



**REQUEST FOR PROPOSALS  
CONSTRUCTION MANAGER AT RISK  
(RFCSP)**

**CITY OF ATHENS  
CIVIC AND AQUATIC CENTER RENOVATIONS**

**DEADLINE: SEPTEMBER 20, 2019 AT 4:00 PM**

CITY OF ATHENS  
508 EAST TYLER STREET  
ATHENS, TEXAS 75751

CONTACT:  
Elizabeth Borstad, City Manager  
(903) 677-6613  
[eborstad@athenstexas.gov](mailto:eborstad@athenstexas.gov)

# Request for Proposals

## 1. Purpose

The City of Athens (CITY) is soliciting this Request for Proposals (RFP) for Construction Managers at Risk (CMAR) for the CAIN CENTER CIVIC AND AQUATIC CENTER RENOVATIONS project. Scope includes interior and exterior renovations to the Cain Center to accommodate a multipurpose venue. The estimated budget for this Project is \$7,000,000 and the estimated completion date of the project is twelve (12) months from the date of issuance of the Notice to Proceed under the Contract for Work.

The CITY shall select the CMAR that submits the proposal that offers the best value for the governmental entity based on: (1) the selection criteria in this request for proposals and the weighted value for those criteria in this request for proposal; and (2) its ranking evaluation.

## 2. Responses to Solicitation

- a. Submission of Proposals: Interested parties are instructed to carefully examine this entire RFP. Firms interested in providing services for this project must provide written statements of proposals in accordance with this solicitation.
- b. Deadline: Completed submissions must be received no later than Friday, September 20, 2019 at 4:00 pm (CST). The CITY will not accept late submissions, including but not limited to, misdirected submissions, or those caused by technical difficulties or other actions or inactions not directly attributed to the CITY or representatives of the CITY.

Send submissions to the following address:

**City of Athens - City Hall**  
**ATTN: Bonnie Hambrick, City Secretary**  
**508 E Tyler Street**  
**Athens, TX 75751**

- c. All interested parties shall register as a bidder with the City Secretary by 5:00 pm Thursday, September 5, 2019
- d. A mandatory Pre-Proposal Conference will be held on Thursday, September 5, 2019 at 2:00 pm at the existing Cain Center located at 915 South Palestine Street, Athens, Texas 75751.
- e. Addenda: Any requests for interpretation, clarification, etc. must be submitted in writing no later than Wednesday, September 11, 2019 at 5:00 pm or it will not be considered. The CITY will provide answers to all questions no later than Friday, September 13, 2019 at 5:00 pm.

If the CITY, in its sole discretion and authority, determines that a clarification or modification is required, such information shall be issued in writing as an addendum. Contractors are encouraged to routinely check for any addenda. Contractors are responsible for reviewing any addenda prior to the deadline date. Interpretations, corrections or changes to the RFP made in any other manner other than writing are not binding upon the CITY, and CMAR shall not rely upon such interpretations, corrections or changes. Oral explanations or instructions given before the award of the Contract are not binding.

Contact: Elizabeth Borstad  
508 East Tyler Street  
Athens, TX 75751  
Email: eborstad@athenstx.gov  
Telephone: (903) 675-5131

**f. Tentative Schedule of Events**

RFP Posting Date	8/17/2019
Preproposal Conference	9/5/2019 @ 2:00 pm
Last Day to be Registered Proposer	9/5/2019 @ 5:00 pm
Deadline for Submission of Questions	9/11/2019 @ 5:00 pm
Deadline for Responses to Questions	9/13/2019 @ 5:00 pm
Deadline for Submission of Proposals	9/20/2019 @ 4:00 pm

CITY reserves the right to change the dates in the Tentative Schedule listed above upon notification through the *amendment process in writing to all registered bidders.*

**3. Definitions**

Addendum: An addition, change, or supplement to a solicitation document issued prior to the opening date.

Architect: The designated Architect acting for and on behalf of the CITY. PGAL is the design firm for this project.

Best Value: Factors to be considered in determining lowest overall cost and highest worth in making certain purchases and/or procurements.

Bid Bond: The Bid Bond, cashier’s check, certified check or other deposit designated to be made by the CMAR, which is to accompany the Proposal as a guaranty of good faith to enter into a written Contract.

City: City of Athens; Texas (CITY).

Construction Documents: The plans, specifications, drawings, scope of work, associated and made a part of this Request for Proposal by PGAL – Architecture, Planning and Historic Preservation, Inc. for the City of Athens – Texan Theater Adaptive Re-Use.

Construction Manager at Risk (CMAR): is a construction delivery method which entails a commitment by the Construction Manger to deliver the project within a Guaranteed Maximum Price (GMP) which is based on the construction documents and specifications.

Contract: The agreement awarded as a result of this RFP and all exhibits thereto. This RFP, any Addendum issued in conjunction with this RFP, the successful respondent’s proposal, and subsequent submission by respondent, may be incorporated therein.

Contract Documents: The Contract Documents will generally consists of the Contract, Addenda, the Bonds, Construction Documents, the specifications and drawings, together with all amendments, modifications, and supplements issued after Contract Time commences.

Contract Time: The number of calendar days or the date stated in the Contract for the completion of the Work.

Historically Underutilized Business (HUB): A minority or women-owned business as defined by Texas Government Code, Title 10, Subtitle D, Chapter 2161.

Opening Date: The day and time, after submission of proposals, when sealed responses are opened.

Payment Bond: A surety Bond in the amount of the Contract, solely for the protection of all claimants supplying labor and material in the prosecution of the Work provided for in the Contract.

Performance Bond: A surety Bond in the amount of the Contract conditioned upon the faithful performance of the Work in accordance with the drawings and specifications. Said Bond is solely for the protection of the CITY.

Prevailing Wages: The Davis-Bacon and Related Acts (DBRA) provide laborers and mechanics on covered federally financed or assisted construction contracts the right to receive at least the locally prevailing wage rate and fringe benefits, as determined by the U.S. Department of Labor, for the type of work performed.

Proposal: The written offer to the CITY made on the prescribed form by the CMAR to furnish the materials or equipment and / or perform the Work or services proposed.

Respondent: Any person, company, CMAR, or firm who submits a response to this solicitation.

Proposals Opening: The public opening of Statements of Proposals, in which the names of the CMARs to a solicitation are publicly read and recorded.

Request for Proposals (RFP): A solicitation document requesting submittal of proposals in response to the scope of goods and services and usually includes some form of a cost

proposal. The RFP process allows for negotiations between a proposer and the issuing organization.

Statement of Proposals: A CMAR's response to an RFP which includes requested submittal of proposals or specialized expertise as related to consulting services in response to the scope of services required.

Work: The entire completed construction or the various separately identifiable parts thereof required to be finished under the Contract Documents. Work is the result of performing services, furnishing labor, and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

#### **4. Scope of Services**

Provide CMAR services as defined in 2269.253 of the Texas Local Government Code for the City of Athens Civic and Aquatics Center located at 915 South Palestine Street, Athens, Texas. Such services will include:

##### 4.1 Pricing Services

- 4.1.2 Based on the current full set of plans, propose a Guaranteed Maximum Price (GMP – the sum of the Construction Manager at Risk fee, and the Cost of the Work), a written basis on which the GMP is based (including a list of Drawings and Specifications, assumptions and clarifications, and allowances), and a Construction Schedule (including date for issuing proposals from trade contractors and subcontractors, date to submit cost of the Work to the City, date for Notice to Proceed, and date for Substantial Completion).
  - a. Include review of Cain Center Steering committee recommendations for project modifications.
  - b. Meet with the City and the Architect to review the GMP and make adjustments for any inaccuracy or inconsistency that may be discovered by the City or the Architect.
- 4.1.3 Provide a minimum of three (3) Value Engineering (VE) recommendations. Include in each description the scope of the VE and the proposed benefit to the CITY financially. BE SURE THE COST SAVINGS IS CLEARLY DEFINED. VE suggestions should include immediate project savings but long-term maintenance cost savings will also be considered.
- 4.1.4 Once the GMP has been accepted by the City, the Construction Manager at Risk guarantees that the actual sum of the Construction Manager at Risk fee and the Cost of the Work will not exceed the GMP, subject to additions in the Contract Documents. Costs which would exceed the GMP shall be paid by the Construction Manager at Risk without reimbursement from the City.
- 4.1.5 If costs are below the GMP, the savings will be returned to the City.

- 4.1.6 Publicly advertise and receive proposals from trade contractors or subcontractors for performance of all major elements of the Work other than the minor work that may be included in General Conditions (as defined by Chapter 2269 of the Texas Government Code) as required by the Drawings and Specifications prepared by the Architect. Advertisement, receipt, review and final selection of proposals must comply with the applicable requirements of Section 271.025 and Section 271.118 of the Texas LG Code.

#### 4.2 Construction Services

- 4.2.2 Following approval from the City of trade contracts and subcontracts, and upon receiving a Notice to Proceed with Construction from the City, the Construction Manager at Risk will administer, manage and supervise the construction of the Work, providing a complete project conforming to the Drawings and Specifications prepared by the Architect.
- 4.2.3 Prepare a detailed construction schedule and update this schedule at regular intervals with monthly payment applications.
- 4.2.4 Prepare and maintain a Cost Savings Log resulting from savings achieved as a result of actual cost for the work installed and completed below estimated costs.
- 4.2.5 Prepare detailed log of requested additional work items (Additional Work Request Log) Prepare cost estimates for each individual requested additional work item with updates as necessary.
- 4.2.6 Schedule regular meetings with the City, Architect and appropriate consultants, trade contractors and subcontractors to review the status of the Work.
- 4.2.7 Review submittals, shop drawings, samples and project data in accordance with contract requirements.
- 4.2.8 Provide regular written reports to the City and Architect on the progress of the entire Work. Maintain a daily log containing a record of weather, trade contractors and subcontractors working on the site, number of workers, Work accomplished, problems encountered, critical path activities affected, and other similar relevant data as the City may reasonably require. Submit this log to the City and the Architect.
- 4.2.9 Develop a system for cost controls for the Work including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. Identify variances between actual and estimated costs and report the variances to the City and the Architect.
- 4.2.10 Upon Owner's request or on a monthly basis, review the Cost Savings Log versus the Additional Work Request log with the Owner and Architect for possible inclusion of Additional Work items into the project.

#### 4.3 Selection of Trade Contractors and Subcontractors

- 4.3.2 Trade Contractors and Subcontractors – The CMAR shall publicly advertise and solicit either competitive bids or competitive sealed proposals from trade contractors or subcontractors for the performance of all major elements of the Work other than the minor work that may be included in General Conditions.
- a. A CMAR may seek to perform portions of the work itself if the CMAR submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the City determines that the CMAR’s bid proposal provides the best value for the City.
  - b. Submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the City determines that the CMAR’s bid proposal provides the best value for the City.
- 4.3.3 Receipt of Bid or Proposals – The CMAR and the City shall receive and open all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process. The City will document the basis of its selection and make evaluations public not later than the 7th day after the contract is awarded, as required by law.
- 4.3.4 Acceptance of Recommendations for Trade Contractors and Subcontractors If the CMAR reviews, evaluates and recommends to the City a bid or proposal from a trade contractor or subcontractor, but the City requires a bid or proposal from another trade contractor or subcontractor to be accepted, then, pursuant to the terms of the Contract, the City shall compensate the CMAR by a change in contract sum, contract time or guaranteed maximum price for any additional cost and risk, which has been demonstrated to the City’s satisfaction and as required by the Contract, that the CMAR may incur because of the City’s requirement that another trade contractor or subcontractor bid or proposal be accepted.

### **5. Selection Process**

A Selection Committee comprised of representatives of the CITY will review and evaluate the responses to this RFP for recommendation to the City Council. The CITY Selection Committee will judge the suitability of the CMAR services offered in its determination of a recommendation for the highest ranking proposal. The CITY shall select the CMAR that submits the proposal that offers the best value for the governmental entity based on: (1) the selection criteria in this request for proposal and the weighted value for those criteria in this request for proposal; and (2) its ranking evaluation.

The CITY will evaluate and rank the proposals in relation to the published selection criteria within 45 days after the opening.

CITY reserves the right to contact any individual, agencies or employers listed in a submittal, to contact others who may have experience and/or knowledge of the Respondent's relevant performance and/or qualifications; and to request additional information from any and all respondents.

CITY reserves the right to conduct a review of records, systems, procedures, etc., of any entity selected for award. This may occur prior to, or subsequent to the award of an agreement. Misrepresentation of the Respondent's ability to perform as stated in the statement of proposals may result in cancellation of the Contract.

Statements of Proposals that do not meet the requirements outlined in this RFP may be deemed non-responsive by the Selection Committee.

Under RFP process, sealed offers will be received and opened by the CITY after the submission deadline. Only the CMAR names and base bids will be read aloud. At and after opening, proposals will NOT be part of the public record and subject to disclosure, but will be kept confidential until time of award. When such award is completed, proposals will be available for public inspection.

## **6. Selection Criteria**

The Selection Committee, in their deliberations, will consider the following factors using the evaluation rating system shown below. Submittals will be evaluated and ranked according to points received:

- a. Price (*60 points*)
- b. Value Engineering Options (*20 points*)
- c. Delivery Schedule (*10 points*)
- d. Experience on Projects of Similar Size and Scope (*10 points*)
- e. References (*10 points*)

TOTAL POINTS POSSIBLE = 110

## **7. Selection and Negotiations**

- a. After receipt of the written proposal submittals, CMAR will be evaluated and ranked on the selection criteria described in this RFP.
- b. CITY may make the selection of CMAR on the basis of the proposals initially submitted, without discussion, clarification or modification.



- c. The CITY will work in good faith with the selected CMAR to negotiate an appropriate scope and fee for the project. In the alternative, CITY may make the selection of CMAR on the basis of negotiation with any of the Proposers. In conducting such negotiations, CITY will use commercially reasonable efforts to avoid disclosing the contents of competing proposals.
- d. If the CITY is unable to negotiate a satisfactory contract with the selected CMAR, the CITY shall, formally and in writing, end negotiations with that CMAR and proceed to the next CMAR in the order of the selection ranking until a contract is reached or all proposals are rejected.
- e. The CITY reserves the right to negotiate all elements that comprise the successful CMAR's response to ensure that the best possible consideration be afforded to all concerned.
- f. CAMR will be required to enter into a written Agreement for Construction Services with the City of Athens, which will incorporate much of the information contained in this RFP.
- g. CMAR shall agree to a lump sum fee, which shall include all costs associated with the services outlined herein. Costs sometimes billed separately as reimbursable costs shall be declared and included in the lump sum amount for negotiation purposes. Invoices shall be provided by CMAR setting forth the percentage of work completed to date, establishing the amount due based on the percentage completed, less retainage, any previous amounts billed, and/or paid to date.
- h. The CITY will notify the selected and non-selected CMARs in writing regarding the results of the selection process.
- i. The selection for these services will be in accordance with the procurement regulations and practices of CITY.
- j. CITY reserves the right to reject any and all submissions entirely at its discretion, waive technicalities or irregularities, and/or accept that proposal which it deems to be in the best interest of the CITY. CITY reserves the right to enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Respondents.

## **8. Award of Contract**

The CITY reserves the right to accept or reject any and all proposals and to: (a) re-solicit for proposals; or (b) abandon, temporarily or permanently this selection process, as it deems necessary to be in the best interests of the CITY. Receipt and consideration of any proposal shall, under no circumstances, obligate the CITY to accept any proposal. If an award of contract is made, it shall be made to the responsible CMAR whose proposal is determined to

be the best evaluated offer taking into consideration the relative importance of the evaluation factors set forth in the RFP and the best value to the CITY.

## 9. Statement of Proposals Contents

Submittals shall include the following:

a. Cover Sheet and Prices (Attachment A)

Include the complete legal name of the proposing CMAR, the location of the office which will have the responsibility for the services to be provided, and the name, address, telephone, facsimile number, and e-mail address of the primary authorized representative knowledgeable of the submittal. The total amount of the base bid proposal as shown in the plans and specifications. The CMAR's authorized signature must appear on this sheet.

**Provide a minimum of three Cost Reduction recommendations. Include in each description the scope of the cost reduction and the proposed benefit to the CITY financially. BE SURE THE COST SAVINGS IS CLEARLY DEFINED. Cost Reduction suggestions should include immediate project savings but long-term maintenance cost savings will also be considered.**

b. Scope of Services and Delivery Schedule (not to exceed 3 sheets)

CMAR shall include in its proposal a detailed scope of services which shows project approach and understanding of the process to undertake such complex project and complete it on time and in compliance with all applicable rules, regulations, standards and requirements.

CMAR shall also include description of its ability to meet the estimated completion date and indicate the amount of days CMAR requires to complete the Work. CMAR shall also indicate an estimate of its earliest start date and its methods of developing and maintaining project schedules.

c. Overall Qualifications and Experience (not to exceed 2 sheets)

State the overall qualifications and experience of the firm. Include a list of several comparable projects the firm has completed in the past five (5) years. Please include: name; location; delivery method; project description (size, renovation, rehab, or new); costs; number of change orders; name of project manager and superintendent; name of Owner representative; and names of each subcontractor (mechanical, plumbing, electrical, etc.).

State the overall depth of staff, including experience relevant to the scope of work. Include work experience history for the proposed project manager, superintendent and each key team member that are most likely to be directly involved with the Work. Include an organizational chart and descriptions of the key team members' roles and responsibilities in performing the proposed services.

Disclose any current or former employees who are current or former employees of the CITY. Disclose any proposed personnel who are related to any current or former employees of the CITY.

CMARs must disclose: (1) any pending litigation; (2) any litigation within the last five (5) years; and (3) any litigation within the last seven (7) years in conjunction with construction contracts. The proposer shall provide information on the circumstances and status of any disciplinary action taken against the firm or any individuals with the CMAR that will be assigned to this project, during the past three (3) years with any state, local or federal regulatory bodies or professional organizations.

d. References (Attachment B)

Provide the names, addresses, email address and telephone numbers of references for three (3) projects completed in the past five (5) years, and the firm's permission to contact these and other known references to verify past performance. The references *shall not include* the City of Athens, Texas or any of its boards, commissions, departments, officials or employees.

e. Bid Bond or Cashier's Check (Attachment C)

A bid bond or cashier's check for five percent (5%) of the total bid with submitted proposal. A performance and payment bond for the full amount of the proposal is required from the successful CMAR prior to commencement of the Work.

f. Residence Certification / Tax Form (Attachment D)

Each CMAR must complete Attachment E – Residence Certification / Tax Form.

g. Proof of Insurance (Attachment E and F)

Each CMAR should include current and valid proofs of insurance. Insurance certificates are required for Attachment F – Minimum Insurance Requirements and Attachment G – Workers Compensation Insurance Coverage.

## **10. Professional Standards**

CMAR will use its best efforts, skill, judgment, and abilities to perform the Work and services and to further the interests of CITY in accordance with CITY'S requirements and procedures, in accordance with the highest standards of Contractor's profession or business and in compliance with all applicable national, federal, state, and municipal, laws, regulations, codes, ordinances and orders (collectively, the "Applicable Laws").

Without limiting the foregoing, Contractor is aware of, is fully informed about, and in full compliance with its obligations under existing applicable law and regulations, including Title VI of the Civil Rights Act of 1964, as amended (42 USC 2000(D)), Executive Order 11246, as amended (41 CFR 60-1 and 60-2), Vietnam Era Veterans Readjustment Act of 1974, as

amended (41 CFR 60-250), Rehabilitation Act of 1973, as amended (41 CFR 60-741), Age Discrimination Act of 1975 (42 USC 6101 et seq.), Non-segregated Facilities (41 CFR 60-1), Omnibus Budget Reconciliation Provision, Section 952, Fair Labor Standards Act of 1938, Sections 6, 7, and 12, as amended, Immigration Reform and Control Act of 1986, and Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (PL 96-507), the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.), the Civil Rights Act of 1991 and all laws and regulations and executive orders as are applicable.

## **11. Completion of Responses**

- a. Information presented in the Proposals will be used to evaluate the professional qualifications of the CMARs and to determine the CMARs which will be selected by the CITY.
- b. Responses shall be completed in accordance with the requirements of this RFP. Statements made by a CMAR shall be without ambiguity and with adequate elaboration where necessary for clear understanding.

## **12. Withdrawal of Proposals**

An authorized representative of the CMAR may withdraw their Proposal at any time prior to the RFP submission deadline by notifying the CITY.

## **13. Period of Acceptance**

CMAR acknowledges that by submitting the Proposals, CMAR makes an offer that, if accepted in whole or part by the CITY, constitutes a valid and binding contract as to any and all items accepted in writing by the CITY. The period of acceptance of Proposals is ninety (90) calendar days from the date of opening, unless the CMAR notes a different period.

## **14. Tax Exemption**

The CITY is exempt from federal excise and state sales tax; therefore, tax must not be included in any contract that may be awarded from this RFCSP.

## **15. Terms of Payment**

The selected CMAR will be required to enter into an executed written Construction Agreement with the City of Athens, which will incorporate much of the information

contained in this RFP. The CITY intends to utilize AIA A101 Standard Form of Agreement between Owner and Construction Manager at Risk.

CMAR shall agree to a lump sum fee payment, which shall include all costs associated with the services outlined herein and those mutually agreed upon prior to contract execution. Any cost billed separately as a reimbursable shall be declared and included in the lump sum amount. Invoices shall be provided by CMAR which set forth the percentage of work completed to date, establishing the amount due based upon the percentage completed less any previous amounts paid. Payments shall be made in accordance with Texas Government Code, Chapter 2251.

## **16. Prevailing Wages**

Texas Government Code Chapter 2258 requires that not less than the general prevailing wage rate for work of a similar character be paid.

## **17. Workers' Compensation**

CMAR must comply with Workers' Compensation in accordance with the State of Texas rules and regulations.

## **18. Insurance**

A certificate of existing insurance coverage shall be submitted with the statement of proposals as proof of insurability. If the current coverage does not meet the qualification requirements, the CMAR should request an affidavit of insurability from their insurance agent that certifies the requirements can and will be met. Failure to provide adequate insurance coverage may be cause for disqualification as non-responsive to the qualification requirements.

CMAR represents and warrants that it will provide CITY with certificates of insurance or other proof acceptable to CITY of the following insurance coverage:

General liability insurance, personal injury and advertising injury with, at a minimum, the following limits: with a single limit for bodily injury of \$1,000,000 per occurrence and property damage limit of no less than \$1,000,000 per occurrence. The insurance may have a combined aggregate of coverage amounting to no less than \$3,000,000. Such insurance shall protect CMAR against claims of bodily injury or death and property damage to others.

Automobile liability on owned and non-owned motor vehicles used on the site(s) or in connection herewith for a combined single limit of bodily injury and property damage of not less than \$1,000,000 per occurrence.

The selected CMAR represents and warrants that it will, within ten (10) days of notification of award and prior to commencement of work, obtain and maintain in full force and effect minimum insurance coverage as negotiated and required. This insurance shall remain in force and effect throughout the duration of the contract.

CMAR represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with “A” rating from Best, and authorized to provide the corresponding coverage. CMAR also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to CITY. CMAR represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide CITY with an executed copy of the policies immediately upon request.

## **19. Availability of Records**

The City of Athens, and any duly authorized representatives of same, shall have, for a period of not less than four (4) years after the Contract term, access to, and the right to examine any and all pertinent books, records, documents, invoices, papers, and the like, of the individual(s) or firm(s) office or firm, which shall relate to the performance of the Work or services to be provided.

## **20. Proprietary Information**

- a. If CMAR does not desire proprietary information in the Proposals to be disclosed, CMAR is required to identify all proprietary information in the Proposals. This identification will be done by individually marking each page with the words "Proprietary Information" on which such proprietary information is found. If CMAR fails to identify proprietary information, it agrees that by submission of its Proposals that those sections shall be deemed non-proprietary and made available upon public request.
- b. CMARs are advised that the CITY, to the extent permitted by law, will protect the confidentiality of their Proposals. CMAR shall consider the implications of the Texas Public Information Act, particularly after the RFP process has ceased and the Contract has been awarded. While there are provisions in the Texas Public Information Act to protect proprietary information, where the CMAR can meet certain evidentiary standards, please be advised that a determination on whether those standards have been met will not be decided by the City of Athens, but by the Office of the Attorney General of the State of Texas. In the event a request for public information is made, the CITY will notify the CMAR, who may then request an opinion from the Attorney General pursuant to 552.305, Texas Government Code. The CITY may not make a request of the Attorney General.

## **21. Independent Relationship**

CMAR is and shall remain an independent CMAR in relationship to the CITY. The CITY shall not be responsible for withholding taxes from payments made under any contract resulting from this RFP. CMAR shall have no claim against the CITY for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

## **22. Historically Underutilized Business (HUB) Requirements**

Firm represents and warrants that it shall comply with the Historically Underutilized Business requirements pursuant to Texas Government Code, Chapter 2161.

## **23. Cost Incurred in Responding**

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify a Proposals which may be required by the CITY shall be the sole responsibility of and shall be borne by the participating CMAR.

## **24. Contract Incorporation**

The contract documents may include the RFP, the Response to the RFP, the Construction Agreement, the Construction Documents and such other terms and conditions as the parties may agree.

## **25. Non-Endorsement or Publicity**

The successful CMAR shall not issue any news releases or other statements pertaining to the award or servicing of the agreement that state or imply the CITY's endorsement of the CMAR's services.

## **26. Unauthorized Communications**

After release of this solicitation, CMAR's unsolicited contact regarding this RFP with members of the RFP evaluation, interview or selection panels, employees of the CITY, or officials of the CITY other than the Marketing Director of Community Services or as otherwise indicated is prohibited and may result in disqualification from this procurement process. No officer, employee, agent or representative of the CMAR shall have any contact or discussion, verbal or written, with any members of the City Council, members of the RFP evaluation, interview, or selection panels, City staff or City's firms, or directly or indirectly through others, seek to influence any City Council member, City staff, or City's firms

regarding any matters pertaining to this solicitation, except as herein provided. If a representative of any CMAR violates the foregoing prohibition by contacting any of the above listed parties with whom contact is not authorized, such contact may result in the CMAR being disqualified from the procurement process.

## **27. Assignment**

The selected CMAR may not assign its rights or duties under an award without the prior written consent of the CITY. Such consent shall not relieve the assignor of liability in the event of default by its assignee.

## **28. Errors or Omissions**

CMARs will not be allowed to rely on any errors or omissions in this RFP. Where errors or omissions appear in this RFP, the CMAR shall promptly notify the City of Athens in writing of such error or omission it discovers. Any significant errors, omissions or inconsistencies in this RFP are to be reported no later than seven (7) calendar days prior to the published submission deadline.

## **29. Termination**

If this award results in a contract, it shall remain in effect until contract expires, delivery and acceptance of products and/or performance of services ordered, or terminated by the CITY.

## **30. Right to Assurance**

Whenever the CITY has reason to question the CMAR's intent to perform, the CITY may demand that the CMAR give written assurance of CMAR's intent to perform. In the event a demand is made, and no assurance is given within seven (7) calendar days, the CITY may treat this failure as an anticipatory repudiation of the contract.



### **31. Change Orders**

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the resulting contract. No change order shall be valid or enforceable unless it is in writing and approved.

### **32. Venue**

The agreement will be governed and construed according to the laws of the State of Texas. The agreement is performable in Henderson County, Texas. Venue shall lie exclusively in Henderson County, Texas.

### **33. Conflict of Interest/Disclosures**

CMAR represents and warrants that CMAR has no actual or potential conflicts of interest in providing services to the CITY under this RFP and that the CMAR's provision of services under this RFP would not reasonably create an appearance of impropriety.

CMAR represents and warrants that they have not given, nor intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or employee or representative of the CITY in connection with this solicitation.

CMAR represents and warrants that it has a duty if awarded a Contract to immediately advise the CITY once it becomes aware that any of the representations and warranties made pursuant to this RFP are no longer accurate.

### **34. Indemnification Agreement**

CMAR shall defend, indemnify and hold harmless the City of Athens, its officers, agents, and employees from and against all claims, actions, suits, demands, proceedings, costs, expenses, damages and liabilities, including without limitation attorneys' fees and court costs, arising out of, connected with, or resulting from any acts or omissions of CMAR or its officers, any agent, employee, subcontractor, or supplier of CMAR or others working on behalf of the CMAR in the execution or performance of this contract, by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with the resulting contract.



**COVER SHEET**

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

REPRESENTATIVE NAME (PRINT): \_\_\_\_\_

Please agree to the following below:

I, \_\_\_\_\_, an authorized representative of the firm indicated above, have reviewed and understand the City of Athens' RFP for Construction Manager at Risk services to perform the Work specified in the Contract Documents.

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

**TOTAL AMOUNT OF PROPOSAL (BASE BID):** \$ \_\_\_\_\_

**CONSTRUCTION MANAGER AT RISK FEE (%)** \_\_\_\_\_

**TOTAL CONTRACT PRICE (GMP)** \$ \_\_\_\_\_



**REFERENCES**

Provide a minimum of three (3) government entities or companies for which you have performed similar work of the same scope and size as defined in this RFP. If additional space is required, include attachment to this section of the RFP.

**REFERENCE #1 – ENTITY:** \_\_\_\_\_

**PROJECT:** \_\_\_\_\_

**DATE:** \_\_\_\_\_ **PROJECT COST:** \_\_\_\_\_ **CONTACT:** \_\_\_\_\_

**PHONE:** \_\_\_\_\_ **EMAIL:** \_\_\_\_\_

**BRIEF DESCRIPTION OF WORK PERFORMED:** \_\_\_\_\_

\_\_\_\_\_

**REFERENCE #2 – ENTITY:** \_\_\_\_\_

**PROJECT:** \_\_\_\_\_

**DATE:** \_\_\_\_\_ **PROJECT COST:** \_\_\_\_\_ **CONTACT:** \_\_\_\_\_

**PHONE:** \_\_\_\_\_ **EMAIL:** \_\_\_\_\_

**BRIEF DESCRIPTION OF WORK PERFORMED:** \_\_\_\_\_

\_\_\_\_\_

**REFERENCE #3 – ENTITY:** \_\_\_\_\_

**PROJECT:** \_\_\_\_\_

**DATE:** \_\_\_\_\_ **PROJECT COST:** \_\_\_\_\_ **CONTACT:** \_\_\_\_\_

**PHONE:** \_\_\_\_\_ **EMAIL:** \_\_\_\_\_

**BRIEF DESCRIPTION OF WORK PERFORMED:** \_\_\_\_\_

\_\_\_\_\_



**BONDS**

A guarantee shall be submitted with each proposal that the CMAR will execute and furnish performance and payment bonds within 10 days after award of contract and receipt of contract performance and payment bond forms. The performance and payment bonds shall be in the amount of 100% of contract price, and shall be executed by a surety company authorized to do business in the State of Texas. If performance and payment bonds are not returned to the CITY within 10 days from the award, the CITY has the right to render the award ineffective.

CMAR guarantee should be submitted to the CITY prior to the RFP deadline in the amount of 5% of the proposal. Bank cashier's check payable to the CITY should be attached to this form and submitted with proposal to the following address:

**City of Athens City Hall  
ATTN: Bonnie Hambrick, City Secretary  
508 East Tyler Street  
Athens, TX 75751**

The City may retain all proposal checks of the CMARs selected for potential negotiations until after the award and approval of the contract and receipt of performance and payment bonds.

Authorization is hereby granted for the CITY to return the proposal check via regular mail without liability of any kind or nature to the address listed below.

BID FOR: \_\_\_\_\_

CHECK #: \_\_\_\_\_

DRAWN ON: \_\_\_\_\_

BANK: \_\_\_\_\_

DATED: \_\_\_\_\_

AMOUNT \$: \_\_\_\_\_

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

TELEPHONE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_



**RESIDENCE CERTIFICATION / TAX FORM**

Pursuant to Texas Government Code §2252.001 *et seq.*, as amended, the CITY requests Residence Certification. §2252.001 *et seq.* of the Government Code provides some restrictions on the awarding of governmental contracts; pertinent provisions of §2252.001 are stated below:

- (3) “Nonresident bidder” refers to a person who is not a resident.
- (4) “Resident bidder” refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

I certify that \_\_\_\_\_ is a Resident Bidder of Texas as defined in  
(Company Name) Government Code §2252.001

I certify that \_\_\_\_\_ is a Nonresident Bidder of Texas as defined in  
(Company Name) Government Code §2252.001 and our principal place  
of business is in \_\_\_\_\_  
(City and State)

---

TAXPAYER IDENTIFICATION NUMBER (T.I.N.): \_\_\_\_\_

COMPANY NAME SUBMITTING BID PROPOSAL: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

SIGNATURE: \_\_\_\_\_



## MINIMUM INSURANCE REQUIREMENTS

The CMAR shall, at all times during the term of this contract, maintain insurance coverage with not less than the type and requirements shown below. Such insurance is to be provided at the sole cost of the contractor. These requirements do not establish limits of the CMAR's liability.

All policies of insurance shall waive all rights of subrogation against the CITY, its officers, employees and agents.

Upon request, certified copies of original insurance policies shall be furnished to the CITY.

The CITY reserves the right to require additional insurance should it be deemed necessary.

- A. Standard Workers' Compensation insurance covering all personnel who will provide services under this contract.
- B. Commercial General Liability Insurance, personal injury and advertising injury with, at a minimum, the following limits: \$1,000,000 minimum each occurrence; \$3,000,000 per general aggregate.
- C. Builder's Risk Policy in the amount of at least \$1,000,000.00 per claim and at least \$3,000,000.00 in aggregate.
- D. Automobile Liability Coverage. The CITY shall be named as "additional insured" on automobile policy.



## TWCC RULE 110.110 - WORKERS' COMPENSATION INSURANCE COVERAGE

If this bid proposal package is for a building or construction contract, all of the provisions of this rule as shown below apply. Since this is a mandatory requirement, cost increases should not be experienced because of the need to comply with the Texas Workers' Compensation Law. For additional information contact the:

Texas Workers' Compensation Commission  
 Southfield Building  
 400 S. IH-35  
 Austin, TX 78704-7491  
 (512) 440-3618

### A. Definitions:

Certificate of coverage ("Certificate"):

A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement, TWCC-81, TWCC-82, TWCC-83, or TWCC-84 showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project:

Includes the time from the beginning of the work on the project until the contractor's / person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096):

Includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling or delivering equipment or materials, providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food / beverage vendors, office supply deliveries, and delivery of portable toilets.

### B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
  - (1) A certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (2) No later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.
- G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project to:
  - (1) Provide coverage, based on reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all its employees providing services on the project, for the duration of the project.
  - (2) Provide to the Contractor, prior to that person beginning work on the project a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project.
  - (3) Provide the Contractor, prior to the end of coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
  - (4) Obtain from each other person with whom it contracts, and provide to the Contractor:
    - (a) A certificate of coverage, prior to the other person beginning work on the project, and



- (b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (5) Retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter.
  - (6) Notify the government entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - (7) Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity.