



ADDENDUM #1
ITB/RFP NUMBER: 2023005-CM-P
Architectural & Engineering Services RFP

DATE: July 25, 2022

TO: All Potential Bidders/Offerors

City of Harrisonburg's RFP, is modified as follows:

Attached and made part of this addendum is an updated version of Attachment J. Federal Contract Clauses which should replace the version in the RFP document.

All other requirements, terms and conditions of the ITB/RFP remain unchanged.

Addendum page must be signed and returned with your bid/proposal to acknowledge receipt of this addendum.

Authorized Signature

By: Shane B. Smith
Procurement Manager

ATTACHMENT J. FEDERAL CONTRACT CLAUSES

VIOLATION AND BREACH OF CONTRACT

2 C.F.R. § 200.327
2 C.F.R. part 200, Appendix II (A)

Rights and Remedies of the CITY OF HARRISONBURG

The CITY OF HARRISONBURG shall have the following rights in the event that the CITY OF HARRISONBURG deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall be defined according to the City of Harrisonburg's General Terms and Conditions.

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the CITY OF HARRISONBURG, the Contractor expressly agrees that no default, act or omission of the CITY OF HARRISONBURG shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the CITY OF HARRISONBURG directs Contractor to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the CITY OF HARRISONBURG will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the CITY OF HARRISONBURG takes action contemplated herein, the CITY OF HARRISONBURG will provide the Contractor with sixty (60) days written notice that the CITY OF HARRISONBURG considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of CITY OF HARRISONBURG's City Attorney. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City Attorney. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City Attorney shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance during Dispute

Unless otherwise directed by CITY OF HARRISONBURG, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the CITY OF HARRISONBURG and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the CITY OF HARRISONBURG is located.

Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the CITY OF HARRISONBURG or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

TERMINATION

2 C.F.R. § 200.340
2 C.F.R. part 200, Appendix II (B)

The CITY OF HARRISONBURG may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the City of Harrisonburg's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to City of Harrisonburg to be paid the Contractor. If the Contractor has any property in its possession belonging to City of Harrisonburg, the Contractor will account for the same, and dispose of it in the manner City of Harrisonburg directs.

TERMINATION FOR DEFAULT [BREACH OR CAUSE] (GENERAL PROVISION)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City of Harrisonburg may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or

services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the City of Harrisonburg that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City of Harrisonburg, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

OPPORTUNITY TO CURE (GENERAL PROVISION)

The City of Harrisonburg, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to City of Harrisonburg's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from City of Harrisonburg setting forth the nature of said breach or default, City of Harrisonburg shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude City of Harrisonburg from also pursuing all available remedies against Contractor and its sureties for said breach or default.

WAIVER OF REMEDIES FOR ANY BREACH

In the event that City of Harrisonburg elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by City of Harrisonburg shall not limit CITY OF HARRISONBURG's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

CIVIL RIGHTS AND EQUAL OPPORTUNITY

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, and 42 U.S.C. § 2000e *et seq.*, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such

action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, and “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” and 45 C.F.R. part 90, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, and 42 U.S.C. §4151 *et seq.*, the Contractor agrees that it will not discriminate against individuals on the basis of disability.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

42 U.S.C. §§ 7401 – 7671q
33 U.S.C. §§ 1251-1387
2 C.F.R. part 200, Appendix II (G)

The Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- 3) It will report violations of use of prohibited facilities to the City of Harrisonburg; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

SUSPENSION AND DEBARMENT

2 C.F.R. part 180
~~2 C.F.R. part 1200~~
2 C.F.R. § 200.214
2 C.F.R. part 200 Appendix II (H)
Executive Order 12549
Executive Order 12689

The Contractor shall comply and facilitate compliance with ~~U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements~~ the Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more and to each contract at any tier for a federally required audit irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or City of Harrisonburg to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City of Harrisonburg. If it is later determined by the City of Harrisonburg that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of Harrisonburg, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, ~~as supplemented by 2 C.F.R. part 1200~~, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

LOBBYING

31 U.S.C. § 1352
2 C.F.R. § 200.450
2 C.F.R. part 200 appendix I (J)

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 an City of Harrisonburg, 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 City of Harrisonburg, 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 shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall 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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

_____Signature of Contractor's Authorized Official

_____Name and Title of Contractor's Authorized Official

_____Date

****Complete & return this document with proposal submission.***