



BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

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MJ

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AUSTIN, TEXAS 78714

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LOUISE WADDILL, R.N., Ph.D.
EXECUTIVE DIRECTOR

July 5, 1991

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Opinion Committee

The Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
Austin, Texas 78701

RE: Letter Opinion Request regarding Vendor
Contract with State Agency

Dear General Morales:

The Board of Nurse Examiners for the State of Texas would like to request a letter opinion regarding:

Whether a state agency may contract with a vendor to secure advertisement to produce and mail an agency newsletter; and

If the vendor defaults on the contract, may an agency solicit advertisements until another vendor is selected via the bidding process? [See p.3, VII(H) of the attachment.]

The following information may assist in responding to these questions:

The Board of Nurse Examiners (BNE), proposed Requisition No. 507-2-01, is seeking an outside vendor to produce and mail eight issues of the BNE's Newsletter (at no cost to the recipient) to all RNs and RN employers in the State of Texas. These eight issues would cover quarterly issues for FY 1992 and FY 1993. It is also the intent of the BNE to have these issues produced at no cost to the BNE; therefore, the vendor would be seeking advertising for the costs incurred.

If additional information is needed, please do not hesitate to contact myself, Joan Stewart or Mark Majek at 835-8650.

Thank you for your assistance in this matter.

Sincerely,

Louise Waddill

Louise Waddill, R.N., Ph.D.
Executive Director

LW:MM:ief

Attachment

ACCOMPANIED BY ENCLOSURES —
FILED SEPARATELY

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IRVING, TEXAS

THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS
9101 Burnet Road, #104
Austin, Texas 78758

Requisition No. 507-2-01

I. General Provisions: The Board of Nurse Examiners (hereinafter the "Board") will publish eight issues of the Board's newsletter over the next two fiscal years beginning September 1, 1991 through August 31, 1993, four issues in fiscal year 1992 (September 1, 1991 through August 31, 1992) and four issues in fiscal year 1993 (September 1, 1992 through August 31, 1993). These issues are to be produced and mailed at no cost to all current Registered Nurses (RN) and RN employers in the State of Texas and with the intent of no cost to the Board with all costs including printing and mailing being the responsibility of the vendor. The Board is requesting bids from vendors to produce and mail the newsletters wherein advertising is permitted.

II. Length of Contract: The successful bidder will be issued a two year contract beginning September 1, 1991 through August 31, 1993 contingent on the Legislature of The State of Texas appropriating funds, if needed, and continuing the Board as an independent regulatory agency. The Board has the option to renew this contract for a second biennium (through August, 1995). The Board may exercise this renewal option on or about May 1, 1993.

III. Cancellation Authorization: The Board reserves the right to cancel the contract at any time with thirty (30) days notice to the vendor should the vendor fail or neglect to carry out the provisions of the specifications contained herein, or neglect or be unable to maintain the quality of production. If, during the term of the contract, there is a change of ownership of company, the Board has the right to cancel and rebid the contract or reaward the contract to the next acceptable bidder. The Board also reserves the right to reject bids from any firm that has changed ownership within the past twelve (12) months.

IV. Subcontractors: The bidder must provide the Board a list of all subcontractors, if any, attached to the bid. Accepted subcontractual arrangements must be explained as to firm names, locations and functions to be performed.

V. Bidders Qualifications: Each bidder must submit with his/her proposal a statement regarding their previous experience in performing comparable work, business and technical organization and financial resources. In particular, the Board is interested in securing a company that has a proven track record in securing advertisements for publications, the ability to handle the volume of newsletters being required to be produced and mailed and the financial resources available to honor contractual obligations.

VI. General Requirements:

A. The Board will furnish the bidder, at no cost, all articles for use in publishing the newsletter at least four weeks prior to publishing date. No other articles, other than those furnished by the Board, will be allowed in the newsletter. All articles submitted will not be rewritten in any form.

B. The Vendor must submit a blueline or prepress proof of the final draft of the newsletter for Board approval before printing. The newsletter is produced by the vendor but remains the property of the Board and upon mailing the newsletter, the vendor will mail the blueline or prepress proof to the Board as Board property.

C. The Board will provide, at no cost to the vendor, labels of all current RNs and employers for the mailing of the newsletter. The date of delivery of the labels will be negotiated after the awarding of the contract.

D. The vendor must only use the information and materials provided by the Board for the sole purpose of publishing and mailing the newsletter and will not provide this information or materials to any other person or business entity for any other use without the Board's approval. Upon awarding the contract, the Board will require a statement from the vendor that the mailing list of state licensees and employers sent them will not be sold or given to any other person or concern.

E. The masthead and logo will be submitted to the vendor by the Board and cannot be altered without approval from the Board.

F. The vendor will provide the Board, at no charge to the Board, with an additional 2,000 newsletters beyond those mailed to RNs and employers prior to mailing.

VII. Advertisements:

A. All proofs of advertisements must be submitted to the Board for approval prior to publishing. The Board reserves the right to reject any advertisement that might prove, in the opinion of the Board, to be offensive or controversial. No alcoholic beverages, tobacco products or political endorsements may be advertised at any time. Costs incurred in the development of proofs are the responsibility of the vendor.

B. Vendor is responsible for all debts incurred in the solicitation and procurement of advertising.

C. The Board is held harmless against any liability resulting from the negligence on the part of the vendor and from any errors in listing caused by the vendor or from any liability resulting from the advertising contained in the newsletter.

D. It is not to be construed that the Board is endorsing any advertisement nor should there be any representation to be so made and such disclaimer must appear in print on the first page of the newsletter.

E. The name of the Board printed on any promotional material by the vendor will not give the implication that the Board is soliciting the advertisements. Any promotional material using the Board's name is to be approved by the Board prior to printing.

F. Advertisements cannot exceed fifty percent (50%) of the newsletter and no advertisements may appear on the front page.

G. The vendor will be entitled to all advertising and listing revenues.

H. If the contract is terminated for any reason, the vendor will continue to sell advertising for the remainder of the fiscal year or six months, whichever is longer, and further agrees to transfer advertising revenues to the Board. As payment for costs incurred, the vendor shall retain twenty-five percent (25%) with the Board receiving seventy-five percent (75%) of revenues. The vendor will provide all camera ready advertising materials to the Board and copies of all marketing and promotional materials used in conjunction with the publishing of the newsletter including advertising rate schedules. The vendor will be required to submit monthly reports on advertising sales.

VIII. Newsletter Specifications: The newsletter shall be published in the form of a tabloid size newspaper.

A. Quantity: Approximately 125,000 per issue
Cost of Additional Thousands \$ _____ per M

B. Minimum pages: 16
Maximum pages: 24

C. Finished Size: Maximum Height - 16" X Maximum Width - 11 1/2"
Minimum Height - 13" X Minimum Width - 11"

Folded From: Maximum Height - 16" X Maximum Width - 23"
Minimum Height - 13" X Minimum Width - 22"

Print on both sides with no bleeds

D. Perforation: None

E. Paper: 30 lb. Newsprint

F. Ink: Black throughout plus spot color on front and back page

G. Typesetting: Type Size - Negotiable but 10 Pitch Preferable
Type Style - Negotiable but Roman Preferable

H. Mailing:

1. Base quantity to be mailed: 125,000 per issue;
2. Presorted zip code labels furnished by the Board;

3. A minimum of third class bulk rate is to be used; and,
4. Newsletter to be mailed from anywhere in the United States under vendor's mailing permit.

I. Schedule:

1. Deadlines for Board approval of blueline/prepress and advertising proofs to be negotiated depending on final mailing deadlines.
2. Mailing deadlines:
 - a. Issue 1: November 30, 1991 (Negotiable depending upon award date of contract)
 - b. Issue 2: February 28, 1992
 - c. Issue 3: May 31, 1992
 - d. Issue 4: August 31, 1992
 - e. Issue 5: November 30, 1992
 - f. Issue 6: February 28, 1993
 - g. Issue 7: May 31, 1993
 - h. Issue 8: August 31, 1993

IX. Instructions To Vendors:

A. Explanation To Vendors:

1. Information given to a prospective vendor will be furnished to all prospective vendors as an addendum to the bid if such information is necessary to vendors in submitting their proposals or if the lack of such information would be prejudicial to uninformed vendors.
2. The Board may issue addenda at any time prior to the time set for the receipt of bid proposals. When issued, addenda becomes an inseparable part of the contract. Receipt of addenda must be acknowledged by the vendor in the bid proposal or by letter or telegram received prior to the time set for receipt of bid proposals.
3. Oral explanation of instructions given before award of the contract will not be binding.

B. Receipt Of Bid Proposals: Written bid proposals must be submitted on Attachment A and received at the Board's office address by 5:00 p.m., Friday, July 12, 1991.

C. Submission Of The Bid Proposal: The bid proposal (Attachment A) shall be submitted in a sealed envelope to:

Mark W. Majek
Board of Nurse Examiners
9101 Burnet Road, #104
Austin, Texas 78758

Bid Proposal with the date marked below should be clearly marked on the front lower left hand of the envelope. Bid proposals received after the date and time specified in IX (B) above will not be considered. Bid Proposals may be withdrawn by written notice or telegram received at any time before the date and time specified in IX (B) above.

D. Preparation Of Bid Proposal: Written bid proposals must be submitted on Attachment A and must be manually signed by a person authorized to conduct business for the vendor. If erasures or other changes appear in the bid proposal, it must be initialed by the person signing the bid proposal. Each bid proposal must contain the following:

1. The costs to the Board, if any, per fiscal year for four issues of the newsletter.
2. The amount of Royalties to the Board, if any, per thousand copies of the newsletter.
3. Identification and discussion of any exceptions taken to the terms, conditions or specifications of the bid.
4. Since the resultant contract will contain an option to renew up to two additional years, the bid proposal must address any changes, conditions, contingencies, etc. that would be applicable to the renewal periods.
5. The name, address and function of any subcontractor to be used by the vendor.
6. The name, address and telephone number of the contact person for this bid.
7. The name, address and telephone number of the vendor or company submitting this bid proposal.
8. The Signature, typed name and title of person authorized to sign the bid proposal.
9. The Acknowledgement of addenda, if any.
10. An attached statement regarding vendor's previous experience, qualifications and finances as requested in Section V.
11. All vendors must be in compliance with Article 2.45 of the Texas Business Corporation Act. To insure compliance, Form B (attached to this bid request) must be completed and attached to the submitted bid proposal. Failure to provide completed Form B may result in rejection of the bid proposal.

E. By submission of a bid proposal, the vendor certifies that neither the vendor nor the company, corporation, partnership or institution represented by the vendor or anyone acting for such company, corporation or institution has violated the antitrust laws of the State, codified in Section 15.01, et seq., Texas Business and Commerce Code or the Federal antitrust laws nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.

By submission of a bid proposal, the vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted bid proposal.

F. Evaluation Of Bid Proposal: Bid proposals will be evaluated based upon the following factors:

1. Cost to the Board per issue, if any;
2. Royalty payments to the Board, if any, per thousand newsletters.
3. Experience, qualifications and financial stability of vendor in performing similar work, specifically:
 - a. Experience - Minimum five years publishing newsletters or publications and is currently soliciting or has solicited in the past two years advertising for other vendors;
 - b. Qualifications - Minimum five consecutive years as a business entity; and,
 - c. Financial Stability - Has not declared bankruptcy or filed for reorganization in the last five fiscal years or is in arrears in payments to other vendors.
4. Deviations/exceptions to terms, conditions and specifications of the bid; and,
5. Conditions, contingencies, changes, etc. applicable to possible contract renewal period.

X. Award of Contract:

- A. The contract will be awarded to that vendor whose bid proposal conforms with bid requirements which are most advantageous to the Board.
- B. The Board reserves the right to reject any or all bids or to waive informalities and minor irregularities in bids received.
- C. The laws of the State of Texas prevail on all bids.

XI. Performance Bond: The vendor awarded a contract must provide a Performance Bond, issued by a surety licensed to do business in Texas, payable to the Board in the amount of \$5,000. This bond is to insure completion of the contract. This bond shall be provided within thirty (30) calendar days after notification of award. Failure to provide this bond within the thirty days may result in rejection of the bid and award to the next acceptable bid. The bond shall remain in effect through the term of the contract and through any extension, if renewed.

XII. Contract Amendment: Amendment to the original contract, if required, shall be by co-endorsed letter amendment initiated by either party.

XIII. Venue: The venue of any suit brought for any breach of the contract is hereby fixed in any court of competent jurisdiction in Travis County, Texas.

XIV. Disputes: Any dispute concerning a question of fact arising under the contract not disposed of by agreement, shall be decided by the Board's Executive Director with the advice of legal counsel. The Executive Director shall reduce his/her decision to writing and furnish a signed copy to the vendor. Such decision shall be final and conclusive unless within ten (10) working days from the date of receipt thereof vendor mails or otherwise furnishes a written appeal addressed to the President of the Board of Nurse Examiners. The vendor shall be afforded an opportunity to be heard and to offer evidence. The decision of the President of The Board of Nurse Examiners or his/her authorized representative shall be final and conclusive. Pending final decision of a dispute hereunder, vendor shall proceed with the performance of the contract and in accordance with the Executive Director's decision.

XV. Indemnification And Hold Harmless: The Board shall not be liable or responsible for and vendor shall indemnify and hold harmless the Board from and against any and all claims and damages of every kind, for injury to or death of any person or persons and for damage to or loss of property arising out of or attributed, directly or indirectly, to the operation of the vendor hereunder.

XVI. Cost of Newsletter: It is the goal of the Board to provide eight issues of the newsletter at no cost to all current Texas RNs and employers and at no or little cost to the Board with the vendor bearing the costs of printing and mailing the newsletters. However, the Board, as authorized by Section 3.08 of Article 601b, V.T.C.S., has the delegated authority to issue orders not to exceed \$1,500.00 per fiscal year. If the Board does not receive bids under this delegated amount, the bid proposal will then be reissued by the State Purchasing and General Services Commission.

XVII. Payment of Royalties: Payment of royalties, if any, to the Board will be made in accordance with the following payment schedule:

- A. 25% of royalties to be paid on September 1, 1992.
- B. 25% of royalties to be paid on December 1, 1992.
- C. 25% of royalties to be paid on March 1, 1993.
- D. 25% of royalties to be paid June 1, 1993.

Royalty payments must be in the form of a bank cashier's check or money order.

XVIII. Contact Persons:

A. The contact person for the Board of Nurse Examiners is:

Mark W. Majek, (512)835-8670/8650

B. The vendor will provide the name, address and telephone number of their contact person.

Attachment A

Bid Proposal
Board of Nurse Examiners
9101 Burnet Road, #104
Austin, Texas 78758

Requisition No. 507-2-01

I. Cost to the Board, if any:

Fiscal Year 1992 (Four Issues) \$ _____
Fiscal Year 1993 (Four Issues) \$ _____
Total \$ _____

II. Royalties to the Board, if any, per 1000 newsletters: \$ _____

III. Identification/discussion of any exceptions to terms, conditions or specifications:

IV. Applicable changes, conditions, contingencies, etc. regarding option to renew for an additional two years:

V. The name, address and telephone number of any subcontractor to be used:

VI. Vendor contact person:

Name: _____
Address: _____
Phone Number: _____

VII. Vendor or company submitting the bid proposal:

Name: _____

Address: _____

Phone Number: _____

VIII. Bid Authorization:

Signature

Name Typed

Telephone Number: _____

IX. Addendum acknowledgement, if any.

X. Attach statement regarding vendor's previous experience, qualifications and finances as requested in Section V of this bid.

XI. Cost of additional copies of newsletter as per Section VIII (A) of this bid.

\$ _____ per M

**FRANCHISE TAX CERTIFICATION
FORM B (WRITTEN BIDS)
COMPLIANCE WITH TEXAS LEGISLATURE
B.B. 175, ACTS OF 70TH LEGISLATURE**

House Bill 175, Acts of the 70th Legislature, Codified as Article 2.45 of the Texas Business Corporation Act, provides that after August 31, 1987, a corporation that is delinquent in payment of its franchise tax may not be awarded a contract by the state or any agency of the state. In order to comply with this requirement, each bidder must complete the following and return with their bid. Failure to provide such information may be cause for rejection of the bid.

1. Name of Business: _____

2. Type of Business: (check one)

Corporation incorporated in state of _____
(If this block is checked, proceed to items 3 and 4 below).

Other than Corporation, i.e., partnership, joint venture, individual, etc. (If this block is checked, sign and attach this form to bid. No other action required).

3. If Corporation was marked in item 2, then provide each of the following:

a. Taxpayer/Vendor Identification No.: _____

b. Charter No. (If incorporated in state of Texas): _____

Certificate of Authority No. (If incorporated in any state other than Texas): _____

4. If Corporation was marked in item 2, then check one of the following:

I certify that payment of Texas franchise tax is current.

I certify that the Corporation is exempt from the payment of Texas franchise tax.

I certify that the Corporation is an out-of-state Corporation that is not subject to Texas franchise tax.

I fully understand, as evident by my signature below, that making a false statement as to Corporate franchise tax status with regard to a state Contract is ground for cancellation at the option of the State by treating the statement as a material breach of the contract.

Signature: _____

Title: _____

THIS DOCUMENT MUST BE RETURNED WITH BID

Revision Date: 2/23/88