

# CITY OF HENDERSON

## RFP TERMS & CONDITIONS

### 1. DEFINITIONS

In addition to terms defined elsewhere in the RFP Documents, the following definitions are applicable to the RFP Documents:

**“Addendum”** means an instrument issued by the City via Nevada Gov eMarketplace (“NGEM”) prior to the Scheduled Closing Date and Time which modifies or interprets the RFP Documents by addition, deletion, clarification, correction or other type of modification. All Addenda will become part of the executed Contract.

**“Business Day”** means Monday through Thursday, excluding official City holidays.

**“City”** means the City of Henderson, a municipal corporation and political subdivision of the State of Nevada.

**“City Council”** means the governing body of the City.

**“Contract”** means the document substantially in the form of the Standard Contract located under the **Attachments Tab** (a) that is executed by the City and the successful Proposer, (b) to which a Scope of Work, and other applicable exhibits (as agreed to by the City and the Contractor) are attached and (c) does not come into existence until executed by the successful Proposer and the City.

**“Contractor”** means a Proposer who is offered a Contract by the City and enters into that Contract.

**“Evaluation Criteria”** means measures established and used by the City to evaluate Proposals to determine the extent to which each Proposal meets the City’s goals, needs, desired outcomes, and/or interests.

**“Law”** means all applicable federal, state and local laws, statutes, ordinances, regulations, rules, codes, orders, policies, standards, guidelines or other governmental requirements, including the Nevada Revised Statutes (“NRS”), Nevada Administrative Code (“NAC”), and Henderson Municipal Code, as amended or that may be enacted or promulgated subsequently.

**“Proposal”** means a complete and properly signed offer from the Proposer to do the Work for the amount or amounts set forth in the offer that is submitted in accordance with the RFP Documents.

**“Proposer”** means the individual or entity submitting a Proposal in response to this Request for Proposals.

**“RFP Documents”** mean the RFP, RFP Terms & Conditions, Scope of Work, Technical Requirements, Evaluation Criteria, Proposal, Standard Contract, and any Addenda.

**“RFP Terms & Conditions”** mean this document entitled “City of Henderson RFP Terms & Conditions.”

**“Request for Proposal”** or **“RFP”** means the City’s invitation through NGEM to individuals and entities to submit a Proposal that will then go through an evaluation process.

**“Scheduled Closing Date and Time”** means the date and time specified on the Close Date & Time located under the **Event Details Tab** in NGEM. The Close Date & Time specified on the **Event Details Tab** shall take precedence over any reference to the Close Date & Time published elsewhere and the reference to time of day refers to local time in Nevada.

**“Work”** means all obligations, duties, requirements, and responsibilities for the successful completion of the Contract by the Contractor, including the furnishing of all goods and/or services required by and in accordance with the Contract.

## **2. ORDER OF PRECEDENCE**

- (a) The RFP Documents include various divisions, sections and conditions that are essential parts for the Work to be performed by the Contractor. A requirement occurring in one is as binding as though occurring in all of the RFP Documents. The RFP Documents are intended to be complementary and to describe and provide for a complete scope of Work. In the event there are inconsistencies between the RFP Terms & Conditions, Scope of Work/services, Proposal, Evaluation Criteria, Standard Contract and any Addenda, the following order of precedence shall apply:
  - (1) Any Addenda (with those of later date having precedence over those of earlier date)
  - (2) RFP Terms & Conditions
  - (3) Scope of Work/services
  - (4) Proposal
  - (5) Evaluation Criteria
  - (6) Standard Contract

## **3. PRE-PROPOSAL MEETING**

Pre-Proposal meetings will be held at the City’s discretion. All information regarding any pre-Proposal meeting will be located under the **Activities Tab**. In the event that the City has decided NOT to conduct a pre-Proposal meeting(s), there will be no corresponding information under the **Activities Tab**.

#### 4. QUESTIONS & COMMUNICATION

- (a) All questions regarding this RFP must be submitted electronically through the NGEM system using the **Questions Tab**. Questions must be submitted prior to the Question Cutoff Date and Time shown in both the **Event Details and Questions Tabs**.
- (b) All other communication must be directed to the Purchasing Specialist named in the **Events Tab**. This will ensure that all issues are appropriately coordinated and that all prospective Proposers are afforded equal treatment. Communication with any other City employee, official or representative in regards to this RFP prior to award may be grounds for disqualification.

#### 5. SUBMISSION OF PROPOSALS

- (a) Proposals submitted electronically via NGEM are due no later than the Scheduled Closing Date and Time. Under the NGEM Terms of Use, “submitted” means that the Proposer has (1) provided all required responses and attachments, (2) digitally signed the Proposal on the **Response Submission Tab** and (3) received a confirmation after clicking the “Submit Response” button. After the deadline has passed, the system will not allow Proposers to submit and the server clock will govern. The City will not accept e-mailed, faxed, partial or late Proposals.
- (b) Pursuant to NRS 332.045.2(d), a written certification is a required part of the Contract pursuant to Section 3 of Nevada Senate Bill 26 (2017)
- (c) In accordance with NRS 332.061.2, Proposals will not be publicly disclosed until recommendation for award is made to City Council and contract negotiations have been concluded.

#### 6. COST OF PROPOSAL

The City will not be liable for, nor will it reimburse, costs associated with Proposal preparation, interviews, presentations, site visits, and correspondence that may or may not result in the award of a Contract as a result of this RFP.

#### 7. EXCEPTIONS TO PROPOSAL

The Proposer shall list any exception(s) to the RFP Documents in accordance with the instructions in the Scope of Work. If no exceptions are stated, it will be understood that all conditions of the RFP will be complied with, including those in the Standard Contract, without exception. The City will evaluate any such exceptions in determining award of a Contract.

#### 8. PROPOSAL MODIFICATIONS

Any Proposer may modify a Proposal that has been submitted to the City at any time prior to the Scheduled Closing Date and Time by selecting **Retract** within the online RFP event in NGEM. Once the Proposal is retracted, it is no longer submitted or valid,

and the Proposal must then be resubmitted in accordance with the requirements in "SUBMISSION OF PROPOSALS" Section of the RFP Terms & Conditions.

## **9. WITHDRAWAL OF PROPOSAL**

- (a) Proposers may withdraw a submitted Proposal prior to the Scheduled Closing Date and Time for any Proposal submitted electronically, by selecting **Retract** within the online RFP event in NGEM.
- (b) No Proposals may be withdrawn for a period of ninety (90) days after the Scheduled Closing Date and Time. All responsive and responsible Proposals received are considered firm offers for the aforementioned time period and may be considered for award by the City.
- (c) In its sole and absolute discretion, the City may allow the Proposer intended for the award of a Contract to withdraw its Proposal if a material mistake of fact on the part of the Proposer has occurred in the preparation of its Proposal, the Proposer provides the City clear and convincing evidence that such a mistake occurred and the Proposer provides the City written notice within two (2) business days. The burden of proving the mistake occurred is on the Proposer. The written notice must include the following: (1) a request to withdraw its Proposal; (2) a detailed description of the nature of the mistake; (3) an explanation of exactly how and why the mistake occurred; and, (4) an explanation of the corrective action that the Proposer implemented, or will implement, to eliminate the possibility of future mistakes. If the foregoing information is not adequately provided to the City's satisfaction, the Proposer shall be prepared to meet with the City within twenty-four (24) hours of notification to further review the request. After reviewing the request and in its sole and absolute discretion, the City may deny the Proposer's request or elect to allow withdrawal of the Proposal by the Proposer without any further implications or penalty.

## **10. LATE PROPOSALS**

NGEM will not allow late Proposals to be submitted or accepted after the Scheduled Closing Date and Time.

## **11. GOVERNING LAW**

This RFP, the RFP Documents and any Contract awarded as a result of this RFP are governed by and will be construed in accordance with the substantive and procedural laws of the state of Nevada, without giving effect to its choice or conflicts of law provisions.

## **12. PUBLIC RECORDS**

- (a) The City is a governmental entity and subject to the public records laws and regulations set forth in chapter 239 of the NRS and NAC. Therefore, the City's records are public records and are subject to inspection and copying by any person unless there is an applicable statutory exception or the record is declared by Law to be confidential. The Proposer is advised, and acknowledges, that when a Proposal is recommended by the City for award, the contents become a public record in accordance with NRS 332.061.2 and unless the information is declared by Law to be confidential or is otherwise excluded from the public records disclosure requirements, may be subject to inspection and copying.
- (b) If the Proposer believes any information it submits should be considered confidential or proprietary in nature, or contains trade secrets (as defined in NRS 600A.030), the Proposer shall mark the page or pages that contain such information "CONFIDENTIAL," shall provide a summary sheet on the cover of the Proposal identifying each and every page that contains information so marked, shall represent in writing that protections exist under Law to preserve the integrity, confidentiality and security of the information, and shall specify with particularity the basis thereof. If the Proposer fails to do all of the foregoing, such information shall be deemed to not be confidential.
- (c) If the City receives a public records request that applies to the RFP Documents (either specifically or otherwise), it will analyze the RFP Documents to see if the information so marked may legally be withheld from inspection and copying. The City takes no responsibility and is not liable for release of (1) any information not so marked and summarized or (2) any information that is so marked and summarized but the City determines in its sole and absolute discretion that the City must provide the information because an applicable exception does not apply or the information is not declared by Law to be confidential.

## **13. CONSUMPTION ESTIMATES**

The quantities appearing herein are approximate only and are prepared for the solicitation of Proposals. Payment to the Contractor will be made only for the actual quantities of items furnished/serviced/delivered in accordance with the Contract. It is also understood that the scheduled quantities of items to be furnished/serviced/delivered may be increased, decreased, or omitted without any penalty or in any way invalidating Proposal prices.

#### **14. TAXES**

The City is exempt from state use tax, state retail tax and federal excise tax. All Proposals shall be exclusive of such taxes.

#### **15. ADDENDA AND INTERPRETATIONS**

- a) If it becomes necessary to revise any part of the RFP Documents, the City will provide an Addendum via NGEM. The City is not bound by any oral representation, clarifications, or changes made in the RFP Documents by the City's employees, unless such clarification or change is provided to Proposers in an Addendum issued by the City's Purchasing Division.
- b) A Proposer who discovers discrepancies in, or omissions in the RFP Documents or finds sections unclear or confusing, should notify the City's Purchasing Division at once in writing. If it should be found necessary, the City will issue an Addendum via NGEM. The City will not be responsible for oral instructions.
- c) A Proposer's failure to so request clarification of any inadequacy, omission or conflict will not relieve the Proposer of responsibility for providing Work at the price in the Proposal. The electronic signing of the Proposal will be considered as implicitly denoting that the Proposer has a thorough comprehension of the full intent and scope of the RFP Documents.
- d) All Addenda issued by the City's Purchasing Division shall become part of the RFP Documents will be made a part of the Contract.
- e) Each Proposer, upon receiving an Addendum, shall review the information contained therein and acknowledge receipt of each Addendum in its Proposal. Proposers shall acknowledge receipt of any Addendum in the transmittal letter included with their Proposals. A Proposer's failure to acknowledge any Addendum in the transmittal letter could result in disqualification and rejection of the Proposal.

#### **16. COLLUSION CLAUSE; INTEGRITY OF PROPOSAL**

- (a) Any evidence of agreement or collusion among Proposers or prospective Proposers acting to illegally restrain freedom of competition by agreement to propose a fixed price, or otherwise, shall render the Proposals of such Proposers void. Advance disclosure of any information to any particular Proposer that gives that particular Proposer any advantage over any other interested Proposer in advance of the Scheduled Closing Date and Time, made or permitted by a member of the City Council or an employee or representative of the City, shall operate to void all Proposals.
- (b) By submitting a Proposal, each Proposer certifies the integrity of the Proposal and that the following representations are accurate and true as of the date of the Proposal and award of the Contract:

- (1) Proposer, and no Proposer officer, employee, representative, agent or consultant, made an offer or promise of (or engaged in a discussion of) future employment or business opportunity to any City official, officer or employee involved with this RFP process; and
- (2) Proposer, and no Proposer officer, employee, representative, agent or consultant, offered, gave or promised to offer or give money, a gratuity or any other thing of value to any City official, officer or employee involved with this RFP process; and
- (3) Proposer, and no Proposer officer, employee, representative, agent or consultant, had any influence in the creation of the RFP and had no knowledge of the specific contents of the RFP prior to it being advertised by the City in accordance with NRS 332.045.
- (4) No City official, officer or employee, directly or indirectly, contributed to (or was involved in) the development of the Proposal.

#### **17. DISQUALIFICATION OF PROPOSER**

Proposers may be disqualified and rejection of Proposals may be recommended by the City for any of (but not limited to) the following causes:

- (a) Lack of signature by an authorized representative on the Proposal.
- (b) Failure to comply with the requirements in the RFP Documents.
- (c) Evidence of collusion among Proposers.
- (d) Unauthorized communication with any City employee, officer or official regarding this RFP, other than the Purchasing Specialist designated herein.
- (e) The public interest would be served by such disqualification.
- (f) Any other reason provided in the RFP Documents or by Law.

#### **18. REJECTION OF PROPOSAL**

City reserves the right, for any reason, to reject any and all Proposals received in response to this RFP or cancel this RFP in its entirety. Proposers whose Proposals are rejected will be notified in writing. The Proposer acknowledges that it shall have no property interest in the Contract unless it is the successful Proposer, the City has awarded the Contract, and the Contract has been executed.

#### **19. FEDERAL, STATE, LOCAL LAWS**

All Proposers shall comply with all Laws relative to conducting business in the City of Henderson including, but not limited to, licensing, labor and health Laws, and including NRS 338.10 through 338.180, as amended, if applicable.

#### **20. MINORITY BUSINESS CLAUSE**

Minority business enterprises will be afforded full opportunity to submit Proposals in response to this RFP and will not be discriminated against on the grounds of race, color,

creed, religion, sex, sexual orientation, gender identity or gender expression, age, disability, national origin or any other protected status in consideration for an award.

## **21. TITLE VI OF THE CIVIL RIGHTS ACT**

The City of Henderson, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all Proposers that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids/proposals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

## **22. NOTICE OF AWARD**

- (a) Notice of award will be by "Recommendation of Award" issued to the Proposer who submits the Proposal deemed to be most advantageous to the City in accordance with NRS 332.065.1. Recommendation of Award will be issued by the City's Purchasing Division and posted on NGEM. The City reserves the right to award based on the evaluation of the Proposals, to schedule presentations/interviews with a short list of proposers and include that in the City's evaluation of the Proposals, and to award to multiple Proposers, if in the best interest of the City. Final approval to award will be made by the City Council, if required.
- (b) In the event the successful Proposer fails to perform in accordance with the Contract, the City reserves the right to terminate the Contract for good cause, rescind the award, and either resolicit the Work or re-award as allowed by NRS 332.065.3.
- (c) Work shall not commence under the Contract until a fully executed Contract has been received by the Contractor and the Contractor has been given approval to proceed. Any work performed by the Contractor prior to the date of approval shall be considered as having been performed at the Contractor's own risk and as a volunteer.

## **23. STANDARD CONTRACT**

It is intended that any Contract awarded as a result of this RFP is expected to contain substantially the same terms and conditions set forth in the Standard Contract. As directed in the "EXCEPTIONS TO PROPOSAL" Section above, Proposer shall set forth any exceptions or modifications to the Standard Contract in its Proposal. Any proposed exceptions or modifications taken to the terms and conditions of the Standard Contract are subject to review and approval by the City's contracting authorities and will be evaluated and weighed by the City. Proposers are advised to thoroughly read the Standard Contract to assure complete understanding of the terms and conditions. Use of the word "contract" in the RFP Documents does not imply any obligation on the part of the City to enter into a Contract.



**24. USE BY OTHER ENTITIES**

NRS 332.195 allows that the state of Nevada and local governments may use the contracts of other government entities upon approval from the Contractor. The City is in no way liable for the obligations of any other entity utilizing any contract awarded as a result of this RFP.