



City of Gary RFS – Fiscal Monitor Vendor Questions and Answers

- 1. Should the 2.3 Business Proposal, 2.4 Technical Proposal, and 2.5 Cost Proposal be bound separately?**
 - a. The Respondent may use its own discretion as to how the various sections are bound.

- 2. For the written work product (2.4.2), is it acceptable to submit multiple examples of work to fully address the scope set forth in your Request for Services?**
 - a. Yes. However, unnecessarily elaborate brochures or other presentations, beyond those necessary to illustrate a Respondent's experience and capabilities, are not desired.

- 3. Regarding Section 2.3.3 Similar Experience and References - Is it acceptable to provide the most relevant public sector client experiences and a sample of commercial engagements with contact information for 3-5 clients?**
 - a. The Respondent shall determine the appropriate number of client experiences that most accurately portrays its experience at providing services similar to those requested in the RFS.

- 4. The RFS specifies that the report must contain, among other requirements, an analysis of "Gary's capacity to function within the restrictions of property tax caps..." Does this requirement refer to the statutory property tax caps without modification by any action of the DUAB?**
 - a. Yes, the fiscal monitor must analyze Gary's ability to function within the statutory requirements as written.

- 5. The RFS specified that the report must contain, among other requirements, "a recommendation for the petitioners' anticipated 2010 DUAB appeal and budget..." Since a 90-day study timeframe based on the potential dates in the RFS would likely pass the date when the official statutorily adopted budget would be passed by the fiscal bodies of the units involved, is the consultant expected to propose a budget different than the legally adopted budget or propose modifications to the legally adopted budget?**
 - a. It is expected that the fiscal monitor would propose a revised budget that would reflect the impact of a 2010 DUAB appeal, if filed.

- 6. Has the City or the DUAB determined a materiality level for analysis of accounts, programs or functions, under which the consultant is not expected to provide analysis or recommendations, or will the consultant determine or help determine materiality levels?**
 - a. No materiality level has been established. The respondent may propose the prioritization or exclusion of certain activities in its proposed work plan, which must be agreed to by the City and DUAB if respondent is the selected fiscal monitor.

- 7. Is there an expectation of the level of effort required for ongoing on-site or off-site fiscal monitoring anticipated during the implementation period of the contract separate from any services related to services required for the implementation of specific recommendations?**
 - a. No expectations exist at this time. The ongoing role of the fiscal monitor, which will be governed by a separately executed services agreement, shall be determined upon receipt and review of its report.

- 8. Section 2.2.2 of the RFS requires the respondent to indicate its willingness to provide the services subject to terms and conditions ... including, but not limited to, Gary's mandatory contract clauses." What are Gary's mandatory contract clauses?**
 - a. A sample contract for professional services has been attached to the end of this document.

- 9. Section 2.3.4 of the RFS requires that subcontracts "must be in compliance with all Gary statutes." Could you outline what Gary statutory provisions relate to subcontracts?**
 - a. Information related to subcontracts can be found in section 2.3.4 of the RFS as well as sections 6.17 and 6.24 of the sample contract attached herein.

SAMPLE CONTRACT FOR PROFESSIONAL SERVICES

This AGREEMENT is effective as of _____, by and between the CITY OF GARY, INDIANA, a Municipal Corporation, (the "CITY") and _____, (the "CONTRACTOR").

WITNESSETH:

WHEREAS, the CITY desires to retain the services of a vendor, duly qualified in the area of _____ to perform the services described in this AGREEMENT; and

WHEREAS, the CONTRACTOR possesses the requisite skills to perform the requested services and has expressed a willingness to perform said services pursuant to the terms and conditions set forth in the AGREEMENT; and

WHEREAS, the provision of said services by CONTRACTOR is in the best interests of the City, and

NOW, THEREFORE, for and in the consideration of the mutual promises, covenants and benefits set forth in this AGREEMENT, and other good and valuable consideration, the receipt of which are hereby acknowledged by the parties, CITY and CONTRACTOR agree as follows:

1. SCOPE OF SERVICES

The services to be performed by the contractor on behalf of the CITY are as follows:

1.1 CONTRACTOR AGREES TO PROVIDE _____.

1.2 CONTRACTOR agrees to comply with all applicable Federal, State, and local laws, rules, regulations and ordinances, and that all provisions required thereby to be included herein, are hereby incorporated by reference.

1.3 CONTRACTOR shall perform this AGREEMENT as an independent contractor and shall not act as an employee of the CITY.

2 TERM OF AGREEMENT

2.1 Contract term is from _____ (the "TERM"), subject to extension or earlier termination as herein provided. This Agreement, if not renewed in writing for an additional fixed period and agreed to by both parties, shall terminate when the TERM expires.

3 COMPENSATION

3.1 As compensation for satisfactory performance of the services set forth in Article I above, CITY agrees to pay CONTRACTOR _____.
CONTRACTOR shall submit monthly itemized invoices for payment to _____.

4 CHANGES

4.1 If, and in the event, CITY determines that changes are necessary in the scope of services to be provided under this AGREEMENT, such changes, including any increase or decrease in compensation, shall be made as written amendments to this AGREEMENT and incorporated herein. Such changes may only be made with written approval by the _____. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

5 TERMINATION

5.1 Either party may terminate this AGREEMENT if the other party defaults in the

performance of any material obligation, subject however, to the right of the defaulting party to cure the default within ten (10) calendar days after receipt of written notice of the default. Upon at least a thirty (30) calendar day written notice to CONTRACTOR, the CITY may also terminate this AGREEMENT at its discretion, for any reason, with no obligation after the effective date of termination. Upon termination, CONTRACTOR shall cease to incur costs under this AGREEMENT. CONTRACTOR shall be paid for all services for which the CITY has not paid that have been satisfactorily performed prior to termination. After termination, CITY reserves the right to obtain from CONTRACTOR a copy of CONTRACTOR'S file applicable to this AGREEMENT.

6 GENERAL PROVISIONS

6.1 **ACCESS TO RECORDS:** During the term of this AGREEMENT and for three (3) years following expiration or termination of this AGREEMENT, the CITY, at all reasonable times, shall be granted access to all files, books, and records (to include any correspondence, documents, papers, accounts, tapes, discs, and accounting records or other evidence pertaining to costs incurred) applicable to this AGREEMENT in the custody and possession of the CONTRACTOR and its subcontractors. The CONTRACTOR and its subcontractors shall make all such records and materials available in their respective offices at all reasonable times for inspection by the CITY or by any other authorized representative of the CITY and copies shall be furnished at no cost to the CITY if requested. These rights and duties survive expiration or termination of the AGREEMENT.

- 6.2 **AFFIRMATIVE ACTION:** CONTRACTOR is hereby required to comply with the Affirmative Action Ordinance of the CITY in the employment of minorities and women.
- 6.3 **AMENDMENTS/MODIFICATIONS:** No amendment, variation, or modification of the terms and conditions of this AGREEMENT shall be valid unless it is in writing and signed by the duly authorized representative(s) of the party against which it is to be enforced.
- 6.4 **APPROPRIATIONS:** This AGREEMENT is subject to appropriation that may be made by the COMMON COUNCIL OF THE CITY. IF THE CITY'S COMMON COUNCIL fails to make an appropriation to provide compensation to CONTRACTOR, then this AGREEMENT shall terminate. The determination of the CITY'S CONTROLLER that a sufficient appropriation has not been made shall be final and determinative. The CITY CONTROLLER shall notify CONTRACTOR of the fact that there is no appropriation, or that the appropriation was insufficient by certified mail, postage prepaid, return receipt requested.
- 6.5 **ASSIGNABILITY:** CONTRACTOR'S rights and obligations under this AGREEMENT are personal, and CONTRACTOR may not assign or transfer this AGREEMENT or any rights or benefits under this AGREEMENT without the prior written approval of the CITY.
- 6.6 **AUTHORIZATION:** The parties signing this AGREEMENT have all the necessary power and authority to act on behalf of their respective entities.
- 6.7 **CONFIDENTIALITY OF CITY INFORMATION:** The CONTRACTOR understands and agrees that data, materials and information disclosed to CONTRACTOR may contain confidential and protected data, therefore, the CONTRACTOR promises and assures that data, material, and information gathered, based upon or disclosed to the

CONTRACTOR for the purpose of this AGREEMENT will not be disclosed to others or discussed with other parties without the prior written consent of the CITY.

6.8 CONFIDENTIALITY OF DATA PROPERTY RIGHTS IN PRODUCTS AND PATENT/COPYRIGHT

PROHIBITION: The CONTRACTOR further agrees that all information, data, findings, recommendations, proposals, etc. by whatever name described and by whatever form therein, secured, developed, written, or produced by the CONTRACTOR in furtherance of this AGREEMENT shall be the property of the CITY and that the CONTRACTOR shall take such action as is necessary under law to preserve such property rights in and of the CITY while such property is within the control and/or custody of the CONTRACTOR. By this AGREEMENT, the CONTRACTOR specifically waives and/or releases to the CITY any cognizable property right in the CONTRACTOR to copyright or patent such information, data, findings, recommendations, proposals, etc.

6.9 CONFLICT OF INTEREST: CONTRACTOR shall be precluded from participating in contracts with the CITY where such participation would constitute a conflict of interest. CONTRACTOR, or any of its officers, directors, partners, or affiliates, shall not prosecute, defend nor represent any claim or other legal action adverse to the CITY'S interest during the term of this AGREEMENT. Such prosecution, defense or representation shall be deemed a conflict of interest and shall automatically terminate this AGREEMENT.

6.10 CONTRACTS: The CONTRACTOR shall not have authority to bind the CITY or otherwise contract with third persons on behalf of the CITY for any purpose. CONTRACTOR shall

not encumber or cause encumbrances, or liens to attach to CITY property by reason of acts or omissions of the CONTRACTOR.

6.11 **ENTIRE AGREEMENT; BINDING EFFECT:** This AGREEMENT constitutes the entire AGREEMENT between the parties and shall bind and inure to the benefit of CITY and CONTRACTOR and their respective successors, assigns, heirs and legal representatives. No other AGREEMENTS, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto.

6.12 **FORCE MAJEURE: SUSPENSION AND TERMINATION:** CITY and CONTRACTOR shall be excused for the period of any delay in the performance of any obligations under this AGREEMENT when prevented from performing such obligations by cause or causes beyond their reasonable control, including, without limitation, actions or decrees of governmental bodies, civil commotion, war, invasion, rebellion, hostilities, military or usurped power, sabotage, pestilence, riots, fire or other casualty, or natural disaster or other acts of God (hereinafter referred to as a "FORCE MAJEURE EVENT"). The party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the FORCE MAJEURE EVENT, the party whose ability to perform has not been so affected may, by giving written notice, terminate this contract.

6.13 **GOVERNING LAW:** This Agreement and performance by the parties hereunder shall

be governed by and construed in accordance with the laws of the State of Indiana, and suit, if any, must be brought in the Superior Court, County of Lake, in the State of Indiana.

6.14 **HEADINGS:** The headings appearing in this AGREEMENT are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any article or section of this AGREEMENT.

6.15 **INDEMNITY:** CONTRACTOR agrees to indemnify, defend, and hold harmless the CITY, its agents, officers, and employees against all claims, demands, losses, liabilities, and suits arising out of :

6.15.1 any act or omission determined to constitute negligence or willful misconduct by CONTRACTOR or contractor's agents or subcontractors, in the performance of this AGREEMENT, or

6.15.2 any act or omission by or on behalf of CONTRACTOR is which outside the scope of this AGREEMENT.

6.16 **JOINT AND SEVERAL LIABILITY:** If CONTRACTOR is organized as a partner or a joint venture, the liability of the partners or the joint ventures in connection with all duties, obligations and liabilities under this AGREEMENT shall be joint and several.

6.17 **LIMITATION ON DELEGATION OF SERVICES:** The services provided herein shall be performed by the CONTRACTOR and no other company or individual other than regular employees of the CONTRACTOR. CONTRACTOR shall not engage subcontractors to perform any of its responsibilities under this Agreement without prior written approval of the CITY. Approval by the CITY shall not be construed as

making the CITY a party of, or to, the subcontract, nor shall approval be construed as subjecting the CITY to liability of any kind to any subcontractor.

6.18 **NON-DISCRIMINATION:** During the performance of this AGREEMENT, the CONTRACTOR agrees as follows: The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, ancestry, or national origin. The CONTRACTOR shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, ancestry, or national origin. As used herein the word "treated" shall mean and include, without limitation, the following: recruited, whether advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensations; selected for training, upgraded; demoted; downgraded; transferred; laid off; and terminated. The CONTRACTOR agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Compliance Officer setting forth the provisions of this nondiscrimination clause.

6.19 **OWNERSHIP OF DOCUMENTS AND MATERIALS:** All documents, records, programs, data, film, tape, articles, memos and other materials developed under this AGREEMENT shall be considered "work for hire" and the CONTRACTOR transfers any ownership claim to the CITY OF GARY and all such materials will be the property of the CITY OF GARY. Use of these materials other than related to contract performance by the Contractor without the prior written consent of the CITY is prohibited. During the performance of the services, specified herein, the CONTRACTOR shall be responsible

for any loss or damage to these materials developed for or supplied by the CITY and used to develop or assist in the services provided herein, while they are in possession of the CONTRACTOR and any loss or damage thereto shall be restored at the CONTRACTOR'S expense. Full, immediate and unrestricted access to the work product of the CONTRACTOR during the term of this contract shall be available to the CITY.

- 6.20 **PROFESSIONAL OPINIONS:** If CONTRACTOR'S services, as defined and outlined in Article 1 of this AGREEMENT, involve the rendering or professional opinions, CONTRACTOR expressly agrees, upon request of CITY, to provide additional documentation, including, but not limited to, reports and letters supporting such opinions, which may include, upon request of CITY, guarantee and/or indemnification of CITY and/or third parties, if actions taken by them are taken in reliance upon CONTRACTOR'S opinions.
- 6.21 **PROHIBITED INTEREST:** No member, officer, or employee of the CITY during his/her tenure or one (1) year thereafter shall have any interest, direct or indirect, in this AGREEMENT or the proceeds thereof.
- 6.22 **SEVERABILITY:** If any provision of this AGREEMENT shall be determined to be invalid or unenforceable, the remaining provisions of this AGREEMENT shall remain in full force and effect and enforceable to the fullest extent permitted by law.
- 6.23 **SURVIVAL:** The covenants contained in this AGREEMENT which, by their terms, require their performance after the expiration or termination of this AGREEMENT shall be enforceable notwithstanding the expiration or other termination of this

AGREEMENT.

6.24 **THIRD PARTIES:** The CITY shall not be obligated or liable hereunder to any party other than the CONTRACTOR.

6.25 **TIME IS OF THE ESSENCE:** Time is of the essence in CONTRACTOR'S performance of its duties under this AGREEMENT. CONTRACTOR'S failure to meet applicable deadlines, unless it has obtained a written extension of time from the _____, shall constitute a material breach of this Agreement.

6.26 **WAIVER:** The failure of CITY at any time to require performance by the CONTRACTOR of any provisions hereof, shall in no way effect the right of the CITY thereafter to enforce same, nor shall the waiver by the CITY of any breach hereof, be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of the provision itself.

6.27 **WARRANTY:** CONTRACTOR warrants that it currently possesses all necessary licenses, permits and approvals to perform this AGREEMENT.

7 **CONTRACTOR HAS READ AND UNDERSTANDS THIS AGREEMENT**

7.1 CONTRACTOR represents that he has read this AGREEMENT, in its entirety and, by signing this AGREEMENT expressly states that he fully understands the consequences of entering into this AGREEMENT and expressly agrees to abide by each and every term and condition stated in this AGREEMENT. Contractor further waives any claims that he may have against CITY that would constitute lack of knowledge of any provision that is contained in this AGREEMENT for himself, his heirs, assigns forever.

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8 Notice

8.1 Notice shall be served upon either party by means of certified mail, postage prepaid, return receipt requested.

8.2 Notice shall be served on CONTRACTOR at the following address:

8.3 Notice shall be served on CITY at the following address:

IN WITNESS WHEREOF, the parties hereunto set their hands and seals on the date written below.

DATE: _____

CONTRACTOR

BY: _____
CONTRACTOR

BOARD OF PUBLIC WORKS
AND SAFETY

DATE: _____

BY: _____
PRESIDENT

DATE: _____

BY: _____
VICE-PRESIDENT

DATE: _____

BY: _____
SECRETARY

This Agreement having been reviewed, the action of the Board of Public Works and Safety for the City of Gary in entering and executing same is **APPROVED**.

DATE: _____

MAYOR RUDOLPH CLAY