



**Materials Management Department
901-B Texas Street
Denton, Texas 76209**

**REQUEST FOR PROPOSALS
RFP 6890**

**POWER PURCHASE AGREEMENT (UTILITY SCALE SOLAR)
WITH THE CITY OF DENTON**

NIGP CLASS and ITEM

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**Issue Date: November 14th, 2018 (Addendum No. 1)
Response due Date and Time (Central Time):
Tuesday, December 4th, 2018, 11:00 A.M.**

**The City now accepts electronic submissions
in lieu of hard copies**

Table of Contents

1.	INTRODUCTION.....	3
2.	MINIMUM QUALIFICATIONS.....	3
3.	SCHEDULE OF EVENTS.....	4
4.	PRE-SUBMITTAL CONFERENCE AND WALKTHROUGH	4
5.	CONTRACT TERM	4
6.	PRICING.....	4
7.	ADDENDA	5
8.	BUSINESS OVERVIEW	5
9.	EXCEPTIONS	5
10.	DISCLOSURES	5
11.	ACKNOWLEDGEMENT.....	5
12.	SUBMITTAL INSTRUCTIONS	5
a.	Submission Format.....	6
b.	Electronic Submission Requirements.....	7
13.	EVALUATION PROCEDURES	7
14.	CONTACT BETWEEN RESPONDENT AND THE CITY.....	9
15.	SHARED INTEREST BY OTHER MUNICIPALS	9
	ATTACHMENT A -BUSINESS OVERVIEW QUESTIONNAIRE AND FORMS	12
	ATTACHMENT B - SUBMISSION EXCEPTIONS	17
	ATTACHMENT C-NOT APPLICABLE	18
	ATTACHMENT D - GOVERNMENT REFERENCES.....	19
	ATTACHMENT E - ADDITIONAL REFERENCES (MOST RECENT PROJECTS).....	20
	ATTACHMENT F- CONFLICT OF INTEREST QUESTIONNAIRE.....	21
	ATTACHMENT G - ACKNOWLEDGEMENT	22
	ATTACHMENT H - CONFIDENTIALITY AGREEMENT	23

Exhibit 1	Pricing Sheet
Exhibit 2	General Provisions, Standard Terms and Conditions and Appendices
Exhibit 3	Scope of Work or Technical Specifications

1. INTRODUCTION

In accordance with the provisions of Texas Local Government Code, Chapter 252 and 271, the City of Denton (the City) is requesting submissions to contract with an individual or business with considerable experience in providing goods or services of this solicitation. The responses and the cost solutions shall be submitted to the City of Denton in a sealed submission.

The City of Denton is located about 30 miles north of Dallas and Ft. Worth, Texas and is considered part of the Dallas/Ft. Worth metroplex. Denton Municipal Electric is the electric utility department owned by the City of Denton and has been in continuous operation since 1905. It serves over 53,000 customers over a service area of about 100 square miles. It operates 34 miles of high voltage transmission circuits and over 810 miles of distribution lines.

The City is seeking proposals for up to 100 MW of utility scale solar energy as part of its plan to obtain a 100% renewable power supply capacity for its native electric load of about 1,500 GWH per year. Denton is interconnected with the Electric Reliability Council of Texas (ERCOT) and is considering various types of renewable technologies at locations within the ERCOT power grid. The City is seeking to establish a twenty-year contract with the utility scale solar energy supplier. Under a long term Power Purchase Agreement (PPA) structure, Denton will purchase the energy, capacity, and environmental attributes from the renewable generation if offered.

The awarded individual or business shall possess a proven track record of using innovative approaches to providing goods and services that represent the best value to their clients. The awarded individual or business shall have the ability to accomplish all aspects of the requested services. The selected individual or firm should be able to provide innovative methods to deal with municipal challenges, and cost effective solutions.

2. MINIMUM QUALIFICATIONS

The following minimum requirements must be demonstrated in order for the submission to be **considered responsive** to the City of Denton. Any submission received, which is determined to not meet these mandatory requirements shall be immediately disqualified and rejected as non-responsive.

- Three (3) years' experience providing similar products or services.
- Three (3) references from utility scale entities for the products or services requested, of which at least one (1) should be from a **governmental** entity of similar size **to the City of Denton** or larger (Attachment D).
- References from the last three (3) entities for which the requested products or services have been provided (Attachment E).
- The responding individual or business must be registered in the State of Texas, or the County of Denton, to provide the products or services required in the solicitation, and the

individual or business must have all licensure required by the State to provide any services required under this contract.

To learn how to obtain information about filing with the State of Texas, or obtaining copies or certificates from the Secretary of State visit Webpage: <http://www.sos.state.tx.us/corp/copies.shtml>; Phone 512-463-5578; or email corpcert@sos.state.tx.us.

- Respondent must have designed, built, installed and completed the financing on at least one (1) utility scale solar project of at least 50 MWs within the United States. **Note: the inclusion of smaller projects aggregated together for the purposes of meeting the 50 MW qualification hurdle is not acceptable.**
- Submittal documents including a cover sheet, Solicitation Checklist, Attachments A -F and Exhibit 1, per the method described in SUBMITTAL INSTRUCTIONS.

3. SCHEDULE OF EVENTS

The City of Denton reserves the right to change the dates indicated below:

Solicitation Schedule:

Issue Solicitation:	10/30/2018
Deadline for Submission of Questions:	11/21/2018 at 11:00 AM CST
Deadline for Submission of Responses:	12/04/2018 at 11:00 AM CST

The City of Denton is using the solicitation 'Issue Date' as noted in the Schedule of Events above as the official 30 day notification requirement for an interview with a firm.

4. PRE-SUBMITTAL CONFERENCE AND WALKTHROUGH

There will be no pre-submittal conference for this solicitation.

5. CONTRACT TERM

It is the intention of the City of Denton to award a contract for a twenty (20) year period.

6. PRICING

Pricing and discounts submitted are firm for the duration of the contracted term. Price decreases are allowed at any time. The City prefers a fixed price in \$/MWh over the term of the contract with no escalation factor, although Respondents may propose an annual escalation rate for consideration. Prices should be provided for delivery at both the generator bus and the ERCOT North Hub. The City prefers that respondents itemize any component of price that is included for the purpose of maintaining a price throughout the RFP process, negotiation and subsequent signed Power Purchase Agreement (PPA). The respondents should complete Exhibit 1 Pricing Sheet and submit it as part of the proposal.

7. ADDENDA

Respondents are required to acknowledge addenda with their submission. Respondents will be responsible for monitoring the City of Denton Purchasing website at www.dentonpurchasing.com to ensure they have downloaded and signed all addenda required for submission with their submission. Respondents should acknowledge each individual addendum on Attachment G.

8. BUSINESS OVERVIEW

Respondent shall complete the Business Overview Questionnaire, Project Information Form & Schedule Compliance Form as applicable per Attachment A.

9. EXCEPTIONS

The Request for Proposal (RFP) process allows for negotiation of the terms and conditions of this proposal. The respondent shall note any exceptions to the solicitation document, on Attachment B. The exceptions will be reviewed to ensure they meet the minimum specifications and requirements and will be ranked in accordance with the evaluation criteria. The City reserves the right to accept, reject or negotiate the exceptions provided.

Respondents shall itemize all exceptions on Attachment B. Additional pages may be added as necessary. **Do not mark or change the text of the solicitation document, exceptions shall be noted only on Attachment B.**

If no exceptions are taken, the respondent shall sign and return Attachment B in the appropriate signature block.

10. DISCLOSURES

The individual or business must disclose any business relationship that would have an effect, of a conflict of interest. A conflict of interest statement must be signed as part of the contract negotiated with the awardee(s). (Attachment F)

11. ACKNOWLEDGEMENT

Submit a signed acknowledgement by authorized agent of the responding firm (Attachment G).

12. SUBMITTAL INSTRUCTIONS

The City of Denton will accept electronic or hard copy (preferred) submittals until the date and time on the cover sheet of this solicitation. Any submission received after the date and/or hour set for solicitation opening will be returned unopened.

Electronic submittals may be emailed to ebids@cityofdenton.com with the solicitation number and name in the subject line. Please consolidate attachments as much as possible, and do not exceed 35MB total for attachments. Emails received by the City will remain unopened until after the due date and

time. Only authorized Materials Management Staff will have access to the e-bid email inbox. Please do not email the buyer directly to ensure security of the proposal.

Hard copy submissions may be hand delivered (by firm or express courier) to the address listed below:

City of Denton
Materials Management
SOLICITATION NUMBER AND NAME
901B Texas Street
Denton, TX 76209

The City of Denton reserves the right to accept or reject in part or in whole any submission, and to waive technicalities of the submission, in the best interest of obtaining best value for the City.

Each respondent is responsible for taking the necessary steps to ensure their submission is received by the date and time noted herein. The City is not responsible for missing, lost or late mail or any mail or email delays, internal or external, that may result in the submission arriving after the set time.

a. Submission Format

Respondents shall provide detailed information to allow the City to properly evaluate the submission. The City requests the following format be used:

1. Hard copy submissions shall be bound only utilizing a staple or binder clip. Do not submit responses in a binder or file folder.
2. Submission shall be no more than 200 pages in length or 35 MB is file size
3. Utilize tabs to identify exhibits and attachments
4. The submission shall be in the following order:
 - a) Coversheet – including Solicitation number and name, firm name, address, contact name, phone, fax, website and email address.
 - b) Pricing Sheet – Exhibit 1
 - c) Completed Solicitation Checklist
 - d) Attachment A – Business Questionnaire
 - e) Attachment B – Exception Form
 - f) Attachment C – Safety Record (if applicable form will be attached)
 - g) Attachment D – Government References
 - h) Attachment E – Recent References
 - i) Attachment F – Conflict of Interest Questionnaire Form
 - j) Attachment G – Signed Acknowledgement form
 - k) Attachment H – Confidentiality Agreement
 - l) Appendices may be used for additional documentation or clarification at the respondent's option.
5. Hard Copy submittals shall include one (1) original signed by an officer authorized to bind the firm, and three (3) copies of the completed response.
6. Submit response, before the published due date. Hard copy submittals must be in a sealed envelope with the solicitation number and name.

b. Electronic Submission Requirements

All respondents shall submit their pricing sheet (Exhibit 1) in Microsoft Excel format for quick tabulation of results. The electronic pricing sheet must be received regardless of the method chosen by the proposer to submit (hard copy or electronic). If a respondent is only submitting a hard copy, they shall provide a flash drive, containing a complete copy of the response to this solicitation, or submit electronically to ebids@cityofdenton.com. Emails to the City should include the RFP number and name in the subject line, consolidate attachments as much as possible, and not exceed 35MB total. Please do not email the buyer directly to ensure security of the proposal.

13. EVALUATION PROCEDURES

Selection of a firm(s) to provide the aforementioned materials and services shall be in accordance with the City of Denton Purchasing Policies and procedures and the State of Texas Local Government Code 252.043. The City of Denton shall open all submissions and evaluate each respondent in accordance to the below criteria:

Step 1: The City of Denton will evaluate the submission in accordance with the selection criteria and will rank the firms on the basis of the submittals. The City of Denton, reserves the right to consider information obtained in addition to the data submitted in the response. The selection criterion is listed below:

a) Location of the Project (FACTOR: 20%).

Preference will be given to projects that are located in areas that will result in lower congestion charges (costs incurred to route the electric energy from the generating facility to the Denton area), as determined by DME staff.

b) Corporate and professional experience on projects of this magnitude and complexity (FACTOR 5%)

The respondent's successful experience in projects within the primary areas similar to the scope of work requested in this SOLICITATION will be an important evaluation factor. Based on the past performance of both the individual project personnel and the respondent, the City of Denton will determine if the respondent has the track record to provide the required services in successfully administering similar projects.

c) Production Profile (FACTOR: 5%).

Preference will be given to projects that have superior performance profiles. **In order for the City to evaluate this metric, respondents must submit an hourly production profile for each facility proposed with their responses. This profile should include 8,760 hours of data for each of 3 years of expected hourly output based on the most recent full year of data available as well as hourly output assuming a typical meteorological year. Respondents are also requested to provide solar irradiation data for the site, expressed both as hourly irradiation and daily**

irradiation over the course of a year, including a description of sources of irradiation data, either onsite or otherwise.

d) Purchased Power Agreement value (FACTOR: 60%).

Proposals will be evaluated for the overall economic/business value of the Project to the City of Denton as well as the Fixed Price (\$/MWh) and terms and conditions for the draft PPA.

e) Operational Viability (FACTOR 10%)

Because of Denton's desire to begin deliveries no later than December 31, 2020, of project schedules, budgets, credit ratings and performance assurances, along with the status of required permits, facility interconnection, site control, financing plan and current project schedule will be important factors in evaluating the likelihood that the Respondent will be able to meet their proposed schedule for the delivery start date.

In addition to the above factors, others that can be utilized as stated within Local Government Code 252.043 are: (1) the extent to which the goods or services meet the City's needs, (2) the impact on the ability of the City to comply with the laws and rules related to contracting with historically underutilized businesses and non-profit organizations employing persons with disabilities, (3) the long term cost to the City to acquire the respondents' goods and services, and (4) any relevant criteria specifically listed in the solicitation by the City.

The total possible score of the submissions shall be scored and weighted as indicated above, Step 1 items a-e. Based on the outcome of the computations performed, each submission will be assigned a raw score. The assigned weight will then be applied to these scores to calculate an overall score for each submission for completion of the final scoring process.

Step 2: Upon evaluation and determination of proposals that provide the best value to the City, the City will immediately proceed to negotiate contract terms and conditions with the **highest ranked Firm or Firms**. Under the prospective terms and conditions of a long term PPA, the Seller should be prepared to agree to project development milestones, minimum performance standards, and will be required to post related performance security and maintain adequate property insurance coverage for the value of the project subject to the PPA. The PPA will also include other industry standard and/or typical provisions for such an agreement.

Step 3: Upon selection of the submission that represents the "best value", a written recommendation will be presented to the appropriate approving authority for the City of Denton (the City Manager, Public Utility Board, and City Council) requesting authorization to proceed with contract execution for the proposed services.

Respondents shall identify the page number(s) in which proprietary information is presented. All materials submitted to the City of Denton become public property and are subject to the Texas Public Information Act upon receipt. If a Respondent does not want proprietary information to be disclosed, each page must be identified and marked **PROPRIETARY** at the time of submittal. The City of Denton will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what

information must be disclosed, however, lies with the Attorney General of Texas. Failure to identify proprietary information will result in all unmarked pages being deemed non-proprietary and available to the public upon request.

By publishing this request for proposals, the City of Denton is under no obligation to enter into a contract with any Respondent and reserves the right to cancel the entire process. The City also reserves the right to reject any and all responses.

14. CONTACT BETWEEN RESPONDENT AND THE CITY

Respondents shall direct all inquiries and communications concerning this solicitation to the Point of Contact(s) listed below:

Cindy Alonzo, CTL, A.P.P., CTL
Senior Buyer, Materials Management
901-B Texas Street
Denton, TX 76209
(940) 349-7100
Fax: (940) 349-7302
Cynthia.Alonzo@cityofdenton.com

*** Please do not email the buyer the final proposal unless requested after the due date and time published on the coversheet. A proposal should be emailed to ebids@cityofdenton.com.

15. SHARED INTEREST BY OTHER MUNICIPALS

Other municipal utilities have expressed an interest in potentially joining with Denton in this RFP for power supply of their own. All respondents are invited, at their option, to indicate if additional capacity is available for other municipals in excess of the amounts that Denton is requesting on "Attachment I" for each facility/project that the respondent has provided responses for to Denton. Proposers should also indicate the pricing terms for such additional amounts that may be available.

SOLICITATION CHECKLIST

Check when Completed	Task to be Completed by Respondent
	Exhibit 1 – Pricing sheet
	Review Exhibit 2 – General Provisions and Terms and Conditions
	Review Exhibit 3 – Scope of Work/Technical Specifications
	Cover sheet
	Solicitation number
	Solicitation name
	Firm name
	Firm address
	Contact name
	Contact phone
	Contact fax
	Website address
	Contact email address
	Solicitation Checklist
	Attachment A- Business Overview Questionnaire
	Document how firm meets minimum qualifications (Section 3)
	Detail to support evaluation criteria
	Attachment B – Exception Form
	Attachment C – Safety Record Questionnaire (if applicable)
	Attachment D – Government Reference Form
	Attachment D – Additional Reference (Most Recent Projects) Form
	Attachment F – Conflict of Interest Questionnaire Form – with signature
	Attachment G – Acknowledgment of Addenda
	Attachment H – Confidentiality Agreement
	Email pricing sheet in excel format (Exhibit 1) to Ebids@cityofdenton.com
	Hard Copy Submission: If submitting a hard copy, the City requires one (1) original and three (3) copies, with the pricing sheet submitted electronically in excel or emailed in excel to Ebids@cityofdenton.com with the Solicitation # and name in the subject line.
	Electronic Submission: If submitting an electronic proposal only, email to Ebids@cityofdenton.com with the Solicitation # and name in the subject line. The pricing sheet (Exhibit 1) must be in excel format.

Submit response, with tabs marking each section, in the following order:

Order for Submission	Document
1	Cover Sheet
2	Pricing Sheet – Exhibit 1
3	Solicitation Checklist
4	Attachment A- Business Overview Questionnaire
5	Attachment B – Exception Form
6	Attachment C – Not Applicable

RFP for Power Purchase Agreement (Utility Scale Solar) with the City of Denton

7	Attachment D – Government References Form
8	Attachment E – Additional References (Most Recent Projects) Form
9	Attachment F – Conflict of Interest Questionnaire Form
10	Attachment G – Acknowledgment
11	Attachment H – Confidentiality Agreement

ATTACHMENT A -BUSINESS OVERVIEW QUESTIONNAIRE AND FORMS

Business Organization and Financial Capability - In order for Denton to assess the financial strength of the Proposer, the Proposal will need to include the following information:

- a. Full name and address of the proposing organization. Identity of parent company if the entity is a subsidiary;
 - b. Company ownership structure, form of organization (partnership, corporation, joint venture, limited partnership, limited liability company, or sole proprietor, etc.);
 - c. Names of principal officers of the organization and general partner, if any;
 - d. Description of the financial structure of the company;
 - e. Description of the financial capability of the company to meet its obligations in the Proposal, including relevant information on the Proposer, any parent company and any partners involved in the Proposal;
 - f. Evidence of creditworthiness of Proposer and/or Proposer's guarantor, including ability to obtain and secure financing for new projects, sources of equity and long-term debt, and bank/financial institution references;
 - g. Profile of qualifications to do business in the State of Texas;
 - h. Primary contact information for individuals responsible for the Proposal and authorized to manage contract negotiations; and
 - i. Other information considered relevant by Proposer.
1. Contract Information (for formal contracting purposes):
The following information will be used to write a contract, should your firm be selected for award.
- Firm's Legal Name:
 - Address:
 - Agent Authorized to sign contract (Name):
 - Agent's email address:

2. Subsidiary of:

3. Check the appropriate Organization Class and provide proof of registration as indicated below:
_____ Sole Proprietorship – County Assumed Name Certificate
_____ General Partnership – County Assumed Name Certificate
_____ Corporation – Secretary of State Certificate of Registration
_____ Limited Liability Companies (LLC) – Secretary of State Certificate of Registration
_____ Limited Partnership (LP) – Secretary of State Certificate of Registration
_____ Limited Liability Partnership (LLP) – Secretary of State Certificate of Registration
_____ Foreign Entity – Secretary of State Certificate of Registration
4. Tax Payer ID#:
5. Date Established:
6. Historically Underutilized Business: Yes or No
7. Does your company have an established physical presence in the State of Texas, or the City of Denton? Yes or No, in which?
8. Please provide a detailed listing of all products and/or services that your company provides.
9. Has your company filed or been named in any litigation involving your company and the Owner on a contract within the last five years under your current company name or any other company name? If so provide details of the issues and resolution if available. Include lawsuits where Owner was involved. (Notice: Failure to disclose this information during proposal submission, and later discovered, may result in contract termination at the Owner's option.)
10. Have you ever defaulted on or failed to complete a contract under your current company name or any other company name? If so, where and why? Give name and telephone number of Owner.
11. Have you ever had a contract terminated by the Owner? If so, where and why? Give name and telephone number (s) of Owner (s).

12. Has your company implemented an Employee Health and Safety Program compliant with 29 CFR 1910 “General Industry Standards” and/or 29 CFR 1926 “General Construction Standards” as they apply to your Company’s customary activities?

http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_to_c_level=1&p_keyvalue=1926

13. Resident/Non-Resident Bidder Determination:

Texas Government Code Section 2252.002: Non-resident bidders. Texas law prohibits cities and other governmental units from awarding contracts to a non-resident firm unless the amount of such a bid is lower than the lowest bid by a Texas resident by the amount the Texas resident would be required to underbid in the non-resident bidders’ state. In order to make this determination, please provide the name, address and phone number of:

- a. Responding firms principle place of business:

- b. Company’s majority owner principle place of business:

- c. Ultimate Parent Company’s principle place of business:

I certify that our firm meets the minimum qualifications as stated in this Main document, Section 3.

Signature

Company

Date

ATTACHMENT B - SUBMISSION EXCEPTIONS

Any exceptions taken to this solicitation (**including terms and conditions in Exhibit 2, the General Provisions and Terms and Conditions**) must be itemized on the lines below. Additional pages may be added as needed. If there are no exceptions, please sign where indicated at the bottom of the page.

Item # Description

The above exceptions (and any additional pages identified) are the ONLY exceptions to the specifications, General Provisions and Terms and Conditions in Exhibit 2, and sample contract to this solicitation. I understand that the City may not accept additional exceptions produced after final submission of this proposal.

Signature Company Date

No Exceptions are taken to this solicitation or the General Provisions and Terms and Conditions in Exhibit 2.

Signature Company Date

ATTACHMENT C-NOT APPLICABLE

ATTACHMENT D - GOVERNMENT REFERENCES

Please list three (3) Government references, **other than the City of Denton**, who can verify the quality of service your company provides. The City prefers customers of similar size and scope of work to this solicitation.

REFERENCE ONE

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

REFERENCE TWO

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

REFERENCE THREE

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

ATTACHMENT E - ADDITIONAL REFERENCES (MOST RECENT PROJECTS)

Please list references from your last three (3) projects who can verify the quality of service your company provides. The City prefers customers of similar size and scope of work to this solicitation.

REFERENCE ONE

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

REFERENCE TWO

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

REFERENCE THREE

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

ATTACHMENT F- CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE -	FORM CIQ
For vendor or other person doing business with local governmental entity	
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.	
<p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. <i>See</i> Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	
1	Name of vendor who has a business relationship with local governmental entity.
2	<input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7 th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)
3	Name of local government officer about whom the information in this section is being disclosed. <div style="text-align: center;"> _____ Name of Officer </div> This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.
<p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>D. Describe each employment or business and family relationship with the local government officer named in this section.</p>	
4	<input type="checkbox"/> I have no Conflict of Interest to disclose.
5	<div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%; text-align: center;"> _____ Signature of vendor doing business with the governmental entity </div> <div style="width: 45%; text-align: center;"> _____ Date </div> </div>

ATTACHMENT G - ACKNOWLEDGEMENT

The undersigned agrees this submission becomes the property of the City of Denton after the official opening.

The undersigned affirms he has familiarized himself with the specification, drawings, exhibits and other documents; the local conditions under which the work is to be performed; satisfied himself of the conditions of delivery, handling and storage of materials and equipment; and all other matters that will be required for the work before submitting a response.

The undersigned agrees, if this submission is accepted, to furnish any and all items/services upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specification. The period for acceptance of this submission will be 120 calendar days unless a different period is noted.

The undersigned affirms that they are duly authorized to execute this contract, that this submission has not been prepared in collusion with any other respondent, nor any employee of the City of Denton, and that the contents of this submission have not been communicated to any other respondent or to any employee of the City of Denton prior to the acceptance of this submission.

Respondent hereby assigns to the City any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.

The undersigned affirms that they have read and do understand the specifications, all exhibits and attachments contained in this solicitation package.

The undersigned agrees that the solicitation package posted on the website are the official specifications and shall not alter the electronic copy of the specifications and/or pricing sheet (Exhibit 1), without clearly identifying changes.

The undersigned understands they will be responsible for monitoring the City of Denton Purchasing Website at: <http://www.dentonpurchasing.com> to ensure they have downloaded and signed all addendum(s) required for submission with their response.

I certify that I have made no willful misrepresentations in this submission, nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in this submission will be investigated, with my full permission, and that any misrepresentations or omissions may cause my submission to be rejected.

Acknowledge receipt of following addenda to the solicitation:

Addendum No 1 Dated _____
Addendum No 2 Dated _____
Addendum No 3 Dated _____

Received _____
Received _____
Received _____

NAME AND ADDRESS OF COMPANY:

Tel. No. _____
Email. _____

AUTHORIZED REPRESENTATIVE:

Signature _____
Date _____
Name _____
Title _____
Fax No. _____

ATTACHMENT H - CONFIDENTIALITY AGREEMENT

This Confidentiality and Non-Disclosure Agreement (“Agreement”), dated as of [REDACTED], is by and between [REDACTED], a [REDACTED] [type of entity and state of organization] with its principal business address of [REDACTED] (“[REDACTED]”), and the City of Denton, a Texas a home-rule municipal corporation with its principal office at 215 E. McKinney St., Denton, Texas 76201 (“Denton”), referred to collectively as “Parties” and individually as a “Party.”

WHEREAS, Denton solicited proposals for an electronically based Energy Trading and Risk Management solution (“ETRM”) and [company] is a respondent, the Parties have desire to enter into detailed discussions concerning risk management solutions for Denton Municipal Electric (“DME”), a city department of City of Denton, in Denton, Texas, and as a result, it is deemed desirable by the Parties to mutually disclose certain information to the other Party;

WHEREAS, it is a condition to the disclosure of such information that the Parties enter into this Agreement to evidence the Parties' undertakings and agreement with respect to the treatment as confidential, and the control and use of, information that may be furnished by and between the Parties; and

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby mutually agree as follows:

1. **Defined Terms.** As used in this Agreement each of the following terms shall have the meaning assigned to such term as set forth below:

1.1. “Affiliate” means any Person that directly or indirectly (through one or more intermediaries) controls or is controlled by or is under common control with the relevant Person specified herein.

1.2. “Confidential Information” means (a) all information, whether of a business, technical, engineering, economic or other nature and regardless of the form or format in which it is communicated or maintained, relating to a Party (the “Disclosing Party”), its Affiliates and/or the Project that is provided to the other Party (the “Receiving Party”) or any of its Representatives by the Disclosing Party or any of its Representatives, (b) all data, sketches, drawings, reports, analysis, compilations, studies and notes containing or reflecting Confidential Information, regardless of who prepares such materials, (c) the fact that the Confidential Information has been made available to or is being inspected or evaluated by the Receiving Party, and (d) the fact that such discussions and negotiations are taking place concerning the Project or other related transactions between the Parties, except that Confidential Information shall not include:

- (i) information that was already in the Receiving Party's or its Affiliates' possession on a non-confidential basis prior to disclosure hereunder;
- (ii) information which prior to disclosure was already in the public domain, or which after disclosure entered the public domain other than by a breach of this Agreement by the Receiving Party or any of its Representatives; and
- (iii) information which was received from a third party which the Receiving Party reasonably believes was not and is not violating an obligation of confidentiality to the Disclosing Party or its Affiliates; provided that use or disclosure by the Receiving Party of information which the Receiving Party obtains in the manner described by this Section 1.2(iii) does not violate any of the terms under which it was disclosed by said third party.

1.3. “Person” means any natural person, corporation, company, partnership, limited liability company, joint venture, trust, organization, association, sole proprietorship, or other juridical person.

1.4. “Representatives” shall mean, with respect to either Party hereto, such Party’s affiliates, officers, directors, partners, members, employees, agents, trustees, potential and existing lenders, potential and existing

investors, potential and existing equity providers, security holders, others providing financing or refinancing and the consultants and advisors (including, without limitation, financial advisors, counsel and accountants, and each of their respective advisors) of such Party.

2. Restrictions on Disclosure and Use of Confidential Information.

2.1. The Receiving Party agrees to, and to cause its Representatives to, treat all Confidential Information as confidential and secret and comply with the terms and conditions contained herein. The Receiving Party shall not, and shall not permit its Representatives to, disclose Confidential Information to any Person (except as set forth in this Section 2), without the prior written consent of the Disclosing Party

2.2. Without the prior written consent of the Disclosing Party, the Receiving Party shall not, and shall not permit its Representatives to, make any use whatsoever of the Confidential Information other than as may be necessary for the purpose referenced above in connection with the ETRM project.

2.3. Except as set forth in Section 2.4, the Receiving Party shall only disclose Confidential Information to those of its Representatives, or other Persons that are concerned with the ETRM project and whose knowledge of such Confidential Information is necessary or advisable for such purpose. Each such Person receiving Confidential Information from the Receiving Party shall have the same obligations with respect to such Confidential Information as the Receiving Party hereunder, and the Receiving Party shall so instruct each such Person receiving Confidential Information and shall use all reasonable efforts to prevent and prosecute unauthorized use or disclosure of Confidential Information by such Persons. The Receiving Party shall be liable to the Disclosing Party for any breach of such obligations by any such Persons.

2.4. It shall not be a breach of the Agreement for the receiving Party or any of its Representatives to disclose Confidential Information in the event that the disclosure is compelled by applicable law or regulation. Provided however that such disclosure is narrowly tailored to the request made under authority. Examples include but are not limited to depositions, interrogatories, requests for information or documents in legal proceedings, subpoenas or similar processes in connection with any proceeding where disclosure is legally compelled. The Receiving Party shall provide the Disclosing Party with prompt written notice once it is aware that it is required to make such a disclosure as required by law or regulation so as to enable the Disclosing Party to seek a protective order or other appropriate remedy or waive compliance with this Agreement.

2.5. Notwithstanding any other provision herein, the Parties understand that Denton is required to comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) (“TPIA”) when responding to records requests made under the Act. Pursuant to the requirements of TPIA, if Denton receives a request for Confidential Information in its possession that was provided by the Disclosing Party and marked or identified as being confidential, Denton will respond to the request in accordance with the procedures set forth in Section 552.305 of the Act. Specifically, Denton will notify Disclosing Party of Denton’s receipt of the request and will request an attorney general decision identifying the exception(s) to disclosure believed to apply. The Parties acknowledge that TPIA requires a brief to be submitted to the attorney general explaining why the claimed exceptions apply to the information at issue. Denton shall not be obligated to submit a brief supporting those claimed exceptions. Disclosing Party shall be solely responsible for submitting the brief and the documents at issue to the attorney general at its own expense.

3. Safekeeping and Return of Confidential Information.

3.1. The Receiving Party shall take all reasonable steps to prevent the unauthorized use, distribution or reproduction of all copies of written materials relating to or containing any part of Confidential Information, including all sketches, drawings, reports, analysis, compilations, studies and notes, and all copies, reproductions, reprints and translations thereof. The Receiving Party shall not, and shall not permit its Representatives to, directly or indirectly, duplicate or otherwise reproduce, in whole or in part, such Confidential Information in any manner inconsistent with the terms hereof.

3.2. The Receiving Party shall return to the Disclosing Party, within ten (10) days after receipt of such a request by the Disclosing Party, all materials containing or reflecting Confidential Information that are in the possession of the Receiving Party and its Representatives, without retaining copies. Notwithstanding the foregoing,

Receiving Party may retain such materials to the extent required by applicable law in the reasonable opinion of counsel to the Receiving Party and may also retain reports, analysis, compilations, studies, notes or other documents or records prepared by the Receiving Party which contain or otherwise reflect or are generated from Confidential Information, provided, however, Receiving Party shall keep all such copies confidential in accordance with this Agreement and such obligation shall survive the termination of this Agreement. Notwithstanding the return of such materials, the Receiving Party and its Representatives shall continue to be bound by the obligations of confidentiality and other obligations hereunder.

4. Notice. All notices, requests, consents, waivers and other communications required, permitted or desired to be given hereunder or by law to be served upon or given to a Party by any other Party shall be deemed duly served and given when received after being delivered by hand, courier or facsimile or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to [redacted]:

Company Name

Address

City, State, Zip

Attn: [redacted]

Telephone: (xxx)xxx-xxxx

Facsimile: (xxx)xxx-xxxx

If to City of Denton generally:

Attention: City Attorney

Telephone: (940) 349-7565

Facsimile: (940) 349-7334

If to Denton Municipal Electric

1659 Spencer Rd.

Denton, TX 76205

Attn: General Manager, DME

Tel:

Fax:

Each Party may change its address for the purpose of this section by giving written notice of such change to the other Party in the manner provided in this section.

5. Term. This Agreement and the obligations of confidentiality undertaken hereby shall remain in full force and effect for a period from the date of this Agreement until the end of two (2) years after the date of this Agreement.

6. No Waiver; Amendments. No failure or delay by the Disclosing Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. Any modification of, and amendment to, this Agreement and any waiver of any provision of this Agreement must be in writing signed by the Parties.

7. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas without reference to the conflict of laws or principles thereof.

8. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

9. Remedies. It is agreed that each Party shall be entitled to relief both at law and in equity, including, but not limited to injunctive relief and specific performance, in the event of any breach or anticipated breach of this Agreement, without proof of any actual or special damages. The Receiving Party agrees to pay the costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Disclosing Party and its Affiliates in successfully enforcing any of the terms of this Agreement or proving that the Receiving Party or any of its Representatives breached any of the terms of this Agreement.

10. Successors and Assigns. Neither Party may assign this Agreement nor any of its rights hereunder except with the prior written consent of the other Party and except that either Party may, without the consent of the other Party, assign this Agreement and the rights hereunder to any of its Affiliates that own an interest in the Project. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.

11. No Obligation or Joint Venture. The Parties agree that unless and until a definitive agreement has been executed and delivered, no contract or agreement providing for a business relationship between the Parties shall be deemed to exist between the Parties, and neither Party will be under any legal obligation of any kind whatsoever with respect to such relationship by virtue of this Agreement or any written or oral expression thereof, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this Agreement, the term "definitive agreement" does not include an executed letter of intent or any other preliminary written agreement or offer, unless specifically so designated in writing and executed by both Parties. This Agreement does not obligate either Party to deal exclusively with the other Party.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any executed counterpart transmitted by facsimile or similar transmission by any Party shall be deemed an original and shall be binding upon such Party.

13. No Warranty. The Parties hereby acknowledge that neither Party, nor any of its representatives, agents, affiliates or assigns makes any representations or warranties whatsoever concerning the accuracy, completeness or correctness of the Confidential Information supplied hereunder, nor must such representation or warranty be implied.

14. Entire Agreement. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF DENTON

By: _____
Name: _____
Title: _____

By: _____
Name: Todd Hileman
Title: City Manager