



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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RR-19-0752-C

DOCUMENT TITLE

Dry Cleaner Environmental Response Fund (DERF) - QBS for Consultant Selection

PROGRAM/BUREAU

Remediation and Redevelopment

STATUTORY AUTHORITY OR LEGAL CITATION

Wis. Stats. ch. 292; Wis. Admin. Code ch. NR 700

DATE SENT TO LEGISLATIVE REFERENCE BUREAU (FOR PUBLIC COMMENTS)

26-Aug-19

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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.

A handwritten signature in black ink that reads "Jennifer Haeg".

Signature

September 4, 2019

Date



QBS For Consultant Selection

Dry Cleaner Environmental Response Fund (DERF) Program

RR-752

August 2014

The Wisconsin Department of Natural Resources (DNR) Dry Cleaner Environmental Response Fund (DERF) Program has specific hiring requirements. This fact sheet is intended to help dry cleaners understand the requirements for consultant selection under Chapter NR 169, Wis. Adm. Code.

The requirements for hiring consultants and contractors conducting remedial response activities are listed under sec. NR 169.23. The owner or operator must select a consultant using a **Qualification Based Selection (QBS)** system, which includes a minimum of three and maximum of six competitive proposals for the site investigation and the selection of remedial action activities, including remedial action design and implementation.

Interim actions may or may not require competitive bidding, based on DNR review. Work plans or proposals and cost estimates must include a clear description of the consultant and contract service costs, including a total cost estimate for all services included in the proposal. Some services must be estimated on an hourly basis.

How Does QBS Work?

Most required consulting services must be selected using a QBS system. The QBS assumes that specific qualifications, rather than price alone, are the best guarantee of a successful relationship between the owner and the consultant. The QBS process identifies three steps to success: defining the project; reviewing proposals; and selecting the consultant.

Defining the Project

First, compile all the information pertinent to the possible environmental contamination of the property. This includes identifying potential sources of contamination, using records of materials and products used or stored on site, where those materials were handled, and waste disposal methods and locations. The types and volumes of dry cleaning solvents used and disposed are of particular importance.

Prepare a brief, written description of the historical use of the site, current use, and what problems need to be addressed. Any historical information makes it easier for the



consultant to understand the site better, and allows the consultant to put together a better workplan for site activities.

The DNR publication entitled [Selecting an Environmental Consultant \(RR-502\)](#) provides basic information on how to define your project and how find a qualified environmental consultant.

Reviewing Proposals

An environmental consultant can be selected to perform site investigation scoping without using a bidding process. Most other remedial activities (except immediate actions) will require that three to six consultant firms submit sealed bids to the dry cleaner owner/operator and to the DNR project manager. The bid must contain the proposal of work to be conducted, a bid sheet listing each task to be performed and the cost associated with each task. Under NR 169, Wis. Adm. Code, tasks that must be bid on a unit cost basis are listed.

The DNR provides a detailed bid form for site investigations form called [DERF - Site Investigation Bid Forms and Bid Summary \(4400-233\)](#). For remedial or interim actions, bidders will provide their own listing of tasks and unit costs.

Not all expenses are eligible for reimbursement. The consultant should highlight expenses for proposed work that are ineligible for reimbursement. This will help the owner/operator understand total costs for the project as well as avoid penalties later when the reimbursement application is submitted.

The owner/operator will open the bids on the day and time that he/she previously determined. The proposals are then reviewed for their responsiveness to the needs and goals of the owner/operator. The DNR project manager can help explain the technical merits of each proposal.

Selecting a Consultant

The owner/operator selects the consultant with the best proposal for achieving site goals and minimizing cost. 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.

The proposal cost estimates provided by the selected consultant will be the maximum paid by the DNR for the response action activities. Costs incurred as a result of a change order may be reimbursed from the DERF if the department finds the changes and costs reasonable.

In all cases, actual costs - documented with receipts and canceled checks - are reimbursed, NOT the estimated bid costs. DNR approval of bids, change orders, etc. does NOT guarantee the reimbursement of those costs. Final determination regarding the eligibility of costs is determined at the time of claim review.

Consultant Requirements

Chapter NR 169 specifies that each proposal include a cost estimate for each service provided by the consultant. Publication [RR-750, Bid Requirements](#) discusses the contents of bid submittals. The rule also specifies that proposals shall state the consultant's ability to do the following:

- be fully informed about the project's scope and required services, and have the experience and ability to analyze alternatives, and design the most suitable response action consistent with technical and economic feasibility, environmental statutes and rules, restoration time frames, and the latest technical advances;
- provide necessary staff and facilities for all phases of planning, investigation, design, construction, and operation;
- retain and confer with specialists on unusual matters, provide qualified technical reviewers, who will keep the owner advised on technical and regulatory matters and work toward planned remediation goals; and
- perform all services in an ethical, professional and timely manner.

Insurance Requirements

Consultants must certify that they will comply with the requirements of ch. NR 169, Wis. Adm. Code, and the NR 700 rule series. They must also include a certification of insurance from an agent licensed to do business in Wisconsin that:

- the consultant maintains coverage for errors and omissions and coverage for comprehensive general liability, including pollution impairment liability, for a minimum of \$1,000,000 per claim and a minimum of \$1,000,000 in annual aggregate claims;
- the policy is an occurrence-based policy or is a claims-made policy with a three year extended reporting period; and
- the policy has a maximum deductible per claim of \$25,000; if the deductible amount is more than \$25,000, the consultant must furnish proof of financial responsibility acceptable to the DNR for the amount of the deductible.

Changes to the Work Plan or Proposal

Once the dry cleaner signs the contract with the consultant, work can begin. The work plan or proposal governs the work that will be performed at the site. It is sometimes necessary to amend or change the work plan or proposal because of unanticipated circumstances in the field.

In these cases, a change order to the initial proposal must be developed by the consultant and must be approved by the owner/operator and the DNR project manager. If the total change in cost is less than \$3,000 or 5 percent of the total project costs, DNR approval is not needed. When a change order is necessary, the following information must be submitted to the DNR:

- an explanation of the change requested including the estimated additional work effort, hourly and total costs; and
- using the original bid specification sheet and costs (for site investigations, use [Form 4400-233](#); for interim and remedial actions, the approved consultant bid sheet should be used), indicate the percent of work accomplished for each task bid and the funds remaining for completing each task. The change order should clearly indicate which specific tasks will change or be added, and the change in hours and costs for the proposed change order.

For More Information

Please see [Bid Requirements \(RR-750\)](#) for a discussion of requirements if costs exceed the original approved bid.

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. The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Equal Opportunity Office, Department of Interior, Washington, D.C. 20240. This publication is available in alternative format upon request. Please call 608-267-3543 for more information.