

BEFORE THE COLUMBIA GATEWAY URBAN RENEWAL AGENCY
CITY OF THE DALLES, OREGON

In the Matter of Amending)	
the Rules of the Columbia)	RESOLUTION
Gateway Urban Renewal Agency)	NO. 94-019
Local Contract Review Board)	

WHEREAS, the Columbia Gateway Urban Renewal Agency adopted rules and procedures concerning public contracts for the Contract Review Board by adoption of Resolution No. 91-008 on July 31, 1991; and

WHEREAS, certain revisions are needed to ensure the Board's rules and procedures are in compliance with recent legislation adopted by the Oregon State Legislature; and

WHEREAS, a review of the Model Contract Rules for Public Contracts adopted by the State of Oregon indicates the Agency needs to adopt revisions to its Contract Review Board Rules concerning bidder and proposer responsibility and responsiveness, rejection of bids and proposals, cancellation of Invitations to Bid or Request for Proposals, disqualification of bidders or proposers for nonresponsibility, appeals of disqualifications, and protest of awards; and

WHEREAS, staff has prepared revisions to the Contract Review Board's rules, which have been reviewed and approved by the Agency acting in its capacity as the Local Contract Review Board;
NOW, THEREFORE,

BE IT RESOLVED BY THE COLUMBIA GATEWAY URBAN RENEWAL
AGENCY AS FOLLOWS:

Section 1. Rules Amended. The rules adopted by the Columbia Gateway Urban Renewal Agency, acting as the Local Contract Review Board, by Resolution No. 91-008, shall be amended in the following manner:

A. On Page 1, Section 2. Definitions, after the definition for Competitive quotes, insert the following definition for Person:

Person. Any individual, firm, company, association, partnership, corporation, or other entity.

B. On Page 2, insert a new section entitled 2(A) Award of Contracts over \$15,000.00, which shall read as follows:

Section 2(A). Award of Contracts over \$15,000.00. Subject to the provisions of Section 3(3), any public contract where the amount of purchase exceeds \$15,000.00 shall be awarded by the Agency, acting in its capacity as the Board. The Agency shall have authorized the purchase through the budget process or by other special action. Following staff review of the bids or proposals received and staff's recommendation concerning the contract award, the Agency shall award the contract to the lowest responsible bidder or the best proposer who has submitted the proposal which is in the best interest of the Agency, based upon the criteria set forth in the request for proposal.

C. On Page 3, Section 3(5). Emergency Contracts Under \$25,000.00, in the second line, delete the words "contract review board", and insert the word "Board".

D. On page 8, Section 3(22) Auction Sales of Personal Property, on the second line, after the word "auction", insert, "after the property has been declared surplus."

E. On page 8, Section 3(23), Sales of Personal Property, on the second line, after the word "property", insert, "after the property has been declared surplus."

F. On page 9, Section 3(24), Donations of Personal Property, on the second line, after the word "property", insert, "after the property has been declared surplus."

G. On Page 9, after Section 3(24). Donations of Personal Property, insert a new subsection (25) Intergovernmental Agreements, which shall read as follows:

25. Intergovernmental Agreements. Contracts between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is a party to the contract for which

- a. The original contract met the requirements of ORS Chapter 279;
- b. The contract allows other public agency usage of the contract; and
- c. The original contracting agency concurs.

No written agreement under ORS Chapter 190 is necessary under this subsection if the agreement is between or among units of local government.

H. On Pages 9, 10 and 11, delete Sections 5, 6, and 8, and replace them with the following Sections 5, 6, 7, 8, 9, and 10.

Section 5. Responsive and Nonresponsive Bids or Proposals; Acceptance and Rejection.

- a. A "responsive bid or proposal" is one which complies in all material aspects with an Invitation to Bid or Request for Proposals (hereafter referred to as ITB and RFP, respectively) and with all prescribed public bidding procedures and requirements.
- b. A "nonresponsive bid or proposal" is, except in the case of minor informalities as provided in OAR 137-30-075(2), one which:
 - i. omits, or is unclear as to, the price;
 - ii. offers good or services of a quality or quantity different from that requested in the ITB or RFP;

- iii. requires a delivery date different from that required in the ITB or RFP;
 - iv. takes exception to the terms and conditions of the ITB or RFP, unless the ITB or RFP specifically allow for an exception to be taken;
 - v. is conditional upon the public contracting agency's acceptance of terms and conditions different from those contained in the ITB or RFP; or
 - iv. contains a deviation which, if the bid or proposal were accepted, would give the bidder or proposer a substantial advantage or benefit not shared by other bidders or proposers to the ITB or RFP;
- c. The Agency shall accept, and consider for award, only those bids or proposals which are responsive as defined in this rule. Nonresponsive bids or proposals shall be rejected, as provided in Section 6 of these rules.

Section 6. Rejection of Bids and Proposals. The Agency may reject any bid or proposal not in compliance with all prescribed public bidding procedures and requirements, and may, for good cause, reject any or all bids or proposals upon a finding that it is in the public interest to do so, based upon the criteria for rejection set forth in the Attorney General's Model Contract Rules. In any case where competitive bids or proposals are required and all bids or proposals are rejected, and the proposed contract is not abandoned, new bids or proposals may be called for as in the first instance.

Section 7. Cancellation of Invitations to Bid or Request for Proposals.

- a. Cancellation in the Public Interest. An invitation to bid or request for proposal may be canceled in whole or in part when it is in the public interest as determined by the Agency. The reasons therefore shall be made part of the bid or proposal file.
- b. Notice of Cancellation. When an invitation to bid or request for proposal is canceled prior to bid or proposal opening, notice of

cancellation shall be sent to all holders of bid or proposal documents. Such notice of cancellation shall:

- 1) Identify the invitation to bid or request for proposals;
- 2) Briefly explain the reason for cancellation; and
- 3) Where appropriate, explain that an opportunity will be given to compete on any resolicitation.

Section 8. Responsible Bidders; Responsibility Investigation; Disqualification of Bidders or Proposers for Nonresponsibility.

- (1) A responsible bidder is one who has:
 - a. Adequate financial resources to perform the contract, or the ability to obtain such resources. If a bond is required to insure performance of a contract, evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability. Evidence of ability to obtain required resources may also include a commitment or specific arrangement, that will be in existence at the time of the contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, or other resources;
 - b. The ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and public business commitments;
 - c. A satisfactory performance record. Evidence that the person has repeatedly breached contractual obligations to public and/or private contracting agencies constitutes strong evidence of nonresponsibility. The Agency shall consider the number of contracts involved and the extent of the deficiency of each in making this evaluation;

- d. Key personnel available of sufficient experience, as determined by the Agency, to perform the contract;
- e. The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain these skills and abilities, as required to satisfactorily perform the contract. These may include, as appropriate, such elements as production control procedures, property control systems, and quality assurance measures applicable to materials to be produced or services to be performed by the bidder and its proposed subcontractor(s);
- f. The necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
- g. Be otherwise qualified and eligible to receive the contract under applicable laws and regulations.

(2) The Agency has the right, prior to awarding any public contract, to make such investigation as is necessary to determine whether a bidder is responsible. This investigation may include an inquiry into the responsibility of the bidder's proposed subcontractors and suppliers. If a bidder fails to promptly supply, or have supplied, information required by the Agency during its responsibility investigation, such failure shall be grounds for finding of nonresponsibility.

(3) A responsible proposer is one who has the attributes, qualities or capabilities of a responsible bidder as set forth in Section 8(1)(a) through (g). The Agency has the right, as set forth in Section 8(2), to make such investigations as necessary to determine whether a proposer is responsible.

(4) If the prospective bidder or proposer is disqualified for nonresponsibility, the notice shall specify the reasons for the disqualification and shall advise the person that any appeal of the disqualification must be filed by giving written notice to the Agency's staff coordinator within three (3) business days after receipt of the notice.

Section 9. Appeals of Disqualifications. The procedures for appeals shall be as follows:

- a. Any person who wishes to appeal disqualification as a bidder or proposer shall, within three (3) business days after receipt of notice of disqualification, notify the Agency's staff coordinator that the person appeals the disqualification.
- b. Notices of appeal need not be in any particular form so long as they are in writing addressed to the Agency's staff Coordinator.
- c. Upon receipt of notice of appeal, the board shall notify the person appealing of the time and place of the hearing.
- d. The board shall conduct the hearing according to the provisions of ORS 279.045 (3) and shall decide the appeal within ten (10) days after receiving the notification from the Agency's staff coordinator and shall set forth in writing the reasons for its decisions.

Section 10. Protest of Award.

- a. Notice of Award. The written notice of award of the contract shall constitute a final decision of the Agency to award the contract if no written protest of the notice of award is filed with the Agency within ten (10) calendar days of the notice of award or such other period as provided in the Agency's solicitation. If a protest is timely filed, the notice of award is a final decision of the Agency only upon issuance of a written decision denying the protest and affirming the award. The notice of award and any written decision denying a protest shall only be sent to a vendor who either submitted a letter stating that no bid or proposal would be submitted at this time or a qualified bid or proposal prior to the deadline specified in the solicitation documents.
- b. Right to Protest. Any actual bidder or proposer who is adversely affected or aggrieved by the Agency's notice of award of the contract to another bidder or proposer on

the same solicitation shall have ten (10) calendar days after notice of award to submit to the Agency a written protest of the notice of award. The written protest shall specify the grounds upon which the protest is based. The period of ten (10) calendar days in which to submit a written protest may be shortened or lengthened by the Agency, as provided in the Agency's solicitation. In order to be an adversely affected or aggrieved bidder or proposer with a right to submit a written protest, a bidder or proposer must itself claim to be eligible for award of the contract as the lowest responsible bidder or best proposer and must be next in line for award, i.e., the protestor must claim that all lower bidders or better proposers are ineligible for award because they are nonresponsive or nonresponsible. The Agency shall not entertain a protest submitted after the time period established in this rule or such different period as may be provided in the Agency's solicitation.

- c. Procedure. The Agency staff coordinator shall promptly notify the Board as to the receipt of the protest of award. The Board shall schedule a hearing to review the protest, and shall decide to affirm or deny the protest within 14 days after receiving notification of the protest from the Agency staff coordinator. The Board shall issue a written decision on the protest.

PASSED AND ADOPTED THIS 23rd DAY OF AUGUST, 1994.

Voting Yes; Bob Briggs, Gary Honald, Bill Holt, Carolyn Wood, Les Cochenour and Richard Elkins.


Voting No; None.

Absent; Ray Koch and Mary Ann Davis

Abstaining; None


Chair

ATTEST:


Recording Secretary