
CITY OF MILWAUKEE
BOARD OF TRUSTEES
MILWAUKEE PUBLIC LIBRARY

REQUEST FOR PROPOSAL
VENDOR CONTRACT
STANDARD TERMS AND CONDITIONS

February 25, 2005

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**STANDARD TERMS AND CONDITIONS
REQUEST FOR PROPOSAL - CONSULTING SERVICES
Milwaukee Public Library**

PART 1 – GENERAL INSTRUCTIONS TO RESPOND TO RFP

1.1 Contracting Officer

The contracting officer shall be the Secretary (Library Director) of the Board of Trustees, Milwaukee Public Library, hereinafter referred to as the “Library Director” and “Board” respectively, representing the City of Milwaukee, a municipal corporation, hereinafter referred to as the “City.”

1.2 Interpretations

All questions about the meaning or intent of the Request for Proposal (RFP), terms and conditions, or contract documents shall be submitted to the Library Director, or designee, in writing as indicated in the Official Notice. Replies shall be issued by Addenda; faxed, mailed or delivered, to all parties recorded by the Library Director as having received the RFP. Questions received after the date identified in the Official Notice will not be answered. Only questions answered by formal written Addenda shall be binding. Oral and other interpretations or clarifications shall be without legal effect.

1.3 Response Date and Location

The response to the RFP, in its entirety, must be received in the Business Office of the Milwaukee Public Library no later than 3:00 p.m. on the date specified in the Official Notice. All proposals and accompanying documentation will become the property of the Milwaukee Public Library and will not be returned. Late proposals will not be accepted.

Responders assume the risk of the method of dispatch chosen. The Library assumes no responsibility for delays caused by any delivery service or facsimile equipment. Postmarking by the due date will not substitute for actual proposal receipt.

1.4 Submission

1.4.1 Schedule of Fees and Expenses

- Where applicable, all fees and hourly rates must be stated in words and numerals; in case of a conflict, words shall take precedence.
- If applicable, the hourly billing rates for Proposing Consultant’s employees with respect to the services performed under the contract shall be set forth in the proposal in a Schedule of Fees and Expenses.
- All proposed expenses shall also be set forth in the proposal in the proposal in the Schedule of Fees and Expenses. Consultant shall not be paid for any expenses which are not listed on the Schedule of Fees and Expenses.
- The Schedule of Fees and Expenses must include Proposing Consultant’s total proposed fee for the entire project from planning and design through project management and close out. Fees must include any sub-consultants and all aspects of project.
- The Schedule of Fees and Expenses must describe services that are included in the total fee and what is considered additional.

1.4.2 Consultant Signatures

- Proposals submitted by an individual shall be signed by the consultant or by an authorized agent.
- Proposals submitted by a corporation shall be executed in the corporate name by the president or vice president (or other authorized corporate officer accompanied by evidence of authority to sign). The corporate address and state of incorporation shall be shown below the signature.

- Proposals by partnerships shall be executed in the partnership name and signed by a partner; the partner's title must appear under the signature, and the official address of the partnership must be shown below the signature.
 - Proposals signed by an attorney-in-fact for individuals, firms, partnerships, or joint-ventures shall have attached thereto a power of attorney evidencing authority to sign the bid.
- 1.4.3 Length and Number of Copies of Proposal to be Submitted
- Consultants shall submit three copies of written proposal, which must include the forms provided in the RFP.
 - The proposal shall be limited to 10 single sided pages, including graphics. A letter of introduction, section dividers, resumes and LBE forms are not included in this limit.
- 1.4.4 Acknowledgment of Addenda
- The proposal shall contain an acknowledgement of receipt of all Addenda, if any, the numbers of which shall be filled in on the proposal form.
- 1.4.4 Text
- All proposals shall be typed or completed in ink and all names shall be typed or printed below the signature.
- 1.4.4 Content
- **Scope of Services.** Proposing Consultants must propose to execute all phases of the work identified in the Scope of Services in a single proposal. The requirements for this proposal are stated in the RFP and/or Scope of Services. Any proposal which does not respond to the items requested shall be considered non-responsive and may not be considered for award. Failure on the part of the responder to comply with all of the instructions and terms of these Standard Terms and Conditions may result in proposal rejection by the Library Director.
- 1.4.5 Small Business Enterprise and Local Business Enterprise
- **Small Business Enterprise.** In accordance with Chapter 370 of the Milwaukee Code of Ordinances Small Business Enterprise (SBE) participation is required in all contracting activities of the Milwaukee Public Library. The ordinance requires that certified SBEs be utilized for a % of the total dollars annually expended through commodity, service contracts and construction contracts. For construction and goods and services contract the requirement is 25%. For the purchase of professional services the requirement is 18%. In an effort to meet these requirements, the Board of Trustees of the Milwaukee Public Library acting through the Library Director, as contracting officer for the City, designates the level of participation of SBE bidders are required to achieve the minimum SBE participation stated in the Official Notice. Proposals must include a completed copy of RFP Attachments 4b "SBE Compliance Plan" and 4c "SBE Affidavit."
 - **Local Business Enterprise.** In accordance with Chapter 365 of the Milwaukee Code of Ordinances, the application of a Local Business Enterprise (LBE) program is required in all contracting activities, unless contrary to federal, state or local law or regulation. To this end, the Milwaukee Public Library will apply an award standard that adds an additional number of points, equal to 5% or the maximum number of points used in the evaluation of the Request for Proposal (RFP), to increase the total score attained by a local business enterprise; however, If the LBE is also certified as a Small Business Enterprise (SBE) with the City of Milwaukee's Office of Small Business Development, an additional number of points equal to 10% of the maximum number of points used in the evaluation of the RFP shall be applied to the total score attained by the LBE.

Responders seeking the Local Business Enterprise and Small Business Enterprise preference shall prepare and submit with the bid an accurate affidavit certifying their LBE and/or SBE status. Failure to do so may result in an LBE forfeiting their rights to be considered for the program.

1.5 Modification of Proposals

After a Proposal has been filed with the Library Director, and before the due date and time for the proposals, the consultant may file an amendment fully identified with the original proposal submitted with proposal number and/or service.

1.6 Opening of Proposals

Proposals will not be opened publicly unless specified in the Official Notice. Proposals will be made available for review only after a contract has been executed.

1.7 Responses to Remain Open

After proposals are opened, proposals will be deemed open and subject to acceptance until awarding of the RFP is finalized or a minimum of forty-five (45) days after the scheduled time of opening.

1.8 Acceptance or Rejection of Proposals

An award will be made to the Proposing Consultant whose proposal best meets the needs of the Milwaukee Public Library based on the evaluation criteria set forth in the Request for Proposal. If the actual cost of a contract exceeds \$30,000, the Board of Trustees of the Milwaukee Public Library shall have the final award authority. Milwaukee Public Library reserves the right to accept or reject all or part of any proposal and accept such proposal deemed to be in the best interests of the Library; reject any or all proposals; request clarification regarding any proposal; make a partial award; or not make any award.

The successful Proposing Consultant will be expected to enter into an agreement on the form prepared by the City, which is substantially the same as the Request for Proposal and all attachments thereto. In no event is responder to submit its own standard terms and conditions as a response to this RFP. Should a responder submit its own terms and conditions in its response to the RFP despite this Section XI's direction not to do so, the responder's terms and conditions shall not be incorporated into the contract.

1.9 Subcontracting

The Library Director may request any responder, within seven days after the day of the proposal opening, to submit a list of all subcontractors proposed for the project. If the Library Director, after due investigation, has reasonable objection to any proposed subcontractor, the Library Director may, before making final award, request the highest ranked responder to submit an acceptable substitution. After investigation and if requested, substitution of proposed subcontractors, the Library Director shall sign the list of proposed subcontractors indicating her/his written approval of such subcontractors, in satisfaction of section 2.12 herein. If the Library Director does not request or sign such list a prior to an award being made, the Consultant may not subcontract with any subcontractors except pursuant to section 2.12 herein.

PART 2 - GENERAL CONDITIONS

2.1 Expenses

2.1.1 Expenses

Consultant shall be entitled to be reimbursed for certain reasonable expenses necessarily incurred in connection with the provision of services under this contract, as set forth in the Schedule of Fees and Expenses provided in Consultant's Proposal. Such expenses shall be provided at no more than 1.1 times the actual cost incurred, including reproduction, plotting, photography, and delivery services. Telecommunications are included in overhead.

2.2 Personnel and Staffing

All personnel provided by the consulting firm to perform services under this contract shall be identified in the “Schedule of Fees and Expenses” and/or proposal. The proposal shall include a description of the type of work to be performed by each individual identified. The proposal shall also identify the Project Manager for the services to be provided under this contract.

If the consultant’s personnel or subconsultants change for this project, the Library Director must review and approve the replacement personnel, in advance. The replacement personnel shall have, at minimum, equivalent qualifications as the original personnel.

2.3 Non-Discrimination and Equal Employment

The Consultant agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories; not to discriminate for the same reasons in regard to tenure, terms, or conditions of employment; not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any rule or employment policy which discriminates between employees on account of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with or perceived affiliation with any of these protected categories; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories.

The Consultant shall include or cause to be included in each subcontract covering any of the services to be performed under this Contract a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

The Consultant agrees that they will comply with all applicable requirements of the Americans with Disability Act of 1990, 42 U.S.C. 12101, *et seq.*

2.4 Insurance Requirements

The Consultant shall be solely responsible to meet the Consultant’s insurance needs as required by the City, including public and professional liability and property damage, during the term of this Contract and any extension thereof. A Certificate of Insurance shall be provided to the City as evidence thereof naming the City and Board as additional insured for public liability and property damage, and providing for a thirty (30) day notice to the Board prior to termination or cancellation of the policy. The City reserves the right to require review and approval of the actual policy of insurance before it executes this Contract. The minimum limits of insurance required by the City under this Contract are set forth in Attachment 3: Insurance Requirements, which is attached to the RFP.

2.5 Permits, Licenses and Regulations

The Consultant shall procure any and all necessary permits and licenses required to perform the work specified, pay all charges and fees, and furnish proof of such licensing authorization and permits prior to commencement of work.

2.6 Taxes, Social Security, and Government Reporting

Personal income tax payments, social security contributions, and all other governmental reporting and contributions required as a consequence of the Consultant receiving payment under this Contract shall be the sole responsibility of the Consultant.

2.7 Revision of Plans

The Library Director may deem it advisable or necessary from time to time to change the scope of work. Such changes, including any increase or decrease in the expense of the work, shall be incorporated in written amendments to the Contract. The method of determining the basis of payment or credit arising from such changes shall be by the hourly billing rate named in the Proposal or by a Lump Sum Price submitted by the Consultant and accepted by the Library Director. Contract can only be modified by written amendment issued by the Library Director and signed by both parties. The Consultant shall submit change order requests in a timely manner. The Library shall not pay for any work done outside of/in addition to the scope of the contract unless both parties have consented to such additional work through written and fully executed change order. Consultant shall not begin any work outside of/in addition to the scope of the contract without first obtaining a fully executed change order. It shall be Contractor's duty to obtain the written and fully executed change order.

2.8 Decisions of the Library Director

All work to be performed must be in accordance with the contract documents and subject to the supervision, approval and acceptance of the Library Director. The Library Director shall decide all questions which shall arise as to the quality and acceptability of materials furnished, work performed, manner of performance, extensions of time, rate of progress of the work, interpretation of the plans and specifications, acceptable fulfillment of the contract, compensation, disputes, and mutual rights between Consultants under the Specifications. All questions as to the meaning of the contract documents and all questions as to the interpretation of any orders or directives which may have been issued in connection with the work shall be decided by the Library Director whose decision shall be considered final and conclusive between the parties hereto and binding upon them.

2.9 Conflict of Interest

The Consultant covenants that no officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract. The Consultant further covenants that no member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this Contract shall have any personal interest, direct or indirect, in this Contract.

The Consultant covenants that s/he has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of her/his services hereunder and that no person having any conflicting interest shall be employed.

2.10 Subcontracting

None of the services to be performed under the contract shall be subcontracted without the prior written approval of the Library Director. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of the contract. The successful responder shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it, as it is for acts and omissions of persons directly employed by it.

All subcontractors are required to provide the same levels of insurance as those required of the successful responder, which are set forth in Attachment 3 to the RFP.

PART 3 - LEGAL RELATIONS

3.1 Laws and Regulations.

The Consultant agrees to abide by all federal, state and local laws, regulations, and ordinances, and all provisions of this Contract. Without limiting the foregoing in any way, Consultant's designs and plans shall conform to the Americans With Disabilities Act, as amended.

3.2 Jurisdiction and Venue

This Contract shall be governed by and construed in accordance with the laws of the State of Wisconsin. Any litigation relating to the formation, interpretation or alleged breach of this Contract must be brought in the state and federal courts having jurisdiction in Milwaukee County, Wisconsin, and the Consultant consents to the jurisdiction of such courts.

3.3 Assignment and Subletting

The Consultant shall not subsequently assign this contract or any interest therein, nor subcontract the work or any part thereof, without written consent of the Library Director having first been obtained. Provided however that claims for money due or to become due the Consultant from the City, under this Contract, may be assigned to a bank, trust company or other financial institution without such approval. Notices of any such assignment or transfer shall be furnished promptly to the Library Director.

3.4 Patents and Trade Secrets

The Consultant shall hold and save the Board and City and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for or on account of any violation or infringement on any patent, copyright, trademark, trade secret or other proprietary right of any third party in the performance of the contract, including its use by the City, unless otherwise specifically stipulated in the contract documents.

3.5 Indemnification and Defense of Suits

Notwithstanding any references to the contrary in the contract documents, the Consultant assumes full liability for all of its acts in the performance of this contract. In case any action in court or proceeding before an administrative agency is brought against the Board, the City or any of its officers, agents, or employees for the failure or neglect of the Consultant in whole or in part to perform any of the covenants, acts, matters, or things by this Contract undertaken, or for injury or damage caused by the alleged carelessness or negligence of the Consultant, its officers, agents or employees, the Consultant shall defend, indemnify and keep harmless the Board, the City and its officers, agents and employees from all losses, damages, costs, expenses, judgments, or decrees arising out of such action. The City shall tender the defense of any claim or action at law or in equity to the Consultant or Consultant's insurer, and upon such tender it shall be the duty of the Consultant and Consultant's insurer to defend such claim or action without cost or expense to the City or its officers, agents, or employees. Nothing in this article shall be construed to impose liability on the Consultant for the negligence of the City, or of its officers, agents, or employees in the performance of this Contract.

3.6 Termination of Contract for Cause

If, through any cause, the Consultant shall fail to fulfill in timely and proper manner its obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Contract, the Library Director shall have the right to terminate this Contract by giving written notice to the Consultant of such termination, specifying the effective date thereof, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, graphics, logos, marketing pieces, reports or other work accomplished by Consultant under this Contract for which compensation has been made or may be agreed to be made shall, at the option of the Library Director become its property.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Consultant, and the City may withhold any payments to the Consultant for the purpose of set-off until such time as the exact amount of damages due to the City from the Consultant is determined.

3.7 Termination for Convenience

The City may terminate this Contract at any time for any reason by giving at least ten (10) days' notice in writing to the Consultant. If the Contract is terminated by the Board as provided herein, the Consultant will be paid an amount which bears the same ratio to the total compensation as the work actually and satisfactorily performed bears to the total work of the Consultant covered by this Contract, less payments of compensation previously made. The value of the services rendered and delivered by the Consultant will be determined by the Library Director.

3.8 Ownership of Documents

The Consultant agrees that the Board shall own all graphics, plans, manuals, reports, and other documents prepared hereunder for the Board by Consultant, including all intellectual property rights herein, and that all elements of work prepared by the Consultant for the Board pursuant to this Contract shall be works for hire. To the extent such works are not deemed works for hire; Consultant hereby assigns and transfers to the Board all of its intellectual property rights, including copyright, in and to such works.

The Consultant reserves the right to use materials for project records, promotion, and marketing purposes. Pre-existing work of the Consultant shall remain the property of the Consultant. This includes processes, source code, and proprietary information. The Consultant shall maintain the copyright and shall be able to reuse pre-existing work in future work.

3.9 Public Records, Proprietary Material and Document Retention

3.9.1 Public Records. Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. Sec. 19.21, *et seq.* The Consultant acknowledges that it is obligated to assist the City and Board in retaining and producing records that are subject to the Wisconsin Public Records Law, including all records in its possession generated pursuant to the contract, and that the failure to do so shall constitute a material breach of this Contract, and that the Consultant must defend and hold the City and Board harmless from liability under that law.

3.9.2 Proprietary Material. All proposals (and all materials included with or in the proposal) are subject to disclosure pursuant to Wisconsin's Public Records Law, as described in more detail in section 3.9.1. Any information contained in the proposal that is proprietary must be clearly designated in RFP Attachment 6 – "Confidential and Proprietary Information Designation Form." Marking the entire proposal as proprietary will be neither accepted nor honored. Designating material as confidential or proprietary does not in any way guarantee that the Library will or may refuse to disclose such information.

3.9.3 Document Retention. Except as otherwise authorized, records shall be maintained for a period of seven (7) years after receipt of the final payment under this Contract.

3.10 Liens and Taxes

Any and all taxes and license or permit fees imposed by the Federal, State and local municipalities are the sole responsibility of the Consultant. The Consultant warrants that the Consultant has good title to all materials and supplies used in the work, free from all liens, claims or encumbrances. The Consultant further covenants and agrees to promptly pay all claims for labor performed and materials furnished, used, or consumed in the performance of this contract.

3.11 Progress Payments and Payment Monitoring Requirements

3.11.1 Progress Payments. The Consultant may submit periodic progress payment requests based upon the percentage of work completed. Each payment request must be itemized to include labor costs and the Consultant's direct expenses, including subcontractor costs. In addition each payment request shall show hours worked by the Consultant's staff, the amount of work completed as a percentage of the work to be performed, and shall be computed on the rates as itemized in the Consultant's proposal. Said payment requests are subject to review and approval by the Library Director or designated representative prior to eligibility for payment.

3.11.2 Payment Monitoring Requirements. All Consultants awarded a contract valued at \$25,000.00 or more are required to participate in training on the City of Milwaukee's contract compliance software. Consultant must complete the training no later than 30 days after the date of contract award. Throughout the contract term, Consultant is required to regularly provide timely payment information in the City's contract compliance software. Please contact the Office of Small Business Development (OSBD) at 414-286-5553 should you have any questions or concerns regarding the training process.

3.12 Final Payment

Upon completion of the work by the Consultant pursuant to the terms of this contract and after the acceptance of the work by the Library Director, the City shall pay the Consultant, subject to any retainer or guarantee provisions in the contract documents, any balance then remaining due and payable by the terms of this Contract.

The acceptance by the Consultant of the “Final Payment” provided for in the contract shall operate as, and shall be, a release to the City and its representatives from all claims by the Consultant for anything done or furnished for or relating to the work or for any act or neglect of the City or of any person relating to or affecting the work.

3.13 Prompt Payment Policy

Prompt Payment - In accordance with Common Council Resolution No. 101137 regarding the City’s contractor and subcontractor payment policy, is modified as follows: It is the City’s policy to pay all invoices within 30 days. If the City does not make payment 45 days after receipt of properly completed supporting payment and other required contract documentation, the City shall pay simple interest beginning with the 31st calendar day at the rate of one percent per month (unless the amount due is subject to a good-faith dispute and, before the 45th day of receipt, notice of the dispute is sent to the contractor by first-class mail, personally delivered, or sent in accordance with the notice provisions in the contract)..

If there are subcontractors, consistent with s. 66.0135(3), Wis. Stats., the prime contractor must pay the subcontractors for satisfactory work within seven days of the contractor’s receipt of payment from the City of Milwaukee, or seven days from receipt of a properly submitted and approved invoice from the subcontractor, whichever is later. If the contractor fails to make timely payment to a subcontractor, the contractor shall pay interest at the rate of 12 percent per year, compounded monthly, beginning with the 8th calendar day

3.14 Definitions

The word “Consultant” or “Contractor” means a person or entity, whether public or private, that enters into a contract with the City and/or the Board of Trustees of the Milwaukee Public Library; i.e. the successful proposer.

“Proposing Consultant” shall mean any and all of the proposers.

“Professional Services Contract” is defined as any contract in which the majority of workers engaged in the performance of the contract perform work which: is predominantly intellectual and varied in nature, as opposed to work with involves routine mental, manual, mechanical or physical labor; requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital.

3.15 Waiver

The failure or delay of either party to enforce any of its rights under this Contract shall not constitute a waiver of such rights, any other rights, or any future rights arising hereunder.

3.16 Severability

The provisions of this Contract are severable. If any provision or part of this Contract or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of the Contract and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

3.17 Audits and Inspections

At any time during normal business hours and as often as the City, or if federal or state grants or aids are involved, as the appropriate state or federal agency may deem necessary, there shall be made available to the City or such agency for examination all of its records with respect to the matters covered by this Contract and the Vendor shall permit the City or such agency and/or their representatives and agents to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Contract.

3.18 Federal Executive Orders 12549 and 12689 Debarment and Suspension

The Library reserves the right to cancel the contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

3.19 Performance

The Consultant is required to perform, do and carryout in a satisfactory, timely, and professional manner the services set forth in the contract. The Consultant is required to furnish all services and labor necessary as indicated in the contract, including without limitation, materials, equipment, supplies, and incidentals.

3.20 Standards of Performance

The Consultant agrees that the performance of the services, pursuant to the terms, conditions and agreements of the contract, shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances providing like services. The Consultant agrees to abide by all federal, state and local laws, regulations, and ordinances, and all provisions of this contract.

3.21 Independent Consultant

In performing its obligations under this contract, the Consultant shall act as an independent consultant solely for its own account and not as an agent, representative, or employee of the City of Milwaukee, Milwaukee Public Library, or the Board.