



**City of Commerce**

**REQUEST FOR QUALIFICATIONS FOR DESIGN  
BUILD PROJECT (RFQ-DB)**

**For**

**Commerce City Park Splash Pad Project**

**# 22-116-02**

**Issue Date: November 29, 2021**

**Responses must be received BEFORE:**

**Thursday, December 30, 2021, 2:00 PM CST**

Staff Contact Person: Howdy Lisenbee  
City Manager  
Email: [howdy.lisenbee@commercetx.org](mailto:howdy.lisenbee@commercetx.org)

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Exhibit 1 – Project Description

Exhibit 2 – Sample Contract (consists of two components)

    2a- Commerce Design Build Agreement

    2b- Commerce Design Build General Conditions

The solicitation packet consists of this Main document, and all exhibits and Attachments identified in the table of contents.

**NOTICE TO RESPONDENTS**  
**REQUEST FOR QUALIFICATIONS-DESIGN BUILD**  
**# 22-116-02**

The City of Commerce (City) intends to obtain Design-Build services and invites you to submit a sealed response for:

**COMMERCE CITY PARK SPLASH PAD PROJECT**

Sealed responses addressed to City Hall will be received **BEFORE December 30, 2021 at 2:00 PM CST**, at 1119 Alamo St, Commerce TX 75428. All Responses must be in the City's possession on or before the scheduled date and time (no late response will be considered). **The City's Purchasing Department is not open for weekend or holiday deliveries.**

This will be a "two-step" Design-Build procurement process, and respondents to this RFQ will be evaluated based on the criteria presented within this RFQ. A short-list of respondents will then be selected to submit proposals based on a subsequent Request for Proposals (RFP).

The City reserves the right to refuse and reject any or all responses, waive any or all formalities or technicalities, accept the response or portions of the response determined to be the best value and most advantageous to the City, and hold the responses for a period of 120 days without acting. Respondents are required to hold their responses firm for the same period.

**Hand-delivered & Courier Submissions:**

City of Commerce  
1119 Alamo St, Commerce TX 75428

**LABELING INSTRUCTIONS:** Envelopes must be clearly marked:

**City of Commerce**  
**REQUEST FOR QUALIFICATIONS**  
**COMMERCE CITY PARK SPLASH PAD PROJECT**  
**# 22-116-02**

## **A. INTRODUCTION**

In accordance with the provisions of Chapter 2269 of the Texas Government Code, and the City's policies and procedures, the City is requesting submissions to contract with an individual(s) or business(es) with considerable experience in providing professional design build services of this solicitation. The responses shall be submitted to the City in a sealed submission.

The awarded individual(s) or business(es) shall possess a proven track record of using innovative approaches to providing professional services that represent the most qualified to their clients. The awarded individual(s) or business(es) shall have the ability to accomplish all aspects of the requested services. The awarded individual(s) or business(es) should be able to provide innovative methods to deal with challenges and provide effective solutions.

The City is preparing a Two-Step Design-Build (DB) solicitation. This process includes the issuance of two solicitations. The first step will be the Qualifications based Request for Qualifications (RFQ). The City will evaluate submittals and select a short-list of firms to move forward to, the second phase, the Request for Proposal (RFP) phase.

### **1. GUIDING PRINCIPALS**

The City of Commerce is working together to build and maintain a community of the highest quality for current and future generations.

The City's Core Values:

- Responsive: Meeting Citizen Needs in a Timely Manner
- Effective: Meeting Citizen Needs Completely, the First Time
- Accountable: Measuring Performance to Improve & Repeat Results

## **B. PROJECT INFORMATION**

### **1. OBJECTIVE**

The City desires to select a Design-Build (DB) Firm to design and construct the **COMMERCE CITY PARK SPLASH PAD PROJECT**.

This RFQ invites respondents to submit a Statement of Qualifications (SOQ) to be selected to move on to the second phase of the DB procurement process. Selection will be determined based upon the SOQ that the City determines to provide the best value according to the evaluation criteria set forth in Section D.3 of this RFQ. The selected Respondents will be responsible for reviewing the subsequent Request for Proposals (RFQ) and submitting their proposal during Phase 2.

## **2. PROJECT BACKGROUND**

The City of Commerce does not have any water recreation options for families. There was previously a City Pool that was closed and demolished years ago. This project looks to design and construct a new, zero-depth splash pad in order to provide low-cost water recreation to the community.

There have been no design activities for this project, but a site has been selected.

## **3. SCOPE OF WORK**

The successful Respondent will provide services in two distinct phases. Phase I services consist of all Pre-Construction services to support the development of a Guaranteed Maximum Price (GMP). The City will look to negotiate the GMP at the approximately 90% Design milestone. Based on the needs of the design, there may be early-out packages and multiple GMPs established during the Pre-Construction Phase. The City will look for cost estimates at approximately the 30% and 60% Design milestones to ensure budget integrity.

Phase II services will include construction, demolition, restoration and facility start-up and commissioning. A sample contract is provided in Exhibit 2 and sets forth the responsibilities, obligations, and other requirements of the Respondent in performing these services. Certain requirements set forth in this RFQ and certain portions of the selected Respondent's Proposal may be incorporated into the DB Contract as appendices in connection with the finalization of the DB Contract with the selected Respondent.

### **3.1 PHASE I SERVICES**

For Phase I Services, the Respondent will:

1. Assist staff with the evaluation of the existing Animal Shelter.
2. Provide Programming Services to determine the new shelter / renovated shelter needs.
3. Develop the Project Management Plan (PMP) to include a Quality Assurance and Quality Control (QA/QC) Plan and a Risk Management Plan.
4. Participate in a one-day Partnering Session.
5. Develop a detailed Project Schedule.
6. Perform Document Management and Controls through a Microsoft SharePoint site managed by the Owner's Representative.
7. Conduct bi-monthly scheduled design status meetings with the City.
8. Submit monthly invoices and status reports documenting project budget and schedule updates. Budget, risk and schedule mitigation measures shall be reported, as necessary.
9. Produce the Preliminary Design Report to be approved by the City.
10. Develop the preliminary engineering design (including preparing and submitting 30 percent and 60 percent design review packages, all necessary field studies, OPCC and other supporting design documents) constructability reviews, and value-engineering activities in conjunction with the City and any relevant regulatory stakeholders.

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11. Prepare and negotiate any early-out GMP packages for site/civil work and long lead-time items.
12. Prepare a project cost model and provide detailed cost estimates as the design and design alternatives are advanced. Tracking for changes by the Owner should be included.
13. Submit and negotiate a GMP at approximately the 90-95% Design milestone to complete all Project services.
14. Identify project permitting requirements and initiate certain permitting activities.
15. Participate in public outreach (including adjacent property owners and general public) including but not limited to providing staff for meetings and public outreach forums as needed, and prepare and provide displays, printed material, photos, renderings, and other materials as necessary in support of the public outreach.

### **3.2 PHASE II SERVICES**

For Phase II Services, the Respondent will:

1. Continue Project Management activities.
2. Complete the permitting.
3. Complete the final design which meets the GMP.
4. Procure subcontractors.
5. Secure necessary permits.
6. Procure equipment.
7. Construct the Project.
8. Maintain site security.
9. Conduct startup, commissioning, and performance/acceptance testing.
10. Provide operator training.
11. Provide final landscaping design and landscaping contractor.
12. Provide warranty coverage.
13. Prepare any necessary O&M Manuals.
14. Provide "As-Built" documents to include two sets of hard copies, PDF files and AutoCAD files.
15. Compile and provide a critical spare parts list to keep on-hand.
16. Demolition and restoration of existing facilities. Contractor may salvage or recycle all equipment and materials from the demolition.
17. Participate in public outreach (including adjacent property owners and general public) including but not limited to providing staff for meetings and public outreach forums as needed, and prepare and provide displays, printed material, photos, renderings, and other materials as necessary in support of the public outreach.

### **4. ESTIMATED PROJECT BUDGET**

The total cost for the Project is estimated at \$1.0 million. Such budget does not include the City's other Project costs, such as professional advisory services, property or access rights, site investigations, environmental studies, certain governmental approvals, taxes, etc.

**5. SHORT LISTED FIRMS**

This RFQ represents the first step of the procurement process and establishes the process for soliciting and evaluating Proposals from those entities shortlisted as part of the City’s evaluation of the SOQs that will be submitted on December 30, 2021.

**Only those Respondents selected by the City will be invited to submit a Proposal in response to the RFP. The City will not accept proposals submitted by any other firm(s).**

**C. PROCUREMENT OVERVIEW**

**1. MINIMUM REQUIREMENTS**

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

- Submittal shall adhere to the Submittal Checklist outlined in Attachment C.

**2. SCHEDULE OF EVENTS**

Following is a list of **projected dates** with respect to this Project

Issuance of RFQ:	11/29/21
Deadline for Submission of Responses:	12/30/21 before 2:00 PM, CST
Selection of Shortlisted Firms:	01/07/22
Issuance of Step 2 RFP:	01/10/22
Deadline for Submission of Step 2 Proposal:	01/26/22
Contract Award:	02/15/22
Project Completion Date:	07/29/22

The City reserves the right to change the dates indicated above.

### **3. CONTRACT TERM**

The Contract shall commence upon the issuance of a Notice to Proceed by the City and shall automatically expire upon completion of the work or receipt of the materials, and acceptance by the City. The final project schedule will be requested and negotiated with the selected Respondent as part of the GMP.

### **4. ADDENDA AND MODIFICATIONS**

Any changes, additions, or clarifications to the RFQ are made by amendments (addenda) and will be posted at the City's website ([www.commercetx.org](http://www.commercetx.org)). Any Respondent in doubt as to the true meaning of any part of the RFQ or other documents may request an interpretation from the Purchasing Department. At the request of the Respondent, or in the event the Purchasing Department deems the interpretation to be substantive, the interpretation will be made by written addendum issued by the Purchasing Department. Such addendum will be attached to the original RFP at the City's website and will become part of the RFQ package having the same binding effect as provisions of the original RFQ. It shall be the Respondent(s)'s responsibility to ensure that they have received all Addenda in respect to this RFQ. Furthermore, Respondents are advised that they must recognize, comply with each Addendum. Respondent(s)'s signature on Addenda shall be interpreted as the Respondent's recognition and compliance to official changes as outlined by the City and as such are made part of the original RFQ documents. Failure of any Respondent to receive any such addendum or interpretation shall not relieve such Respondent from its terms and requirements. Addenda are available online at the City's website. No verbal explanations or interpretations will be binding. The City does not assume responsibility for the receipt of any addendum sent to Respondents.

## **D. SELECTION PROCESS**

### **1. SELECTION**

The City will select a Design-Builder for services specified using a two-phased approach, Request for Qualifications and Request for Proposals. The RFQ for this Project was issued by the City on **November 29, 2021**. The City will evaluate the Qualifications of the Design-Builders based on the provided set criteria. Cost or price related factors will not be used in Phase One. The City will shortlist firms from Phase One.

Phase Two of the selection process involves the Owner's issuance of an RFP and the submission of sealed proposals by selected Design-Builders as set forth in the Design-Build Statute at Texas Government Code §2269.360. The shortlisted Design/Builders will be asked to submit proposals, including separate "SEALED" monetary proposals and a technical proposal by the date as set forth in the RFP.

Following the submittal of the SOQs, the City may elect to conduct interviews with the shortlisted Respondents. The City's selection committee will evaluate each of the SOQs received. SOQs will be scored based on a numerical scoring system for the responses to the evaluation criteria outlined in Section D.3. the City will then select the highest-ranking Respondent and begin negotiations.

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Upon successful negotiations, the City will recommend award of the DB Contract to the City Council.

If the City determines that it is unable to reach a contract satisfactory to the City with selected Respondent, then the City will end negotiations with that Respondent and proceed to the next Respondent in order of selection ranking and continue this process until a contract is reached or the City has rejected all proposals. The City will not disclose information from one Respondent’s proposal to another Respondent in conducting such discussion. The City reserves the right to award the contract for all or any portion of the Project; or reject all proposals if deemed to be in the best interest of the City. The City also reserves the right to re-solicit for proposals if deemed to be in the best interest of the City, and to abandon the procurement temporarily or permanently.

**2. CONTRACT INFORMATION**

The Sample DB Contract in Exhibit 2 will be utilized as the basis of the final contract award. Any exceptions to the sample DB Contract should be documented in Attachment B– Submission Exceptions/Clarifications.

**3. EVALUATION CRITERIA**

In accordance with Statute 2269.361 of the Texas Government Code respondents are required to submit the following: project approach, anticipated problems, proposed solutions to anticipated problems, ability to meet schedules, conceptual engineering design, and other information requested by the governmental entity. Proposals submitted by the Design-Builders shall be evaluated by the City selection committee based on the following criteria and weighting:

	<b>Points</b>	<b>Page Limit</b>
<b>Statement of Qualifications (SOQ)</b>		
Cover Sheet		1
Executive Summary		2
Project Approach	25	5
Project Schedule	15	3
Project Management	10	5
Risk Management	5	5
Relevant Experience & Qualifications	45	10
<b>Total for SOQ</b>	<b>100</b>	<b>31</b>
<b>Monetary Proposal</b>		
N/A	--	N/A

### **3.1 STATEMENT OF QUALIFICATIONS**

#### **3.1.1 PROJECT APPROACH**

Having reviewed the requirements of this RFQ, provide a narrative detailing the Respondent's overall approach for successfully delivering this Project. This narrative should include:

- Detailed scope of work for the 30 percent and 60 percent design phases of the project.
- Description of how the Respondent proposes to incorporate input from the City during the design and construction phases.
- Description of how the Respondent plans to adhere to the Project budget and negotiated GMP.
- Description of how the Respondent proposes to subcontract work, including what work may be self-performed and what will be bid.
- Description of Best Management Practices (BMP) which will be used on this Project.
- Approach to start-up, testing, commissioning, and training, if necessary.
- Approach to demolition and site restoration of existing facilities, if necessary.
- Recommendations of alternative materials, or construction processes, if any, to minimize the cost and complexity for shelter operations and maintenance, if necessary.

#### **3.1.2 PROJECT SCHEDULE**

In this section the Respondent shall provide a detailed schedule using the critical path method showing dates for each major task associated with this Project. The detailed schedule should include at a minimum the following items:

1. Submittal dates for each phase of the design
2. Allow two weeks following each design phase submittal for the City's review
3. GMP Negotiation
4. Permit acquisition and regulatory review
5. Major construction milestones including start-up, commissioning, and training

The Respondent shall assume the Notice to Proceed for Phase I services will be issued on **February 16, 2022** and all construction must be completed by **July 29, 2022**. The Respondent shall describe scheduling techniques to meet the Project's timeframe including any potential schedule reduction opportunities that may exist for this Project.

**The detailed schedule may be presented on 11" by 17" pages and will count as one page per sheet.**

#### **3.1.3 PROJECT MANAGEMENT**

In this section, the Respondent shall present the management structure and team that will be used to develop and implement the Project. The Respondent shall prepare and include an organizational diagram of the proposed management structure for the Project that identifies the key staff that will

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be involved in the Project from development through implementation and the role they will perform in the Project delivery.

The Respondent shall describe, in graphic and written form, the proposed Project assignments and lines of authority and communication for each team member to be directly involved in the Project.

The City is interested in knowing how the management team will interact with the City and the benefits to be realized from the management structure being proposed. This should include a description of the Respondent's plan for anticipated meetings with the City during both Phase I and Phase II.

### **3.1.4 RISK MANAGEMENT**

In this section, the Respondents shall clearly convey the risk management and constructability review process that will be proposed for implementation to identify impacts to the Project budget, schedule, and quality.

The Respondent shall describe the most significant risks to achieving the City goals for budget, schedule, and quality. Describe your proposed approach to mitigating these identified risks as well as your plan for identifying and mitigating other risks as the Project progresses. Provide examples of how you have successfully implemented these approaches on previous projects to the benefit of the project and the owner. The Respondent shall include previous project successes and failures and how such learnings will be brought to bear for the benefit of this Project.

The Respondent shall identify any significant Project risks as related to the constructability of the Project, including approach to construction activities during the daily operation of the plant. The Respondent shall include potential cost and schedule impacts.

### **3.1.5 QUALIFICATIONS AND EXPERIENCE**

The score from the Relevant Experience and Qualifications section of the RFQ will be used again within the RFP scoring criteria. For each selected respondent, the score from the Relevant Experience and Qualifications section of the RFQ will be divided by the total number of points available (45 points). That percentage will then be multiplied by 15 (evaluation criteria maximum for the RFP) to get the score for that section.

## **4. MONETARY PROPOSAL**

**There will be NO Monetary Proposal included in this Statement of Qualifications.**

## **E. SUBMITTING A RESPONSE**

### **1. SUBMITTAL INSTRUCTIONS**

Respondent shall submit one (1) original signed document and five (5) copies. The original shall be clearly marked. In addition, the submittal shall be provided electronically on a USB drive. The

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complete proposals must be received, in a sealed envelope, at the City of Commerce City Hall no later than published date and time on the cover sheet at the address below. Submittals sent by facsimile or email will not be accepted. Any submittal or modification received after this time shall not be considered, and will be returned, unopened to the Respondent. Respondents should strive for early submission to avoid the possibility of rejection for late arrival.

Address:  
City of Commerce  
Attn: Purchasing Solicitation # 22-116-02  
1119 Alamo St  
Commerce, Texas 75428

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 delays, internal or external, that may result in the submission arriving after the set time.

All submissions shall be opened in a manner that avoids disclosure of the contents to competing Respondents and keeps the responses confidential during negotiations. **A public opening will not be conducted with this process.**

## **2. SUBMISSION FORMAT**

Each submittal shall be typewritten, single spaced and submitted on 8.5” by 11” white paper. Maximum of five (5) 11” by 17” pages to be counted as a single page. Font size shall be no less than 12-point type for all items and may be in full color. All pages shall be numbered and should be printed two-sided. Submittals shall include the documents listed below, and in the Attachment C -Submittal Checklist. Websites or URLs shall not be submitted in lieu of the printed submittal or electronic submission.

Responses are limited to the page limits set forth in the evaluation criteria as outlined in Section D.3. Required forms do not count toward the page limit.

Each submittal must include the sections and attachments in the sequence listed below, and each section and attachment must be indexed and divided by tabs and indexed in a Table of Contents page. The electronic submittal should be submitted in Adobe PDF as one file and bookmarked with the sections listed below.

Submissions shall be organized as follows:

### **A. STATEMENT OF QUALIFICATIONS:**

1. **COVER SHEET:** The cover sheet shall include the solicitation number and name, firm name, address, contact phone, fax, website and email address.

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2. **BID BOND:** **No Bid-Bond is required for the SOQ submittals to this RFQ.** However, firms that are selected for the 2<sup>nd</sup> Step RFP will be required to submit an acceptable bid bond in an amount not less than 5% of the total amount of the project, which is **\$1,000,000 (i.e. \$50,000).**
3. **TABLE OF CONTENTS:** Respondent will prepare and include a Table of Contents that includes each section of the proposal, as well as the corresponding page number. The Table of Contents should be formatted in the same order as the Proposal Checklist.
4. **SUBMITTAL CHECKLIST:** Complete Attachment C - Proposal Checklist, with the proposal packet. Respondent should verify that the checklist is signed and that all documents on the checklist have been included with the proposal packet.
5. **EXECUTIVE SUMMARY:** The summary shall include a statement of the work to be accomplished, how consultant proposes to accomplish and perform each specific service and unique problems perceived by consultant and their solutions.
6. **PROJECT APPROACH:** Provide a response addressing all items requested, as indicated in Section D.3.1.1, Evaluation Criteria.
7. **PROJECT SCHEDULE:** Provide a response addressing all items requested, as indicated in Section D.3.1.2, Evaluation Criteria.
8. **PROJECT MANAGEMENT:** Provide a response addressing all items requested, as indicated in Section D.3.1.3, Evaluation Criteria.
9. **RISK MANAGEMENT:** Provide a response addressing all items requested, as indicated in Section D.3.1.4, Evaluation Criteria.
10. **SOLICITATION PACKET ATTACHMENTS:** This section includes the following forms:
  - Attachment A - Acknowledgement
  - Attachment B - Submission Exceptions/Clarifications

**B. MONETARY PROPOSAL**

**There will be NO Monetary Proposal included in this Statement of Qualifications.**

**3. PREPARATION OF RESPONSE**

Responses **MUST** give full firm name and address of Respondent, and be manually signed in the Acknowledgment, Attachment A. Failure to do so will disqualify your submittal. The person signing the response must show title or **AUTHORITY TO BIND FIRM IN A CONTRACT**. Firm name and authorized signature must appear on each page that calls for this information. The legal status of the Respondent whether corporation, partnership, or individual, shall also be stated in the submittal. A corporation shall execute the submittal by its duly authorized officers in

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accordance with its corporate by-laws and shall also list the state in which it is incorporated. Respondent shall give full names and business addresses of all partners proposed to be utilized on this Project. All partners shall execute the submittal. Partnership and Individual Respondent shall state in the submittal the names and addresses of all persons with a vested interest therein. The place of residence of each Respondent, or the office address in the case of a firm or company, with county and state and telephone number, shall be given after the signature. Any costs associated with assembling this submittal will be at the sole expense of the Respondent.

**4. WITHDRAWAL**

Responses may be withdrawn prior to the due date for submission. Written notice of withdrawal shall be provided to the Purchasing Department. No response may be withdrawn after opening time without reasonable exception in writing and only after approval by the City.

**5. TIME ALLOWED FOR ACTION TAKEN**

The City may hold responses 120 days after submittal deadline without taking action. Respondents are required to hold their Responses, including pricing, firm for same period of time.

**6. ALTERATIONS/AMENDMENTS TO RESPONSES**

Responses CANNOT be altered or amended after the opening deadline. Alterations made before opening time must be initialed by Respondent guaranteeing authenticity.

**7. INTERPRETATIONS**

Any questions concerning the requirements or scope of work with regards to this RFP shall be directed to the designated individuals as outlined herein. Such interpretations, which may affect the eventual outcome of this solicitation for Responses, shall be furnished in writing to all prospective Respondents via Addendum. No interpretation shall be considered binding unless provided in writing by the City in accordance with paragraph entitled “**Addenda and Modifications.**”

**8. RIGHT TO REJECT/ AWARD**

The City reserves the right to reject any or all responses, to waive any or all formalities or technicalities, and to make such awards of contract(s) as may be deemed to be in the best interest and most advantageous to the City, considering the relative importance and other evaluation factors specified herein.

**9. RESTRICTIONS ON COMMUNICATION**

Respondent(s) are prohibited from communicating with: 1) The City Council and the City staff regarding the RFQ or submittals from the time the RFQ has been released until the contract is posted as a City Council agenda item; and 2) the City employees and Owner’s Representative from the time the RFQ has been released until the contract is awarded. These restrictions extend to “thank you” letters, phone calls, emails and any contact that results in the direct or indirect

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discussion of the RFQ and/or submittal by Respondent. Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent's submittal from consideration.

Exceptions to the restrictions on communication with the City employees include:

- Respondents may ask verbal questions concerning this RFP at the Pre-Submittal Conference (if applicable) or submit clarification requests via email to the point of contact below.
- Respondents may provide responses to questions asked of them by the Purchasing Department after submittals are received and opened. The Purchasing Department may request clarification to assist in evaluating Respondent's Response. The information provided is not intended to change the Response in any fashion. Such additional information must be provided within two (2) business days from the City's request. Respondents may also respond to requests by the Purchasing Department for best and final offers, which do allow Respondents to change their response. Requests for best and final offers will be clearly designated as such.

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

Howdy Lisenbee  
City Manager  
(903)886-1130  
[howdy.lisenbee@commercetx.org](mailto:howdy.lisenbee@commercetx.org)

**10. INVITATION FOR RESPONSES PREPARATION COSTS**

Issuance of this RFQ does not commit the City, in any way, to pay any costs incurred in the preparation and submission of a response. All costs related to the preparation and submission of this RFQ shall be borne by the Respondent.

**11. ANTI-LOBBYING PROVISION**

During the period between RFQ submission date and the contract award, Respondents, including their agents and representatives, shall not directly discuss or promote their response with any member of the City Council or City staff except in the course of City-sponsored inquiries, briefings, interviews, or presentations. Violation of this provision may result in the rejection of the Respondent's response and disqualification from future consideration of a similar solicitations.

**12. CONFIDENTIAL INFORMATION & SECURITY**

Any information deemed to be confidential by the Respondent should be clearly annotated on the pages where confidential information is contained. The City cannot guarantee that it will not be required to disclose all or part of any public record under Texas Public Information Act, since information deemed to be confidential by the responder may not be confidential under Texas Law, or pursuant to a Court order.

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Should the successful Respondent be awarded a contract and become the holder of, and have access to, confidential information, (in the process of fulfilling its responsibilities in connection with the contract), the successful Respondent agrees that it shall keep such information confidential and will comply fully with the laws and regulations of the State of Texas, ordinances and regulations of the City, and any applicable federal laws and regulations relating to confidentiality.

**13. ACKNOWLEDGEMENT**

Submit a signed Attachment A as an acknowledgement in by authorized agent of the responding firm.

**14. DEVIATION FROM SPECIFICATION/ REQUIREMENTS**

Please read the requirements thoroughly and be sure that your response complies with all requirements/specifications noted. Any variation from the solicitation requirements/ specifications must be clearly indicated in Attachment B on a point-by-point basis, attached to and made a part of your response. If no exceptions are noted, and you are the successful Respondent, the City will require that the good/service(s) be provided as specified.

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.**

**15. CONTRACT**

The successful Respondent will be required to execute a contract using the City's standard terms and conditions. A sample of the Design-Build Contract is included in Exhibit 2. Respondents should include any exceptions to the contract on Attachment B, or submit a modified word document, using track changes for consideration by the City.

**F. TERMS AND CONDITIONS**

**1. LIQUIDATED DAMAGES AND INCENTIVES**

The City and the awarded contractor recognize that time is of the essence with respect to the Substantial Completion and Final Completion dates for the Project. Failure to achieve the applicable dates specified in the contract, plus any extensions thereof allowed in accordance with the contract will result in the assessment of delay liquidated damages or as otherwise agreed upon by the Parties in any amendment ("Amendment"). They also recognize the delays, expense, and difficulties involved in quantifying the actual loss suffered by the City if the Work is not substantially complete on Time. Accordingly, Liquidated Damages will be negotiated as part of the GMP amendment to the contract.

**2. SUBSTITUTIONS/CANCELLATIONS**

No substitutions or cancellations are permitted without written approval of the City.

**3. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed by both parties hereto that the City is contracting with the successful Respondent as an independent contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the successful Respondent under this contract and that the successful Respondent has no authority to bind the City.

**4. ASSIGNMENT**

Respondents are advised that the City shall not allow the successful Respondent to sell, assign, transfer, or convey any part of any contract resulting from this response in whole or in part, to a third party without the written approval of the City.

**5. INDEMNIFICATION CLAUSE**

**THE CONSULTANT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY DAMAGE, LIABILITY OR COST (INCLUDING REASONABLE ATTORNEYS' FEES AND COST OF DEFENSE) TO THE EXTENT CAUSED BY THE CONSULTANT NEGLIGENT ACTS, ERRORS OR OMISSIONS IN THE PERFORMANCE OF ITS SERVICES UNDER THIS AGREEMENT AND THOSE OF HIS OR HER SUBCONTRACTORS OR ANYONE FOR WHOM THE CONSULTANT IS LEGALLY LIABLE.**

**6. FORCE MAJEURE**

If either party shall be wholly or partially prevented from the performance of any contractual obligation or duty by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of Force Majeure shall rest solely with the City.

**7. JURISDICTION**

Contract(s) executed as part of this solicitation shall be subject to and governed under the laws of the State of Texas. All obligations and payments are due and payable in Hunt County, Texas.

**8. VENUE**

The parties agree that venue for purposes of any and all lawsuits, cause of action, arbitration, and/or any other dispute(s) shall be in Hunt County, Texas.

**9. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS**

The Respondent shall comply with all State, Federal, and Local laws and requirements. The Respondent must always comply with all applicable laws, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

**10. RESPONDENT'S EMPLOYEES**

Neither the Respondent nor his/her employees engaged in fulfilling the terms and conditions of any awarded contract shall be employees of the City. The method and manner of performance of such undertakings shall be under the exclusive control of the Respondent on contract. The City shall have the right of inspection of said undertakings at any time.

**11. VERBAL THREATS**

Any threats made to any employee of the City, be it verbal or written, to discontinue the providing of item/material/services for whatever reason and/or reasons shall be considered a breach of contract and the City may immediately sever the contract with the successful Respondent.

**12. EQUAL EMPLOYMENT OPPORTUNITY**

The awarded contractor will not discriminate against any employee or applicant for employment because of race, religion, ethnicity, gender, age, national origin, disability, veterans' status or any other status or condition protected by applicable federal and state laws. The awarded contractor will take affirmative action to ensure that applicants are employees and that employees are treated during employment, without regard to their race, religion, ethnicity, gender, age, national origin, disability, veterans' status or any other status or condition protected by applicable federal and state laws.

**13. BONDS**

**A. BID BOND**

**No Bid-Bond is required for the SOQ submittals to this RFQ.**

The Short-Listed Firms must submit a bid bond (with their RFP Proposal) with a raised seal, in a form acceptable to the City, made payable to the City of Commerce, executed by a corporate surety acceptable to the City who is licensed pursuant to the Texas Insurance Code and listed on the United States Department of the Treasury's Listing of Approved Sureties (Dept Circular 570) in the amount of 5% of the total amount of the project (except for design services as limited by Sec. 2269.311, Texas Government Code), which is \$1,000,000 (i.e. \$50,000). The Bid Bond shall be valid through Phase 1. The Bid Bond must be accompanied by an original signed and notarized Power-of-Attorney bearing the seal of the issuing surety company and reflecting that the signatory

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to the bond is a designated Attorney-in-Fact. If Respondent is not selected, the City will not collect on the bond, but will keep the original document pursuant to the Local Government Records Act and applicable retention schedule.

Should the Respondent to whom the Contract is awarded, refuse or neglect to execute the Contract and furnish the required bonds at Phase 2, the bid guaranty shall become the property of the City, not as a penalty, but as liquidated damages, or the City may pursue any other action allowed by law.

**B. PERFORMANCE BOND**

The awarded contractor shall provide a performance bond made payable to the City of Commerce, executed by a corporate surety acceptable to the City who is licensed pursuant to the Texas Insurance Code and listed on the United States Department of Treasury's Listing of Approved Sureties (Dept. Circular 570) in the amount of **the cost of the entire Project**, (except for design services as limited by Sec. 2269.311, Texas Government Code). Said bond shall further provide coverage for all damages or losses resulting from the principal's default. Said bond shall further guarantee the principal's performance of all terms and obligations under this contract. Said bond must have attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. This bond must be furnished in compliance with the statutory requirements of the Texas Government Code, chapter 2253. This bond must be executed and delivered to the City prior to commencement of work under this contract. Any repairs exceeding the bond's value must be approved separately, and Contractor must supply a supplemental performance bond, meeting the same requirements herein, to cover the incremental increase between this bond's value and the cost of the repair.

**C. PAYMENT BOND**

The awarded contractor shall provide a payment bond as a security for all persons supplying labor and material in the performance of the Project completion. Bond shall be made payable to the City of Commerce, executed by a corporate surety acceptable to the City who is licensed pursuant to the Texas Insurance Code and listed on the United States Department of Treasury's Listing of Approved Sureties (Dept. Circular 570) in the amount of **the cost of the entire Project**, (except for design services as limited by Sec. 2269.311, Texas Government Code). Said bond shall further provide coverage for all damages or losses resulting from the principal's default. Said bond shall further guarantee the principal's payment of all terms and obligations under this contract. Said bond must have attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. This bond must be furnished in compliance with the statutory requirements of the Texas Government Code, Chapter 2253. This bond must be executed and delivered to the City prior to commencement of work under this contract. Any repairs exceeding the bond's value must be approved separately, and Contractor must supply a supplemental bond, meeting the same requirements herein, to cover the incremental increase between this bond's value and the cost of the repair.

**D. MAINTENANCE BOND**

The awarded contractor shall provide a maintenance bond to guarantee Contractor will resolve all maintenance incidents on the Project for a 12-month period. Maintenance bond shall be made payable to the City of Commerce, executed by a corporate surety acceptable to the City who is licensed pursuant to the Texas Insurance Code and listed on the United States Department of Treasury's Listing of Approved Sureties (Dept. Circular 570) in the amount of **the cost of the entire Project**. Said bond shall further provide coverage for all damages or losses resulting from the principal's default. Said bond shall further guarantee the principal's performance of all terms and obligations under this contract. Said bond must have attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. This bond must be furnished in compliance with the statutory requirements of the Texas Government Code, chapter 2253. This bond must be executed and delivered to the City prior to commencement of work under this contract. Any repairs exceeding the bond's value must be approved separately, and Contractor must supply a supplemental bond, meeting the same requirements herein, to cover the incremental increase between this bond's value and the cost of the repair.

**14. RETAINAGE**

In accordance with the Government Code Section 2252.032, The City shall retain 5% of each payment request until final completion and acceptance of the contract work.

**15. TAX EXEMPTION**

The City is a political subdivision of the State of Texas, which is the reason for this claim of exemption from the Sales Tax. The City's tax-exempt number is **75-6000498**.

The Contractor performing this contract may purchase all materials and supplies consumed in the performance of this contract by issuing to his retailer an exempt certificate in lieu of the tax, said exemption certificate complying with State Comptroller's Ruling No. 95-9.07. Any such exemption certificate issued by the Contractor in lieu of the tax shall be subject to the provisions of the State Comptroller's Ruling No. 95-0.09 as amended to be effective October 2, 1968.

The Contractor will be liable for payment of the Limited Sales and Use Tax if the Contractor uses the goods and services in some other manner for some other use than the reason listed above and shall pay the tax based on the price paid for the goods and services.

The City will furnish the Contractor with a Tax Exemption Certificate. It is the awarded contractor's responsibility to take all necessary action to establish tax exemption in accordance with the Texas Tax Code. The awarded contractor is totally responsible for maintaining auditable records to track tax exempt materials and tangible equipment.

**16. PREVAILING WAGE RATES**

The Provisions of Chapter 2258 of the Texas Government Code, and the "Wage and Labor Standard Provisions" expressly are made a part of the Contract. In accordance therewith, a

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schedule of the general prevailing rate of per diem wages in this locality for each craft or type of worker needed to perform the Contract shall be included in the Project bid package prior to the bidding of the Project, **Exhibit 2**. The establishment of prevailing wage rates, pursuant to Chapter 2258 of the Texas Government Code, shall not be construed to relieve Contractor from its obligation under any Federal or State Law, regarding the wages to be paid to or hours worked by laborers, workmen or mechanics, insofar as applicable to the work to be performed hereunder. Contractor, in the execution of this Project, agrees it shall not discriminate in its employment practices against any person because of race, color, creed, sex, or origin. Contractor agrees it will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, creed, national origin, sex, age, handicap or political belief or affiliation. This Contract provision shall be included in its entirety in any subcontract agreement entered into by the Contractor or any Subcontractor employed on the project.

**17. CERTIFICATE OF INTERESTED PARTIES**

Effective January 1, 2016, pursuant to House Bill 1295 passed by the 84th Texas Legislature (Section 2252.908, Texas Government Code, as amended) and formal rules released by the Texas Ethics Commission (TEC), all contracts with private business entities requiring approval by the City Council, and/or with the amount of the contract being more than \$1,000,000, will require the on-line completion of Form 1295 "Certificate of Interested Parties." Form 1295 is also required for all contract amendments, extensions or renewals. The awarded Respondent(s) will be required to complete and file electronically with the Texas Ethics Commission using the online filing application.

Please visit the State of Texas Ethics Commission websites:  
[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and  
<https://www.ethics.state.tx.us/tec/1295-Info.htm> for more information.

IF YOU HAVE ANY QUESTIONS ABOUT COMPLIANCE, PLEASE CONSULT YOUR OWN LEGAL COUNSEL. COMPLIANCE IS THE INDIVIDUAL RESPONSIBILITY OF EACH PERSON OR AGENT OF A PERSON WHO IS SUBJECT TO THE FILING REQUIREMENT.

**18. PUBLIC INFORMATION REQUESTS**

This section applies to contracts executed by the City that have a stated expenditure of at least \$1 million for the purchase of goods or services by the City, or that result in an expenditure of at least \$1 million for the purchase of goods or services in a fiscal year.

The contractor shall provide contracting information that is in its possession to the City if the City receives a public information request for the information, subject to the exceptions provided under the Texas Public Information Act, Chapter 552 of the Government Code. The City must inform the contractor of the request for information within three (3) business days of receipt from the requestor. The contractor shall provide the information within ten (10) business days. The

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contractor shall provide written notice of an exception request, in accordance with Government Code Chapter 552.

The requirements of Subchapter J, Chapter 552, Government Code apply to this solicitation/ bid/ contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter. In addition, any contractor or vendor that does not comply shall be placed on the City's debarred vendor list.

**19. NO BOYCOTTING ISRAEL VERIFICATION**

Contractor agrees that it does not boycott Israel and will not do so during the term of this Agreement. This provision follows §2270.001 of the Texas Government Code. The City agrees to comply with the United States and Texas Constitutions in consideration of whether to enforce this provision.

**20. NON-TERRORIST/IRAN/SUDAN CERTIFICATION**

The City may not enter a contract with a company engaged in business with Iran, Sudan, or Foreign Terrorist Organizations. The awarded contractor will certify their firm is not listed on the website of the Comptroller of the State of Texas concerning companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. And further certifies that should their firm enter a contract with a firm listed on the on the Comptrollers' website which does business with Iran, Sudan, or any Foreign Terrorist Organization, they will immediately notify the City.

## **ATTACHMENTS**

All Attachments are to be returned with Submittal

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**ATTACHMENT A-ACKNOWLEDGMENT**

The undersigned agrees this submission becomes the property of the City of Commerce (City) after the official opening.

I understand that my submission may be treated as a public record under the Texas Public Information Act. I have marked pages that I consider to be confidential as "confidential." I further **INDEMNIFY AND HOLD HARMLESS** the City for the release of any portion of my information, as may be required by law.

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, and that the contents of this submission have not been communicated to any other Respondent or to any employee of the City 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 solicitation package, without clearly identifying changes.

The undersigned understands they will be responsible for monitoring the City Purchasing Website at: [www.commercetx.org](http://www.commercetx.org) 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.

In submitting a response to the City, the responder offers and agrees that if the response is accepted, the responder will convey, sell, assign or transfer to the City all rights, titles and interest in and to all causes to action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Texas for price fixing relating to the particular commodities or services purchased or acquired by the City. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the responder. 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. \_\_\_\_\_

**AUTHORIZED REPRESENTATIVE:**

Signature \_\_\_\_\_  
Date \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Email. \_\_\_\_\_



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**ATTACHMENT C-SUBMISSION CHECKLIST**

Project Name: COMMERCE CITY PARK SPLASH PAD PROJECT

Firm Name: \_\_\_\_\_

This checklist shall be used to ensure the submittal to this RFP is completed and meets the Minimum Qualifications. Check off each item below and include the checklist with your response with a signature and date.

SEPARATE SEALED STATEMENT OF QUALIFICATIONS

- Cover Sheet
- Table of Contents
- Attachment C – Submittal Checklist
- Executive Summary
- Project Approach
- Project Schedule
- Project Management
- Risk Management
- Attachment A – Acknowledgement
- Attachment B – Submission Exceptions/Clarifications
- USB Flash Drive

SEPARATE SEALED MONETARY PROPOSAL

- There will be NO Monetary Proposal for this RFQ.**

**EXHIBIT 1**  
**Project Description**

The City of Commerce does not have any water recreation options for families. There was previously a City Pool that was closed and demolished years ago. This project looks to design and construct a new, zero-depth splash pad to provide low-cost water recreation to the community.

There have been no design activities for this project, but a site has been selected. The site will be within “City Park” which is located at 1907 Park St, Commerce TX. It will be near the intersection of Maple St and Church St (northeast corner of the park).

The total project budget is \$1,000,000. The City recognizes that this budget is not all construction, but there are certain design costs and other soft costs associated with it; however, the City wants to maximize the budget to get as much play surface as possible for the community.

There has been some discussion regarding the wastewater that comes from the facility. The City does NOT want to recycle this wastewater stream. We will either send it directly to the City sewer system or send it to irrigation within the Park.