



THREE AFFILIATED TRIBES • FORT BERTHOLD RESERVATION

Mandan, Hidatsa and Arikara Tribes

TRIBAL EMPLOYMENT RIGHTS OFFICE

PO Box 488 New Town, North Dakota 58763

Phone: (701)627-6100 Fax: (701)627-4496

22 Jan 21

To: All Awarding Entities

SUBJ: SELF-PERFORMING PREFERENCE LIST - BID OPENING PROTOCOL

EFFECTIVE IMMEDIATELY, in an effort to reinforce and support the Self-Performing Preference Guidance, the following protocol will be observed in all MHA TERO bid openings:

1. Awarding Entities shall publish requests for proposals by transmitting the requests to the Qualified Indian Contractors identified on the MHA TERO website by service.
2. Responses to a request for proposal shall remain sealed until the date and time of the bid opening and shall not be otherwise viewed or evaluated prior to bid opening. Information contained in the response shall not otherwise be communicated to the Awarding Entity.
3. **IMPORTANT:** Prior to the opening of the first bid, Awarding Entities shall disclose to TERO an estimated project cost/Engineer's Estimate for the scope of work defined in the request for proposal. This projected cost disclosure to MHA TERO is consistent with the MHA TERO Ordinance and Regulations. This cost information will be used by TERO to ensure full compliance with the bid process. It is MHA TERO's intention to preserve the confidentiality of the projected cost estimate.
4. Only Self-Performing Indian Contractors (if any) bids shall be opened prior to any other bids. If a Self-Performing Indian Contractor's bid is at or below the estimated project cost, the bid process is complete and the most competitive Self-Performing Indian Contractor bid shall be identified.
5. MHA TERO declares who has the lowest bid. If lowest bid cannot be determined with the information provided, the effort will be made to designate the apparent low bidder.
6. **IMPORTANT:** If a Self-Performing Indian Contractor is not selected in the initial round of the bid opening, the burden of proof is on the Awarding Entity to justify and request moving on to and opening the bids of Indian Contractors not identified as "Self-Performing".
7. Through this process, there is a presumption that the Awarding Entity will select an Indian Contractor.

Pursuant to Section 503 of the TERO Ordinance of the Three Affiliated Tribes, the TERO Director is responsible to carry out the purpose of the Ordinance. MHA TERO Regulation. Section 3.2 reads in part: "Qualified Indian Contractors" that are 100% owned and controlled by enrolled members of the Three Affiliated Tribes shall have first preference..." The Director interprets Regulation Section 3.2's reference to first preference to incorporate a bid opening and selection protocol that is consistent with the rules and the purpose of the rules. Entities that are subject to TERO jurisdiction shall follow the summarized protocol for Bid Openings.

Charles Foote

MHA TERO Executive Director