

## **Part 512 – Construction**

### **Subpart B – Preconstruction Activities**

#### **512.10 Selection of the Contractor**

Design engineers, project engineers, or both may be asked to contribute their technical expertise in determining the ability of a contractor to perform the project for a sealed-bid project. They may also be asked by the contracting officer (CO) to lead or participate on the technical selection panel for contractor selection on negotiated contracts under the Federal Acquisition Regulation (FAR). The CO is responsible for determining if the offeror is responsible, the submitted proposal is responsive, and the determination of either the offeror providing the best value or establishment of the lowest bid.

#### **512.11 Prebid or Proposal Meeting (Site Showing)**

- A. The date and time for all prebid or proposal meetings and site showings must be included in the requests-for-proposals (RFPs) from contractors, regardless of the contractual vehicle used.
- B. The requirements of the bid package must be discussed at the prebid or proposal meeting. The CO and engineer, or their authorized representatives, should chair the meeting for a Federal contract. The project engineer should be present regardless of whether the contract type is contracting local organization (CLO) or private.
- C. Potential offerors will be given the opportunity to tour the project site so that they may inspect the area. Stakes, flagging, or both must be in place at the time of the site showing to identify the major items of work and their relationship to other elements of the proposed project.
- D. If the contract is a Federal contract, the CO must make a written record of all questions asked and any answers given at the prebid or proposal meeting. Engineering staff present at the prebid or proposal meeting must not express opinions as to the difficulty or the ease of performing work elements and must not interpret the contract or contract conditions.
- E. When individual landowners-operators hire a contractor, prebid or proposal meetings for engineering conservation practices may be less formal. The landowner-operator may request that an NRCS employee be present to assist with the site showing. A job diary, conservation assistance notes, or other permanent record will be utilized to document questions and answers and other pertinent items discussed at the showing. NRCS participation in site showings for the installation of engineering conservation practices installed under a private contract is encouraged, especially for projects of high complexity or value.
- F. It is critical that all responses to questions that may affect a contractor's evaluation and potential bid or proposal be shared with all solicitation package holders. This may require a written followup or an amendment to the solicitation, as required by Agriculture Acquisition Regulation (AGAR) 452.237-71. The followup or amendment is the responsibility of the CO for Federal, the CLO contracting official for CLO contracts, and the landowner for private contracts.
- G. The prebid or proposal meeting and site showing must be fully documented, regardless of contract type. The CO must prepare the documentation. The CO's technical representative or Government representative must submit copies of all notes taken at the site showing to the CO. Copies of the documentation must be given to the Federal CO, the CLO contracting official, or to the landowner for private contracts. These individuals issue the formal minutes. Copies of the documentation must be maintained in the project file.

## 512.12 Evaluation of Bidders

A. Prior to Award.—After the bids or proposals are received, the contractor’s responsibility and the responsiveness of their offer must be evaluated prior to award of a construction contract. The responsibility and responsiveness of the contractor must be determined by the NRCS CO for a Federal contract, the local sponsor’s CO for a CLO contract, and by the landowner for a private contract. NRCS may provide technical assistance (TA) to the local sponsor or landowner-operator in evaluating bidders, but should not make recommendations.

B. Determining the Contract Awardee.—Government agencies have the choice of several contracting methods and contract types, depending on the complexity of the work and the anticipated competition. For example, a contract may be awarded using sealed bids, where the award is made to the bidder whose responsible bid is the most advantageous to the Government, considering only price and the price-related factors, or a negotiated contract, where tradeoffs are made between technical qualifications and price and price-related factors to provide the best value to the Government. Technical qualifications on a best-value acquisition are based on evaluation factors published with the solicitation. Project sponsors with contract administration duties have similar contractual opportunities. Individual owners have similar interests to ensure quality and timely installation of their works of improvement at a reasonable cost. The CO (NRCS or CLO) or the owner determines the contract awardee. The criteria for determining responsiveness and responsibility must be included in the invitation for bid or the request for proposal (if a Federal contract) or in the announcement for a local sponsor or private contract.

C. Documentation.—Any information collected on behalf of the CO that deals with bidder evaluation must be given to the CO for inclusion with their files. Copies should not be maintained in the project file.

## 512.13 Preconstruction Conference

A. This is usually the first meeting between the owner and contractor following the contract award. Individuals representing the contractor and subcontractors, the owner, major suppliers, and others who will be working together in the execution of the contract should be present. The authorities and responsibilities of these individuals must be jointly understood. The conference will be used to develop a positive working relationship and generate a discussion that centers on the procedures the contractor plans to implement to meet the terms and conditions of the contract.

B. For project work, the preconstruction conference minutes must be recorded. Minutes must be reviewed by the Government attendees and CLO if applicable, finalized, and shared with all participants. Any questions and answers and any interpretations of contract documents provided at the preconstruction conference will be included in the minutes. Any questions that could not be answered by the contract documents (where interpretation is provided) will be addressed and included in the minutes. A contract modification may be necessary if a response affects the length of the contract or a change in the extent of the work or final cost of the contract. The preconstruction conference minutes will be included as part of the project’s permanent record.

C. It is important to review the extent of the work required of the contractor for installing engineering conservation practices under private contracts. Documentation is the responsibility of the owner and can be accomplished through the use of a job diary, conservation assistance notes, other permanent record, sharing in writing of agreed-to action items, or any combination of these. NRCS participation in the preconstruction conference for the installation of engineering conservation practices installed under a private contract is encouraged, especially for projects of high complexity or value. The owner must be involved in any decision that could affect the practice installation, final cost, or both.

## 512.14 Partnering

A. “Partnering” means a relationship of open communication and close cooperation that involves both Government and contractor personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment to achieve contract objectives and resolve issues and implementing actions, as required. Partnering involves an agreement in principle to share the risks involved in completing a project and to establish and promote a partnership environment. Partnering is not a contractual agreement in itself, does not create any legally enforceable rights, and does not change the responsibility for risks established by the contract. Instead, partnering seeks to create a cooperative attitude in completing Government contracts.

B. Benefits to partnering include the following:

- (1) The establishment of a partnering environment usually leads to higher quality products, completed more quickly, at lower overall costs, and with fewer accidents and litigation.
- (2) The use of partnering is encouraged as it has been shown to reduce the average contract cost, schedule growth, and the number of contract claims and litigation.

C. Partnering should be used on a contract when the CO, in coordination with the project engineer, determines that the benefits to be achieved from its use are expected to be greater than the costs. In determining whether the benefits of partnering are greater than the costs, the following factors should be considered:

- (1) The estimated dollar value of the contract
- (2) The complexity of the work to be performed
- (3) The contemplated length of the contract
- (4) The estimated costs to be incurred in conducting the partnership development and team building initial and followup workshops or meetings

D. The partnership for construction contracts may be established through a facilitated process. The costs to conduct a partnering workshop must be agreed to and shared equally by all parties, with no change in contract price. Accordingly, the contractor will not include costs associated with this partnering effort as part of the bid or proposal price, nor will such costs be allowable under the contract. This partnering effort conveys no legally enforceable rights or duties; any changes to the contract must be made by the CO under the terms of the written contract. The participants should represent all levels of each organization involved with the construction contract. A partnering charter or similar agreement should be developed and shared with all participants.

E. When issues that arise during the contract period are not resolved to the satisfaction of those directly involved at one level, the issues are elevated to the next management level for resolution. Partnering has the potential to expedite the resolution process.