INSTRUCTIONS TO CONSULTANTS

Solicitation Number: CLMC194
Project Name: Engineering Services for 2016 Power Plant Production Rotation List

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): Please submit **one (1) original and one (1) electronic copy on CD or flash drive** of the RFQ response. Wherever used, "page" refers to single-sided, single-spaced, 10 point minimum font printed on 8 ½ x 11 inch pages. Sections should be divided by tabs for ease of reference.

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

c. **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.

d. **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.

e. **Anti-Lobbying and Procurement.** Entities submitting statements of qualifications, including their agents and representatives, shall not undertake any activities or actions to promote or advertise their statement of qualifications to any member of the Austin City Council or City staff except in the course of City-sponsored inquiries, briefings, interviews, or presentations between the statement of qualifications submission date and award by City Council. Any violation of this provision may result in disqualification of the entity. Entity shall execute by signature the following Entity's Affidavit of Non-

Collusion, Non-Conflict of Interest, and Anti-Lobbying and return the signed affidavit with their statement of qualifications. The Affidavit form is Form 4 under Proposal Forms. Article 6, Chapter 2-7, Austin City Code, prohibits lobbying activities or representations by the Consultant between the date that the Request for Qualifications (RFQ) is issued and the date of contract execution. The text of the pertinent City Ordinance may be viewed at the following link: http://www.cityofaustin.org/edims/document.cfm?id=161145.

f. 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

(1) Definitions

(A) "Authorized Contact Person" means the Project Manager listed in the Cover Letter of the RFQ, or other persons specifically named and designated in the RFQ as the contact for questions and comments regarding the RFQ.

(B) "No-Contact Period" means the period of time from the date the RFQ is issued until a contract is executed. If the City withdraws the RFQ or rejects all responses with the stated intention to reissue the same or a similar RFQ for the same or similar project, the no-contact period continues during the time period between the withdrawal and reissue.

(C) "Response" means a statement of qualifications.

(D) "Respondent" means a person responding to a City solicitation including a bidder, a quoter, responder, or a proposer. The term "respondent" also includes:

(i) an owner, board member, officer, employee, contractor, subsidiary, joint enterprise, partnership, agent, lobbyist, or other representative of a respondent;

(ii) a person or representative of a person that is involved in a joint venture with the respondent, or a subconsultant in connection with the respondent's response; and

(iii) a respondent who has withdrawn a Response or who has had a Response rejected or disqualified by the City.

(E) "Representation" means a communication related to a response to a council member, official, employee, or City representative that is intended to or that is reasonably likely to:

(i) provide information about the Response;

(ii) advance the interests of the Respondent;

(iii) discredit the Response of any other respondent;

(iv) encourage the City to withdraw the RFQ;

(v) encourage the City to reject all of the responses;

(vi) convey a complaint about a particular response; or

(vii) directly or indirectly ask, influence, or persuade any City official, City employee, or body 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.

(F) "City" means Owner.

(2) Restrictions on Contacts

(A) During a no-contact period, a Respondent shall make a representation only through the authorized contact person.

(B) During the no-contact period, a Respondent may not make a representation to a City official or to a City employee other than to the authorized contact person. This prohibition also applies to a vendor that communicates and then becomes a Respondent.

(C) The prohibition of representation during the no-contact period applies to a representation initiated by a Respondent, and to a representation made in response to a representation initiated by a City official or a City employee other than the Authorized Contact Person.

(D) If the City withdraws an RFQ or rejects all Responses with a stated intention to reissue the same or similar RFQ for the same or similar project, the no-contact period shall expire after the ninetieth day after the date the RFQ is withdrawn or all Responses are rejected if the RFQ has not been reissued during the 90-day period.

(E) For a single vendor award, the no-contact period shall expire when the first of the following occurs: contract is executed or solicitation is cancelled

(F) For a multiple vendor award, the no-contact period shall expire when the last of the following occurs: all contracts are executed, negotiations have been fully terminated, or the ninetieth day after the solicitation is cancelled.

(G) The purchasing officer or the director may allow respondents to make representations to city employees or city representatives in addition to the authorized contact person for a solicitation that the purchasing officer or the director finds must be conducted in an expedited manner; an expedited solicitation is one conducted for reasons of health or safety under the shortest schedule possible with no extensions. The purchasing officer's or director's

finding and additional city employees or city representative who may be contacted must be included in the solicitation documents.

(H) Representation to an independent contractor hired by the City to conduct or assist with a solicitation will be treated as representations to a City employee.

(I) A current employee, director, officer, or member of a respondent, or a person related within the first degree of consanguinity or affinity to a current employee, director, officer or member of a respondent, is presumed to be an agent of the respondent for purposes of making a representation. This presumption is rebuttable by a preponderance of the evidence as determined by the purchasing officer or director.

(J) A respondent's representative is a person or entity acting on a respondent's behalf with the respondent's request and consent. For example, a respondent may email their membership list and ask members to contact council members on the respondent's behalf. The members are then acting per respondent's request and with their consent, and the members have become respondent representatives.

(3) Permitted Representations

(A) If City seeks additional information from respondent, the Respondent shall submit the representation in writing **only** to the authorized contact person. The contact person will then distribute the written representation in accordance with the terms of the RFQ. A Respondent cannot amend or add information to a Response after the Response deadline.

(B) If respondent wishes to send a complaint to the City, the respondent shall submit the complaint in writing only to the authorized contact person. The authorized contact person will then distribute a complaint regarding the process to members of the City Council or members of the City board, to the director of the department that issued the solicitation, and to all respondents of the RFQ. However the director shall not permit distribution of any complaint that promotes or disparages the qualifications of a respondent, or that amends or adds information to a response. A determination what constitutes promoting or disparaging the qualifications of a respondent or constitutes amending or adding information is at the director's sole discretion.

(C) If a Respondent submits a written inquiry regarding an RFQ, the authorized contact person will provide a written answer and distribute both the inquiry and answer to all Respondents on the RFQ.

(D) If a Respondent does not receive a response from the authorized contact person, the Respondent may contact the director as appropriate.

(E) A respondent may ask a purely procedural question, for example a question regarding the time or location of an event or where information may be obtained, of a City employee other than the authorized contact person. No suggestions or complaints about the contract process that constitute a representation to a City

employee is allowed. A respondent may not ask a procedural question to a Council member, a council member's aide, or of a City board member except in a meeting held under the Texas Government Code, Chapter 551 (Open Meetings Act).

(F) The Anti-Lobbying ordinance allows representations:

(1) made at a meeting convened by the authorized contact person, including meetings to evaluate responses or negotiate a contract;

(2) required by protest procedures for vendors;

(3) made at a protest hearing;

(4) provided to the Small & Minority Business Resources Department in order to obtain compliance with the MBE/WBE Procurement Program Ordinance;

(5) made to the City Risk Management coordinator about insurance requirements for a solicitation;

(6) made public at a meeting held under the Open Meetings Act; or

(7) made from a respondent's attorney to an attorney in the Law Department in compliance with Texas Disciplinary Rules of Professional Conduct.

(G) Nothing in the Anti-Lobbying Ordinance prohibits communications regarding the solicitation between or among City official or City employees acting in their official capacity.

(H) A contribution or expenditure defined in Chapter 2-2 (Campaign Finance) is not a representation.

(4) Contract Voidable. If a contract is awarded to a Respondent who has violated these Anti-Lobbying & Procurement provisions, the contract is voidable by the Owner.

(5) Debarment. If a Respondent has been disqualified under these provisions more than two times in a sixty month period the purchasing officer shall debar the responder from responding for a period not to exceed three years, provided the Respondent is given written notice and a hearing in advance of the debarment.

II. Rejection of Proposals

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** cause your firm to be deemed non-responsive:

- Form 2 – Affidavit of Authentication is not included with original signature and notarized.
- Form 3 – Prime Firm's EEO Program and Title VI Assurances is not included with original signature certifying firm conforms to City Code 5-4-2.
- The required Key Personnel do not have a current license/registration in the State of Texas at the time of submittal.
- 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 Proposer attend the mandatory Pre-Response Meeting, if applicable.
- Statement of Qualifications (SOQs) received from a Proposer who has been debarred or suspended by OWNER's Purchasing Officer.
- SOQs received from a Proposer when Proposer or principals are currently debarred or suspended by Federal, State or City governmental agencies.

II. The following **<u>may</u>** cause your firm to be deemed non-responsive:

- Failure to provide a SOQ stamped "ORIGINAL".
- Failure to provide the correct number of "COPY" SOQs.
- Failure to provide an electronic version on CD or Flash Drive of your complete SOQ.
- Form 4 - Affidavit of Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying is not included with original signature and notarized.
- Form 5 - Affidavit of Availability is not included with original signature and notarized.
- Form 6 – Affidavit of Contract Execution is not included with original signature and notarized.
- Failure to provide a response to one or more of the Consideration Items.
- 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.

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 Director 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. The consultant must adhere to the terms stated in Form 6 – Affidavit of Contract Execution.

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 Capital Contracting Director 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 Capital Contracting Director may dismiss your complaint or protest.

<u>Prior to Solicitation Due Date:</u> If you are a prospective Respondent and you become aware of the facts regarding what you believe is a deficiency in the solicitation process before the Solicitation is due, you must notify the City in writing, through the authorized contact person, of the alleged deficiency before that date, giving the City an opportunity to resolve the situation prior to the Solicitation Due Date.

After Solicitation Due Date: If you submit a response to the City 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:

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.
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 Solicitation was due. If you know of the facts before that date, you must notify the City as stated above.
3. You must submit your protest in writing, through the authorized contact person, and must include the following information:
    a. your name, address, telephone, and fax number;
    b. the solicitation number and the CIP number, if applicable;
    c. a detailed statement of the factual grounds for the protest, including copies of any relevant documents.
4. Your protest must be concise and presented logically and factually to help with the City's review.
5. When the City receives a timely written protest, the Capital Contracting Director will determine whether the grounds for your protest are sufficient. If the Capital Contracting Director decides that the grounds are sufficient, the Capital Contracting Office will schedule a protest hearing, usually within five (5) working days. If the Capital Contracting Director determines that your grounds are insufficient, you will be notified of that decision in writing.
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 the City are: representatives from the department that requested the purchase, the Law Department, the 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.
7. A decision will usually be made within fifteen (15) calendar days after the hearing.
8. The Capital Contracting Director will send you a copy of the hearing decision after the appropriate City staff have reviewed the decision.
9. 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 Capital Contracting Director determines that:
    a. The City urgently requires the supplies or services to be purchased, or

b. Failure to make an award promptly will unduly delay delivery or performance.

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

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

P.O. Address for U.S. Mail:

City of Austin
ATTN: Director, Capital Contracting Office
P.O. Box 1088
Austin, Texas 78767-0845

Street Address for Hand Delivery/Courier Service:

City of Austin
ATTN: Director, Capital Contracting Office
505 Barton Springs Road, Suite 1045-A
Austin, Texas 78704

PHONE: (512) 974-7181

END