

REQUEST FOR PROPOSAL

SALE OF RAW WATER

SABINE RIVER AUTHORITY



File No: 60-813-10-11

Proposal Opening Date: 11/9/2011

Proposal Opening Time: 12:00 PM

State of Louisiana
Sabine River Authority
October 12, 2011

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PART II. EVALUATION

REQUEST FOR PROPOSAL

NOTE: SALE OF RAW WATER

PART I. ADMINISTRATIVE AND GENERAL INFORMATION

1.1 Background.

The Sabine River Authority of Louisiana was created by, and currently operates under, Act 261 of the Legislature of the State of Louisiana, Regular Session, 1950, Revised Statutes Article 38:2321 et seq., as amended, as approved by Article 14, Section 45 of the Constitution of Louisiana (Act), and is authorized under the Act to enter into contracts for the sale of water over which it has jurisdiction or control.

1.1.1 Purpose.

The Sabine River Authority of Louisiana is offering, for competitive sale, based upon a negotiated long-term contract, the annual maximum quantity of 600,000 acre-feet of water from Toledo Bend Reservoir. Water may be purchased for use within or outside of the State of Louisiana. In accordance with Louisiana Law, contracts for water sold outside of the state of Louisiana require the written consent of the Governor of Louisiana, to be valid.

To implement such purpose, the Sabine River Authority of Louisiana will accept proposals for the competitive purchase of water from Toledo Bend Reservoir (“Proposals”) with an opening date of the Proposals of **November 9, 2011**.

1.2 Definitions.

- A. Shall – The term “shall” denotes mandatory requirements.
- B. May – The term “may” denotes an advisory or permissible action.
- C. Should – the term “should” denotes desirable.
- D. Contract – The contract, if any, ultimately entered into between SRA and the successful Proposer, following completion of negotiations and approval by SRA’s Board of Commissioners and, if applicable, the Governor of Louisiana.
- E. Proposer – The person or entity submitting a proposal in response to this RFP.
- F. Sample Contract – The sample contract attached as Exhibit A to this RFP, which is intended to serve as the basis for the Contract, following negotiation between SRA and the successful Proposer.

G. SRA – Sabine River Authority of Louisiana.

H. State – The State of Louisiana.

1.3 Schedule of Events.

	<u>Date</u>	<u>Time (CST)</u>
1. RFP mailed to prospective Proposers	Commencing 10/12/11	
2. Deadline to receive written inquiries (“Inquiry Deadline”)	10/31/11	10:00 AM
3. Deadline to answer written inquiries	11/2/11	10:00 AM
4. Proposal Opening Date	11/9/11	12:00 PM (noon)
5. Oral discussions with Proposers, if applicable	To be scheduled	
6. Notice of Intent to Award to be mailed	1-2 weeks after item 6.	
7. Contract Negotiation Commences	1 week after item 7.	
8. Completion of Contract Negotiations	30 days after item 8, subject to extension by mutual agreement of the SRA and the successful Proposer	
9. Vote by SRA Board of Commissioners	First meeting after item 9, subject to compliance with public notice requirements	
10. Approval by Governor, if applicable	TBD by Governor	

NOTE: The SRA reserves the right to deviate from these dates. As adjusted by the SRA, these dates shall be referred to as the “Schedule of Events.”

1.4 Proposal Submittal.

All proposals shall be received by the SRA **no later than the date and time shown in the Schedule of Events.**

Important - - Clearly mark outside of envelope, box or package with the following information and format:

- **Proposal Name: Sale of Raw Water**
- **File Number: 60-813-10-11, Solicitation No. 1**

- **Proposal Opening Date: 11/ /2011**

Proposals may be mailed through the U. S. Postal Service to our box at:

Sabine River Authority
15091 Texas Hwy.
Many, LA 71449-5718

Proposals may be delivered by hand or courier service to our physical location:

Sabine River Authority
15091 Texas Hwy.
Many, LA 71449-5718
16 miles west of Many on Hwy. 6 west

No proposal shall be deemed made until actually received by the SRA. Proposer is solely responsible for ensuring that its courier service provider makes inside delivery to our physical location. The SRA is not responsible for any delays or delivery failure caused by the Proposer's chosen means of proposal delivery.

Proposer is solely responsible for the timely delivery of its proposal. Failure to meet the proposal opening date and time may result in rejection of the proposal.

1.5 Primary Offer Terms.

The SRA is offering, for competitive sale, based upon a negotiated long-term contract, the annual maximum quantity of 600,000 acre-feet of water from Toledo Bend Reservoir. Water may be purchased for use within or outside of the State of Louisiana. **In accordance with Louisiana Law, Contracts for water sold outside of the state of Louisiana require the written consent of the Governor of Louisiana, to be valid.**

Water will be sold FOB Toledo Bend Reservoir. The successful Proposer will be responsible for all aspects/phases of withdrawal, transportation, quality, distribution, sale and delivery to its customer(s).

For water sales outside of the State of Louisiana, the minimum quantity to be contracted for is 300,000 Acre-feet per annum.

The Board of Commissioners, SRA, has established the following **minimum** requirements for water sales:

- Water sold for use outside the state of Louisiana \$.25 per 1000 gallons or \$81.46 per Acre-Foot. (Reminder: Requires the Written Consent of the Governor of Louisiana).
- Water sold for use inside the state of Louisiana \$.15 per 1000 gallons or \$48.88 per Acre-Foot.
- An annual reservation fee shall be required and shall be based upon the negotiated price of the water and escalation formula.

- Contracts will include a method(s) to adjust the sale price of the water to insure the SRA receives the escalated value of the water over the life of the Contract. Methods to ensure this price adjustment are subject to negotiation.
- Drought Contingency provisions will be included in any Contract contemplating out of state sales of water.
- Water sold must be used for beneficial purposes as required by the Constitution of the State of Louisiana. Those purposes must be identified in the proposal.

1.6 Proposal Fee.

A non-refundable proposal fee of \$50,000 shall be required to be submitted with each proposal. Fee shall be submitted in the form of a certified bank check or other guaranteed form of payment. Any proposals submitted without the required proposal fee will be disqualified without further action or comment. Any Proposer who has previously submitted the \$50,000 proposal fee since January 1, 2010 in connection with the potential sale of raw water by the SRA will receive credit for its prior payment and is not required to submit an additional \$50,000 proposal fee.

1.7 Required Format and Information.

Each proposal should be clearly identified by this caption:

Sabine River Authority of Louisiana
Competitive Water Purchase Proposal

Proposals should follow the format and order of presentation described below:

Date Prepared: _____

Section 1. General:

1. Name of Proposer: _____
2. Proposer Address: _____
3. Date of Organization: _____
4. State of Organization: _____
5. State File number: _____
6. Tax ID Number: _____
7. Publicly Held? Yes No (Circle Appropriate).
8. Officers and Board of Directors (or equivalents): (Please list Titles, Names, Addresses and length of time each has been with the Proposer).

9. Owners and percent of ownership: (Please list names and addresses, if any are the same as listed in 8 above please state so rather than repeat the same information)(List all direct or indirect owners in the Proposer holding a 10% or greater direct or indirect ownership of Proposer's equity).
10. Management Team: (Please list the Titles, Names, Background and Experience of the Proposer's key personnel who will be involved in this project).
11. Financial Capability: Describe the Proposer's capability and plans to fund development expenses and project construction.
12. Performance Guarantees: (Performance Bond or Letter of Credit required)

Proposer shall provide a minimum performance guarantee in the amount of \$5,000,000

Section 2. Qualifications:

1. Principal business of the Proposer:
2. Outline of business plan to market, transport, and distribute the quantity of water involved, including targeted customers:
3. Describe the Proposer's technical capability to design, construct and operate a pipeline and distribution system for this project:
4. Does the Proposer currently own/operate a fluid pipeline?
5. List previous projects of comparable magnitude (Minimum of \$50 Million):
6. Previous experience with State Contracts in Louisiana/Texas:
7. Previous experience with obtaining governmental permits and compliance with environmental and other governmental mandates (Including those set forth by Environmental Protection Agency (EPA), Department of Natural Resources (DNR), Treasury Department, River Authorities, Department of Economic Development (DED), analogous Texas agencies, etc.):
8. Estimated schedule from date of Contract signing until initial withdrawal of water for distribution and sale:
9. Purposes for which the water sold from Toledo Bend Reservoir will be used and what benefits will be derived from that use:

Section 3. Offer To Purchase:

1. Indicate the length of Contract for which you are applying, including any proposed extension(s):
2. Indicate the quantity of water you are applying to purchase per annum (maximum of 600,000 minimum of 300,000 acre-ft. for out of state sales):
3. State your initial offer at price per 1000 gallons and per acre-ft: \$ _____
4. Describe your proposal to ensure the price paid for water remains current with the value of water through out the life of the Contract, such as periodic adjustment in the price paid per 1000 gallons/acre-ft or other compensation payable to the SRA.
5. Specify your proposal for reservation fees to include point at which you begin to pay full value for the reserved water whether or not Proposer's project is ready to withdraw (Take or Pay).

Section 4. Changes to Sample Contract:

Provide a mark-up of the Sample Contract that provides specific alternative or additional provisions to those in the Sample Contract that are not acceptable to the Proposer.

1.7.1 Number of Response Copies.

Each Proposer shall submit one (1) signed original proposal on 8.5 inch by 11 inch paper. Five additional copies of the proposal are also desired. Also included (1) compact disk (CD) containing an Adobe PDF version of the entire proposal.

1.7.2 Legibility/Clarity.

Responses to the requirements of this RFP in the formats requested is desirable with all questions answered in as much detail as practicable. The Proposer's response should demonstrate an understanding of the requirements. Proposals prepared simply and economically, providing a straightforward, concise description of the Proposer's ability to meet the requirements of the RFP are also desired. Each Proposer is solely responsible for the accuracy and completeness of its proposal.

1.8 Confidentiality.

The designation of certain information as trade secrets and/or privileged or confidential proprietary information shall only apply to the technical portion of your proposal. Your cost proposal will not be considered confidential under any circumstance. Any proposal marked as confidential or proprietary in its entirety may be rejected without further consideration or recourse.

For the purposes of this RFP, the provisions of the Louisiana Public Records Act (La. R.S. 44.1 et. seq.) will be in effect. Pursuant to this Act, all proceedings, records, contracts, and other public documents relating to this RFP shall be open to public inspection. Proposers are reminded that while trade secrets and other proprietary information they submit in conjunction with this RFP may not be subject to public disclosure, protections must be claimed by the proposer at the time of submission of its proposal. Proposers should refer to the Louisiana Public Records Act for further clarification.

The Proposer must clearly designate the part of the proposal that contains a trade secret and/or privileged or confidential proprietary information as “confidential” in order to claim protection, if any, from disclosure. The Proposer shall mark the cover sheet of the proposal with the following legend, specifying the specific section(s) of its proposal sought to be restricted in accordance with the conditions of the legend:

“The data contained in pages ____ of the proposal have been submitted in confidence and contain trade secrets and/or privileged or confidential information and such data shall only be disclosed for evaluation purposes, provided that if a contract is awarded to this Proposer as a result of or in connection with the submission of this proposal, the Sabine River Authority of Louisiana and the State of Louisiana shall have the right to use or disclose the data therein to the extent provided in the contract. This restriction does not limit the SRA or the State’s right to use or disclose data obtained from any source, including the proposer, without restrictions.”

Further, to protect such data, each page containing such data shall be specifically identified and marked “CONFIDENTIAL”.

Proposers must be prepared to defend the reasons why the material should be held confidential. If a competing Proposer or other person seeks review or copies of another Proposer’s confidential data, the SRA will notify the owner of the asserted data of the request. If the owner of the asserted data does not want the information disclosed, it must agree to indemnify the SRA and the State and hold the SRA and the State harmless against all actions or court proceedings that may ensue (including attorney’s fees), which seek to order the SRA or the State to disclose the information. If the owner of the asserted data refuses to indemnify and hold the SRA and the State harmless, the SRA or the State may disclose the information.

The SRA reserves the right to make any proposal, including proprietary information contained therein, available to SRA personnel, the Office of the Governor, or other state agencies or organizations for the purpose of assisting the SRA and the State in the evaluation of the proposal. The SRA and/or the State shall use reasonable efforts to cause said individuals to protect the confidentiality of any specifically identified proprietary information or privileged business information obtained as a result of their participation in these evaluations.

If your proposal contains confidential information, you should also submit a redacted copy without the claimed proprietary information along with your proposal. If you do not submit the redacted copy, you will be required to submit this copy within 48 hours of notification from the SRA. When submitting your redacted copy, you should clearly mark the cover as such - “REDACTED COPY” - to avoid having this copy reviewed by an evaluation committee

member. The redacted copy should also state which sections or information has been removed.”

1.9 Proposal Clarifications Prior to Submittal.

An initial inquiry period as specified on the Schedule of Events is hereby firmly set for all interested Proposers to perform a detailed review of the RFP and Sample Contract and to submit any written questions relative thereto. *Without exception*, all questions MUST be in writing and received by the close of business on the Inquiry Deadline date set forth in the Schedule of Events. Initial inquiries shall not be entertained thereafter.

The SRA shall not and cannot permit an open-ended inquiry period, because this creates an unwarranted delay in the RFP process. The SRA reasonably expects and requires *responsible and interested* Proposers to conduct their in-depth proposal review and submit inquiries in a timely manner.

Inquiries shall be submitted in writing by an authorized representative of the Proposer, clearly cross-referenced to the relevant RFP or Sample Contract section. Only those inquiries received by the established deadline shall be considered by the SRA. Answers to questions that change or substantially clarify the solicitation shall be issued by addendum and provided to all perspective Proposers.

Inquiries concerning this solicitation may be delivered by mail, express courier, e-mail, hand, or fax to:

Sabine River Authority
Attention: Jim Pratt
15091 Texas Hwy.
Many, LA 71449-5718
E-Mail: Jim.Pratt@LA.Gov Ph: (318) 256-4112 / Fax: (318) 256-4179

1.10 Errors and Omissions in Proposal.

The SRA and the State will not be liable for any error in any proposal. Proposer will not be allowed to alter proposal documents after the deadline for proposal submission, except under the following condition: The SRA reserves the right to make corrections or clarifications due to patent errors identified in proposals by the SRA or the Proposer. The SRA, at its option, has the right to request clarification or additional information from the Proposer.

1.11 Performance Bond or Letter of Credit (REQUIRED).

Upon the effective date of the Contract, the successful Proposer shall be required to provide a performance (surety) bond or letter of credit in the amount of five million dollars (\$5,000,000) to insure the successful performance under the terms and conditions of the Contract negotiated between the successful Proposer and the SRA. The performance bond shall be subject to forfeiture or the letter of credit shall be subject to draw for failure on the part of the successful Proposer to perform its obligations under the Contract.

1.12 Changes, Addenda, Withdrawals.

The SRA reserves the right to change the Schedule of Events or issue addenda to the RFP at any time. The SRA also reserves the right to cancel or reissue the RFP.

If the Proposer needs to submit changes or addenda, such shall be submitted in writing, signed by an authorized representative of the Proposer, cross-referenced clearly to the relevant proposal section, in a sealed envelope, prior to the proposal opening. Such shall meet all requirements, including deadlines, for the proposal.

1.13 Withdrawal of Proposal.

A Proposer may withdraw a proposal that has been submitted at any time up to the proposal opening date and time. To accomplish this, a written request signed by the authorized representative of the Proposer must be submitted to the SRA.

1.14 Material in the RFP.

Proposals shall be based only on the material contained in this RFP. The RFP includes official responses to questions, addenda, and other written material, which may be provided by the SRA pursuant to the RFP.

1.15 Waiver of Administrative Informalities.

The SRA reserves the right, at its sole discretion, to waive administrative informalities contained in any proposal.

1.16 Proposal Rejection.

Issuance of this RFP in no way constitutes a commitment by the SRA to award a Contract. The SRA reserves the right to accept or reject any or all proposals submitted. The Governor must approve any out of state water sales.

1.17 Ownership of Proposal.

All materials (paper content only) submitted in response to this request become the property of the SRA. Selection or rejection of a response does not affect this right. All proposals submitted will be retained by the SRA and not returned to Proposers. Any copyrighted materials in the proposal are not transferred to the SRA.

1.18 Cost of Offer Preparation.

The SRA and the State are not liable for any costs incurred by prospective Proposers. Costs associated with developing the proposal, preparing for oral presentations, and any other expenses incurred by the Proposer in responding to the RFP are entirely the responsibility of the Proposer, and shall not be reimbursed in any manner by the SRA or the State.

1.19 Written or Oral Discussions/Presentations.

Written or oral discussions may be conducted with Proposers who submit proposals determined to be reasonably susceptible of being selected for award. The SRA also reserves to issue an award without further discussion of the proposal submitted based on the initial offers received.

Written or oral discussions/presentations for clarification may be conducted to enhance the SRA's understanding of any or all of the proposals submitted. Neither negotiations or changes to proposals will be allowed during these discussions. Proposals may be accepted without such discussions.

1.20 Cancellation of RFP or Rejection of Proposals.

The SRA reserves the right to reject any or all proposals received in response to this RFP, or to cancel this RFP if it is in the best interest of the SRA to do so. If the proposal includes out-of-state water sales, the Governor of Louisiana also has the right to reject such proposal.

1.21 Evaluation and Selection.

All responses received as a result of this RFP shall be evaluated by the committee described below for the purpose of recommending the Proposer to the Board of Commissioners of the SRA with whom the SRA shall attempt to negotiate a Contract.

To evaluate all proposals, a committee whose members have expertise in various areas has been selected by the SRA Board of Commissioners. This committee will determine which proposals are reasonably susceptible of being selected for award.

Written recommendation for award shall be made to the SRA's full Board of Commissioners for the Proposer whose proposal, conforming to the RFP, will be the most advantageous to the SRA, price and other factors considered.

The committee may reject any or all proposals if none are considered in the best interest of the SRA. The Board of Commissioners of the SRA must approve the committee's recommendation before the notice of award is issued and may reject such recommendation.

1.22 Notice of Intent to Award.

The SRA intends to award to a single Proposer.

Upon the SRA's Board of Commissioners' review and approval of the evaluation committee's recommendations for award, SRA will issue a Notice of Intent to Award letter to the apparent successful Proposer.

SRA will also notify all unsuccessful Proposers as to the outcome of the evaluation process.

1.23 Contract Negotiations.

If for any reason the Proposer receiving the notice of award does not timely agree to a Contract acceptable to the SRA, that proposal may be rejected and the SRA may negotiate with the next most responsive Proposer. Negotiation may include revision of terms, conditions, and requirements of the Sample Contract provided with this RFP. Negotiation shall not allow price alterations, except those in favor of the SRA. The SRA Board of Commissioners must approve the final form of the Contract and, if the Contract allows sales out of state, the Governor of the State must approve the Contract, to complete the process.

1.24 Sample Contract.

In no event is a Proposer to submit its own standard contract terms and conditions as a response to this RFP. The Proposer needs to address the specific language in the Sample Contract and submit with its proposal with any exceptions or exact contract deviations that the Proposer wishes to negotiate.

If the contract negotiation period exceeds 30 days the negotiation period may be extended by mutual consent of both parties. If the Proposer and the SRA fail to agree upon a Contract by the deadline in the Schedule of Events, as extended, the SRA may elect to cancel the award and award the Contract to the next-highest-ranked Proposer.

1.25 Debriefings.

Debriefings may be scheduled by the participating Proposers after the Intent to Award letter has been issued by scheduling an appointment with the SRA. Contact may be made by phone at (318) 256-4112 or by E-mail to Jim.Pratt@LA.Gov.

1.26 Governing Law.

All activities associated with this RFP process shall be interpreted under Louisiana law. All proposals and the Contract are subject to provisions of the laws of the State of Louisiana including but not limited to L.R.S. 38:2321-2328.

PART II. EVALUATION

Award shall be made to the Proposer whose proposal, conforming to the RFP, will be the most advantageous to the SRA, considering price, financial and technical capability of performance, business plan, deviations from the Sample Contract, and other factors considered below.

The SRA Board of Commissioners will consider all factors the Board deems relevant, such as water price, price escalations and other compensation mechanisms, water volume, projected revenue to the SRA, schedule of performance, ability to finance the project, technical ability to perform the project, projected water end user customers, experience with relevant regulatory regimes and authorities, experience with projects of a similar type or magnitude, adherence and changes to the Sample Contract, projected use of the water, effect on Toledo Bend Reservoir levels, reputation in the water industry, effect on Toledo Bend Reservoir stakeholders, and adherence to this RFP. The decision of the SRA Board of Commissioners is, however, ultimately a subjective decision, weighing all factors deemed relevant. Likewise, if the proposal includes out of state water sales, the Governor of Louisiana must approve the Contract, and the Governor's discretion is not limited by this RFP in any way.

MINIMUM REQUIREMENTS AFFIDAVIT

The undersigned hereby acknowledges the undersigned has read and understands all requirements and specifications of the Request for Proposals (RFP), including attachments.

OFFICIAL CONTACT. The SRA requires that Proposer designate one person to receive all documents and the method in which the documents are best delivered. Identify the Contact Person's name and fill in the information below: (Print Clearly):

Date: _____

Official Contact Name: _____

A. E-Mail Address: _____

B. Fax Number with area code: (_____) _____

C. US Mail Address: _____

Proposer certifies that the above information is true and grants permission to SRA to contact the above named person or otherwise verify the information the Proposer has provided.

By its submission of this proposal and authorized signature below, Proposer certifies that:

- (1) The information contained in its response to the RFP is accurate:
- (2) Proposer complies with each of the minimum requirements listed in the RFP;
- (3) Proposer accepts the procedures, evaluation criteria, minimum requirements and all other administrative requirements set forth in the RFP;
- (4) Proposer understands that if selected as the successful Proposer, it will have thirty (30) days, subject to extension by mutual agreement, from the date of delivery of SRA's notice of award in which to complete contract negotiations, if any, and execute the final contract document:

SIGNATURE of Proposer's Authorized Representative: DATE: _____

Authorized Signature: _____

Typed or Printed Name: _____

Title: _____

Company Name: _____

Address: _____

City: _____ State: _____ Zip: _____