



CITY OF DULUTH
PURCHASING DIVISION
Room 100 City Hall
411 West First Street
Duluth, Minnesota 55802-1199
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purchasing@duluthmn.gov

Addendum # 2

Biomass Preliminary Design RFP for Duluth Steam

This addendum serves to notify all bidders of the following:

1. Contract Terms and Conditions were not included in the RFP.

Answer: The contract will be awarded by Ever-Green Energy, Inc. (EGE). EGE's Terms and Conditions are attached.

2. The RFP does not provide a POC for questions or an address to which proposals should be sent.

Answer: Questions should be emailed to purchasing@duluthmn.gov. Proposals must be mailed in a sealed envelope with the RFP title clearly identified to the following address:

City of Duluth
ATTN: Purchasing Division
411 West 1st St, Room 100
Duluth, MN 55802

3. The RFP had attached "Design Considerations and Technical Specifications" that outlines and specifies a biomass Hot Gas Generator and associated infrastructure to combust standard "green" chipped biomass and feed it into an existing boiler to make steam. The RFP summary doesn't match the Design Considerations and Technical Specifications", so we are wondering if the wrong document was attached or the incorrect document was referenced.

Answer: The RFP attachments were intended to inform potential bidders of concepts that have been previously explored. The Attachment (4) label on the document marked "DRAFT" which starts on page 45 (of 84) of the posted document is missing. That document is a draft RFP which was never solicited and was only included to inform bidders of a possible solution. The design assumptions, constraints and background information relevant to the current RFP are contained in pages 1-14 of the posted document. Any design restrictions or boundary conditions listed in the attachments were applicable to previous investigations, not to the current RFP.

4. At the bottom of Page 1 of the RFP, you allow us to bid a lot of different options including co-firing in the existing boiler, which later says has been ruled out. Further, in the RFP summary, you do not really specify a specific fuel or outline costs for the biomass fuels (green vs. fabrication and construction wastes nor prepared fuels such as wood pellets, which are not disallowed in the summary. We need clarification on what you really are asking.

Answer: If a bidder believes one of the previously explored concepts is the best solution, we are prepared to revisit that proposed solution. The RFP does not state that the previously explored ideas have been ruled out. The RFP does state previously explored solutions were “deemed to be cost prohibitive at that time” [meaning at the time they were previously presented to us] or were “tabled due to concerns” or were “not fully studied”.

5. The “Design Considerations” document also requires detailed design and specifications for the facility. We assume you are wanting a range for the design cost as part of the final report of the preliminary design.

Answer: The applicable deliverables and design considerations are contained in pages 1-14 of the posted document.

6. Have permitting modifications been considered by Ever-Green and the City of Duluth for the various options? The RFP in one location states permitting modifications are not allowed, which doesn’t seem to be realistic based on the change in fuel handling. Can you elaborate on the permitting and the process you intend to follow based on the options?

Answer: The applicable design considerations and constraints are contained in pages 1-14 of the posted document. A permit amendment request will be submitted if/as required to support whatever solution is selected.

7. Is there a reason Ever-Green is no longer following the earlier studies that were completed?

Answer: The earlier studies were never fully completed. The RFP provides the full extent of the investigation into the various options. One of the previously explored options may very well be selected for further investigation / design.

8. What is the driver for this project? Is biomass a driver, regardless of cost or does the project have to be economically justified? What is the benchmark for the economic justification?

Answer: The design considerations, deliverables and contract award criteria are provided in pages 1-14 of the posted document.

Please note the following modifications to the attachments:

- i. Attachment (3) consists of pages 37 - 44
- ii. Attachment (4) consists of pages 45 – 54
- iii. Attachments (5 and 6) consist of pages 55 – 84

In addition, the schedule has been updated -

Pre-Bid Site Visit (optional):

August 2, 2016 10:00 am

Written Proposals Due:

August 26, at 2:00 pm

Presentations (by Invitation):

Week of September 12, 2016

Contract Award:

September 30, 2016

Written Deliverables Due:

November 1, 2016

(or Contract Award date plus 5 weeks, whichever is later)

Design Presentations:

Week of November 14

(or award week plus 7 weeks, whichever is later)

Posted: July 27, 2016.

Ever-Green Energy, LLC.

Standard Terms & Conditions

ARTICLE 1. GENERAL

These General Provisions supplement and become part of the Agreement between Ever-Green Energy, Inc., a Minnesota Corporation, hereinafter referred to as Ever-Green, and the other Party to the Agreement, hereinafter referred to as CONSULTANT, wherein Ever-Green engages CONSULTANT to provide certain Engineering and/or Planning services. Either Party to this Agreement may be referred to as a "Party" or collectively as "Parties."

As used herein, the term "Agreement" refers to (1) CONSULTANT's original proposal (the "Proposal") which forms the basis for the Agreement; (2) these General Provisions, and (3) any attached Exhibits, as if they were part of one and the same document. With respect to the order of precedence, any attached Exhibits shall govern over these General Provisions and the Proposal shall govern over any attached Exhibits and these General Provisions.

In conducting the Services, CONSULTANT will apply present professional, and/or scientific judgment, and use a level of effort consistent with care and skill ordinarily used by members of the subject profession practicing in the same or similar locality, at the same time, and under similar circumstances in performing the Services.

ARTICLE 2. PERIOD OF SERVICE

The term of this Agreement for the performance of services hereunder shall be as set forth in CONSULTANT's Proposal. Any lump sum or estimated maximum payment amounts set forth in the Proposal constitute the best estimate of the fees and tasks required to perform the services as defined, and have been established in anticipation of the orderly and continuous progress of the project in accordance with the schedule set forth in the Proposal or any Exhibits attached thereto.

ARTICLE 3. COMPENSATION TO CONSULTANT

Compensation to CONSULTANT for services shall be as designated in the Proposal. Ever-Green shall make monthly payments to CONSULTANT within the latter of 45 days of the date of invoice or when Ever-green is paid by its customer.

The Ever-Green will pay the balance stated on the invoice unless Ever-Green notifies CONSULTANT in writing of the particular item that is alleged to be incorrect within 15 days from the date of invoice, in which case all undisputed items shall be paid and amounts in dispute shall become due upon an adjudicated resolution or upon agreement of the parties. All accounts unpaid after 45 days from the date of original invoice shall be subject to a service charge of 1-1/2% per month, or the maximum amount authorized by law, whichever is less. CONSULTANT shall be entitled to recover all reasonable costs and disbursements, including reasonable attorneys' fees, incurred in connection with collecting amounts owed by Ever-Green.

ARTICLE 4. EXTRA WORK

If CONSULTANT is of the opinion that any work it has been directed to perform is beyond the Scope of this Agreement, or that the level of effort required exceeds that estimated due to changed conditions and thereby constitutes extra work, it shall notify Ever-Green of that fact. Upon written notification to Ever-Green, CONSULTANT shall be entitled to additional compensation for same, and to an extension of time for completion upon Written Agreement with Ever-Green.

ARTICLE 5. ABANDONMENT, CHANGE OF PLAN AND TERMINATION

Either Party has the right to terminate this Agreement upon seven days' written notice for convenience of either Ever-Green or CONSULTANT. In addition, Ever-Green may at any time reduce the scope of this Agreement. Such reduction in scope shall be set forth in a written notice from Ever-Green to CONSULTANT. In the event of unresolved dispute over change in scope or changed conditions, this Agreement may also be terminated upon seven days' written notice as provided above.

In the event of a termination or reduction in scope of the project work, CONSULTANT shall be paid for the work performed and expenses incurred on the project work and for any completed and abandoned work for which payment has not been made, computed in accordance with the provisions of the Proposal and payment of a reasonable amount for services and expenses directly attributable to termination such as costs of terminating contracts with CONSULTANT's subconsultants, costs of producing copies of file materials and other related close-out costs. Ever-Green will not accept costs incurred past termination, including reassignment of personnel.

ARTICLE 6. DISPOSITION OF PLANS, REPORTS AND OTHER DATA

All documents, including reports, drawings, calculations, spreadsheets, specifications, CAD materials, computer software or hardware or other work product prepared by CONSULTANT pursuant to this Agreement are CONSULTANT's Instruments of Service. Upon final payment being made to CONSULTANT, Ever-Green shall be provided a copy of the final Instruments of Service. Ever-Green shall retain ownership of the final Instruments of Service, prepared by CONSULTANT pursuant to this agreement, except to the extent that the Instruments of Service or supporting documentation is not unique to the project and are subject to multiple use/reuse by CONSULTANT. Any use or reuse of such Instruments of Service, except for the specific purpose intended, by Ever-Green or others without written consent, verification, or adaptation by CONSULTANT will be at the

Ever-Green's risk and full legal responsibility. In this regard, Ever-Green will indemnify and hold harmless CONSULTANT from any and all suits or claims of third parties arising out of such use or reuse which is not specifically verified, adapted, or authorized by CONSULTANT.

Copies of documents that may be relied upon by Ever-Green are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT's Engineer. Files in electronic format furnished to Ever-Green are only for convenience of Ever-Green. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. In the event electronic copies of documents are made available to Ever-Green, Ever-Green acknowledges that the useful life of electronic media may be limited because of deterioration of the media, obsolescence of the computer hardware and/or software systems or other causes outside of CONSULTANT's control. Therefore, CONSULTANT makes no representation that such media will be fully usable beyond 30 days from date of delivery to Ever-Green.

If requested, at the time of completion or termination of the work, CONSULTANT shall make available to Ever-Green at Ever-Green's expense copies of the Instruments of Service upon (i) payment of amounts due and owing for work performed and expenses incurred under this Agreement, and (ii) fulfillment of the Ever-Green's obligations under this Agreement.

ARTICLE 7. EVER-GREEN'S ACCEPTANCE BY PURCHASE ORDER

In lieu of or in addition to execution of the Proposal, Ever-Green may authorize CONSULTANT to commence services by issuing a purchase order by a duly authorized representative. Such authority to commence services or purchase order shall incorporate by reference the terms and conditions of this Agreement. In event the terms and conditions of this Agreement conflict with those contained in Ever-Green's purchase order, the terms and conditions of this Agreement shall govern. Notwithstanding any purchase order provisions to the contrary, no warranties, express or implied, are made by CONSULTANT. In order to implement the intent of Parties to this Agreement, the Parties agree that the Proposal, these General Provisions, and any Exhibits constitute the entire Agreement between them. The Parties further agree that any preprinted "fine print" terms and conditions (not including agreed-to project specific terms) on any Ever-Green purchase order issued to request work pursuant to this Agreement will not apply to the work, regardless of whether CONSULTANT executes the purchase order in acceptance of the work.

ARTICLE 8. EVER-GREEN'S RESPONSIBILITIES

To permit CONSULTANT to perform the services required hereunder, Ever-Green shall supply, in proper time and sequence, the following at no expense to CONSULTANT:

1. All necessary information regarding its requirements as necessary for orderly progress of the work.
2. Designate in writing a person to act as Ever-Green's representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive instructions, receive information, and interpret and define Ever-Green's policies with respect to CONSULTANT's services.
3. Furnish, as required for performance of CONSULTANT's services (except to the extent provided otherwise in the Proposal or any Exhibits attached thereto), data prepared by or services of others, including without limitation, soil borings, probing and subsurface explorations, hydrographic and geohydrologic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restriction; and other special data not covered in the Proposal or any Exhibits attached thereto.
4. Provide access to, and make all provisions for CONSULTANT to enter upon publicly or privately owned property as required to perform the work.
5. Act as liaison with other agencies or involved parties to carry out necessary coordination and negotiations; furnish approvals and permits from all governmental authorities having jurisdiction over the project and such approvals and consents from others as may be necessary for completion of the project.
6. Examine all reports, sketches, drawings, specifications and other documents prepared and presented by CONSULTANT, obtain advice of an attorney, insurance counselor or others as Ever-Green deems necessary for such examination, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.
7. Give prompt written notice to CONSULTANT whenever Ever-Green observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services or any defect in the work of Construction Contractor(s), subconsultants or CONSULTANT.

8. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the project, such legal services as Ever-Green may require or CONSULTANT may reasonably request with regard to legal issues pertaining to the project including any that may be raised by contractor(s), such auditing service as Ever-Green may require to ascertain how or for what purpose any contractor has used the monies paid under the construction contract, and such inspection services as Ever-Green may require to ascertain that contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
9. Provide "record" drawings and specifications for all existing physical plants or facilities which are pertinent to the project.
10. Act promptly to approve all pay requests after receipt of payment from the CLIENT by Ever-Green, Supplemental Agreements, or requests for information by CONSULTANT as set forth herein.
11. Require all Utilities with facilities in Ever-Green's right-of-way to locate and mark said utilities upon request, relocate and/or protect said utilities as determined necessary to accommodate work of the project, submit a schedule of the necessary relocation/protection activities to Ever-Green for review and comply with agreed upon schedule.
12. Provide other services, materials, or data as may be set forth in the Proposal or any Exhibits attached thereto.

Unless otherwise specifically provided in the Proposal, Ever-Green acknowledges that CONSULTANT's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCB's, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., or radioactive materials). If CONSULTANT, or any other party, encounters a Hazardous Environmental Condition, CONSULTANT may, as its option and without liability for consequential or any other damages, suspend performance of services on the portions of the Project affected thereby until Ever-Green: 1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition, and 2) warrants that the Site is in full compliance with applicable Laws and Regulations. Ever-Green acknowledges and agrees that CONSULTANT is not a handler, generator, operator, treater, storer, transporter or disposer of Hazardous Environmental Conditions which may be encountered by on the project. Ever-Green agrees to hold harmless, indemnify and defend CONSULTANT and its officers, subconsultant(s), employees and agents from and against any and all claims, lawsuits, damages, liability and costs, including, but not limited to, costs of defense, arising out of or in any way connected with the presence, discharge, release, or escape of Hazardous Environmental Conditions waste on the Site.

CONSULTANT shall be entitled to rely on the accuracy and completeness of information furnished by Ever-Green. If CONSULTANT finds that any information furnished by Ever-Green is in error or is inadequate for its purpose, CONSULTANT shall promptly notify Ever-Green.

ARTICLE 9. OPINIONS OF COST

Opinions of probable project cost, construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs provided for in the Proposal or any Exhibits attached thereto, are made on the basis of CONSULTANT's experience and qualifications and represent CONSULTANT's judgment as an experienced and qualified design professional. It is recognized that CONSULTANT does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices, and that any evaluation of any facility to be constructed, or acquired, or work to be performed on the basis of CONSULTANT's cost opinions, must of necessity, be speculative until completion of construction or acquisition. Accordingly, CONSULTANT does not guarantee that proposals, bids or actual costs will not substantially vary from opinions, evaluations or studies submitted by CONSULTANT to Ever-Green hereunder. CONSULTANT assumes no responsibility for the accuracy of opinions of probable project costs or construction costs, and provides these estimates for the sole convenience of Ever-Green for the purposes of general project budgeting.

ARTICLE 10. CONSTRUCTION PHASE SERVICES

Ever-Green acknowledges that it is customary for the Engineer who is responsible for the preparation and furnishing of Drawings and Specifications and other construction-related documents to be employed to provide professional services during the Construction Phases of the project, (1) to interpret and clarify the documentation so furnished and to modify the same as circumstances revealed during bidding and construction may dictate, (2) in connection with acceptance of substitute of or-equal items of materials and equipment proposed by bidders and contractor(s), (3) in connection with review of shop drawings and sample submittals, and (4) as a result of and in response to CONSULTANT's detecting in advance of performance of affected work inconsistencies or irregularities in such documentation. Ever-Green agrees that if CONSULTANT is not employed to provide such professional services during the Construction Phases of the project, CONSULTANT will not be responsible for, and Ever-Green shall indemnify and hold CONSULTANT (and CONSULTANT's professional associates and consultants)

harmless from, all claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from changes to documentation prepared by CONSULTANT, including any interpretation, clarification, substitution acceptance, shop drawing or sample approval or modification of such documentation issued or carried out by Ever-Green or others. Nothing contained in this paragraph shall be construed to release CONSULTANT (or CONSULTANT's professional associates or consultants) from liability for failure to perform in accordance with professional standards any duty or responsibility which CONSULTANT has undertaken or assumed under this Agreement.

ARTICLE 11. INSURANCE

CONSULTANT shall procure and maintain insurance for protection from claims against it under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees, and from claims against it for damages because of injury to or destruction of property.

Also, CONSULTANT shall procure and maintain professional liability insurance in the amount of \$2 million for protection from claims arising out of performance of professional services caused by any negligent act, error, or omission for which CONSULTANT is legally liable. Certificates of insurance will be provided to Ever-Green upon request.

ARTICLE 12. ASSIGNMENT

This Agreement, being intended to secure the personal service of the individuals employed by and through whom CONSULTANT performs work hereunder, shall not be assigned, sublet or transferred without the written consent of CONSULTANT and the Ever-Green. Any assignment of the Agreement, or claims arising under or relating to the Agreement without the written consent of both Parties shall be null and void.

ARTICLE 13. CONTROLLING LAW

This Agreement is to be governed by the laws of the state or jurisdiction in which the Project is located.

ARTICLE 14. SEVERABILITY

Any provision or portion thereof in this Agreement which is held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding between Ever-Green and CONSULTANT.

ARTICLE 15. WAIVER OF CONSEQUENTIAL DAMAGES

Ever-Green and CONSULTANT waive consequential damages for claims, disputes or other matters in question arising out of or relating to CONSULTANT's services under this Agreement. This mutual waiver of consequential damages applies and survives termination of this Agreement.

ARTICLE 16. LIMITATION OF LIABILITY

In recognition of the relative risks of Ever-Green and CONSULTANT relating to the work, Ever-Green agrees, to the extent permitted by law, that CONSULTANT's liability to the Ever-Green or anyone claiming through Ever-Green for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes including, but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied, of CONSULTANT or its officers, directors, partners, employees, agents, or consultants, or any of them, shall not exceed the limits of the professional liability policy.

ARTICLE 17. CONFLICT RESOLUTION

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, Ever-Green and CONSULTANT agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation as a precondition to any formal legal proceedings.

ARTICLE 18. CONFIDENTIALITY

CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than CONSULTANT's employees, subconsultants and the general contractor and subcontractors, if appropriate, any data and information furnished to CONSULTANT and marked CONFIDENTIAL by Ever-Green. These provisions shall not apply to information in whatever form that comes into the public domain, nor shall it restrict CONSULTANT from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for CONSULTANT to complete services under the Agreement or defend itself from any suit or claim.

ARTICLE 19. UNDERGROUND UTILITIES

If authorized in the Proposal, CONSULTANT and/or its authorized subconsultant will conduct the research that in its professional opinion is necessary and will prepare a plan indicating the locations intended for subsurface penetrations with respect to assumed locations of underground improvements. Such services by CONSULTANT or its subconsultant will be performed in a manner consistent with the ordinary standard of care. Ever-Green recognizes that the research may not identify all underground improvements and that the information upon which CONSULTANT relies may contain errors or may not be complete.

Ever-Green agrees, to the fullest extent permitted by law, to waive all claims and causes of action against CONSULTANT and anyone for whom CONSULTANT may be legally liable, for claims by Ever-Green or its contractors for delay or additional compensation relating to the identification, removal, relocation, or restoration of utilities, or damages to

underground improvements resulting from subsurface penetration locations established by CONSULTANT.