



# City of Austin

Founded by Congress, Republic of Texas, 1839

Capital Contracting Office, PO Box 1088, Austin, Texas 78767 Telephone 512/974-7181

July 31, 2020

To: Firms Requesting RFQ Package

SUBJECT: Request for Statements of Qualifications (RFQ) for providing Construction Manager@Risk Services for Colony Park and Givens District Parks Aquatic Facilities  
Solicitation Number: CLMA032 - **ADDENDUM No. 2**

This Addendum No. #2 modifies the RFQ issued on July 27, 2020, for the above subject project.

## Addendum No. #2

1. **REFERENCE – 00100CMR, Solicitation Requirements, Contract Forms and Conditions of the Contract; Correction of web links to live events**

**Delete in its entirety:** 00100CMR, Solicitation Requirements, Contract Forms and Conditions of the Contract, dated (7/24/2020)

**Replace with:** 00100CMR, Solicitation Requirements, Contract Forms and Conditions of the Contract, dated (7/31/2020)

All other information in the Solicitation remains unchanged. Please remember this solicitation is currently in a “No Contact” period and all inquiries should be directed to the appropriate contact persons listed in the solicitation. If you have questions regarding this process and project related questions, you may contact me at (512) 974-2657 or [michelle.croft@austintexas.gov](mailto:michelle.croft@austintexas.gov).

Sincerely,

*Michelle R Croft*

Michelle R Croft, Procurement Specialist IV  
Professional Services Division  
Capital Contracting Office

cc: Scott Sinn, Project Manager  
Rick Selin, Contract Procurement Supervisor  
Jessica Oberembt, SMBR Representative

**CONSTRUCTION MANAGER-AT-RISK  
Request for Qualifications  
Section 00100CMR**

**1. OVERVIEW**

The City of Austin (City), hereafter referred to as Owner, desires to select a Construction Manager-at-Risk firm through a one-step evaluation and selection process. This solicitation complies with applicable City Policy and state of Texas law, including Texas Government Code Title 10, Subtitle F, Chapter 2269. Owner will select the successful Offeror that offers the best value to the City based on the published Evaluation Criteria. Owner will evaluate and rank each responsive submittal with respect to the published Evaluation Criteria contained in this solicitation expeditiously. Owner may determine that it is necessary to interview Offerors prior to making a recommendation to the City Council. If Interviews are necessary, all Offerors will be interviewed.

**2. PROJECT INFORMATION, BUDGET, AND CONTRACT TIME**

Below is a summary of information related to this Solicitation. Potential Offerors are cautioned to refer to all other sections of the Solicitation Documents, Clarifications and/or Addenda for further details. Evaluation Criteria are specified in Section 00101CMR.

Owner is requesting documentation of qualifications and other relevant information for Construction Manager-at-Risk services to perform all Work required for the following Project:

<b>Project Name:</b>	<b>Colony Park District Park and Givens District Park Aquatic Facilities – Construction Manager-at-Risk</b>
<b>Project Location:</b>	<b>Austin, TX</b>
<b>Solicitation Number:</b>	<b>CLMA032</b>

The City of Austin Parks and Recreation Department (PAR) recognizes the significance of aquatic facilities in creating community. The redevelopment of Givens Aquatic Facility and the new Colony Park Aquatic Facility will continue the tradition of creating spaces for Austinites to gather, share and build unifying experiences. Funded through the 2018 G.O. Bonds, the project objective is to design and construct these new pool facilities while responding to the 2014 Aquatic Assessment recommendations and the 2018 Council approved Aquatic Master Plan.

As outlined in the Aquatic Master Plan, the aquatic facilities would provide enhanced recreation programming and build on establishing sustainable aquatic facilities. Vital to the success of these projects is respecting the historic and cultural values of the communities at Colony Park and Givens.

The project budget presently is **Fourteen Million Dollars & Zero Cents (\$14,000,000.00)**.

**ANTICIPATED SERVICES:**

This solicitation is for the Construction Manager-at-Risk (CMR) Scope of Services for the Colony Park District Park and the Givens District Park Aquatic Facilities. The city has procured a project management firm and a design team to implement community engagement, design, and production of construction documents for the facilities. The CMR team will provide services during the preliminary and design phases of the project to establish an environment of collaboration and trust amongst the community, the design team, and the City of Austin. During the design phase, the CMR Manager will provide a Guaranteed Maximum Price (GMP)

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for each of the aquatic facility projects. A summary of the required services is below as a guide to develop fees and overall scope of the project.

For the Colony Park District Park site, this new aquatic facility in northeast Austin will be classified as a Community Pool per the Austin Aquatic Master Plan. The community pool designation provides for the following aquatic characteristics and amenities: lap lane pool, zero entry activity pool (tot pool), water slide, spray ground feature, diving board, gender neutral bathhouse, family restrooms, deck space, training/party room and aquatic office space. In addition to the pool work, site work is planned to include a ROW connection, wet and dry utilities, site clearing, grading, asphalt parking lot, driveways, sidewalks, accessibility requirements, landscaping, irrigation and other related site work to complete the project.

For the Givens District Park site, the scope of work will include the demolition of the existing bathhouse and pool. It is classified as a Community Pool and will including the following aquatic characteristics and amenities: lap lane pool, zero entry activity pool (tot pool), water slide, spray ground feature, diving board, gender neutral bathhouse, family restrooms, deck space, training/party room and aquatic office space. This new facility will need to be skillfully integrated into the existing park grounds. Additional work beyond the pool construction will include wet and dry utilities, asphalt parking lot, sidewalks, accessibility requirements, landscaping, irrigation and other related site work to complete the project.

Contract Time is of the essence. All Work shall be substantially completed within **One Thousand, One Hundred (1100)** calendar days after date specified in the written Notice to Proceed with Preconstruction Phase Services, subject to change as the Preconstruction Phase progresses and the schedule becomes more defined. Any modification to the schedule will be provided in writing.

### 3. SOLICITATION DOCUMENTS

Solicitation Documents are obtained through the City's Vendor Connection website log on: [www.austintexas.gov/financeonline/vendor\\_connection/index.cfm](http://www.austintexas.gov/financeonline/vendor_connection/index.cfm).

All addenda and answers to Offeror's questions will also be posted in the attachments section for each solicitation on the City's Vendor Connection Website. In order to receive these documents, an Offeror must subscribe to the solicitation in Vendor Connection.

### 4. DUE DATE FOR RESPONSES

The Offeror may submit using eResponse via Austin Finance Online or in-person at the location below.

If submitting using eResponse, the Offeror should refer to Appendix 3 - "Submitting Offers Online Using eResponse" attached to the solicitation documents. The Offeror must fill out Appendix 4 - "eResponse Construction Manager-At-Risk Total Bid Form" and upload it to Austin Finance Online as per instruction provided in "Submitting Offers Online Using eResponses".

If submitting in-person, the Offeror must submit one (1) original signature copy of their submittal, stamped "ORIGINAL" and one (1) digital/electronic version on a Flash Drive in a sealed container. Proposals must be received at the following location prior to the date and time set forth below:

**Capital Contracting Office  
Professional Services Division  
ATTN: Michelle Croft  
One Texas Center, 505 Barton Springs Rd., Suite 1045-B**

Austin, Texas 78704

<b>DUE DATE:</b>	<b>September 3, 2020</b>
<b>PRIOR TO:</b>	<b>2:00 PM</b>

**RESPONSES RECEIVED ON OR AFTER THE DATE AND TIME STATED ABOVE WILL NOT BE ACCEPTED FOR EVALUATION.** The time stamp clock located in Suite 1045-B, One Texas Center, 505 Barton Springs Rd., Austin, Texas 78704 is the time of record and is verified daily with [www.time.gov](http://www.time.gov), the Official U.S. time. For responses submitted electronically via Austin Finance Online, the time of record is the time received in Austin Finance Online.

Due to the unprecedented event of COVID-19 and to help prevent the further spread, Capital Contracting Office will NOT be conducting an in-person proposal opening. Offerors must submit their proposals and compliance plans **no earlier than 10:00 AM and prior to 2:00 PM** on September 3, 2020 in Suite 1045B. Proposals and compliance plans submitted after 2:00 PM on September 3, 2020 will not be accepted. The Capital Contracting Office will open the proposals at 3:30 PM on September 3, 2020.

Proposals will be received, and then publicly opened and read aloud online via the following Web link:

Microsoft Teams

[Join live event](#)

+1 512-831-7858 United States, Austin (Toll)

Conference ID: 260 419 790#

Responses may be mailed or delivered (during normal business hours in person or by Federal Express, Express Mail or other delivery service) to the addresses below. It is the sole responsibility of the Offeror to ensure timely delivery of its Response. Owner will not be responsible for failure of service on the part of the U.S. Post Office, courier services, or any other form of delivery service. Email or facsimile Responses will not be accepted.

**If sending thru US Postal Service:**

Capital Contracting Office  
Professional Services Division  
Attn: Michelle Croft  
PO Box 1088  
Austin, TX 78767-1088

**If hand-delivering or courier service:**

Capital Contracting Office  
Professional Services Division  
Attn: Michelle Croft  
505 Barton Springs Rd, Ste., 1045B  
Austin, TX 78704

**5. AUTHORIZED CONTACT PERSONS**

The persons listed below may be contacted for information regarding this solicitation. If the Offeror contacts any other City employee, including Austin City Council Members and/or members of City Boards and Commissions, the Offeror may be found in violation of Ordinance 20111110-052, dated November 10, 2011, regarding Anti-Lobbying and Procurement. The Ordinance may be viewed at:

<http://www.cityofaustin.org/edims/document.cfm?id=161145>.

<b>PROJECT MANAGER:</b>	<b>Scott Sinn</b>	<b>512-974-9474 work 970-481-3212 cell</b>
<b>CONTRACT PROCUREMENT REP.:</b>	<b>Michelle Croft</b>	<b>512-974-2657 work</b>

		512-791-0096 cell
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## 6. ANTICIPATED SELECTION SCHEDULE

The final selection of the CMR firm for this project is anticipated to be completed and submitted to the Austin City Council for action by **November 2020**.

Owner will submit a recommendation for Austin City Council authorization to negotiate and execute a contract with the top-ranked firm. If Owner is unable to negotiate a satisfactory contract with the top-ranked firm within 45 calendar days, Owner will formally end negotiations with that firm. The Owner will then proceed to negotiate a satisfactory contract with the next ranked firm in the order of the selection ranking, until a contract is reached or all negotiations end, provided that Owner, in its complete discretion, may elect to extend the time for negotiations with any firm for an additional period of time.

## 7. NON-MANDATORY PRE-RESPONSE MEETING

A **non-mandatory** livestream virtual Pre-Response Meeting will be held on **August 7, 2020**, at **2:00 PM** at the following link:

Microsoft Teams – Non-Mandatory Pre-Response Meeting Link:

### [Join live event](#)

[+1 512-831-7858](#) United States, Austin (Toll)

Conference ID: 974 854 961#

The video recording of the virtual Pre-response meeting will be available at the link indicated above.

Offerors are recommended to attend the non-mandatory virtual Pre-Response Meeting to ensure their understanding of Owner's Solicitation request, contracting requirements, and MBE/WBE Procurement Program requirements

Offerors will have the ability to participate by logging into the live stream Microsoft Teams meeting. As part of the sign-in requirement, Offerors who log into the virtual meeting will be asked to provide first name, last name, name of organization, phone number, and email address of individual persons wishing to participate and whether the organization is a Prime and if it is a registered WBE or MBE. Instructions on how to connect to the Pre-Response Meeting virtually are provided in the above link.

## 8. SITE VISIT

There will be no site visit as part of the pre-response meeting agenda. Responders are welcomed to visit the sites on their own accord.

## 9. VENDOR REGISTRATION

Vendors submitting responses electronically in Austin Finance Online must be registered to do business with Owner.

All Contractors must be registered to do business with Owner prior to the Contract Award. All Subcontractors must be registered with the Owner prior to execution of a contract. Prime

Contractors are responsible for ensuring that their Subcontractors are registered as vendors with the City of Austin. Registration can be done through the Owner's on-line Vendor Registration system. Log onto <https://www.ci.austin.tx.us/vss/Advantage> and follow the directions.

## **10. NON-DISCRIMINATION**

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 bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

## **11. MBE/WBE PROCUREMENT PROGRAM**

City Code Chapters 2-9A and 2-9B, as amended, establish a Minority-owned Business Enterprise and Women-owned Business Enterprise (MBE/WBE) Procurement Program in Construction and Professional Services. The aim of this program is to promote MBE and WBE participation in City procurement, through its prime contract awards and subcontracts, and to afford MBEs and WBEs an opportunity to compete for City contracts. In particular, this program encourages contractors to provide opportunities to certified MBEs and WBEs for subcontracts or related contracts.

The City will issue initial MBE/WBE goals for the Preliminary Phase Services of this Project and the Offeror shall submit with their Submittal, an MBE/WBE Compliance Plan meeting such goals or documentation detailing their Good Faith Efforts (GFE) to meet the established MBE/WBE goals. If the Preliminary Phase Compliance Plan is not submitted with this Solicitation, the Submittal will not be accepted for consideration.

Additionally, the City has determined that subcontracting opportunities will arise during the Construction Phase of this project; however, the specific scopes and the magnitude of the Work for the Construction Phase cannot be determined until the Design has been sufficiently completed. Prior to entering the Construction Phase, the City will establish appropriate MBE/WBE goals and the Design-Builder shall submit an MBE/WBE Compliance Plan meeting the goals or documentation detailing their GFE to meet the established MBE/WBE goals.

## **12. SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE (SDVBE) PROGRAM**

This Contract is subject to the provisions of the City's Interim Service-Disabled Veteran Owned Business Enterprise (SDVBE) Program as established by City Council Resolution No. 20160303-016. **See the Service-Disabled Veteran Owned Business Enterprise Contractor Certification Form 00480 included in the Solicitation.** If a respondent is a SDVBE, and wants to participate in the Program, the City requires a certification with their Offer certifying that they are State Historically Underutilized Business (HUB) Service-Disabled Veteran Owned Business.

## **13. PREPARATION OF RESPONSES**

**13.1 Responses.** Each Response should be prepared simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of this solicitation. Elaborate bindings, colored displays, promotional materials and so forth are not desired. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of the City's (Owner's) needs. Vague and equivocal

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statements will be viewed unfavorably. Offeror shall also comply with proposal requirements of Section 00101DB including page number limitations.

**13.2 Volume of Information.** Limitations on volume of requested information apply equally to single firms and joint venture Offerors, regardless of the number of firms partnering in the joint venture. The individual firms of a joint venture are scored separately on the Evaluation Criteria. Their individual scores are then combined based on the proportion of control that each firm has in the joint venture.

**13.3 Sealed Container.** Responses delivered in person must be submitted in a sealed container marked on the outside with the Offeror's name and address, solicitation number, and due date and time. Responses that are not submitted in a sealed container will not be considered.

**13.4 Modifications to Responses.** Responses delivered in person may be modified in writing at any time prior to the due date and time. The person signing the Response shall initial any modifications made to the Response. For modification of electronic responses please see "Appendix 3 - Submitting Offers Online Using eResponse".

**13.5 Professional Services.** Offeror shall secure any required services that are defined as professional services under Texas Government Code Title 10, Subtitle F, Chapter 2254, Subchapter A: PROFESSIONAL AND CONSULTING SERVICES, also known as the Professional Services Procurement Act (for example: registered professional land surveyors, professional architects and professional engineers) using the qualifications-based selection process prescribed by that Chapter. (Note: It is a violation of State Law to solicit Bids for professional services.)

**13.6 Disclosure of Proprietary Information.** All materials submitted to Owner become public property and are subject to Texas Government Code Title 5, Subtitle A, Chapter 552, also known as the Texas Public Information Act. If Offeror does not desire proprietary information in the Response to be disclosed, each page must be identified and marked proprietary at time of Response and 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.

Responses will be reviewed in a manner that avoids disclosure of the contents to competing Offerors and keeps the contents confidential during negotiations. Until the negotiations are completed, only the number, identity, fees and prices of the Offerors' Responses will be made available to the public.

Under Texas law, information relating to Responses may be kept confidential until a contract has been awarded. Owner shall not release information relative to this Solicitation during the evaluation process or prior to contract award.

**13.7 Costs of Preparing the Response.** All cost directly or indirectly related to preparation of a Response to this Solicitation or any oral presentation required to supplement and/or clarify a Response, which may be required by Owner, shall be the sole responsibility of the Offeror.

**13.8 Further Information.** Information may be secured by calling the designated Authorized Contact Person(s) identified in this solicitation. 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 solicitation due date

and time. Interpretation of Solicitation Documents will be made by Addendum **only** and a copy of each Addendum is available through the City's on-line Vendor Registration system. Log on to the site below and follow directions as required:

[https://www.austintexas.gov/financeonline/vendor\\_connection/index.cfm](https://www.austintexas.gov/financeonline/vendor_connection/index.cfm).

**13.9 Legal Status of Offeror.** The Response and any subsequent supporting documents and the Contract must be executed in the Offeror's full name and legal entity status by an authorized representative of the Offeror and accompanied by enough documentation. Enough documentation must clearly indicate not only the legal name and entity status of Offeror, but also the capacity and authority of the person signing on behalf of Offeror. Accordingly, a partnership/joint venture must file its partnership/joint venture agreement, a corporation must file its articles and bylaws, a limited liability company must file its certificate of organization and article of organization and regulations, and a limited partnership must file not only limited partnership agreement and the certificate of limited partnership, but also the documentation for its general partner, and any Offeror must file a copy of any assumed name certificate, or such limited portion of such documents reasonably establishing signature authority.

**13.10 Sales Tax Exemption.** The Owner is a tax-exempt organization as defined by Chapter 11 of the Property Tax Code of Texas. Bid or proposal prices shall not include sales tax on materials, supplies, or equipment that are incorporated into the real property interest of the Owner or are otherwise completely used and consumed in the performance of the Contract. Owner will furnish Contractor with a Sales Tax Exemption Certificate to be issued to Suppliers in lieu of the tax.

**13.11 Anti-Lobbying and Procurement.** Article 6, Chapter 2-7, Austin City Code, prohibits lobbying activities or representations by the Offeror between the date that the Solicitation is issued and the date of contract execution. The text of that Ordinance may be viewed at: <http://www.cityofaustin.org/edims/document.cfm?id=161145>.

#### **14. MINOR INFORMALITIES**

Owner reserves the right to reject any or all Responses and to waive any minor informality in any Response or in the solicitation procedure (a minor informality is one that does not affect the competitiveness of the Response).

#### **15. SELECTION OVERVIEW**

In an expeditious manner, an evaluation team comprised of City Staff will apply the evaluation factors set forth herein to all eligible and responsive Offerors in comparing Qualifications, Price Proposals, additional information as requested, and Interviews, recommending the successful top-ranked Offeror to the Austin City Council. Owner will evaluate and rank each Response with respect to the Evaluation Criteria contained herein. Owner reserves the right to negotiate all elements that comprise the Offeror's submittal to ensure that the best possible consideration is afforded to all concerned. An evaluation team comprised of City Staff will apply the Evaluation Criteria to all eligible and responsive Offerors in comparing Responses and recommending the successful Offeror to the Austin City Council.

#### **16. AWARD AND EXECUTION OF CONTRACT**

Owner will process Responses expeditiously. The Austin City Council will review the staff recommendation and authorize negotiation and execution of a contract to the recommended top-ranked Offeror offering the best value to the Owner. After City Council has authorized the negotiation and execution for contract award, the successful Offeror will enter into negotiations of a contract in a form established by Owner.

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If Owner is unable to negotiate a satisfactory contract with the selected Offeror in a stipulated timeframe, Owner will formally end negotiations with that Offeror, and proceed to negotiate with the next Offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked Offerors end.

The project Guaranteed Maximum Price (GMP) and partial GMPs, if applicable, are anticipated to be negotiated at the appropriate times during the project design, and those established milestones will be stipulated in the contract form. The entire content of the Response will become a part of the executed contract documents. Failure of the successful Offeror to accept this obligation may result in cancellation of any award. Any damages accruing to Owner as a result of the successful Offeror's failure to contract may be recovered from the successful Offeror.

City Manager or his/her designee will sign the contract after successful negotiations and execution of required contract documents by the successful Offeror. Contract will not be binding upon Owner until both parties have executed it. Owner will process the contract expeditiously however Owner will not be liable for any delays prior to the award or execution of contract.

### 17. CONFLICT OF INTEREST

The City may not accept a Response or award a contract with a firm who is currently under contract or who has received compensation to participate in preparing the specifications or any other work for which this CMR solicitation is based.

### 18. WITHDRAWAL OF RESPONSE

A Response may be withdrawn by Offeror, provided an authorized individual of the Offeror submits a written request to withdraw the Response prior to the time set for receipt of Responses. Withdrawn Responses may be resubmitted, with or without modifications, prior to the due date and time. For withdrawal of electronic responses please see "Appendix 3 - Submitting Offers Online Using eResponse".

### 19. EXCEPTIONS, ADDITIONS, QUALIFICATIONS

Offeror must complete their proposal without any alteration of the solicitation requirements. If any exceptions are taken to any portion of the Solicitation, Offeror must clearly indicate the exceptions taken and include a full explanation as a separate attachment to the Response. The failure to identify exceptions and/or proposed changes with a full explanation will constitute acceptance by Offeror of the Solicitation as proposed by Owner.

Owner reserves the right to reject exceptions, additions, qualifications or conditions not called for in the Solicitation Documents.

### 20. REJECTION OF PROPOSAL

Owner reserves the right to reject any or all Responses 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 Offerors).

**20.1** The following **will** be cause to reject a Response:

- .1 Submission of Price Proposal, Section 00300CMR, which is not signed by an individual empowered to bind the Offeror.

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- .2 More than one Proposal for same Work from an individual, firm, partnership or corporation.
- .3 Evidence of collusion among Offerors.
- .4 Sworn testimony or discovery in pending litigation with Owner which discloses misconduct or willful refusal by Contractor to comply with subject contract or instructions of Owner.
- .5 Failure to submit MBE/WBE or DBE Compliance Plan in accordance with the separately bound volume titled MBE/WBE Procurement Program Package or DBE Procurement Program Package.
- .6 Failure to have an authorized agent of the Offeror to attend the mandatory Pre-Proposal Meeting, if applicable.
- .7 Proposals received from an Offeror who has been debarred or suspended by Owner's Purchasing Officer.
- .8 Proposals received from an Offeror when its principals are currently debarred or suspended by Federal, State or City governmental agencies.
- .9 Failure to submit Insurance Cost Form, Section 00425A, with Proposal, if applicable.
- .10 Failure to submit Nondiscrimination Certificate, Section 00630, with Proposal.

### 20.2 The following may be cause to reject a Proposal or influence evaluations and ranking of Proposal:

- .1 Poor performance in execution of work under a previous City of Austin contract.
- .2 Evidence of poor performance on previous Projects as documented in Owner's project performance evaluations.
- .3 Failure to achieve reasonable progress on an existing City of Austin contract.
- .4 Default on previous contracts or failure to execute Contract after award.
- .5 Evidence of failure to pay Subcontractors, Suppliers or employees in accordance with Contract requirements.
- .6 Proposals containing omissions, alterations of form, additions, qualifications or conditions not called for by Owner, or incomplete Proposals may be rejected. In any case of ambiguity or lack of clarity in the Proposal, Owner reserves right to determine most advantageous Proposal or to reject the Proposal.
- .7 Failure to acknowledge receipt of Addenda.
- .8 Failure to submit any of the items specified in the Evaluation Criteria or within this Request for Proposal.
- .9 Failure to submit post-proposal information within the allotted time(s), if applicable.
- .10 Failure to timely execute this Contract after award.
- .11 Previous environmental violations resulting in fines or citations by a governmental entity (i.e. U.S. Environmental Protection Agency, Texas Commission on Environmental Quality, etc.).
- .12 Unacceptable safety record and/or safety program as set forth in Evaluation Criteria.
- .13 Failure of Offeror to demonstrate its experience with projects of similar size, scope, and complexity.
- .14 Evidence of Offeror's lack of sufficient resources, workforce, equipment or supervision.
- .15 Unbalanced Unit Price Bid: "Unbalanced Bid" means a Bid, which includes a Bid that is based on unit prices which are significantly less than cost for some Bid items and significantly more than cost for others. This may be evidenced by submission of unit price Bid items where the costs are significantly higher/lower than the cost of the same Bid items submitted by other Bidders on the project.
- .16 Failure to submit with Proposal all requested documentation as identified in Section 00101CMR.

- .17 Failure to submit Section 00810A Exhibit A Federal Provisions pages 1-9 with Proposal, if applicable.

## **21. BONDS AND INSURANCE REQUIREMENTS**

With this Response, Offeror is required to submit a letter from Offeror's surety stating Offeror's ability to acquire bonding as required in the full amount of the contract, either directly or through reinsurance, and ensuring the commitment from its surety to provide such bonding.

At the time of Contract award, the successful Offeror may be required to deliver a security bond in the amount to be agreed upon in substantially the form set forth in attached the Section 00500CMR, **Exhibit 7 Security Bond** ensuring that Payment and Performance Bonds will be issued in accordance with Texas Government Code, Chapter 2269. The Payment and Performance Bonds will be for the amount of the then current GMP for construction or the aggregate of the GMPs established in the then current Work Authorization Amendments.

All bonds and insurance required by the Contract Documents shall be obtained from solvent surety or insurance companies that are duly licensed by the State of Texas and authorized to issue bonds or insurance policies for the limits and coverages required by the Contract Documents. The bonds shall be in a form acceptable to Owner and shall be issued by a surety, who complies with the requirements of Texas Insurance Code, Title 12, Chapter 3503: SURETY BONDS AND RELATED INSTRUMENTS.

Minimum insurance requirements are specified in Section 00810CMR, Supplemental General Conditions in this Solicitation.

## **22. PREVAILING WAGE COMPLIANCE**

Workers on the Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) for Building Construction and Heavy and Highway Trades "AS APPLICABLE" and/or the \$15.00 minimum wage required by City of Austin Ordinance No. 20160324-015, whichever is higher. The Total Minimum Wage required can be met using any combination of cash and non-cash qualified fringe benefits provided the cash component meets or exceeds the \$15.00 minimum wage required.

## **23. INSPECTION, CONSTRUCTION MATERIALS AND BUILDING COMMISSIONING**

Owner will provide or contract for, independently of the CMR firm, the inspection services, the testing of construction materials engineering, building commissioning and the verification testing services necessary for acceptance of the facility by Owner. Awarded CMR will be required to provide coordination of these services, as required by the Owner-approved Quality Assurance Plan.

## **24. OPPORTUNITY TO PROTEST**

The Owner's Capital Contracting Office (CCO) Officer has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying Owner of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the CCO Officer may dismiss your complaint or protest.

Prior to Proposal due date: If you are a prospective Offeror and you become aware of the facts regarding what you believe is a deficiency in the solicitation process before the Proposal is due, you must notify Owner in writing of the alleged deficiency before that date, giving Owner an opportunity to resolve the situation prior to the Proposal due date.

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After Proposal due date: If you submit a Proposal to Owner and you believe that there has been a deficiency in the solicitation process or the award, you have the opportunity to protest the solicitation process or the recommended award as follows:

**24.1** You must file written notice of your intent to protest within four (4) calendar days of the date that you know or should have known of the facts relating to the protest. If you do not file a written notice of intent within this time, you have waived all rights to protest the solicitation process or the award.

**24.2** You must file your written protest within fourteen (14) calendar days of the date that you know or should have known of the facts relating to the protest unless you know of the facts before the Proposal due date. If you know of the facts before that date, you must notify Owner as stated above.

**24.3** You must submit your protest in writing and must include the following information:

1. your name, address, telephone, and fax number;
2. the solicitation number and the CIP number, if applicable;
3. a detailed statement of the factual grounds for the protest, including copies of any relevant documents.

**24.4** Your protest must be concise and presented logically and factually to help with Owner's review.

**24.5** When Owner receives a timely written protest, the Capital Contracting Office Officer will determine whether the grounds for your protest are sufficient. If the CCO Officer decides that the grounds are sufficient, CCO will schedule a protest hearing, usually within five (5) working days. If the CCO Officer determines that your grounds are insufficient, you will be notified of that decision in writing.

**24.6** 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 Owner are: representatives from the department that requested the purchase, the Law Department, Capital Contracting Office, 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.

**24.7** A decision will usually be made within fifteen (15) calendar days after the hearing.

**24.8** The Capital Contracting Office Officer will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.

**24.9** When a protest is filed Owner usually will not make an award until a decision on the protest is made. However, Owner will not delay an award if the City Manager or the Capital Contracting Office Officer determines that:

1. Owner urgently requires the supplies or services to be purchased, or
2. failure to make an award promptly will unduly delay delivery or performance.

In those instances, the CCO will notify you and make every effort to resolve your protest before the award.

The protest or notice of intent and the protest shall be submitted in writing to the following address:

**If sending thru US Postal Service:**

Capital Contracting Office  
Professional Services Division  
Attn: Officer  
PO Box 1088  
Austin, TX 78767-1088  
512-974-7141

**If hand-delivering or courier service:**

Capital Contracting Office  
Professional Services Division  
Attention: Officer  
505 Barton Springs Rd, Ste., 1045B  
Austin, TX 78704  
512-974-7141

**25. CITY'S ARCHITECT/ENGINEER**

The City's architect or engineer for the Project or an entity related to the City's architect or engineer may not serve, alone, or in combination with another person as the Construction Manager-at-Risk. An entity is considered related to the architect or engineer if the entity is a sole proprietorship, corporation, partnership, limited liability company, or other entity that is a subsidiary, parent corporation, or partner, or has any other relationship in which the City's architect or engineer has an ownership interest, or is subject to common ownership or control, or is a party to an agreement by which it will receive any proceeds of the Construction Manager-at-Risks' payments from the City.

**26. TEXAS ETHICS COMMISSION INTERESTED PARTIES DISCLOSURE FORM 1295**

**26.1** Definitions:

(A) "Interested Party" – means a person who has a controlling interest in a Business Entity with whom the Owner contracts or who actively participates in facilitating the Contract or negotiating the terms of the Contract, including a broker, intermediary, adviser, or attorney for the Business Entity.

(B) "Business Entity" – means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.

**26.2** As a condition to entering the Contract, the Business Entity constituting the successful Bidder must provide a Texas Ethics Commission Certificate of Interested Parties Form to the Owner at the time the Business Entity/Bidder submits the signed Contract to the Owner in full compliance with the following requirements under which the successful Bidder shall:

(i) go to the Ethics Commission's website ([www.ethics.state.tx.us](http://www.ethics.state.tx.us)),

(ii) complete the "Interested Parties" information, in accordance with the requirements of the Texas Ethics Commission Rules published at Title 1, Part 2, Chapter 46, of the Texas Administrative Code and available on the referenced website,

(iii) include the City's contract identification number,

(iv) include a short description of the goods or services to be used by the City, and

(v) indicate whether each interested party has a controlling interest in the business entity, is an intermediary in the contract for which the disclosure is being filed, or both.

**Solicitation Requirements, Contract Forms, and Conditions of the Contract**

- 26.3** In accordance with the Commission Rules, the Certificate of Filing and completed Certificate of Interested Parties must be (i) printed, (ii) signed by an authorized agent of the business entity, and (iii) submitted to the City at the time of the submission of the signed contract to the City. The City then must notify the Ethics Commission in electronic format of receipt of the document within 30 days of contracting and the Commission will make the disclosure of interested parties available to the public on its website.

**END**