National Association of Surety Bond Producers
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BY ELECTRONIC TRANSMISSION (carole.householder@usace.army.mil)

July 29, 2015

Ms. Carole Householder
U.S. Army Engineer District, Pittsburgh
Attn: CELRP-RC-P
W.S. Moorhead Federal Building
1000 Liberty Avenue, Room 2203
Pittsburgh, PA 15222-4186

Re: Solicitation Number: W911WN15B0005
Requisition/Purchase Request Number: W81ET450169815
Project: Construction of the River Chamber Completion at Charleroi Locks and Dam, Monongahela River, PA

Dear Ms. Householder:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of agencies employing professional surety bond producers, including licensed producers placing bonds throughout the United States, I am contacting you regarding the Solicitation for the Charleroi Locks and Dam River Chamber Completion project (Project). The Solicitation for the Project has recently come to our attention, prompting us to express our concerns to you about several significant issues that will likely have a detrimental impact on bidder capacity, robust competition, and project price. NASBP wants to bring to your attention certain terms and conditions in the Solicitation that will not inure to the Government's benefit, as they will inadvertently restrict competition and increase pricing.

The first issue is that the Solicitation is structured so that the proposals must include the base contract and awardable options that could extend the Project completion date into 2023, and farther, if the contract schedule is extended. In short, this dictates that the contract duration is potentially 8 years, a lengthy process from a surety underwriting perspective.

The second issue is that the one-year warranty for each of the phases of construction does not begin to run until substantial completion of the entire contract, including substantial completion of the base contract and any of the awarded options. Therefore, the warranties for earlier completed work are, in essence, extended for many years after the date of actual completion of the work.

The third issue is that the Solicitation does not include any provisions for government risk sharing, through price redetermination. It is not a reasonable allocation of risk to require the contractor to assume all risk of labor and material escalation for an 8-year project. Please understand that contractor margins for such projects typically are narrow, and with no escalation clause, the contractor's profit margin on such a project could be completely eliminated. Such a possibility is a real disincentive for potential bidders on the Project.

In addition to the extended duration and warranties and the lack of price redetermination allowances, there are other contract terms in the bid documents that are problematic. These include no mutual waiver of consequential damages and uncapped liquidated damages, with no limitation of liability. Contractors will add substantial contingencies to their bids to account for the uncertainty of damages.

For those few bidders that could manage such a complex project, with such unreasonable risks for the bidders and their sureties, they will submit highly inflated bids, to cover the many contingencies inherent in the base contract and awardable options, thereby ensuring the government will be paying much more than if there were redetermination of pricing.

For these and other reasons, NASBP is very concerned about the potential duration of the Project, the extended warranty periods, and the failure to include price redetermination language. Contractors and sureties evaluate the total risk exposure on a project, including the duration of the risk. The longer the duration, the more risk involved, which impacts pricing. Lengthy durations pose considerable problems for sureties, substantially increasing the uncertainty regarding underwriting projections. Simply put, sureties are less able to gauge the soundness and financial wherewithal of a particular construction company for periods extending too far into the future.

Any one of the above-referenced conditions would be problematic for a contractor and its surety, but the combination of such unreasonable conditions will dramatically restrict competition and almost certainly and unnecessarily drive up the cost of the Project. To account for fluctuation of prices over long periods of time, bidders will likely submit highly inflated bids. Such a situation is in no party's best interest, including the government and the taxpayers.

For these reasons, NASBP respectfully requests the USACE reconsider imposing such onerous terms and conditions and include more balanced risk allocation conditions between the USACE and the bidders.

I appreciate your consideration of NASBP's concerns, and I would be happy to answer any questions you might have.

Yours sincerely,

Martha L. Perkins

Martha L. Perkins
General Counsel

Attachment

cc: Colonel Bernard R. Lindstrom, Commander—Pittsburgh District, USACE
Mark H. McCallum, CEO, NASBP