

Wyoming Stable Token Commission

General Agency, Board or Commission

Chapter 2: Procurement by Request for Proposal

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Chapter 2

Procurement by Request for Proposal

Emergency rules are in effect no longer than 120 days after filing with the Registrar of Rules.

Section 1. Authority.

(a) These rules are promulgated by the Wyoming Stable Token Commission, herein referred to as the Commission, in accordance with W.S. 40-31-105(b) and 40-31-110.

Section 2. Applicability.

(a) This chapter applies to the Commission's procurement of services or materials by request for proposal ("RFP").

(b) This chapter shall not apply to the procurement of services or materials using competitive sealed bidding, competitive negotiation, or noncompetitive negotiation, which are covered in Chapter 3 of these rules.

Section 3. Prequalification requirements by project value.

(a) For a project with a services or materials fee estimated by the Commission to be fifteen thousand dollars (\$15,000) or less, the Commission may perform a prequalification process in preparation for the specific project, as defined in Sections 4 through 6 of this chapter.

(b) For a project with a services or materials fee estimated by the Commission to exceed fifteen thousand dollars (\$15,000), the Commission shall perform a prequalification process in preparation for the specific project, as defined in Sections 4 through 6 of this chapter.

Section 4. Firm prequalification for requests for proposal.

(a) Notwithstanding the value thresholds in subsections (a) and (b) of Section 3 of this chapter, in a request for proposal process, the Commission may, at its discretion, require all potential proposers to submit applications for prequalification prior to submitting proposals on a project.

(b) Prequalification does not replace the use of evaluation criteria as allowed in Section 9 of this chapter. The Commission may use prequalification in conjunction with the evaluation criteria even after prequalification has been completed.

(c) A call for prequalification applications shall be advertised, at a minimum, on the state procurement website or agency website for not less than two (2) consecutive weeks and shall:

(i) Generally describe the proposed project and scope of work; and

(ii) Describe the procedures and requirements to submit a prequalification application related to the proposed project.

(d) To the extent applicable, based on the scope of work requested in the call for prequalification applications, an application for prequalification shall include, at a minimum:

(i) Contact information;

(ii) A statement of corporate history;

(iii) A listing of the services or materials that the applicant believes it is qualified to provide;

(iv) A concise description of relevant past work completed by the applicant within the last eighteen (18) months at minimum;

(v) Proof of equipment, certifications, professional qualifications, or experience specific to the scope of work;

(vi) A signed affidavit stating the applicant's willingness to comply with applicable laws and policies, which may or may not be unique to the project or Commission; and

(vii) Any other information required by the Commission in a notice requesting statements of qualifications.

Section 5. Prequalification term, status notification, and revocation.

(a) Prequalification for a request for proposal process shall be designated on a per project basis. Designation of prequalification on one project shall not be construed as prequalification for any other project, nor shall prequalification on one project be accepted in lieu of required documentation for prequalification on another project.

(b) Upon completion of its review of all prequalification applications for a project, the Director or their designee shall notify a prequalification applicant of the Commission's decision with regards to the applicant's prequalification status, including the reason for the decision.

(c) Prequalification applicants that are determined by the Commission to have met the qualification requirements will be deemed a qualified firm.

(d) The decision to revoke a prequalification granted to a qualified firm is at the discretion of the Commission. The Commission shall follow the processes in Chapter 5, Section 4(c) of these rules if it revokes a qualified firm's prequalification.

Section 6. Request for review of denial of prequalification application.

(a) A potential proposer denied prequalification status after filing an application for prequalification status may request the Commission to review the application decision. The potential proposer shall file a written request for review to the Commission including:

- (i) The name and address of the requesting potential proposer;
- (ii) A brief explanation of why the potential proposer's prequalification application should be granted;
- (iii) The statute, rule, or policy which the potential proposer believes was applied incorrectly or in error;
- (iv) Any additional facts the potential proposer would like to be considered, including any relevant exhibits, evidence, or documents of substantiation to support a requested change in the prequalification outcome.

(b) Requests shall be submitted to the Director or their designee.

(c) The Director or their designee shall acknowledge receipt of written review requests within three (3) business days of receipt, with a blind closed copy provided to the Commission.

(d) The Director or their designee may request additional information as part of the review. If requested information is not provided within three (3) business days, the review may be completed without such information.

(e) The Director or their designee shall provide written notice of any action taken in response to the review request, including a decision to take no action, within ten (10) business days and shall provide such notification to the Commission in blind closed copy.

(f) Notwithstanding the time limitations in subparts (c) and (e) above in this section, the Director or their designee shall make every attempt to resolve review requests in a timely manner but is not under obligation to resolve requests prior to request for proposal filing deadlines when such timeline would put an undue burden on the Director or their designee and detract from the execution of Commission operations.

Section 7. Issuance of requests for proposals.

(a) Before issuing requests for proposals for a specific project, the Commission shall complete the prequalification process as described in Sections 3 through 6 of this chapter.

(b) Notwithstanding the value threshold in subsection (a) of Section 3, the Commission shall request proposals only from qualified firms. The Commission does not need to solicit requests for proposal from firms that were not deemed to be qualified firms.

(c) The Commission shall select the firms from whom it shall request proposals in accordance with the following:

(i) If there are more than three (3) qualified firms, the Commission shall request proposals from at least three (3) of the qualified firms, to be selected at the discretion of the Commission.

(ii) If there are three (3) or less qualified firms, the Commission shall, at its discretion:

(A) Request proposals from all of the qualified firms; or

(B) Adjust its prequalification criteria and re-advertise the prequalification application for a specific project.

(iii) Notwithstanding the estimated contract value, if the Commission determines that only one (1) firm is qualified, the Commission may seek a bid waiver from the Governor or their designee as described in Chapter 3, Section 5(c) of these rules.

(A) Upon approval of a bid waiver by the Governor or their designee, the Commission may proceed to let the contract through noncompetitive negotiation (sometimes known as “sole sourcing”) as described in Chapter 3, Section 7 of these rules.

(d) A request for proposal shall contain:

(i) A description of the project scope, the required project timeline, and the desired deliverables;

(ii) Submission procedures and content requirements for technical proposals; and

(iii) Submission procedures and content requirements for the firm’s estimated fee.

(e) Notwithstanding subsections (a) through (d) of this section, the Commission may forgo requesting qualified firms to provide written proposals and, instead, proceed directly to interviewing qualified firms. The Commission proceeding under this subsection shall comply with the following:

(i) The Commission shall apply the requirements of subsections (a) through (c) of this section and Section 8 of this chapter to evaluate prequalification status, select firms for interviews, and conduct interviews;

(ii) An invitation to interview shall contain at least the following:

(A) A description of the project scope, the required project timeline, and the desired deliverables;

(B) Submission procedures, if any, and content requirements for technical presentations; and

(C) Submission procedures, if any, and content requirements for the firm's estimated fees.

(iii) The Commission may allow a qualified firm to present its technical proposals and estimated fees at the interview. The Commission is not required to have a qualified firm submit a written proposal or the firm's estimated fees prior to the interview.

Section 8. Firm interviews.

(a) For a project with a services or materials fee estimated by the Commission to be fifteen thousand dollars (\$15,000) or less, the Commission may interview firms that provide proposals.

(b) For a project with a services or materials fee estimated by the Commission to exceed fifteen thousand dollars (\$15,000), the Commission or Evaluation Committee shall interview not less than three (3) firms that provided proposals. However, if the Commission or Evaluation Committee determines after reviewing a firm's proposal that the firm is not qualified for the project and should not have received a request for proposal, the Commission or Evaluation Committee may reject the proposal and not interview the firm.

(i) Interviews may include discussion of each firm's projections of project costs, qualifications, approaches to the project, ability to furnish required services or materials, and an estimated fee based on the Commission's description of the scope of work.

(ii) The Commission shall keep a record of the interview.

(iii) If fewer than three (3) firms submit proposals, the Commission may:

(A) Interview all proposing firms;

(B) Solicit for additional proposals before proceeding; or

(C) Reject all proposals and either re-advertise for prequalification applications or cancel the procurement.

(iv) If the Commission is unsatisfied with the results of the interviews, it may interview not less than two (2) additional firms that provided proposals.

Section 9. Award of contract.

(a) The Commission shall consider factors including but not limited to the following when selecting the firm with which it will begin contract negotiations:

(i) Legal entity domicile;

(ii) The ability of professional personnel;

(iii) Past performance;

- (iv) Ability to meet time requirements;
- (v) Location;
- (vi) Current and projected workloads;
- (vii) The volume of work previously awarded to the firm by the Commission;
- (viii) Estimated fees;
- (ix) Ability to meet stringent compliance requirements;
- (x) Feedback from the Evaluation Committee, if applicable; and
- (xi) Any other factors as deemed appropriate by the Commission.

(b) The Commission shall assess and rank each firm's proposals for a project in accordance with the above factors in subsection (a).

(c) The Commission may:

(i) Select the highest-ranked firm, in consideration of all the information provided by the firm, for contract negotiations; or

(ii) Reject all proposals. If the Commission opts to reject all proposals, it may exercise its discretion to repeat the process from the most appropriate step under the circumstances.

Section 10. Emergency selection.

(a) The Director or their designee may waive any provision pertaining to firm selection if following the provision is reasonably believed to:

(i) Endanger the health, welfare, or safety of the public under the circumstances; or

(ii) Place the solvency, security, or integrity of the Wyoming Stable Token, its technical infrastructure, its underlying reserves held in trust, or any other critical underpinning at risk.

(b) In the event that emergency work is initiated in response to an emergency condition, the Director shall:

(i) Document the emergency situation necessitating the procurement, the circumstances justifying the waiver, and an explanation of how and why following the waived provision would endanger the health, welfare, or safety of the public; or place the solvency, security, or integrity of the Wyoming Stable Token, its technical infrastructure, its underlying reserves held in trust, or any other critical underpinning at risk. The decision of the Director or

their designee to waive any provision pertaining to firm selection under this provision is immediately subject to review by the Commission.

(ii) Notify the Commission by the next business day of any and all efforts undertaken by the Director or their designee(s) to obtain competition, and the emergency condition that justified reliance on this section. The Director, not the Commission, is responsible for any notification to Risk Management or other such agencies or entities as may be statutorily required per rules and statutes that apply to the Commission.

(iii) Notwithstanding any confidentiality concerns, the Director or their designee shall publicly disclose the rationale and result of the emergency selection to the agency website within five (5) business days of the emergency selection.

Section 11. Contract.

(a) Upon completion of the selection process, the Director or their designee shall negotiate a written contract in the form required by the Commission with the selected firm as determined by this chapter and Chapter 4 of these rules.

(b) The Director or their designee shall consider the estimated value, scope, complexity, and professional nature of the services or materials to be rendered when determining a reasonable compensation.

(c) If the Director or their designee is unable to negotiate a satisfactory contract with the selected firm at a price determined to be fair and reasonable, negotiations with that firm shall be terminated. The Director or their designee shall then begin negotiations with the second-ranked firm in order of preference pursuant to Section 9. If the Director or their designee fails to negotiate a contract with the second-ranked firm, they shall terminate negotiations. The Director or their designee shall then begin negotiations with the third-ranked firm in order of preference.

(d) If the Director or their designee is unable to negotiate a satisfactory contract with any of the selected firms, they shall:

(i) Select additional firms in order of their rank and continue negotiations in accordance with this Section 11 and Section 9 of this chapter, until a contract is reached; or

(ii) Review the contract under negotiation to determine the possible cause for failure to achieve a negotiated contract.

(e) Each contract for services or materials entered into by the Commission shall contain a prohibition against gratuities, kickbacks and contingent fees for the Director and the Board. The selected firm shall certify that it has not in any way been involved in any gratuities, kickbacks, or contingent fees in connection with its selection or ultimate performance of the contract.

(f) This act shall not prohibit continuing contracts between any person or firm providing services or materials and any agency.