



CITY OF DULUTH
PURCHASING DIVISION
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Addendum 1
File # 18-19AA

Project: Engineering Services for Lift Station No. 15 Relocation

This addendum serves to notify all bidders of the following changes to the solicitation documents:

1. This project will be financed in whole or in part with federal funds. Responders must comply with the attached provisions, and must complete the following forms and return them as part of the proposal:
 - a. Affidavit of Noncollusion
 - b. Disclosure of Potential Conflict of Interest
 - c. State of Minnesota Work Force Certificate Information
 - d. Certification Regarding Lobbying

Please acknowledge receipt of this Addendum by returning it with your proposal.

Posted: October 30, 2018

1. City Not Obligated to Complete Project

This RFP does not obligate the city to award a Contract or complete the project, and the city reserves the right to cancel the solicitation if it is considered to be in its best interest.

2. Proposal Certifications

By submitting a Proposal, responders warrant that the information provided is true, correct and reliable for purposes of evaluation for potential Contract award. The submission of inaccurate or misleading information may be grounds for disqualification from Contract award and may subject the responder to suspension or debarment proceedings, as well as other remedies available to the city, by law.

3. Disposition of Responses

All materials submitted in response to this RFP will become property of the city and will become public record, in accordance with Minnesota Statutes §13.591, after the evaluation process is completed. Pursuant to the Statute, completion of the evaluation process occurs when the city has completed negotiating the Contract with the successful responder.

The city will not consider the prices submitted by the responder to be proprietary or trade secret materials.

4. Contingency Fees Prohibited

Pursuant to Minnesota Statutes §10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

5. Affidavit of Noncollusion

Responders must complete the attached “Affidavit of Noncollusion” and submit it as part of the proposal.

6. Conflicts of Interest

Responders must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this RFP. This list should indicate the name of the entity, the relationship and a discussion of the conflict. Responders must complete the attached “Conflict of Interest Checklist and Disclosure Form” and submit it as part of the proposal.

7. Organizational Conflicts of Interest

The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances, which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to the city, or the successful responder’s objectivity in performing the Contract work is or might be otherwise impaired, or the successful responder has an unfair competitive advantage. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the city, which must include a description of the action, which the successful responder has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the city may, at its discretion, cancel the Contract. In the event the responder was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the city, the city may terminate the Contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms “contract,” “contractor,” and “contracting officer” modified appropriately to preserve the city’s rights.

8. Certification Regarding Lobbying

Federal money will be used to pay for all or part of the work under the Contract, therefore the responder must complete the attached Certification Regarding Lobbying and submit it as part of the proposal.

9. E-Verify Certification (In accordance with Minnesota Statutes §16C.075)

By submission of a proposal for services in excess of \$50,000, responders certify that as of the date of services performed on behalf of the city, they, and all of their proposed subcontractors, will have implemented, or be in the process of implementing, the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the city. In the event of contract award, the successful responder will be responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with the successful responder and made available to MnDOT upon request.

10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Federal money will be used (or may potentially be used) to pay for all or part of the work under the contract; therefore, this contract is a covered transaction for purposes of 49 Code of Federal Regulations (“CFR”) Part 29. As such, the successful responder is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The successful responder will be required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its proposal, responders certifies as follows:

The certification in this clause is a material representation of fact relied upon by the city. If it is later determined that the responder knowingly rendered an erroneous certification, in addition to remedies available to the city, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The responder agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The responder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

11. Work Force Certification

For all Contracts estimated to be in excess of \$100,000.00, responders are required to complete the attached “Work Force Certification” page and submit it as part of the proposal. As required by Minnesota Rules Part 5000.3600. Minnesota Statutes §363A.36 and Minnesota Rules 5000.3400 will be incorporated into any Contract resulting from this RFP. A copy of Minnesota Statutes §363A.36 and Minnesota Rules 5000.3400-5000.3600 are available upon request from the city.

CITY OF DULUTH
AFFIDAVIT OF NONCOLLUSION

I swear (or affirm) under the penalty of perjury:

1. That I am the responder (if the responder is an individual), a partner in the company (if the responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the responder is a corporation);
2. That the attached proposal submitted in response to the _____ RFP has been arrived at by the responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other responder of materials, supplies, equipment or services described in the RFP, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the responder, or its employees or agents, to any person not an employee or agent of the responder and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Authorized Signature:

Responders Firm Name: _____

Print Authorized Representative Name: _____ Title: _____

Authorized Signature: _____ Date: _____

Notary Public

Subscribed and sworn to before me this:

_____ day of _____, _____

Notary Public Signature

Commission Expires

CONFLICT OF INTEREST CHECKLIST AND DISCLOSURE FORM

Purpose of this Checklist: This checklist is provided to assist proposers in screening for potential organizational conflicts of interest. The checklist is for the internal use of proposers and does not need to be submitted to the city, however, the “Disclosure of Potential Conflict of Interest” form must be submitted with your proposal.

Definition of “Proposer”: As used herein, the word “proposer” includes both the prime contractor and all proposed subcontractors.

Checklist is not Exclusive: Please note that this checklist serves as a guide only, and that there may be additional potential conflict situations not covered by this checklist. If a proposer determines a potential conflict of interest exists that is not covered by this checklist, that potential conflict must still be disclosed.

Use of the Disclosure Form: Proposers must complete the attached disclosure and submit it with their proposal. If the proposer determines a potential conflict of interest exists, it must disclose the potential conflict to the city; however, such a disclosure will not necessarily disqualify a proposer from being awarded a contract. To avoid any unfair “taint” of the selection process, the disclosure form should be provided separate from the bound proposal, and it will not be provided to selection committee members. The City Purchasing Agent will review the disclosure and the appropriateness of the proposed mitigation measures to determine if the proposer may be awarded the contract notwithstanding the potential conflict.

Material Representation: Proposers are required to submit the attached disclosure form either declaring, to the best of its knowledge and belief, that no potential conflict exists, or identifying potential conflicts and proposing remedial measures to ameliorate such conflict. The proposer must also update conflict information if such information changes after the disclosure. Information provided on the form will constitute a material representation as to the award of this contract. The city reserves the right to cancel or amend the resulting contract if the proposer failed to disclose a potential conflict, which it knew or should have known about, or if the proposer provided information on the disclosure form that is materially false or misleading.

Approach to Reviewing Potential Conflicts: The city recognizes that proposer’s must maintain business relations with other public and private sector entities in order to continue as viable businesses. The city will take this reality into account as it evaluates the appropriateness of proposed measures to mitigate potential conflicts. It is not the city’s intent to disqualify proposers based merely on the existence of a business relationship with another entity, but rather only when such relationship causes a conflict that potentially impairs the proposer’s ability to provide objective advice to the city. The city would seek to disqualify proposers only in those cases where a potential conflict cannot be adequately mitigated. Nevertheless, the city must follow statutory guidance on organizational conflicts of interest.

Statutory Guidance: Minnesota Statutes §16C.02, subdivision 10(a) places limits on state agencies ability to contract with entities having an “organizational conflict of interest”. For purposes of this checklist and disclosure requirement, the term “vendor” includes “proposer” as defined above. Pursuant to such statute, “organizational conflict of interest” means that because of existing or planned activities or because of relationships with other persons: (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state; (2) the vendor’s objectivity in performing the contract work is or might otherwise be impaired; or (3) the vendor has an unfair advantage.

Additional Guidance for Professionals Licensed by the Minnesota Board of Engineering: The Minnesota Board of Engineering has established conflict of interest rules applicable to those professionals licensed by the Board (see Minnesota Rules Part 1805.0300). Subpart 1 of the rule provides “A licensee shall avoid accepting a commission where duty to the client or the public would conflict with the personal interest of the licensee or the interest of another client. Prior to accepting such employment the licensee shall disclose to a prospective client such facts as may give rise to a conflict of interest”.

An organizational conflict of interest may exist in any of the following cases:

- ❑ The proposer, or its principals, own real property in a location where there may be a positive or adverse impact on the value of such property based on the recommendations, designs, appraisals, or other deliverables required by this contract.
- ❑ The proposer, or its principals, in previous work for the state has provided the final design or related services that are directly related to performance of work required under this contract. **Comment:** this provision will, for example, disqualify a proposer who performed final design for MnDOT and now seeks to provide construction administration services for that same project. MnDOT believes this is necessary because the firm that prepared the plans may be unable to objectively determine plan errors and omissions. This may cause a situation where: (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state; and (2) the vendor's objectivity in performing the contract work is or might otherwise be impaired.
- ❑ The proposer is providing services to another governmental or private entity and the proposer knows or has reason to believe, that entity's interests are, or may be, adverse to the state's interests with respect to the specific project covered by this contract. **Comment:** the mere existence of a business relationship with another entity would not ordinarily need to be disclosed. Rather, this focuses on the nature of services commissioned by the other entity. For example, it would not be appropriate to propose on a MnDOT project if a local government has also retained the proposer for the purpose of persuading MnDOT to stop or alter the project plans.
- ❑ This contract is for right-of-way acquisition services or related services (e.g. geotechnical exploration) and the proposer has an existing business relationship with a governmental or private entity that owns property to be acquired pursuant to this contract.
- ❑ The proposer is providing real estate or design services to a private entity, including but not limited to developers, whom the proposer knows or has good reason to believe, own or are planning to purchase property affected by the project covered by this contract, when the value or potential uses of such property may be affected by the proposer's performance of work pursuant to this contract. "Property affected by the project" includes property that is in, adjacent to, or in reasonable proximity to current or potential right-of-way for the project. The value or potential uses of the private entity's property may be affected by the proposer's work pursuant to the contract when such work involves providing recommendations for right-of-way acquisition, access control and the design or location of frontage roads and interchanges. **Comment:** this provision does not presume proposers know nor have a duty to inquire as to all of the business objectives of their clients. Rather, it seeks the disclosure of information regarding cases where the proposer has reason to believe that its performance of work under this contract may materially affect the value or viability of a project it is performing for the other entity.
- ❑ The proposer has a business arrangement with a current MnDOT employee or immediate family member of such employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the proposer being awarded this contract. This item does not apply to pre-existing employment of current or former MnDOT employees, or their immediate family members. **Comment:** this provision is not intended to supersede any MnDOT policies applicable to its own employees accepting outside employment. This provision is intended to focus on identifying situations where promises of employment have been made contingent on the outcome of this particular procurement. It is intended to avoid a situation where a proposer may have unfair access to "inside" information.
- ❑ The proposer has, in previous work for the state, been given access to "data" relevant to this procurement or this project that is classified as "private" or "nonpublic" under the Minnesota Government Data Practices Act, and such data potentially provides the proposer with an unfair advantage in preparing a proposal for this project. **Comment:** this provision will not, for example, necessarily disqualify a proposer who performed some preliminary work from obtaining a final design contract, especially when the results of such previous work are public data available to all other proposers. Rather, it attempts to avoid an "unfair advantage" when such information cannot be provided to other potential proposers. Definitions of "government data", "public data", "non-public data" and "private data" can be found in Minnesota Statutes Chapter 13.
- ❑ The proposer has, in previous work for the state, helped create the "ground rules" for this solicitation by performing work such as: writing this solicitation, or preparing evaluation criteria or evaluation guides for this solicitation.
- ❑ The proposer, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the state.

DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST

Having had the opportunity to review the Organizational Conflict of Interest Checklist, the proposer hereby indicates that it has, to the best of its knowledge and belief:

☐ Determined that no potential organizational conflict of interest exists.

☐ Determined that a potential organizational conflict of interest exists, as follows:

Describe nature of potential conflict:

Describe measures proposed to mitigate the potential conflict:

Signature

Date

If a potential conflict has been identified, please provide name and phone number for a contact person authorized to discuss this disclosure form with MnDOT contract personnel.

Name

Phone

CERTIFICATION REGARDING LOBBYING
For State of Minnesota Contracts and Grants over \$100,000

The undersigned certifies, to the best of his or her knowledge and belief that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.
3. The undersigned will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Organization Name

Name and Title of Official Signing for Organization

By: _____
Signature of Official

Date

STATE OF MINNESOTA – WORK FORCE CERTIFICATE INFORMATION

This form is required by state law for all proposals that could exceed \$100,000.00. Complete this form and return it with your proposal. The State of Minnesota is under no obligation to delay proceeding with a contract until a company becomes compliant with the Workforce Certification requirements in Minnesota Statutes §363A.36.

BOX A – MINNESOTA COMPANIES that have employed more than 40 full-time employees within this state on any single working day during the previous 12 months, check one option below:

- ☐ Attached is our current Workforce Certificate issued by the Minnesota Department of Human Rights (MDHR).
- ☐ Attached is confirmation that MDHR received our application for a Minnesota Workforce Certificate on _____ (date).

BOX B – NON-MINNESOTA COMPANIES that have employed more than 40 full-time employees on a single working day during the previous 12 months in the state where it has its primary place of business, check one option below:

- ☐ Attached is our current Workforce Certificate issued by MDHR.
- ☐ We certify we are in compliance with federal affirmative action requirements. Upon notification of contract award, you must send your federal or municipal certificate to MDHR at compliance.MDHR@state.mn.us. If you are unable to send either certificate, MDHR may contact you to request evidence of federal compliance. The inability to provide sufficient documentation may prohibit contract execution.

BOX C – EXEMPT COMPANIES that have not employed more than 40 full-time employees on a single working day in any state during the previous 12 months, check option below if applicable:

- ☐ We attest that we are exempt. If our company is awarded a contract, we will submit to MDHR within 5 business days after the contract is fully signed, the names of our employees during the previous 12 months, the date of separation, if applicable, and the state in which the persons were employed. Send to compliance.MDHR@state.mn.us.

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of your company.

Name of Company: _____ Date _____

Authorized Signature: _____ Telephone number: _____

Printed Name: _____ Title: _____

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance Services

Web: <http://mn.gov/mdhr/>

Email: compliance.mdhr@state.mn.us

TC Metro: 651-539-1095

Toll Free: 800-657-3704

TTY: 651-296-1283