



INSTRUCTIONS TO CONSULTANTS

Solicitation Number: CLMP345

Project Name: Infrastructure Energy Savings Assessment and Retrofit

I. Preparation of Response

- a. **Request for Qualifications (RFQ) Response Forms.** Enclosed are the RFQ response forms which are to be completed and returned as part of your firm's response. Please use the enclosed current forms and organize your response in the order in which the forms are presented in the Table of Contents. **Forms may be recreated; however, all requested information must be included.**

- b. Statement of Qualifications (SOQ):

Proposals may be submitted electronically in Austin Finance Online. Refer to attached "eResponse, Attachment 1 Submitting Proposals in Austin Finance Online".

OR

Please submit **one (1) original, stamped "ORIGINAL" and one (1) electronic copy on flash drive** of the RFQ response. Sections should be divided by tabs for ease of reference. The City is not responsible for discrepancies between the submitting firm's electronic version and "Original" hard copy submittal. The City of Austin reserves the right to use the electronic version as an "Original".

Wherever used, "page" refers to single-sided, single-spaced, 10 point minimum font on 8 ½ x 11 inch pages.

Responses sent to the City of Austin are subject to disclosure pursuant to the Public Information Act, Government Code, Chapter 552.

- b. **Disclosure of Proprietary Information.** All materials submitted to OWNER become public property and are subject to the Texas Public Information Act, Government Code Chapter 552, upon receipt. If Consultant does not desire proprietary information in the Proposal to be disclosed, each page must be identified and marked proprietary at time of submittal. OWNER will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.
- c. **Further Information.** Information may be secured by contacting the authorized contact persons listed in the RFQ. Persons desiring further information or interpretation of the solicitation requirements shall make a written request for such information to OWNER no later than seven (7) working days before submittal due date and time. Interpretation of Solicitation Documents will be made by Addendum or Clarification and a copy of each

document will be emailed to each person to whom has obtained a RFQ packet. The addendum or clarification will also be available through the City's Vendor Connection. References to Purchasing Officer in these instructions are referring to the City's Chief Procurement Officer.

- d. Anti-Lobbying and Procurement.** Article 6, Chapter 2-7, City Code, repealed and replaced effective on June 25, 2018, prohibits lobbying activities or representations by respondents or offerors during the No Lobbying Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at:

https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf

1. FINDINGS; PURPOSE.

- (A) The council finds that persons who enter a competitive process for a city contract voluntarily agree to abide by the terms of the competitive process, including the provisions of this article.
- (B) The council finds that it is in the City's interest:
 - (i) to provide the most fair, equitable, and competitive process possible for selection among potential vendors in order to acquire the best and most competitive goods and services; and
 - (ii) to further compliance with State law procurement requirements.
- (C) The council intends that:
 - (i) each response is considered on the same basis as all others; and
 - (ii) respondents have equal access to information regarding a solicitation, and the same opportunity to present information regarding the solicitation for consideration by the City.

2. APPLICABILITY.

- (A) This article applies to all solicitations except:
 - (i) City social service funding;
 - (ii) City cultural arts funding;
 - (iii) federal, state or City block grant funding;
 - (iv) the sale or rental of real property;
 - (v) interlocal contracts or agreements; and
 - (vi) solicitations specifically exempted from this article by council.
- (B) Absent an affirmative determination by the council, the purchasing officer has the discretion to apply this article to any other competitive process.
- (C) City Code Section 1-1-99 (*Offenses; General Penalty*) does not apply to this article.

3. DEFINITIONS.

In this article:

- (A) AGENT means a person authorized by a respondent to act for or in place of

the respondent in order to communicate on behalf of that respondent. Each of the following is presumed to be an agent:

- (i) a current full-time or part-time employee, owner, director, officer, member, or manager of a respondent;
- (ii) a person related within the first degree of consanguinity or affinity to a current fulltime or part-time employee, owner, director, officer, member, or manager of a respondent;
- (iii) a person related within the first degree of consanguinity or affinity to the respondent, if a respondent is an individual person; and Section 0200 V2, Solicitation Instructions 4 Rev. 06-26-2018
- (iv) a lobbyist, attorney, or other legal representative of the respondent that has been retained by the respondent with respect to the subject matter of either the solicitation or the respondent's response to the solicitation.

(B) AUTHORIZED CONTACT PERSON means a City employee designated in a City solicitation as the point of contact for all purposes for that solicitation.

(C) CITY EMPLOYEE is defined in Section 2-7-2 (*Definitions*), and further includes an independent contractor hired by the City with respect to the solicitation.

(D) CITY OFFICIAL is defined in Section 2-7-2 (*Definitions*).

(E) NO-LOBBYING PERIOD means the period of time beginning at the date and time a solicitation is published and continuing through the earliest of the following:

- (i) the date the last contract resulting from the solicitation is signed;
- (ii) 60 days following council authorization of the last contract resulting from the solicitation; or
- (iii) cancellation of the solicitation by the City

(F) PURCHASING OFFICER means the City employee authorized to carry out the purchasing and procurement functions and authority of the City.

(G) RESPONSE means a written offer or submission in reply to a solicitation.

(H) RESPONDENT means a person or entity that has timely submitted or subsequently timely submits a response to a City solicitation, even if that person subsequently withdraws its response or has been disqualified by the City for any reason. Respondent includes:

- (i) a subsidiary or parent of a respondent;
- (ii) a joint enterprise, joint venture, or partnership with an interest in a response and in which a respondent is a member or is otherwise involved, including any partner in such joint enterprise, joint venture, or partnership; and
- (iii) a subcontractor to a respondent in connection with that respondent's response.

(I) SOLICITATION means an opportunity to compete to conduct business with the City that requires council approval under City Charter Article VII Section 15 (*Purchase Procedure*), and includes, without limitation:

- (i) an invitation for bids;

- (ii) a request for proposals;
- (iii) a request for qualifications;
- (iv) a notice of funding availability; and
- (v) any other competitive solicitation process for which the purchasing officer, in the purchasing officer's sole discretion, affirmatively determines this article should apply in accordance with Section 2-B.

4. RESTRICTION ON LOBBYING.

Subject to the exclusions in Section 5 (*Permitted Communications*), during a no-lobbying period,

(A) a respondent or an agent shall not communicate directly with a City official or a City employee, or both in order to:

- (i) provide substantive information about any respondent or response with respect to the solicitation to which the communication relates;
- (ii) encourage the City to reject one or more of the responses to the solicitation to which the communication relates;
- (iii) convey a complaint about the solicitation to which the communication relates; or
- (iv) ask any City official or City employee to favor or oppose, recommend or not recommend, vote for or against, consider or not consider, or take action or refrain from taking action on any vote, decision, or agenda item regarding the solicitation to which the communication relates.

(B) a City official shall not contact or communicate with a respondent regarding a response or the solicitation to which the no-lobbying period applies;

(C) a City employee, other than the authorized contact person, shall not contact or communicate with a respondent regarding a response or the solicitation to which the no-lobbying period applies.

5. PERMITTED COMMUNICATIONS.

The following communications are permitted under this article at any time:

(A) any communication between a respondent or agent and any authorized contact person, including, without limitation and in accordance with regulation, any complaint concerning the solicitation;

(B) any communication between a respondent or agent and any person to the extent the communication relates solely to an existing contract between a respondent and the City, even when the scope, products, or services of the current contract are the same or similar to those contained in an active solicitation;

(C) any communication between a respondent or an agent and a City employee to the extent the communication relates solely to a non-substantive, procedural matter related to a response or solicitation;

(D) any communication required by or made during the course of a formal protest hearing related to a solicitation;

- (E) any communication between a respondent or an agent and the City's Small & Minority Business Resources Department, that solely relates to compliance with Chapters 2-9A through 2-9D (*Minority-Owned and Women-Owned Business Enterprise Procurement Program*) of the City Code;
- (F) any communication between an attorney representing a respondent and an attorney authorized to represent the City, to the extent the communication is permitted by the Texas Disciplinary Rules of Professional Conduct;
- (G) any communication made by a respondent or an agent to the applicable governing body during the course of a meeting properly noticed and held under Texas Government Code Chapter 551 (*Open Meetings Act*);
- (H) any communication between a respondent or an agent and a City employee whose official responsibility encompasses the setting of minimum insurance requirements for the solicitation to which the communication relates, to the extent the communication relates solely to the insurance requirements established by the City in the solicitation; and
- (I) any contribution or expenditure as defined in Chapter 2-2 (*Campaign Finance*).

6. MODIFICATION OF RESTRICTION.

The purchasing officer may waive, modify, or reduce the requirements in Section 4 (*Restrictions on Lobbying*) in order to allow respondents to communicate with a City employee or a City official other than the authorized contact person when the purchasing officer determines, in writing, that the solicitation must be conducted in an expedited manner, including but not limited to a solicitation conducted for reasons of health or safety under the shortest schedule possible with no extensions. Any such modification authorized by the purchasing officer shall be stated in the solicitation.

7. NOTICE.

(A) Each solicitation shall include a notice advising respondents and prospective respondents:

- (i) of the requirements of this article;
- (ii) that any communication initiated by a City employee or City official, other than the authorized contact person, during the no-lobbying period regarding a response or the solicitation may result in a violation of Section 4(A) if the respondent subsequently lobbies that City employee or City official.

(B) The purchasing officer, or a City employee designated by the purchasing officer, shall provide weekly written notice, accessible to all City employees and City officials, of each solicitation for which the no-lobbying period is in effect.

8. DISCLOSURE OF VIOLATION.

A City official or a City employee other than the authorized contact person that becomes aware of a violation of Section 4 (*Restrictions on Lobbying*) shall notify the authorized contact person in writing as soon as practicable.

9. ENFORCEMENT.

- (A) A respondent that has been disqualified pursuant to Section 10(A) (*Disqualification; Contract Voidable*) may appeal such disqualification to a subcommittee that is less than a quorum of the Ethics Review Commission established in Chapter 2-7, Article 2 (*Ethics Review Commission*), whose decision on appeal shall be final and binding. Any appeal must be filed in the manner prescribed by the Ethics Review Commission within 5 calendar days of the notice given by the purchasing officer pursuant to Section 10(B).
- (B) The purchasing officer shall waive a violation of Section 4(A) if the violation was solely the result of communications initiated by a City official or a City employee other than the authorized contact person.
- (C) The purchasing officer has the authority to enforce this article through rules promulgated in accordance with Chapter 1-2 (*Adoption of Rules*), which at a minimum shall include a notice and protest process for respondents disqualified pursuant to Section 10 (*Disqualification; Contract Voidable*), including:
 - (1) written notice of the disqualification imposed pursuant to Section 10 (*Disqualification; Contract Voidable*);
 - (2) written notice of the right to protest the disqualification imposed; and
 - (3) written notice of the right to request an impartial hearing process.

10. DISQUALIFICATION; CONTRACT VOIDABLE.

- (A) If the purchasing officer finds that a respondent has violated Section 2-7-104(1), the respondent is disqualified from participating in the solicitation to which the violation related.
- (B) The purchasing officer shall promptly provide written notice of disqualification to a disqualified respondent.
- (C) If a respondent is disqualified from participating in a solicitation as a result of violating Section 2-7-104(1) and the solicitation is cancelled for any reason, that respondent is also disqualified from submitting a response to any reissue of the same or similar solicitation for the same or similar project. For the purposes of this section, the purchasing officer may determine whether any particular solicitation constitutes a “same or similar solicitation for the same or similar project”.
- (D) If a respondent violates Section 104(1) and is awarded a contract resulting from the solicitation to which the violation relates, the City may void that contract.
- (E) Respondents that violate Section 2-7-104(1) three or more times during a five year period may be subject to debarment from participating in any new contracts with the City for a period of up to three years.

- e. **Certificate of Interested Parties.** As required by Section 2252.908 of the Texas Government Code, the Consultant who is awarded the contract is required to submit to the OWNER a complete Form 1295 "Certificate of Interested Parties" that is signed and notarized prior to contract execution. This form must be completed and printed on the Texas Ethics Commission website and returned to Contract Developer at the time of execution of the contract. Information and instructions on completing the form can be found at the following website:
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
- f. The City of Austin, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this solicitation, disadvantaged business enterprises will be afforded full and fair opportunity to submit responses to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
- g. **Documentation Showing Legal Status of Respondent, Signature Authority.** The response and any subsequent supporting documents and the Contract must be executed in the respondent's full name and legal entity status by an authorized representative of the respondent and a response must be accompanied by sufficient documentation to clearly indicate not only the legal name and entity status of respondent, but also the capacity and authority of the person signing on behalf of respondent. Accordingly, along with its response, a partnership/joint venture must submit its partnership/joint venture agreement, a corporation must submit its articles and bylaws, a limited liability company must submit its certificate of organization and article of organization and regulations, and a limited partnership must submit not only its limited partnership agreement and the certificate of limited partnership, but also the documentation for its general partner, or such limited portion of such documents reasonably establishing legal status and signature authority. In addition, a respondent must submit a copy of any assumed name certificate.

A respondent submitting a response as a joint venture must identify itself as a joint venture in its initial response. A joint venture respondent is required to submit its joint venture agreement with its response. The joint venture agreement must, at a minimum, address the following: joint venture's management and control, liability, fiduciary responsibilities, authority to legally bind the joint venture to its response, as well as a detailed breakdown of the roles and responsibilities of the parties to the joint venture with regard to the work to be performed under the Contract. A response submitted by a joint venture or by one of the parties to a prospective joint venture, that does not include the required documentation concerning the respondent's joint venture arrangement with its response, will be rejected as nonresponsive. The joint venture must provide its tax identification number and certificate of insurance prior to execution of the agreement as provided in the solicitation.

II. Rejection of Responses

OWNER reserves the right to reject any or all responses received for this RFQ and to waive any minor informality in any submittal or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Consultants).

I. The following **will** be cause for your firm to be deemed non-responsive:

- The required Key Personnel do not have the required current license/registration in the State of Texas at the time of submittal as stated in the evaluation criteria.
- The required Key Personnel are not employed by the prime firm as stated in the evaluation criteria.
- Failure to submit MBE/WBE or DBE Compliance Plan (or other MBE/WBE Procurement Program documents) in accordance with the MBE/WBE Procurement Program Package or DBE Procurement Program Package.
- Failure to have an authorized agent of the Respondent attend the mandatory Pre-Response Meeting, if applicable.
- Statement of Qualifications (SOQs) received from a Respondent who has been debarred or suspended by OWNER's Chief Procurement Officer.
- SOQs received from a Respondent when Respondent or principals are currently debarred or suspended by federal, state, city or other local governmental entities or agencies.
- Failure to submit the joint venture agreement with its Response (for joint venture respondents).
- Failure to provide a response to one or more of the Consideration Items as required in the Evaluation Criteria.

II. The following **may** be cause for your firm to be deemed non-responsive:

- Failure to provide a SOQ stamped "ORIGINAL".
- Failure to provide an electronic version on Flash Drive of your complete SOQ.
- Response failed to show the prime firm performing the plurality of the services.
- Prime firm and/or subconsultants did not provide the number of projects required for an evaluation criteria item.
- Exceeding the maximum number of page limitations in any of the sections designated.
- Including projects that have not been completed within the specified time period.
- Combining forms.

- Failure to use the current City of Austin forms.
- Failure to acknowledge receipt of Addenda on Form 1 – Prime Firm General Information.
- Listing a subconsultant's qualifications in the body of the SOQ, yet failing to list the subconsultant on the compliance plan.
- Failure to sign and submit Form 1 – Prime Firm's General Information

III. Release of Information

Under Texas law, information relating to this Solicitation may be kept confidential until a contract has been executed. OWNER shall not release information relative to this Solicitation during the proposal evaluation process or prior to contract execution, except as otherwise required by law.

IV. Award and Execution of Contract

Capital Contracting Officer shall submit recommendation for award to the City Council for those project awards requiring City Council action. Contract will be signed by City Manager or his/her designee after award and submission of required documentation by consultant. Contract will not be binding upon OWNER until it has been executed by both parties. OWNER will process the Contract expeditiously. However, OWNER will not be liable for any delays prior to the award or execution of Contract.

Upon contract award, the selected consultant must submit either their existing or an updated personnel policy (on letterhead) documenting conformity with City Code, Chapter 5-4, § 5-4-2. If the company does not submit a copy of their personnel policy incorporating the non-discrimination policy, the company will not be in compliance and will not receive a contract award.

V. Protest Procedures

The OWNER's Chief Procurement Officer has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying the City of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Chief Procurement Officer may dismiss your complaint or protest.

Protest regarding the Solicitation (Pre-Submittal Protest). Any protest regarding the Solicitation by the City shall be filed no later than five (5) days prior to the due date and time for proposals. Any protest filed after that date which raises issues regarding the Solicitation will not be considered.

Protests regarding the evaluation of Proposals. Any protest regarding the evaluation of Proposals by the City shall be filed with the City no later than five (5) days after the notification of award

recommendation is posted on Austin Finance Online, or notification that the protestor's status as an Offeror has changed, such as notification that an Offer has been found to be non-responsive or an Offeror has been found to be non-responsible. Any protest filed after such date which raises issues regarding the evaluation will not be considered. Offerors may only protest the evaluation of their Proposal.

Protest Regarding Award of Contract (Post-Award Protest). Any protest regarding the award of the contract shall be filed no later than ten (10) days after the date of award. Any protest regarding the award of the contract filed after such date will not be considered.

1. You shall submit your protest in writing and it shall include the following information: (i) your name, address, telephone, and email address; (ii) the Solicitation number; (iii) the specific facts and/or law upon which the protest of the Solicitation or the award is based, including all pertinent documents and evidence thereto; and (iv) the form of relief requested.
2. Your protest shall be concise and presented logically and factually to help with the City's review.
3. When the City receives a timely written protest, the Chief Procurement Officer will determine whether the grounds for your protest are sufficient. If the Chief Procurement Officer decides that the grounds are sufficient, the Chief Procurement Officer will schedule a protest hearing, usually within five (5) working days. If the Chief Procurement Officer determines that your grounds are insufficient, the City will notify you of that decision in writing.
4. The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from the City are: representatives from the department that requested the purchase, the Department of Law, the Financial Services Department, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.
5. A decision will usually be made within fifteen (15) calendar days after the hearing.
6. The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
7. When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Chief Procurement Officer determines that the City urgently requires the supplies or Services to be purchased, or failure to make an award promptly will unduly delay delivery or performance. In those instances, the City will notify you and make every effort to resolve your protest before the award.

The protest shall be submitted in writing to the Authorized Contact-Procurement Specialist identified in the Request for Qualifications.

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