



City Council Questions and Answers

City Council Questions and Answers for
Thursday, February 27, 2014

These questions and answers are related to the
Austin City Council meeting that will convene at 10:00 AM on
Thursday, February 27, 2014 at Austin City Hall
301 W. Second Street, Austin, TX



Mayor Lee Leffingwell
Mayor Pro Tem Sheryl Cole
Council Member Chris Riley, Place 1
Council Member Mike Martinez, Place 2
Council Member Kathie Tovo, Place 3
Council Member Laura Morrison, Place 4
Council Member William Spelman, Place 5

The City Council Questions and Answers Report was derived from a need to provide City Council Members an opportunity to solicit clarifying information from City Departments as it relates to requests for council action. After a City Council Regular Meeting agenda has been published, Council Members will have the opportunity to ask questions of departments via the City Manager's Agenda Office. This process continues until 5:00 p.m. the Tuesday before the Council meeting. The final report is distributed at noon to City Council the Wednesday before the council meeting.

QUESTIONS FROM COUNCIL

1. Agenda Item # 2 - Authorize execution of a power purchase agreement with Lincoln Renewable Energy LLC, Chicago, IL, for a term of up to 18 years for up to 300 megawatts of wind-generated electricity, in an estimated amount of \$31,000,000 per year, for an estimated total contract amount not to exceed \$558,000,000.
 - a. QUESTION - How does the wind profile for the panhandle (Castro County) differ from West Texas or Coastal projects? COUNCIL MEMBER SPELMAN
 - b. ANSWER: See attachment
2. Agenda Item # 10- Authorize the negotiation and execution of the Fifth Amendment to the Second Amended and Restated Lease Agreement with Greater Austin Performing Arts Center, Inc. for the cooperative scheduling of events and capital improvements funding to preserve and protect the City's long-term investment in the Long Center facility.
 - a. QUESTION: Agenda Item # 10 states "the City will fund a Long Center Capital Improvements Fund for long-term capital renewal and replacements of the Long Center with approximately \$300,000.00 in annual contributions beginning in FY 2015" but does not indicate the source of the funds. Please provide information on the funding source. COUNCIL MEMBER TOVO
 - b. ANSWER: The proposed lease amendment provides that the City will establish and fund, subject to annual appropriations by the Austin City Council, a CITY OF AUSTIN LONG CENTER CAPITAL IMPROVEMENTS FUND for long-term capital renewal and replacements of the Long Center with approximately Three Hundred Thousand and No/100 Dollars (\$300,000.00) in annual contributions beginning in Fiscal Year 2015. A funding source for the Long Center Capital Improvements Fund has not been identified at this time, but will be determined during the City's budget development process for inclusion in the City Manager's 2014-2015 Proposed Budget.
3. Agenda Items # 13 and # 14 - 13) Authorize the Urban Renewal Agency of the City of Austin to negotiate and execute all documents and instruments necessary or desirable to sell an approximately 13,200-square-foot vacant lot, locally known as 1120 E. 12th Street, to BUTLER EQUITY HOLDINGS, LTD., in accordance with Local Government Code Section 374.017, in the amount of \$451,000,

excluding any applicable closing costs, for the development of a five-story vertical mixed use building. 14) Authorize the Urban Renewal Agency of the City of Austin to negotiate and execute all documents and instruments necessary or desirable to sell approximately 26,206 square feet of vacant land, locally known as 1322, 1324, 1326, 1328, 1330, 1332, 1334 and 1336 E. 12th Street, to BUTLER EQUITY HOLDINGS, LTD., in accordance with Local Government Code Section 374.017, in the amount of \$901,000, excluding any applicable closing costs, for the development of a five-story vertical mixed use building.

- a. QUESTION: 1) For a solicitation process for real estate and purchasing items, when do we provide the matrix and other backup material to the public? Do we provide it before Council has voted (i.e., in the backup) or do we wait until after Council has voted and the matter has been completed? If the answer varies depending on the type of matter, please explain. 2) What do we tell proposers about how the City handles confidential information? Does the solicitation document tell proposers about the Public Information Act?
WORK SESSION DISCUSSION

- b. ANSWER: See attachments

- 4. Agenda Item # 43 - Approve a resolution directing the City Manager to create a tool to be easily accessible on the City's website that allows a voter to type in an address and find the council district that the address is in, no later than May 1, 2014. (Notes: SPONSOR: Mayor Pro Tem Sheryl Cole CO 1: Mayor Lee Leffingwell CO 2: Council Member Laura Morrison)

- a. QUESTION: Travis County's website allows voters to type in their name and birthdate and find their new City District (along with all their other voting districts) here: <http://www.votetravis.com/vexpress/display.do> 1) Does the city website currently point voters to this for look up? 2) Is there a benefit in the city creating a system by address, in addition? 3) Are there other ways to make the City website more easily informative for city voters? COUNCIL MEMBER SPELMAN

- b. ANSWER: 1) Yes, the City Clerk's Web page includes links to the voter registration verification for both Travis and Williamson Counties under our Frequently Ask Questions Page. <http://www.austintexas.gov/page/frequently-asked-questions-elections>. 2) The advantage of a site allowing one to search by address, is it would allow anyone to identify what district they are in regardless of being a registered voter. In combination with the voter verification systems maintained by the Counties this would allow any citizen, business owner, etc. to determine which district an address is located. It would expand on the existing idea created by the ICRC's interactive map but create a more user friendly tool. In addition, there is the possibility of using the system beyond the November Election allowing citizens not only to find out which district an address is located but specifically which Council Member represents that district and their contact information. 3) The City Clerk's Office has updated the web pages relating to


elections that includes the election calendar, maps and demographics relating to the districts and a FAQ providing answers to common questions, which can be found at <http://www.austintexas.gov/elections>. Preliminary discussions have been held with the Travis County and the sponsors of this resolution on obtaining support for the tool. Staff is also planning to add the functionality for users to search for their district by address to the existing Jurisdiction Web Map (<http://austintexas.gov/gis/JurisdictionsWebMap/>) on the City's website. This is expected to be completed within the next 2 weeks and can also be linked to the pages listed above.

5. Agenda Item # 68-71- Conduct a public hearing and consider a resolution under Section 2306.67071, Texas Government Code and Section 10.204(4), Texas Administrative Code, for an application to be submitted to the Texas Department of Housing and Community Affairs by Villages at Ben White, LP for tax-exempt bond financing for a proposed 183-unit affordable senior housing development to be called the Villages at Ben White, located at 6934 East Ben White Boulevard. 69) Conduct a public hearing and consider a resolution under Section 2306.67071, Texas Government Code and Section 10.204(4), Texas Administrative Code, for an application to be submitted to the Texas Department of Housing and Community Affairs by Pedcor Investments-2012-CXXXI, LP for tax-exempt bond financing for a proposed 252-unit affordable multi-family development to be called William Cannon Apartments, located at 2112 East William Cannon Drive. 70) Conduct a public hearing and consider a resolution under Section 2306.67071, Texas Government Code and Section 10.204(4), Texas Administrative Code, for an application to be submitted to the Texas Department of Housing and Community Affairs by Ben White Development, LP for tax-exempt bond financing for a proposed 250-unit affordable multi-family development to be called the Pointe at Ben White, located at 7000 East Ben White Boulevard. 71) Conduct a public hearing and consider a resolution under Section 2306.67071, Texas Government Code and Section 10.204(4), Texas Administrative Code, for an application to be submitted to the Texas Department of Housing and Community Affairs by Pedcor Investments-2012-CXXX, LP for tax-exempt bond financing for a proposed 252-unit affordable multi-family development to be called Parmer Place, located at 1500 East Parmer Lane.
 - a. QUESTION: Would any of these projects meet the City's S.M.A.R.T. housing requirements? If so, how do they specifically meet the transit standard?
COUNCIL MEMBER RILEY
 - b. ANSWER: See attachment

END OF REPORT - ATTACHMENTS TO FOLLOW



The City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.

 For assistance please call (512) 974-2210 OR (512) 974-2445 TDD.



Council Question and Answer

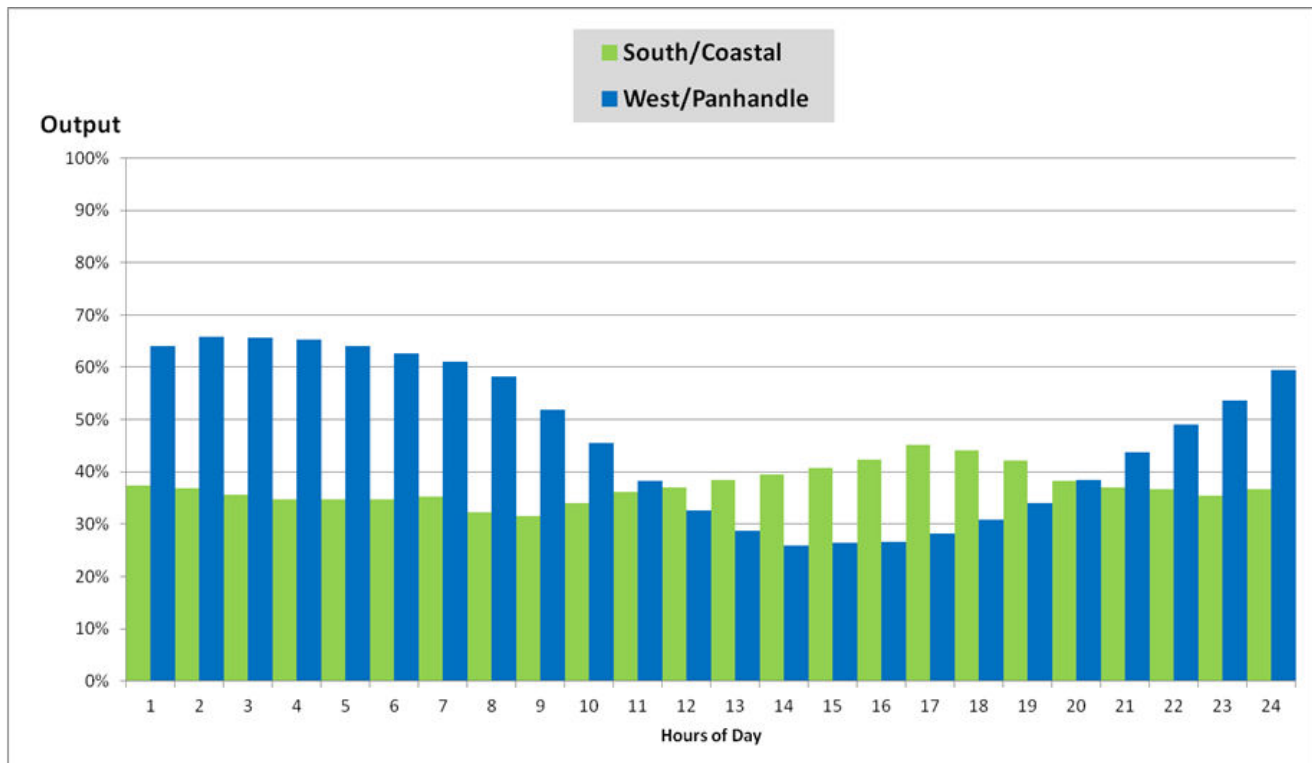
Related To	Agenda Item #2	Meeting Date	February 27, 2014
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Additional Answer Information

QUESTION: How does the wind profile for the panhandle (Castro County) differ from West Texas or Coastal projects? COUNCIL MEMBER SPELMAN

ANSWER:

West Texas and Panhandle wind projects are very similar in terms of seasonal and time of day production. Peak production for both tends to the spring and overnight hours. However, West/Panhandle projects generally exhibit greater overall annual production per Megawatt of Capacity. In contrast, south/coastal projects tend to produce energy more consistently over the course of the year and hours of the day but also produce less total energy compared to west/panhandle wind. The chart below illustrates this showing annualized output by time of day:





Council Question and Answer

Related To	Work Session Discussion	Meeting Date	February 25, 2014
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Additional Answer Information

RESPONSE FROM THE CONTRACT MANAGEMENT DEPARTMENT

QUESTION: For a solicitation process for real estate and purchasing items, when do we provide the matrix and other backup material to the public? Do we provide it before Council has voted (i.e., in the backup) or do we wait until after Council has voted and the matter has been completed? If the answer varies depending on the type of matter, please explain.

ANSWER: For Contract Management Departmental procurements that include an evaluation component, the matrix is made public when the preliminary Council agenda is published. If the procurement is reviewed by a City Board or Commission prior to Council consideration, the matrix is made public when that board or commission's agenda is published.

QUESTION: What do we tell proposers about how the City handles confidential information? Does the solicitation document tell proposers about the Public Information Act?

ANSWER: In Contract Management's Professional Services Procurements, Offerors are advised of how the City handles confidential information and the requirements of the Public Information Act.

Instructions to Consultants, Page 1: "I. Preparation of Response. b. Disclosure of Proprietary Information -- All materials submitted to OWNER become public property and are subject to the Texas Public Information Act, Government Code Chapter 552, upon receipt. If Consultant does not desire proprietary information in the Proposal to be disclosed, each page must be identified and marked proprietary at time of submittal. OWNER will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request."

Instructions to Consultants, Page 7: "III. Release of Information -- Under Texas law, information relating to this Solicitation may be kept confidential until a contract has been executed. OWNER shall not release information relative to this Solicitation during the proposal evaluation process or prior to contract award, except as otherwise required by law."

Similar language is contained in the documents for other evaluated procurement types (Construction Manager at Risk, Design/Build, Competitive Sealed Proposals, Job Order Contracting).

Instructions to Offerors to follow.

INSTRUCTIONS TO OFFERORSSection 00100CSP

I. Preparation of Proposals

a. Proposal Documents. Each Proposal should be prepared simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of this solicitation. Elaborate bindings, colored displays, promotional materials and so forth are not desired. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of the City of Austin's (OWNER's) needs. Vague and equivocal statements will be viewed unfavorably.

Proposals must be printed on letter-sized (8-1/2" x 11") paper. OWNER requests that proposals be submitted in a binder. Sections should be divided by tabs for ease of reference. Offerors are required to submit multiple, complete copies of their entire response. See Section 00020CSP, for the total number of copies required and other submittal requirements.

b. Modifications to Proposal. Proposals may be modified in writing at any time prior to the due date and time. The person signing the Proposal shall initial any modifications to the Proposal.

c. Professional Services. Offeror shall secure any required services that are defined as professional services under the Professional Services Procurement Act, Chapter 2254 of the Texas Government Code (for example: registered professional land surveyors, professional architects and professional engineers) using the qualifications based selection process prescribed by that Chapter. (Note: It is a violation of State Law to solicit Bids for professional services.)

d. Sales Tax Exemption. The OWNER is a tax-exempt organization as defined by Chapter 11 of the Property Tax Code of Texas. Proposed prices shall not include sales tax on materials, supplies, or equipment that are incorporated into the real property interest of the OWNER or are otherwise completely used and consumed in the performance of the Contract. OWNER will furnish CONTRACTOR with a Sales Tax Exemption Certificate to be issued to Suppliers in lieu of the tax.

e. Addenda. Offeror shall be knowledgeable of all Addenda issued and shall acknowledge all Addenda in spaces provided on proposal form. Further information regarding the solicitation documents and the Project may be obtained from the Project Manager or Contract Procurement Rep listed at the end of Section 00020CSP, Request for Proposals.

f. Required Items. Offers must include all specified items in this section and be submitted in accordance with section XIV. Evaluation Criteria.

g. Disclosure of Proprietary Information. All materials submitted to OWNER become public property and are subject to the Texas Public Information Act, Government Code Chapter 552, upon receipt. If Offeror does not desire proprietary information in the Proposal to be disclosed, each page must be identified and marked proprietary at time of submittal. OWNER will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

h. Costs of Preparing Proposal. All cost directly or indirectly related to preparation of a PROPOSAL to this solicitation or any oral presentation required to supplement and/or clarify a PROPOSAL, which may be required by OWNER, shall be the sole responsibility of the Offeror.

i. Further Information. Information may be secured by calling the project manager listed at the end of Section 00020, Request for Proposals. Persons desiring further information or interpretation of the solicitation requirements shall make a written request for such information to OWNER no later than seven (7) working days before Proposal submittal due date and time. Interpretation of Solicitation Documents will be made by Addendum **only** and a copy of each Addendum will be mailed or delivered to each person to whom a set of Solicitation Documents has been furnished.

j. Legal Status of Offeror. Only individual firms or lawfully formed formal business organizations may apply, unless, if Offeror does not meet the foregoing criteria, Offeror states in writing to OWNER that, if awarded the contract, it will form a formal business organization in a timely manner so as not to delay the Project. Any associations will be disqualified (this does not preclude Offeror from having subcontractors/subconsultants). OWNER will contract only with individual firms or formal organizations such as a) joint ventures, b) limited liability corporations, c) partnerships, or d) corporations authorized to do business in the State of Texas.

k. Anti-Lobbying and Procurement. Article 6, Chapter 2-7, Austin City Code, prohibits lobbying activities or representations by the Offeror between the date that the Request for Proposal (RFP) is issued and the date of contract execution. The text of the pertinent City Ordinance may be viewed at <http://www.cityofaustin.org/edims/document.cfm?id=111624>.

(1) Definitions

- (A) "Authorized Contact Person" means the Project Manager listed in Section 00020CSP, Solicitation, or other persons specifically named and designated in the Solicitation as the contact for questions and comments regarding the Solicitation.
- (B) "No-Contact Period" means the period of time from the date the Solicitation is issued until a contract is executed. If the City withdraws the Solicitation or rejects all offers with the stated intention to reissue the same or a similar Solicitation for the same or similar project, the no-contact period continues during the time period between the withdrawal and reissue.
- (C) "Response" means a proposal.
- (D) "Offeror" means an Offeror. The term "Offeror" also includes:
 - (i) owner, officer, employee, contractor, lobbyist, subsidiary, joint enterprise, partnership, or other representative of an Offeror;
 - (ii) a person or representative of a person that is involved in a joint venture with the Offeror, or a subcontractor in connection with the proposal; and
 - (iii) an Offeror who has withdrawn a proposal or who has had a proposal rejected or disqualified by the City.
- (E) "Representation" means a communication related to a proposal to a council member, official, employee, or agent of the City which:
 - (i) provides information about the proposal;
 - (ii) advances the interests of the proposal;
 - (iii) discredits the proposal of another Offeror;
 - (iv) encourages the City to withdraw the Solicitation;
 - (v) encourages the City to reject all of the proposals; or

- (vi) conveys a complaint about a particular proposal.
- (F) "City" means OWNER.

(2) **Restrictions on Contacts**

- (A) During a no-contact period, an Offeror shall communicate only through the authorized contact person.
- (B) If, during the no-contact period, an Offeror makes a representation with a member of the City Council, a member of a City board, or any other official, employee, or agent of the City, other than to the authorized contact person for the Solicitation, the Offeror's proposal is disqualified from further consideration except as permitted in the paragraph below. This prohibition also applies to a vendor that communicates and then becomes an Offeror.
- (C) The prohibition of representation during the no-contact period applies to a representation initiated by an Offeror, and to a representation made in response to a representation initiated by a member of the City Council, member of a City board, or any other official, employee, or agent of the City other than the Authorized Contact Person.
- (D) If the City withdraws a Solicitation or rejects all offers with a stated intention to reissue the same or similar Solicitation for the same or similar project, the no-contact period shall expire after the sixtieth day after the date the Solicitation is withdrawn or all offers are rejected if the Solicitation has not been reissued during the 60-day period.
- (E) This section does not apply to a representation:
 - (i) made at the pre-proposal conference or any other meeting convened by the Authorized Contact Person;
 - (ii) required by Financial Services Department protest procedures for Offerors
 - (iii) made at a Financial Services Department protest hearing
 - (iv) provided to the Small & Minority Business Resources Department in order to achieve compliance with Chapter 2-9 (Minority-Owned and Female Owned Business Enterprise Procurement Program)'
 - (v) made to the City Risk Management coordinator about insurance requirements for a proposal; and
 - (vi) made in public at a meeting held under the Texas Open Meetings Act.

(3) **Allowed Representations**

- (A) If an Offeror desires to make a representation to a City official, employee, or agent during the no-contact period, the Offeror shall submit the representation in writing **only** to the authorized contact person. The contact person will then distribute the written representation in accordance with the terms of the RFP. An Offeror cannot amend or add information to an offer after the Solicitation deadline.
- (B) If an Offeror wishes to make a complaint about a particular Solicitation to a City Council member or City board member, the Offeror should submit the **written** complaint to the authorized contact person. The contact person will then distribute the complaint to members of the City Council or members of the City board, to the Contract Management Director, and to all Offerors on the Solicitation.
- (C) If an Offeror submits a written inquiry regarding a Solicitation, the authorized contact person will provide a written answer and distribute both the inquiry and answer to all Offerors on the Solicitation.
- (D) If an Offeror does not receive a response from the authorized contact person, the Offeror may contact the Director of Public Works or Purchasing Officer as appropriate.

- (4) **Contract Voidable.** If a contract is awarded to an Offeror who has violated these Anti-Lobbying & Procurement provisions, the contract is voidable by the OWNER.
- (5) **Debarment.** If an Offeror violates these provisions more than once in a three-year period, the Purchasing Officer shall debar the Offeror from submitting proposal for a period not to exceed three years, provided the Offeror is given written notice and a hearing in advance of the debarment.

I. City's Minority-Owned and Women-Owned Business Enterprise (MBE/WBE) Program Requirements.

Good Faith Efforts. When an Offeror cannot achieve the MBE/WBE goals or subgoals established for the project, the bidder must document its Good Faith Efforts to meet the goals or subgoals. Good Faith Effort evaluations will consider, at a minimum, the offeror's efforts to do the following:

- (1) Soliciting through at least two reasonable, available and verifiable means MBEs/WBEs within the Significant Local Business Presence boundaries at least seven (7) business days prior to the bid opening date to allow the MBEs/WBEs to respond to the bid.
- (2) Providing interested MBEs/WBEs adequate information about the bid documents and requirements, including addenda, in a timely manner to assist them in responding to the bid.
- (3) Negotiating in good faith with interested MBEs/WBEs that have submitted bids to the bidder.
- (4) Publishing notice in a local publication such as a newspaper, trade association publication or via electronic/social media.
- (5) Not rejecting MBEs/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- (6) Making economically feasible portions of the work available to MBE/WBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE/WBE subcontractors and suppliers, so as to facilitate meeting the goals or subgoals.
- (7) The ability or desire of the bidder to perform the project work with its own organization does not relieve the bidder of the responsibility to make Good Faith Efforts.
- (6) Offerors are not required to accept higher quotes in order to meet the goals or subgoals.
- (9) Effectively using the services of Minority Person/Women community organizations; Minority Person/Women Contractors groups; local, state and federal Minority Person/Women business assistance offices; and other organizations to provide assistance in solicitation and utilization of MBEs, WBEs and/or DBEs.
- (10) In assessing minimum Good Faith Efforts, the OWNER may consider (1) whether the bidder sought guidance from the City of Austin Small and Minority Business Resources

Department (SMBR) on any question regarding compliance with these requirements; and (2) the performance of other offerors in meeting the goals.

For additional information, refer to the MBE/WBE Compliance Program Requirements Volume of the Project Manual.

Bid shopping is not allowed in conjunction with this solicitation and may result in the disqualification of prospective offerors and subcontractors.

II. Estimate of Quantities (Unit Price Contracts Only)

Quantities, if any, listed in Proposal Form are to be considered as approximate and will be used only for comparison of Proposals. Payment to CONTRACTOR will be made only for actual quantities of Work performed or materials furnished in accordance with Contract and it is understood that quantities may be increased or decreased as provided in Section 00700, General Conditions, and as may be modified by Section 00810, Supplemental General Conditions.

III. Drawings, Project Manual and Site(s) of Work

Before submitting a Proposal, Offeror shall carefully examine the Proposal Documents, site(s) of the proposed Work, soils, and other conditions that may affect the performance of the Work. Offeror shall be satisfied as to character, quality and quantities of the Work to be performed and materials to be furnished. Submission of a Proposal shall indicate that Offeror has complied with these requirements.

IV. Opening of Proposals

Proposals will be opened in a manner that avoids disclosure of the contents to competing Offerors and keeps the contents confidential during negotiations. Until the negotiations are completed, only the number, identity and proposed cost of the Offerors submitting Proposals will be made available to the public.

V. Withdrawal of Proposals

Proposal may be withdrawn by Offeror, provided an authorized individual of the Offeror submits a written request to withdraw the Proposal prior to the time set for receipt of Proposals. Withdrawn Proposals may be resubmitted, with or without modifications, up to the due date and time.

VI. Rejection of Proposals

OWNER reserves the right to reject any or all Proposals and to waive any minor informality in any Proposal or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Offerors).

a. The following will be cause to reject a Proposal:

- (1) Proposals which are not signed by an individual empowered to bind the Offeror.
- (2) Proposals which are not accompanied by acceptable Bid guaranty, with Power of Attorney attached, or a letter certifying the Offeror's ability to be bonded, from a surety company, if required.

- (3) More than one Proposal for same Work from an individual, firm, partnership or corporation.
- (4) Evidence of collusion among Offerors.
- (5) Sworn testimony or discovery in pending litigation with OWNER which discloses misconduct or willful refusal by CONTRACTOR to comply with subject contract or instructions of OWNER.
- (6) Failure to submit MBE/WBE or DBE Compliance Plan in accordance with the separately bound volume titled MBE/WBE Procurement Program Package or DBE Procurement Program Package.
- (7) Failure to have an authorized agent of the Offeror to attend the mandatory Pre-Proposal Conference, if applicable.
- (8) Proposals received from an Offeror who has been debarred or suspended by OWNER's Purchasing Officer.
- (9) Proposals received from an Offeror when its principals are currently debarred or suspended by Federal, State or City governmental agencies. (Applicable for Proposal amounts equal to or in excess of \$25,000.00).

b. The following **may** be cause to reject a Proposal:

- (1) Poor performance in execution of work under a previous City of Austin contract.
- (2) Failure to achieve reasonable progress on an existing City of Austin contract.
- (3) Default on previous contracts or failure to execute Contract after award.
- (4) Evidence of failure to pay Subcontractors, Suppliers or employees in accordance with Contract requirements.
- (5) Proposals containing omissions, alterations of form, additions, qualifications or conditions not called for by OWNER, or incomplete Proposals may be rejected. In any case of ambiguity or lack of clarity in the Proposal, OWNER reserves right to determine most advantageous Proposal or to reject the Proposal.
- (6) Failure to acknowledge receipt of Addenda.
- (7) Failure to submit any of the items specified in the Evaluation Criteria or within this Request for Proposal.
- (8) Failure to submit post-proposal information within the allotted time(s), if applicable.
- (9) Failure to timely execute Contract after award.
- (10) Previous environmental violations resulting in fines or citations by a governmental entity (i.e. U.S. Environmental Protection Agency, Texas Commission on Environmental Quality, etc.).
- (11) Poor safety record as set forth in Section XIV. Evaluation Criteria.
- (12) Lack of comparable experience as specified in Section XIV. Evaluation Criteria.
- (13) Evidence of Offeror's lack of sufficient resources, workforce, equipment or supervision, as specified in Section XIV. Evaluation Criteria.
- (14) Evidence of poor performance on previous Projects as documented in OWNER's project performance evaluations and as specified in Section XIV. Evaluation Criteria.
- (15) Unbalanced Unit Pricing: "Unbalanced Bid" means a Proposal, which includes a unit price that is significantly less than cost for some items and significantly more than cost for others. This may be evidenced by submission of unit price proposal items where the cost are significantly higher/lower than the cost of the same proposal items submitted by other Offeror's on the project.
- (16) Failure to submit form Section 00440, Affidavit - Prohibited Activities.
- (17) Failure to submit form Section 00630, Non-Discrimination Certificate.
- (18) Failure to submit all other required documents as required in XIV. Evaluation Criteria.

VII. Submission of Post Proposal Information

Offeror shall submit information as requested by OWNER.

VIII. Release of Information

Under Texas law, information relating to this Solicitation may be kept confidential until a contract has been awarded. OWNER shall not release information relative to this Solicitation during the proposal evaluation process or prior to contract award, except as otherwise required by law.

IX. Award and Execution of Contract

OWNER will process Proposals expeditiously. OWNER will evaluate and rank each proposal with respect to the evaluation factors contained in this solicitation. Award of Contract will be to the Offeror providing the best value to OWNER. OWNER reserves the right to negotiate all elements which comprise the Proposal to ensure that the best possible consideration is afforded to all concerned. The OWNER and/or its ENGINEER or ARCHITECT may discuss with the selected Offeror options for a scope or time modification and any price change associated with the modifications.

OWNER may not award a contract to a nonresident Offeror unless the nonresident underbids the lowest Proposal submitted by a responsible resident Offeror by an amount that is not less than the amount by which a resident Offeror would be required to underbid the nonresident Offeror to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

Proposals are to be valid for OWNER's acceptance for a minimum of 90 calendar days from the Proposal due date to allow time for evaluation, selection, and any unforeseen delays. Any damages accruing to OWNER as a result of the successful Offeror's failure to contract may be recovered from the successful Offeror.

Upon contract award, the selected Offeror must submit either their existing or an updated personnel policy (on letterhead) documenting conformity with City Code, Chapter 5-4, § 5-4-2. If the company does not submit a copy of their personnel policy incorporating the non-discrimination policy, the company will not be in compliance and will not receive a contract award.

The OWNER's Contract Management Director, on behalf of the Managing Department Director, shall submit a recommendation for award to the City Council for those project awards requiring City Council action. City Manager or his/her designee will sign contract after award and submission of required documentation by Offeror. Contract will not be binding upon OWNER until it has been executed by both parties. OWNER will process the Contract expeditiously. However, OWNER will not be liable for any delays prior to the award or execution of Contract.

X. Protest Procedures

The OWNER's Contract Management Director has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying OWNER of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Contract Management Director may dismiss your complaint or protest.

Prior to Solicitation opening: If you are a prospective Offeror and you become aware of the facts regarding what you believe is a deficiency in the solicitation process before the Response

is opened, you must notify OWNER in writing of the alleged deficiency before that date, giving OWNER an opportunity to resolve the situation prior to the Solicitation Bid opening.

After Solicitation opening: If you submit a Response to OWNER and (1) you have been found non-responsive, or (2) you believe that there has been a deficiency in the solicitation process or the award, you have the opportunity to protest the solicitation process or the recommended award as follows:

1. You must file written notice of your intent to protest within four (4) calendar days of the date that you know or should have known of the facts relating to the protest. If you do not file a written notice of intent within this time, you have waived all rights to protest the solicitation process or the award.
2. You must file your written protest within fourteen (14) calendar days of the date that you know or should have known of the facts relating to the protest unless you know of the facts before the Bid has been opened. If you know of the facts before that date, you must notify OWNER as stated above.
3. You must submit your protest in writing and must include the following information:
 - a. your name, address, telephone, and email address;
 - b. the solicitation number and the CIP number, if applicable;
 - c. a detailed statement of the factual grounds for the protest, including copies of any relevant documents.
4. Your protest must be concise and presented logically and factually to help with OWNER's review.
5. When OWNER receives a timely written protest, the Contract Management Director will determine whether the grounds for your protest are sufficient. If the Contract Management Director decides that the grounds are sufficient, the Contract Management Department will schedule a protest hearing, usually within five (5) working days. If the Contract Management Director determines that your grounds are insufficient, you will be notified of that decision in writing.
6. The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from OWNER are: representatives from the department that requested the purchase, the Law Department, the Contract Management Department, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.
7. A decision will usually be made within fifteen (15) calendar days after the hearing.
8. The Contract Management Director will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
9. When a protest is filed, OWNER usually will not make an award until a decision on the protest is made. However, OWNER will not delay an award if the City Manager or the Contract Management Director determines that:
 - a. OWNER urgently requires the supplies or services to be purchased, or
 - b. failure to make an award promptly will unduly delay delivery or performance.

In those instances, the Contract Management Department will notify you and make every effort to resolve your protest before the award.

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

City of Austin
Contract Management Department
ATTN: Contract Management Director
105 W. Riverside Dr., Suite 205
Austin, Texas 78704
PHONE: 512/974-7141
FAX: 512/469-1719

XI. ROCIP Requirements

If the insurance on this Project will be under the Rolling Owner Controlled Insurance Program (ROCIP), the Offeror is directed to Section 00810, Supplemental General Conditions and Contract Forms, and the Project Safety Manual included with these contract documents for information and bidding requirements. The Insurance Cost Form, Section 00425, must be accurately completed and submitted with the proposal to indicate insurance removed from Base Proposal and Alternates. CONTRACTOR shall remove from the proposal the cost of insurance for the CONTRACTOR and Subcontractors of all tiers working on site.

XII. Signature Requirements

The Proposal and any subsequent supporting documents and Contract must be executed in the Offeror's full name and legal entity status by an authorized representative of the Offeror and accompanied by sufficient documentation, which clearly indicates not only the legal name and entity status, but also the capacity and authority of the person signing on behalf of Offeror. Accordingly, a partnership/joint venture must file its partnership/joint venture agreement, a corporation must file its articles and bylaws, a limited liability company must file its certificate of organization and article of organization and regulations, and a limited partnership must file not only limited partnership agreement and the certificate of limited partnership, but also the documentation for its general partner, and any Offeror must file a copy of any assumed name certificate, or such limited portion of such documents reasonably establishing signature authority.

XIII. Super Prompt Payment Program

Super Prompt Payment Program is the OWNER'S program, which applies to certain projects with a construction cost estimate greater than \$2 million, and requires CONTRACTOR to submit bimonthly payment requests to OWNER and to pay eligible subcontractors bimonthly, when such eligible subcontractors request the Super Prompt Payment option and those eligible subcontractors have performed Work on the Project during the current pay period. If the Project qualifies for participation in the Program, OWNER will make electronic payments to CONTRACTOR to expedite payments and, accordingly, the successful Bidder/CONTRACTOR must register with the OWNER'S Treasury Office and its financial institution to establish electronic payment instructions.

XIV. Evaluation Criteria

XV. Federal Contracting Requirements

To the extent that the Project directly receives federal funding there will be federal contracting requirements for this Project in addition to the standard OWNER's contracting requirements. Because the OWNER has received federal funding for some of its projects, the successful Offeror will be required to sign "Appendix A" the federal nondiscrimination certificate included in the Contract Documents and made a part thereof.

END



Council Question and Answer

Related To	Work Session Discussion	Meeting Date	February 25, 2014
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Additional Answer Information

RESPONSE FROM THE OFFICE OF REAL ESTATE SERVICES

QUESTION: For a solicitation process for real estate and purchasing items, when do we provide the matrix and other backup material to the public? Do we provide it before Council has voted (i.e., in the backup) or do we wait until after Council has voted and the matter has been completed? If the answer varies depending on the type of matter, please explain.

ANSWER: For ORES solicitations for the sale or lease of City property, the Request For Proposal (RFP) and the criteria that will eventually be used for scoring proposals are released to the public at the beginning of the solicitation period, through our office as well as on the City website. These documents are typically removed once the submission deadline has passed, but are still available to the public upon request. By Council request, ORES will ensure that all RFP solicitation materials are provided as backup to related Council agenda items.

Because all information provided as backup to a Request for Council Action (RCA) is viewable by members of the public, ORES does not provide the scored matrices and the Purchase and Sale Agreement (PSA) as RCA backup as a measure to protect the City's real estate negotiating position. If Council should vote not to award the sale upon consideration of the RCA, should reject all bids, or if the transaction should not be consummated during the period between Council award and closing of the sale for any reason, then the City may elect to reissue an RFP for that property. In the case that future proposers have an opportunity to review City staff's evaluation of previous competitive bids on the same property/RFP, they would have a competitive advantage in the design of their proposals.

All real estate transaction documentation is available to the public, if requested, after the transaction is completed. Note that the transaction is not completed on the date of award by City Council, but rather on the date of closing.

Also note that most solicitations released by the Office of Real Estate Services (ORES) are Invitations For Sealed Bids (IFB), which are awarded to the highest bidder above the determined appraised value. For these solicitations, it is not necessary to develop a matrix because offer price is the only criterion. Over the past five years, ORES has released IFBs for five City-owned properties and RFPs for only two City-owned properties (one of which was cancelled, and one of which had only one respondent).

(Those numbers do not include properties sold by the City under FAA guidelines as part of the ABIA Noise Mitigation Program – which were all IFBs – nor RFPs for Master Development Agreements (MDAs), which are released by the Economic Development Department.)

QUESTION: What do we tell proposers about how the City handles confidential information? Does the solicitation document tell proposers about the Public Information Act?

ANSWER: ORES includes some form of the following language in the RFPs that it releases:

"All proposals made will be held confidential during the period between submitting the proposal and award of a sale to a Successful Proposer by the City Council, at which point all proposals will become open records subject to the Public Information Act. If there is any information that you deem to be proprietary, it must be stamped "Confidential" and submitted in a separate sealed envelope. If the entire proposal is identified as confidential, that will be deemed overly broad and ineffective by the Attorney General's office. If any provision is noted as proprietary the Seller will tender the request and the proposal to the Attorney General for resolution. The Seller's Representative will notify you of the request and you must defend the exception to the Attorney General. All responses under the Public Information Act are due within 10 business days after receipt of the request by the governmental body.

The Attorney General has a hotline to answer questions about proper procedures for using and complying with the Public Information Act.: 877-673-6839. A copy of the law and a handbook explaining it are available at the following website: www.oag.state.tx.us. The Public Information Act is codified as Chapter 552 of the Texas Government Code."

ORES additionally addresses confidential information in RFP solicitations. For RFPs that require the respondent to successfully develop and/or manage the property being sold, these solicitations request potentially sensitive information about the respondent's financial capacity and capability. ORES includes some form of the following language in RFPs:

"Financial Capacity and Capability: In order to demonstrate access to equity capital and financing resources necessary to carry out construction of the proposed Project, Proposers must provide the information indicated below. The Seller recognizes that under certain circumstances, this information could be construed as proprietary and sensitive. Therefore, the Seller will treat this entire portion of the submission as a confidential document, to the extent that this information is not already public and to the extent allowed by law. As such, this portion of the submission should be stamped "Confidential" on each page, and should be submitted in a separate sealed envelope attached to the RFP submission."



Council Question and Answer

Related To	Work Session Discussion	Meeting Date	February 25, 2014
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Additional Answer Information

RESPONSE FROM THE PURCHASING DEPARTMENT

QUESTION: For a solicitation process for real estate and purchasing items, when do we provide the matrix and other backup material to the public? Do we provide it before Council has voted (i.e., in the backup) or do we wait until after Council has voted and the matter has been completed? If the answer varies depending on the type of matter, please explain.

ANSWER: We provide the matrix and other materials at the time the RCA is publicly posted for council and/or commission meetings.

QUESTION: What do we tell proposers about how the City handles confidential information? Does the solicitation document tell proposers about the Public Information Act?

ANSWER: Here is some of the information written in our solicitation documents (including matrices) regarding confidential information and the Public Information Act.

0200 Solicitation Instructions

Proprietary Information:

- i. All material submitted to the City becomes public property and is subject to the Texas Public Information Act, Chapter 552, Texas Government Code, upon receipt.
- ii. If an Offeror does not desire proprietary information in the Offer to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General.
- iii. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

0300 Standard Terms & Conditions

RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

0600 Proposal Preparation Instructions and Evaluation Criteria

Proprietary Information: All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt. If a Proposer does not desire proprietary information in the proposal to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

Evaluation Matrix

NOTE: As per Section 252.049 of the local government code, contents of a proposal shall remain confidential until a contract is awarded or as directed by the Texas Attorney General's Office. Therefore, the matrix will include points awarded for price but exact pricing will not be disclosed.



Council Question and Answer

Related To	Agenda Items # 68-71	Meeting Date	February 27, 2014
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Additional Answer Information

QUESTION: Would any of these projects meet the City's S.M.A.R.T. housing requirements? If so, how do they specifically meet the transit standard? COUNCIL MEMBER RILEY

ANSWER:

All four projects were certified for S.M.A.R.T. Housing September of 2012 as meeting the transit oriented standards. The S.M.A.R.T. Housing ordinance, §25-1-703 (B)(3) reads S.M.A.R.T. Housing must comply with the transit oriented guidelines adopted by the director. The S.M.A.R.T. Housing Guide since 2008 provides different standards for projects based on location within the urban roadway boundary or outside the urban roadway boundary. The guidelines were developed to allow flexibility, while still encouraging development near transit. The distance is measured from the closest point on the property to the nearest route. This does not require measurement along an accessible route.

Items 68 and 70 located on East Ben White Boulevard are within the urban roadway boundary. These properties are within 1,300 feet of a bus route on Montopolis Drive. After the construction these projects would be able to access Maxwell to the Riverside Route.

Item 69 located on William Cannon outside the urban roadway boundary has a bus route directly in front of the property.

Item 71 located on Parmer Lane outside the urban roadway boundary is located .41 miles from the nearest bus route with a walking route of .66 miles.

Imagine Austin identified S.M.A.R.T. Housing as a work program which has been assigned to the Household Affordability Priority Program. This program will provide guidance on future changes to the guidelines. NHCD will also be working with stakeholders to identify needed changes to the guidelines. In Section 4 of the S.M.A.R.T Housing Guide, an overview of the current transit standards can be reviewed. Click on the following link to access the guide:

http://www.austintexas.gov/sites/default/files/files/Housing/Application_Center/SMART_Housing/smart_guide_0708.pdf