



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Norman H. Bangertter
Governor

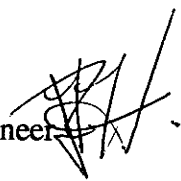
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August 4, 1992

TO: Lowell Braxton, Associate Director

From: J. Randall Harden, P.E., Sr. Reclamation Engineer 

RE: Construction and Engineering Contracts

SUMMARY:

The Division of Oil, Gas and Mining currently procures contracts under Delegation of Purchase Authority #DGR025 in cooperation with the Department of Facilities Construction and Management. DOGM only uses DFCM for contractor pre-qualification requirements, receiving bids, and the bid opening process. DFCM has indicated to the Division of Oil, Gas and Mining that they no longer wish to allow bid openings and awards of contracts through their facilities. DFCM has indicated that Purchasing has the capability of performing the same function. DFCM has agreed to allow DOGM to utilize their facilities for bid pre-qualification and the bid opening process for this construction season. This fall, DFCM and DOGM will evaluate whether or not to continue these services.

Further DFCM has indicated that to some degree, by allowing bids to pass through their office, that they have qualified or approved the bid specifications and the forms that are contained within DOGM's documents, which they do not.

ANALYSIS:

All of the subdivisions of DOGM will, at some time or another, will require outside engineering/construction services. The current procedures of utilizing DFCM for bidding, and adaptation of their forms and procedures will not be suitable as currently accomplished by AML. Reclamation contracts of varying amounts and requirements will be let by Title V, Title IV, the Minerals Program, and Oil & Gas Conservation. As recommended by Ken Nye, Assistant Administrator at DFCM, Purchasing, with delegation of purchasing authority to DOGM only may well be the best method for letting engineering and construction contracts.

Contract forms currently utilized by the AML program are not suitable for all of the Division's needs. In the event that the delegation of purchase authority is assigned solely to DOGM, it would be of the best interest to the Division to standardize and centralize the forms and procedures for procurement of engineering and construction services.

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In order to establish a more uniform method for procurement of engineering/construction services, the Division will most likely need to develop in-house capabilities for developing and maintaining contract forms and specifications and bidding processes. One of the concerns regarding in-house contracting services is maintaining an arms-length approach to managing pre-qualification of bidders, bid acceptance and the bid opening process. One way to help alleviate this concern is to allow Purchasing to handle the bidding process and maintain uniform and current contract forms. This could be handled in-house, but would be an added responsibility and activity may require an additional staff time.

Regardless of future needs, the current problem is the development of contract forms and procedures for letting currently planned projects out this season. Within the Title V Program, projects at hand include the New-Tech, Boyer, and Blackhawk projects, all tentatively scheduled for construction work this year.

In reviewing and comparing the current general conditions and forms used by AML for the procurement of contract services with the new forms implemented by DFCM, it is my opinion that these forms and current AML procedures do not meet the current standards and statutory requirements for the procurement of engineering or construction type services.

In order to get these current projects underway and out for bid, it appears that there are two alternatives, either modify the current forms used by AML or develop new forms consistent with Purchasing's requirements and procedures. Of these two alternatives, I would recommend that we immediately proceed with the development of new forms under the direction and authority of Purchasing. AML's current format is tied more to the old forms and format used by DFCM which DFCM has now replaced with a totally new format and which deals primarily with buildings, architectural design and construction. The new DFCM forms are no less than 85 pages, not including any technical specifications, which would have to be reworded and reworked to be made more applicable to the civil and landscaping type of work required for reclamation projects. By developing standard forms under Purchasing, a simpler, shorter, and more generic set of forms and general conditions could be developed which could be utilized by all sections within the Division.

In order to minimize repetition of contractual forms and procedures, the Division should consider delegation of purchase authority solely to DOGM. To accomplish this, several considerations will need to be made and questions resolved regarding the Divisions ability to design, specify, bid and manage projects varying in size and nature.

Generic forms are needed for Engineering and Construction contracts ranging from a few thousand to several hundred thousand dollars per contract. Forms needed include Notice to Contractors, Instructions to Bidders, Bid Proposal, Bid Bond, Subcontractor's, Suppliers and Vendors Lists, Engineering Contract, Construction Contract, General Terms and Conditions for Engineering and/or Construction Contracts, Performance Bond, Payment Bond, Contract

Change Order, Certificate of Substantial Completion, and, Certificate of Final Acceptance.

By having Purchasing develop and prescribe these forms and the format for bid specifications, regulatory changes and updated requirements would be developed and implemented by Purchasing and DOGM would not responsible for reading, reviewing and interpreting changes that effect or could affect the procurement of engineering and contract services. In addition to maintaining consistency within DOGM on the regulations and procedures for procurement, the forms and format used would be applicable to all agencies within the state in regard to engineering and construction requirements. This would include all of the Department of Natural Resources and the Department of Environmental Quality, which both have similar needs for engineering and construction work and would further eliminate duplication of effort and conflict with regulatory requirements regarding procurement of services.

Routine procedures for contractor pre-qualification, advertising bids, receiving bids, bid openings, and bid awards need to be developed through and in cooperation with Purchasing.

In addition to the generic forms which would be utilized by all sections within the Division, Supplemental General Conditions would be required to incorporate any specific federal restrictions or conditions on projects which are federally funded as well as any other special terms or conditions which are not adequately described in the General Conditions. Examples of this would be the Minority and Woman Business Enterprise Representation federal reporting requirements, using licensed drillers, certified underground mine supervisors, wage and working hour restrictions, or other special permits or licenses which may be required to perform the work.

RECOMMENDATIONS:

Development of forms and standard procedures for construction contracts is currently underway and ongoing. The technical specifications for the New Tech Project are in final form and only need the general conditions and contracts to initiate the bidding process. I am currently attempting to work with Purchasing to acquire standardized forms and contracts. In conjunction with this I am also working on developing procedures for writing specifications, bidding, and contract awards directly through purchasing. These procedures will be geared to generic forms and contracts to be used throughout the Division. Hopefully, this effort will help determine the need for using or eliminating DFCM from pre-bid qualifications and the bidding process by the fall of this year.

cc: D. Haddock