

# MSD of Wayne Township

## Request for Proposal 1712CM

### Addendum #3

**Item Description: Construction Manager Services**

**Response Due Date: January 24, 2018 @ 4:00 PM EST**

This Addendum forms part of the contract documents and modifies the original documents published on the December 27, 2017, & January 3, 2018 advertising date

#### **A. Summary of Changes to the Request for Proposal Notification:**

None

#### **B. Responses to the following questions have been posted**

Question 1: Requested to consider removal of Financial Statement from the RFP to avoid said private information from the public access laws. Suggested utilizing a more common way of financial comparison by requesting Bonding Capacity. This will be provided with our LOI/RFP.

Response: Addendum #1 previously communicated “The RFP does read “All LOIs are considered public records in accordance with Indiana public access laws at the time the final approved consultant selection information is published by MSD of Wayne Township.” The intent of the RFP was not to communicate trade secrets or confidential financial information will be released in response to a records’ request. Under Indiana’s Access to Public Records law, there are some records excepted from disclosure when a person requests an opportunity to inspect and copy the school’s records. *If the information submitted contains trade secrets or confidential financial information, then the school could assert those records may not be disclosed or must be redacted. The company may wish to clearly mark and identify any information it believes are trade secrets or confidential financial information, and ask such information not be released unless required under Indiana’s Access to Public Records law.*”

The 4th bullet point within Section IX. Project Approach of the RFP Instructions was updated in Addendum #1 to read “(4) The consultant’s current financial status. The information provided should be specific enough in detail to allow MSD of Wayne Township to make a proper determination of the consultant’s capability for completing the Projects if awarded.”

In regard to information requested under IX. Project Approach, the intent is to request information related to a company’s current financial status. While an income statement, balance sheet, or tax return may show a company’s current financial status, accreditations, certifications or representations by an accounting firm or financial institution (e.g. a bonding or insurance company) might be able to reveal a company’s current financial status. The information provided should be specific enough in detail so the school can make a proper determination of the company’s capability for completing the project if awarded.

Question 2: There is no reference to the availability of classrooms at any given time which would assist with schedule, staffing, and fee. Are there expectations of working after school hours which still does not avoid the available room question? Now addressed with Addendum #2.

Response: The 11th paragraph within the Item Work Description in the Item Details portion of the RFP Instructions was updated in Addendum #2 to read “Consultant's crew shall regulate its work week to conform to the contractor's hours in accordance with the directions of MSD of Wayne Township's architect, engineer, or PE/S. It is estimated the number of classrooms available for simultaneous construction, reconstruction, alteration, and/or renovation is four (4). It is also estimated there will be seven (7) weeks during the summer months and two (2) weeks during October in which there will be no students present and the buildings will be available for the work. If work on the construction project is suspended or if the consultant services are no longer required to supplement MSD of Wayne Township personnel and all matters concerning contract compliance and administration are current, the services of the Consultant may also be suspended for a reasonable amount of time without cost to the project.”

Question 3: Why does the information in multiple places suggest that we have fiduciary responsibilities and obligations of making payments to others? This is a CM Agent contract not a CM at Risk contract.

Response: It is unclear which document is being referenced. The RFP does not contain the word “fiduciary.” If the question pertains the insurance provisions found in the draft of the Standard Form of Agreement Between Owner and Construction Manager as Adviser, fiduciary liability insurance is required *if* the Construction Manager is responsible for the management, receipt, distribution, review, approval, and/or oversight of monetary funds, accounts, payments, etc.

Question 4: RFP Instructions: paragraph 1 states that in no event may a respondent rely on any oral statement, however in the Notice of Request for Proposals at end of notice it states that submitters will be responsible for items discussed at the mandatory meeting. It is suggested that this be clarified and all verbal discussions that M.S.D. of Wayne will consider important and items that the submitters will be responsible for will be supported by minutes of the mandatory meeting thus written and not just oral.

Response: The RFP communicates MSD of Wayne Township will not be bound by or be responsible for any explanation or interpretation of the proposed documents other than those given in writing by MSD of Wayne Township through the issuance of addenda to this RFP. In no event may a respondent rely on any oral statement by MSD of Wayne Township, or their respective agents, advisors or consultants. Paragraph 13.1 in the draft of the Standard Form of Agreement Between Owner and Construction Manager as Adviser also communicates “This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral.”

Question 5: V Letter of Interest Affirmations, paragraph 2: You have asked the consultant to develop the project within the “planned construction cost allocations”. Where is this allocation/budget stated and identified? Now addressed with Addendum #2.

Response: The 12th paragraph within the Item Work Description in the Item Details portion of the RFP Instructions was updated in Addendum #2 to read “The following maximum amounts are estimated budget costs per Project: Ben Davis High School - \$2,400,000; Lynhurst 7/8 Grade Center - \$2,020,000; Chapel Glen Elementary - \$2,600,000. Consultant shall prepare or assist the architect, contractor, and PE/S in the preparation of progress estimates for periodic partial payments to the contractor as required by published specifications and deliver to MSD of Wayne Township for review and processing. The payments to the contractor are to be based on estimates of the value of work performed and materials complete in place in accordance with the contract.”

Question 6: V Letter of Interest Affirmation, paragraph 3: We have many requested changes to the contract and have included with this response and will also identify with our LOI letter. In general, a CM Agency contract is being changed to a CM at Risk.

Response: Paragraph 13.2 in the draft of the Standard Form of Agreement Between Owner and Construction Manager as Adviser communicates the Agreement is comprised of the documents listed in that paragraph. The RFP in Section V Letter of Interest Affirmations reads in part “MSD of Wayne Township's Standard Contract Terms and Conditions for Construction Managers are available for review on MSD of Wayne’s website at: <http://district.wayne.k12.in.us/request-for-proposals>. These terms contain both mandatory and non-mandatory clauses. Mandatory clauses are listed below and are typically non-negotiable. Other clauses are highly desirable.”

Section V also reads in part “If a standard contract clause is not acceptable as worded, consultants shall note this in the Identification and Qualifications portion of the LOI, immediately following team identification, and shall include specific suggested alternative wording. If additional contract terms are required they shall also be documented. It is MSD of Wayne Township's strong desire to not deviate from the standard terms and conditions and as such MSD of Wayne Township reserves the right to reject any and all suggested changes.”

Question 7: IX Project Approach (4) already submitted and stated that we will not be providing a financial statement (5) explain what it is meant by “cost of each item of work to be performed including a breakdown of all labor and materials required to complete the work”. Once again suggested language possibly for a general contractor.

Response: a) The 4th bullet point within Section IX. Project Approach of the RFP Instructions was updated in Addendum #1 to read “(4) The consultant’s current financial status. The information provided should be specific enough in detail to allow MSD of Wayne Township to make a proper determination of the consultant’s capability for completing the Projects if awarded.”

b) The Construction Manager's Basic Services consist of those described in Sections 3.2 and 3.3 in the draft of the Standard Form of Agreement Between Owner and Construction Manager as Adviser and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors.

Section § 4.1 in the draft of the Standard Form of Agreement Between Owner and Construction Manager as Adviser communicates "Additional Services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2"

The Construction Manager will provide the services as set forth in Standard Form of Agreement Between Owner and Construction Manager as Adviser. The response should therefore include the Construction Manager's best estimate of the cost of each item of work or service to be performed by the Construction Manager, including a breakdown of all labor and materials required by the Construction Manager to complete the work or services.

#### Question 8: Contract Language Concerns

2.6.1 Contract uses terms per person/per occurrence; the normal language is per occurrence/aggregate; 2.6.5 Same as above: per claim and in the aggregate; 2.6.5 Fiduciary Liability – don't understand, as an agent contract this language doesn't match responsibilities. Our insurance carrier has never heard of this requirement. This is also not covered under E & O insurance which does cost additional fees.; 3.3 Add back "NOT" after shall in line four; Article 11 Compensation – normal language in the contract remains, however the Item Details-01 suggests the compensation method to be cost – plus fixed fee; 3.3.8 Concerned with this additional language including the word "ensure". Suggest the word be deleted in all sentences.; 3.3.9 Two-year warranty. Unusual and costly. Much of the project scope does not warrant a two-year warranty.; 3.3.12.4 Add back "NOT" after shall in line two. Also delete the word "and" in line six. This is not the responsibility of the CM since the contract with the contractor is with the Owner.; 3.3.13 Add back language in line two "solely and exclusively" also add back "NOT" in line five. Also add back "direct" and "or" and delete the word "and" on line four. Delete "even if" on line seven.; 3.3.15 Language conflicts with article 3.3.13; 5.4 Conflict in language Article 2.3 which states use B132.; 6.2 Is there a definition for the added word "slightly" suggest deleting the word.; Article 7 Delete entire paragraph. This paragraph suggests the Owner take over ownership of everything. As an example, we utilize our programs for all projects and don't plan on giving same to the Owner.; 8.1.2 One-sided, leave as is; 8.1.3 Delete the added word "NOT" in last line; 9.5 Eliminate all added language; 9.6 Eliminate stricken and added language; 9.7 Eliminate stricken and added language; 9.7.1 Delete added language on line three; 10.6 Owner is solely responsible for hazardous materials

Response: Paragraph 13.1 in the *draft* of the Standard Form of Agreement Between Owner and Construction Manager as Adviser communicates that Agreement may be amended by written instrument signed by both the Owner and Construction Manager. This document is currently in draft form.

Paragraph V. Letter of Interest Affirmations within the RFP communicates “MSD of Wayne Township's Standard Contract Terms and Conditions for Construction Managers are available for review on MSD of Wayne’s website at: <http://district.wayne.k12.in.us/request-for-proposals>. These terms contain both mandatory and non-mandatory clauses. Mandatory clauses are listed below and are typically non-negotiable. Other clauses are highly desirable. It is MSD of Wayne Township’s expectation the final contract terms will be substantially similar or identical to those posted in the referenced document.

If a standard contract clause is not acceptable as worded, consultants shall note this in the Identification and Qualifications portion of the LOI, immediately following team identification, and shall include specific suggested alternative wording. If additional contract terms are required they shall also be documented. It is MSD of Wayne Township's strong desire to not deviate from the standard terms and conditions and as such MSD of Wayne Township reserves the right to reject any and all suggested changes.”

Respondents should also remember to be mindful of XVI. Miscellaneous within the RFP which reads in part “A responsive proposal would include solutions that are innovative, creative and importantly, feasible. MSD of Wayne Township may request best and final offers from those respondents determined by MSD of Wayne Township to be reasonably viable for contract award. However, MSD of Wayne Township reserves the right to award a contract on the basis of initial proposals received. Therefore, each proposal should contain the respondent’s best terms from a price and service standpoint.”

Question 9: We absolutely disagree with the statement “consultant personnel shall take directions from and report to MSD of Wayne Township’s architect and engineer, or PE’s on all matters concerning contract compliance and administration, including work hours.” This is found in Item Work Description paragraph 5. Please keep in mind our contract is not with the architect it is with the Township.

Response: The Construction Manager will provide the services as set forth in in the Standard Form of Agreement Between Owner and Construction Manager as Adviser. Paragraph 3.1 of that Agreement communicates “The Construction Manager’s Basic Services consist of those described in Sections 3.2 and 3.3 and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors.” There are numerous references within that Agreement as to how the Construction Manager will be interacting, attending meetings, communicating, and coordinating with the architect. For example, § 2.3 in the draft of the Standard Form of Agreement Between Owner and Construction Manager as Adviser notes “The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition.”

Question 10: Indiana Code 5-16-13. This code is for the Requirements for Contractors not requirements for Construction Manager.

Response: It is unclear which document is being referenced. The text of Ind. Code 5-16-13 can be reviewed at <http://iga.in.gov/legislative/laws/2017/ic/titles/005/#5-16-13> The Construction Manager, contractors, and sub-contractors are required to comply with all applicable laws, rules, regulations, and ordinances. Construction Manager, contractors, and subcontractors must also be able to and meet all requirements found in applicable public works and contract statutes.

Question 11: While the township clearly states they can change direction and not responsible for same I find fault in scheduling a mandatory meeting and then stating there will be a subsequent meeting for the same purpose.

Response: It is unclear which document is being referenced. If the question relates to a meeting identified in the RFP, XVI. Miscellaneous mentions “This RFP constitutes an invitation to respondents to submit proposals to MSD of Wayne Township. Without limitation, MSD of Wayne Township reserves and holds, at its sole discretion, the following rights and options: ...To postpone or change the date for receipt of proposals or any other deadlines and dates specified in this RFP; ...To issue subsequent RFPs, to conduct investigations with respect to the information provided by each respondent, and to hold public meetings for consideration of the merits of any or all respondents; ...To take any action affecting the RFP process, or the projects subject to this RFP, that is in the best interest of MSD of Wayne Township.”

If the question relates to a meeting identified in the draft of a proposed agreement with the Construction Manager, § 3.3.6 in the draft of the Standard Form of Agreement Between Owner and Construction Manager as Adviser communicates “The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Multiple Prime Contractors.”

Question 12: In general, as compared to the history of submitting responses to RFP’s this exercise is the most confusing without clear direction and with inappropriate suggested contract language.

Response: It is unclear which RFP or document is being referenced. The Purpose of the RFP paragraph notes “The purpose of this RFP is to select a vendor who can satisfy MSD of Wayne Township’s needs for construction manager services related to construction, reconstruction, alteration, and renovation of school buildings (“Projects”). General plan and specifications describing the kind of work on the Projects is located at <http://district.wayne.k12.in.us/request-for-proposals>” The Notice of Request for Proposals communicated prospective submitters could attend a pre-proposal meeting for discussion of the Project, reviewing the scope of work, project specifications and drawings, RFP documents, the RFP qualifying requirements and other important matters.

The I. RFP Questions paragraph also communicated interested parties were allowed opportunities to submit questions, inquiries, and requests for information. Interested parties were further allowed several opportunities to meet in person and engage in a dialog regarding the RFP and the services to be performed by the Construction Manager. Interested parties were allowed and had an opportunity to notify MSD of Wayne Township of any ambiguity, inconsistency or

errors they discovered upon examination of the RFP. All questions, inquiries and/or request for information related to this RFP or related to items could be sent to a representative at any time between December 27, 2017 and January 19, 2018 (i.e. 23 days). Addendums and answers to questions were then timely posted and can be reviewed at <http://district.wayne.k12.in.us/request-for-proposals/>