



REQUEST FOR BID
RFP 2005-022

ADDENDUM NO. 2

To: Prospective Bidders

From: Llew F. Perry 
Cooperative Educational Services

Date: April 29, 2005

- Cooperative Educational Services (CES) has received questions regarding RFP 2005-022 by e-mail on April 20, 2005. The following are the responses to the questions asked.

Question:

1. Insurance – The definition of insurance did not specifically mention professional liability, ie. Errors and omissions coverage, while #14 of the Categorical Terms and Conditions does require the same. Will this coverage be required and if so, what limits are acceptable? As a footnote, Harris Consultants has \$1,000,000.00 of professional liability coverage in place.
2. Performance and Payment Bonds – Item #15 of the Categorical Terms and Conditions states that the contractor may be required to provide and maintain a performance and payment bond. The language for this condition strikes me as a carryover from the previous RFB. It seems that appropriate professional liability coverage is the best mechanism to protect the interests of the member when it comes to construction management services.
3. Liquidated Damages and Change Orders – The language contained within Items 18 and 23 of the Categorical Terms and Conditions once again strike me as a carryover from the previous RFB. How can a construction manager be held liable for liquidated damages when the means and methods for performance of the construction are not within his control? In reference to Change Orders, we agree that any such change between the member and the general contractor should be documented to CES and a PO issued. This would not necessarily affect the contractual relationship between the member and construction manager however. Please clarify how we should interpret.
4. Notification – Section III, Item C. states that notification to all respondents will be made by Friday, July 7, 2005. Previous discussion between ourselves had suggested that the turnaround would be quicker than 60 days. Can Harris Consultants expect notification sooner than the date shown in the RFP? If so, what would the expected date be?
5. Addendum to RFP 2005-012 – We assume that we do not have to acknowledge the addendums issued to the previous RFP. Is this correct?

Submitted by: Mike Harris
Harris Consulting LLC.
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Background:

Page 18, Section I Instructions to Offerros, E. Listing of General Terms and Conditions,

Indemnification: Vendor shall indemnify, defend, and save harmless CES for any and all claims, demands, suits, proceedings, loss, cost and damages of every kind and description, including any attorney's fees and/or litigation expenses, which may be brought or made against or incurred by CES on account of loss or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any act, omission, profession error, fault, mistake, or negligence of vendor, its employees, agents, representative, or subcontractor, their employees, agents, or representative in connection with or incident to the performance of this agreement, or arising out of Worker's Compensation claims, Unemployment Compensation claims, or Unemployment Disability Compensation claims of employees of vendor, and/or its subcontractors or claims under similar such laws or obligations. Vendor's obligation under this section will not extend to any liability caused by the sole negligence of CES or its employees.

Insurance: On contract, the vendor will, at its own expense, purchase and maintain insurance that will protect it from claims that may arise out of, or as a result from, activities under this contract, where those activities are performed by it, or by any subcontractor or by anyone directly or indirectly employed by any of the contractors, or by anyone for whose acts may be liable during the entire performance period of this contract. The successful offeror must furnish Certificate of Insurance to the CES procurement office prior to official award. If policy changes occur during the life of the contract, it is the vendor's responsibility to provide updated proof of coverage to the CES procurement office. Offerors will submit proof of coverage under the Workman's Compensation Insurance as required by the Labor Laws and New Mexico Statutes. Offerors will submit a certificate of general liability insurance for the personal injury, occupational disease, sickness or death and property damage. Insurance will include "occurrence" claim provisions. Minimum acceptable coverage is \$1,000,000 combined single limit for bodily injury and property damage or \$500,000 bodily injury and \$250,000 property damage (each occurrence). The offeror will name CES and the member as co-insured up to the limits of the Tort Claims Act. Additional punitive damages liability to \$500,000 will be provided naming CES as co-insured.

Page 36, Section II Scope of Work, D. Specifications, Categorical Terms and Conditions, Item 14.

Contractor will have and maintain for the term of contract the appropriate professional, errors and omissions liabilities insurance and must provide proof of insurance certificate.

Page 36, Section II Scope of Work, D. Specifications, Categorical Terms and Conditions, Item 15.

If required the contractor must provide and maintain a performance and payment bond in an amount to equal one hundred percent (100%) for each member's contract.

Page 36, Section II Scope of Work, D. Specifications, Categorical Terms and Conditions, Item 18.

Work to be performed and/or activity to be conducted by the member must be clearly described and agreed to by the contractor and the member prior to project start up. Any agreements on liquidated damages and early project completion incentives will be between the member and the contractor and must be agreed upon in writing prior to start up. If the member declines a liquidated damages agreement, the contractor will obtain a written and signed statement to this effect. A copy will be provided to CES.

Page 37, Section II Scope of Work, D. Specifications, Categorical Terms and Conditions, Item 23.

Change orders are to be avoided if possible since they often indicate poor planning. A mutually agreed upon system for establishing changes must be identified, including changes in scope and changes in compensation for the contractor. Because of unforeseen events and conditions that may arise during a project covered by this RFP, the ability to make change orders needs to be permitted and mutually agreed

upon and paperwork to document these changes must be allowed. A change order that increases the contract amount in excess of \$5,000 or five percent of the contract amount, whichever is greater, must be approved in writing by the member's governing board. A copy of the approval must accompany a revised purchase order to CES. No change order that increases the cost of the project will be permitted without a purchase order to CES from the member ordering the change. CES will then issue a revised purchase order to the contractor. Changes mutually agreed upon by the member and the contractor that do not involve compensation or do not significantly modify the scope of work, can be made without communication to CES.

Page 41, Section III Conditions Leading to and Including Contract Award , C. Proposal Review.

Commencing on Monday, May 9, 2005 proposals will be reviewed by the Executive Director and a committee designated by the CES Board of Directors. Notification to all respondents will be made by Friday, July 7, 2005.

CES Response:

Question #1 The insurance coverages addressed within this item relates to exposures that may occur during the day to day business operations and interactions such as automobiles accidents, personal actions, unemployment claims, worker's compensation and other areas covered by the New Mexico Tort Claims Act or other laws. In regards to professional liability insurance (item #14) as it relates to the "indemnification of CES and its members" the one million dollar would be acceptable. Please note the following change.

Page 36, Section II Scope of Work, D. Specifications, Categorical Terms and Conditions, Item 14.

Change From:

Contractor will have and maintain for the term of contract the appropriate professional, errors and omissions liabilities insurance and must provide proof of insurance certificate.

Change To:

Contractor will have and maintain for the term of contract a minimum of one million (\$1,000,000) of professional, errors and omissions liabilities insurance and must provide proof of insurance certificate.

Question #2 CES and its members desire to have the option of requiring the contractor to obtain and maintain a performance bond to ensure that those activities and deadlines that the contractor does have control of are in accordance with and completed as stated within the written agreement of the parties. You are correct in that this statement is a carry over of RFB 2005-012 and payment bonds are not necessary within this scope of work. Please note the following change.

Change From:

Page 36, Section II Scope of Work, D. Specifications, Categorical Terms and Conditions, Item 15.

If required the contractor must provide and maintain a performance and payment bond in an amount to equal one hundred percent (100%) for each member's contract.

Change To:

If required the contractor must provide and maintain a performance bond in an amount to equal one hundred percent (100%) for each member's contract.

Question #3 CES and its members desire to have liquidated damage agreements as another alternative to ensure that those activities and deadlines that the construction manager does have control of are in

accordance with and completed as stated within the written agreement of the parties. Due to the nature of this solicitation and the variety and range of construction management services that may occur under this solicitation, as noted within the solicitation the CES member and the construction manager will develop and establish individual project's scope of work that meets the member's needs. However, unforeseen events and/or situation may arise that requires a change in the scope of work and therefore, a change order (project addendum) is required and item #23 addresses these situations.

Question #4 As noted within the solicitation, this is a qualification based proposal and CES has established a process for evaluating and making an award. Determining the amount of time required to complete this process depends on the number and level of responses received as well as the time required to conduct, perform interviews and negotiate with the finalist. It is CES intent to complete and make an award as quickly as the process allows and the July 7th date as been established as the worst case scenario.

Question #5 Yes, you are correct in that respondents to RFP 2005-022 do not have to acknowledge addendums for RFB 2005-012.

If you have any questions regarding this Addendum No. 2, please contact me by phone (505) 344-5470 or by email llew@nmedu.org.

By dating, signing, and returning this page, the offeror acknowledges receipt of RFP 2005-022, Addendum No. 2. **(Please place behind Tab 1 of your response)**

Date

Company Name (please print)

Print Name

Signature