

## **19A NCAC 02B .0165 ASBESTOS CONTRACTS WITH PRIVATE FIRMS**

(a) The North Carolina Department of Transportation maintains a staff capable of performing the normal workload for most of the functions required for the acquisition of rights of way for our highway systems. However, it is recognized that situations arise and certain specific needs exist which can best be met by the use of qualified consultants outside the Department.

These Rules are established for the preparation, execution and administration of contracts over ten thousand dollars (\$10,000.00) for asbestos inspections, asbestos removals, and structure clearings by consultant firms.

(b) The following are incorporated by reference including any subsequent amendments or editions:

- (1) 23 CFR 710 FHWA right of way regulations which contain some contracting requirements; and
- (2) 49 CFR 18.36, USDOT contracting regulations.

These documents are available for public inspection in the office of the Right of Way Branch. Copies may be obtained from the contract administrator at a cost of five dollars (\$5.00) for each document.

(c) Contracts on Specific Projects.

- (1) The Department may continue to let individual contracts on specific projects for inspections, abatements or structure clearings to a responsible bidder after publicly advertising for bids.
- (2) If the Manager of the Right of Way Branch determines that the project schedule does not allow time for public advertising the Department shall solicit at least three informal bids and may award a contract to the lowest responding qualified bidder.

(d) Retainer Contracts. In order to provide a method of accomplishing the required asbestos inspections, asbestos abatements, and structure clearings when the Right of Way Branch Manager determines that the project schedule does not provide enough time for a specific project contract to be put in place by the procedure in Subparagraphs (c)(1) and (c)(2) of this Rule, the Department may also contract with private firms as specified in Paragraphs (d) through (u) of this Rule.

(e) Due to the diversity of contract types, some portions of these Rules may not be fully applicable to all situations. The Right of Way Branch Manager shall be responsible for determining when waivers from portions of these Rules are justified. Guidelines for determining if a waiver is justified shall include:

- (1) The amount of time the Department has to secure bids for a specific project under Subparagraphs (c)(1) and (c)(2) of this Rule; and
- (2) The willingness of contractors retained under this Rule to perform work on a specific project. Any waiver from these Rules shall require approval of FHWA if Federal Funds are involved in the project.

(f) DEFINITIONS. The following definitions are for the purpose of clarifying and describing words and terms used herein:

- (1) Contract Administrator - The individual who is assigned the responsibility of initiating, negotiating, and administering the contracts for asbestos inspections, asbestos removals, and structure clearings.
- (2) Cost per Unit of Work - A method of compensation based on an agreed cost per unit of work including actual costs, overhead, payroll additives and operating margin.
- (3) Cost Plus Fixed Fee - A price on the actual allowable cost, including overhead and payroll additives, incurred by the firm performing the work plus a pre-established fixed amount for operating margin.
- (4) Cost Proposal - A submittal specifying the amount of work anticipated and compensation requested for the performance of the specific work or services as defined by the Department.
- (5) Firm - Any private agency, firm, organization, business or individual offering qualified asbestos inspections, asbestos removals, and structure clearings.
- (6) Lump Sum - A fixed price, including cost, overhead, payroll additives and operating margin for the performance of specific work or services.
- (7) Payroll Burden - Employer paid fringe benefits including employers portion of F.I.C.A., comprehensive health insurance, group life insurance, unemployment contributions to the State, vacation, sick leave, holidays, workers compensation and other such benefits.
- (8) Proposal - An offer by a firm to perform specific work or services for the Department at specified rates of compensation.
- (9) Scope of Work - All services, actions and physical work required by the Department to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all required labor, equipment, supplies and materials except as specifically stated.

- (10) Contract Amendment - A written supplement to the contract which modifies the terms of an existing contract.
- (11) Termination Clause - A contract provision which allows the Department to terminate, at its discretion, the performance of work, in whole or in part, and to make final payment in accordance with the terms of the contract.

(g) APPLICATION. These Rules shall apply to all retainer contracts for asbestos inspections, asbestos removals, and structure clearings obtained by the Right of Way Branch of the Department of Transportation under the authority of G.S. 136-28.1(f) and in accordance with the provisions of G.S. 130A-444 through 130A-451.

(h) SELECTION COMMITTEE. The Committee shall consist of the Right of Way Branch Manager or his designated representative, the State Right of Way Agent or his designated representative, and at least one employee of the Department's Preconstruction Unit or Construction Unit professional staff designated by the Right of Way Branch Manager, and shall be chaired by the Right of Way Branch Manager or his representative.

(i) SELECTION OF FIRMS. On a yearly basis (or more often if needed), the Department shall advertise for firms interested in performing asbestos inspections, asbestos removals, and structure clearings for the North Carolina Department of Transportation. The advertisement shall be published in the North Carolina Purchase Directory. The response time will normally be two weeks after the advertising date. The response shall include copies of the numbered certifications of employees certified by NC Department of Health and Human Services, Division of Public Health Asbestos Hazard Management Program to perform asbestos inspections, copies of the firm's latest brochures, and such similar information related to the firms qualifications.

Evaluation of the firms expressing interest will be based on the following considerations:

- (1) Experience, education, reputation, and required certifications of staff in the fields of expertise required by the contract including inspection, abatement, and structure clearings;
- (2) Number of staff available to perform the services required by the contract including inspection, abatement, and structure clearings;
- (3) Financial ability to undertake the proposed work;
- (4) The firm's accounting system including ability to identify costs chargeable to the project;
- (5) Past performance by the firm on previous right of way acquisition contracts including meeting the time schedule for the work; and
- (6) Equipment necessary to perform the required services.

The Selection Committee shall, on the basis of the criteria of Subparagraphs (1) - (6) of this Paragraph, select a sufficient number of firms for contract negotiations in order that those negotiations will produce a sufficient number of contracts to handle the anticipated work over the next year. The number of firms shall be determined prior to advertising.

(j) REQUEST FOR PROPOSALS. Each selected firm shall be requested by the contract administrator to submit a proposal which provides for:

- (1) Unit Cost for inspection and lab analysis, if any;
  - (A) per unit of less than 800 SF (minimum of 4 samples - to include out buildings, signs, barns, etc.);
  - (B) per unit of 800 SF to 2000 SF (maximum of 8 samples);
  - (C) per unit of 2000 SF to 5000 SF (maximum of 10 samples); or
  - (D) per unit of 5000 SF or more (subject to adjustment if approved by the Department); and
- (2) a per unit cost for Final Visual Inspection of abated improvements including air monitoring; and
- (3) a per unit abatement price - to a maximum of 200 SF or LF;
  - (A) Non-Friable Asbestos;
    - (i) per square foot of asbestos materials; or
    - (ii) per linear foot of asbestos materials
  - (B) Friable Asbestos;
    - (i) per square foot of asbestos materials; or
    - (ii) per linear foot of asbestos materials; and
- (4) a per unit cost for general clearings;
  - (A) Residential (up to 1,500 SF);
    - (i) per square foot - frame; or
    - (ii) per square foot - masonry or other;
  - (B) Commercial (up to 3,000 SF);
    - (i) per square foot - frame; or
    - (ii) per square foot - masonry or other.

The Proposal Request shall state that the Department intends to enter into a retainer contract for the term of one year and a maximum amount of one million dollars (\$1,000,000) each with a sufficient number of firms on a statewide basis to perform asbestos inspections, asbestos removals, and structure clearings on an as needed basis.

(k) **NEGOTIATION OF CONTRACTS.** Upon receipt of the proposals from the selected firm negotiations shall be initiated with the selected firm to produce a retainer contract with a term of one year and maximum amount of one million dollars (\$1,000,000). Should negotiations fail to reach successful execution of a contract with any selected firm, the negotiations shall be terminated and shall be initiated with an alternate firm. The object of the negotiations shall be to establish an acceptable per unit cost for any asbestos investigations needed by the Department for the term of the contract and to establish an acceptable per square foot cost and per running foot cost for abatement of any asbestos discovered upon completion of the inspections and a unit cost for clearing of improvements. When agreement is reached on the unit costs, a retainer contract shall be executed with a sufficient number of selected firm to perform the anticipated work for the term of one year and shall provide for the scope of services enumerated in this Rule.

(l) **BOARD OF TRANSPORTATION APPROVAL AND EXECUTION OF CONTRACT.** After final negotiations are completed, the firm shall execute a minimum of two contract originals and submit them to the consultant coordinator. The Manager of Right of Way shall submit the proposed contract to the Board of Transportation for approval. After the Board of Transportation approves the contract, the Manager of Right of Way shall execute and return the contract to the Right of Way consultant coordinator. The Right of Way contract administrator shall transmit one original contract to the contracting firm and shall retain one in the Central Office. The Way contract administrator shall provide a copy of the contract to the DOT Fiscal Section.

(m) **REQUEST FOR SPECIFIC JOB ESTIMATES.** When the Department acquires structures that require inspection for asbestos, two firms who have executed the retainer contract will be contacted by the Right of Way Branch, given the location of the structure(s), and requested to submit a work assignment cost estimate. The first firm's estimate shall cover Inspections, both preliminary and final; and the second firm's estimate shall be for abatements, if any, and clearing, if required, of the structure. The Estimate of Job Costs submitted by the contractor shall be reviewed by Right of Way staff personnel to insure:

- (1) that the per unit cost is in compliance with those specified in the retainer contract, and
- (2) the quantities specified in the Estimate of Job Costs are reasonable. If the estimate is found to be reasonable, the contract administrator shall authorize the work by the firm under the retainer contract by signing the Estimate document. If the estimate is unacceptable and agreement cannot be reached by negotiations with the firm, an estimate will be requested from another firm on retainer contract and evaluated in the same manner until agreement is reached and work can be authorized. In the event that an agreement cannot be reached through negotiations with any firm on retainer contract, then the Department shall terminate negotiations and advertise for specific project bids under the provisions of Subparagraph (b)(2) of this Rule.

(n) **SUB-CONTRACTING.** A contracting firm may sublet portions of the work proposed in the contract only upon approval of the contract administrator as set out in these rules. The responsibility for procuring a subcontractor and assuring the acceptable performance of the work lies with the prime contractor. Also, the prime contractor shall be responsible for submitting the proper supporting data to the contract administrator for all work that is proposed to be sublet.

(o) **METHODS OF COMPENSATION.** Cost Per Unit of Work - This method of compensation is suitable for contracts where the magnitude of work is uncertain but the character of work is known and a cost of the work per unit can be determined accurately.

(p) **ADMINISTRATION OF CONTRACT.** The administration of the contract shall be the responsibility of the contract administrator. This shall include the review of invoices and recommendation for payment to the Fiscal Section.

(q) **CONTRACT AMENDMENTS.** Each contract shall contain procedures for contract modifications and define what changes can be made only by means of a contract amendment. The Department may, with the concurrence of the Manager of Right of Way, delete any clearing item.

(r) **MONITORING OF WORK.** The responsibility for monitoring the work, the schedule and performing reviews at intermediate stages of the work shall rest with the staff personnel. An inspector may be assigned on each job by the Division Engineer who shall make periodic status reports to the Division Right of Way Office. The firm shall be required to provide a written progress report accompanying each invoice describing the work performed for the project covered by the invoice.

(s) **FINAL PAYMENT.** When it is determined that the work is complete, the final invoice shall be approved by the Way contract administrator and forwarded to the Fiscal Section with a recommendation for payment. When the

contract is terminated by the Department, the final payment shall be for that portion of work performed. Should the firm believe that additional compensation or time should be allowed for services not covered under the contract, the firm must notify the Department in writing within 60 days after receipt of final payment. The Department shall render a decision on the claim which will be final, subject to review in accordance with Chapter 150B of the North Carolina General Statutes. Exhaustion of the administrative procedure described herein shall be a prerequisite to the firm's right of review.

(t) **TERMINATION OF CONTRACTS.** All contracts shall include a provision for the termination of the contract by the Department. Such termination by the Department shall be in writing and shall be effective upon receipt by the contracting firm.

*History Note: Authority G.S. 130A-444; 136-28.1(f);  
Eff. November 1, 1991;  
Temporary Amendment Eff. May 4, 1992 for a Period of 180 Days to Expire on October 31, 1992;  
Amended Eff. December 1, 2012; August 1, 2002; November 2, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*