

REQUEST FOR PROPOSAL OVERVIEW & PROPOSAL PROCEDURES

A. INTRODUCTION/BACKGROUND

Introduction

The City of Gainesville (hereafter "City") is requesting proposals from qualified individuals, firms, partnerships or corporations (hereafter "Consultants"), having specific financial, auditing and legal expertise to conduct an investigative review of the City-owned Gainesville Regional Utilities (hereafter "GRU") with the following two primary objectives:

- 1) Opportunities for financial and operational benefit to GRU related, but not limited to, the Gainesville Renewable Energy Center (GREC) power purchase agreement (PPA), and
- 2) Recommendations of institutional controls that can be implemented that would help avoid the management discrepancies of the past and help strengthen the working relationship between GRU management and the City Commission.

Respondents shall construct their proposal to include two (2) separate sealed envelopes. One envelope should only include the technical criteria for the investigative review contemplated. The second envelope should contain the corresponding fee. A local preference is available to Gainesville firms.

The City is the county seat and the largest city in Alachua County. There are approximately 54 square miles of land included within the corporate boundaries of the City. The City operates under a Commission-Manager form of government with seven elected officials. The population is currently estimated at 126,047.

GRU operates as a set of separate enterprise funds of the City and provides the Gainesville urban area with electric, water, wastewater, natural gas and telecommunication services. GRU serves over 95,000 customers with one or more of these services. The Fiscal Year 2014 GRU budget is approximately \$406 million.

Background

In May 2008, the Gainesville City Commission approved the ranking of proposals for a biomass-fueled generation facility and authorized the GRU General Manager to negotiate and execute a long term contract with Nacogdoches Power, LLC (now known as GREC) for a 100MW biomass plant which would provide renewable energy as part of GRU's energy supply resources. The resulting contract or Power Purchase Agreement (hereafter PPA) was signed by the GRU General Manager on April 29, 2009 and approved by the City Commission on May 7, 2009. At that meeting, the GRU General Manager stated the contract "would probably be the biggest commitment for GRU and City since Deerhaven 2" (a City-owned coal-fueled power plant). The fiscal note in the agenda item indicated:

The projected thirty year net present value for the facility compared to the projected market electricity costs ranges from \$212 million to \$492 million based on various sensitivities, such as projected completion date, implementation of a renewable portfolio standard and/or carbon constraint legislation. The greater value of the plant accumulates after the initial portion (five years plus) of the contract period. With approximately one-half contractual third party participation included with the other sensitivities, the monthly fuel adjustment impact on a typical customer (1000 kwh/month) could range from \$4 to \$8 in 2014, but by 2019 this approaches a break even point. After 2019, the projected fuel adjustment benefits to customers are significant as discussed above considering net present value.

Under the terms of the PPA, GREC owns and operates the plant and GRU purchases 100% of the energy generated at an estimated total cost of \$3.1 billion dollars over the 30 year term. At the time, the City Commission approved a redacted contract as GREC claimed proprietary confidentiality. Approximately two years later, after a lawsuit by Gainesville Citizens Care, Inc., an un-redacted contract was made public. Changes made between the initial RFP process and eventual PPA included increasing the length of the contract from 20 to 30 years, increasing the power supplied from 50MW to 100MW and eliminating a Commission discussed "back out clause." Additionally, GREC was expected to be eligible for a Federal 1603 Grant and contract prices reflected GREC receiving this grant. The PPA also included a "Right of First Offer" should GREC desire to sell the power plant. After the PPA was executed, the following events occurred:

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- June 17, 2010 - GREC documents in an e-mail to the GRU Assistant General Manager-Strategic Planning GREC's belief that certain emissions requirements of the Florida Department of Environmental Protection (FDEP) constitute a "Change in Law" under PPA Section 3.2, PPA Section 3.2, which states:

The Parties recognize and agree that the Contract Prices are based on the current regulatory requirements for generating and selling the Products. A "Change in Law" shall be a change in any applicable law, regulation, permit, ordinance, market rule, or order of any governmental or regulating authority, market regulator, court or arbitration tribunal enacted after the Effective Date where such change in law specifically increases or decreases the actual cost of generating and selling the Products, but it shall not include any such change in law that is not specifically directed toward generating facilities or which just has general economic effects that indirectly increase or decrease Seller's costs, nor shall it include any change in law with respect to Production Tax Credits, Renewable Energy Grant or Investment Tax Credits. If there is a Change in Law, then the Contract Prices shall be equitably adjusted to cover the additional costs, or pass on the additional savings, associated with generating and selling the Products. No claim for extra compensation based on a change in law that results in an increase in Seller's costs shall be presented by Seller or considered by Purchaser unless Seller shall first have provided written notice of such claim to Purchaser. No claim for a reduction in payments shall be presented by Purchaser or considered by Seller unless Purchaser shall first have provided written notice of such claim to Seller.

The GREC representative also indicated in the e-mail:

At this time, it was my understanding that you discussed this with your team and were in general agreement that this change from an SNCR to an SCR would constitute a "change in law" and that we would need to re-evaluate the Contract Prices under the PPA at some point in the future.

- September 2010 - A Memorandum of Understanding ("MOU") was negotiated between the Suwannee River Water Management District (SRWMD), GREC, GRU, and the City of Alachua related to SRWMD making the use of available reclaimed water a condition of the Water Consumptive Use Permit for the biomass facility to reduce groundwater use. The MOU states that GREC "and/or" GRU shall pay any and all costs that are not covered by any grants made available to the City of Alachua. The City Commission approved the MOU and authorized the GRU General Manager to negotiate and execute the final agreement. The agenda item did not include estimated costs or delineate plans for allocating costs between GREC and GRU. Construction of the pipeline began in January 2012 and subsequent documents indicate GRU paid the full cost of construction, approximately \$1.1 million, to the City of Alachua through an escrow account. However, the "Equitable Adjustment for Change of Law" signed in March 2011 provides the only documentation of GRU agreeing to pay the full cost of the pipeline.
- November 5, 2010 - The GRU Assistant General Manager-Energy Supply, in an e-mail to the Assistant General Manager-Strategic Planning copied to the General Manager and Utilities Attorney, indicates strong disagreement that the environmental rules constitute a "change in law." He also suggests GRU "should review some case law to see if we owe them anything" and that "I don't think we should agree to give them a dime until we absolutely, positively know we're legally obligated to do so."
- November 15, 2010 - GREC provides a detailed memorandum to the GRU General Manager, Assistant General Manager-Strategic Planning and Assistant General Manager-Energy Supply regarding "Changes in Regulatory Environment." In the memorandum, GREC explains "the effect that these changes have had on the GREC facility, both technically and economically, and why we believe the Contract Prices need to be equitably adjusted to cover the additional costs resulting from these changes as provided for in Section 3.2 of the PPA."
- December 20, 2010, GRU's outside legal counsel provides a detailed memorandum to GRU regarding the GREC PPA concluding that:

The FDEP's decision to require the use of a SCR system does not fall within the change-in-law provision because there was, quite simply, no change in law. Instead, the FDEP's decision – although not necessarily expected – was based on the long-standing Best Available Control Technology ("BACT") regulatory standard that was in effect at the time the parties entered into the PPA.

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The memorandum also indicates that the Assistant General Manager-Strategic Planning “did not have apparent authority to bind GRU because GRU did nothing to lead GREC LLC to believe that he was authorized to provide a binding interpretation of the PPA.”

- March 15, 2011 – After continued discussions with GRU, GREC provides the GRU General Manager, Assistant General Manager-Strategic Planning and Utilities Attorney with a “written notice of a claim for extra compensation due to a change in the regulatory requirements for generating and selling the Products, as defined in the PPA.”
- March 16, 2011 – The GRU Chief Financial Officer signs the “Equitable Adjustment for Change of Law” in the place of the GRU General Manager, which is also approved as to form and legality by the Utilities Attorney. This adjustment states:
 - (i) the Non-Fuel Energy Charge Contract Price of “\$50.00/MWh x Construction Cost Adjuster” set forth at Appendix III is hereby adjusted to hereafter be “\$54.40/MWh x Construction Cost Adjuster,”
 - (ii) the Non-Fuel Energy Charge Contract Price of “\$58.10/MWh x Construction Cost Adjuster” set forth at Appendix III is hereby adjusted to hereafter be “\$62.50/MWh x Construction Cost Adjuster;”
 - and (iii) Purchaser shall, to the extent not funded by grants received, fund the costs of connecting the Facility to the reclaimed water system of the City of Alachua.

The “Equitable Adjustment for Change of Law” is expected to result in increased costs to GRU under the PPA of approximately \$3.5 million annually or \$105 million over the 30 year contract term. The construction of the reclaimed water pipeline added a one-time cost of approximately \$1.1 million.

The Equitable Adjustment was never placed on the City Commission agenda to be formally approved. One of the recitals in the “Equitable Adjustment for Change of Law” states:

Whereas, by action of the City Commission of the City of Gainesville on May 7, 2009, the undersigned General Manager of Purchaser has been duly authorized to implement the Agreement on behalf of Purchaser and to execute and deliver any instruments in connection therewith.

- April 6, 2011 – The un-redacted GREC PPA was released to the public. An unsigned and undated copy of a memorandum from the GRU Marketing & Communications Manager to the Mayor and Commissioners indicates:

This packet contains documents you may find helpful in answering questions when the GREC Purchased Power Agreement (PPA) is released publicly this Wednesday, April 6. The PPA will be posted that day on www.gru.com in a version that highlights the redacted portions and includes the Equitable Adjustment Agreement along with a letter from GREC to GRU removing the confidentiality requirement.

The memo indicates that the packet contains the un-redacted PPA and the “Equitable Adjustment Agreement to accommodate new state and federal regulations.” A GRU news “eLINE” was also released on April 6 titled “American Renewables Removes Confidentiality Requirement for Biomass Contract.” A paragraph within the eLINE states: “With American Renewables removing its confidentiality requirement, GRU was also able to release today an adjustment to the power purchase agreement that addresses negotiated costs associated with recent changes in federal environmental regulations and state permitting requirements.” The paragraph concludes with a statement from the GRU General Manager indicating “changes will have a minimal impact on customers.”

- October 7, 2013 – At the conclusion of a Special City Commission meeting regarding whether or not to execute a “Right of First Offer” to GREC, a City Commissioner asked if the City Attorney had a copy of a memorandum prepared by GRU’s outside legal counsel regarding the reclaimed water line to the City of Alachua. The City Attorney suggested the Commissioner ask outside legal counsel, present at the meeting, about the memorandum. GRU’s outside legal counsel indicated that they had not prepared a memorandum regarding the reclaimed water line to the City of Alachua, but that they had prepared a memorandum regarding a change in law under the PPA. This memo was subsequently provided to the Commissioner by the City Attorney via the Utilities Attorney.

Upon review of the memorandum, the City Attorney began to question how and why the GRU General Manager entered into the “Equitable Adjustment for Change of Law,” despite a written opinion from GRU’s

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outside legal counsel. The City Attorney conducted a limited investigation into the circumstances of the “Equitable Adjustment for Change of Law” with several former and current GRU managers, as well as the former City Attorney and Utilities Attorney. In a December 19, 2013 memorandum to the City Commission, the City Attorney indicated:

It appears from the inquiry conducted by this Office that the execution of the “Equitable Adjustment for Change of Law of the Power Purchase Agreement” was an ultra vires act; however, it is the opinion of this Office that legal action would not likely be successful because the City Commission was provided notice of the “Equitable Adjustment for Change of Law of the Power Purchase Agreement” within one month after its execution, because of certain exception language contained in the City’s Purchasing Policy and Procedures and because the document was approved as to form and legality.

In the course of the inquiry, the City Attorney’s Office also became aware of another document that amended the PPA without City Commission approval. This document, dated June 30, 2011, was titled a “Consent and Agreement” and appears to have been provided in the context of GREC obtaining financing for the biomass facility. This document assigned a collateral interest in the PPA for the benefit of GREC’s lender and made 10 amendments to the PPA.

- October 31, 2013 - The City Attorney’s limited investigation included the use of outside counsel. In a “memo to file” dated October 31, 2013, the outside counsel concludes that the City does appear to have viable arguments that the actions of the GRU General Manager and the Utilities Attorney, in approving the “Equitable Adjustment for Change of Law” constitute ultra vires actions that were not “authorized.” The “memo to file” also indicates that the Utilities Attorney who approved the “Equitable Adjustment” as to form and legality “candidly admitted to the City Attorney recently that in the period prior to his retirement he had signed a number of documents that he ‘probably should not have signed.’” The “memo to file” also indicated that since the GRU General Manager is not an attorney he “has no competency to make a legal determination as to what is, or is not a “change in law. He must rely on experienced counsel for that assessment.”
- Additionally, a series of resignations and retirements from top GRU management and legal staff occurred from 2010 to 2013. The City Attorney, Utilities Attorney and Assistant General Manager-Strategic Planning retired after long careers with the City. The GRU General Manager negotiated a separation package with the City and the GRU Chief Financial Officer left GRU to pursue other opportunities.

SCOPE OF SERVICES

A. INTENT

It is the intent of the City of Gainesville to obtain proposals from Consultants having specific financial, auditing and legal expertise to conduct an investigative review of the City-owned Gainesville Regional Utilities (hereafter “GRU”) with the following two primary objectives:

- 1) Opportunities for financial and operational benefit to GRU related, but not limited to, the Gainesville Renewable Energy Center (GREC) power purchase agreement (PPA), and
- 2) Recommendations of institutional controls that can be implemented that would help avoid the management discrepancies of the past and help strengthen the working relationship between GRU management and the City Commission.

Investigative services provided should include a review of the decision making processes and relevant transactions occurring after the GREC PPA was signed by the GRU General Manager on April 29, 2009 until November 15, 2013 when the GRU General Manager left the employ of GRU. Services would include reviewing the flow of financial information provided to the City Commission, especially as it relates to the “Equitable Adjustment Agreement for Change of Law.” The Consultant should provide any relevant recommendations it believes would provide possible financial or operational benefits to GRU and the City of Gainesville.

During the course of the initial review and investigation, the scope of work may be further expanded or altered by request of the City Commission.

B. MINIMUM REQUIREMENTS

The review shall include but not be limited to:

1. A review of relevant agreements, documents, financial records, memos, e-mails and any other materials associated with the GREC PPA and any subsequent amendments.
2. A review of activities and decisions involving the GREC PPA and subsequent amendments, including the “Equitable Adjustment Agreement for Change of Law,” with a focus on policy, legal and administrative standards and compliance.
3. A determination as to whether any financial recoveries may be available for GRU.
4. Preparation of data in a manner consistent with legal practices necessary for pursuance of legal action, if appropriate.
5. A review of GRU’s policies, procedures and practices with respect to expenditure contracting and other compliance issues that may include recommendations to strengthen the working relationship between GRU management and the City Commission and to improve financial oversight going forward.

C. REPORTS TO BE ISSUED

Following the completion of the investigative review, the Consultant shall issue a final written report focused on the primary objectives established by the City Commission regarding:

- 1) Opportunities for financial and operational benefit to GRU related, but not limited to, the Gainesville Renewable Energy Center (GREC) power purchase agreement (PPA), and
- 2) Recommendations of institutional controls that can be implemented that would help avoid the management discrepancies of the past and help strengthen the working relationship between GRU management and the City Commission.

It is also expected that an oral presentation of the conclusions and recommendations in the final report will be presented to the City Commission.

PROPOSAL FORMAT

A. FORMAT AND CONTENTS OF PROPOSAL

1. Table of Contents

The table of contents should outline in sequential order the major areas of the proposal, and all pages of the proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the table of contents.

2. Technical Proposals

The technical proposal is a narrative which addresses the scope of work, the proposed approach to the work, the schedule of the work, and any other information called for by the RFP which the proposer deems relevant.

3. Price Proposal

As this is a multi-step evaluation process, firms shall submit their price proposal(s) in a separate sealed envelope with the RFP name and number and the proposing Consultant's name clearly written on the outside of the envelope. Price proposals should provide a detailed rate structure, including the billable hourly rate by classification for all personnel to be assigned. The hourly rate shall include overhead and profit as well as the direct salary costs; estimates of the total project cost, if possible, and a not to exceed price. If this proposal is a joint venture, the proposal shall include similar information on the other firms or individuals involved.

Understanding the Scope of Work is broad and may change, the City recognizes that budgets will be difficult to provide. However, as a local entity, cost is a major factor. Therefore, to assist with budgeting, we provide two suggestions. First, we encourage proposers to be innovative in budgeting. Reduced hourly rates, monthly flat rates or other alternative billing solutions are welcome. Second, the Consultant should provide two items – an overall budget or not to exceed amount believed necessary to perform the base services and a supplemental expense sheet detailing hourly rates to provide any additional services that may be necessary.

4. Qualifications

The response to the minimum qualification requirements contained below is a list of the minimum qualification requirements prescribed for the RFP. Proposers must provide documentation which demonstrates their ability to satisfy all of the minimum qualification requirements. Proposers who do not meet the minimum qualification requirements or who fail to provide supporting documentation will not be considered for award. If a prescribed format, or required documentation for the response to minimum qualification requirements is stated below, proposers must use said format and supply said documentation.

A copy of your Business tax receipt and Zoning Compliance Permit must be submitted with the proposal if a local preference is requested.

B. QUALIFICATIONS/STATEMENT OF QUALIFICATIONS

The proposal should demonstrate the experience and capacity of the Consultant in identifying, preparing and implementing an investigative review of the nature and scope required by this Request for Proposals, identify the key personnel to be assigned to render the services proposed and indicate the main contact person for the project.

The Consultant must demonstrate a level of expertise and experience necessary to successfully complete the project within the proposed timeline, the capability to competently produce the required elements of the project and the ability to work in a responsive and cooperative manner with City and GRU management and staff.

The Consultant must also include in the response:

1. Name, address, phone number, fax number, email address and brief description of firm.

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2. Resumes of key personnel to be assigned to this project, highlighting skills, abilities and knowledge related to the proposed services.
3. A narrative as to Consultant's skills, abilities, and knowledge relating to the delivery of the proposed services.
4. Three or more references. At least two of the references must deal directly with the Consultant's delivery of investigative review services preferably related to municipal utilities.
5. Description of services to be provided by the firm which meets the services requested by the Scope of Work section of this RFP. If firm cannot provide the specific service requested, firm will indicate this in the response and have the option of proposing an alternative service.
6. Cost of providing services listed in the Scope of Work.

TECHNICAL SPECIFICATIONS

A. SCOPE

The purpose of the technical proposal is to demonstrate the qualifications, competence and capacity of the firm(s) seeking to undertake an investigative review of the GRU PPA and subsequent amendments in conformity with the requirements of this request for proposals. The technical proposal should also specify an approach that will meet the requirements of this request for proposals. If this proposal is a joint venture, the proposal should include similar information on the other firm(s) involved.

The technical proposal should address all the points outlined in the request for proposals. The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements presented herein. While additional data may be presented the following subjects, items Nos. 2 through 7, must be included as they represent the criteria against which the proposal will be evaluated.

1. Firm Profile

- Name of Business
- Mailing Address, telephone, fax number and email address
- Name of persons to be contacted for information or services if different from name of person in charge
- Business hours
- State whether the firm is local, regional, national or international and indicate the business legal status (corporation, partnership, etc.)
- Date business was organized and/or incorporated, and where location of the office from which the work is to be done and the number of professional staff employees at that office
- Indicate whether the business is a parent or subsidiary in a group of firms/agencies

2. Independence

The firm shall provide an affirmative statement that it is independent of the City, GRU and GREC. The firm should also list and describe the firm's professional relationships involving the City, GRU or GREC for the past five (5) years, along with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed engagement. In addition, the firm shall give the City written notice on any professional relationships entered into during the period of this engagement.

3. License or Certifications to Practice

An affirmative statement must be included indicating if the firm and all assigned key professional staff are licensed or certified (i.e., Attorneys, CPA's, CFE's, etc.)

4. Firm Qualifications and Experience with Other Government and Utility Entities

Describe the range of services performed by the firm. Include a description of investigative reviews that have been completed for government and/or utility entities. Include a discussion of nationwide resources available to your firm in the aforementioned areas in performing the services and providing technical advice.

For the firm's professional staff assigned responsibility for this engagement, list and rank the five most relevant engagements performed in the last three years that are similar to the engagement described in this Request for Proposals. These engagements should be ranked on the basis of total staff hours.

Indicate the scope of work, date, engagement staff, total hours and the name and telephone number of the principal client contact. The City reserves the right to contact the above mentioned references and any other clients. Also provide the names and qualifications of the daily on-site supervisors.

5. Partner, Supervisory and Staff Qualifications and Experience

The proposal shall identify the principal supervisory and management staff of the firm, including partners, managers, other supervisors and specialists, who would be assigned to this engagement. The proposal shall also include information on the relevant experience of each person on the team in government and utility investigative reviews, as applicable. Information should include relevant professional certifications and designations relevant to this engagement.

The proposer should provide as much information as possible regarding the number, qualifications, experience and training of the specific staff to be assigned to this engagement. The proposal shall also indicate how the quality of the staff over the term of the agreement will be assured. Engagement partners, managers, other supervisory staff and specialists may be changed during the term of the agreement with the express prior written permission of the City if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons; but in either case, the City retains the right to approve or reject replacements.

6. Conflict of Interest

The proposal must also disclose any potential conflicts of interest due to any other clients' contract or property interest or include a notarized statement certifying that no member of your firm's ownership, management, or staff currently have a vested interest which might be considered a conflict of interest. Any potential conflict of interest listed by a firm will be reviewed with the City Attorney. If the conflict of interest is found to be substantive, the proposal will be rejected.

7. Specific Engagement Approach

The proposal must set forth a work plan, including an explanation of the engagement methodology to be followed to perform the services required as described in this document. In developing the work plan, reference should be made to such sources of information as the City's budget and related materials, organizational charts, manuals, programs, and other financial and management information. Proposers will be required to provide the following information on their engagement approach:

- a. Proposed segmentation of the engagement
- b. Staffing assignments and levels to be designated to each proposed segment of the engagement
- c. Extent of evaluation and use of electronic data processing software in the engagement
- d. Approach to be taken to gain and document an understanding of the City's internal control structure
- e. Approach to be taken in determining laws and regulations that will be subject to investigative review

8. Proof of Professional Liability Insurance

Consultant must meet the minimum insurance requirements at all times as required by law and the City, including professional liability insurance. Consultant will procure and maintain insurance with coverage amounts as required and furnish the City certificate(s) of insurance in a form acceptable to the City. Consultant must notify City of any changes in coverage within seven (7) business days. Failure to maintain minimum coverage may result in breach of contract.