

Planning, Engineering, and Environmental Services for the Seawall Resiliency Project

RFP Written Questions and Responses – May 12, 2017

- 1) Under task 1.03 Existing Conditions Review and Documentation, it does not list any underwater inspection requirements and none of the historic mapping efforts seem to list diving inspection. Is the Port going to require underwater diving inspections to generate a baseline condition assessment?

Response: Yes. Diving inspections will be needed.

- 2) Will payments be made based on Services “performed” versus “completed”? Please confirm that this is based on services performed rather than completed deliverables.

Response: Payments will be based on services performed, with payments made on the percentage complete of tasks in the detailed work breakdown structure.

- 3) Does the City intend to withhold retainage? If so, will it be held in an interest-bearing account with all interest payable to the Contractor?

Response: The Port intends to withhold retention on payments for this contract, the terms of which will be negotiated with the selected consultant. Retention can be held by the City or in an interest-bearing escrow account.

- 4) The additional language suggests an express or implied warranty of fitness for a particular purpose. Will the City consider deleting language or adding, “The performance standard is not intended to create a warranty, guarantee, or a strict liability standard, and it is expressly agreed that Contractor is agreeing only that its services will not be performed negligently or with willful or reckless misconduct.”

Response: Assuming the question refers to the P-600 contract template, Section 4.6 (entitled “Warranty” and quoted below) the Port will consider alternate contract clauses during the contract negotiation period following the final scoring of proposals. However, the Port believes this provision is reasonable and sees no basis for modifying it.

4.6 Warranty. Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all

Services performed are correct and appropriate for the purposes contemplated in this Agreement.

- 5) Liquidated damages are uncommon in contracts for professional services. Is the City willing to include a cap on liability?

Response: The Port's standard contract terms and conditions, including the clause for liquidated damages, will be the subject of negotiations following the evaluation and scoring of proposals. At this point, the Port does not intend to include any provision for liquidated damages in the contract. Once the Port has reviewed detailed proposals, the Port will engage in negotiations of the specific contract terms subject to City policies and ordinances.

- 6) 4.7 - Liquidated Damages: This section is blank. Does the City have a dollar amount in mind or is that subject to negotiations between parties?

Response: See response to Question 5.

- 7) Is the City willing to consider adding language to provide an extension of cost and schedule for delays outside of Contractor's control? We suggest the following paragraph be added to the agreement:

"In the event of any delays to the project through no fault of the Contractor, including but not limited to force majeure events, permitting delays, or owner required consent or approvals, which prevents Contractor from completing any part of the Work with the Contract or cause an increase or decrease in Contractor's cost of, or the time required for, the performance of any part of the work under this Agreement, an equitable adjustment shall be made by mutual agreement and the Agreement modified in writing accordingly."

Response: At this point, the Port does not intend to include any provision for liquidated damages in the contract, so the issue of relieving the contractor for these damages will likely become moot. As to requests for extra compensation due to other delays, the Port will consider each case individually based upon the specific circumstances and applicable City policies and ordinances. The Port is unable to commit to a formulaic approach at this stage but will entertain further discussions of this during the contract negotiations period.

- 8) Bonds are uncommon in contracts for professional services. Does the City intend to require a bond for this project?

Response: The Port will consider modification of this provision during the contract negotiation period, following the final evaluation of proposals and subject to the City's policies and ordinances. Once the Port has reviewed detailed scope proposals, the Port will

be in a better position to evaluate proposed alternate terms, including bonding requirements.

- 9) Is the City willing to make the waiver of consequential damages mutual? If the City is unwilling to make the waiver mutual and delete Article 6.3, will the City consider a cap?

Response: The Port will engage in active negotiations of the contract terms and conditions during the contract negotiation period, following the final evaluation of proposals and subject to the City's policies and ordinances. Section 6.3 of the contract template is a standard City contract condition. Once the Port has reviewed detailed proposals, the Port will be in a position to evaluate proposed alternate contract terms. However, without the proposer's proposed services, fee schedules and other relevant information, detailed negotiations of business terms would be premature at the pre-proposal stage.

- 10) Is the City willing to add the following language excluding pre-existing Intellectual Property? "In no case shall Section 9.2 apply to, or prevent the Contractor from asserting or protecting its rights in any idea, procedure, process, system, method of operation, concept, principle, discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Contract that existed prior to or was developed or discovered independently from the activities directly related to this Contract."

Response: The Port will engage in active negotiations of the contract terms and conditions during the contract negotiation period, following the final evaluation of proposals and subject to the City's policies and ordinances. Section 9.2 of the contract template is a standard City contract condition. Once the Port has reviewed detailed proposals, the Port will be in a position to evaluate proposed alternate contract terms. However, without the proposer's proposed services, fee schedules and other relevant information, detailed negotiations of business terms would be premature at the pre-proposal stage.

- 11) Please clarify Appendix E. Should resumes be included in an appendix entitled Appendix E, and if so, are there appendices for A- D? Please also clarify desired length for resumes.

Response: Resumes shall be no more than 2 pages in length. An Addendum will be issued with the correction to Section III.C.7. Appendices A-D are listed in the RFP under the Table of Contents.

- 12) RFP Section III.C.6d (page 19 of 29): Please confirm if detailed resumes shall be included as an attachment to Appendix F and not to Appendix E? Also if the resumes are an attachment to Appendix F, please confirm that they will not be page counted.

Response: See response to Question 11.

13) Are 11x17 sheets allowed beyond the project schedule section?

Response: 11x17 sheets are also allowed for the Org Chart.

14) Can we include 11X17 pages, where appropriate (i.e. organizational chart)?

Response: See response to Question 13.

15) If we keep the body text as serif, are non-serif fonts allowed in the section headers or as captions?

Response: Yes.

16) On page F4, please clarify language that states that the lead structural engineer is required to have both coastal lead and structural building experience? (minimum of 12 years of experience coastal/buildings)

Response: Coastal infrastructure experience is required. An Addendum will be issued to delete "buildings".

17) There was an initial budget disclosed but we do not see it in the RFP. Is there an initial budget for each Phase already established?

Response: Scope and fee will be negotiated based upon labor, billable rates, and expenses. Target budgets have been established, but will be shared during negotiations.

18) Please clarify: outreach entity on this team to the outreach entity of the previous team

Response: This request for clarification is not clear.

19) Describe the role of this team in helping with the proposed 2018 ballot measure

Response: This team will not help with a ballot measure. This is a planning, engineering and environmental contract.

20) On item 7 A the statement that ends that subconsultants must provide ----(statement ends)

Response: The incomplete sentence will be removed in upcoming Addendum.

21) Will you please provide the rest of the last sentence in section 7. Proposal Qualifications on page 20 Part a?

Response: See response to Question 20.

- 22) Page 30 of 29 moves into descriptions. Item B refers to general program management services. Please clarify if this language is a carry-over.

Response: It is not a carry over. The section contains guidance on conflict of interest.

- 23) How shall we respond to the Fee proposal requirements regarding fully burdened rates (example, by staff, classification, etc.)? Is there a rate cap?

Response: Rates should be listed by position. There is not a rate cap, however the Port reserves the right to review the rate schedule and request for changes during contract negotiations.

- 24) Can you advise who will serve on the selection committee?

Response: No, the selection committee names are confidential.

- 25) The USACE is already performing work on this program. What is the scope of the work they are doing and where will it interface with this work?

Response: The Port expects to enter into a CAP103 agreement with USACE in June or July of this year to complete a feasibility study for a flood protection project just south of the Ferry Building. The Port continues to pursue a General Investigation with USACE. The consultant team will support this effort, scope to be determined.

- 26) Are there any requirements on what can or cannot be included on a tab and still not be counted in the page count?

Response: Excluding responses to the RFP, there are no requirements for what can or cannot be included on the tab.

- 27) Should the fee schedule be for all three phases of the project?

Response: Yes, with Phases 2 & 3 effort based on \$500M total cost for initial projects. Final Phase 2 & 3 scope and fee will need to be finalized based on the outcome of Phase 1.

- 28) Do second tier LBEs count towards the LBE goal or do LBEs have to contract directly to the Prime?

Response: Second tier LBEs count towards the LBE goal. Please refer to Section 1 of CMD Form 2A)

29) 4.8 - Bonding Requirements: Will a performance bond be required?

Response: Section 4.8 is a standard City contract term and condition. The Port will consider modification of this provision during the contract negotiation period, following the final evaluation of proposals and subject to the City's policies and ordinances. Once the Port has reviewed detailed scope proposals, the Port will be in a better position to evaluate proposed alternate terms, including bonding requirements.

30) 6 - Liability of the Parties: A "Liability of Contractor" clause is not included in this agreement that limits the liability of Contractor in a reasonable manner. Will the City consider including such a clause, as it has in previous RFPs, given the type of services requested by RFP?

Response: The Port will engage in active negotiations of the contract terms and conditions during the contract negotiation period, following the final evaluation of proposals and subject to the City's policies and ordinances. Once the Port has reviewed detailed proposals, the Port will be in a position to evaluate proposed alternate contract terms.

31) 8 - Termination and Default: In 8.1.3(a), it states: "The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services." The 10% limitation seems more in line with a true construction contractor overhead and not design professional's overhead which is significantly higher. Can this be revised to strike the 10% limitation given we are required to disclose our overhead rate as part of the Fee Proposal?

Response: Section 8.1.3 of the contract form is a standard City term and condition. The Port will engage in active negotiations of the contract terms and conditions during the contract negotiation period, following the final evaluation of proposals and subject to the City's policies and ordinances. Once the Port has reviewed detailed proposals, the Port will be in a position to evaluate proposed alternate contract terms.

32) Would it be permissible to allow the Cover Letter+ Executive Summary to total 4 pages, or to expand the designated length of the Executive Summary to 3 pages maximum?

Response: Yes. An Addendum will be issued to increase the Executive Summary to 3 pages maximum.

33) Can we provide the proposal in a 2-column format?

Response: No. Please submit the proposal in a single column format.

34) Can graphics/exhibits use an alternate font from Times New Roman (for example, a sans serif font like Calibri)?

Response: Yes.

35) Can graphics/exhibits use a smaller font size, if they are legible?

Response: Yes.

36) RFP Appendix F (page F-4): Please clarify requirement for Project Manager Experience on projects >20M - Is this a construction value?

Response: This is total project cost, not construction cost. An Addendum will be issued for clarification.

37) RFP Section III.C.7b (page 20 of 29): If a JV is submitting, is it 2 pages per JV member (i.e. 2 firm JV = 4 pages)?

Response: It is a maximum of 2 pages total, for a Prime or JV partnership.

38) Regarding Appendix E: Reference Evaluation Form – the pdf of the form is only 2 pages long with the proposer completing the first page, then the Reference completing the second page. Once the Project Scope information is completed, it pushes the page count to more than 2 pages - can this form be more than 2 pages long?

Response: Yes.

39) Regarding Task 2.04.00 – Pilot Projects: Is the consultant expected to budget funds for construction of pilot projects, or just design and permitting?

Response: Just design and permitting.

40) Do you expect bonding for an A/E and Professional Services Contract as called out in Section 4.8 of the contract?

Response: Section 4.8 is a standard City contract term and condition. The Port will consider modification of this provision during the contract negotiation period, following the final evaluation of proposals and subject to the City's policies and ordinances. Once the Port has

reviewed detailed scope proposals, the Port will be in a better position to evaluate proposed alternate terms, including bonding requirements.

- 41) Insurance Requirements for subs, clause 5.1.9 – Is the City open to discussion to define “necessary” in its insurance requirements for subconsultants, specifically LBE’s, independent consultants, or other small businesses? Depending on each consultant’s scope, the insurance levels stated may not be necessary or reasonably achievable.

Response: Section 5.1.9 is a standard City contract term and condition. The Port will consider modification of this provision during the contract negotiation period, following the final evaluation of proposals and subject to the City’s policies and ordinances. However, approval of the City Risk Manager is generally required for modification of the City’s contract insurance requirements. Once the Port has reviewed detailed scope proposals, the Port will be in a better position to evaluate proposed alternate terms, including insurance required of subconsultants.

- 42) Appendix D reads "the billing rate for each listed individual may not exceed the lowest rate charged to any other government entity". Can this be struck from the RFP since this project has unique overhead assumptions that makes it not comparable to other government approved multipliers?

Response: This sentence will be removed from the RFP by addendum.

- 43) Many small businesses or independent consultants do not maintain an accounting system sufficient to calculate an overhead multiplier. Please confirm these firms/individuals will be allowed to submit fully burdened billing rates only.

Response: The Port encourages small businesses and independent consultants to participate in this RFP. The requirements of Appendix D will not be changed regarding the overhead multiplier.

- 44) Is this a T&M or a Fixed Price contract?

Response: This is a fixed price contract based upon detailed work breakdown structure tasks.