



Finance
Purchasing Division
320 Chestnut Street, 2nd Floor
Post Office Box 1810
Wilmington, NC 28402-1810

910 341-7830
910 341-7842 fax
wilmingtonnc.gov
Dial 711 TTY/Voice

May 20, 2009

NOTICE

Upon receiving this proposal by internet, email julia.vosnock@wilmingtonnc.gov to register as a prospective respondent. Failure to register as a prospective respondent may result in your firm not receiving proposal addenda. Failure to acknowledge proposal addenda with your submittal may cause your proposal to be considered non-responsive.

RE: Request for Proposal (RFP)
RFP No: S6-0609
Environmental Assessment-Monkey Junction Annexation

Dear Sir:

The above referenced Request for Proposal (RFP) will provide your firm(s) with sufficient information to enable you to prepare and submit a proposal for services related to the above referenced project. If you wish to submit a proposal you may download the document from the City WEB site at www.wilmingtonnc.gov or contact my office.

The RFP includes a preliminary scope of work and general terms and conditions of any subsequent contract. The scope of services, as defined herein, may be modified after final selection of the consultant. The general terms and conditions are part of any submitted proposal and will be incorporated into any subsequent contract. Submission of a statement shall constitute acceptance of these terms and conditions. Conditional responses may be rejected.

In order for your proposal to be considered responsive, it must include:

- a) Cover letter stating interest in project with signature of duly authorized principal;
- b) List of key personnel, including outside consultants, to be assigned to the project;
- c) Professional qualifications of key personnel, including resumes, roles and responsibilities;
- d) Point of contact for correspondence and project office location. Contact information for team members, including telephone number, fax, and e-mail address;
- e) List of current and previous similar projects indicating client, negotiated fee and final fee paid. Specify experience preparing Environmental Assessments and Environmental Impact Statements;
- f) List of professional references and contact information;
- g) Description of your understanding of the project and the proposed approach for conducting an Environmental Assessment;
- h) Evidence of applicable licenses and certifications;

- i) Minority/Female Enterprise Certification (if applicable);
- j) Evidence of Errors and Omissions Insurance;
- k) Example of an Environmental Assessment report prepared by the bidder's company;
- l) Estimated timing for preparation, review and approval of the Environmental Assessment; and
- m) Assumptions and exclusions.

A committee will review the proposal and may select the most qualified firm(s) for an interview. After the most qualified firm(s) is determined by the City, the staff may enter into negotiations with the most qualified firm(s) to better define the final scope of work and finalize the fee. If for any reason, the City and the selected firm(s) cannot agree on a scope and fee, the City will enter into negotiations with the next most qualified firm(s).

Six (6) copies of your Proposal must be submitted to the Purchasing Manager P. O. Box 1810, 320 Chestnut Street, Wilmington, N. C. 28402 no later than 3:00 p.m., Tuesday, June 16, 2009, in order for it to be considered. Proposals will be twenty-five (25) pages or less.

It is the goal of the City to promote local and minority business participation in all construction and service contracts. Therefore, in accordance with the City of Wilmington's MBE/DBE Policy, the consultant shall make a good faith effort to identify and hire minority subcontractors for this project. A complete copy of the City's MBE/DBE policy is available at my office.

Questions concerning the scope of work for this study should be addressed to Mr. Carl Farmer, Division Engineer, at carl.farmer@wilmingtonnc.gov or to (910) 341-5881 (No inquiries by phone please).

Questions concerning the proposed contract terms and conditions should be addressed to my office. I hope to receive your proposal for this work.

Sincerely,

Daryle L. Parker
Purchasing Manager

DLP:

Enclosure

Cc: Dave Cowell, PE, City Engineer
Carl Farmer, Division Engineer
Jim Flechtner, Engineering Manager CFPUA

COUNTY OF NEW HANOVER

AGREEMENT BETWEEN
THE CITY OF WILMINGTON, NORTH CAROLINA
AND

THIS AGREEMENT, made this the ____ day of _____, 2009, by and between the CITY OF WILMINGTON, NORTH CAROLINA (hereinafter called "CITY"), a municipal Corporation located in New Hanover County, North Carolina; and 1. a corporation organized under the laws of the State of _____; 2. a non-profit corporation organized under the laws of the State of _____; 3. an unincorporated association having its principal place of business in _____; 4. a resident of _____; or 5. owner of a partnership organized under the laws of the State of _____, (hereinafter called "CONSULTANT").

W I T N E S S E T H:

1. General

The City of Wilmington, North Carolina is soliciting proposals from professional consulting firms with expertise in Environmental Assessments (EA's), at a minimum complying with North Carolina State Environmental Policy Act (SEPA) guidelines and City of Wilmington environmental regulations. The work is associated with preparing an Environmental Assessment (EA) for proposed downstream sanitary sewer upgrades required for the Monkey Junction Annexation project in Wilmington, North Carolina. The improvements will involve upgrades to the Cape Fear Public Utility Authority's Barnard's Creek and Mott's Creek Pump Stations and installation of a proposed 20-inch diameter sanitary sewer force main.

The City of Wilmington relies upon the Cape Fear Public Utility Authority's force main and pump stations to provide sewer services to existing residential homes and businesses. The upgrades and additional force main installation are necessary in order to meet the sewer requirements of the 1200-acre Monkey Junction Annexation Area and the recently-annexed 1,400-acre River Lights Development.

The proposals will be reviewed and selected based on the overall experience of the team members in performing this type of work.

2. Proposal Procedures

- a) **Withdrawal of Proposals:** Consultants submitting proposals may withdraw their proposals any time before the deadline for submission, but the withdrawal must be submitted in writing and signed by the proposing consultant.
- b) **Inquiries and Corrections:** All inquiries relating to this request should be in writing and submitted by e-mail to Carl Farmer at carl.farmer@wilmingtonnc.gov
- c) **Omissions and discrepancies:** If a proposing consultant finds omissions or discrepancies in the RFQ, or should require additional clarification of any part, a written request for interpretation shall be submitted by e-mail to Carl Farmer at carl.farmer@wilmingtonnc.gov
- d) **Addenda:** Any interpretation of or changes made to the RFQ will be made by written addendum issued to each prospective consultant and shall become part of the request for any contract awarded. The City of Wilmington will not be responsible for the accuracy of any oral explanations, interpretations, or representations. All inquiries must be made no later than Tuesday, June 9, 2009 by 5:00 p.m. to carl.farmer@wilmingtonnc.gov, or by fax to (910)- 341-7842. Inquiries should not be made by telephone. It shall be the responsibility of each proposing organization or individual to verify that every addendum has been received prior to submitting proposals.

3. Consultant Certification

The submission of proposal shall be deemed a representation and certification that the proposing consultant:

- a) Has carefully read and fully understands the information provided by City of Wilmington in this RFP;
- b) Is financially solvent and as the capability to successfully undertake and complete the responsibilities and obligations of the proposal submitted;
- c) Represents that all of the information contained in the submitted proposal is true and correct;
- d) Did not in any way collude or conspire with any other parties, directly or indirectly, in regard to the amount, terms or conditions of the proposal;
- e) Acknowledges that the City of Wilmington has the right to make any inquiry it deems appropriate to substantiate or supplement information provided by proposing consultants and hereby grants the City of Wilmington permission to make these inquiries; and
- f) Acknowledges that any proposal cannot be modified after its submission for any reason.

4. Release and Indemnity

To the fullest extent permitted by law, CONSULTANT shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by the

negligent performance or nonperformance by CONSULTANT (or by any person acting for the CONSULTANT or for whom the CONSULTANT is responsible). The CONSULTANT expressly understands and agrees that any performance bond or insurance protection required by this agreement, or otherwise provided by the CONSULTANT, shall in no way limit the CONSULTANT's responsibility to release, indemnify, keep and save harmless and defend the CITY as herein provided. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

5. Personnel

It is mutually agreed that CONSULTANT is an independent contractor and not an agent of the CITY, and as such the CONSULTANT shall not be entitled to any CITY employment benefits, such as, but not limited to, vacation, sick leave, insurance, workmen's compensation, or pension and retirement benefits.

6. Conflict Of Interest

No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this agreement.

7. Non-Waiver Of Rights

It is agreed that the CITY'S failure to insist upon the strict performance of any provision of this agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this agreement.

8. Suspension or Termination of Agreement

1. In the event that review of the CONSULTANT'S performance shows non-conformance to the work required by this contract, the Scope of Services or other terms or conditions contained herein as a result of the CONSULTANT'S negligent errors, omissions or acts, the CONSULTANT shall be in breach of this agreement and the CITY may take corrective action as it deems necessary including, but not limited to, termination, withholding or reduction of payment.

2. The CITY shall also have the right to suspend this agreement upon written notice to the CONSULTANT. Such written notice shall state the reasons for suspension and allow for a review period of ten (10) days during which the CONSULTANT shall be provided with an opportunity to respond with an explanation or justification, and/or shall undertake any reasonable remedial action required by the CITY. If, in the opinion of the CITY the CONSULTANT remains in violation of this agreement at the completion of the ten (10) day suspension period, the CITY shall have the right to terminate this agreement whereupon all obligations of the CITY to the CONSULTANT shall cease.

3. In the event this project is terminated prior to completion of the services by the CONSULTANT, the CONSULTANT shall be paid for services performed to the date of termination. (In no event will the amount due CONSULTANT in the event of

termination exceed that amount set forth in paragraph _____ of this agreement. CONSULTANT shall be paid for all reimbursables, as defined herein, which are due him.)

4. This agreement may be terminated without cause by either party with thirty (30) days written notice.

5. Nothing contained herein shall prevent the CITY from pursuing any other remedy which it may have against CONSULTANT including claims for damages.

9. Assignment of Agreement

It is mutually agreed by the parties hereto that this agreement is not transferable by either party without the written consent of the other party to this agreement.

10. Insurance Requirements

The amount of insurance to be provided for all coverages listed under this section shall be not less than \$1,000,000.00, unless otherwise specified, per occurrence for claims arising from bodily injury and/or property damage, including accidental death which may arise directly or indirectly from CONSULTANT'S performance of professional services under this contract. The CONSULTANT shall be responsible for any liability directly or indirectly arising out of professional services performed under this contract by a subcontractor which liability is not covered by the subcontractor's insurance.

1. The CONSULTANT shall maintain during the life of this contract WORKERS' COMPENSATION and EMPLOYER'S LIABILITY INSURANCE covering all of the CONSULTANT'S employees to be engaged in the work under this contract, providing the required statutory benefits under North Carolina Workers Compensation Law, and Employers Liability Insurance providing limits at least in the amount of \$500,000/500,000/500,000 applicable to claims due to bodily injury by accident or disease. Whenever work under this contract includes exposure to claims under the U. S. Longshoremen's and Harborworker's Act, such coverage shall be provided by appropriate endorsement to this policy.

2. The CONSULTANT shall take out and maintain during the life of this contract COMMERCIAL GENERAL LIABILITY INSURANCE, including coverage for INDEPENDENT CONTRACTOR OPERATIONS, CONTRACTUAL LIABILITY assumed under the provisions of this contract, PRODUCTS/COMPLETED OPERATIONS LIABILITY and BROAD FORM PROPERTY DAMAGE LIABILITY insurance coverage. Exclusions applicable to explosion, collapse and underground hazards are to be deleted when the work to be performed involves these exposures. The CITY shall be named as an additional insured under this policy. Unless otherwise specified, this coverage shall be written providing liability limits at least in the amount of \$1,000,000, Combined Single Limits, applicable to claims due to bodily injury and/or property damage arising from an occurrence.

3. The CONSULTANT shall take out and maintain during the life of this agreement AUTOMOBILE LIABILITY INSURANCE. Such coverage shall be written on a

comprehensive form covering owned, non-owned and leased vehicles.

4. The CONSULTANT shall take out and maintain an architect's/CONSULTANT's PROFESSIONAL LIABILITY INSURANCE policy, naming as insureds any professional individual or firm(s) acting in the capacity of a CONSULTANT. This insurance shall provide liability insurance limits of not less than \$1,000,000.00 for claims for damages arising out of the performance of professional services rendered by the CONSULTANT, and shall be maintained for a period of two years following the date of acceptance of the project by the CITY. The CONSULTANT shall be responsible for securing and providing insurance certificates for any subcontractors employed on this project and shall furnish a copy of the insurance to the CITY. Subcontractors or CONSULTANTS shall be insured to the limits referenced above. Failure of the CONSULTANT to provide these certificates may result in termination of the agreement or claims made against the CONSULTANT for any insurance claims made in conjunction with this project.

The CONSULTANT shall furnish the schedule of insurance carried under this contract in the form of a Certificate of Insurance attested by the insurance carrier or appointed agent, indicating the type, amount, class of operations covered, effective date and expiration date of all policies. This Certificate shall be in six (6) counterparts and when the contract is signed by the CONSULTANT, a copy thereof shall be inserted in each copy of the contract documents and upon insertion shall become a part of such documents. The insurance carrier or its agent shall also certify on these documents that it will notify the CITY by registered mail at least twenty (20) days prior to any cancellation or non-renewal of these coverages.

11. Findings Confidential

All of the information, reports, cost estimates, plans, specifications and documents prepared or assembled by the CONSULTANT under this agreement are the property of the CITY. The CONSULTANT agrees that any such documents shall not be made available to any individual or organization other than appropriate CITY officials without prior written approval of the CITY. Nothing contained in this paragraph shall be construed to prevent the CONSULTANT from making information, reports and documents available to those individuals or firm(s) directly concerned with the project involved with prior written agreement of the CITY.

12. Subcontracts

The CONSULTANT shall utilize no subcontracts for carrying out the services to be performed under this agreement without the written approval of the CITY.

13. Entire Agreement

This agreement constitutes the entire understanding of the parties.

14. Binding Effect

This agreement shall be binding upon the heirs, successors, assigns, agents, officials,

employees, independent contractors, and subcontractors of the parties.

15. Continuing Obligation

The parties will make and execute all further instruments and documents required to carry out the purposes and intent of the agreement.

16. Reference

Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of the agreement.

17. Interpretation

All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard.

18. Preaudit

This contract has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act as evidenced by City Purchase Order No. _____ which is incorporated as if fully set out.

19. Minority Business Enterprise (Mbe)

The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:

1. Promote affirm(s)atively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional provisions) the procurement of goods, services in connection with construction projects for minority owned business enterprises.
2. Insure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.
3. Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
4. Provide technical assistance as needed.
5. Promulgate and enforce contractual requirements that the general contractor or all construction projects shall exercise all necessary and reasonable steps to insure that

minority business enterprises participate in the work required in such construction contracts.

The CONSULTANT shall insure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. The CONSULTANT shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONSULTANT to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

A Woman Business Enterprise is a business with at least fifty (51%) percent owned and controlled by women who exercise actual day-to-day management.

The CONSULTANT shall exercise all necessary and reasonable steps to insure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The CONSULTANT agrees by executing this contract that he will exercise all necessary and reasonable steps to insure that this special provision contained herein on Minority Business Enterprise is complied with.

20. Immunity Not Waived

This agreement is governmental in nature for the benefit of the public and is not intended to be for private profit or gain. Any fees charged hereunder are intended to reflect as closely as possible the CITY'S actual cost and neither party intends to waive its sovereign immunity by reason of this agreement.

21. Saving Clause

If any section, subsection, paragraph, sentence, clause, phrase or portion of this agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

22. Other Laws and Regulations

CONSULTANT will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances regarding toxic, hazardous and solid wastes and any other pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONSULTANT will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder.

23. Amendments

This agreement shall not be modified or otherwise amended except in writing signed by the parties.

24. Non-Discrimination

CONSULTANT will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONSULTANT will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at CITY'S option, in a termination or suspension of this agreement in whole or in part.

IN WITNESS WHEREOF, the CITY has caused this agreement to be duly executed in its name and behalf and the CONSULTANT has caused this agreement to be duly executed in its name and behalf and its corporate seal to be hereunto affixed, and attested to.

CITY OF WILMINGTON, NORTH CAROLINA

BY: _____
Sterling B. Cheatham, City Manager

WITNESS:

Daryle Parker, Purchasing Manager

APPROVED AS TO FORM:

Thomas C. Pollard, City Attorney

CITY ACCOUNTANT'S CERTIFICATION

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act this the ____ day of _____, 2009.

Debra Mack, Finance Director

Project Number: _____ (if applicable)

Account Number: _____

Amount of Contract: _____

PO # _____

By: _____
President/Vice President

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, certify that
_____, personally came before me this day and
acknowledged that he (she) is President of _____, a
corporation, and that by authority duly given and as the act of the corporation, he(she)executed the
foregoing instrument on behalf of the corporation.

Witness my hand and official seal, this the ____ day of _____, 20__.

My Commission Expires:

Notary Public
