

July 3, 2019

RE: Solicitation #1000857398 (Energy Code Facilitator)

To Prospective Contractors:

The Arkansas Energy Office is providing the following clarifications based on questions raised by Prospective Contractors. Please use these clarifications in addition to the original Request For Proposal to prepare your response to AEO before the proposal opening date: 3:00 pm (central), July 15, 2019.

Questions on the expected code update version:

- What IECC code edition is the AEO considering updating to – 2012, 2015, 2018, or the yet-to-published 2021 edition?

Clarification:

Arkansas is currently using the IECC 2009 with amendments and AEO certainly wants to improve upon this for the planned update. AEO has not officially selected a new model code, but has mentioned the IECC 2015 by name in conversations with stakeholders. Prescriptive code requirements have not significantly changed in Climate Zones 3 or 4 since the IECC 2012 version, but AEO would prefer to adopt the 2015 or 2018 version “in name” due to the imminent sunset of technical support for older code versions. If the 2021 IECC is published in time to include it in our review, AEO may consider incorporating language from that version.

Questions on the Stakeholder Group:

- Does the AEO have an identified group of stakeholders currently engaged in the code update process or who were involved in the last code update, or are Bidders responsible to identify and recruit relevant stakeholders for the meetings?
- Approximately how many individuals from different stakeholder groups (e.g., code official, builders, design professionals, etc.) will be included in the code update process?
- What are the roles and authority of the stakeholder group? Specifically, do the stakeholders vote on any code adoption decisions, or do they simply provide feedback?

Clarification:

AEO has identified over two dozen participants with whom we have been in recent conversations regarding the energy code updates. These stakeholders predominantly include home builder associations, contractors, HVACR association, code officials, and utility companies. AEO is continuing efforts to recruit additional stakeholders including realtors, city and county leaders, commercial builders, trainers, manufacturers, and suppliers; the prospective contractor should recommend additional members of stakeholder groups as appropriate.

The role of the stakeholders is to provide expert feedback representing the public (formally or informally) in various industries and demographics impacted by the Energy Code. Stakeholders hold no voting power on the rule, but their opinion holds sway in the legislative approval process. AEO believes that stakeholder involvement from the early onset is vital to creating a quality energy code update and ensuring its smooth legislative approval.

Questions on the Code adoption process, authority, and timeline:

- The RFP states that the draft code provisions will be completed in December 2019. Is this a typo (intended to be December 2020) or does the AEO anticipate all work to be completed in 3 months?
- Can the AEO provide a description of the process to adopt the 2014 Energy Code based on the 2009 IECC? i.e. was this a similar process as outlined in the RFP?
- The RFP specifies up to six (6) meetings beginning in CY 2019, but does not specify a frequency or time deadline. Can the AEO clarify expectations around the frequency and time period for the in-person stakeholder meetings?
- Can the AEO provide more details on how final code adoption decisions are made? Specifically, do decisions require full consensus of the stakeholder group, or are final decisions within the responsibility of the AEO?

Clarification:

AEO has the responsibility and authority to promulgate an Energy Efficiency building code and require it to be adopted in jurisdictions that issue building permits. However, the checks and balances for AEO to promulgate these rules require the following process (paraphrased from Arkansas Code section 25-15-2):

As used below, “rule” means the updated Arkansas Energy Code.

1. In making rules, AEO shall consider the specific nature and significance of the problem we are addressing with the proposed rule, including unintended consequences or risks, reasonable alternatives, financial impacts, scientific evidence, or economic evidence.
2. AEO shall open the proposed rule for public comment for at least 30 days. AEO intends to keep this period open for at least 60 days.
3. AEO shall provide opportunities for oral hearings. AEO shall fully consider all written and oral submissions. This typically means a 2nd round of public comment and any subsequent finalizing of language before filing the rule.
4. AEO shall be prepared to provide concise reasoning for adoption of the rule, including reasons for overruling considerations urged against its adoption. AEO shall prepare a Financial Impact Statement. AEO shall adopt the least costly rule unless the benefits outweigh the cost or the reason can be explained based on public health, public safety, public welfare, or statutory authority. If the Financial Impact Statement reveals the rule to increase total aggregate annual costs by \$100,000 then AEO is also required to file Written Findings.
5. AEO shall file the proposed rule, a Financial Impact Statement, and (if applicable) Written Findings with the Legislative Council at least thirty (30) days before the expiration of the period for public comment. The proposed rule shall be reviewed by the Administrative Rules and Regulations Subcommittee (22 members of the General Assembly), who shall also allow public comment. Following the Subcommittee review, the Subcommittee will either:
 - a. Vote to approve or disapprove this rule, or
 - b. Elect to send the rule to be reviewed and voted on by the entire Legislative Council.
6. After approval, AEO shall file the approved final rule with the Secretary of State for adoption.
7. AEO shall take appropriate measures to make the final rule known to all stakeholders, including online posting the final rule and relevant comments, responses, reports, or statements.

Looking at the 7 steps in the above process, the initial stakeholder meetings will cover only Step 1, whereas the total scope of the contract will cover Steps 1 through 5. Section 2.1 (Introduction) of the RFP alluded to a timeline that would adopt the new code in 2021, going into effect in 2022, and AEO intends to stick to that goal. Stakeholder meetings, revisions, and public comments are expected to begin in 2019 and continue throughout calendar year 2020. A first draft of the proposed rule might not be ready for public comment by December 2019 and AEO will not hold the contractor to that milestone

deadline, but progress must be made to be ready to file a rule, with expected approval, for the 2021 legislative session (January-March 2021).

Questions on the expectations for meetings:

- Should we include price/cost of renting facilities for each in-person stakeholder meeting, or will the AEO be providing the meeting facilities?
- With regards to stakeholder meetings, are there established locations where the in-person stakeholder meetings will be held? For example, will all meetings take place at the Arkansas Energy Office in North Little Rock, or in separate locations such as the major population centers throughout the State?

Clarification:

AEO has a free meeting space at our North Little Rock office. This space is subject to availability but with planning it can be easily reserved. This space can accommodate up to 160 in-person attendees and is equipped with technology to facilitate web-conferencing for remote attendees. AEO expects the majority of meetings and hearings to occur at this location. Other potential ad-hoc locations might be Texarkana, Fayetteville-Springdale-Rogers, Jonesboro, or West Memphis, but AEO cannot provide free space in these locations unless it is donated for the purposes of the meeting.

Questions on the Technical Proposal Packet and Official Price Sheet:

- I was unable to find a number of other important documents (e.g., Technical Proposal Packet, Official Bid Price Sheet, EO 98-04 Disclosure Form, Equal Opportunity Policy, VPAT, Subcontractors Form, etc.) referenced in the RFP. Are you able to provide these documents?

Clarification:

The Department of Finance and Administration procurement content can be found at <https://www.dfa.arkansas.gov/procurement/procurement-forms-and-reporting/>. Specifically, the RFP Response documents can be found in the downloadable forms as follows:

1. *Proposal Signature Page* – included in the “*RFP Technical Proposal Packet Template*”
2. *Information For Evaluation* – included in the “*RFP Technical Proposal Packet Template*”
3. *Official Bid Price Sheet* – included in the “*IFB Response Packet Template*”
4. *EO 98-04 Disclosure Form* – also known as the “*Contract and Grant Disclosure Form*”
5. *Prospective Contractor's Equal Opportunity Policy* – provided by Prospective Contractor
6. *Proposed Subcontractors Form* – included in the “*RFP Technical Proposal Packet Template*”
7. *VPAT* – this is not required for submission with the RFP response. AEO will evaluate if it is necessary to submit, and if so, provide the document before awarding any final contract.

Questions on project scope responsibilities, budget, and future work:

- If selected to execute the contract, will the Bidder be tasked with identifying supplemental Appendix documents to provide builders and code officials with useful tools and resources for statewide compliance, or will the Bidder be required to develop the supplemental Appendix documents specific to the Arkansas Energy Code themselves?
- If selected to execute the contract, will the Bidder be tasked with recommending existing industry training related to the updated version of the Energy Code, or will the Bidder need to develop new resources specific to the Arkansas Energy Code themselves?

- Given that the AEO has not yet shared a price sheet with the RFP, can you please clarify if the AEO is seeking fixed hourly rates of service categories, or a defined lump sum budget?
- Can the AEO share any details with regards to the range of available funding or expected budget for the requested services?
- Will the AEO be looking for additional support activities once the Energy Code is adopted?
- Can I respond to the RFP with a proposal that offers my specific expertise, rather than the full scope of requested services?

Clarification:

As stated in the RFP, Arkansas Energy Office expects to award a contract to one *or more* prospective contractors. If a prospective contractor feels like they best fill a niche role within the overall scope, please propose your intended services in your complete Response packet and AEO will consider your proposal.

The intended scope includes responsibility for identifying or recommending supplemental documents and trainings to support compliance with the updated code. The creation or administering of documents or trainings is outside the scope of work for this contract.

Please provide lump sum pricing. You may provide as much or as little detail as you feel necessary to allow AEO to adequately evaluate your proposal. AEO cannot share details regarding available funding for the requested services. We encourage respondents to be conservative in their fees but realistic about the budget to provide the service; requesting additional funding after initial approval of a contract would precipitate a second approval process and cause undesirable project delays of multiple months.

After the conclusion of Step 7 outlined in the above process, AEO plans to help administer further outreach and training regarding the energy code. Planning may begin early, but training programs will not be administered until after the code is adopted. There will be a grace period of up to 12 months between adoption and enforcement, and AEO will focus trainings during this grace period and the enforcement period to prepare stakeholders for enforcement of and compliance with the new code.

AEO thanks all prospective contractors for their time and attention. Further questions for clarification will not be allowed at this time. AEO will post this clarification document on its website at <https://www.adeg.state.ar.us/energy/>.

Best,

Tim Quetsch
Arkansas Energy Office