



ADDENDUM #2

To: All Companies Interested in Submitting Qualifications
From: Diane Muench, CPPB, Purchasing Agent
RFQ: Electrical Engineering Services, RFQ #PUR1017-064, Dated October 12, 2017
Subject: Addendum #2 (6 pages)
Date: October 20, 2017

Please note the following specification changes/additions/clarifications relative to the above Request for Qualifications.

- 1) **Question:** See Attachment C - Standard Terms and Conditions and Attachment D - Insurance Requirements.

All addenda that you receive shall become a part of the contract documents and shall be acknowledged and dated on the bottom of the Signature Page (Attachment B). The deadline for sealed qualifications is Tuesday, October 24, 2017, before 3:00 pm CDT at the Office of the City Clerk, 101 First Street SE, Cedar Rapids, IA 52401.

ATTACHMENT C – STANDARD TERMS AND CONDITIONS

ACCELERATED PAY DISCOUNTS - Accelerated discounts should be so stated on the Signature Page. If quick pay discounts are offered, the City reserves the right to include that discount as part of the award criteria. Prices proposed must, however, be based upon payment in net forty-five (45) days after receipt, inspection and acceptance. In all cases, quick pay discounts will be calculated from the date of the invoice or the date of acceptance, whichever is later.

ADA COMPLIANCE

1. The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101 et seq.) and applicable Federal regulations under the Act <https://www.law.cornell.edu/uscode/text/42/12101>.
2. Bids for design, construction, programs, policies and concessions of any type shall comply with the 2010 Standards for Accessible Design, the ADA title II regulation - <https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm>, Section 504 of the 1973 Rehabilitation Act <https://www.ada.gov/cguide.htm#anchor65610>, and similar statutes and regulations prohibiting discrimination on the basis of disability.
3. The Contractor shall ensure that its websites and all online services, including those websites or online services provided by third parties upon which Cedar Rapids relies to provide services or content, comply with, at minimum, Web Content Accessibility Guidelines - WCAG 2.0 AA.
4. It is the responsibility of the Contractor to understand and implement the Accessible Design specifications indicated above (Article 26.1 and 26.2) into all applicable construction projects, including being aware of and making considerations for expected field or manufacturing tolerances, as stated in article 104.1.1 of the 2010 ADA Standards for Accessible Design. Further, the Contractor shall be responsible to make the construction workers aware of the specifications and tolerances in projects that involve ADA design items. Any subsequent inspection of installations of facilities or construction that results in failure to meet the Accessible Design parameters, these items shall be removed and replaced at the expense of the Contractor.

ASSIGNMENT - The City and the Consultant each is hereby bound and the partners, successors, executors, administrators and legal representatives of the City and the Consultant are hereby bound to the other Party to the Contract and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other Party, in respect of all covenants, agreements and obligations of the Contract. Any assignment or attempt at assignment made without prior written consent of the City shall be void.

CONFLICT OF INTEREST - Consultant represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Consultant and the City that is a conflict of interest. No employee, officer or agent of the Consultant shall participate in the selection or in the award if a conflict of interest, real or apparent, exists. The provisions of Iowa Code ch. 68B shall apply to the Contract. If a conflict of interest is proven to the City, the City may terminate the Contract, and Consultant shall be liable for any excess costs to the City as a result of the conflict of interest. The Consultant shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties. The Consultant shall report any potential, real, or apparent conflict of interest to the City.

DISPUTES - Should any disputes arise with respect to the Contract; the Parties agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. The Consultant agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute and the City shall continue to make payment for all Services properly performed. Should the Consultant fail to continue to perform its responsibilities regarding all non-disputed Services, without delay, any additional costs incurred by the City or the Consultant as a result of such failure to proceed shall be borne by the Consultant. The unintentional delayed payment by the City to the Consultant of one or more invoices not in dispute in accordance with the terms of the Contract will not be cause for Consultant to stop or delay Services.

FOB POINT AND FREIGHT/DELIVERY CHARGES - The FOB point, in terms of loss or damage, as well as where title to the goods is passed, shall be FOB-Destination. Freight/delivery charges are to be included in the quoted price of the goods, rather than as a separate line item.

FORCE MAJEURE - Force majeure shall be any of the following events: acts of God or the public enemy; compliance with any order, rule, regulation, decree, or request of any governmental authority or agency or person purporting to act therefore; acts of war, public disorder, rebellion, terrorism, or sabotage; floods, hurricanes, or other storms; strikes or labor disputes; or any other cause, whether or not of the class or kind specifically named or referred to herein, not within the reasonable control of the Party affected. A delay in or failure of performance of either Party shall not constitute a default hereunder nor be the basis for, or give rise to, any claim for damages, if and to the extent such delay or failure is caused by force majeure. The Party who is prevented from performing by force majeure shall be obligated, within a period not to exceed fourteen (14) days after the occurrence or detection of any such event, to give notice to the other Party setting forth in reasonable detail the nature thereof and the anticipated extent of the delay, and shall remedy such cause as soon as reasonably possible, as mutually agreed between the Parties.

INDEMNIFICATION - The Consultant shall, and hereby agrees to, protect, defend, indemnify and hold harmless the City of Cedar Rapids, its officers and employees from any and all claims, settlements, judgments, and damages of every kind and nature made, to include all costs associated with the investigation and defense of any claim, rendered or incurred by or on behalf of the City, its officers, and employees, that may arise, occur, or grow out of any errors, omissions, or acts, done by the Consultant, its employees, or any independent Consultants working under the direction of either the Consultant in the performance of the Contract.

LAWS AND REGULATIONS - The Contract shall be governed, interpreted and enforced in accordance with all applicable federal, State of Iowa, and local laws, ordinances, licenses and regulations of a governmental body having jurisdiction and shall apply to the Contract throughout, as the case may be. The Consultant certifies that in performing the Contract they will comply with all applicable provisions of the federal, state, and local laws, regulations, rules, and orders.

NO GIFT STANDARD - The City of Cedar Rapids is committed to upholding the highest ethical standards in all of its business practices. This standard recognizes the need to avoid even the perception of improper gifts or favors to employees. Therefore, all suppliers have been asked to abide by the City's "No Gift" standard. The "No Gift" standard also applies to all offers of discounts or free items at any place of business targeted toward a City employee and not available to the general public, regardless of the value.

NON-COLLUSION STATEMENT - Neither the Consultant, nor anyone in the employment of the Consultant, has employed any person to solicit or procure the Contract nor will the Consultant make any payment or agreement for payment of any compensation in connection with the Contract. There is no contract, agreement or arrangement, either oral or written, expressed or implied, contemplating any division of compensation for Services rendered under the Contract or participation therein, directly or indirectly, by any other person, firm or corporation, except as documented in the Contract. Neither the Consultant, nor anyone in the employment of the Consultant, has either directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive procurement in connection with the Contract.

NON-DISCRIMINATION AND EQUAL OPPORTUNITY - All Consultants that engage in contracts with the City of Cedar Rapids, Iowa agree as follows: The Consultant will not discriminate against any employee or applicant for employment because of race, sex, color, creed, ancestry, national origin, marital status, families with children, religion, age, disability, sexual orientation, gender identity, genetic information, status with regard to public assistance, status as a veteran or any classification protected by federal, state, or local law, (Protected Classes) except where age and sex are essential bona fide occupational requirements, or where disability is a bona fide occupational disqualification. Such action shall include, but not be limited to the following; (a) Employment, (b) Upgrading, (c) Demotion or transfer, (d) Recruitment and advertising, (e) Layoff or termination, (f) Rate of pay or other forms of compensation, and (g) Selection for training, including apprenticeship. The Contractor further assures that managers and employees comply with both the spirit and intent of federal, state, and local legislation, government regulation, and executive orders in providing affirmative action as well as equal opportunity without regard to the protected classes, as stated above. The Consultant will include, or incorporate by reference, the provisions of the nondiscrimination clause in every contract or subcontract unless exempt by the rules, regulations or orders of the City's Affirmative Action Program and will provide in every contract or subcontract that said provision will be binding upon each Consultant.

PROPOSED CURRENCY/LANGUAGE - All proposed prices shall be shown in US Dollars (\$). All prices must remain firm for the duration of the contract regardless of the exchange rate. All Proposal responses must be submitted in English.

REGULATORY AGENCY COMPLIANCE - Compliance with laws and regulations set forth by regulatory agencies is required. These agencies include, but are not limited to, OSHA – Occupational Safety & Health Agency, EPA – Environmental Protection Agency, ICC – Interstate Commerce Commission, DNR – Department of Natural Resources, and DOT – Department of Transportation. The City of Cedar Rapids expects that Consultants will offer expertise on conformance of regulations applying to the services they provide.

RIGHT TO PROTEST - Anyone wishing to file a protest concerning (1) the specifications, (2) the submittal procedure or (3) the award of the contract must do so in writing in accordance with the City's Protest Procedure which is posted on the City's website at

http://www.cedar-rapids.org/document_center/Purchasing/Protest%20Procedure_14.pdf

SUBCONTRACTING - The Services relating to this Project, or any portion thereof, may not be subcontracted without written approval from the City. All approved Subcontractors shall be listed in the resulting contract or in a written amendment to the contract.

SUBMITTAL FORMS - Each Proposer must submit an original and additional copies of their submittal as required. The Proposer shall correctly sign the forms, and the submittal may be rejected if it shows any omissions, alterations of the form, additions not called for in the RFQ, or any irregularities of any kind. In case of a discrepancy between the unit price and the extended price, the unit price shall prevail.

SUBMITTAL INFORMATION IS PUBLIC - All documents submitted shall become public documents and subject to Iowa Code Chapter 22, which is otherwise known as the "Iowa Open Records Law". By submitting any document to the City of Cedar Rapids in connection with the RFQ, the submitting party recognizes this and waives any claim against the City of Cedar Rapids and any of its officers and employees relating to the release of any document or information submitted. Each submitting party shall hold the City of Cedar Rapids and its officers and employees harmless from any claims arising from the release of any document or information made available to the City of Cedar Rapids arising from any opportunity.

SUBMITTAL REJECTION OR PARTIAL ACCEPTANCE - The City reserves the right to accept or reject any or all submittals or parts thereof. The City further reserves the right to waive technicalities and formalities in submittals, as well as to accept in whole or in part such submittal where it is deemed advisable in protection of the best interests of the City.

SUSPENSIONS AND DEBARMENT - The Contractor hereby certifies, pursuant to 2 CFR pt. 180 and 2 CFR pt. 3000, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Contract by any federal agency. The Contractor further certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contracts with the City of Cedar Rapids or the State of Iowa.

TAXES - The City of Cedar Rapids is exempt from sales tax and certain other use taxes. Any charges for taxes from which the City is exempt will be deducted from invoices before payment is made. The Cedar Rapids Tax ID number is 42-6004336.

TERMINATION OF CONTRACT FOR CONVENIENCE - The City may terminate the Contract at any time by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least thirty (30) calendar days before the effective date of such termination. In that event, all finished or unfinished Services, reports, materials(s) prepared or furnished by the Consultant under the Contract shall, at the option of the City, become its property. If the Contract is terminated by the City as provided herein, the Consultant shall be paid for all Services which has been authorized, provided, and approved up to the effective date of termination. The City will not be subject to any termination fees from the Consultant.

TERMINATION FOR CAUSE AND DEFAULT - If through any cause, the Consultant shall fail to fulfill in a timely and proper manner its obligations or if the Consultant shall violate any of the terms or conditions of the Contract, the City shall thereupon have the right to terminate the Contract by giving written notice to the Consultant of such termination and specifying the effective date of termination. In that event, and as of the time notice is given by the City, all completed Services, reports, and delivered materials shall, at the option of the City, become its property, and the Consultant shall be entitled to receive compensation for any satisfactory Services completed. Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damage sustained by the City by virtue of breach of the Contract by the Consultant and the City may withhold any payments to the Consultant for the purpose of set off until such time as the exact amount of damages due the City are determined.

WARRANTIES - INTELLECTUAL PROPERTY - Consultant represents and warrants that all the materials, goods and services produced, or provided to the City pursuant to the terms of the Contract shall be wholly original with the Consultant or that the Consultant has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such materials, goods and services. The Consultant represents and warrants that the materials, goods and services, and the City's use of same, and the exercise by the City of the rights granted by the Contract shall not infringe upon any other services or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm, or corporation. Consultant further represents and warrants that the materials and services do not infringe upon the copyright, trademark, trade name, trade dress patent, statutory, common law or any other rights of any person, firm or corporation or other entity. The Consultant represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods and services contemplated by the Contract.

WARRANTIES - PROFESSIONAL SERVICES - The Consultant shall perform Services for, and furnish deliverables to, the City pertaining to the Project as set forth in this Contract. The Consultant shall possess a degree of learning, care and skill ordinarily possessed by reputable professionals, practicing in this area under similar circumstances. The Consultant shall use reasonable diligence and professional judgment in the exercise of skill and application of learning.

Consultant represents that the Services and all of its components shall be free of defects; shall be performed in a manner consistent with the standard of care of other professional service providers in a similar industry and application; shall conform to the requirements of this Contract; and shall be sufficient and suitable for the purposes expressed in this Contract.

Consultant shall be responsible for the quality, technical accuracy, completeness and coordination of all Documents and other items and Services under the Contract. Consultant shall, promptly and without charge, provide all corrective Services necessary as a result of Consultant's acts, errors, or omissions with respect to the quality and accuracy of Services and documents.

Consultant shall be responsible for any and all damages to property or persons as a result of Consultant's acts, errors, or omissions, and for any losses or costs to repair or remedy any services undertaken by City based upon the services as a result of any such acts, errors, or omissions.

Consultant's obligations shall exist without regard to, and shall not be construed to be waived by, the availability or unavailability of any insurance, either of City or Consultant.

----- End of Attachment A -----

ATTACHMENT D – INSURANCE REQUIREMENTS

Section I – Basic Insurance Requirements

Consultant, at its own expense, shall procure and maintain during the life of the Contract, the following insurance so as to cover all risk which shall arise directly or indirectly from Consultant's obligations and activities.

General Liability Insurance Consultant shall carry the most recently approved ISO Commercial General Liability Insurance policy, or its equivalent, written on an occurrence-basis, with limits not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for Bodily Injury and Property Damage, including the following coverages:

- Premises and Operations Coverage
- Contractual Liability
- Products and Completed Operations Coverage
- Broad Form Property Damage Liability
- Personal Injury Liability

Automobile Liability Insurance with a combined single limit of at least \$1,000,000 per occurrence for bodily injury and property damage. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of the Contract by the Consultant or its employees.

Workers Compensation and Employers Liability Insurance meeting the relevant Workers Compensation Statutes.

Professional Liability Insurance with limits of at least \$1,000,000 per occurrence covering all services provided by the Consultant, its employees, or independent consultants. If this coverage is written on a claims made policy form, the certificate of insurance must clearly state coverage is claims made and coverage must remain in effect for at least two years after final payment with the Consultant continuing to furnish the City certificates of insurance.

REQUIRED THREE (3) ENDORSEMENTS are to be added to the General Liability Policy. Copies of the endorsements are to be produced with the certificate.

1. Additional Insured Endorsement:

Except for Workers' Compensation and Professional Liability, the policies shall include the City Additional Insured Endorsement of: The City of Cedar Rapids, Iowa, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees, and volunteers, are included as additional insureds with respect to liability arising out of the Insured's work and/or services performed for the City of Cedar Rapids, Iowa. This coverage shall be primary to the additional insureds, and not contributing with any other insurance or similar protection available to the additional insureds, whether available coverage be primary, contributing, or excess.

2. Non-Waiver of Governmental Immunities Endorsement (Iowa):

a. **Non-waiver of Government Immunity** The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Cedar Rapids, Iowa as an Additional Insured does not waive any of the defenses of governmental immunity available to the City of Cedar Rapids, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.

b. **Claims Coverage** The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as may be amended from time to time.

c. **Assertion of Government Immunity** The City of Cedar Rapids, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Cedar Rapids, Iowa.

d. **Non-Denial of Coverage** The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Cedar Rapids, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Cedar Rapids, Iowa.

e. No Other Change in Policy The insurance carrier and the City of Cedar Rapids, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

3. Cancellation and Material Changes Endorsement

Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction in insurance coverage and/or limits and ten (10) days written notice of non-payment of premium shall be sent to:

City of Cedar Rapids
Finance Department – Purchasing Services Division
101 First Street SE
Cedar Rapids IA 52401

(Please note that the City does accept a signed letter on the agent’s letterhead, from the insured’s insurance agent, confirming that the agent will provide notice as indicated above.)

Section II – Conditions of Contract

The Consultant is required to purchase and maintain insurance coverage to protect the Consultant and City of Cedar Rapids throughout the duration of the Contract per the minimum limits above written and the requirement shall be a part of the Contract. Failure on the part of the Consultant to maintain this insurance in full effect will be treated as a failure on the part of the Consultant to comply with these requirements and be considered sufficient cause to suspend the services, withhold payment(s), and/or be disqualified in the future.

The insurance policies shall be issued by insurers authorized to do business in the State of Iowa and currently having an A.M. Best Rating of “B+” or better. All policies shall be occurrence form. If Professional Liability coverage is written on a claims made policy form, the certificate of insurance must clearly state coverage is claims made and coverage must remain in effect for at least two years after final payment with the Consultant continuing to furnish the CITY certificates of insurance.

The Consultant shall be responsible for deductibles and self-insured retentions in the Consultant’s insurance policies.

The Consultant is required to give the City notice of any change in coverage, specifically, any reduction in coverage and cancellation of coverage no less than thirty (30) days prior to the effective date of any non-renewal or cancellation of any policies required by the Contract.

The City intends for the Consultant’s coverage to be primary and not contributing with any other insurance or similar protection available to the City whether any other coverage is primary, contributing or excess.

Section III – Contract Approval

A Certificate of Insurance is required evidencing all required insurance coverage as provided above with any required endorsements attached so as to evidence their inclusion in the coverage. The Certificate of Insurance is due before the Contract can be approved. The following format is required:

List Landscape Design Architectural Services, RFQ #PUR0617-253, as the Scope of Services the certificate covers in the Description of Operations section.

The following address must appear in the Certificate Holder section:

City of Cedar Rapids
Finance Department – Purchasing Services Division
101 First Street SE
Cedar Rapids IA 52401

The Producer’s contact person’s name, phone number and e-mail address is required.

Certificates may be sent by e-mail (d.muench@cedar-rapids.org), fax (888-815-3659), mail or delivery to the attention of Diane Muench.