



Solicitation Amendment No. 1

To: Prospective Proposer/Offeror:		Date:	
Prospective Proposers		October 9, 2020	
Project Title:		Project No.:	
Retail Electric Provider Services		RFP 21-04	
Description of Solicitation Amendment: Request for Proposals (Project No. RFP 21-04) is hereby amended as set forth below:			
<p>Questions and Answers, are released and are attached.</p> <p>Please visit our website at https://www.hccs.edu/about-hcc/procurement/</p> <p>Except as provided herein, all terms and conditions of the solicitation remain unchanged and in full force and effect.</p>			
Acknowledgement of Amendment No. by:		Date:	
Company Name (Bidder/Offerer):			
Signed by:			
Name (Type or Print):		Title:	

REQUEST FOR PROPOSAL
PROJECT NO. RFP 21-04
RETAIL ELECTRIC PROVIDER SERVICES
QUESTIONS AND ANSWERS No. 001

Date: October 9, 2020

To: Prospective Respondents

From: Procurement Operations Department, Houston Community College

Subject: Questions and Answers Responses

Q1. Clarify that there is no required level of SBDP subcontracting.

Response: Please refer to page 8 of RFP document.

Q2. Regarding #19 "Texas Public Information Act" on page 19 of the RFP, clarify that, consistent with Section 24.0, Open Records, of the HCC General Terms and Conditions posted on its website, Proposer may indicate if any information submitted to HCC is confidential, and will be advised of a request for public information in order to have the opportunity to raise any objections to the Texas Attorney General.

Response: Any proposer that desires to keep their proposal as confidential needs to state it on their proposal response. The proposer must clearly designate the part of the proposal that contains a trade secret and/or privileged or confidential proprietary information as "confidential" in order to claim protection, if any, from disclosure.

Proposals containing a request to maintain an entire proposal as confidential may be rejected as nonresponsive.

Q3. Please provide more clarification about what information is needed to fulfill the requirements in #5 "Disclosure of Ownership Interests" on page 29 of the RFP and the accompanying "Exhibit No. 1."

Response: Provide direct, full and complete answers to each section using N/A (Not Applicable) where appropriate

Q4. When does HCC anticipate awarding a contract?

Response: Per RFP schedule it is anticipated that the award and Board approval will be in December 2020.

Q5. The HCC General Terms and Conditions state the following in Sections 6.0 and 7.0: "HCC may, at its option and discretion, terminate the resulting Purchase Order for convenience and, at its option and discretion, may reduce the statement of work or other requirements of the Purchase Order at any time, without any default on the

part of HCC or the Seller, by giving thirty (30) calendar days written notice thereof to the Seller. Such right of termination is in addition to, and not in lieu of, rights of HCC set forth in Paragraph 7, below. In the event of such termination, HCC's sole obligation to Seller is to pay for only those products and/or services authorized by any Purchase Order or Purchase Order issued by HCC and received and accepted by HCC prior to the date of Termination." And "HCC may terminate the Purchase Order immediately for default, by giving written notice thereof to the Seller, if the Seller fails to execute the work properly; performs in a manner that is unsatisfactory to HCC, breaches any terms, conditions, covenants, or provisions of the Purchase Order or otherwise fails to meet its obligations under the Purchase Order. In the event of termination for default, HCC shall have against the Seller, all remedies provided by law and equity. HCC, in its discretion, may include a provision granting the Seller a reasonable opportunity to cure Seller's default depending on the nature of the breach or default."

Will HCC accept the following provisions as a substitution?

"Early Termination. If an Event of Default occurs, the Non-Defaulting Party may take one or more of the following actions for as long as the Event of Default continues:

- (a) establish a date ("**Early Termination Date**") on which this Agreement and all Energy Transactions terminate; and
- (b) disconnect, or cause to be disconnected, each Customer Location from electric service, or, if disconnection is not allowed by Law, transfer each Customer Location to the POLR or another REP as specified by Law.

The Parties agree that if Customer causes an Event of Default by switching away one or more Customer Locations to another REP prior to the expiration of the Initial Term, the Early Termination Date will be the earliest date a Customer Location is switched. Regardless of which Party is the Defaulting Party, Customer agrees that if an Early Termination Date occurs, it will remain liable to timely pay Reliant all charges for Energy sold until each Customer Location is transferred or is disconnected from electric service. If an Early Termination Date occurs, the Non-Defaulting Party determines its resulting damages as of the Early Termination Date pursuant to **Section 3.3** below.

Damages. The actual damages of the Non-Defaulting Party are that Party's Costs, plus its Losses and minus its Gains, if any, determined as set forth in the definitions in **Exhibit A** and in this Section. If an Early Termination Date occurs before the Delivery Term begins, the damages will be calculated as though Reliant had delivered Energy to Customer throughout the Delivery Term until the end of the Initial Term. The Non-Defaulting Party will aggregate its Gains or Losses and Costs into a single net amount (the "**Termination Payment**"). If the calculation of the Termination Payment yields a positive amount, the Defaulting Party will owe that amount to the Non-Defaulting Party. If the calculation of the Termination Payment

yields a negative amount, the Termination Payment will be zero and neither Party will owe a Termination Payment. Any Termination Payment owed to the Non-Defaulting Party will be setoff against any other amounts owing between the Parties under this Agreement and any other agreement, and a single, net amount payable ("**Net Settlement Amount**") will be due by one Party (the "**Payor**") to the other Party (the "**Payee**"). Promptly following the Early Termination Date, the Non-Defaulting Party will calculate the Net Settlement Amount and provide notice to the Defaulting Party. The Payor must pay the Net Settlement Amount to the Payee within five Business Days of the Defaulting Party's receipt of the Non-Defaulting Party's notice. The Net Settlement Amount will accrue interest at the Interest Rate from, and including, the Early Termination Date to, but excluding, the date the Payee receives payment."

Response: Any exceptions to Houston Community College Terms and Conditions will need to be submitted with your RFP response and then evaluated by the General Counsel Office.

- Q6. The HCC General Terms and Conditions state the following: "The Seller may not assign or transfer any of its rights, duties or obligations under this Purchase Order, in whole or in part, without the prior written consent of HCC. This Purchase Order shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns."

Will HCC accept the following provision instead, as this is more conducive to the sale of retail electricity?

Assignment. (A) If Customer desires to sell or lease all or a portion of Customer Locations to another entity, Customer may assign this Agreement to the assignee as to all Customer Locations or cause the assignee to enter into an agreement with Reliant on the same terms and conditions set forth in this Agreement as to that portion of Customer Locations sold or leased, on the following conditions:

- (1) Customer is not a Defaulting Party;
 - (2) the assignee satisfies Reliant's collateral and credit requirements; and
 - (3) the assignee assumes Customer's obligations in writing and in a form legally adequate for that purpose;
- (B) Reliant may assign this Agreement without Customer's consent, under the following circumstances or conditions:
- (1) in connection with any financing or other financial arrangements involving the assignment, sale, pledge, or encumbering of this Agreement or its accounts, revenues, or proceeds;
 - (2) the assignment is to an affiliate of Reliant;
 - (3) the assignment is to any person or entity succeeding to all or a substantial portion of Reliant's assets; or
 - (4) the assignment is to a certified REP; and

(5) in the cases of (B)(2) and (B)(3) above, the assignee is at least as creditworthy as Reliant as of the Effective Date and assumes Reliant's obligations in writing and in a form legally adequate for that purpose.

If a Party makes an assignment in compliance with (A), (B) (2), (B) (3), or (B) (4) above, the assigning Party will have no further obligations regarding future performance with respect to the assigned Customer Locations, except to make full payment for obligations incurred before the date the assignee agrees to assume the obligations and to comply with continuing confidentiality obligations. Except as provided in this Section, neither Party may assign this Agreement or any of its rights or obligations without the other Party's prior written consent, which consent may not be unreasonably withheld.

Response: Any exceptions to Houston Community College Terms and Conditions will need to be submitted with your RFP response and then evaluated by the General Counsel Office.

Q7. Reliant is able to place the address specified in Section 20.0 of the HCC General Terms and Conditions on invoices. However, Reliant needs HCC provide the purchase order number it desires to have placed on invoices. Please confirm that HCC understands that it will need to provide this purchase order number upon contract award.

Response: The College does not issue a purchase order ahead of contract execution.

Q8. Section 41.0 of the HCC General Terms and Conditions states the following: "HCC may at any time and for any reason direct Seller to suspend its performance under the Purchase Order, in whole or in part, by giving written notice to Seller specifying the portion of the work to be suspended. If HCC suspends Seller's performance hereunder, the scheduled dates for Seller's performance set forth in the Purchase Order shall be adjusted to reflect the impact of any delays resulting from the suspension. Adjustments to the scheduled dates for performance shall constitute the Seller's sole and exclusive remedy for any suspension directed by HCC."

Would it be possible for HCC to omit this provision, as it is not applicable to the sale of retail electricity?

Response: Any exceptions to Houston Community College Terms and Conditions will need to be submitted with your RFP response and then evaluated by the General Counsel Office.

Q9. Reliant is not able to agree to the statement in Attachment No. 5, #13 "Equal Opportunity Employer" on page 30 of the RFP: "Furthermore, all persons performing work under this contract must be an employee of the company." Reliant cannot be sure that contractors aren't performing work under the contract. Can HCC please confirm that this is acceptable?

Response: Supplier must comply with the Equal Opportunity Employer clause.

Q10. Please supply a list of HCC's meters with historical usage information, as stated on page 3 of the RFP.

Response: Reference Q&A Attachment No. 1_Utilities Meters.

Q11. This question is regarding the extension language in "Section 1.1 Contract Term" on page 3 of the RFP:

"The contract term for contract(s) awarded resulting from this solicitation, if any, depend on the pricing structure determined to be in the College's best interest, not to exceed 120 months (10) years. Further, HCC reserves the right to extend, or blend and extend, any awarded contract term up to the full 120 months (10) years for which HCC obtained competitive pricing, provided the pricing during an extended or blended or extended option does not exceed the pricing originally submitted by the proposer for those corresponding contract years."

For example, if Reliant signs a 10-year contract starting in October 2020, we could technically blend and extend the deal the following month with a November 2020 start. Does that mean Reliant needs to be able to then sign a blend and extend contract with a 10-year extension that would run through Oct 2040?

Response: The language means that if HCC signs any contract for a duration less than 10 years, the college can then sign a blend & extend to extend the contract out to a total of 10 years, assuming the new price is less than or equal to the original contract price. For example, if the College signs a 5 year contract at \$0.03/kWh, the College could then sign a Blend & Extend that would extend the expiration date another 5 years (for 10 years total) assuming the new blended rate is \$0.03/kWh or less.

When issued, "Questions & Answers" shall automatically become a part of the solicitation documents and shall supersede any previous specification(s) and/or provision(s) in conflict with the Questions & Answers. All revisions, responses, and answers incorporated into the Questions & Answers are collaboratively from both the Procurement Operations and the applicable HCC Department(s). It is the responsibility of the bidder/respondent to ensure that it has obtained all such letter(s). By submitting a bid on this project, bidders/respondents shall be deemed to have received all Questions & Answers and to have incorporated them into this solicitation and resulting proposal response.

Furthermore, it is the responsibility of each Contractor to obtain any previous Questions & Answers associated with this solicitation.

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