

DOCUMENT 2

**JOINT DEVELOPMENT AUTHORITY OF PEACH COUNTY
AND THE CITY OF WARNER ROBINS**

INSTRUCTIONS TO OFFERORS

PROJECT IDENTIFICATION: 2018 Cold Storage Facility

THIS PROPOSAL IS SUBMITTED TO: Joint Development Authority of Peach County and the City of Warner Robins

INTENTION: It is intended that the Instructions to Offerors, Specifications and Drawings shall cover the complete work to which they relate.

ARTICLE 1 **DEFINED TERMS:** Documents named in this Request for Proposal's ("RFP) Article I may be referred to by such name. In addition to the terms defined in the Agreement or elsewhere in the Proposal Documents, additional terms used in these Instructions to Offerors have the meanings indicated below which are applicable to both the singular and plural thereof.

- 1.1 **Addenda** - Graphic or written documents issued by Engineer prior to the opening of Proposals issued to clarify, revise, add to, or delete information in the original Proposal Documents or in previous addenda.
- 1.2 **Agreement** - The American Institute of Architects (AIA) agreement to be entered into between the Owner and Successful Offeror (the "Contractor") pursuant to this RFP and the Proposal, which shall be on form A141-2014, with appropriate exhibits, as modified and completed pursuant to any modifications negotiated by the JDA and the Contractor in accordance with the Proposal Process. References to the Agreement include the other Contract Documents as the context may permit or require.
- 1.3 **Engineer** – Saunders Engineering, 104 Old Gunn Rd # C, Centerville, GA 31028
- 1.4 **Offeror** - One who submits a Proposal directly to Owner as distinct from a sub-offeror of sub-bidder, who submits a Proposal to a Offeror.
- 1.5 **Owner** - Joint Development Authority of Peach County and the City of Warner Robins.
- 1.6 **Project** - That certain project defined in the public notice made a part of this RFP.

- 1.7 **Proposal** - A complete and properly signed offer to execute work for the prices stipulated in Proposal Form and submitted in accordance with the Proposal Documents.
- 1.8 **Proposal Documents** - All documents included in the RFP including all Addenda. The “Contract Documents” are the Agreement and the other Proposal Documents, as accepted and agreed to by Owner.
- 1.9 **RFP** - The Owner’s Request for Proposals dated May 22, 2018, related to the 2018 Cold Storage Facility.
- 1.10 **Successful Offeror** - The responsible and responsive Offeror whose Proposal the Owner determines to be most advantageous to Owner (on the basis of Owner’s evaluation as hereinafter provided) and to whom Owner makes an award.
- 1.11 **Work** - All labor, services, and work of whatever kind and required to be performed under the Agreement by the Successful Offeror in connection with the Project.

ARTICLE 2 PROPOSAL FORM: All Proposals must be made upon the Proposal Form hereto annexed, and shall state the amount proposed for each item shown, and all Proposals must be for materials and work called for in the specifications. Deposits for Specifications and Drawings are not refundable.

- 2.1 The Proposal Form is included with the Proposal Documents; additional copies may be obtained from Engineer or Owner.
- 2.2 All blanks on the Proposal Form must be completed by printing in black ink or by typewriter.
- 2.3 A Proposal submitted by a partnership shall list the names of all partners and shall be signed in the partnership name by one of the authorized members of the partnership. If there is no partner who is a Georgia resident, the name and address of an entity designated to receive service of process for the partnership in Georgia must be provided.
- 2.4 A Proposal submitted by a corporation, limited liability company, or other legal entity not a partnership shall be signed under the legal name of the entity by the officer, manager, or other person(s) duly authorize to bind said entity. The name of each person signing the Proposal shall be typed or printed below the signature. If not a Georgia corporation, there must also be evidence that the corporation is authorized to transact business in Georgia.

- 2.5 A Proposal from an *individual* who is not a Georgia resident shall provide the name and address of an entity in Georgia with the authority to accept service of process for the individual.
- 2.6 All names must be typed or printed in ink below the signature.
- 2.7 The Proposal shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Proposal Form.)
- 2.8 The address, email address, and telephone number for communications regarding the Proposal must be shown.

ARTICLE 3 COPIES OF PROPOSAL DOCUMENTS:

- 3.1 Complete sets of Proposal Documents must be used in preparing Proposals; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Proposal Documents.
- 3.2 Owner and Engineer in making copies of Proposal Documents available for a non-refundable deposit do so only for the purpose of obtaining Proposals for the Work and do not confer a license or grant for any other use.

ARTICLE 4 EXAMINATION OF PROPOSAL DOCUMENTS, OTHER DATA, AND SITE:

- 4.1 It is the responsibility of each Offeror before submitting a Proposal:
 - 4.1.1 to examine and study thoroughly the Proposal Documents and other related data identified in the Proposal Documents;
 - 4.1.2 to visit the work site to ascertain by inspection pertinent local conditions such as location, character and accessibility of the site including existing surface and subsurface conditions in the work area; availability of facilities, location and character of existing work within or adjacent thereto, labor conditions, etc.
 - 4.1.3 to become familiar with and satisfy Offeror as to all federal, state, and local laws and regulations that may affect cost, progress, or performance of the Work;
 - 4.1.4 to obtain and carefully study (or assume responsibility for doing so) all addition or supplementary examination investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and an underground facilities) at or contiguous to the Site which may affect cost, progress, or

performance or the Work or which relate any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Offeror, including any specific means, methods, techniques, sequences, and procedures of construction expressly required of the Proposal Documents, and safety precautions and programs incident thereto;

- 4.1.5 to study and carefully correlate Offeror's knowledge and observations with the Proposal Documents and such other related data; and
 - 4.1.6 to promptly notify Engineer of all conflicts, errors, ambiguities or discrepancies which Offeror has discovered in or between the Proposal Documents and such other related documents;
 - 4.1.7 to agree at the time of submitting its Proposal that no further examinations, investigations, explorations, tests, studies or data are necessary for the determination of its Proposal for performance of the Work at the price proposal and within the times and in accordance with the other terms and conditions of the Proposal Documents;
 - 4.1.8 to become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Proposal Documents;
 - 4.1.9 to determine that the Proposal Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.2 The Owner shall make available to all prospective Offerors, previous to receipt of proposals, information that it may have as to sub-soil conditions and surface topography at the work site. Such information shall be given as the best factual information available without being considered as a representation of the Owner.
- 4.3 The submission of a Proposal will constitute an incontrovertible representation by Offeror that Offeror has complied with every requirement of this Article 4, that without exception, the Proposal is premised upon performing and furnishing the Work required by the Proposal Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Proposal Documents, that Offeror has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Offeror has discovered in the Proposal Documents and the written resolutions thereof by Engineer are acceptable to Offeror, and that the Proposal Documents are

generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 5 INTERPRETATIONS AND ADDENDA:

- 5.1 All questions about the meaning or intent of the Proposal Documents are to be directed to Engineer. The person submitting the request shall do so in writing and be responsible for its prompt delivery. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or otherwise delivered (e.g. electronic mail, facsimile, etc.) to all parties recorded by Engineer as having received the Proposal Documents. Questions received less than ten days prior to the date for opening of Proposals may not be answered. Only questions answered by formal written Addenda will be binding. Owner will not be responsible for any oral instructions and oral or other interpretations or clarifications not issued in writing as specified herein will be without legal effect.
- 5.2 Addenda may also be issued to modify the Proposal Documents as deemed advisable by Owner or Engineer.

ARTICLE 6 PROPOSAL SECURITY:

- 6.1 Each Proposal must be accompanied by "Proposal Security" made payable to Owner in an amount of five percent (5%) of Offeror's maximum Proposal price and in the form of a certified bank check, cash, if permitted by O.C.G.A. § 36-91-51(b), an irrevocable letter of credit compliant with said Code Section, or a Proposal Bond (on form attached, if a form is prescribed) issued by a surety company licensed in Georgia with a minimum of an "A" Financial Strength Rate and a Financial Size Category of at least five (5) times the contract price as listed in the most current publication of "Best's Key Rating Guide Property Liability."
- 6.2 The Proposal Security of Successful Offeror will be retained until such Offeror has executed the Agreement, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Proposal Security will be returned. If the Successful Offeror fails to execute and deliver the Agreement and furnish the required Proposal Security within fifteen days after the Notice of Award, Owner may annul the Notice of Award and the Proposal Security of that Offeror will be forfeited. The Proposal Security of other Offerors whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the Effective Date of the Agreement or the sixty-first day after the Proposal opening, whereupon Proposal Security furnished by such Offerors will be returned. Proposal Security with

Proposals which are deemed unlikely of being selected for award will be returned within seven days after the Proposal opening.

ARTICLE 7 CONTRACT COMPLETION TIME: The Work is to be completed and ready for final payment no later than 260 calendar days from Notice to Proceed. Provisions for liquidated damages, if any, are set forth in the Agreement.

ARTICLE 8 SUBSTITUTE AND “OR-EQUAL” ITEMS: The Agreement, if awarded, will be on the basis of materials and equipment specified or described in the Proposal Documents without consideration of possible substitute or “or-equal” items. Whenever it is specified or described in the Proposal Documents that a substitute or “or-equal” item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure, if any, for submission of any such application by Contractor and consideration by Engineer is set forth in the Contract Documents.

ARTICLE 9 SUBMITTAL OF PROPOSALS: Proposals shall be submitted at the time and place indicated in the Request for Sealed Proposals and shall be enclosed in a sealed opaque envelope, marked with the project title, and name and address of Offeror, and accompanied by the Proposal security and other required documents. If the Proposal is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation “PROPOSAL ENCLOSED” on the face of it. Contractor license number(s) shall be written on the face of the proposal envelope. Pursuant to O.C.G.A. § 43-14-8.2(h), and to the extent the Work requires the services of a utility contractor, Offerors shall provide a Georgia Utility Contractor’s License Number on the outside of all sealed Proposals. The submittal of a utility Contractor’s License Number held by a subcontractor commits the Offeror to utilize that subcontractor on the Project. If the Work requires a utility contractor, the failure to provide the Offeror’s (or its designated subcontractor’s) Georgia Utility Contractor’s License Number on the outside of the sealed Proposal will result in rejection of the Proposal.

Each Offeror is responsible for seeing that his Proposal is received by the Owner not later than the advertised time set for the opening of Proposals.

ARTICLE 10 MODIFICATION AND WITHDRAWAL OF PROPOSALS:

10.1 Proposals may be modified or withdrawn by an appropriate document duly executed (in the manner that a Proposal must be executed) and delivered to the place where Proposals are to be submitted at any time prior to the opening of Proposals.

10.2 Once Proposals have been opened, Proposals may only be withdrawn for appreciable error in accordance with (and as limited by) O.C.G.A. § 36-91-52, and only upon duly signed, written notice actually received by Owner prior to award of the Agreement and not later than 48 hours after the opening of the Proposals, excluding Saturdays, Sundays, and legal holidays. Thereafter, that Offeror will be disqualified from further proposal on the Work to be provided.

ARTICLE 11 OPENING OF PROPOSALS: Sealed Proposals must be received by the time required for such Proposals (i.e. 10:00 a.m.. on Tuesday, June 26, 2018) at the offices of Owner located at 425 James E. Khoury Drive, Unity B, Fort Valley, Georgia 31030. All sealed Proposals shall be opened so as to avoid disclosure of contents to competing Offerors. The attendance of all Offerors at the time and place fixed for opening of Proposals is not mandatory.

ARTICLE 12 ACCEPTANCE OF PROPOSALS: Proposals may not be withdrawn (except as noted in Section 10.2) after the time set for the opening of Proposals. Proposals will remain subject to acceptance for sixty (60) days after the day of the Proposal opening, but the Owner may, in its sole discretion, release any Proposal and return the Proposal security prior to expiration of the acceptance period.

ARTICLE 13 AWARD OF AGREEMENT:

13.1 The submission of Proposals hereunder shall invest Offeror with no interest, right or claim of any kind with respect to the Agreement to be awarded. Furthermore, Owner reserves the right to reject all Proposals in its absolute discretion for any reason whatsoever, with or without cause, and thereafter re-advertise the contract opportunity, or not.

13.2 Owner also reserves the right to waive all informalities not involving price, time or changes in the Work. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

13.3 Owner will award the Agreement in accordance with the following procedure. Owner will first eliminate from consideration all Offerors who are not “responsive” and “responsible”, as such terms are defined in the Act, and will further eliminate any Offeror to whom Owner does not assign an aggregate score of at least 80 under the “Evaluation Factors” described below, based on Owner’s review of the Offerors’ Proposals. Owner will deem all remaining Offerors to be reasonably susceptible of being selected for award, and may give such Offerors an opportunity to participate in discussions, negotiations and revisions of

their Proposals (including the terms and conditions of the Agreement), in order to obtain their best and final offers; provided that Owner reserves the option to select the successful Offeror from the submittals without engaging in such discussions, negotiations and revisions. If only a single Offeror remains, Owner will deem and determine (in writing) its offer to be most advantageous to Owner, and, subject to its right to reject any such Proposal or engage in further discussions, negotiations and revisions with said Offeror, will award the Agreement to such Offeror.

- 13.4 Owner may assign to each Proposal the maximum number of points indicated for each factor, based on its review of each Offeror's Proposal: Related Experience - up to 30 points; Construction Management Capability - up to 30 points; Contract Price Provisions (which, if applicable, must include a unit price based on quantities provided within the technical specifications of the RFP) - up to 30 points; Operational Capability (to include, without limitation, financial resources) - up to 15 points; Adequacy and Ability of Professional Personnel up to 15 points. In the event of a tie between two or more remaining Offerors, and following any discussions, negotiations, or revisions as permitted under the RFP, Owner will base the award on the evaluation factor of "Risk Management"; i.e., which Offeror's past experience, capability, personnel, and approach to delivery of the Project lead Owner to believe that risk of delay or disputes is least if Owner accepts such Proposal. Owner will deem and determine (in writing) such Offeror's Proposal to be most advantageous to Owner, and, subject to its right to reject any such Proposal, Owner will award the Agreement to such Offeror.
- 13.5 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Proposal and to establish the responsibility, qualifications and financial ability of Offerors, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.
- 13.6 If the Agreement is to be awarded, it shall be made to the responsible and responsive Offeror whose Proposal is determined by Owner (in its sole discretion) to be the most advantageous, taking into consideration the evaluation criteria set forth herein, and, accordingly, Owner is not required or otherwise obligated to accept the Proposal submitted containing the lowest contract price.
- 13.7 If the Agreement is to be awarded, Owner will give Successful Offeror a Notice of Award within sixty (60) days after the day of the Proposal opening.

ARTICLE 14 MODIFICATIONS OF QUANTITIES: If the lowest bona fide Proposal exceeds the money available for the Work, the Owner reserves the right to delete enough of the Work to bring the cost within the available funds. The Owner also reserves the right to delete whichever items or portions of items Owner considers to be in the best interest of the Owner.

ARTICLE 15 CONTRACT SECURITY: The Agreement sets forth Owner's requirements as to performance and payment bonds. When the Successful Offeror delivers the executed Agreement to the Owner, it must be accompanied by the required performance and payment bonds ("Contract Security"). Unless otherwise specified in the Agreement, the payment and performance bonds shall be in amount and form as minimally specified by the Act (as defined herein).

ARTICLE 16 SIGNING THE AGREEMENT: When the Owner gives a Notice of Award to the Successful Offeror, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within fifteen (15) days thereafter, Contractor shall sign and deliver the required counterparts of the Agreement and attached documents to Owner with the required Bonds. Within ten (10) days thereafter, Owner shall deliver one fully signed counterpart to Contractor.

ARTICLE 17 LAWS AND REGULATIONS: The Contractor shall comply with local, State and federal laws applicable to the Work.

The Contractor shall comply with the Department of Labor Safety and Health Regulations for Construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-596) and under Section 107 of the Contract Work and Safety Standards Act (PL) 91-54). The regulations are administered by the Department of Labor and the Contractor shall allow access to the project to personnel from that Department.

ARTICLE 18 CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE: Contractor shall not commence work under this Agreement until Contractor has obtained all the insurance required by the Agreement.

ARTICLE 19 TERMINATION OF CONTRACT: If the Owner is made to stop construction of the work because of an order from a Court or State Department, the Agreement shall be terminated. Payment will be made for work completed and a proration of the work underway, materials stored, and for the overhead and profit of the completed work and work underway. Payment will not be made for anticipated profit and overhead on work not completed or underway.

ARTICLE 20 MODIFICATION BY OWNER: Subject to O.C.G.A. §36-91-20(d), Owner expressly reserves the right to revise, amend or otherwise change, at any time, any and all of the terms and requirements for Proposals set forth herein. Upon such revision, change or amendment, Owner will send written notification to

all Offerors regarding the same, said written notices to be made a part of these materials. Any Proposal submitted prior to receipt of such written notification may be returned to Offeror upon request.

ARTICLE 21 CONFLICT: Any conflict between the Request for Proposals advertised pursuant to O.C.G.A. § 36-91-20 et seq. and the Proposal Documents made available to Offerors following such advertisement shall be controlled by the latter.

ARTICLE 22 COSTS INCURRED BY OFFERER: All costs incurred by Offeror in connection with the Proposal, of whatever amount and nature, direct or indirect, shall be borne exclusively and completely by Offeror, and Owner shall have absolutely no liability or obligation of any kind for such costs.

ARTICLE 23 PUBLIC RECORDS: Subject to O.C.G.A. 36-91-21(c)(2), the Offeror is advised that the contents of its Proposal and all documents and information submitted in connection therewith may be subject to disclosure as required by The Georgia Open Records Act and any and all other applicable laws, and the Offeror does hereby release and forever discharge Owner and its members, employees, and agents from any damage, suit, costs, or other liabilities of whatever kind arising from such disclosure.

ARTICLE 24 SUBJECT TO PROVISIONS OF ACT: This Request for Proposals is made expressly subject to, and is qualified in its entirety by, all applicable provisions of the Georgia Local Government Public Works Construction Law, O.C.G.A. § 36-91-1 et seq. (the “Act”). To the extent any portion of this Request for Proposals directly conflicts with the provisions of the Act, this Request for Proposals shall be deemed modified so as to comply with said Act.

ARTICLE 25 SPECIFICATIONS AND DRAWING: Specifications for the Project, as well as Drawings (the “Specifications and Drawings”), are open to inspection at, or may be obtained from Owner, upon payment of \$50 (plus shipping charges as applicable). This payment is non-refundable.

ARTICLE 26 WARRANTY CERTIFICATE: Upon completion of the Project, Pure Hothouse Foods, Corp. (the “Company”) will receive a certificate from the Successful Offeror warranting that the Project has been completed in accordance with the Requests for Proposals, the Specifications and Drawings, and is free from defects in materials, workmanship, and design.

All such Specifications and Drawings are by this reference made a part of these Instructions and the Request for Proposals of which it is a part.