

REQUEST FOR BIDS

**TOWN OF ACTON
Former Caouette Property (DEP RTN 2-0018007) and
Abutting Portion of Former MBTA Property (DEP RTN 2-0017998)
Stow and Maple Streets
Acton, Massachusetts**

DATE OF ISSUANCE: September 28, 2011

PRE-BID SITE INSPECTION: October 11, 2011 at 11:00 a.m.

DEADLINE FOR BIDS: October 19, 2011 at 5:00 p.m.

BID OPENING: October 19, 2011 at 5:00 p.m.

ESTIMATED START DATE OF WORK: October 31, 2011

ESTIMATED COMPLETION DATE OF WORK: November 30, 2011

I. INTRODUCTION

Pursuant to G.L. c. 30, § 39M, this is a Request for Bids ("RFB") issued by the Town of Acton, a Massachusetts municipal corporation with a principal address at Town Hall, 472 Main Street, Acton, MA 01720 (the "Awarding Authority"). The Town owns two adjoining properties on Stow and Maple Streets in Acton known as the former Caouette Property and the former MBTA Property (collectively the "Site"). The Town has conducted several rounds of soil, sediment, and groundwater assessments of the Site. Those assessments reveal that polycyclic aromatic hydrocarbon ("PAH"), lead, and arsenic are present above Massachusetts Contingency Plan ("MCP") Soil-1 ("S-1") standards in shallow soils in portions of the Site. The Massachusetts Department of Environmental Protection ("DEP") has assigned DEP RTN 2-0018007 to the release at the former Caouette Property and DEP RTN 2-0017998 to the release at the abutting portion of the former MBTA Property.

The Town's environmental consultant, O'Reilly, Talbot & Okun ("OTO") has prepared and submitted to the MA Department of Environmental Protection ("DEP") a Release Abatement Measure Plan (the "RAM Plan") summarizing the results of the environmental assessments and outlining a plan for the removal and disposal of the contaminated soils. The RAM Plan is Exhibit A to this RFB and is available at <http://public.dep.state.ma.us/fileviewer/Rtn.aspx?rtn=2-0018007>. A copy of the Site Plan showing the location of the soil removal areas is attached to this RFB as Exhibit B.

The Awarding Authority is requesting bids to furnish all labor, supervision, services, equipment, transportation, required materials, supplies, insurance and other resources to perform and complete the following work (collectively the "Work") in strict accordance with the Contract Documents identified in Section 4 of Exhibit D, all applicable laws and regulations, and the Order of Conditions issued by the Acton Conservation Commission and recorded in the Middlesex County Registry of Deeds at Book 57158, Page 406, and attached hereto as Exhibit C, all of which are incorporated herein by reference and are made a part hereof:

- (a) The complete excavation, loading, removal, transportation, and off-site disposal of PAH, lead, and arsenic-contaminated soils located at the Site in accordance with the RAM Plan, M.G.L. c. 21E, the Massachusetts Contingency Plan ("MCP"), and any DEP approval relating thereto and under the direction and supervision of the Town's Licensed Site Professional ("LSP"). Soil excavation shall extend to approximately two (2) feet below ground surface or until impacted soils are removed, as determined by the LSP; and
- (b) The complete restoration of the areas disturbed during the soil removal described in Paragraph (a), including the importation from off-site sources and installation

and placement of topsoil to match existing grades and the installation of surface cover and seed to stabilize disturbed soil.

The Awarding Authority reserves the right to reject any and all bids submitted in response to this request if it is in the Awarding Authority's best interest and/or the public interest to do so, and the Awarding Authority's discretion in that regard shall be absolute.

Subject to its rights under this Request For Bids, the Awarding Authority may proceed with the Notice of Award and Notice to Proceed in a time frame that requires the successful Bidder to complete the work, with the exception of seeding and loaming required as part of the work, no later than November 30, 2011, with time being of the essence. Seeding and loaming shall be completed by May 31, 2012.

II. DEADLINE

All responses to this RFB are due by October 19, 2011, at 5:00 p.m. Five copies of the response shall be delivered in a sealed envelope clearly labeled on the outside of the envelope as follows:

ACTON REMEDIATION BID RESPONSE

Steven L. Ledoux
Town Manager
Town Hall
472 Main Street
Acton MA 01720

III. SITE INSPECTION

An inspection of the Site will be conducted for all bidders on October 11, 2011, at 11:00 a.m. All prospective bidders are encouraged to attend. Interested persons will meet Mr. Roland Bartl on that date and time at the entrance to the Site. Transportation will not be provided.

IV. BID OPENING

Bids will be publicly opened and recorded on **October 19, 2011 at 5:00 p.m.** at the Town Hall, 472 Main Street, Acton MA.

V. AGREEMENT

The successful bidder will be required to execute a contract for the work in substantially the form of the Agreement attached as Exhibit D, within five (5) business days from the date of Notice of Award.

VI. BIDDER'S WORK COVERED BY THIS RFB

Within 30 calendar days of receiving a Notice to Proceed, the successful bidder (the "Contractor") shall complete the Work. Time is of the essence.

The Contractor shall include in its bid all costs of the Work including, without limitation, the Contractor's costs of its own work and the amount to cover all work required by any subcontractor of the Contractor. The Contractor shall cause the work covered by any subcontract to be performed by a qualified and responsible subcontractor. If the Awarding Authority determines that any subcontractor chosen by the Contractor is not qualified or responsible, the Contractor shall obtain another subcontractor who is satisfactory to the Awarding Authority with no adjustment in the Contractor's price.

In performing said Work, the Contractor shall comply and shall cause its subcontractors to comply with (a) the requirements of governmental agencies having jurisdiction over such matters; (b) applicable federal, state and local laws, codes, ordinances, rules, regulations, and orders, adopted or amended, including, without limitation, the requirements of Chapter 21E, Chapter 21C, the RCRA, OSHA and the Massachusetts Contingency Plan applicable to the removal and disposal of PAH, lead, and arsenic-contaminated materials; (c) all conditions

imposed by the Order of Conditions issued by the Acton Conservation Commission and recorded in the Middlesex County Registry of Deeds at Book 57158, Page 406, attached hereto as Exhibit C; and (d) all other conditions required by this RFB and all exhibits thereto.

All activities under the Agreement shall be done with as little interference with the Site and the properties of any abutters as possible.

VII. QUALIFICATIONS OF BIDDERS

To demonstrate qualifications to perform the Work, each Bidder must submit its written answer to the Request for Bids Questionnaire attached hereto as Exhibit E. The Awarding Authority reserves the right to reject any Bid if the evidence submitted by such Bidder, or the investigation of such Bidder by the Awarding Authority, fails to satisfy Awarding Authority that such Bidder is properly qualified to carry out the obligations of the Contract and to complete the Work contemplated therein. Without limitation, the Awarding Authority shall reject any Bid by a Bidder that has not successfully completed at least three contaminated soil removal and restoration projects.

It is the responsibility of each Bidder before submitting a Bid to: (a) examine the Contract Documents thoroughly; (b) visit the Site to become familiar with the local conditions that may affect cost, progress, performance or furnishing of the Work; (c) consider federal, state and local laws and regulations that may affect cost, progress, performance or furnishing of the Work; (d) study and carefully correlate Bidder's observations with the Contract Documents; and (e) notify the Awarding Authority of all conflicts, errors or discrepancies in the Contract Documents.

VIII. INSURANCE

Prior to providing any Work, Contractor shall procure and maintain, and shall cause all subcontractors to procure and maintain, insurance of the following types of coverage and limits of liability:

- (1) Comprehensive General Liability (CGL”) including products/completed operations, independent contractors and a "broad form" coverage endorsement that must include contractual liability and personal injury. The minimum limit is \$1,000,000 per occurrence for Bodily Injury and Property Damage on a combined single limit basis. General Liability Insurance shall include coverage for completed operations, contractual liability, and independent Contractor, X.C.U. liability.
 - (2) Workers' Compensation Insurance to the extent required by statute.
 - (3) Automobile Bodily Injury and Property Damage limits of at least \$1,000,000.
 - (4) Employers' Liability Insurance of at least \$1,000,000.
 - (5) Statutory Disability Insurance if required in Massachusetts.
 - (6) All Risk Property Insurance to the full replacement value of any equipment used by Contractor that belongs to the Town. (If Contractor will use its own equipment exclusively, this insurance is not needed. The Town's insurance will not cover any tools, equipment, materials, supplies, temporary structures or other property owned or rented by the Contractor or Subcontractors which is not to be incorporated in the Work.)
- b. All coverages shall be primary (unless otherwise noted), shall be written on an occurrence basis and shall be maintained without interruption from the date of this Agreement until the date of termination of this Agreement.
- c. Certificates of insurance acceptable to the Town shall be filed with the Town prior to commencement of Contractor's Work. The certificates and the insurance policies required by this Agreement shall not expire for at least one year from the date of issuance and shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire unless the Town has received at least 30 days prior written notice. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of this coverage shall be submitted with the final application for payment. The certificate of insurance and the insurance policies required hereunder shall name the Town of Acton, and its successors and assigns, as additional insureds with respect to all Work performed

on behalf of the Town. The insuring company shall be reputable, admitted to do business in Massachusetts and have a rating by A.M. Best of at least A. VIII.

- d. The Contractor shall, upon execution of this Agreement, furnish a performance bond and a labor and materials or payment bond, each of a surety company qualified to do business under the Laws of the Commonwealth of Massachusetts and satisfactory to Awarding Authority and each in the sum of the value of the bid as set forth on the Bid Form, Exhibit G (Total Price), the premiums for which shall be paid for by the General Contractor and are included in the contract price.
- e. The Contractor shall, upon execution of this Agreement, furnish a sufficient security conforming in all respects to General Laws Chapter 30, Section 39A, for payment of all rental and transportation charges for the hire or use of dump trucks upon such contract, on a surety company qualified to do business under the Laws of the Commonwealth of Massachusetts and satisfactory to Awarding Authority and in the sum of the Contract Price, the premiums for which shall be paid for by the General Contractor and are included in the contract price.

IX. MISCELLANEOUS TERMS AND CONDITIONS

A. Underground Utilities

Information and data reflected in the Contract Documents with respect to underground utilities at or contiguous to the Site is based upon information and data available to the Awarding Authority and Awarding Authority does not assume responsibility for the accuracy or completeness thereof.

B. Bidder's Representation

The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this RFB, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

C. Addenda

Changes in the Work or corrections to or interpretation of the Contract Documents, as may be issued by the Awarding Authority during the bidding period, shall be in the form of Addenda. Such Addenda shall become part of the Contract Documents. Each Bidder shall acknowledge promptly receipt of any and all Addenda and shall confirm in its Bid that the information contained in such Addenda has been considered in preparing its Bid. Bidder shall be responsible for determining that it has received all Addenda which have been issued.

D. Governing Law

The validity, effect and enforceability, as well as all the rights of all of the parties regarding any Agreement entered into pursuant to this RFB shall be governed, construed and interpreted solely in accordance with the laws of the Commonwealth of Massachusetts.

E. Guarantee

The Contractor shall warrant and guarantee to the Town of Acton that all Work will be in accordance with the Contract Documents and will not be defective and that the Work shall be fit for the particular purposes stated herein.

F. Prevailing Wages

Pursuant to G.L. c. 149, § 27, prior to awarding this Contract, the Awarding Authority has submitted information on this project to the commissioner of labor and industries and has requested that the commissioner determine the rate of wages to be paid on each job relating hereto. Pursuant to G.L. c. 149, § 27, said rates shall apply to all persons engaged in the Work at the Site including, without limitation, transporting soil, gravel or fill to the Site or removing soil, gravel or fill from the Site, regardless of whether such persons are employed by a Contractor or subcontractor or are independent Contractors or Awarding Authority operators. The

commissioner, subject to the provisions of section twenty-six, has determined the same, and has furnished to the Awarding Authority a schedule of such rate or rates of wages.

The Awarding Authority hereby incorporates said schedule in this Request for Bids as Exhibit F and shall furnish a copy of said schedule, without cost, to any person requesting the same. Said schedule shall be made a part of the contract for said Work and shall continue to be the minimum rate or rates of wages for said employees during the life of the contract. The Contractor shall cause a legible copy of said schedule to be posted in a conspicuous place at the site of said Work during the life of the contract. The Contractor shall certify in writing upon Completion of the Work, using AIA documentation or the equivalent, that it has complied fully with the requirements of this section.

X. EVALUATION CRITERIA

All bids must comply with the requirements of this RFB. All bids must specify: (a) a contract base price for all costs associated with mobilization and demobilization, overhead and management costs, insurance, bonding, preparation of the Project Work Plan and other required submittals, installation maintenance and removal of temporary facilities (including erosion and sedimentation control features and wheel wash station), and the construction, maintenance and removal of wetland protection measures, and any other miscellaneous work required in the contract specifications; (b) a Unit Price per Ton for the excavation, handling, stockpiling, removal, transportation and disposal of the PAH, lead, and arsenic- contaminated soil; and (c) a Unit Price per Ton for soil backfilling, including all costs associated with the transportation, backfilling and compaction of soil. The Contract will be awarded to the lowest responsible and eligible Bidder ("Successful Bidder"). Such a Bidder shall possess the qualifications, skill, ability and integrity necessary to the faithful performance of the Contract including, without

limitation, the qualifications required by Section VII of this RFB. The term "lowest responsible and eligible Bidder" as used herein shall have the meaning as defined in G.L. c. 30, § 39M(c).

The Awarding Authority reserves the right to reject any and all bids, to waive any and all informalities if it is in the Awarding Authority's best interest and the public interest to do so, and to reject all nonconforming, nonresponsive or conditional Bids.

The Awarding Authority shall reject the Bid of any Bidder that does not meet the qualifications of Section VII of this RFB to Bidders.

XI. INSTRUCTIONS AND CONDITIONS FOR BIDDERS

A. Bid Deposit

Each Bid must be accompanied by Bid Deposit in the form of a Bid Bond, or cash, or a certified check on, or a treasurer's or cashier's check issued by, a responsible bank or trust company, payable to the "Town of Acton." A Bid Bond shall be: (a) in a form satisfactory to Awarding Authority; (b) with a surety company qualified to do business in the Commonwealth of Massachusetts and satisfactory to Awarding Authority; and (c) conditional upon the faithful performance by the principal of the agreements contained in the Bid. The amount of such Bid deposit shall be five (5%) percent of the value of the bid as set forth on the Bid Form, Exhibit G (Total Price). Any bid which is not accompanied by Bid deposit as described herein shall be invalid, and the Awarding Authority shall reject such Bid. Bid deposits shall be returned to unsuccessful Bidders within ten days from the Notice of Award. If a Successful Bidder does not enter into an Agreement with the Awarding Authority within five business days from the designation of Successful Bidder, or within such further time as the Awarding Authority may allow, the bid deposit will be retained as liquidated damages.

B. Bid and Price

The Bid shall be submitted on the Bid Form, Exhibit G. The Bid Price shall take into account all the obligations imposed on the Contractor by the Contract Documents. The Bidder shall enter a price against each item of the Bid Form. Note that Bid prices shall include everything necessary to furnish the Work and fulfill the Contract. All prices shall be firm. The estimated quantities shown in the Bid Form are approximate only and are not guaranteed, being solely given for the purpose of comparison of Bids and determining an initial Contract Price. In the event of any increase or decrease in the quantity of any item of work, the actual quantity executed will be paid for at the unit prices bid by the Contractor for the particular items of the Work up to the maximum contract price specified in the Contract Documents.

C. Performance Bond

The Contractor shall furnish the performance bond and labor and materials or payment bond required by Paragraph 5 of the Bid Form and the security required by Paragraph 6 of the Bid Form within the time specified therein.

D. Agreement and Certificates

Each applicant shall complete the Bid Form (with certifications) attached hereto as Exhibit G and shall agree to execute the Agreement attached hereto as Exhibit D. No bid will be considered unless all required forms are completed and the required certificates are signed by an authorized representative of the Applicant. The Awarding Authority may waive minor informalities and omissions in the bid if it decides, in its sole discretion, that such informality or omission is not prejudicial to the interests of the Awarding Authority or to fair competition.

E. Interviews

The Awarding Authority reserves the right to interview or to seek additional information from any applicant after opening of bids but before entering into an Agreement, to reject any bid if the Awarding Authority deems it to be in the best interests of the Awarding Authority, and to award an Agreement to the next qualified applicant.

F. Public Records

All bids shall be deemed to be public records with the meaning of G.L. c. 4, § 7(26). If a Bidder believes that the RFB requires the disclosure of technical, proprietary, or trade secret information that the Bidder is not willing to make public, it may submit such information in a separate envelope clearly marked, which for any unsuccessful bidder will be returned to the applicant following the designation of successful bidder. No part of a bid involving the price may be designated as confidential.

G. Corrections

Bids may be corrected, modified, or withdrawn prior to the deadline for submission of bids by submitting the required number of copies of such correction, modification, withdrawal or a new submission, clearly marked on the outside envelope with the appropriate heading, by the deadline listed in Section II. Bids may not be withdrawn or modified for a period of sixty (60) business days after the day of opening of bids.

H. Exceptions

Contractor's response to this RFB should reflect exceptions to only those requirements with which Contractor cannot comply. Exceptions should be itemized in the Bid proposal. The Awarding Authority reserves the right to reject any bid setting forth any such exception if it

decides, in its sole discretion, that such exception is not in the Awarding Authority's best interests or in the public interest.

I. Taxes

Bids shall include any applicable Local, State, and Federal taxes. The Awarding Authority believes that the Work is exempt from sales tax pursuant to G.L. c. 64H, § 6(F). Should a determination be made that the Work is subject to sales tax, such taxes will be paid by the Contractor. For clarity, the Bid should not include sales tax covered by the exemption in G.L. c. 64H, § 6(F).

J. Bid Form

A fully completed Bid Form in the form attached hereto as Exhibit G must be submitted in accordance with the RFB.

K. Construction Schedule

A proposed schedule of construction activities, identifying key milestones and construction completion, must be submitted in accordance with the RFB. The proposed schedule for construction activities will not exceed 30 calendar days with the exception of seeding and loaming which shall be completed by May 31, 2012.

L. Bid Costs

This Request for Bids (RFB) shall in no way obligate the Awarding Authority to issue any purchase order or to pay any costs incurred in preparation of a response to this RFB.

M. News Releases

News releases regarding any aspect of this RFB or solicitation of this procurement by the Awarding Authority shall not be made at any time without prior written approval of the Awarding Authority.

N. Permits

The successful Contractor shall be responsible for obtaining all necessary permits for the Work.

O. Inspections and Certificate of Occupancy

The Contractor shall be responsible to obtain all inspections during and after the course of construction and obtain any necessary certificate of occupancy for the Work which must be submitted to Awarding Authority.

P. [Intentionally Omitted]

Q. Completion of Work

The Work shall be considered “Complete” when all required Town of Acton inspections have been successfully completed and any necessary Certification from OTO and/or DEP has been issued.

R. Purchase Orders

During the course of the Work, materials and/or services are only to be provided if authorized by a signed a Town of Acton purchase order.

S. Warranties

All materials and equipment provided as part of the Work must be provided with standard manufacturers’ warranties unless otherwise stated. All services provided must carry a minimum of one year warranty against all labor and material.

T. Awarding Authority’s Point of Contact

The Awarding Authority shall designate a primary and alternate Point of Contact for the Work.

U. Contractor's Point of Contact

The Contractor will assign a project supervisor to monitor the day-to-day activity during the Work. This person will act as the main Point of Contact ("POC") for Contractor.

V. Payment

All payment terms shall be in accordance with the executed Agreement, substantially in the form attached as Exhibit D and only following completion of the Contractors' Receipt of Payment Release and Waiver of Lien in the form attached as Exhibit H. The Town will withhold 10% of the contract base price until completion of the seeding and loaming required by the work.

W. Testing Expenses

All necessary and appropriate testing relating to the Work will be at the expense of the Contractor. The Contractor's POC will notify the Awarding Authority at least 48 hours in advance of all required testing and inspections.

X. Materials

Procurement and delivery of all materials must be coordinated by the Contractor. The Contractor must have its POC on Site when deliveries take place.

XII. NOTICE OF AWARD

If the Contract is to be awarded, the Awarding Authority will give the Successful Bidder a Notice of Award within sixty (60) business days after the day of the General Bid opening. All Bids shall remain open for sixty (60) business days after the day of the General Bid opening but the Awarding Authority may, in its sole discretion, release any Bid and return the Bid deposit prior to that date.

The time allowed between the opening of General Bids and the Notice of Award of the Contract specified above may be extended by mutual agreement between the Awarding Authority and the Bidder.

XIII. NOTICE TO PROCEED

The Notice to Proceed will be issued within thirty (30) days of the execution of the Agreement by Awarding Authority. This time may be extended by mutual agreement between Awarding Authority and Successful Bidder.

The Notice to Proceed will establish the date of Commencement of the Work and the date of Final Completion. Time is of the essence to this Work.