

RED LION MUNICIPAL AUTHORITY

RESOLUTION NO. 2011-7

**A RESOLUTION ADOPTING COMPETITIVE
BIDDING REGULATIONS FOR THE
PROCUREMENT OF GOODS AND SERVICES
BY THE RED LION MUNICIPAL AUTHORITY**

WHEREAS, Red Lion Municipal Authority (Authority) is a general municipality authority organized and existing under the Municipality Authorities Act, as amended (Act), 53 Pa.C.S. §§ 5601-5622; and

WHEREAS, the Authority has the power, pursuant to Section 5607(d)(17) of the Act, to prescribe rules and regulations for procurement of goods and services; and

WHEREAS, the Authority now desires to adopt competitive bidding regulations for the procurement of goods and services.

NOW, THEREFORE, BE IT RESOLVED and it is hereby resolved as follows:

SECTION 1. The Members of the Authority hereby approve and adopt the Competitive Bidding Regulations of Red Lion Municipal Authority, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, and from the effective date hereof they shall be the Competitive Bidding Regulations applicable to procurement of goods and services by Red Lion Municipal Authority.

SECTION 2. The provisions of this Resolution and of the Competitive Bidding Regulations hereby adopted are severable, and if any clause, sentence, subsection,

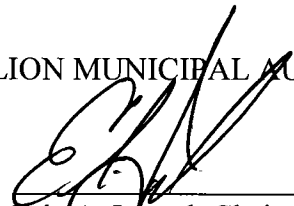
section, article, chapter or part thereof shall be adjudged by any court of competent jurisdiction to be illegal, invalid or unconstitutional, such judgment or decision shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation and application to the clause, sentence, subsection, section, article, chapter or part thereof rendered illegal, invalid or unconstitutional. It is hereby declared to be the intent of the Authority Members that this Resolution and of the Competitive Bidding Regulations would have been adopted if such illegal, invalid or unconstitutional clause, sentence, subsection, section, article, chapter or part thereof had not been included therein.

SECTION 3. This Resolution shall be effective immediately.

RESOLVED this 23rd day of March, 2011.

ATTEST:


Henry P. Herrman, Secretary

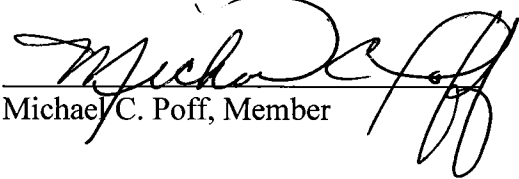
RED LION MUNICIPAL AUTHORITY

Eric A. Immel, Chairman

(SEAL)

Carroll L. Missimer, Member


Henry P. Herrman, Member

Clair Paules, Member


Michael C. Poff, Member

Red Lion Municipal Authority Competitive Bidding Regulations

Red Lion Municipal Authority (“RLMA”) will be bound by and comply with the competitive bidding requirements of the Municipality Authorities Act of 1946, 53 Pa.C.S. §§ 5601-5623, and any other applicable statutes. The purpose of these regulations is to provide consistency in the award of competitively bid contracts and to establish an administrative procedure for contests arising from bids awards. These regulations supplement but do not supersede or replace bidding specifications that are advertised and published for specific contracts. To the extent of any conflict between bid specifications and these regulations, the bid specifications will control.

Awarding Bids

1. Lowest Responsible Bidder. After the bids are opened and evaluated, the contract will be awarded to the lowest responsible bidder. In the case of bid specifications that are divided into component parts for bidding, the lowest responsible bidder may be determined for the individual components or the aggregate bid, as determined to be in the best interest of RLMA. When evaluating “responsible” in awarding the contract, RLMA may consider the following factors:

- A. The quality of the bidder’s previous work.
- B. The bidder’s record for completion of work on time.
- C. The bidder’s history of payment to subcontractors and suppliers.
- D. The maintenance of bidder’s principal place of business.
- E. Adequacy of bidder’s equipment, work crew, and principal place of business to conduct the work.
- F. Credit history and financial background of bidder and bidder’s principals.

By submitting a bid, the bidder expressly consents to RLMA performing the foregoing background checks.

2. Unsatisfactory Bid Outcomes. Where RLMA deems that none of the bids submitted are satisfactory, they may reject all of the bids submitted and rebid the project.

3. Rejection of Bids. RLMA may reject individual bids/proposals for several reasons, including but not limited to submission errors, conflicts of interest, non-responsiveness, failure to meet bid specifications, or other changes in conditions.

4. Award of Bid with Errors. RLMA may accept bids or proposals that have minor errors or irregularities from the bid specifications provided. A minor error or irregularity is one that is merely a matter of form and not of substance. It also pertains to some defect or variation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired,

or when the acceptance of a corrected bid is deemed to be in the best economic interests of RLMA. A negligible defect or variation is one in which the cost of the reformed bid or proposal does not change by more than ten percent (10%) and the accepted bid or proposal still qualifies as the lowest responsible bid.

5. Public Meeting. The award of contracts will be made by public announcement at a duly publicized public meeting.

Withdrawal of Bids

1. Purpose. Bidders may withdraw their bids or proposals before the bid opening, per the conditions provided in the bid specifications. Some bid specifications may permit or remain silent on the opportunity to withdraw after bid opening while others may call for a bid surety to protect RLMA's interest. Withdrawal of bids or proposals after bid opening is not a matter of convenience for the bidder. The Solicitor shall evaluate such events to ensure the best interests of RLMA are maintained.

2. Claim of Clerical Error. A bidder may withdraw their bid for consideration without forfeiting its bid bond if the bid price was submitted in good faith and the bidder can show by credible evidence that the reason for its bid price being substantially lower was a clerical error and not a judgment mistake. The clerical error must have been due to an unintentional and substantial arithmetical error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in contemplation of the bid.

3. Substantial. As used above and within this section, "substantial" shall mean greater than a twenty five percent (25%) deviation in price or quantity from what would have been submitted without a clerical error.

4. Procedure.

A. Discovery of Clerical Error. When a clerical error is discovered and the bidder wishes to withdraw its bid, the bidder must, within two (2) business days after the bid is opened, submit a written Claim of Clerical Error providing its right to withdraw its bid to the RLMA engineer and the RLMA superintendent. The Claim of Clerical Error must include supporting documentation of the exact error, including cost breakdown sheets which isolate the error itself and signed affidavits submitted under penalty of perjury of the error. A Claim of Clerical Error shall only be accepted by RLMA within two (2) business days after the bids are opened, with the two (2) business day period commencing the hour after the bids are actually opened. RLMA may require the bidder to submit additional information, as necessary, to evaluate the Claim of Clerical Error.

B. Categorization of Error. The RLMA superintendent and RLMA engineer shall review the Claim of Clerical Error to determine the appropriate Error Category (see table below) and the proper course of action.

Bid Error Categories

Discovered prior to Contract Award	
<ul style="list-style-type: none"> 1. Minor Errors or Irregularities 2. Obvious/Apparent Clerical Errors 3. Errors other than 1 & 2 above 	<p>RLMA may:</p> <ul style="list-style-type: none"> ▪ Elect to have bidder correct the error. ▪ Allow bidder to withdraw bid (disallowed to subsequently bid on project if it is rebid). ▪ Deny error and disallow bidder to withdraw bid prompting withdrawal contest.
Discovered after Contract Award	
<ul style="list-style-type: none"> 4. Any Error Discovered after Award 	<p>Allowed to be corrected if RLMA determines:</p> <ul style="list-style-type: none"> ▪ It would be unconscionable not to allow correction. ▪ Error can be corrected by contract modification or change order, without changing the essential requirements of the specifications or prejudicing other bidders. <p>RLMA may also make the following determinations:</p> <ul style="list-style-type: none"> ▪ Rescind the contract. ▪ Reform the contract by affixing a price for the item(s) omitted that is not more than the next lowest price for the item in a competing bid. ▪ Disallow changes to the contract or withdrawal prompting withdrawal contest. ▪ An error may not be corrected if it changes the lowest bidder.

C. Determination of Error. Based on the documentation provided, the RLMA superintendent will make the determination on how to proceed based on whether:

- i. The error can be corrected;
- ii. The error will be recognized and the bid allowed to be withdrawn;
- iii. The error will not be recognized and the bid not be allowed to be withdrawn.

D. Notice. RLMA will send a letter that notifies the bidder of its decision including a notification of the bidder's right to appeal and citations to the appeal procedures.

E. Record. RLMA will assemble the documentation that will create the record for the bid decision as follows:

- i. The bid specifications.
- ii. The original bid.
- iii. The written Claim of Error.
- iv. All supporting documentation to the Claim of Error.
- v. Documentation of the Error.
- vi. Copies of all internal correspondences regarding the discussion of the bid error.
- vii. Copy of the letter to the bidder of the final decision.

4. Contest of Bidder's Right to Withdraw.

A. Where a bidder attempts to withdraw a bid and RLMA challenges such bidder's ability to withdraw its bid, RLMA shall hold a hearing not more than ten (10) business days after the opening of the bids. The RLMA solicitor shall be the hearing officer at such hearing. The hearing shall be conducted according to the Local Agency Law. The RLMA solicitor shall issue an order allowing or denying withdrawal of the bid within five (5) business days after such hearing.

B. Where a hearing is scheduled to contest withdrawal of a bid, RLMA shall provide the bidder with timely and reasonable notice of the time, date and location of the hearing. For purposes of these regulations, twenty four (24) hour notice posted at the RLMA offices and on its website shall be considered timely and reasonable notice.

C. The bidder shall pay all of RLMA's administrative costs, including stenographer, engineering and legal fees, associated with the bid contest. RLMA may require an escrow be established prior to a hearing to insure payment thereof. The party requesting a transcript of the hearing shall pay the cost thereof.

5. Withdrawn Bid or Rescinded Contract. In the event a bid is successfully withdrawn, or RLMA rescinds the awarded contract, RLMA may, in its discretion, award the bid to the next lowest responsible bidder or reject all bids and resubmit the project for bidding.

6. Rebidding. Where RLMA decides to rebid a project as provided above, the withdrawn bidder will be required to pay the costs associated with printing new contract documents, advertising, and printing and mailing notices to prospective bidders. RLMA will not release any bond security until after the foregoing costs have been paid in full. The withdrawn bidder is prohibited from resubmitting a bid or working as a subcontractor under another bidder.

Bid Award Protest Procedure

1. Purpose. The purpose of a protest procedure is to allow an actual rate payer of RLMA or other party with legal standing ("Interested Party") who is aggrieved in

connection with a solicitation, evaluation, or award of a contract, an opportunity to state their dispute, pursuant to a "Protest Procedure". Because RLMA's response to a protest establishes a precedent, it is important that RLMA's responses to protests be consistent and take into consideration the best interests of RLMA on a long-term basis. Protests are only permissible for contract award amounts exceeding \$10,000.00.

2. Formal Protest. A protest must be submitted via certified or confirmed delivery mail or hand delivery to the RLMA office by an Interested Party no later than five (5) business days after the publicly advertised meeting at which the contract was awarded. All protests must be in writing and shall contain the following:

- A. The procurement title and/or number under which the protest is made;
- B. The name and address of the allegedly aggrieved party;
- C. A detailed description of the specific grounds for the protest and all supporting documentation;
- D. The specific ruling or relief requested; and
- E. The written protest shall be addressed to or delivered to the RED LION MUNICIPAL AUTHORITY, Center Square, P.O. Box 190, Red Lion, Pennsylvania 17356.

3. Protest Procedure.

A. Upon receipt of a timely written protest, RLMA will hold a hearing on the protest within ten (10) business days after actual receipt in accordance with the procedures of the Local Agency Law. The RLMA solicitor will preside as hearing officer and will issue a written decision within ten (10) business days stating the reasons for the action taken.

B. Where a hearing is scheduled to protest a bid award, RLMA shall provide the bidder with timely and reasonable notice of the time, date and location of the hearing. For purposes of these regulations, twenty four (24) hour notice posted at the RLMA offices and on its website shall be considered timely and reasonable notice.

C. The decision made by RLMA shall be final and conclusive unless appealed to a court of competent jurisdiction within ten (10) business days after the mailing date of the written decision.

D. An Interested Party may not commence litigation prior to exhausting all administrative remedies. Failure to exhaust all administrative remedies shall constitute an absolute waiver of the protestor's right, if any, to commence litigation.

E. Failure to comply with this protest procedure will render a protest or an appeal untimely or inadequate and may result in its rejection by RLMA.

F. The Interested Party commencing the bid protest shall pay all of RLMA's administrative costs, including engineering and legal fees, associated with the bid protest proceeding. RLMA may require an escrow be established prior to a hearing to insure

payment thereof. The party requesting a transcript of the hearing shall pay the cost thereof.