

	Ramsey/Washington Recycling & Energy	Ramsey/Washington Recycling & Energy 100 Red Rock Road, Newport, MN 55055
	Request for Proposal (RFP)	

Title of RFP: Predominant Use Study

Responses must be received by 2:00 p.m. Central Time on July 29, 2022.

Mailing, Third-Party Carrier (FedEx, UPS, etc.) and Hand-Submitted Proposals Address:

Attn: James Redmond
 Ramsey/Washington Recycling & Energy
 100 Red Rock Road
 Newport, MN 55055

All solicitation responses must be received by Ramsey/Washington Recycling & Energy (R&E) at the specified location by the date and time cited above. Late solicitation responses will not be considered. The mere fact that the solicitation response was dispatched will not be considered; the firm must ensure that the solicitation response is actually delivered. Regardless of cause, late qualification responses will not be accepted and will automatically be disqualified from further consideration. It shall be the Offeror's sole risk to assure delivery at the designated office by the designated time. Late solicitation responses will not be opened and may be returned to the Offeror at the expense of the Offeror or destroyed if requested. Except for trade secrets and confidential information which the Offeror identifies as proprietary, all solicitation responses will be open for public inspection after the contract award. Vendors are advised to carefully read the entire Solicitation Package. Solicitation responses that do not comply with all Instructions contained herein may be disqualified.

PROPOSERS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE SOLICITATION.

All communications concerning this solicitation must be directed to the person identified within this solicitation in Table 02. Communications with other R&E staff, Ramsey or Washington County staff, and/or R&E Contractors may disqualify you from the evaluation process.

Predominant Use Study RFP

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1.0 RFP Introduction and Background

1.1. Solicitation Description and Process

Terms and Conditions governing this solicitation, including applicable insurance requirements, are included as a part of this document. Ramsey/Washington Recycling & Energy (R&E) has no obligation to enter into a contract as a result of this inquiry. This Request for Proposal (RFP) is intended to solicit proposals from proposers capable of meeting R&E's need for a Predominant Use Study.

R&E expressly reserves the right to amend or withdraw this solicitation at any time and to reject any or all solicitation responses. R&E reserves the right to waive any minor irregularities in the solicitation process.

This RFP and the selected solicitation response(s) to this RFP will be incorporated into the contract resulting from this solicitation; provided, however, that the contract may contain terms different from or in addition to this RFP and the successful proposal. For purposes of this RFP, the term "vendor," "contractor," "offeror," "Proposer" and "proposer" are considered to have the same meaning.

1.2. About Ramsey/Washington Recycling & Energy

[R&E](#) is a public joint powers board between Ramsey and Washington counties in Minnesota. R&E is responsible for administering solid waste (trash) programs for residents and businesses in both counties. Combined, the two counties are home to over 800,000 residents and over 70,000 businesses.

With a partnership of over 30 years, Ramsey and Washington counties have made a bold pivot in thinking about the waste system, recognizing the potential value in the materials that are put in the trash and shifting the view from "waste" to "resource." The economic, environmental and community benefit of this resource can be realized only through a comprehensive waste system that seeks to recover that value. This resulted in the 2016 purchase of the [Ramsey/Washington Recycling & Energy Center \("R&E Center"\)](#) in Newport, MN.

In owning the facility, and requiring all trash produced in Ramsey and Washington counties be managed there, the counties are better positioned to capture the resource value of waste and find higher, better use for waste materials. In fulfilling this vision, Ramsey and Washington counties, through R&E, will maximize the recovery of resources, reduce greenhouse gas emissions and divert as much as possible from landfills.

1.3. Purpose of RFP

The purpose of this RFP is to seek proposals for a Predominant Use Study to be performed to examine utility usage at the R&E Center. This study will be used to determine which uses are taxable and nontaxable according to the Minnesota Department of Revenue and to find ways to improve energy management.

Proposers' responses will be evaluated and ranked based on the criteria described in this RFP. If a service is available that meets R&E needs, R&E may then enter into additional budget discussions and a contract with the selected proposer(s). R&E anticipates selecting one or two vendor(s) for all proposed services associated with this RFP for services expected to begin September 1, 2022.

In addition to soliciting written responses, this document provides information to assist proposers in preparing their responses and facilitates the subsequent evaluation and comparison process. In that regard, this RFP:

- Provides information essential to soliciting meaningful recommendations and realistic commitments from the proposers
- Specifies the desired format and content of proposals in response to this RFP
- Outlines R&E evaluation and selection procedures
- Establishes a schedule for the preparation and submission of proposals in response to this RFP
- Establishes a performance standard for the selected proposer.

1.4. Contract Term & Schedule

The initial term of the contract is expected to be for three years upon execution, with the option for up to two one-year renewals. The need for these services is expected to diminish when an end use market vendor's facility is fully operational and capable of accepting the food scrap bags, estimated to be 24 to 36 months from program launch in late 2022.

1.5. Costs

The resulting contract fee shall be a maximum not to exceed agreement for services rendered and reimbursable expenses. Rates shall be negotiated.

1.6. RFP Schedule of Events

The following RFP Schedule of Events represents the best estimate of the schedule R&E will follow. R&E has performed extensive planning work and has planned to meet the dates described below. Vendors are encouraged to hold the demonstration dates listed. If a component of the schedule is delayed, it shall be anticipated that the remaining components will also be delayed by a similar number of days. Any significant change to the schedule will be published via RFP Addendum.

Table 01: RFP Schedule of Events

Event	Estimated Date
Request for Proposals Released	Jun 30, 2022
Deadline for Proposer Questions	July 12, 2022 by 4:00pm CT
R&E Addendum Published	July 15, 2022
Deadline for Proposal Submissions	July 29, 2022 by 2:00pm CT
Anticipated Contract Effective Date	September 1, 2022

1.7. Minimum Qualifications

For proposals to be evaluated and considered for award, proposals must be deemed responsive. To be deemed responsive, the submitted proposal documents shall conform in all material respects to the requirements stated by the RFP and proposers shall document and validate the capability to fully perform all requirements defined by the RFP.

1.8. Pre-Proposal Conference

A non-mandatory pre-proposal conference will be held according to the information in Table 01. The purpose of the conference is to discuss the solicitation and allow vendors to see the site and ask questions. Questions and answers will be transcribed and posted on R&E's website in the form of an addendum.

1.9. Incurred Expenses

There is no express or implied obligation for R&E to reimburse responding firms for any expenses incurred in preparing solicitation responses to this Request for Proposal and R&E will not reimburse responding firms for these expenses, nor will R&E pay any subsequent costs associated with the provision of any additional information or presentation, or to procure a contract for these services.

1.10. Questions and Inquiries

It shall be the responsibility of the Proposer to inquire about any portion of the RFP that is not fully understood and susceptible to more than one interpretation. Written inquiries are required. All questions concerning the RFP must reference the page number, section heading, and paragraph, if applicable. Questions may be submitted via email and Proposers shall insert "Predominant Use Study Contractor RFP" in the subject line. Oral communications will not be accepted. The following table provides the primary contact information.

Table 02: Point of Contact

Point of Contact
James Redmond jredmond@recyclingandenergy.org

Questions and inquiries related to this RFP, including questions and inquiries related to technical issues are to be submitted in writing via email and directed to the Point of Contact using the contact information in Table 02 above. Proposers shall not contact any other R&E staff, Washington and Ramsey County Staff, or R&E Contractors with any questions or inquiries. Unauthorized contact with any personnel of R&E other than staff listed in Table 02, may be cause for rejection of the Proposer’s response. The decision to reject a Proposal is solely that of R&E.

1.11. Clarification and Discussion of Proposals

R&E may request clarifications and conduct discussions with any vendor who submits a solicitation response. Failure of a vendor to respond to such a request for additional information or clarification may result in rejection of the vendor’s proposal.

1.12. Amendments and Addenda

All clarifications and RFP revisions will be documented in an addendum and published to R&E’s website, <http://morevaluelesstrash.com/>. R&E will attempt to publish periodic addenda on a timely basis. Questions received less than ten days prior to the date for opening may not be answered.

Only questions and answers documented in an addendum shall be binding. Proposers shall acknowledge each addendum issued on the Solicitation Response Form (Attachment 1) which shall be signed and returned with Proposers’ responses. R&E reserves the right to revise the RFP. Revisions shall be documented in an addendum and published to the R&E website.

2.0 Instructions for Proposers

2.1. Advertisement for Proposal/Public Notice

R&E uses its website, www.recyclingandenergy.org/vendors/ to release all competitive solicitations and associated addenda. Construction-related solicitations shall be published in R&E's official newspaper for three weeks. All other advertising or publishing requirements applicable to the purchase shall be published in R&E's official newspaper for at least two weeks. Public notice of the solicitations shall include a reasonable time to allow for receipt of solicitation responses.

2.2. Instructions for Proposers

It will be the sole responsibility of the Proposer to submit its proposal to R&E before the closing deadline. Late proposals will not be considered and will be returned unopened to the Proposer.

R&E reserves the right to reject any or all proposals or parts of proposals, to accept part or all of proposals on the basis of considerations other than lowest cost, and to create a project of lesser or greater expense than described in this RFP or the respondent's reply based on the component prices submitted.

R&E reserves the right to cancel this RFP or to change its scope if it is considered to be in the best interest of R&E. R&E reserves the right to waive irregularities in the proposal content or to request supplemental information from Proposers.

Vendors must address all information specified by this RFP. All questions must be answered completely. R&E reserves the right to verify any information contained in the Vendor's RFP response and to request additional information after the RFP response has been received.

R&E may make such investigations as it deems necessary to determine the ability of the Vendor to furnish the services outlined herein, and the Vendor shall furnish to R&E all such information and data for this purpose as R&E may request. R&E reserves the right to reject any quote if the evidence submitted by or the investigation of such Vendor fails to satisfy R&E that such Vendor is properly qualified to carry out the obligations of the contract.

Marketing brochures included as part of the main body of the RFP response will not be considered. Such material must be submitted only as attachments and must not be used as a substitute for written responses. In case of any conflict between the content in the attachments and a vendor's answers in the body of the quote, the latter will prevail.

The deadline for proposal responses is established in Section 1.7, RFP Schedule of Events. Proposal responses received at R&E after this deadline will not be accepted and will be returned to Proposer. Late qualifications will not be opened and may be returned to the Offeror at the expense of the Offeror or destroyed if requested.

Contractors shall submit one original and 1 electronic copy of the solicitation response via mail or personal service to R&E. Oral solicitation responses will not be considered. Electronic copies shall be submitted as a PDF.

The mailing addresses for Proposals is contained in the following table.

Table 04: Proposal Mailing Address

R&E Mailing Address
Attn: James Redmond Ramsey/Washington Recycling & Energy 100 Red Rock Road Newport, MN 55055

The following table contains the organization guidelines for Proposal responses.

Table 05: Proposal Checklist

RFP Attachment Number	Proposal Section	RFP Section Number
-	Signed Cover Letter	2.3
Attachment 1	Completed Proposal Response Form (attached)	2.4
Attachment 2	Contractor Information and Reference Form (attached)	2.5
-	Firm Introduction	2.6
-	Qualifications and Experience	2.7
-	Key Personnel Qualifications	2.8
-	Work Plan for Scope of Services	2.9
-	Description of Contractor's Cost/Budget for Scope of Services	2.10
-	Exceptions to Terms and Conditions	2.11
Attachment 3	Application for Designation of Trade Secret Information (attached)	2.12

2.3. Cover Letter

The first section of the Proposal should be the Cover Letter. The Cover Letter shall be signed by an authorized representative of the company such as the owner, partner, or in the case of a corporation, the President, Vice President, Secretary, or other corporate officer(s).

The Cover Letter must provide the following:

- i. Identification of the proposing company, including name, address and telephone number
- ii. Name, title, address, telephone and fax numbers, and email address of contact person during period of Proposal evaluation
- iii. A summary of the company's background and history
- iv. A summary of claims brought against the proposer, subcontractors, and proposed project team members during the past five years related to their goods and/or services, including the date, description of the claim, and the resolution of the claim, on company letterhead. Even if there have been no claims, a statement must be provided
- v. A brief summary of the Proposal contents
- vi. Signature of a person who is authorized to sign contracts for the company

The Cover Letter shall be printed on the company's letterhead.

A signature on the Cover Letter hereby provides R&E acknowledgement and acceptance of the "Conditions" and the execution of same during the discharge of any succeeding contract. It shall be clearly understood that by submitting a Proposal in response to this solicitation, a Proposer shall be deemed to have accepted all specifications, terms, and general conditions and requirements set forth in these specifications, terms, general conditions, and requirements unless otherwise clearly noted and explained in this RFP.

2.4. Proposal Response Form

The second section of the Proposal should be a completed Solicitation Response Form - Attachment 1.

2.5. Contractor Information and Reference Form

The third section of the Proposal should be a completed Contractor Information and Reference Form – Attachment 2.

2.6. Firm Introduction

Provide a brief company history and organizational structure of the firm. Include an outline of previous and current projects which demonstrate the firm's qualifications to provide the scope of services as requested by this RFP.

2.7. Qualifications and Experience

Contractor must provide a history of experience performing predominant use studies.

2.8. Key Personnel Qualifications

A list of project staff, including short biographical summaries and a list of prior projects of similar scope for which the staff played the same or a similar role as proposed for R&E's project. Please include a resume for key staff involved.

2.9. Work Plan for Scope of Services

The Contractor's proposal must demonstrate the Contractor's understanding of the program and scope of services as described herein. The Contractor's proposal must include:

- a. A clear description of the approaches and processes to be used to complete the activities described in Section 4.0, Scope of Work.

2.10. Description of Contractor's Cost/Budget for Scope of Services

The Contractor must provide a detailed budget estimate for proposed work plan on the price sheet included as Attachment 5, attached hereto and incorporated by reference.

2.11. Exceptions to Terms and Conditions

The eighth section of the Proposal should include any exception the Proposer takes to the terms and conditions set forth in this RFP. Proposer should identify the areas where they feel the requested service or product is not available, deviates from the specific requests, or is deemed to be an unwise or unwarranted approach. The Proposer will describe exceptions to the RFP and identify their impact to R&E, including, but not limited to, workarounds, reductions in performance, capacity, flexibility, accuracy, and ultimately cost and value. R&E reserves the right to disallow exceptions it finds are not in the best interests of R&E. Any and all exceptions to the requirements of this RFP must be identified and fully explained in the submitted Proposal. It is R&E's intention to be made aware of any exceptions to terms or conditions prior to contract negotiations.

2.12. Application for Designation of Trade Secret Information

The ninth section of the Proposal should be a completed Application for Designation of Trade Secret Information – Attachment 3, if applicable.

The solicitation response shall not be contingent on R&E accepting the contractor's claim that certain data is Trade Secret Information within the meaning of Minnesota Statute Section 13.37, subd. 1(b)

R&E review of data identified as Trade Secret Information will not occur unless and until such time as an appropriate request for the data is made by a third party

At such time as an appropriate request for data identified in a response as Trade Secret Information is made, R&E will provide the responder with notice of the request for the Trade Secret Information

3.0 General Solicitation Standard Terms and Conditions

3.1 Evaluation

Evaluation of the solicitation responses will be conducted by R&E staff, County staff, and selected partners. The following will be considered:

1. Contractor Qualifications
 - a. The proposer's experience and qualifications in providing similar services
2. Demonstrated Understanding and Proposed Approach
 - a. Completeness and clarity of response
 - b. Clear understanding of R&E's goals and needs
 - c. Clear understanding of work tasks
 - d. Ability to complete projects in a timely manner
3. Cost Allocation
4. References

R&E reserves the right to consider any additional information gathered by R&E or submitted by the Vendor to evaluate the submitted quote.

After completing the evaluation phase of the process, R&E will enter into financial negotiations. The final selection will be based on the satisfactory outcome of these negotiations. The award shall be made to the responsible Vendor whose quote is determined, at R&E's sole discretion, to be the most advantageous to R&E. The lowest cost will not be the sole determining factor. After the contract has been awarded, R&E will notify the quote submitters of the outcome.

3.2 Notice of Intent Award

The following must be submitted in response to the Notice of Intent to Award within 10 business days:

- W-9
- Certificate of Insurance

Successful proposers are advised not to begin work or enter into subcontracts relating to the project until both the successful proposer and the R&E sign the contract.

3.3 Negotiations and Contract Execution

The R&E reserves the right to negotiate the final terms and conditions of the contract to be executed. In the event R&E and the vendor are unable to agree upon all contract provisions, R&E reserves the right to cease negotiations, and to move on to select another vendor, or to reject all Proposals.

3.4 Contracting Ethics

- 1) It is a breach of ethical standards for any person to offer, give, or agree to give any R&E official, employee, agent or volunteer, or by R&E Policy, for any R&E employee, or Committees, Commissions, and Boards person to solicit, demand, accept, or agree to accept from another person or agency, a gratuity or an offer of employment whenever a reasonable prudent person would conclude that such consideration was motivated by an individual, group, or corporate desire to obtain special, preferential, or more favorable treatment than is normally accorded the general public.
- 2) The Vendor shall not assign any interest in this contract and shall not transfer any interest in the same without the prior written consent of R&E.
- 3) The Vendor shall not accept any private client or project that may place it in ethical conflict during its representation of the R&E.

3.5 No Obligation, Right of Rejection, and Multiple Award

The inquiry made through this RFP implies no obligation on the part of R&E.

The R&E reserves the right to reject any proposal, in whole or in part. Proposals received from debarred or suspended vendors will be rejected. R&E may reject any proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of this RFP.

R&E further reserves the right to award all, part, or none of the services included in this RFP or a Proposer's proposal. In addition, R&E reserves the right to make one or more awards to competing Proposers for subsets of functionality as a result of this RFP.

R&E reserves the right not to contract with any Vendor. If R&E decides to contract, R&E will contract with the Vendor whose response best meets the needs of R&E. R&E reserves the right to contract with other than the lowest priced quote.

R&E reserves the right to reject any proposal determined to be non-responsive. R&E also reserves the right to refrain from making an award if it determines it to be in its best interest.

If only one solicitation response is received, an award may be made to the single Contractor if R&E finds, in its sole discretion, that the price submitted is fair and reasonable, and that either other Contractors had reasonable opportunity to respond, or there is not adequate time for re-solicitation.

3.6 Proposer's Certification

By signature on the Proposal, the proposer certifies that it complies with:

- 3.6.1** The laws of the State of Minnesota and is licensed to conduct business in the State of Minnesota;
- 3.6.2** All applicable local, state and federal laws, codes and regulations;
- 3.6.3** All terms, conditions, and requirements set forth in this RFP;
- 3.6.4** A condition that the proposal submitted was independently arrived at, without collusion; and,
- 3.6.5** A condition that the offer will remain open and valid for the period indicated in this solicitation; and any condition that the firm and/or any individuals working on the contract do not have a possible conflict of interest.

If any proposer fails to comply with the provisions stated in this paragraph, R&E reserves the right to reject the proposal, terminate the contract, or consider the proposer in default.

3.7 Amendment/Withdrawal of Proposals

Proposers may amend or withdraw proposals prior to the deadline set for receipt of proposals. No amendments will be accepted after the deadline unless they are in response to a request of R&E. After the deadline, proposers may make a written request to withdraw proposals and provide evidence that a substantial mistake has been made. R&E may permit withdrawal of the proposal upon verifying that a substantial mistake has been made.

3.8 Clarification of Proposals

In order to determine if a Proposal is reasonably susceptible for award, communications by the Point of Contact identified in Table 02 or the proposal Evaluation Committee are permitted with any proposer to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Clarifications may not result in a material or substantive change to the Proposal. The initial evaluation may be adjusted because of a clarification under this section.

3.9 Rights to Submitted Material

It shall be understood that all proposals, responses, inquiries, or correspondence relating to or in reference to this RFP, and all reports, charts and Proposal or referencing information submitted in response to this RFP, shall become

the property of R&E, and will not be returned. R&E will use discretion with regard to disclosure of proprietary information contained in any response but cannot guarantee information will not be made public. As a government entity, R&E is subject to making records available for disclosure.

3.10 Contract Negotiation

If contract negotiations are commenced, R&E anticipates conducting negotiations remotely through electronic communications and teleconferences, beginning on a date and time to be determined.

If contract negotiations are held in person, they will be held at R&E offices, and the offeror will be responsible for all costs including its travel and per diem expenses.

3.11 Failure to Negotiate

If the selected proposer:

1. Fails to provide the information required to begin negotiations in a timely manner;
2. Fails to negotiate in good faith;
3. Indicates it cannot perform the contract within the budgeted funds available for the project; or,
4. If the proposer and R&E, after a good-faith effort, cannot come to terms; then

R&E may terminate negotiations with the proposer initially selected and commence negotiations with the next highest-ranked proposer. At any point in the negotiation process, R&E may, at its sole discretion, terminate negotiations with any or all proposers.

3.12 Non-Collusion Statement

Proposers shall complete and sign the non-collusion statement and include it with their proposal.

Contractors shall not enter into an agreement, participate in any collusion, or otherwise take any action in restraint of free competition in connection with this solicitation or any contract which may result from its acceptance, including actions involving other contractors, competitors, R&E staff, R&E Board Members, Ramsey County, or Washington County staff. Evidence of such activity will result in rejection of the solicitation response.

4.0 Scope of Work

Contractors will perform the following activities related to a Predominant Use Study related to Minnesota Statute 297a.68:

- Analyze the use of electricity, natural gas, water, and other resources at the R&E Center to determine exempt and non-exempt uses as classified by the Minnesota Department of Revenue.
- Examine R&E Center utility bills to determine current exemptions and any recoverable refunds from previous billing periods.
- Conduct negotiations with utility suppliers to realize any savings resulting from the Predominant Use Study.
- Monitor utilities at the R&E Center on an ongoing basis to determine if any additional future savings can be realized.
- Provide documentation to validate tax-exempt status for future R&E Center purchases that may be covered by the tax exemptions.
- Process all paperwork and other materials as required to apply for exemption and refunds.

5.0 General Agreement/Contract Terms and Conditions

5.1 Contract Term

The contract term is expected to be upon execution for the duration of the proposed project schedule, including monitoring, to be included as outlined in Proposer's responses.

5.2 Contract Pricing

5.2.1 Costs

The resulting contract shall be a not to exceed agreement upon approved work schedule and budget.

5.2.2 Application of Payments

Contractor may submit an invoice monthly. Payment shall be made within 35 days following the receipt of an invoice and verification of the charges, as determined by R&E.

5.2.3 Payment of interest and disputes regarding payment shall be governed by the provisions of Minnesota Statutes §471.425.

5.3 Contract Approval

This RFP does not, by itself, obligate R&E to award a contract. R&E's obligation will commence following R&E's approval of a contract. Upon written notice to the vendor, R&E may set a different starting date for the contract. R&E will not be responsible for any work done by the vendor, even work done in good faith, if it occurs prior to the contract start date set by R&E.

5.4 Contract Dispute

In the event of contract dispute, dispute proceedings will be held in the State of Minnesota. Mediation will be a mandatory first step in the event of a dispute, prior to any legal action as set forth in the contract.

5.5 Possession of Firearms on R&E Premises

Unless specifically required by the terms of this contract, no provider of services pursuant to this contract, including but not limited to employees, agents or subcontractors of the (Vendor or Contractor, depending upon which term is used) shall carry or possess a firearm on R&E premises or while acting on behalf of R&E pursuant to the terms of this agreement. Violation of this provision shall be considered a substantial breach of the Agreement; and, in addition to any other remedy available to R&E under law or equity. Violation of this provision is grounds for immediate suspension or termination of this contract.

5.6 Indemnification and Hold Harmless

The Vendor does hereby agree that it will defend, indemnify, and hold harmless R&E, its agents, officers and employees against any and all liability, loss, damages, costs and expenses which R&E Board, its officers or employees may hereafter sustain, incur or be required to arising out of the negligent or willful acts or omissions or intentional acts of the Vendor, its agents, officers or employees or independent contractors in the performance of this Agreement.

5.7 Insurance Requirements

The proposer and its subcontractors or independent contractors agree that in order to protect itself, as well as R&E Board under the indemnity provisions set forth above, it will at all times during the term of this Agreement, keep in force the following insurance protection with the minimum limits specified:

- Commercial general liability of no less than \$500,000 per claim, \$2,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products/completed operations total limit, \$2,000,000 personal injury and advertising liability. R&E Board shall be added to the policy as additional insured on a primary and non-

contributory basis with respect to the ongoing and completed operations of the proposer providing coverage at least as broad as ISO forms CG 2010 and CG 2037. Waiver of subrogation is required.

- Network Security / Privacy Liability on a claims-made basis to include coverage for:
 - computer or network systems attacks
 - denial or loss of service
 - introduction, implantation, or spread of malicious software code
 - unauthorized Access and use of computer systems
 - privacy liability
 - breach response coverage
- Liability coverages should have a minimum of \$2 million limit and in the annual aggregate.
 - Breach response sublimits of at least 50% of the liability limit.
- Commercial Automobile Liability coverage with combined single limits of not less than \$1,000,000. R&E Board shall be added to the policy as additional insured on a primary and non-contributory basis. Waiver of subrogation is required.
- Workers' Compensation as required by Minnesota Law. Employer's liability with limits of \$500,000/\$500,000/\$500,000. Waiver of subrogation is required.

The above policies shall contain a clause or endorsement that waives the right of subrogation against R&E Board

Prior to the effective date of this Agreement, the proposer will furnish R&E with a current and valid proof of insurance certificate indicating insurance coverage in the amounts required by this agreement. This certificate of insurance shall be on file with R&E throughout the term of the agreement. As a condition subsequent to this agreement, the proposer shall insure that the certificate of insurance provided to R&E will at all times be current. The parties agree that failure by the proposer to maintain a current certificate of insurance with R&E shall be a substantial breach of the contract and payments on the contract shall be withheld by R&E until a certificate of insurance showing current insurance coverage in amounts required by the contract is provided to R&E.

Any policy obtained and maintained under this clause shall provide that it shall not be cancelled, materially changed, or not renewed without thirty days' notice thereof to R&E. Ten (10) day notice for cancellation due to non-payment of premium is required.

5.8 Termination

R&E may immediately terminate this Agreement if any proceeding or other action is filed by or against the Contractor seeking reorganization, liquidation, dissolution, or insolvency of the Contractor under any law relating to bankruptcy, insolvency or relief of debtors. The Contractor shall notify R&E upon the commencement of such proceedings or other action.

If the Contractor violates any material terms or conditions of this Agreement R&E may, without prejudice to any right or remedy, give the Contractor, and its surety, if any, thirty (30) calendar days' written notice of its intent to terminate this Agreement, specifying the asserted breach. If the Contractor fails to cure the deficiency within the thirty (30) day cure period, this Agreement shall terminate upon expiration of the cure period.

R&E may terminate this Agreement without cause upon giving at least thirty (30) calendar days' written notice thereof to the Contractor. In such event, the Contractor shall be entitled to receive compensation for services provided in compliance with the provisions of this Agreement, up to and including the effective date of termination.

5.9 Merger

It is understood and agreed that the entire agreement of the parties is contained herein and this Agreement supersedes all oral agreements and negotiations between the parties relating to this subject matter. All items referred to in this Agreement are incorporated or attached and deemed to be a part of the Agreement.

5.10 Conflict of Interest

Proposer shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner affect Proposer or the services and/or items to be provided, specifically and not limited to any laws relating to conflicts of interest. Failure to comply with any applicable laws, including the provisions of the Act, may result in: i) the forfeiture by Proposer of all benefits of the Contract; ii) the retainage by R&E of all services performed by Proposer and iii) the recovery by R&E of all consideration, or the value of all consideration, paid to Proposer pursuant to any awarded contract.

5.11 Pending and Recent Litigation

Proposers must disclose any pending or recent litigation they are involved in as a company. Recent is defined as the past five years. Information provided should include the timeline of the litigation history, the subject of the litigation, and the current status of the litigation. Proposals must also disclose any pending litigation of any third- party partners in the proposal.

5.12 Contract Modifications

Any material alteration, modification or variation shall be reduced to writing as an amendment and signed by the parties. Any alteration, modification or variation deemed not to be material by agreement of R&E and the Contractor shall not require written approval.

5.13 Contractor Debarment, Suspension, and Responsibility

Federal Regulation 45 CFR 92.35 prohibits R&E from purchasing goods or services with federal money from vendors who have been suspended or debarred by the federal government. Similarly, Minnesota Statutes, Section 16C.03, subdivision 2, provides the Commissioner of Administration with the authority to debar and suspend vendors who seek to contract with R&E. Vendors may be suspended or debarred when it is determined through a duly authorized hearing process, that they have abused the public trust in a serious manner.

5.14 Performance

All services performed by the Vendor pursuant to this Agreement shall be performed to the satisfaction of R&E, as determined at the sole discretion of its authorized representative, and in accord with all applicable federal, state, and local laws, ordinances, rules and regulations. Services not performed in accordance with the terms and conditions of RFP and contract shall be considered a material breach and shall be cause for immediate termination by R&E. The Vendor shall not receive payment for work found by R&E to be unsatisfactory, or performed in violation of federal, state, or local law, ordinance, rule or regulation. In the event of work found by R&E to be unsatisfactory, R&E shall provide Vendor with written notice describing the work found to be unsatisfactory in any reasonable respect and thirty (30) days to correct the unsatisfactory service performed. Vendor shall work with R&E to correct the unsatisfactory service to R&E's mutual satisfaction within thirty (30) days of said notice. If service is not corrected to the satisfaction of R&E, it shall be considered a material breach and shall be cause for be immediate termination by R&E.

5.15 Non-Discrimination Clause

During the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, disability, age, marital status, or status with regard to public assistance. The Contractor will take affirmative action to ensure that all employment practices are free of such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Contractor agrees to comply with the nondiscrimination provision set forth in Minnesota Statute 181.59. The Contractor's failure to comply with section 181.59 may result in cancellation or termination of the agreement, and all money due or to become due under the contract may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

5.16 Compliance with Law

The Contractor will comply with all applicable local, state, and Federal laws, ordinances and regulations in the performance of the Agreement. The contract, amendments, and supplements will comply with and be governed by all laws of the State of Minnesota. Any violation shall constitute a material breach of the executed Agreement. All actions brought under this agreement shall be brought exclusively in Minnesota State Courts of competent jurisdiction with venue in R&E.

5.17 Force Majeure

Neither Party shall be in default by reason of any failure in performance of the contract if such failure arises out of causes beyond their reasonable control and without the fault or negligence of said Party including, unforeseeable acts of nature; terrorism or other acts of public enemy; war and epidemics or quarantine restrictions.

If either Party is delayed at any time in the progress of the work governed by the contract by force majeure, the delayed Party shall notify the other Party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in the notice. The notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed Party from performing in accordance with this contract.

5.18 Policy Compliance

The Proposer shall, as a condition of being awarded this Agreement, to require each of its agents, officers and employees to abide by R&E's policies prohibiting sexual harassment, firearms and smoking, as well as all other reasonable work rules, safety rules or policies regulating the conduct of persons on R&E property at all times while performing duties pursuant to this Agreement. The Proposer agrees and understands that a violation of any of these policies or rules constitutes a breach of the Agreement and sufficient grounds for immediate termination of the Agreement by R&E.

5.19 Public Information

It shall be understood that all Proposals, responses, inquiries or correspondence relating to or in reference to this RFP, and all reports, charts and Proposal or referencing information submitted in response to this RFP shall become the property of R&E and will not be returned. R&E will use discretion with regard to disclosure of proprietary information contained in any response, but cannot guarantee information will not be made public. As a governmental entity, R&E is subject to making records available for disclosure pursuant to applicable public record disclosure laws, and Proposers, including the Proposer ultimately awarded the contract, shall cooperate in complying with such public disclosure laws at no additional cost to R&E. In the event any Proposer designates materials within its RFP response confidential and/or proprietary and therefore not subject to release pursuant to public record disclosure laws, and if R&E, its employees, and/or its officials are then named in or subjected to legal action based on its refusal to disclose such materials designated confidential and/or proprietary by the Proposer, Proposer agrees to indemnify, hold harmless, and defend R&E in any such action brought against it regarding R&E's refusal to release such Proposer-designated materials pursuant to a public records request.

5.20 Audits, Reports, Records and Monitoring Procedures/Records Availability & Retention

Pursuant to Minn. Stat. section 16C.05 subd. 5, the proposer will:

- Maintain records which reflect all revenues, costs incurred and services provided in the performance of this Agreement.
- Agree that the R&E, the State Auditor, or legislative authority, or any of their duly authorized representatives at any time during normal business hours, and as often as they may deem reasonably necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., and accounting procedures and practices and involve transactions relating to this agreement. The proposer agrees to maintain and make available these records for a period of six (6) years from the date of the termination of this agreement.

5.21 Data Practices

All data collected, created, received, maintained, or disseminated for any purpose by the activities of the proposer, because of this agreement shall be governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (Act), as amended and the Rules implementing the Act now in force or as amended. The proposer is subject to the requirements of the Act and Rules and must comply with those requirements as if it is a governmental entity. The remedies contained in section 13.08 of the Act shall apply to the proposer.

5.22 Interpretation of Agreement; Venue

The Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate State or Federal District Court in Ramsey County, Minnesota.

The provisions of this Agreement are severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement.

5.23 Clean Up

If applicable, the Contractor shall at all times keep R&E premises free from accumulation of waste materials or rubbish caused by its operations.

5.24 Protection of Persons and Property

The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, R&E employees and other persons who may be affected; the Contractor's work and materials and equipment which are under the care, custody and control of the Contractor or any of the Contractor's subcontractors; and other property at the project site or adjacent thereto.

Unless otherwise directed by R&E's Authorized Representative, the Contractor shall promptly remedy damage or loss to property caused in whole or in part by the Contractor, its employees, officers, or subcontractor(s), or anyone directly employed by any of them, or by anyone for whose acts any of them may be liable.

5.25 Title Risk of Loss

Title to goods and/or all associated documentation shall pass to R&E upon payment by R&E for goods and/or associated documentation; or for construction projects, upon incorporation of the goods into the Project.

R&E shall be relieved from all risks of loss or damage to goods, and/or all documentation prior to the time title passes to R&E as described above. The Contractor shall not be responsible for loss or damage to goods and/or documentation occasioned by negligence of R&E or its employees.

5.26 Warranty

The Contractor warrants that it has the legal right to provide the goods and services identified in this Agreement and further warrants that the goods and services provided shall be in compliance with the provisions of this Agreement.

5.27 Ownership of Work Product

The Contractor agrees that all right, title, and interest in all material that Contractor shall conceive or originate, either individually or jointly with others, and which arises out of the performance of this Agreement, are the property of R&E and are by this Agreement assigned to R&E along with ownership of any and all copyrights in the material.

Where applicable, works of authorship created by Contractor for R&E in performance of this Agreement shall be considered "works made for hire" as defined in the U.S. Copyright Act. Contractor shall, upon the request of R&E, execute all papers and perform all other acts necessary to assist R&E to obtain and register copyrights on such material.



The Contractor warrants that any materials or products provided or produced by it in the performance of this Agreement will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. Contractor will defend, indemnify, and hold R&E harmless from any such third party claims.

Attachments

Attachment 1 – Solicitation Response Form

Attachment 2 – Contractor Information and Reference Form

Attachment 3 – Contractor Application for Trade Secret Information

Attachment 1 – Solicitation Response Form

Solicitation Title: Predominant Use Study RFP

The following shall be completed by the Contractor:

Contractor Company Name:

Total Number of Solicitation Pages:

Total Number of Pages in Contractor's Solicitation Response:

Acknowledgement and Number of Solicitation Addenda
Received:

**PLEASE READ THE FOLLOWING BEFORE COMPLETING THIS SOLICITATION
RESPONSE FORM**

The provisions of the solicitation document should be reviewed and understood before preparing a solicitation response. Unless the solicitation document provides otherwise, the solicitation response shall be the best price for all labor, equipment, materials and services for the project described in the solicitation document.

Estimated Budget: Please provide an annual cost and a proposed pricing structure. Information can be provided on a separate sheet, if needed.

ACKNOWLEDGEMENT

By signing below, I certify that I understand, agree, and bind the Contractor to the provisions contained in the solicitation document for the above Solicitation, including the Solicitation and Contract Terms and Conditions and that I am authorized to submit this solicitation response on behalf of the Contractor.

COLLUSION

By signing below, I certify that this solicitation response has been prepared without any collusion with other contractors, competitors, R&E employees, Washington or Ramsey County employees, or R&E Board Members and without taking any other action which will restrict competition or constitute fraud or collusion.

Name and Title of Authorized Contractor Representative: _____

Signature: _____

Date: _____

Solicitation Title: **Predominant Use Study RFP**

Attachment 2 – Contractor Information and Reference Form

R&E requires completion of this form for this solicitation. Failure to submit this completed form with the solicitation response will result in rejection of the Contractor's solicitation response.

Company Information:

1. Contractor Name (as on file with the MN Secretary of State's Office, if applicable):
2. Name of CEO or Company President:
3. FEIN / Contractor Tax ID Number:
4. Minnesota Business Licenses Filing Number:
5. Local Telephone Number:
6. Toll Free Telephone Number:
7. Fax Number:
8. Email Address:
9. Address:
10. City:
11. State:
12. Zip Code:
13. Is your company a Certified Small Business Enterprise ("CERT SBE")?
14. If yes, what is your CERT SBE#?

Solicitation Response Contact:

1. Name and Title of the person to contact for questions concerning this solicitation response:
2. Local Telephone Number:
3. Toll Free Telephone Number:
4. Fax Number:
5. Email Address:
6. Address:
7. City:
8. State:
9. Zip Code:

Contract Mailing Address (if different from Company Information):

1. Contact Name and Title:
2. Local Telephone Number:
3. Toll Free Telephone Number:
4. Fax Number:
5. Email Address:
6. Address:
7. City:
8. State:
9. Zip Code:

Reference Requirements: Provide a minimum of three (3) references for work completed within the last five (5) years that is similar to what is requested in this solicitation.

1. First Reference

- Company Name:
- Contact Name and Title:
- Local Telephone Number:
- Toll Free Telephone Number:
- Email Address:
- Address:
- City:
- State:
- Zip Code:
- Description of Work Completed:

2. Second Reference

- Company Name:
- Contact Name and Title:
- Local Telephone Number:
- Toll Free Telephone Number:
- Email Address:
- Address:
- City:
- State:
- Zip Code:
- Description of Work Completed:

3. Third Reference

- Company Name:
- Contact Name and Title:
- Local Telephone Number:
- Toll Free Telephone Number:
- Email Address:
- Address:
- City:
- State:
- Zip Code:
- Description of Work Completed:

Name and Title of Authorized Contractor Representative: _____

Signature: _____

Date: _____

Attachment 3 – Contractor Application for Designation of Trade Secret Information

Solicitation Title Predominant Use Study RFP

The submitted quote/proposal/proposal includes trade secret information that we, the contractor, believe to be classified as nonpublic (relating to a non-person) or private (relating to a person) information under §13.37 of the Minnesota Government Data Practices Act.

As such, we are requesting that certain provisions of our quote/proposal/proposal response, as indicated below, be treated as trade secret data and that any request for access to the trade secret data be handled in accordance with the provisions of R&E's Purchasing Standard Terms and Conditions.

Section(s)

Page #s:

Topic(s):

We understand that a decision regarding this request will be made by R&E prior to award. If this classification request is granted, in the event the designation of this information as trade secrets is challenged, we agree to defend, indemnify, and hold harmless R&E against any claims related to the designation of this data as trade secrets data.

We further understand that R&E considers markings of "confidential" or "trade secrets" in the solicitation response to be insufficient to classify information in a response. We agree to indemnify and hold R&E harmless from any damages arising out of the release of any materials or data unless they are specifically identified above.

Name and Title of Authorized Preparer: _____

Signature: _____

Date: _____