Washington State Department of Transportation

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W. Michael Anderson
Assistant Secretary of Marine Operations
Executive Director

DATE: **SEPTEMBER 28, 2006**

TO: **INTERESTED PARTIES**

RE: **NEW 144 - AUTO FERRIES**
DESIGN - BUILD CONTRACT NO. 00-6674

NOTICE NO. 16

Following are Questions received on September 27, 2006 with Answers:

Q: "Volume II Paragraph 5.1 regarding protests, requires that "protests shall be filed in writing . . . . and other Proposers." Should we elect to protest terms of the RFP Documents we will need to know who are the other proposers.

On Monday September 25, Proposers were to submit a "Notice of Intent". Will WSF identify which of the three qualified Proposers filed the required notice?"

A: Yes. The required Notice of Intent was filed by J. M. Martinac Shipbuilders on August 24, 2006 and by Todd Pacific Shipyard on September 25, 2006.

Q: "Volume II Paragraph 5.1 states that Proposers may protest the terms of this RFP documents prior to the time for submission of final Technical Proposals...

Line 18 page 17 of 19 adds a requirement that protests must be received by WSF no later than 60 calendar days after issue date for RFP Volumes II through V.

Per Addendum No 17 the final Technical Proposal is due June 4, 2007. This infers that protests may be filed as late as June 3, 2007.

Addendum No 17 indicates that RFP Volumes II through V were issued on August 2, 2006. This implies that a protest must be received by October 1, 1006, however that is a Sunday.

Which date is correct?

If the October 1 date is correct, may we expect that WSF would consider a protest delivered on Monday October 2, 2006 would be on time and within the intent of Paragraph 5.1?"

A: Volume II, Paragraph 5.1, referenced in the question, includes line 18 on page 17 of 19. Paragraph 5.1 requires that protests of the terms of the RFP Documents be received by WSF no later than 60 calendar days after issue of the RFP Volumes II through V which occurred on August 2, 2006. The end date for the 60 day protest period is October 1, 2006 which falls on a Sunday. WSF will consider a protest delivered on Monday, October 2, 2006 as timely under Paragraph 5.1.

Attached are copies of two communications submitted to WSF by proposers which did not require a response from WSF.

1. Nichols Brothers Boat Builders 9/25/2006 letter notice not to participate

2. Todd Pacific Shipyard's September 20, 2006 e-mail relating to Contract Security.

Sincerely,

David H. Humphreys
Vessel Project Engineer
Washington State Ferries

Attachments

NICHOLS BROS. BOAT BUILDERS
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September 25, 2006

Mr. David H. Humphreys
Washington State Ferries, a division of
Washington State Department of Trasportation
2901 Third Avenue, Suite 500
Seattle, WA 98121-3014

RE: New 144 – Auto Ferries

Dear Mr. Humphreys:

Thank you for the opportunity to participate in the bidding process for the new 144 automobile ferries for the Washington State Ferries system.

Nichols Brothers Boat Builders has decided not to participate as a prime contractor in Phase II of the Request for Proposal, the Technical Proposal Development, however we will be participating as a substantial subcontractor with Todd Pacific Shipyards Corporation.

Yours truly,

Matthew J. Nichols

Humphreys, Dave

From: Bob Gilbert [Robert.Gilbert@toddpacific.com]

Sent: Wednesday, September 20, 2006 3:31 PM

To: Humphreys, Dave

Cc: Michael Marsh

Subject: WSF 144-Auto Ferry -- Bonding

Mr. Humphreys,

Provided below for your information and reference, is an e-mail from Todd's surety brokers, advising their understanding and position on the question of bonding vessel new construction projects. We need no reply; we provide this to share what we know about this topic with the intent of facilitating understanding and finding a solution for all concerned.

Robert A. Gilbert
Senior Director, New Construction
Todd Pacific Shipyards
206-623-1635 x 101

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From: Mark Jensen [mailto:MJensen@bnbseattle.com]
Sent: Tuesday, September 12, 2006 2:58 PM
To: Michael Marsh
Cc: Gary Stone
Subject: WSF Bonding - Surety Update

Mike,

As we have discussed, the surety requirements for the new WSF contract are going to be very difficult, even for Todd, to meet, if not impossible. There are a number of reasons, but first a little history of the surety industry.

As you are aware, insurance company's and the sureties rely heavily on re-insurance to spread their risk. They annually renew their re-insurance treaties, which includes an exclusion section on a number of types of risk that the re-insurers will not cover. Ten years ago, most surety re-insurance exclusion sections were part of one page, and they are now 3 pages, I'm told. There are a number of reasons for this, a large part of it can be attributed to catastrophic losses due to business failures such as Enron and K-Mart for example. Unfortunately there was also a large "shipbuilding" loss in the South, which I'm told was in the $150 million range. With the advent of these losses, the re-insurers took a beating, and decided to update, and expand, their exclusion list.

This means that the surety company has no ability to spread their risk, so they have to be prepared to take the entire loss in-house, if by chance there was a loss.

Your surety, St Paul/Travelers, is not in the habit of writing Shipbuilders, but has agreed to continue handling Todd, due to a long-term relationship, and their understanding of the strength of your balance sheet. Their continuation with Todd is limited to your bread and butter repair work, as well new construction as long as it is relatively short term, and of a size that is more the norm. Understanding that Todd has successfully completed a number of new ferry contracts, the last of which was for the three jumbo's. That was then, this is now.

The Design/Build aspect adds more risk as far as the surety is concerned, as does the length of these contracts.

They underwrite primarily on the strength of your balance sheet, and while they feel they can safely predict that Todd will be around for a number of years, no one wants to have their name on a number of bonds that go bad 5 or 6 years down the road. As with Enron, due to the size of those obligations, the heads of the surety company's were involved in the decision making process, some of whom lost their

jobs. They were heroes when they wrote the bonds, as at that time Enron looked like a slam dunk, but they were not able to predict that far down the road.
I have talked to all of the surety company's that can handle a bond of this size, and had a less than warm reception. While their would be substantial reward in the form of a hefty bond premium, no one is willing to take the risk. As a last resort we have talked about collateral in the form of an ILOC, but they are reluctant to do that as $30-$40 million of your borrowing power will be tied up for many years.
The first time these came out, I think the bond requirement was in the $13 million range, which was a lot more palatable to the sureties, as I'm sure it was for you.

Please let me know if you need any further information.

Mark A. Jensen
Senior Vice President
Brown & Brown