Section 2.2 Statewide Low Bid Contracts

Chapter 2.2 Statewide Low Bid Contracts

List of Revisions

August 25, 2017:

- Issuance of Chapter.

2.2 **Statewide Low Bid Contracts**

2.2.0 Authority

RSA 228.4 **-** State Transportation Projects

RSA 228.4a – Competitive Bidding

Federal Acquisition Rules Part 14 – Sealed Bidding.

Federal Acquisition Rules Part 16 - Types of Contracts

NH Office of Legislative Services, Administrative Rules, Chapter Tra 400

2.2.0.1 *Supersedes*
This document supersedes and replaces all previous procedures found in the Department's "Processing Construction, Consultant and Prequalification Low Bid Contracts" dated January 2002, including all individual Bureau contract procedures.

2.2.0.2 *Definitions:*

Agreement - A Low-Bid contract for services between the Department and an individual or firm (Consultant/Contractor). Generally the Department uses a Statewide *On-Call or Indefinite Delivery/Indefinite Quantity (IDIQ)* contract type. This is a contract for the performance of services on a variable number of Department projects using task order assignments, issued on an as-needed or on-call basis during the established contract period. The work performed can be at any project location in the state, and for certain tasks such as fabricated product inspection it may be outside the state.

Bid Opening - The date and time specified in the Bid Package when the Department will open all bids submitted for a particular solicitation to determine the bid results.

Bid Package - The Bid Package consists of the Agreement, and a bid sheet with work item tasks, estimated item quantities and/or work hours, and other information necessary to allow the Consultant/Contractor to submit a complete and comprehensive bid.

Bid Item Rate – A cost rate established by bid for a task or item of work based on either a unit of time, unit of measure, unit price, lump sum, etc. as defined in the contract. Rates generally include all costs of labor (salary, fringe benefits), indirect expenses (overhead, materials and equipment to perform the work) and profit.

Consultant/Contractor - An individual or firm providing contracted services to the Department.

Contract Coordinator - The assigned Department employee who manages the establishment of the Agreement and its implementation while it is in force.

Direct Expense – Costs incurred by the Consultant/Contractor in performing the assigned work that are not included in other reimbursable bid item rates and are chargeable as direct expenses according to the Agreement such as travel, subcontracted work tasks, etc.

Director - The Director of the Division that initiated the request for Consultant/Contractor services.

G & C - The Governor and Executive Council of the State of New Hampshire.

Lead Bureau – The Department bureau that initiates a solicitation for a technical services contract such as, but not limited to those described in Section 2.2.8.

Letter of Interest – The letter submitted by the Consultant/Contractor in response to a solicitation from the Department for certain technical services, which the Department uses as a basis for determining whether the firm does or does not qualify. Responses by Consultants/Contractors may be in other forms (e.g. e-mail message) that are deemed acceptable to the lead Bureau.

Negotiation - The process whereby the Department and the Consultant/Contractor come to agreement on the details of a Task Order Assignment under an existing Agreement with estimated hours/quantities and a total maximum cost of those services to be provided under the assignment.

Notice to Proceed - Notification by the Department to the Consultant/Contractor to begin work (as specified in the Agreement) for a Task Order Assignment.

Overhead - Those business expenses that are not directly attributable to a particular portion of the work or product (does not include wages, direct expenses or certain other costs), included in the Bid Item Rate.

Pre-Qualification – The Department process used to determine if the firm submitting a letter of interest has the experience, capabilities, staffing and ability to complete the proposed work.

Profit - An amount included in the Bid Item Rate provided by the Consultant/Contractor not attributable to business expenses such as labor, overhead, direct or other costs.

Qualified Bidders List – The letter generated by the lead bureau and approved by the Assistant Commissioner listing firms qualified to bid and who will be sent Bid packages for a technical services contract. Unqualified firms will also be included in the letter.

Scope of Work - A general description of possible work assignments in an Agreement to be performed as required by the Department. It is also a description of specific work to be performed in a Task Order Assignment.

Solicitation – The formal Department request to Consultants/Contractors to express their interest in performing specific technical services for the Department.

Task Order Assignment – A work assignment under an Agreement to the Consultant/Contractor by the Contract Coordinator or other authorized staff.

2.2.1 Selection Process Overview

The Statewide On-Call Low Bid Contract Selection Process is used for contracts that are established to provide technical services to the Department, and do not include any Engineering, Architect or Land Surveying services (i.e. services that require the stamping of plans or other documents by Professional Engineers, Architects or Land Surveyors). The Qualifications Based Selection process (See Chapter 2.1) is required on contracts that provide any of these professional services, even if they are only a small portion of the contract. This process also does not include Low Bid Construction contracts, which are

covered under a separate process. However this process could be used on a project specific contract if the size and complexity warranted a standalone contract.

The Bureau Administrator of the lead bureau has overall responsibility for the solicitation, advertising, bidding and management of Statewide Low Bid contracts. Duties are delegated to Bureau staff as needed for effective management of the contracts.

2.2.2 Establishing the Pre-Qualification Evaluation Team

The lead bureau will establish a pre-qualification evaluation team for the purpose of evaluating expressions of interest that are received. The team shall be composed of individuals designated by the Bureau Administrator and may include the Administrator. One team member shall be designated as the Contract Coordinator. See the Bureau Specific Contracted Services listed in 2.2.8 for the prequalification committee members assigned.

2.2.3 Solicitation

The Contract Coordinator will solicit letters of interest by any means appropriate for the required services from firms and/or individuals that have performed these services for the Department in the past, and from other firms and/or individuals known by the Department to provide the required services. At a minimum, a solicitation will be posted on the Department's website under the heading "*Projects Soliciting for Interest*". If deemed applicable, notice can also be included in statewide newspapers and/or trade journals. See Section 2.2.8 for Bureau specific requirements. The firm and/or individual should be further instructed to include in the letter of interest information that addresses the qualification criteria set forth in the solicitation. A sample solicitation is attached in the Appendix A.

2.2.4 Determining Qualified Bidders

The prequalification evaluation team will review the expressions of interest, basing the review upon the firm's or individual's ability to comprehend the assignment, capacity to perform the work in a timely manner, quality of work, experience and overall suitability for the required tasks. The lead bureau will generate a letter listing the qualified and unqualified bidders with supporting justification for the assessments. The letter will be routed through their Director, who will review the recommended list and supporting justification. If possible, the list should have three or more qualified firms listed. Once the review is completed, the letter is forwarded to the Assistant Commissioner for approval. Upon approval, the letter constitutes the Qualified Bidders List. A sample Qualified Bidder List approval memo is attached in Appendix B.

The approved Qualified Bidders List will remain valid for one year after the initial bid date. After the initial contract has been awarded, the list can be used to establish additional contracts of the same type within its period of validity without performing a new solicitation. Bid Packages can be sent to the prequalified firms on the list. The Consultant/Contractor who was awarded the initial contract can be excluded from subsequent contract bids within this period as agreed by the Director. After one year a new solicitation will be required to establish a new Qualified Bidder List.

2.2.5 Notification to Consultant/Contractor Not Pre-Qualified
Non-qualified firms will be notified of their status in writing by the Contract Coordinator upon approval of the Qualified Bidders List by the Assistant Commissioner.

2.2.6 Invitation to Bid
A Bid Package will be sent to all of the Consultants/Contractors on the Qualified Bidders List. The Bid Package will include the Agreement, which details the required services and the terms and conditions under which services are to be performed. It also includes a bid sheet based on a sample project with tasks, estimated item quantities and/or work hours, and other information necessary to allow the Consultant/Contractor to submit a complete and comprehensive bid. The list of tasks should cover the full range of activities that may be specified on the task order assignments under the Agreement. The sample project is also used to determine the Independent Government Estimate for the contract – see Section 2.2.7.1.

The firms and/or individuals will be instructed to respond to the sample project with a sealed bid delivered to the bid box in the Main Lobby of the John O. Morton Building by the specific bid date and time.

2.2.6.1 *Agreement Formats*
There are two types of agreement formats generally used for Statewide Low-Bid contracts, the P-37 and Article I-IV format, which are briefly described below. The format selected for use is at the discretion of the Bureau Administrator.

2.2.6.1.1 *P-37 Agreement*
The P-37 is a State of New Hampshire generic agreement that contains standard contract language. This type of agreement will also require as attachments, an Exhibit A (Scope of Work), Exhibit B (Basis of Payment and Contract Prices) and Exhibit C (Special Provisions including Insurance and Bond requirements). See Appendix D for an example.

2.2.6.1.2 *Article I-IV Agreement*
An Article I-IV Agreement has a format similar to that used for qualifications based selection contracts. The separate articles are broken down into the following areas: Article I – Description of Services to be Rendered, Article II – Compensation of Consultant/Contractor for On-Call Services, Article III – General Provisions, Article IV – Standard Provisions and Attachments (Certifications, etc.). See Appendix C for an example.

2.2.6.2 *Bid Item Rate*
The technical services to be provided in a Statewide On-Call Low Bid contract are identified by specific bid items explained in the Agreement. Each bid item has an associated unit of measure (e.g. hour, foot, each, etc.) that is used to determine how the services performed are measured and paid. As part of the

contract bid the Consultant/Contractor will provide a price for each item of work. Once the overall low bidder is determined, the individual price for each item of work provided by the low bidding firm becomes the Bid Item Rate for the approved Agreement. Bid Item Rates cannot be changed and are fixed for the term of the contract. The bid item rates applied to the quantity of services requested under a Task Order Assignment with the addition of direct expenses is the basis for determining the total cost of a task order assignment.

2.2.6.3 *Direct Expenses*

Under the Statewide On-Call Low Bid contracts, direct expenses are not listed as a work item and therefore not bid. They will be determined and agreed upon as contract task order assignments are made or as these expenses are automatically provided for under the agreement. Direct expenses for each task order will be identified by the Consultant/Contractor when an assignment is made and approved by the Department, prior to the beginning of any work on that assignment. See Section 3.1.4.8 for additional explanation of eligible direct expenses.

2.2.7 Bid Opening

All bids received by the closing date and time will be opened in public, and be reviewed for completeness and compliance with the requirements of the invitation to bid. From the acceptable bids received, the firm(s) and/or individual(s) submitting the lowest bid will be selected. The successful firm or individual will be notified to execute the Agreement with the Department. Unsuccessful bidders will be notified as to which firm or individual was awarded the Agreement. (In some cases there may be multiple contracts awarded from the same bid event.) Bid results will be posted on the Department's webpage.

2.2.7.1 *Independent Government Estimate*

The sample project used for establishing bidding quantities is also used to establish the Independent Government Estimate (IGE) for bid evaluation. To complete the IGE, the Contract Coordinator estimates a price for each work item and multiplies it by the associated quantity on the bid sheet. The subtotal of all work items are then added together to arrive at a grand total, which is the IGE for the contract. The IGE total cost derived from the sample project does not have to match the intended contract award amount; however, when the actual bids are opened, the low bid(s) total are compared to the IGE. If substantially higher than the IGE (>10%) then justification for accepting the bid must be included in the G&C letter. See Appendix for example.

2.2.7.2 *Multiple Contract Awards*

In some instances multiple contracts will be awarded as a result of one bid opening. In the case of multiple contract awards the contract amounts are usually tiered so the firm with the lowest bid gets the largest contract amount; the second lowest bidder gets the next largest contract amount, etc. Example: A solicitation was for 3 contracts of the following amounts: $300,000, $200,000 and $100,000. The lowest acceptable bidder would receive the $300,000 contract, the second acceptable bidder would receive the $200,000 contract and the third acceptable bidder would receive the $100,000 contract.

2.2.8 Bureau Specific Contracted Services

Each Bureau solicits for contracts that are specifically tailored to their individual requirements (see individual Bureau sections below). Even though these contracts are developed independently and may vary to some degree, each Bureau will have, as a minimum, several common elements. These include: solicitation of letters of interest; pre-qualification procedures; invitation to bid for all qualified firms/individuals as determined by the respective Bureau; sealed bids opened publicly, and; contract awarded to the firm submitting the lowest total bid – See 2.2.7.2 for multiple contracts.

2.2.8.1 *Bureau of Bridge Design*

The Bureau of Bridge Design routinely solicits for the following services under the Statewide Low Bid contract type:

2.2.8.1.1 *Structural Steel Inspection*

Structural steel inspection provides for the quality assurance inspection of steel bridge members fabricated in shop facilities in the United States for new and rehabilitation bridge construction projects, and occasional field inspection of steel bridge members in New Hampshire. Contracts may vary between one and three years and will be for a "not to exceed" dollar amount for each contract. The number of firms necessary to provide services is dependent upon the expected work load. The steel inspection prequalification committee consists of the Administrator of Bridge Design, Chief of the Existing Bridge Section, and the designated Contract Coordinator. See appendix for sample contract documents.

2.2.8.1.2 *Underwater Inspection Services*

Underwater inspection services provide the required documentation of riverbed and bridge foundation conditions to satisfy the underwater bridge inspection requirements of the National Bridge Inspection Program (NBIP) in accordance with the National Bridge Inspection Standards (NBIS) as codified in 23 CFR 650.311. Contracts may vary between one and three years and will be for a "not to exceed" dollar amount for each contract. The number of firms necessary to provide services is dependent upon the expected work load. The underwater inspection prequalification committee consists of the Administrator of Bridge Design, Chief of the Existing Bridge Section, and the Chief Bridge Inspector. See appendix for sample contract documents.

2.2.8.2 *Bureau of Environment*

The Bureau of Environment routinely solicits for the following services under the Statewide Low Bid contract type:

2.2.8.2.1 *Cultural Resources Services*

The Bureau of Environment will solicit expressions of interest in providing architectural history, and archaeology services from firms and/or individuals that have performed these services for the Department of Transportation in the past, and from other firms and/or individuals known to the Department to provide the required services. The prequalification team for the purposes of evaluating

expressions of interest consist of, at a minimum, the DOT's Cultural Resources Manager, the DOTS's Cultural Resource Specialist, the Administrator of the Bureau of Environment, up to (2) professional staff from NH Division of Historical Resources, and the Federal Highway Administration NH Division Environmental Program Manager. Either the Bureau of Environment Administrator or the DOT's Cultural Resource Manager will be designated as the Contract Coordinator. Contracts may vary between one and three years and will be for a "not to exceed" dollar amount for each contract. The number of firms necessary to provide services is dependent upon the expected work load. See appendix for sample contract documents.

2.2.8.2.2 *Wetland Services*

The Bureau of Environment will solicit expressions of interest in providing wetland/environmental evaluation services from firms and/or individuals that have performed these services for the Department of Transportation in the past, and from other firms and/or individuals known to the Department to provide the required services. The prequalification team for the purposes of evaluating expressions of interest consists of, at a minimum, the Wetland Program Manager, an Environmentalist, and the Administrator of the Bureau of Environment. Either the Administrator or the DOT's Wetland Program Manager will be designated as the Contract Coordinator. Contracts may vary between one and three years and will be for a "not to exceed" dollar amount for each contract. The number of firms necessary to provide services is dependent upon the expected work load. See appendix for sample contract documents.

2.2.8.3 *Bureau of Materials and Research*

The Bureau of Materials and Research routinely solicits for the following services under the Statewide Low Bid contract type:

2.2.8.3.1 *Geotechnical Exploration Services*

The Bureau of Materials and Research will review the projected workload related to geotechnical explorations and, in consideration of its other commitments, determine whether contracted services are required to obtain subsurface exploration services. The Bureau of Materials and Research will solicit expressions of interest from companies capable of providing geotechnical exploration services for the Department. The prequalification team for the purposes of evaluating expressions of interest consists of, at a minimum, the Geotechnical Section Chief and Bureau Administrator. One team member shall be designated as the Contract Coordinator, typically the Geotechnical Section Chief. Contracts are for a multi-year period and will have a set maximum dollar amount. The number of firms necessary to provide services is dependent upon the expected work load. See appendix for sample contract documents.

2.2.8.3.2 *Material Testing Services*

The Bureau of Materials and Research will solicit expressions of interest in providing materials testing services from firms interested in performing these services for the Department. The prequalification team for the purposes of evaluating expressions of interest consists of, at a minimum, the Materials Technology Section Chief and Bureau Administrator. One team member shall be designated as the

Contract Coordinator, typically the Materials Technology Section Chief. Contracts are for a multi-year period and will have a set maximum dollar amount for each contract. The number of firms necessary to provide services is dependent upon the expected work load. See appendix for sample contract documents.

2.2.8.4 *Bureau of Right-of-Way*
The Bureau of Right of Way routinely solicits for the following services under the Statewide Low Bid contract type:

2.2.8.4.1 *Fee Appraisal Services*
The Bureau of Right-of-Way will solicit expressions of interest in providing appraisal services. A solicitation of interest will be advertised in area and statewide newspapers and shall be sent to firms that have performed these services for the Department of Transportation in the past, and from other firms known to the Department to provide the required services. The prequalification committee for the purposes of evaluating expressions of interest consists of, at a minimum, the Bureau of Right-of-Way Administrator, the Right-of-Way Engineer, and the Chief Right-of-Way Appraiser, or their designee(s). One team member shall be designated as the Contract Coordinator. Once approved, the firms will be added to the Statewide Appraisal Contract for approval by Governor and Executive Council. The Department shall contact all appraisers approved to perform appraisal work for the Department regarding their participation in the Statewide Appraisal Program. Those firms that indicate such interest shall be required to execute a contract with the Department regarding the terms and conditions of appraisal assignments under this contract. The Department shall establish and maintain a Fee Appraiser Selection Committee for the appraisal assignments made through the Statewide Appraisal Contract. The committee shall consist of the Chief Right-of-Way Appraiser, Right-of- Way Engineer and two Appraisal Supervisors. Contracts will be for a three year period and will be for a “not to exceed” dollar amount for each contract.

2.2.8.4.2 *Property Management Services*
The Bureau of Right-of-Way will solicit expressions of interest in providing property management services to oversee the rental and maintenance of NHDOT owned properties within the following regions:

Region 1: Carroll, Coos, and Grafton Counties
Region 2: Cheshire and Sullivan Counties
Region 3: Belknap, Hillsborough and Merrimack Counties
Region 4: Rockingham and Stafford Counties

A solicitation of interest will be advertised in area and statewide newspapers and shall be sent to firms that have performed these services for the Department of Transportation in the past, and from other firms known to the Department to provide the required services. The prequalification committee for the purposes of evaluating expressions of interest consists of, at a minimum, the Bureau of Right-of-Way Administrator, the Right-of-Way Engineer, and the Chief Relocation Advisor, or their designee(s). One

team member shall be designated as the Contract Coordinator. One contract will be awarded in each of the four regions. Contracts will be for a three year period and will be for a "not to exceed" dollar amount for each contract.

2.2.9 Preparation of Contract and Governor and Council Resolution
See Section 2.1.22 and 2.1.23 for procedures.

2.2.10 Agreement Approval
Upon receiving Governor and Council approval, the Contract Coordinator shall notify the Consultant/Contractor in writing that the contract is approved and the work may proceed as directed. If the contract is tabled or disapproval by the Governor and Council, the Bureau Administrator shall take appropriate action under the direction of the Director.

2.2.11 Kick-Off Meeting
At the discretion of the Bureau Administrator, a kick-off meeting with the Consultant/Contractor may be requested so a review of the agreement, task order assignment procedures, invoicing procedures, etc. can be conducted prior to beginning work on the contract.

2.2.12 Contract Management
See Chapter 3.0 for the processes and procedures for managing the contract after the Notice to Proceed is given. Specific sections to review are: 3.1.3 On Call Contracts and Task Order Assignments, 3.1.4 Invoicing Procedures, and 3.1.5 Modifying (Amending) Agreements.

It should be noted that in Chapter 3.0 the terminology used may be slightly different than that used in this chapter. In Chapter 3.0 the terms Consultant and Consultant/Contractor are interchangeable as well as Project Manager/Lead Person is interchangeable with Contract Coordinator.