



## WISCONSIN DEPARTMENT OF NATURAL RESOURCES NOTICE OF FINAL GUIDANCE & CERTIFICATION

*Pursuant to ch. 227, Wis. Stats., the Wisconsin Department of Natural Resources has finalized and hereby certifies the following guidance document.*

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### DOCUMENT TITLE

Dry Cleaner Environmental Response Fund (DERF) - Bid Requirements

### PROGRAM/BUREAU

Remediation and Redevelopment

### STATUTORY AUTHORITY OR LEGAL CITATION

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### DNR CERTIFICATION

*I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.*

Signature

September 4, 2019

Date



# Dry Cleaner Environmental Response Fund (DERF) Program- BID REQUIREMENTS

DNR-RR-750

December 2016

This fact sheet is designed to help dry cleaners who have been accepted into the Dry Cleaner Environmental Response Fund (DERF) Program understand the bidding requirements found in Wis. Admin. § NR 169. The goal of the DERF program is to investigate and cleanup contamination at program-eligible dry cleaner sites for the least possible cost.

Competition among vendors helps to contain costs. Bidding is the most common way state and local governments ensure competition and control project costs, for most government contracting.

Under Wis. Admin. § NR 169, the following responses are anticipated at dry cleaner facilities: immediate actions, interim actions, site investigations and remedial actions. Immediate actions, taken to address an imminent threat to the environment or public health, safety or welfare, are not required to be bid. An interim action is taken to stabilize a threat to the environment or public health, safety or welfare while other remedial actions are being planned. Interim actions may or may not be bid, as determined by the Wisconsin Department of Natural Resources (DNR). All site investigations and remedial actions are subject to bid requirements.

## Information Needed Prior to Soliciting a Bid

Planning a response to a discharge of dry cleaning solvent requires a certain amount of information. This

### Contents of a Site Investigation Scoping Report

1. History of facility
2. Knowledge of type and amount of contamination
3. Where the contamination is located (e.g., soil or groundwater)
4. Location of facility and proximity to other sources of contamination
5. Affect on water supply, surface water, or other receptors
6. Affect on sensitive environmental areas
7. Map of the site boundaries, contaminant source, utility lines, etc. and sample locations and sample results

information is usually gathered and presented in a site investigation scoping report. An eligible dry cleaner can hire an environmental consultant, without competitive bidding, to produce the site investigation scoping report. A potential claim notification form must be approved by the DNR before any expenses are eligible for reimbursement.

The scoping report ensures that the detail of the subsequent site investigation is appropriate. The requirements of a site investigation scoping report can be found in Wis. Admin. § NR 169.05(27) (please see side bar). Interim action proposals, if needed, may be based on information collected for the site investigation scoping report or during the site investigation. Remedial action bids are submitted after the completion of the site investigation.

The dry cleaner owner/operator is encouraged to put together the request for competitive bid proposals, or he/she can hire a consultant to do this. However, costs for bid proposals are not reimbursable. Please [See \*Selecting an Environmental Consultant \(PUB-RR-502\)\*](#) and [OBS for Consultant Selection \(PUB-RR-752\)](#) for more information on hiring a consultant. The owner/operator should provide copies of the bid solicitation letters to the DNR project manager.

## Requirements for a Competitive Bid Proposal

A minimum of three and maximum of six competitive bid proposals are required for interim actions (if required by DNR), site investigation and remedial actions. An interim action proposal, a site investigation work plan, or remedial action proposal is prepared and submitted as part of the bid package. Each work



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plan or proposal must include a cost estimate for each service provided by the consultant or contractor. Also, the owner/operator must summarize cost estimates for each bid on forms provided by the DNR. Form 4400-233, the bid summary form for site investigations, and Form 4400-212, which is used for summarizing interim and remedial action bids, can both be found at [dnr.wi.gov/aid/derf.html](http://dnr.wi.gov/aid/derf.html) on the “Bidding” tab.

### Contents of Bid Submittals

Bids submitted by consultants must include each of the following:

- a clear description and itemization of the consultant and contract services included in the proposal or estimate; the description shall be based on an approved work plan or proposal; if there is no work plan, the description should be based on a good faith estimate of the scope of the project as stated in the proposal or estimate;
- a total cost estimate for all of the consultant and contract services included in the proposal or estimate, and a subtotal price for each of the component services itemized in the proposal or estimate;
- a certification from an agent licensed in Wisconsin that the consultant meets the insurance requirements;
- a certification that the consultant and contract services will comply with Wis. Admin. §§ NR 169 and 700 rule series; and
- an estimate of service costs on an hourly or per unit basis, including (please see box on this page for more information):
  - the price per hour or per unit of service;
  - a reasonable, good faith estimate of the number of hours or units of service to be provided;
  - the total estimated price for the service; and
  - the estimated date by which the consultant and contractor will perform their services.

**Cost Estimates Requiring Hourly or Per Unit Basis**

- Excavating
- Trucking
- Waste treatment or disposal services
- Drilling, including at-depth soil sampling and well installation
- Laboratory services
- Professional or personal services, including engineering, hydrogeologic, field technician and general contracting services. These costs must also include a maximum total price for each service, and a statement of professional qualifications for every person whose professional services are included in that proposal.

### Sealed Bids Required

Participating consultants must submit two sets of **sealed** consultant bids. One set is submitted to the owner/operator or agent, and a second set is submitted to the DNR project manager. The owner/operator sets the time and date of the official bid opening and must inform the DNR project manager of the bid opening time and date. The bid may NOT be opened by ANYONE prior to the bid opening time.

The owner/operator will complete the appropriate bid summary sheet and submit the bid summary along with the name of the selected bidder to the DNR project manager. Once the bid opening time is set by the owner/operator, it may not be changed without justification for the extension and DNR approval.

### Selecting a Consultant

The owner/operator or their agent studies each submitted bid and selects the bid that will best meet the cleanup objectives while minimizing costs. The lowest bid does NOT have to be selected. However, if the lowest bid is not selected, the owner/operator must justify to the DNR why the selected bidder was chosen. Written DNR approval of the proposed work and the selected bidder must be obtained prior to signing a contract with the consultant.

### **Cost Overruns**

The department will not reimburse for consulting service costs that exceed the amount listed in the bid proposal. However, the consultant may be eligible for reimbursement of additional costs not included in the proposal, or if the hours or units of service are greater than what was included in the proposal, if all the following conditions are met:

- the consultant justifies to the owner/operator and the DNR the need for the additional costs;
- the consultant providing the additional services was selected using the qualification-based selection process;
- the consultant bills for the additional services at the same or lower per-unit price at which the consultant agreed to provide equivalent services, if any, in the consultant's initial proposal;
- the consultant provides the eligible applicant with a cost estimate for the additional services before performing those services; the department may require the owner or operator to obtain competitive proposals for the additional services, if the department finds that the cost estimate is unreasonable;
- if the total cost of additional services exceeds \$3,000 – or 5 percent of the contract costs, which ever is greater – the owner or operator will provide the DNR with a copy of the cost estimate, and obtains approval from the DNR project manager before authorizing the consultant to proceed;
- after receiving the consultant's estimate and DNR approval where needed, the owner or operator gives the consultant written authorization to proceed with the additional services;
- the cost for the additional services does not exceed the consultant's estimate; and
- the additional services do not involve the selection, design or installation of groundwater remediation.

The owner/operator should see, in writing, the terms of the contract including who will do what, and by when. The owner/operator should make sure that the contract includes language that allows the owner/operator to terminate the contract if he/she is unsatisfied with the consultant's work.

### **Change Orders**

All changes to the scope of work require the DNR project manager and owner/operator to be notified. A change order is needed when either:

- Changes are needed to the scope of work tasks that result in increased costs.
- Costs need to be shifted between consultant costs and sub-contractor costs.

All change orders must be accompanied by:

- A summary of work completed to date. This must include a description of all work that has been completed and a description of the proposed additional work to be performed.
- Any maps necessary to detail activities.
- The DERF Linking Spreadsheet (Form 4400-214D) to provide the cost details for both incurred and proposed costs. The DERF Linking Spreadsheet can be found here: [dnr.wi.gov/files/PDF/forms/4400/4400-214D.xls](http://dnr.wi.gov/files/PDF/forms/4400/4400-214D.xls).

Total costs for the change order as well as the new contract cost should be clearly indicated. Approval by the DNR project manager for change orders of more than \$3,000 or 5 percent of the contract costs, and approval by the owner/operator or agent must accompany the reimbursement request.

### **Remedial Action Bid Requirements**

Effective August 1, 2005, Wis. Admin. § NR 169 contains the following revised remedial action bid requirements.

- Remedial Action Options Reports (RAOR) are no longer part of the site investigation report. Instead, each remedial action bid must contain a Wis. Admin. § NR 722, technical and economic analysis of the proposed remedial action as well as possible alternative remedies, including natural

attenuation and enhanced natural attenuation. The description of the proposed remedy must explain how the remedy will lead to case closure under Wis. Admin. § NR 726.

- A description and cost estimate for implementation, analysis and interpretation of a pilot test is required for all active remedies, unless the DNR determines that a pilot test is not necessary.

### **What's reimbursable?**

Not all costs are reimbursable. For instance, the cost for a consultant to prepare a reimbursement application is not reimbursable. A complete list of eligible and ineligible reimbursement costs can be found in Wis. Admin. § NR 169.13. An owner/operator should insist that the consultant clearly define those costs that are not reimbursable. If the owner or operator applies for reimbursement of an ineligible cost, the DNR is required to deduct the amount of that cost from that owner's reimbursement claim and subtract a 50 percent penalty, if the owner/operator prepared the claim.

If a consultant or third party prepares a reimbursement claim for the owner/operator that contains ineligible costs, that other person shall pay an amount equal to 50 percent of the ineligible costs to the DNR. If an owner/operator or other person is not certain whether a cost is eligible for reimbursement, they should contact the DNR project manager for a preliminary opinion under Wis. Admin. § NR 169.19(1).

### **For More Information**

Please visit [dnr.wi.gov](http://dnr.wi.gov), search "DERF" for more information about the DERF and to access the documents referred to in this publication.

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.