

ADDENDUM #15

KITSAP TRANSIT
Request for Proposals
Bow Loading Ferry Vessel Design Build
RFP #KT 17-559
December 22, 2017

60 Washington Ave. Ste.
200
Bremerton, WA 98337
Phone: 360.479.6962
Fax: 360.377.7086

www.kitsaptransit.org



Clarification, Additions, Revisions and Corrections:

Clarification: With regards to the “Sample Design Build Contract”, the provisions of the Contract are provided as a framework for the final signed Contract. Most areas of the “Sample” Contract are subject to negotiation upon selection of the Awarded Contractor. All Federal and State clauses and regulations are nonnegotiable.

Questions Asked and Answers Provided:

Question #1: Section 6.5 “Warranty Period”; Is the warranty period for each vessel calculated from final completion of that vessel or from final completion of all vessels?

Answer #1: The warranty period starts and ends with each vessel. Warranty period for vessel 1 would not be held through production/delivery/acceptance and warranty period of vessel 2.

Question #2: Is the Contractor liable for defects in Owner Furnished Equipment (OFE)?

Answer #2: No

Question #3: Is Contractor liable for defects [sic] material, equipment and workmanship of suppliers and subcontractors that Kitsap Transit specifically instructs Contractor to use?

Answer #3: All suppliers and vendor selected. Other than specific OFE, Kitsap Transit will not specifically instruct contractor to use specific products. Name brand or equal may be called out in bid documents but vendor has the ability to select product they wish to use and submit as part of their bid packet.

Question #4: If a 24 month warranty period (should this be 720 days?) starts anew each time there is corrective work, is there any absolute end point for Contractor’s warranty. Does that mean the performance/payment bond must continue indefinitely or can the bonds be reduced to the value of the corrective re-work?

Answer #4: 24 month warranty period should be listed as 720 days. Yes, new warranty period only starts on the item repaired – Contractors liability ends when all systems are working properly. Yes, the bonds can be reduced.



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Question #5: Section 6.5.7- If repairs, replacement or adjustments of “alleged negligent or defective work” cannot be reasonably repaired within five days, does Kitsap Transit have the right to have the work performed by a competing ship repair yard even if that other yard is also not able to complete repairs within five days?

Answer #5: The response to this question regarding reasonable repair – question states five days and this isn’t called out on the document for this section. Timely manner is called out. The definition of timely manner is agreed upon by both parties.

Question #6: Section 6.5.7 and Section 6.9.5- Does Contractor have unlimited liability if Kitsap Transit has corrective work performed at another shipyard, including not only for direct damages, but also for lost profits, loss of use, incidental and consequential damages?

Answer #6: The definition for the liability for conforming work is explained in its entirety in 6.9.1 and 6.9.5 – clarifications to this or changes can be negotiated upon a selection for award.

Question #7: Section 6.9.5- Most ship fabricator’s price assumes that the sole remedy for breach of warranty/nonconforming work is to repair/replace/re-perform that work within a reasonable time at its yard, or if that is not feasible and the work must be performed elsewhere, to pay the customer the amount it would have cost the Contractor to perform that work at its yard. This section suggests that the Contractor has unlimited liability, not only for direct damages, but also for lost profits, loss of use and incidentals and consequential damages. It also suggests that Kitsap Transit can offset what it believes are its losses without notice to Contractor and without giving Contractor the right to object or cure the problem. Section 6.12, however, suggests that the Contractor would have the right to cure the problem before incurring those costs. Please clarify that apparent contradiction.

Answer #7: 6.9.5 remedy for breach of warranty – section 6.9.1 – 6.9.5 explain clearly the rights for the shipyard and Kitsap Transit regarding breach of warranty. Contractor will always have the ability to fix an issue before it is brought out to another vendor however, this language can be negotiated upon a selection for award.

Question #8: Section 6.10.1- If Kitsap Transit, USCG or any other authority approves Contractor’s work, and in reliance on that inspection and approval, Contractor subsequently covers that work, and if Kitsap Transit, USCG or any other authority later wishes to re-inspect that work, must the Contractor pay for to [sic] uncover and replace the cover without charge even if the second inspection reveals a problem? What if the problem is immaterial?

Answer #8: If KT, USCG or another authority approves the work and work needs to be re-inspected for some reason other than a component failure or apparent construction mistake, KT would create a change order and cover the cost for covering and removing the work. If the inspection reveals a problem, the shipyard would be expected to fix the issue either under the new construction contract or under warranty even if the issue is deemed immaterial by the shipyard.

Question #9: Section 6.10.2- Does any deviation (even immaterial/minor deviations) from the Contract Documents of Work that Kitsap Transit decides to examine after it has been covered require the Contractor to pay the costs of removal/recovering?

Answer #9: If a portion of the work has been covered that KT or governmental authority has not specifically requested to examine (or that was required to be examined) prior to its being covered and for which the

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contract documents did not require inspection, KT or governmental authority may request to see such work and it shall be uncovered by the contractor. If such work conforms to the contract documents, the costs of uncovering and replacement shall by appropriate change order be at Kitsap Transit's expense. This can be negotiated upon selection for award if language should be adjusted.

Question #10: Section 6.13 Substantial Completion- Substantial Completion should occur when the Coast Guard approves the Vessel for use as intended. Will this be clarified in the Contract?

Answer #10: Yes

Question #11: Section 6.14 Final Completion- Certain minor or immaterial Punch List Work should be treated as a warranty claim and not prevent Final Completion. See also, Section 9.6.1 (1) – only material Defective Work should prevent payment, and then, only after Contractor has had a reasonable time to correct it.

Answer #11: If identified before final acceptance it is a completion item for completion on the punch list not warranty work. Warranty period will begin after final acceptance of the vessel.

Question #12: Section 7.11 Ownership of Documents- Does this provision apply to the hard copies of the documents? Or to the intellectual property rights embodied in those documents? Or to both hard copies and the IP?

Answer #12: The intent of this section is to provide Kitsap Transit the documents to service, maintain and operate the vessel during its lifetime. There is no intent to utilize the intellectual property within the documents to procure vessels from other than the IP vendor/owner. This section can be negotiated upon selection for award.

Question #13: Section 8.6 Performance and Payment Bonds- Must the Contractor obtain a payment/performance bond for 100% of the total value of all vessels for the entire contract term, or on a vessel-by-vessel basis? What happens to the 5% bid bond upon contract award? Will there be a process for reducing the amount of the performance and payment bond as fabrication progresses and vessels are delivered?

Answer #13: A 100% performance and 100% payment bond for the total contract amount must be obtained before the Notice to Proceed can be issued. Upon receipt of a fully executed Contract, the bid bonds will be returned/released. Yes there is a process for reducing the bond amount as vessels are delivered.

Question #14: Section 9.1.3 Schedule of Values- Three percent (3%) of the contract Sum is allocated to punch list work between Substantial Completion and Final Completion. The requirements for "Final Completion" are described Section 6.14.2, but the term "Final Completion" is not defined. Please confirm whether the term "Final Completion" means the satisfaction of the requirements listed in Section 6.14.2.

- Will the first installment of that three percent for punch list work on a specific Vessel be paid upon completion of Sea Trials for that Vessel, or will it be paid only upon completion of Sea Trials for all three Vessels?
- Will the second installment of that three percent for a specific Vessel be paid upon Final Completion of that Vessel, or will it be paid only upon Final Completion of all three Vessels?
- Where is the term "Final Payment" defined?

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- What factors will influence Kitsap Transit's decision to release portions of the three percent as items are completed?

Answer #14: Final completion is defined in Section 6.14. The 3% as described allocates funds for sea trials, final documentation and punch list items. This amount will initially be for the entire contract and some amounts may be released based on sea trials of vessel 1 however the majority will be retained until project completion due to the requirements of final documentation. This can be negotiated upon selection for award.

Question #15: Section 9.3/Miscellaneous- Will Kitsap Transit pay Contractor for deposits Contractor is required to pay to its material vendors? For vendors of custom/specialty materials or goods?

Answer #15: Kitsap Transit can only reimburse on materials in hand.

Question #16: Section 9.4.1 Retainage— When will Kitsap Transit pay the 5% retainage? Will it pay the 5% retainage from invoices related to a Vessel upon Final Acceptance of the Work on that Vessel? Or will it pay that 5% retainage only upon Final Acceptance of the Work for all three Vessels? (Section 9.9.1 defines “Final Acceptance” as formal acceptance of the “Project” including “delivery of the Vessels”). If the latter, would Kitsap Transit be willing to release at least portions of this amount progressively as Vessels are completed, delivered and accepted similar to the three percent hold back? Section 9.4.2 prohibits Contractor from withholding more than 5% from amounts payable to Subcontractors. May Contractor also be permitted to withhold an additional 3% from amounts payable to major suppliers whose work will be evaluated between Substantial Completion and Final Completion?

Answer #16: The 5% retainage will be paid upon completion of stages of work, a level of retainage must be maintained to cover any remaining work on the project. Contractors may not retain an additional 3%.

Question #17: Section 9.6.1 Decision to Withhold Certification – Will Contractor receive written notice of a problem before Kitsap Transit's Project Manager withholds a Certificate for Payment?

Answer #17: Yes, Contractor will have every opportunity to correct an issue before payment would be withheld.

Question #18: Section 9.7.2 Progress Payments- Does this section require Contractor to pay Subcontractors before their otherwise applicable payment terms?

Answer #18: This section requires the Contractor to pay Subcontractors the percentage of their work that is in any pay estimate within 10 days.

Question #19: Section 9.6.1(1) and (11) are too subjective. They should be invoked only if the Defective Work/failure is material and only if Contractor has received reasonable notice and a reasonable opportunity to cure the problem.

Answer #19: Yes, Contractor will be given every opportunity to correct an issue.

Question #20: Section 9.9/Final Acceptance And Payment- Section 9.9.1 - See questions above the interplay between retainages and the Vessel to which they relate. Section 9.9.1(8) - Do the same deadlines apply to Final Acceptance and final Payment as for Progress Payments under Section 9.8 (Kitsap Transit's Failure to Pay Without Cause)?

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Answer #20: Deadlines may vary upon the final completion stages, this can be negotiated upon selection for award.

Question #21: Section 10.4/Early Completion Incentives And Late Completion Damages – Does this subsection mean that instead of a liquidated damage amount, the Contractor has unlimited liability, including for lost profits, loss of use and consequential damages, for late delivery of a Vessel? Can Kitsap Transit refuse to accept any Vessel until all three Vessels perform to all Specifications? Would a delay in Contractor's delivery of spare parts, training, licensing, etc. mean the Contractor is late and therefore has unlimited liability under this subsection?

Answer #21: No. This section can be negotiated upon selection for award.

All other terms and conditions remain the same.

END ADDENDUM 15