

NEVADA BOARD TO REVIEW CLAIMS

MEETING OF SEPTEMBER 10, 2015

Video conferenced from Carson City and Las Vegas, Nevada
Summary of Policy Resolution

ITEM: 7

SUBJECT: Policy Resolution No. 2015-01 - Provides Clarification Regarding the Petroleum Fund Bid Process.

DISCUSSION: Petroleum Fund regulation NAC 590.760.4(e) requires a storage tank owner/operator to obtain approval from the Nevada Division of Environmental Protection (NDEP) or secure not less than three competitive bids for a task included in a corrective action that costs more than \$3,000.00 if the corrective action required by the discharge from the tank is not an emergency. The intent of this regulation is to facilitate cost control.

Policy Resolution No. 2015-01 will further delineate the bid process to meet the intent of NAC 590.760.4(e). It will provide a \$25,000.00 threshold whereby bids must be provided to NDEP prior to work being initiated and stipulate how the Certified Environmental Manager, the owner/operator and bidding contractor/vendor must complete and submit the bids.

RECOMMENDATION: **Adoption** of Policy Resolution No. 2015-01 as proposed.

NEVADA BOARD TO REVIEW CLAIMS

RESOLUTION No. 2015-01

Resolution to Provide Clarification Regarding the Petroleum Fund Bid Process

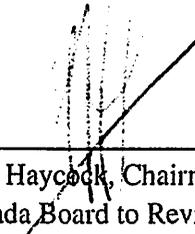
Whereas, the Nevada Board to Review Claims (hereinafter referred to as the Board) Finds:

1. NAC 590.760.4(e) states that a storage tank operator must obtain approval from the Nevada Division of Environmental Protection (NDEP) or secure not less than three competitive bids for a task included in a corrective action that costs more than \$3,000.00 if the corrective action required by the discharge from the tank is not an emergency.
 2. NAC 590.710.1(c) defines an emergency as an action that stops the release of petroleum or identifies or mitigates existing or potential hazards from fire, explosion, vapor or other hazards associated with a release, or prevents the migration of petroleum which poses a substantial imminent threat to the environment.
 3. The intent of NAC 590.760.4(e) is to facilitate cost control and maintain open competition.
 4. To better manage cost control, but not impede corrective action progress, all bid packets for projects or purchases with the selected bid equal to or greater than \$25,000.00 must be provided to NDEP prior to the work being initiated by the contractor or item being purchased.
 5. NDEP will notify the person who submitted the bid packet, in writing, that the bid packet has been received and will review it no later than 10 business days after receipt. NDEP will notify the person who submitted the bid packet whether or not there is an objection.
 - a. If NDEP does not object, the work may proceed or item purchased.
 - b. If NDEP objects, the issue must be resolved or, if the owner chooses to proceed, the costs for doing the work or purchasing the item may not be recommended for reimbursement.
- If NDEP does not stipulate whether or not it has an objection after 10 business days from bid packet receipt, the work may proceed or the item may be purchased.
6. For all bids, regardless of the bid amount, the contractor or vendor must sign a "Contractor Certification Form" or "Vendor Form" which contain certification statements (See Attachment A and B).
 7. The individual bids, each paired with a signed Contractor Certification Form, are packaged, usually by the Certified Environmental Manager (CEM), with the Bid Summary Table completed. The CEM and Owner/Operator each must sign the "CEM Bid Summary & Certification Form" (See Attachment D) which completes the bid packet for transmittal to NDEP.

THEREFORE BE IT RESOLVED THAT:

1. The Request for Bids sent to contractors must be structured so all obtained bids will be compared to the same criteria (See Attachment C for Request for Bid Table Example). The Summary Bid Table (See Attachment D) must be completed prior to submittal to NDEP and will ensure comparable bids.
2. All bid packets for contractor work or purchases with the selected bid equal to or greater than \$25,000.00 must be provided to the NDEP regulatory case officer and the NDEP LUST supervisor prior to the work being initiated by the contractor or item being purchased. For Washoe County projects, bid packets must be submitted to the NDEP Petroleum Fund supervisor and the LUST supervisor.
 - a. NDEP will notify, in writing, the person who submitted the bid packet that it was received and will review the bid packet no later than 10 business days after receipt. NDEP will notify the person who submitted the bid packet whether or not there is an objection.
 - i. If NDEP does not object, the work may proceed or item purchased.
 - ii. If NDEP objects, the issue must be resolved or, if the owner chooses to proceed, the costs for doing the work or purchasing the item may not be recommended for reimbursement.
 - b. If NDEP does not stipulate whether or not it has an objection after 10 business days from bid packet receipt, the work may proceed or the item may be purchased.
3. All bids, regardless of the bid amount, must be accompanied with a signed Contractor Certification Form and/or Vendor Certification Form.
4. The individual bids, each paired with a signed Contractor Certification Form, are packaged, usually by the Certified Environmental Manager (CEM), with the Bid Summary Table completed. The CEM and Owner/Operator each must sign the "CEM Bid Summary & Certification Form" which completes the bid packet for transmittal to NDEP. This process is required for all bids, regardless of the amount.
5. The Petroleum Fund reimburses for select corrective action equipment and corrective action work performed, including reasonable and customary profit and overhead markup. The Fund does not reimburse costs attributed to risks associated with an owner/operator or other intangible costs not related to the work being performed or item(s) being purchased.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada Board to Review Claims on September 10, 2015.



John Haycock, Chairman
Nevada Board to Review Claims

Attachment A

Contractor Certification Form

Contractor Certification Form

I hereby certify, to the best of my knowledge, that:

- I am licensed to conduct the work contained in the above-described and attached bid.
- I have arrived at the prices in the bid independently, without consultation, communication, or agreement with any party for the purpose of restricting competition, including price fixing, bid-rigging and collusion.
- I understand the Petroleum Fund is not responsible for paying invoiced costs identified in the "Ineligible Contractor Costs" found at <http://ndep.nv.gov/bca/fundhome.htm> .
- Unless otherwise required by law, I have not and will not disclose the prices quoted in the bid to any party, directly or indirectly, prior to the opening of all bids by the party requesting the bid.
- I did not attempt to induce any other party to submit, not submit or modify a bid for the purpose of restricting competition.
- I will provide to the NDEP all necessary documentation to verify actual costs, if requested. These may include but are not limited to: bid worksheets, timesheets and subcontractor invoices. I understand that reimbursements approved by the Petroleum Fund Board are subject to audit by the NDEP or any representative thereof.
- I understand that the submission of false or misleading information or credentials, or failure to comply with the applicable statutes or rules, may result in a denial of all claims as well as further penalties as provided under NRS 459.595 and NRS 197.160.

Business Name _____

Printed Name _____

Authorized Signature _____

Contractor's Nevada License Number _____

License Expiration Date _____

Phone Number _____

Date _____

Project Name _____

Project Location _____

Petroleum Fund Case# _____

Facility ID # _____

Attachment B

Vendor Certification Form

Vendor Certification Form

I hereby certify, to the best of my knowledge, that:

- I have arrived at the prices in the bid independently, without consultation, communication, or agreement with any party for the purpose of restricting competition.
- I understand the Petroleum Fund is not responsible for paying invoiced costs identified in the "Ineligible Contractor Costs" found at <http://ndep.nv.gov/bca/fundhome.htm>.
- Unless otherwise required by law, I have not and will not disclose the prices quoted in the bid to any party, directly or indirectly, prior to the opening of all bids by the party requesting the bid.
- I did not attempt to induce any other party to submit, not submit, or modify a bid for the purpose of restricting competition.
- I understand that reimbursements approved by the Petroleum Fund Board are subject to audit by the NDEP or any representative thereof. I understand that the submission of false or misleading information or credentials, or failure to comply with the applicable statutes or rules, may result in a denial of all claims as well as further penalties as provided under NRS 459.595 and NRS 197.160.

Business Name _____

Printed Name _____

Authorized Signature _____

Business License Number _____

Phone Number _____

Date _____

Project Name _____

Project Location _____

Petroleum Fund Case # _____

Facility ID # _____

Attachment C

Example Request for Bid Form

**NEVADA PETROLEUM FUND
REQUEST FOR BID
Example Form**

Project Name _____

Project Location _____

Petroleum Fund Case # _____

Facility ID # _____

Task	Estimated Quantity	Unit	Unit Price	Cost
Task A				
Task B				
Task C				
Total Cost				\$\$ ENTER TOTAL COST HERE

This table should be modified to meet the scope of work requirements. Please ensure that for each project, all bids are submitted using the same uniform table.

Attachment D

CEM & Owner/Operator Bid Summary and Certification Forms

Certification Form for Contract between CEM & Contractor
Certification Form for Contract between Owner & Contractor

NEVADA PETROLEUM FUND BID SUMMARY & CERTIFICATIONS

Project Name _____
Project Location _____
Petroleum Fund Case # _____ **Facility ID #** _____
Selected Bidder _____

DESCRIPTION OF TASK / WORK ACTIVITY	QUANTITY	UNIT	BIDS		
			Company Name #1	Company Name #2	Company Name #3
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
TOTAL			\$	\$	\$

NOTE: Bids must be reported in like units

Bid Packet Requirements:

1. Ensure the Request for Bid Table provided to the Contractors/Vendors has tasks in identical order as the Bid Summary Table provided to NDEP. If the Quantity is not uniform for all bids, please indicate N/A for "not applicable." The unit should be uniform for all bids.
2. Provide **justification** along with a written bid waiver from the **Regulatory Case Officer** if less than three bids were obtained OR lowest bid was not selected.
3. Ensure all contractor/vendor bids are complete, including a signature following the certification statements.
4. Ensure both the CEM and Owner have signed the same *Certification Statement* form, depending upon whether the CEM or owner will be contracting with the contractor/vendor.
5. If the selected bid is \$25,000.00 or greater, the bid packet must be submitted to the NDEP case officer and the NDEP LUST Supervisor prior to conducting work or purchasing item. For Washoe County projects, the bid packet must be submitted to the NDEP Petroleum Fund supervisor and the NDEP LUST supervisor.
6. If NDEP does not object to the submitted bid packet after 10 business days of receipt, the contracted work may begin or the item may be purchased.

Certification Statements – Contract Between CEM and Contractor

I hereby certify, to the best of my knowledge, that:

1. I have confirmed the bids were obtained only from parties licensed to perform the work.
2. The bids are based upon the same scope of work and I have included the Request for Bid.
3. I have not independently consulted, communicated, or otherwise influenced any bidding party for the purpose of restricting competition.
4. Unless otherwise required by law, I have not and will not disclose the prices quoted in the bids to any party, directly or indirectly, prior to the opening of all bids by the party requesting the bid.
5. I did not attempt to induce any other party to submit, not submit, or modify a bid for the purpose of restricting competition.
6. If I am bidding on a client's project, my bid and all related competitor bids will be provided directly to the NDEP case officer and the NDEP LUST Supervisor. For Washoe County projects, all bids will be submitted to NDEP Petroleum Fund Supervisor and the LUST supervisor.
7. I have submitted to NDEP a true and correct copy of each bid I received.
8. I will provide to the NDEP all necessary documentation to verify actual costs, if requested. I understand that reimbursements approved by the Petroleum Fund Board are subject to audit by the NDEP or any representative thereof. I will reimburse the fund for any costs disallowed pursuant to such an audit.
9. I understand that the submission of false or misleading information or credentials, or failure to comply with the applicable statutes or rules, may result in a denial of all claims as well as further penalties as provided under NRS 459.595 and NRS 197.160.

Project Name _____

Project Location _____

Petroleum Fund Case # _____

Facility ID # _____

Storage Tank Owner/Operator

Statements 3, 4, 5, 8 and 9 only

Printed Name _____

Signature _____

Phone Number _____

Date _____

Certified Environmental Manager

Statements 1 – 9

Company _____

Printed Name _____

CEM Number _____

Signature _____

Phone Number _____

Date _____

Attachments: Copy of Request for Bid

Copies of all bids received and Contractor/Vendor Certification Forms

REGULATORY AGENCY USE ONLY

I DO ___ DO NOT ___ concur with the proposed bid packet and selected contractor/vendor _____
NDEP Case Officer Date

Certification Statements – Contract Between Owner and Contractor

I hereby certify, to the best of my knowledge, that:

1. I have confirmed the bids were obtained only from parties licensed to perform the work.
2. The bids are based upon the same scope of work and I have included the Request for Bid.
3. I have not independently consulted, communicated, or otherwise influenced any bidding party for the purpose of restricting competition.
4. Unless otherwise required by law, I have not and will not disclose the prices quoted in the bids to any party, directly or indirectly, prior to the opening of all bids by the party requesting the bid.
5. I did not attempt to induce any other party to submit, not submit, or modify a bid for the purpose of restricting competition.
6. I have submitted to NDEP a true and correct copy of each bid I received.
7. I will provide to the NDEP all necessary documentation to verify actual costs, if requested.
8. I understand that reimbursements approved by the Petroleum Fund Board are subject to audit by the NDEP or any representative thereof. I will reimburse the fund for any costs disallowed pursuant to such an audit.
9. I understand that the submission of false or misleading information or credentials, or failure to comply with the applicable statutes or rules, may result in a denial of all claims as well as further penalties as provided under NRS 459.595 and NRS 197.160.

Project Name _____

Project Location _____

Petroleum Fund Case # _____

Facility ID # _____

Storage Tank Owner/Operator

Printed Name _____

Signature _____

Phone Number _____

Date _____

Certified Environmental Manager

Company _____

Printed Name _____

CEM Number _____

Signature _____

Phone Number _____

Date _____

Attachments: Copy of Request for Bid
Copies of all bids received and Contractor/Vendor Certification Forms

REGULATORY AGENCY USE ONLY

I DO ___ DO NOT ___ concur with the proposed bid packet and selected contractor/vendor _____
NDEP Case Officer Date

Ineligible Contractor Costs

Please be Aware the Petroleum Fund is NOT Responsible for Reimbursing the Following Itemized Costs. If NDEP determines these costs have been included in a claim, NDEP will recommend to the *Board to Review Claims to not reimburse the ineligible amount(s)*.

The costs for items below may be separately negotiated with the owner/operator.

1. Excessive markup over customary and usual rates. Customary and usual rates are rates required for a service or purchase that include reasonable markup for profit and overhead and do not include intangible costs not associated with effective completion of a project.
2. Costs attributed to risks associated with an owner/operator or other intangible costs not related to the effective completion of a project.
3. Costs for damage due to contractor or subcontractor error.
4. Change Order costs associated with an awarded bid that was submitted intentionally low, failing to be representative of the costs for the project, in an effort to increase the likelihood of winning the bid.
5. Costs for equipment that was not used for the job.
6. Costs outside the scope of the approved project.
7. Costs for additional, unforeseen work approved by NDEP that is billed at a greater rate than the original bid rates, unless approved by the regulatory case officer.
8. Purchase of maintenance equipment, such as hand tools.
9. Activities, equipment or materials which are solely for the convenience of the claimant. Examples: rush lab turn around fees not required by oversight agency, replacement of wells due to site improvements, site improvements unrelated to required corrective actions.