" means a Contract between the Department and a PRAC for an indefinite quantity of Pollution Action Response Services as described in the scope of services in the Continuing Contract for a period of

time defined in the Continuing Contract.

(2) “Department” means the Department of Environmental Protection.

(3) “Firm” means a partnership, corporation, or other legal entity that is certified under s. 471.023, F.S. to practice or offer to practice engineering.

(4) “Level of Effort” means the estimate that the PRACs will provide based on their Project assessment, including the cost(s) from lowest responsible and responsive bid(s) from non-Professional Services.

(5) “Oral Evaluation Committee” means Department employees selected by the Department head or designee to evaluate the oral presentation portion of the Request for Qualifications.

(6) “Pollution Response Action Contractor” or “PRAC” means a single entity that is responsible for a Project, including scheduling and coordination, in both pre-rehabilitation and rehabilitation phases, and generally responsible for the successful, timely, and economical completion of the Project. The PRAC shall also be responsible for procurement and management of all non-Professional Services contractor(s) used on a Project.

(7) “Pollution Response Action Services” means a pollution response action as defined in s. 376.301, F.S.

(8) “Professional Services” means pursuant to s. 287.055, F.S., those services within the scope of the practice of architecture, professional engineering, landscape architecture or registered surveying and mapping, as defined by the laws of the State, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

(9) “Project” means a response action as defined in s. 376.301, F.S.

(10) “Request for Qualifications” or “RFQ” means a process for competitive procurement performed in accordance with s. 287.055, F.S. and the procedures outlined in rules 62-787.300 and 62-787.400, Florida Administrative Code.

(11) “Site” means any “contaminated site” as defined in s. 376.301, F.S.

(12) “Task Assignment” means written authorization to use contracted services to conduct a defined set of activities related to a Project for a Site or multiple Sites under the purview of the Waste Cleanup Program.

(13) “Task Assignment Change Order” means a modification to a Task Assignment by written authorization prior to the expiration of the Task Assignment or agreement.

(14) “Technical Evaluation Committee” means Department employees selected by the Department head or designee to evaluate the technical presentation portion during the Request for Qualifications.

(15) “Waste Cleanup Program” means all response action activity, regardless of funding source, excluding response actions addressed pursuant to s. 376.3071, F.S.

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Rulemaking Authority 287.0595, 376.303, Law Implemented 287.055, 287.0595, 376.30, 376.301, 376.303, 376.305, 376.307, 376.3078 FS. History New _____.

62-787.300 Procedures for Determining Qualifications of Firms for Continuing Contracts.

(1) To be eligible to enter a Continuing Contract with the Department, Firms must, at a minimum:

(a) Meet all certification and license requirements imposed by law.

(b) Employ a professional geologist, who possesses and maintains a valid certificate of authorization to practice geology from the Florida Department of Business and Professional Regulation (DBPR) pursuant to s. 492.111, F.S.

(c) Employ a professional engineer who possesses and maintains a valid certificate of authorization to practice engineering from the Florida Board of Professional Engineers (FBPE) pursuant to s. 471.023, F.S., or demonstrate that the professional engineer is not practicing engineering under a fictitious name or a business organization, and therefore does not require a certificate of authorization.

(d) Have the capacity to perform or directly supervise the majority of the work at a Site in accordance with s. 489.113(9), F.S.

(2) The Department may require additional qualifications for Firms in its RFQ.

(3) Failure to possess any of the qualifications listed in subsection 62-787.300(1), F.A.C., or listed in the RFQ at the date the RFQ is due shall result in rejection of the Firm as unqualified.

(4) Pursuant to s. 120.57, F.S., an unqualified Firm will be advised of the right to petition for an administrative hearing of the decision to disqualify the Firm and shall be given a time certain within which to provide the petition.

(5) Within four years of the effective date of this rule, the Department will evaluate this rule to determine if the Department needs to repeal this rule in accordance with the procedures set forth in s. 120.54, F.S.

Rulemaking Authority 287.0595, 376.303 FS. Law Implemented 287.0595, 376.30, 376.301, 376.303, 376.305, 376.307, 376.3078 FS. History New _____.

62-787.400 Competitive Selection.

(1) The Department may issue an RFQ to qualify and award Firms a Continuing Contract for response action and Site rehabilitation as defined in s. 376.301, F.S.

(2) The Department may qualify and award multiple Continuing Contracts from a single RFQ, if doing so is determined to be in the best interest of the State.

(3) A Technical Evaluation Committee shall determine the relative ability of each Firm to perform the services required under the scope of services of the RFQ and provide each Firm with a relative score.

(4) A Technical Evaluation Committee shall select Firms in order of ranking and deemed to be most highly qualified to perform the required services based on the scores.

(5) The highest-ranking Firms selected by the Technical Evaluation Committee shall be eligible to participate in oral presentations. The number of Firms participating in the oral presentations shall be specified in the RFQ.

(6) An oral presentation topic, scoring guidelines, and a presentation date shall be provided to those Firms selected to participate in oral presentations.

(7) Firms will present the oral presentations to the Oral Evaluation Committee. The Oral Evaluation Committee shall evaluate all presentations and shall select Firms deemed to be the most highly qualified to perform the required services.

(8) The Oral Evaluation Committee will submit their recommendations to the Secretary of the Department or designee for approval.

(9) The Department will negotiate contracts with the number of Firms set forth in the RFQ. Failure of a Firm to negotiate a contract rate that is fair, competitive, and reasonable, shall result in that Firm no longer being eligible for a contract. The Department will then select the next highest-ranking Firm from the oral presentations to negotiate a contract.

(10) For single source purchases, the Department shall follow the procedures in s. 287.057(3)(c), F.S.

(11) Within four years of the effective date of this rule, the Department will evaluate this rule to determine if the Department needs to repeal this rule in accordance with the procedures set forth in s. 120.54, F.S.

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62.787.500 Contract Terms and Conditions.

(1) Non-Exhaustive List of Required Contract Terms. Each Continuing Contract issued pursuant to this chapter shall contain provisions that require:

(a) The PRAC to follow a competitive procurement process to obtain quotes from non-Professional Services contractors for each non-Professional Service required by a Task Assignment. The competitive procurement process must follow rule 60D-5, F.A.C., or alternate, but similar process pre-approved by the Department in writing. A minimum of three bids will be obtained, where practicable, for all subcontracted work. Exceptions to the minimum three-bid requirement would be: situations where only one (sole-source) or two subcontractors are available to provide the desired services or when the PRAC receives less than three responsive bids, proposals or replies. The PRAC will manage and assume responsibility for all work conducted by subcontractors under a Task Assignment. The Department retains the right to reject the use of any subcontractor prior to and during execution of the work under a Task Assignment.

(b) The PRAC is to select the lowest responsible and responsive non-Professional Services contractors and use that price in developing their Level of Effort for each Task Assignment.

(2) The PRAC must maintain the minimum qualifications required by this chapter and demonstrate its continued compliance with those requirements upon demand. Failure to meet this requirement shall result in immediate termination of the Continuing Contract.

(3) Payments, purchases, warrants, and invoices are subject to the provisions in Sections 215.42, 215.422, and 112.061, F.S.

(4) The PRAC must comply with s. 287.0585, F.S.

(5) Renewals and extensions of Continuing Contracts must be in compliance with s. 287.057(12) - 287.057(13), F.S.

(6) Task Assignments.

(a) Task Assignments may not be used for a Site in which the estimated construction cost or Professional Services fee for the Project exceed the limits set forth in s. 287.055(2)(g), F.S.

(b) Each Task Assignment incorporates all terms and conditions of the Continuing Contract. Task Assignments shall not be broader in scope than the Continuing Contract.

(c) Each Task Assignment shall outline a detailed scope of work that divides the services into quantifiable,

measurable, and verifiable units of deliverables that must be received and accepted in writing by the Department before payment.

(d) The parties shall specify and describe the work necessary to complete a Project in the Task Assignment.

(e) The Department reserves the right to require a performance bond on Tasks Assignments.

(7) Within four years of the effective date of this rule, the Department will evaluate this rule to determine if the Department needs to repeal this rule in accordance with the procedures set forth in s. 120.54, F.S.

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62-787.600 Assignment, Negotiation, and Modification of Task Assignments.

(1) The PRAC may be assigned Task Assignments from the Continuing Contract. There is no minimum amount of work guaranteed to any PRAC under a Continuing Contract. The Department shall assign work at its sole discretion as determined by the Department to be in the best interest of the State. In making a determination of the best interest of the State, the Department may consider a PRAC's workload, past performance, experience with similar tasks, and scheduling availability in making all assignments.

(2) Cost negotiations shall be addressed in each Task Assignment.

(a) Upon assignment of a Project, the PRAC shall negotiate a Level of Effort with the Department.

(3) Modification of Task Assignments.

(a) Should conditions alter the nature and extent of the work specified and described in the Task Assignment, and the alteration of such conditions causes greater or less cost and expense or time to perform the work required to complete the Project as specified or described and planned to be incurred in the PRAC's Level of Effort and negotiated cost, a modification shall be made by means of a Task Assignment Change Order to the Task Assignment time and/or Task Assignment amount.

(b) All adjustments to the Task Assignment amount resulting from a change in the work shall be determined by the measure of actual, or estimated out-of-pocket costs and expenses incurred or avoided by the PRAC for labor, materials, equipment, equipment rental, and overhead and profit thereon, for performing the changed work, or not performing the work.

(c) It is in the best interest of the State that the PRAC perform changes in the work and that bidding not be required

if the PRAC's performance and capability remain satisfactory at the time of a proposed Task Assignment Change Order and: (i)the change is within the general scope of the Continuing Contract and the Continuing Contract or Task Assignment contains a method of calculating overhead and profit caused by Task Assignment Change Order; or (ii)the change will reduce either the scope or size of the Project or the Task Assignment price, is an integral part of the Project that must be made to correct an unanticipated condition which is necessary to permit the Project to continue; and the PRAC agrees to a reasonable negotiated change in the Task Assignment price. The Department shall make a determination in the best interest of the State on the basis of these criteria for each proposed change in the work.

(4) The Department may solicit a cost proposal for a qualifying Project from any PRAC and may thereafter enter into a Task Assignment with that PRAC, for any of the services described in the scope of services contained in the RFQ and in the Continuing Contract. Under a Task Assignment, the PRAC will manage all work being conducted under that Task Assignment. This includes: pre-qualification of all subcontractors necessary for conducting work under the Task Assignment; selection of the lowest cost, responsive, responsible subcontractor for each aspect of the subcontracted work described within the Task Assignment; management of all selected subcontractors under the Task Assignment; and payment of all subcontractors following satisfactory completion of work described in the Task Assignment.

(5) Within four years of the effective date of this rule, the Department will evaluate this rule to determine if the Department needs to repeal this rule in accordance with the procedures set forth in s. 120.54, F.S.

Rulemaking Authority 287.0595, 376.303 FS. Law Implemented 287.0595, 376.30, 376.301, 376.303, 376.305, 376.307, 376.3078 FS. History New _____.