

## **SOUTH CAROLINA DEPARTMENT OF ADMINISTRATION**

### **Request for Proposals: Merger & Acquisition and Corporate Advisory Services**

**Deadline: 11:00 AM (EASTERN) MONDAY, JUNE 17, 2019**

#### **Overview: The Santee Cooper Legislation and this Request for Proposals**

In May 2019, the South Carolina General Assembly enacted, and the Governor signed, House bill 4287 (hereinafter referred to as the “Joint Resolution” a copy of which is accompanying this announcement). This complex legislation concerns the future of the South Carolina Public Service Authority, otherwise known as Santee Cooper.

Santee Cooper is a state-owned public utility. Primarily a wholesaler to rural cooperatives (who in turn serve about 770,000 retail customers), Santee Cooper also serves two municipal systems and about 176,000 retail customers, along with about 27 large industrial customers. Directly or indirectly, about 2 million South Carolinians receive their power from Santee Cooper. Its largest customer, Central Electric Cooperative, Inc. (Central), represents 60 percent of Santee Cooper’s revenues. Central’s contract expires in 2058, but has a clause entitling it to terminate the contract with Santee Cooper “if ownership, management or control of the Authority or of all or a majority of its electric system assets is transferred, sold or leased to any person, corporation or other entity.” In 2017, Santee Cooper had a revenue requirement of about \$1.7 billion and assets of about \$13 billion, including about 5100 MW of generation. The utility also operates two wholesale water systems; the associated lakes are used for recreation.

The Joint Resolution requires the South Carolina Department of Administration (the Department) to deliver to the General Assembly three recommendations, one for each of the following categories: (1) a potential acquirer of Santee Cooper, in whole or in part; (2) a company to potentially manage Santee Cooper as a continuing state-owned utility; and (3) a plan to be proposed by Santee Cooper for reforming and restructuring Santee Cooper as a continuing state-owned utility. Regarding acquisition, the Joint Resolution leaves open the possibility that the acquirer would not buy Santee Cooper’s hydroelectric facilities, and the associated wholesale water systems, undeveloped land, other natural resources, and recreational assets. The Joint Resolution also requires bidders, overseen by the Department, to negotiate arrangements with Central.

The Department must deliver its recommendations to the General Assembly by January 15, 2020. Within this short period, the Department must retain multiple consultants, prepare specifications for bidders and for Santee Cooper’s restructuring, provide sufficient time for responses, review responses, conduct negotiations over the proposals, evaluate and recommend one bid for sale and one management proposal, evaluate Santee Cooper's proposal and make a

recommendation, negotiate and prepare final legal documents for each of the options, and present to the General Assembly a written report explaining the Department's three recommendations.

To satisfy its requirements under the Joint Resolution, it is the intent of the Department to contract for the following services:

- 1) the development of a process to solicit and the actual solicitation of competitive bids for the sale of some or all of Santee Cooper; and,
- 2) the development of a solicitation for management proposals that do not involve a sale of Santee Cooper but are designed to improve the efficiency and cost-effectiveness of Santee Cooper's electric operations including, but not limited to, a management arrangement, joint venture, or alternative arrangement; and,
- 3) the development of a process for the receipt of a proposal from Santee Cooper, as an alternative to a sale or management proposal, setting forth its plans for reform, restructuring, and changes in operation; and,
- 4) the evaluation of bids and proposals received pursuant to the criteria set forth in the Joint Resolution; and,
- 5) the conducting of confidential negotiations between Central and each entity that submitted a qualified bid or qualified proposal; and,
- 6) the preparation of a recommendation with justifications for one bid for sale and one management proposal considered to be in the best interests of the State, its taxpayers, and the customers of Santee Cooper, as well as an evaluation and recommendation regarding Santee Cooper's proposal; and,
- 7) the preparation of proposed contracts to execute (a) the recommended sale and (b) the recommended management proposal.

The solicitation and evaluation of bids and proposals and the development of required recommendations must be done in accordance with the criteria established in the Joint Resolution. The Joint Resolution states no preference for any particular option (sale, management proposal, or Santee Cooper restructuring), but the Joint Resolution does make it clear that the objective is to reach an outcome that is in the best interests of the State, its taxpayers, and the customers of Santee Cooper. To meet obligations set forth in the Joint Resolution, the Department wishes to engage immediate consulting assistance covering three main areas:

***Utility policy advice and consulting services:*** Including but not limited to resource planning and procurement, management prudence, finance, revenue requirements, rate design, operational efficiency, utility infrastructure, and market power.

***Merger & acquisition and corporate advisory services:*** Including but not limited to corporate acquisition, finance, governance, tax-exempt financing, competitive bidding and contracting, employee policies (including pensions and other benefits), and business management.

***Legal services:*** drafting of contracts, providing employee services, and providing other services pertinent to meeting the obligations set forth in the Joint Resolution.

While the Department preliminarily intends to engage utility policy advice and consulting services, merger & acquisition and corporate issues advisory services, and legal services separately, the Department expects advisors and services providers to work closely together. Attached to this document is an Appendix containing a tentative list of roles for utility policy advice and consulting services and merger & acquisition and corporate issues advisory services. The Department welcomes offerors to comment on the Appendix.

This current request for proposals is for merger & acquisition and corporate advisory services and the substantive responsibilities set out for those services through Appendix to this RFP.

As discussed next, each offeror must submit a substantive proposal and a budget proposal.

## **Requirements for Substantive Proposals**

The Joint Resolution requires numerous distinct tasks to be performed and assessments to be made in performing those tasks. A non-exhaustive list of tasks and assessments is set out on the attached Excel spreadsheet entitled Offeror Task Budget. The spreadsheet lists each task/assessment and its statutory source, then preliminarily allocates that task to one or both of the utility policy advice and consulting services or merger & acquisition and corporate issues advisory services (The allocation of a task/assessment to one area or the other is simply for reference. If a particular task or assessment is required to perform the services under the Joint Resolution and this RFP, then a firm contracting to provide services hereunder would be required to perform the particular task or assessment).

Firms wishing to respond to this RFP should provide the following:

1. The resume or biography of each person who will work on this project.

2. For each person, a summary of that person's skills and experience relating specifically to the Department's needs, along with that individual's billing rate. The description must relate to the individual. It does not help to say the firm has expertise on a subject if no individual on the team has that expertise.
3. A statement acknowledging that the offeror understands the Department's statutory obligations.
4. An acknowledgment that the identified individuals have the necessary availability between now and March 2020.
5. A brief description of all work done for any South Carolina entity in the past five years.
6. A brief description of work done in the last five years for, or in relation to, any entity that your firm thinks might have an interest in acquiring or managing Santee Cooper. Potential contractors must disclose any on-going financial relationship with Santee Copper or with any entity that your firm thinks might have an interest in acquiring or managing Santee Cooper.
7. A list and description of recent (within the last five years) examples of work done on similar transactions.
8. A list of clients and references for the Department to contact.

**The Department will not contract with any firm that has an on-going financial relationship with Santee Cooper or any potential bidder.**

**The Department cannot contract with any entity or firm with whom the House of Representatives, the Senate, or the Governor has previously engaged to consider the possible sale of Santee Cooper.**

Given the short time allowed for responses to this RFP, the Department is not requesting a detailed work plan, however, the Department is seeking a commitment to perform the substantive responsibilities set out for the merger & acquisition and corporate issues advisory services through Appendix to this RFP. Our immediate focus is on skills, experience, availability, and budget. On receiving responses, we will conduct interviews with a short list of offerors, prior to or during which we might request the offeror's ideas on a work plan. Interviews will take place in Columbia, South Carolina.

## **Requirements for Budget Proposals**

The Department has not yet created a final budget for this consulting work. The Department therefore asks each offeror to propose a budget total for the work the offeror believes will be necessary to carry out the responsibilities required by the Joint Resolution and this RFP. It may be useful to review the attached Excel spreadsheet entitled Offeror Task Budget in formulating your budget proposal.

NOTE TO OFFERORS: The Joint Resolution states that the Department “must not utilize the professional services of an individual or entity that would have a financial interest in the outcome of this process, nor may the department contract or otherwise employ an individual or entity based upon a contingency fee due to the outcome of this process.”

## **Logistics**

This procurement is not subject to the South Carolina Consolidated Procurement Code. The Department will, however, seek as much competition as is practicable and assess proposals rigorously for skill, experience, and cost-effectiveness.

Offerors must deliver final responses by email, using only Word and unlocked Excel (except that resumes may be in PDF if convenient), to: [santeecooper@admin.sc.gov](mailto:santeecooper@admin.sc.gov) no later than 11:00 am Monday, June 17, 2019. Interviews will be held beginning June 19, 2019. The Department expects a contract to be awarded by July 1, 2019.

Prospective offerors may email questions about this document to [santeecooper@admin.sc.gov](mailto:santeecooper@admin.sc.gov). The Department will aim to answer all questions within 24 hours. Prospective offerors wishing to receive answers to questions asked by others may send their contact information to [santeecooper@admin.sc.gov](mailto:santeecooper@admin.sc.gov). The Department is unable to respond to telephone questions.

## **Restriction on Communication**

Offerors are required to comply with all confidentiality obligations contained in the Joint Resolution.

## **Costs of Preparing the Bid Proposal**

The costs of preparation and delivery of the bid proposal are solely the responsibility of the firm submitting such proposal.

## **Rejection of Bid Proposals**

The Department reserves the right to reject any or all bid proposals, in whole and in part, received in response to this RFP. Issuance of this RFP in no way constitutes a commitment by the department to award a contract. This RFP is designed to provide potential offerors with the information necessary to prepare a competitive bid proposal. This RFP process is for the Department's benefit and is intended to provide the Department with competitive information to assist in the selection of a firm to provide services. This RFP is not intended to be comprehensive and each offeror is responsible for determining all factors necessary for submission of a comprehensive proposal.

## **Disqualification**

The department may, in its sole discretion, reject proposals outright if any of the conditions of the RFP are not met.

## **Release of Claims**

By submitting a proposal, offeror agrees that it will not bring any claim or cause of action against the Department and/or the State of South Carolina based on the Department choosing not to engage the Offeror pursuant to this RFP.

## **Compliance with S.C. State Ethics Act**

Offerors are required to comply with applicable provisions of the South Carolina State Ethics Act.

## **Unacceptable Terms and Conditions**

It is expected that the Department and the firm that it selects will work in good faith to reach a mutually acceptable contractual agreement. Offerors should note, however, that there are certain terms and conditions that are unacceptable to the Department. Offerors must ensure the following list of items are not included in their proposed contractual documents prior to submission for the Department's consideration:

- Choice of law provisions applying the laws of any state other than the State of South Carolina
- Forum selection clauses that designate venue or jurisdiction, other than as provided by South Carolina law
- Clauses requiring the State to indemnify, defend, or hold harmless the Offeror or any other party
- Clauses that require binding arbitration of disputes
- Confidentiality requirements that conflict with any applicable disclosure requirements under South Carolina law, including under the SC Freedom of Information Act (SC Code of Laws, Title 30, Chapter 4)
- Clauses that prevent the State's termination of any contract due to non-appropriation of funds

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- Clauses that require the waiver of the State’s sovereign immunity
- Clauses that are in conflict with any provision of House bill 4287 (S.C. General Assembly H.4287, 123rd Session, 2019-2020).

**The Department has no authority to agree to a contract that contains any of the above “Unacceptable Terms and Conditions.”**

## **Appendix: Tentative List of Responsibilities for the Two Service Areas**

### **A. Utility policy advice and consulting services**

1. Sketches the performance criteria and the corporate characteristics essential to satisfying those criteria and conducts regulatory policy assessments with respect to Santee Cooper's current operations, potential sale of Santee Cooper and a potential third-party management arrangement.
2. Creates alternative resource plans for Santee Cooper, reflecting alternative mixes of generation, demand management, distributed energy resources, and energy efficiency suitable for its customer base.
3. Liaises with bidders on energy and utility policy.
4. Assesses proposals in terms of effects on rate base, rate of return, physical infrastructure.
5. Assesses capabilities of bidders based on past performance.
6. Assesses fuel costs, network upgrades and other transmission requirements and costs.
7. Assesses the various assumptions that bidders make in their proposals, to ensure comparability among proposals. Examples: demand forecast, commodity prices, power prices, discount rates.
8. Determines what data must be made available by Santee Cooper to the bidders.
9. Assesses all bids in terms of their ability to satisfy the statutory criteria.
10. Makes recommendations to the Department in a form to be determined by the Department.
11. Assist in making and presenting recommendations to the S.C. General Assembly and appearing before the General Assembly or any legislative committee or subcommittee as may be required by the Department.
12. Prepares market power studies, as required.



## **B. Merger & acquisition and corporate advisory services**

1. Runs the bid process, based on utility policy advisors' specifications as approved by the Department.
2. Creates actual RFPs based on performance criteria and corporate characteristics created by the utility policy advisors.
3. Creates "data room" containing all necessary information re Santee Cooper.
4. Manages question and answer responses to bidders.
5. Manages timelines for analysis and negotiations.
6. In conjunction with utility policy advisor, evaluates all bids for financial accuracy and soundness.
7. Provides general investment banking merger & acquisition and corporate advisory services, including but not limited to:
  - a. Defining merger & acquisition objectives and performing a valuation analysis (including building a valuation model);
  - b. Assisting in the preparation of a thorough, confidential memorandum which best presents the prospects and opportunities offered by the business to potential acquirers;
  - c. Identifying a targeted but comprehensive list of potential strategic and financial buyers;
  - d. Overseeing management presentations and the due diligence process;
  - e. Working with the Department's attorneys, accountants and other advisors to anticipate and manage potential issues that may arise during the transaction process; and
  - f. Negotiating and structuring the commercial aspects of a transaction or other agreement to achieve the best possible outcome in light of the requirements of the Joint Resolution;
8. Recommends bond counsel to ensure that any public financing is managed properly and to mitigate risk in the retirement of the bonds.
9. Recommends an independent expert to assess nuclear plant decommissioning, retirement, and asset salvage value.

10. Facilitates negotiations for definitive documentation.
11. Sketches preliminary contract terms and informally negotiates them with top bidders to determine possible snags.
12. Brings contracts to final execution.
13. In conjunction with the utility policy advisors, prepare a report of recommendation with justifications for one bid for sale and one management proposal considered to be in the best interests of the State, its taxpayers, and the customers of Santee Cooper, as well as an evaluation and recommendation regarding Santee Cooper's proposal
14. Assist in presenting recommendations to the S.C. General Assembly and appearing before the General Assembly or any legislative committee or subcommittee as may be required by the Department.
15. Determine the value or advisability of obtaining a fairness opinion.
16. Provide whatever other general assistance may be needed by the Department to achieve the outcome required by the Joint Resolution.