



State of Utah

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ADDENDUM NO. 1

Date: October 21, 2008

To: Energy Services Companies

From: John Harrington, Energy Manager, DFCM

Reference: Weber State University
Energy Performance Contracting Services
DFCM Project No. 08304810

Subject: **Addendum No. 1**

Pages: Total Addendum 5 pages

Note: *This Addendum shall be included as part of the Contract Documents. Items in this Addendum apply to all drawings and specification sections whether referenced or not involving the portion of the work added, deleted, modified, or otherwise addressed in the Addendum. Acknowledge receipt of this Addendum in the space provided on the Bid Form. Failure to do so may subject the Bidder to Disqualification.*

While we contend that SB220 should only be potentially applicable to a contract issued after the effective date of said bill, this is to clarify that for purposes of this contract, regardless of the execution or effective dates of this contract, the status of Utah Law and remedies available to the State of Utah and DFCM, as it relates to any matter referred to or affected by said SB220, shall be the Utah law in effect at the time of the issuance of this Addendum.

1.1 **SCHEDULE CHANGES:** None - The interview dates will remain on November 18 & 19 as listed in the RFP schedule.

1.2 **GENERAL ITEMS:** Questions & Responses

1.2.1 What address do we use for RFP responses sent via FedEx?

***Response: Use the following address:
Division of Facilities Construction and Management
State Office Building, Suite #4110
Salt Lake City, Utah 84114***

- 1.2.2 Markup and Pricing Table: In our review of the entire RFQ and supporting documents, it appears that there are three separate versions of the Markup and Pricing Table; one in the RFQ, one in the contract, and one in the implementation contract. Which version should be used for this response?

Response: The Tables for Mark-up and Fees found in the Request For Proposals Attachment C, Sections III.B.1.a and III.B.2.b on pages 15 and 16 of 17 are designed for responding firms to fill in information and proposed amounts and shall be used for an acceptable response to the Request For Proposals.

- 1.2.3 Fees: In a related issue, the Implementation Contract, Attachment B states, “Fees shall not be added to items on which markups are applied as listed in the markup table below. Markups on fees are not allowable.” Similar statements are also made in the RFP. We are unclear as to what fees are to be based upon. Are fees not to be based on a percentage of anticipated construction cost? Please explain.

Response: Fees are not allowed to be a flat percentage of construction cost applied to the purchased equipment, materials, subcontract services, etc. listed in the Mark-up Table. Fee amounts shall be developed from the ESCo’s anticipated effort and cost associated with each allowable fee listed. These fee amounts shall then be expressed as a percentage of construction cost for the purposes of establishing the maximum total amount that can be billed for each fee under the Open Book Pricing requirement of the contract. Billing under the contract payment schedule shall reflect the effort and costs actually expended for fee items during each billing period. Markup percentages from the Mark-up Table cannot be applied on top of the fee amounts.

- 1.2.4 Utah Table of Design Fees: We are not familiar with the Utah Table of Design Fees referenced in the fee table. Please direct us to this information.

Response: DFCM, A/E Design Fees are found on the DFCM web site under Standard Documents Item #3

- 1.2.5 Attachment C: Request for Proposals Format for ESCO Response. Pgs 6-7 of 17. #2, Project Summary: The initial paragraph under B. Company Project History asks for “significant” EPCs over the past five years but #2 asks, “List all Energy Performance Contracting projects developed and implemented by the firm or its personnel within the past five years. Do we need to include all projects in the past five years, significant EPC projects or just the projects completed by the specific team?”

Response: It is intended that there be three separate elements to ESCO responses as described in the requirements for this section.

1.2.6 #3, Project References: Is there a specific number of references necessary?

Response: No.

1.2.7 State General Conditions (GC's): We have experience in other states where the GC's for design/bid/build come into conflict with a performance contract. For example: The GC's attached to this RFQ include three entities: the DFCM, the A/E, and the Contractor. In a performance contract, the A/E and the Contractor are one and the same. There are many instances where the A/E has review or approval authority over the Contractor. Will we have an opportunity to work with the State and E/S3 to resolve conflicting language prior to the implementation contract?

Response: The potential for these types of issues will be investigated by the internal WSU/DFCM team as part of the final review of the contract documents shown in Attachments E and F of the RFP. If any potential conflicts are uncovered they will be resolved solely by the internal WSU/DFCM team with the advice of the State Attorney General's Office. Any required language changes will be incorporated in final contract documents

1.2.8 Contract Schedules: Is use of contract schedules EPC-1 through 5 a firm requirement or will the ESCO have latitude to use its own similar schedules?

Response: Only Contract Schedules EPC-1 through EPC-5 shall be used. Other formats or schedules are not allowed.

1.2.9 Insurance: We noted two different types of insurance provisions, one in the audit contract and one in the energy performance contract. Can all insurance language conform to the language included in the EPC as it accommodates self insurance which is commonly used in large corporations?

Response: The Request for Proposals is not intended to serve as a forum for negotiation of requirements, terms, or conditions of the contract documents. The requirements described in each contract provided as Attachments E and F to the Request for Proposals reflect the needs of the State of Utah and Weber State University for the type of work contemplated under each particular contract.

1.2.10 RFP Section IV.B.1.b. What is meant by the term "base cost"? Is this meant to be the same as "Construction Costs" as described in Attachment E, Section 8.2.3?

Response: The base cost for purposes of the Mark-up Schedule is considered to be the direct cost to the ESCo for purchased equipment, materials, and subcontractor work. This cost shall be substantiated by vendor or subcontractor invoices to the ESCo. These costs are part of the Construction Costs described in Section 8.2.3 of Attachment E to the Request for Proposals under the second and third bullet points only.

1.2.11 RFP Section IV.F.2. What is meant by “ESCO internal costs”?

Response: In general these would be costs for ESCo employees who are engaged in work that is self-performed by the ESCo.

1.2.12 Attachment E (Investment Grade Audit Contract), Section 8.1.6. Should the Owner specify that certain energy conservation measure components be subject to request for bids, will the Owner compensate ESCO for additional costs incurred for this work not anticipated during the energy audit? Further, should the bidder reasonably recommended by Owner result in an increase in construction cost beyond ESCO’s anticipated budget, will Owner compensate ESCO for these additional costs?

Response: In general this is considered to be part of the Investment Grade Audit and Project Development from which the final project price is developed; therefore no need for additional compensation by the Owner beyond the negotiated Guaranteed Maximum Price for the subsequent Energy Performance Contract is anticipated.

1.2.13 Attachment E, Section 8.2.3. How are labor, travel and overnight accommodations, and miscellaneous project costs to be accounted for? Is it anticipated that these will be a part of the overhead markup?

Response: ESCos responding to the Request for Proposals may describe their proposed Open Book Pricing approach to accounting for these project costs for evaluation by the Selection Committee. Note that all costs and methodologies to account for them are subject to negotiation prior to execution of contract documents.

1.2.14 Attachment E, Section 8.6.9.7. Are we correct in assuming that we are not expected to provide proprietary information? For example, electronic files are licensed software from third party vendors.

Response: The materials described in Section 8.6.9.7 of Attachment E to the Request for Proposals are required under the contract for proper evaluation of the ESCo’s Investment Grade Audit Report and Project Proposal.

1.2.15 In the Request for Proposal Document, Item J, paragraph 3, page 9 of 11 the following statement is made: “By submitting the proposal, the ESCO agrees to use the Investment Grade Audit and Project Development Contract (Attachment E) and Energy Performance Contract (Attachment F) as the documents for these contacts.”

Question: At the mandatory Pre-proposal conference, October 7, 2008 John Harrington stated that the contracts contained in Attachments E and F were in development by Utah DFCM and would most likely be changing from their current form. How can the ESCO agree to use of agreements, as contained in the RFP documents, knowing that they will be changing?

Response: Considerable effort has been invested in the development of these contract documents to address the needs and requirements of the State of Utah and Weber State University. Some modifications to language or form may occur following final internal review. In order to move the RFP process forward rather than wait for this final review the state issued the RFP and is currently in the process of final internal reviews. State provided contract documents shall be used for this ESCo project.

- 1.2.16 Within Attachment G, references were made to 30psig steam for Swenson, 20psig for Stromberg. Are there specific processes such as laundry facilities, pool heating, or other processes that require a minimum steam pressure? If so, what processes and for which buildings? Is higher pressure steam required for anything at the Health Science Center?

Response: The Swenson Building has a swimming pool that uses WSU's steam supply system. It also has small laundry facilities, but they are natural gas and electric. Higher pressure steam is not required for anything at the Health Science Center.

- 1.2.17 Relative to Attachment G, does Weber State University currently recover heat from pool AHU's?

Response: No.

- 1.2.18 Relative to Attachment G, what is Weber State University's sewer usage costs?

Response: Sewer usage and costs were not evaluated for Attachment G and are not available at this time.

- 1.2.19 Relative to Attachment G, does the water meter data include irrigation? What does Weber State University do for irrigation (i.e. city water, ditch water, etc)? What current irrigation controls does Weber State University have?

Response: The Central Campus is supplied via an underground canal (pipeline) from Pine View Water (non potable). The Dee Events Center is supplied from Weber Basin Water District, using the same method. The University is about 75% automated currently with plans for the remainder of the Ogden Campus to be completed when funding is available. Make, model, etc. for irrigation controls is not available at this time.