

University of Louisville
DEPARTMENT OF PROCUREMENT SERVICES
LOUISVILLE, KENTUCKY

Invitation No: RP-026-22
Title: Utility System Concessionaire
Addendum No. Five (5)

Date: May 9, 2022


Reference is made to that certain Invitation No.: RP-026-22 (“RFP—Phase II”). This Addendum No. Five (5) shall clarify and/or modify RFP-Phase II as follows:

- Amend RFP—Phase II by adding new Section 13 thereto in the form of the attached document.
- Amend RFP—Phase II by adding the following definition to Appendix 1 thereto immediately below the definition of “Concessionaire”: **“Contract Administrator means the person named as ‘Contract Administrator’ on the cover form of this RFP-Phase II.”**
- Amend RFP—Phase II by adding the following definition to Appendix 1 thereto immediately below the definition of “SVP”: **“Stakeholders’ has the meaning ascribed thereto in Section 13.2(b)(ii).”**

Bidder must acknowledge receipt of this Addendum No. Five (5). Acknowledgement must be received in the Department of Procurement Services, Service Complex Building, University of Louisville no later than **the “Proposal Due Date” (as defined in the RFP-Phase II).** Bidder shall refer to the following information in their acknowledgement:

Invitation No: RP-026-22
Title: Utility System Concessionaire
Due Date: Proposal Due Date

BY: _____


Authorized Purchasing Officer

Receipt Acknowledged: _____

FIRM

BY: _____

13 Communications Protocols

13.1 The University's Point of Contact

Unless expressly provided otherwise by this document, the Contract Administrator identified on the cover form of this RFP-Phase II shall be the University's sole point of contact and source of information for Proposers during this procurement.

If the University replaces the Contract Administrator at any time during this procurement, the University shall notify the Proposers of the name, address and other contact information of the new Contract Administrator.

13.2 Additional Rules of Conduct/Improper Communications and Contacts

In addition to the requirements set forth in Section 7 of this RFP—Phase II:

(a) *Cardbox*

All notices, submissions, approvals, and other communications described in the RFP from a Proposer to the University, or from the University to a Proposer, shall be in writing and delivered through the Cardbox, except as expressly permitted or required to be given orally (in person or by telephone), in hard copy or otherwise, in each case, as designated by the University (in this document or through a subsequent communication).

(b) From and after the date of issuance of Addendum five (5) and ending on the earliest of (x) the execution and delivery of the Concession Agreement, (y) rejection of all Proposals by the University or (z) cancellation of this procurement:

(i) *Ex parte communications*

No Proposer or representative of a Proposer, through their employees, agents, consultants, advisors or other representatives, shall have any *ex parte* communications regarding the RFP or the Project with the University or any University staff, advisors, contractors or consultants involved with the RFP or the Project, except for communications expressly permitted by the RFP or approved in advance by the Contract Administrator, in such person's absolute discretion. The foregoing restriction does not prohibit or restrict communications with regard to matters unrelated to the RFP or the Project, or participation in public meetings of the University or any public or Proposer workshop or one-on-one related to the RFP.

(ii) *Stakeholders*

Communication by or on behalf of any Proposer with any entity listed below (each, a "**Stakeholder**"), including any of the Stakeholder's members, staff-persons, employees, agents, consultants, advisors or other representatives, regarding the RFP or the Project is prohibited, except for communication

expressly permitted by the RFP or approved in advance by the Contract Administrator, in such person's absolute discretion:

- a. The Board of Trustees of the University of Louisville;
- b. The Office of the President of the University of Louisville;
- c. The Operations unit of the University of Louisville;
- d. The Department of Procurement Services of the University of Louisville;
- e. Any other University of Louisville Departments;
- f. The Kentucky General Assembly;
- g. The Capital Projects and Bond Oversight Committee of the Kentucky General Assembly;
- h. Dinsmore & Shohl LLP (legal advisor to the University);
- i. Ernst & Young Infrastructure Advisors, LLC (financial advisor to the University);
- j. Henningson, Durham & Richardson, Inc. (technical advisor to the University);
- k. Hunton Andrews Kurth LLP (legal advisor to the University);

It is the intent of the University that the University will provide any necessary coordination during the procurement process with Stakeholders so that, among other things, the process described in this document may be implemented in a fair, competitive and transparent manner and with uniform information. Information requests concerning Stakeholders should be sent to the Contract Administrator, who, in the University's discretion, may arrange for general or separate meetings between one or more of such Stakeholders and the Proposers, or facilitate delivery of responses to such questions by a Stakeholder. Such meetings will be open to all Proposers and will not include any confidential matters.

- (iii) Any communications in breach of Section 13.2(b) may result in disqualification from the RFP, in the absolute discretion of the University.
- (iv) The University will not be responsible for any oral exchange or any other information or exchange that occurs outside of the official process specified in this RFP—Phase II.
- (v) For the purposes of this Section 13, "contact" and "communication" includes face-to-face, telephone, email, text messaging, social media, other electronic means or formal written communication, either directly by a Proposer or

indirectly by an employee, member, agent, consultant, advisor, representative, promoter or advocate of a Proposer.

Appendix 1

Defined Terms

Unless otherwise specified or the context otherwise requires, for the purposes of this RFP—Phase II the following terms have the following meanings:

“Approved Capital Improvements” has the meaning ascribed thereto in the Concession Agreement.

“Assumptions and Instructions Book” means assumptions and instructions book provided by the Proposer as part of its proposal in accordance with Section 2.3(i)(ii).

“Benchmark Interest Rate” has the meaning ascribed thereto in the Concession Agreement.

“Bid Financial Model” means the financial model provided by the Proposer as part of its proposal in accordance with Section 2.3(i)(i).

“Binding Proposal Submittal” or **“BPS”** has the meaning ascribed thereto in Section 1.

“BPS Revisions” has the meaning ascribed thereto in Section 5.

“Business Day” has the meaning ascribed thereto in the Concession Agreement.

“Capital Improvements” has the meaning ascribed thereto in the Concession Agreement.

“Capital Projects and Bond Oversight Committee” means the permanent subcommittee of the Kentucky General Assembly Legislative Research Commission charged with overseeing the expenditure of funds budgeted for capital projects.

“Closing Consideration” has the meaning ascribed thereto in the Concession Agreement.

“Closing Deposit” has the meaning ascribed thereto in the Concession Agreement.

“Closing” has the meaning ascribed thereto in the Concession Agreement.

“Concession” or **“Concession Agreement”** has the meaning ascribed thereto in Section 1.

“Concessionaire” has the meaning ascribed thereto in Section 1.

“Contract Administrator” means the person named as ‘Contract Administrator’ on the cover form of this RFP-Phase II.

“Equity Participant” has the meaning ascribed thereto in the Concession Agreement.

“Final Bid Version of the Concession Agreement” means the version of the Concession Agreement designated the “Final Bid Version” and provided to the Proposers by the University pursuant to this RFP—Phase II.

“Financial Officer’s Certificate” means the certificate described on Schedule 3.

“Guarantor” means each parent company or affiliate (if any) that was designated by the Proposer in its SOQ to provide an Equity Participant or the Operator with the financial support and resources needed to successfully complete the Project.

“KAR” means Kentucky Administrative Regulation.

“Key Performance Indicators” or **“KPIs”** has the meaning ascribed thereto in Section 2.4(c)(i).

“KRS” means Kentucky Revised Statute.

“Leasehold Mortgage Debt” has the meaning ascribed thereto in the Concession Agreement.

“Letter of Credit” has the meaning ascribed thereto in the Concession Agreement.

“O&M” means operations and maintenance.

“Operator” has the meaning ascribed thereto in the Concession Agreement.

“Performance Standards” has the meaning ascribed thereto in the Concession Agreement.

“Preferred Proposer” has the meaning ascribed thereto in Section 1.

“Project” has the meaning ascribed thereto in Section 1.

“Proposal Due Date” means August 12, 2022.

“Proposal Expiry Date” means February 8, 2023.

“Proposal Security” has the meaning ascribed thereto in Section 2.3(h)(vi).

“Proposer Member” means a Responding Team Member (as defined in RFP—Phase I) of a Responding Team that has been qualified as a Proposer pursuant to RFP—Phase I.

“Proposer” has the meaning ascribed thereto in Section 1.

“Responding Team” has the meaning ascribed to it in RFP—Phase I.

“Responding Team Member” has the meaning ascribed to it in RFP—Phase I.

“Requests for Clarification” or **“RFCs”** has the meaning ascribed thereto in Section 2.4.

“RFP” means, collectively, RFP—Phase 1 and this RFP—Phase 2.

“RFP—Phase 1” means Phase I of this Request for Proposal dated as of February 1, 2022.

“RFP—Phase 2” means Phase II of this Request for Proposal dated as of the date hereof.

“SPV” has the meaning ascribed thereto in Section 1.

“Stakeholder” has the meaning ascribed thereto in Section 13.2(b)(ii).

“Statement of Qualifications” means, with respect to any Proposer, such Proposer's submittal in response to RFP—Phase I.

“Supplies” has the meaning ascribed thereto in the Concession Agreement.

“Term” has the meaning ascribed thereto in the Concession Agreement.

“University” has the meaning ascribed thereto in Section 1.

“University Utility System Employees” has the meaning ascribed thereto in the Concession Agreement.

“University’s Utilities Team” means representatives of the University Physical Plant Department.

“Utility System” has the meaning ascribed thereto in the Concession Agreement.