Washington State Department of Transportation

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W. Michael Anderson
Assistant Secretary of Marine Operations
Executive Director

DATE: **SEPTEMBER 25, 2006**

TO: **INTERESTED PARTIES**

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

NOTICE NO. 15

Attached to this notice are copies of an email from Todd Pacific Shipyard dated September 20, 2006, and a facsimile from J. M. Martinac Shipbuilding dated September 21, 2006. The following Questions were paraphrased from the attachments. Answers are provided:

Q: [Paraphrased] Will WSF issue Addenda that implement changes to the RFP on or before Wednesday, September 27 on each of the following topics: contract changes; bonding; changes in law or regulation; risks, price, and WSF budget; waiver of claims; and acceptance criteria?

A: WSF will not issue any further Addenda addressing the topics listed on or before September 27.

Q: [Paraphrased] If all the topics cannot be addressed by September 27, will WSF defer the Notice to Proceed and Phase II protest deadline milestones sufficiently to issue such Addenda, so that proposers will have a clear idea of WSF's contract requirements?

A: WSF will not defer the milestones. The RFP documents and previously issued Addenda and Notices provide the contract requirements and describe WSF intentions for further evaluation of certain issues and possible future revisions.

Q: [Paraphrased] Are there conversations ongoing between Todd Pacific Shipyards and WSF?

A: No. I am designated as the single point of contact for WSF on this RFP, the only conversations I have had, since the Kick Off Meeting on August 15, 2006, with any of the qualified proposers' representatives were contained in two short telephone conversations with Mr. Bronson, representing J. M. Martinac Shipbuilders, providing clarification about methods and timing of transmission of notices and addenda. As to the first conversation with Mr. Bronson, in response to a question regarding the format that Notices and Addendums will be issued in, I responded that they will be issued by e-mail and by facsimile. With regards to the second conversation, I clarified that the Addendum noted as being issued by Friday, September 22, 2006 referenced in my September 15, 2006 letter to Todd attached to Notice 13, was actually Addendum 18.

Q: [Paraphrased] In attached and previous correspondence two Proposers have requested a meeting between all Proposers and WSF to discuss issues related to the RFP, including but not limited to the topics listed in the first question above.

A: WSF does not choose to convene a meeting with the proposers and has determined that, under the present circumstances of this RFP process, written correspondence is preferable. Proposers are encouraged to continue to submit any questions to WSF in written form.

Sincerely,

David H. Humphreys
Vessel Project Engineer
Washington State Ferries

Attachments

Humphreys, Dave Question #11

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

Sent: Wednesday, September 20, 2006 12:10 PM

To: Humphreys, Dave

Cc: Scott Penner; nchoppin@worldnet.att.net; Michael Marsh; Steve Welch

Subject: 144-Auto Ferry – Open Issues

Dear Mr. Humphreys,

Todd Pacific Shipyards has reviewed your letter of September 15th, Addendum 18, and Notices 12 and 13. We found these documents helpful, timely and exhibiting welcome flexibility on some of these difficult issues. Unfortunately, some other issues were not resolved, and it is not clear when they might be.

WSF says they are evaluating future changes on the following topics, but there were few specifics or commitments. The brief summary below admittedly omits significant details, but I think largely reflects the situation:

- Changes – contemplated RFP revisions are minor (DD days); no commitment from WSF to restrain Changes was evident from the material provided.
- Bonding – WSF agrees to research the market and adjust if needed.
- Changes in law / regulation – WSF will study the issue.
- Risks, Price, WSF Budget – WSF will study escalation options.
- Waiver of claims – WSF will issue a revision to the RFP, but Addendum 18 did not contain it, and no details were provided.
- Acceptance criteria – no action.

On Friday September 29th, WSF's Notice To Proceed is scheduled to be issued. Receipt of the NTP will start the Phase II design clock, and demands contractors commence the expense of the design work. Sunday, October 1st, is the latest date to protest the RFP (making Friday 9/29 the effective last date); if this date goes by without protest, the RFP indicates the contractor loses significant rights to challenge the RFP.

Todd is very concerned about the timing as we approach these critical milestones. We do not know how soon WSF may respond in more detail to the remaining issues noted above. We prefer not to submit a protest simply because the deadline is imminent, out of ignorance of WSF's intentions.

- Todd requests WSF state whether WSF expects to issue Addenda that implement changes to the RFP in *each* of the topics noted above, on or before Wednesday 9/27 (thus providing Proposer's with a minimum opportunity to consider the Addenda before the cited milestones are reached).

- Todd further requests that if all of these topics cannot be addressed by Addenda by 9/27, that WSF defer these milestones sufficiently to issue such Addenda, so that Proposer's will have a clear idea of WSF's contract requirements.

In considering these requests, Todd emphasizes to you that none of these topics can be deferred. We consider a decision by us to proceed, while perhaps not ironclad, to be a meaningful commitment to the project, to the use of our time and money as well as that of WSF, and is not made lightly.

- For example, materials escalation and changes in law are not issues that can be addressed next July because (perhaps WSF thinks?) they only affect the bids, not the current design process. However, if the required contingencies to be added to the bids to cover these or any set of unresolved issues, renders the bids significantly beyond WSF's budget, then realistically there is no ferry project. If that is the case, it is clearly better by far to recognize this situation now, and decline participation *before* everyone's time and money is spent.

- Similarly, we do not see any sign of commitment by WSF to establish control processes to mitigate the history of excess Change Orders. We do not propose a zero changes environment, and do not seek a contractual prohibition on WSF-generated Changes. But without some kind of structured process to control this problem, we foresee a project out of control, and no bid contingency can possibly cover our risk. Again, from our perspective, this means

there is no reality to the project and we should stop now.

- Language permitting bonding requirement increases, limited to being proportional to increases in Contract value, is a common and entirely reasonable requirement assuming WSF is willing to bear the cost of the additional bonding. However, the idea that bonding can be increased at will, without limit, at any time, is ludicrous, and again requires a bid contingency WSF cannot afford. As a practical matter, if WSF chose to require added security due to a sense of increasing risk, the securities market would certainly recognize and shun the situation completely, making this a de facto termination-at-will clause for WSF.

- If bonding is simply unavailable in the marketplace, WSF has indicated they will provide alternative means of supplying security. However, without knowing when or how this will occur, it is not possible to know now whether proceeding with the costs of Phase II is worthy of expending your resources or ours. We recognize the complexity of this market. This alone may be sufficient basis for delaying the critical milestones, to provide time for WSF to resolve this issue. We recoil at expending funds and energy on the project until this is resolved.

- Regarding the waiver of claims topic, we assume this is not too terribly complex, and might also be resolved in an Addendum within a brief period of time. We strongly recommend doing so prior to initiating Phase II.

Please feel free to contact the undersigned at your convenience. We'd rather talk than write, so you may wish to have a meeting with all bidders to discuss these issues.

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

Received 9/21/
10:04 am
Question #12

J. M. Martinac Shipbuilding
401 East 15th Street
Tacoma, WA 98421

September 21, 2006

David H. Humphreys
Project Engineer
WASHINGTON STATE FERRIES, a division of
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
2901 Third Avenue, Suite 500
Seattle, WA 98121-3014

Re: RFP Contract No 00-6674
Request for Clarification

Dear Mr. Humphreys:

We received Notice No 13 which contains correspondence between WSF and Todd Pacific Shipyards. The tone of the letters causes us to believe that there are conversations between the two organizations. If there are conversations occurring we request that all of the qualified potential Proposers be included.

We share many of the same concerns raised in Todd's September 6, 2006 letter. Your September 15 reply indicates that you do not yet understand the gravity of the problems in the Request for Proposal as it currently stands. We echo Todd's suggestion that a meeting with all Proposers and WSF take place. Such a meeting might resolve our concerns and surely is in the best interest of all parties. I strongly feel that a meeting would be in the best interest of the taxpayers.

Your reply to Todd dated September 15, 2006 closes with a statement that an Addendum will be issued by Friday, September 22, 2006. In our conversation of this morning you clarified that the addendum mentioned was as Addendum No 18.

If an Addendum is issued in the next two days that contains information that causes us to modify either the TDPS or MDS we expect that you will delay the required submittal date or by some other means, allow us to make necessary changes to those documents.

Please indicate whether there are additional correspondence or conversations that exists that have not been provided J M Martinac.

Thank you for you assistance.

Very truly yours:

L. E. Bronson, P.E.
Chief Engineer

Cc: J. Martinac