



**ADDENDUM NO. 4
REQUEST FOR PRICE PROPOSALS 2024-012
KITSAP COUNTY**

TO: All Respondents

FROM: Glen McNeill, Purchasing Supervisor

CLOSING DATE: 05/01/2024 (Unchanged)

REF NO.: 2024-012 RFQ CKTP Solids and Liquid Hauled Waste Upgrades
General Contractor/Construction Manager Services

DATE: 04/24/2024

The following Addendum 4 modifies the Draft Contract included as Attachment A to the 2024-012 CKTP Solids and Liquids Hauled Waste Upgrades Request for Price Proposals issued March 28, 2024 (“Draft Contract”) and details certain additional information regarding the Draft Contract. The Price Proposal Submission Date is not changed by this Addendum.

1. The CMAR Agreement is modified as follows:

- a. The following text is added to Section 4.1, Subcontractors:

If a subcontract is awarded under RCW 39.10.385 on the basis of cost plus a fee, the CMAR shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the CMAR in the Contract Documents and these Subcontractors shall be audited prior to final payment in accordance with RCW 39.10.385 and the Contract Documents.

- b. Section 5.3.1 is stricken and replaced with the following:

The CMAR shall achieve Substantial Completion of the Work within the timeframes established in the Phase II Construction Price Amendment(s) for each phase of the Project (the “Contract Time”). In addition, the CMAR shall achieve Final Completion of each phase within sixty (60) days of Substantial Completion of the Work of each phase.

- a. Section 9.1, Waiver of Consequential Damages, is stricken and replaced with the following:

Except for (a) damages mutually agreed upon by the Parties as liquidated damages in Paragraph 5.4 hereof, (b) damages asserted by third parties that are subject to the CMAR’s indemnity obligations, and (c) subject to the following provisions set forth in this Paragraph 9.1, notwithstanding anything else herein to the contrary, the Owner and the CMAR agree to waive all claims against each other for any consequential or other special damages that may arise out of or

relate to this Agreement. The Owner agrees to waive consequential or other special damages including, but not limited to, loss of income, profit, or revenue related to the Project, as well as the loss of business, opportunity, loss of financing, principal office overhead and expenses, loss of reputation or goodwill. The CMAR agrees to waive consequential or other special damages including, but not limited to, principal and home office overhead and expenses including without limitation the compensation of personnel stationed there, for losses of financing, business and reputation, for losses on other projects, for interest or financing costs, and for loss of profit. The Owner specifically does not waive consequential or special damages for loss of use of the Project and its associated facilities or the cost of substitute facilities or services, including rental expenses and transportation expenses. This provision shall not be construed to impair the CMAR's obligation to defend, indemnify, and hold harmless the Owner against claims for consequential or special damages asserted by third parties. The provisions of this paragraph shall also apply to the termination of this Agreement and shall survive such termination.

- b. The reference in Section 12.2.2 to three (3) years is modified to six (6) years.
- c. The word "licensed" in Section 12.4.2 is replaced with "authorized".

2. The CMAR General Conditions are modified as follows:

- a. Section 2.3.3, Cost Reporting, is stricken and replaced with the following:

The CMAR and any cost-reimbursable Subcontractors shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Agreement and to substantiate all costs incurred. This requirement also applies to any Subcontractor of any tier that submits a Claim or submits costs for a proposed Change Order. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, including electronically copy, the CMAR's and its Subcontractors' original records and accounts, including complete documentation supporting accounting entries, books, ledgers, computerized records, daily reports, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, invoices of Subcontractors and suppliers of any tier, memoranda, and other data relating to this Agreement and the Project. The CMAR and its Subcontractors shall preserve these records for a period of three years after Final Payment, or for such longer period as may be required by law.

The CMAR shall, in accordance with the Contract Documents, prepare a detailed final accounting of the Cost of the Work at completion of the Project, including a final accounting of any subcontracts under RCW 39.10.385. The Owner shall conduct an audit in accordance with RCW 39.10.908 to confirm the proper accrual of costs under the Agreement. Such audit may include, in the Owner's discretion, inspection and review

of all information detailed above. If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the CMAR's final accounting, is less than claimed by the CMAR, the difference shall be credited to the Owner.

- b. Section 9.1.4 is stricken. Reference the CMAR Agreement, Section 9.1, for the consequential damages waiver.
- c. Section 9.5 is stricken and replaced with the following:

A loss insured under the Builder's Risk Insurance Policy required pursuant to the Phase II Construction Price Amendment to the Agreement shall be adjusted by the CMAR and made payable to the CMAR for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and the Phase II Construction Price Amendment. The CMAR shall pay the Owner, Subcontractors, and other parties in interest their just shares of insurance proceeds received by the CMAR, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

- d. Section 9.6 is stricken.

3. Other Information

- a. The Owner will not agree to include a limitation of liability in the Draft Contract. Shortlisted Respondents should take into account that there will be no limitation of liability when preparing Price Proposals.
- b. The Percent Fee submitted by Shortlisted Respondents in the Price Proposal shall apply to all reimbursable Costs of the Work, *including negotiated self-performed Work*. There shall not be a different fee percentage applied to negotiated self-performed Work. Reference the CMAR Agreement, Section 1.1.24, for a more detailed description of application of the Fee.
- c. As outlined in the Request for Price Proposals, the Project is anticipated to be funded through a combination of low interest State Revolving Funds (SRF), Water Infrastructure Finance and Innovation Act (WIFIA) funding, Defense Community Infrastructure Program (DCIP) funding (which will have Build America, Buy America requirements), municipal bonds, and/or cash. Per Title 2 CFR § 200 Appendix II, other federal funding requirements, including but not limited to Equal Employment Opportunity, Davis Bacon, Contract Work Hours and Safety Standards Act, American Iron and Steel, and Clean Air Act and Federal Water Pollution Control Act, will apply. Shortlisted Respondents should take into account these funding sources and requirements (including the current Davis Bacon wage rates as applicable), and associated requirements, when preparing Price Proposals. Owner funding support, and costs associated with administration of funding requirements, shall be included in the bid Specified General Conditions amount.

END OF ADDENDUM NO. 4