Request for Proposal
CITY OF NEW BEDFORD
Department of Planning, Housing and Community Development

Consulting Services for the Market Analysis and Feasibility Study for a Convention Center/Sports Arena in New Bedford, Massachusetts

# 19750028

November 26, 2018

Jonathan F. Mitchell
Mayor

Planning, Housing and Community Development
133 William Street
New Bedford, MA 02740
CITY OF NEW BEDFORD
MASSACHUSETTS
Advertisement
REQUEST FOR PROPOSAL

The City of New Bedford, Purchasing Department, in conjunction with the Department of Planning, Housing and Community Development is soliciting proposals for Consulting Services for the Market Analysis and Feasibility Study for a Convention Center/Sports Arena

Sealed proposals will be received by the Purchasing Department, in the office of the Purchasing Agent, Room 208, City Hall, 133 William Street, New Bedford, Massachusetts, 02740, during business hours, until the date and time of the proposal opening.

PROPOSALS RECEIVED
Proposals will be received until Wednesday, December 19, 2018 at 11:00 AM. Prevailing Time

Contract Documents, including the Information for Bidders, Form of Bid, Form of Contract, Specifications, and other Contract Documents, may be obtained by emailing purchasing@newbedford-ma.gov on or after Monday, November 26 @ 9:00 AM, Monday thru Friday – 8:30 AM – 4:00 PM.

Attention is called to the fact that supplies furnished as part of this Contract are exempt from the Sales and Use Tax. All proposals submitted should take this factor into consideration, and be calculated accordingly.

The contract will be awarded within thirty (30) days after the proposal opening. The time for award may be extended by mutual agreement between the City and the awarded vendor.

No Vendor may withdraw his/her proposal for a period of thirty (30) days, excluding Saturdays, Sundays, and legal holidays, after the actual date of the opening thereof.

The Vendor must furnish a Non-Collusion Form and Statement of Taxes, with their proposal. Proposals must include ALL DOCUMENTS required by the Request for Proposal. The Awarding Authority reserves the right to waive any informality, reject any or all proposals, or accept other than the lowest priced proposal.

AWARDING AUTHORITY
CITY OF NEW BEDFORD
PURCHASING DEPARTMENT
Consulting Services for the Market Analysis and Feasibility Study for a Convention Center/Sports Arena

1. Sealed proposals for the Purchase and delivery of the above will be received in the Purchasing Department, Room 208, 133 William Street, New Bedford, MA, until **Wednesday, December 19, 2018, at 11:00 am**, at which time all proposals received will be recorded in the presence of such proposers as desire to be in attendance. No proposals will be accepted after the time and date specified. This is not a public opening.

2. There will be no scheduled bidder’s conference; however, all questions must be submitted electronically to susan.bruce@new Bedford-ma.gov no later than **3:00 p.m., Wednesday, December 5, 2018**. Answers will be provided via Addendum by email to all bidders on record as picking up the RFP.

3. The proposer must submit their Technical Proposal and Price Proposal in separate sealed envelopes bearing on the outside the name and address of the Proposer, addressed to the Purchasing Agent, City Hall, New Bedford, MA 02740. The Technical Proposal must be properly filled out, signed, sealed and endorsed: “Proposal #19750028 Convention Center/Sports Arena − Technical Proposal”. The Price Proposal must be properly filled out, signed, sealed and endorsed: “Proposal #19750028 Convention Center/Sports Arena − Price Proposal”.

   Telephone responses and faxed replies will not be accepted. No responsibility shall be attached to any person or persons for the premature openings of proposals not properly marked.

4. Proposals that are incomplete, not properly endorsed, or signed, or which are otherwise contrary to these instructions may be rejected as informal by the Procurement Officer.

5. The Proposer will be bound by all applicable statutory provisions of law of the Federal Government, the Commonwealth of Massachusetts and of the City of New Bedford.

6. All submitted proposals and associated price quotes must be guaranteed to the City of New Bedford for a period of thirty (30) days from the date of the proposal opening. If a contract is to be awarded as a result of this RFQ, it will be awarded within the thirty (30) day time period.

7. As provided by Massachusetts General Law, Chapter 64H, §6(d), purchases made by the City of New Bedford are exempt from the payment of Federal Excise Taxes and Massachusetts Sales Tax; any such taxes must not be included in the quoted price.

8. The City reserves the right to reject any and all proposals, and to make awards in a manner deemed in the best interest of the City.
9. The Proposer will not be permitted to either assign or underlet the contract nor assign either legally or equitably, any monies hereunder, or its claim thereto, without the previous written consent of the Purchasing Agent.

10. All proposal prices stated must be firm.

11. When submitting a proposal, the Proposer shall submit One (1) Original and Four (4) copies of the technical proposal and one (1) copy of the price proposal. If the City accepts said proposal, it shall constitute part of the contract.

12. Before submitting a proposal, each Proposer must make a careful study of the specifications contained in this Request for Proposal document and fully assure themselves as to the quality, quantity and type of services that the City is seeking to have performed.

13. The proposal for this work must cover all contingencies, including all labor and materials, transportation, etc., necessary for the purchase and delivery/execution of the services required by the City of New Bedford.

14. The Proposer who is selected to provide services will be required to indemnify the City for all damage to life and property that may occur due to their negligence or that of their employees, subcontractors, etc., during the period of this contract.

15. The contract agreement will be in the form customarily employed by the City and is attached hereto.

16. The specifications as detailed under part entitled TECHNICAL PROPOSAL SPECIFICATIONS shall constitute a part of the contract of purchase, as well as all conditions listed on these first two pages. A copy of the successful Proposer’s/vendor’s proposal will be incorporated herein and made a part of this contract.
Section 2 PROCUREMENT SCOPE

2.1 Withdraw, Modify and Amend Bids

Respondents who wish to withdraw, modify or amend their bid must do so in writing utilizing electronic mail to the City of New Bedford Director of Purchasing at susan.bruce@newbedford-ma.org no later than the time and date set forth herein for the receipt of the bids. All such withdrawals, modifications, or amendments must so state in the subject line of the email correspondence. Any withdrawal, modification or amendment arriving after the date and time set forth for accepting responses will not be considered. After the opening of the bids, a Respondent may not change any provision of the bid in a manner prejudicial to the interests of the City of New Bedford or fair competition. Minor informalities will be waived at the discretion of the City of New Bedford.

2.2 Rule of Award

One contract will be awarded to the one responsive and responsible Proposer whom the City of New Bedford’s Chief Procurement Officer determines offers the most advantageous proposal, taking into consideration all required qualifications, submission requirements and selection criteria set forth in the RFQ, including price. Emphasis in selecting a firm shall be placed on the chosen firm’s experience on similar past projects and overall experience within this category of work.

2.3 Familiarity with Requirements

Respondents are to thoroughly familiarize themselves with the requirements of the Request for Proposals. Ignorance of the requirements will not relieve the Respondent from any obligations or liabilities of any contract issued as a result of this Request for Proposals.

2.4 Independent Party

Under this Request for Proposals, the successful Respondent declares itself to be at all times acting and performing as an independent party and nothing in this Request for Proposals or any subsequent contract(s) is intended to constitute a partnership or joint venture between the Respondent and the City of New Bedford.

2.5 Conflict of Interest

No officer or employee of the City of New Bedford shall participate in any decision relating to any contract which would affect their financial or personal interest or the interest of any corporation, partnership, sole proprietorship or association in which they are directly or indirectly interested.

2.6 Political Activity Prohibited

None of the services to be provided by any Respondent shall be used for any partisan political activity or to further the election of any candidate for public office.

2.7 Assignment by Contractor

The successful Respondent or contractor shall not assign in whole or in part or otherwise transfer any interest in any contract without the written consent of the City of New Bedford, provided however, that the present and
prospective claims for money due owing to the Contractor from the City of New Bedford or any other Buyer may be assigned to a bank or trust company or to a financial institution insured by the Federal Deposit Insurance Corporation (FDIC) without such consent so long as notice of such assignment is promptly furnished to the City of New Bedford. Any complete or partial assignment of the contractor’s of successful Respondent’s interest in any such contract shall requires the assignee at the City of New Bedford’s discretion, to supply such further information as the City of New Bedford deems necessary to comply with the City of New Bedford’s rules and regulations governing contracts for servic4es. Any such assignment, in whole or in part, shall also be expressly made subject to all defenses, set-off’s or counter claims which would have been made available to the City of New Bedford against the successful Respondent in the absence of such assignment.

2.8 Subcontracting

None of the services to be provided by the contractor pursuant to any contract shall be subcontracted or delegated in whole or in part to any organization, association, individual, corporation, partnership or any other such entity without the prior written approval of the City of New Bedford. All intended subcontracts shall be provisions, which are functionally identical to and consistent with the language of this Request for Proposals.

2.9 Choice of Law

Any contracts awarded as a result of this Request for Proposals shall be construed under the laws of the Commonwealth of Massachusetts. The successful Respondent and agents thereof agree to bring any federal or state legal proceedings arising from any such contract in which the City of New Bedford is a party in a court of competent jurisdiction, within the Commonwealth of Massachusetts. This section shall not be construed to limit any rights any party may have to intervene in any action in any court or wherever pending in which the other is a party.

2.10 Notices

Unless otherwise specified, any notice hereunder shall be in writing and shall be deemed delivered when sent via electronic mail (e-mail), given in person to either party or deposited in the U.S. Mail, postage prepaid and addressed to the persons indicated in any contract or as specified by any amendment hereto.

2.11 Severable Sections Do Not Affect Entire Contract

If any provision of the Request for Proposals or any subsequent contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations under the provision. The remainder of the Request for Proposals and any subsequent contract shall remain in full force and effect and enforceable to the fullest extent provided by law.

2.12 Contract Performance

The failure of any party to insist in any one or more situations, upon performance of any of the terms or provisions of any part of this Request for Proposals or resulting contract shall not be considered as a waiver or relinquishment of the right of either party to future performance of any such term or provision, and are the rights and obligations of the parties to such future performance shall continue in full force and effect.

2.13 Liquidated Damages for Failure to Enter into a Contract

The successful Respondent, upon its failure or refusal to execute and deliver the contract, bonds and certificates of insurance required within seven days after receipt of the Notice of Award of the Bid, shall forfeit to the City of New Bedford, as liquidated damages for such failure or refusal, the security deposited with its bid, provided
that the amount forfeited shall not exceed the difference between its bid price and the bid price of the next lowest, responsive and responsible Respondent. In case of death, disability, bonafide clerical or mechanical error of a substantial nature or similar unforeseen circumstances affecting the Respondent, its bid deposit shall be returned.

2.14 Liquidated Damages for Failure to Perform Under the Terms of the Contract

Should the successful Respondent fail to commence or diligently perform according to the terms if the contract, the successful Respondent agrees to pay the City of New Bedford, as liquidated damages, Two Hundred Fifty Dollars ($250.00) per calendar day that the successful Respondent fails to commence or diligently perform the work in accordance with the contract documents and/or is in violation of the contract. Liquidated damages assessed under this provision shall be deducted from any payment(s) due to the successful Respondent.

2.15 Funding & Fiscal Year Appropriation

Appropriations for expenditures by the City of New Bedford, and authorizations to spend for a particular purpose are ordinarily made on a fiscal year basis. The fiscal year for the City of New Bedford begins on July 1st and ends on June 30th of the following year. The obligations of the City of New Bedford under any contract resulting from this Request for Proposals for any subsequent fiscal year following the fiscal year in which the initial contract is awarded is subject to the appropriations to the City of New Bedford of funds sufficient to discharge its obligations, which accrue in such subsequent fiscal year, and to the authorization to spend such funds for the purposes of the Request for Proposals shall be terminated immediately without liability for damages, penalties or other charges arising from early termination. Expenditures for contracted services, which will extend beyond a single fiscal year shall not exceed in any fiscal year the amount appropriated and authorized for the said fiscal year.

2.16 Procurement Calendar

The City of New Bedford is soliciting bids that will result in a contract. The schedule of events for this solicitation, subject to amendment by the City of New Bedford is:

- **RFQ Released**: Monday, November 26, 2018 @ 9:00 am
- **Questions Due**: Wednesday, December 5, 2018 by 3:00 pm
- **Questions Answered**: Wednesday, December 12, 2018 by 3:00 pm
- **Proposals Due**: Wednesday, December 19, 2018 at 11:00 am

2.17 Duration of Contract

This contract will be a one-year contract beginning upon contract signature and notice to proceed and ending 365 days after that date.

END OF SECTION
SECTION 3  GENERAL PROPOSAL INFORMATION

3.1 Required RFP Sections

The Respondent must provide in its response, a reply to the particular specifications included in the Request for Proposals.

3.2 ADA, Regulatory, Compliance and Standards

Respondents are expected to provide services and commodities that are in compliance with Section 504 of the Federal Rehabilitation Act of 1973, the American with Disabilities Act 1990, the Telecommunications Act of 1996, and all successor federal and related legislation throughout the term of any contract resulting from this solicitation.

3.3 Indemnification

Any successful Respondent, in exchange for entering into an agreement or contract resulting from this Request for Proposals shall indemnify and hold harmless the City of New Bedford and all persons acting for or on behalf of either of them from all suits and claims against them, or either of them arising for or on occasioned by the use of any service, material, equipment or apparatus, or any part thereof, which infringes or is alleged to infringe on any patent rights. In case such service, material, equipment or apparatus, or any part thereof, in any suit is held to constitute infringement, the successful Respondent within a reasonable time will, at its expense, and as the City of New Bedford may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus or remove the material, equipment or apparatus and refund the amounts paid therefore. Said indemnification includes reasonable Attorney’s fees related hereto.

Furthermore, any successful Respondent in exchange for entering into any agreement or contract resulting from this Request for Proposals agrees to indemnify and hold harmless, release and forever discharge the City of New Bedford as well as their officers, agents and employees as well as their successors and assigns from any and all manner of actions, suits, claims, demands, judgments, damages and liability in law and equity which may arise or result from performance under this contract. This includes discrimination, labor or employment claims against the successful Respondent and the City of New Bedford and any and all manners of legal action brought against the successful Respondent and/or the City of New Bedford. Said indemnification includes reasonable attorney’s fees related thereto.

3.4 Federal, State and Local Laws

The successful Respondent will comply with all applicable Federal, State and Local laws and regulations.

3.5 Tax Exempt

Purchases made by municipalities and government are exempt from Federal Excise Taxes and Massachusetts State Sales Taxes and bid prices must show exclusion of such taxes. Tax exemption certificates will be furnished as required.

3.6 Insurance

The successful Respondent, in addition to any insurance required by State of Local law, shall maintain in force during the term of any contract (s) issued as a result of this Request for Proposals, the following insurance
issued by an insurance company licensed to do business in the Commonwealth of Massachusetts. Failure to provide or maintain such insurance shall be grounds to reject a bid or execute a contract.

a. Worker’s Compensation and Employer’s Liability Insurance in compliance with statutory limits;
b. Liability Insurance with $1,000,000.00 General Liability Coverage;
c. $2,000,000.00 General Aggregate Liability Coverage;
d. Certificate of Errors and Omissions Insurance will also be required with $1,000,000.00 minimum coverage;
e. Automobile Liability Insurance including non-owned and hired automobiles with a combined single limit of $1,000,000.00 per accident;
f. Evidence of such insurance must name the City of New Bedford as the additional insured as well as the successful Respondent;
g. An Insurance Certificate giving evidence if the insurance must be delivered to the City of New Bedford within seven business days by the successful Respondent receiving the award to this Request for Proposals.

2.7 Confidentiality

The successful Respondent acknowledges that in performance of any contract resulting from the Request for Proposals it may require or have access to “personal data” and become a “holder” of personal data as defined by M.G.L. c. 66A. The successful Respondent shall comply with all laws and regulations relating to confidentiality and privacy, including but not limited to any rules and regulations of the City of New Bedford. The Successful Respondent shall at times recognize the City of New Bedford’s ownership of personal data and the exclusive right and jurisdiction of the City, and “data subjects” (as defined in Chapter 66A) to control the use of personal data. The successful Respondent shall immediately notify the City of New Bedford both orally and in writing if any personal data in its possession is subpoenaed, improperly used, copied or removed by anyone except an authorized representative of the City of New Bedford. The successful Respondent shall cooperate with the City of New Bedford in taking all steps it deems advisable to enjoin, misuse, regain possession and/or otherwise protect the City of New Bedford’s rights and data subject’s privacy. The successful Respondent shall allow access to any personal data held in their possession solely to those employees of the City of New Bedford who require such information in the performance of their occupational responsibilities. All personal data held by the successful Respondent shall be delivered to the City of New Bedford within 14 calendar days after termination of any contract resulting from this Request for Proposals. The successful Respondent agrees to take reasonable steps to insure the physical security of such data under its control, including but not limited to, fire protection, protection against smoke and water damage, alarm system, locked removal of manually held data, passwords, access logs, badges or other methods reasonably expected to prevent loss or unauthorized access to electronically or mechanically held data, limited terminal access, access to input documents and design provisions to limit use of personal data. The successful Respondent agrees that it will inform each of its employees having any involvement with their personal data or confidentiality. The City of New Bedford shall have access to all times to any data maintained pursuant to any contract resulting from this Request for Proposals, without the consent of the data subject. The successful Respondent shall use personal data and material derived from such data, only as necessary to the performance of the subject contract. Failure of the successful Respondent to comply with the requirements of this section may be grounds for terminating any contract resulting from this Request for Proposals.

2.8 Force Majeure

Neither the City of New Bedford, nor the successful Respondent shall be liable to the other, nor deemed to be in breach of any contract resulting from this Request for Proposals for failure or delay in rendering
performance arising out of causes factually beyond its control and without its fault or negligence. Such causes may include, but are not limited to, Acts of God or the public enemy, wars, fires, flood, epidemics, quarantine restrictions, strikes, unforeseen freight embargos or unusually severe weather. Dates and times of performance shall be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other party promptly of the existence and nature if such a delay. It is agreed that since the performance dates of the subject contract are of the essence and important to the implementation of essential City of New Bedford work, continued failure to perform for periods aggregating 45 or more calendar days, even for causes beyond the control of the successful Respondent, shall afford the City of New Bedford the right to terminate any contract resulting from this Request for Proposals without assessment of termination costs or penalties.

2.9 Equal Opportunity

During the performance of this contract, the successful Respondent agrees as follows:

a. The successful Respondent will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, asexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, genetic information or ancestry. The successful Respondent will take affirmative action to ensure that applicants are employed and that the employees are treated during employment without regard to their race, religion, color, sex, national origin or sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, genetic information or ancestry.

b. The successful Respondent will comply with all provisions of Executive Order No. 11246 of September 24, 1965 and all of the rules, regulations and relevant orders of the Secretary of Labor.

2.10 Termination

The Respondents for this Request for Proposals should note that the City of New Bedford reserves the right to terminate any contracts resulting from this Request for Proposals in whole or in part, by written notice:

- **Without Cause:** Either party may terminate the subject contract by giving written notice to the other party at least 60 calendar days prior to the normal contractual effective date of termination as stated or such other period as is mutually agreed upon in advance by the parties.

- **For Cause:** If, in the opinion of the City of New Bedford, the successful Respondent fails to fulfill its obligations, the Town of New Bedford may terminate any contract resulting from this Request for Proposals by giving 30 days written notice to the successful Respondent at any time. The subject contract shall be terminated immediately in the event of fraud or program abuse.

- **Emergency:** The City of New Bedford may terminate or suspend any contract resulting from this Request for Proposals up to 60 calendar days by providing written notice to the successful Respondent, stating the grounds for the City of New Bedford's action, in the form of U.S. Mail, hand carried letter, or other appropriate written means if the City of New Bedford determined that immediate action is necessary to protect the City, State and-or Federal funds or property, or to protect persons from injury. Such termination or suspension shall be effective upon receipt of notice of either suspension or termination by the successful Respondent. In the case of a suspension under this paragraph, the Notice of Suspension shall be accompanied by instructions from the City of New Bedford specifying requisite actions by the successful Respondent to remove the suspension, proposed timetable for meeting those requirements and a description by the City of New Bedford of allowable activities and costs, if any,
during the suspension period. Failure by the successful Respondent to remedy the stated deficiencies according to the timetable prescribes by the City of New Bedford shall be cause for immediate termination.

- **Elimination or Reduction of Funding**: In the event of a reduction of funding for any reason, the City of New Bedford may terminate any contract resulting from this Request for Proposals by providing notice of termination in a reasonable time. The City of New Bedford may provide a conditional notice of termination with a proposed amendment to the subject contract. Any such notice shall provide that the subject contract will terminate unless the successful Respondent submits to the City of New Bedford a properly signed copy of the amendment, or such modification form of amendment as may be agreeable to the City of New Bedford, within 20 calendar days after the date of the conditional Notice of Termination, or such other time as it is otherwise specified in the Conditional Notice.

- **Remedies Upon Termination for Cause or for Emergencies**: Notwithstanding the terms contained in this section, in the event of termination, the successful Respondent shall not be relieved of liability to the City of New Bedford by virtue of any breach of contract resulting from this Request for Proposals by the successful Respondent. In the event of termination pursuant to this section, the City of New Bedford may withhold any payments to the successful Respondent for the purpose of set off until such time as the exact amount of damages due to the City of New Bedford form the successful Respondent is determined. In addition to and notwithstanding the above, the successful Respondent covenants and agrees that in the event of termination of any contract resulting from this Request for Proposals, the successful Respondent shall pay to the City of New Bedford as damages: (a) such sum as, at the time of termination, the City of New Bedford reasonably determines that it shall require to compensate a subsequent contractor to complete the delivery of service, and (b) the sum, reasonably determined by the City of New Bedford, which will compensate the City of New Bedford for all of the direct and indirect costs resulting from the delay of services upon the successful Respondent’s default. The successful Respondent further covenants and agrees with the City of New Bedford that the successful Respondent shall pay all of the City of New Bedford’s costs and expenses (including Attorney’s Fees) incurred or paid in obtaining and enforcing any court order favorable to the City of New Bedford for any obligation of the successful Respondent under any contract resulting from this Request for Proposals.

2.11 **Obligation in the Event of Termination**

Upon termination of any contract resulting from this Request for Proposals, all documents finished or unfinished, data, studies and reports prepared by the successful Respondent pursuant to the subject contract shall become the property of the City of New Bedford. Copies of finished and unfinished documents, data, studies and reports generated as a necessary part of performing the subject contract shall be delivered to the City of New Bedford upon reasonable request and shall be retained by the successful Respondent for future use. The City of New Bedford shall promptly pay the successful Respondent for all services performed and for all costs and un-cancelable commitments reasonably incurred in performance of the subject contract to the effective date of termination, provided the successful Respondent is not in default of the terms of the subject contract and submits to the City of New Bedford properly completed invoices with supporting documentation covering services no later than 45 days after the effective date of termination, and that the successful Respondent makes every reasonable effort to minimize or reduce(?) costs incurred.
2.12 Ownership of Furnishings & Equipment

Unless otherwise provided by law or a federal grant award, title to all furnishings and equipment provided by the City of New Bedford or that the awarded Respondent provides under the terms of this Request for Proposals and paid with public funds, shall vest in and be retained by the City of New Bedford. Upon completion of performance of the awarded Respondent’s contract, the awarded Respondent shall return such furnishings and equipment in its possession in the same condition as at the commencement of any contract resulting from this Request for Proposals, normal wear and tear excepted.

2.13 Anti-Boycott Warranty

During the term of any contract resulting from this Request for Proposals, neither the successful Respondent nor any “affiliated company” as hereafter described, shall participate in or cooperate with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended by the Tax Reform Act of 1986, or engage in conduct declared to be unlawful by Sections 2 and 4 of Chapter 151E of the Massachusetts General Laws. As used herein, an “affiliated company” shall be any business entity or which at least 51% of the ownership interests are directly or indirectly owned by the successful Respondent or by a person or persons or business entity or entities which directly own at least 51% of the ownership interest of the successful Respondent.

END OF SECTION
PROPOSAL FOR CONSULTING SERVICES FOR THE MARKET ANALYSIS AND FEASIBILITY STUDY FOR A CONVENTION CENTER/SPORTS ARENA

Section 4. TECHNICAL PROPOSAL SPECIFICATIONS

The City of New Bedford is seeking proposals from consultants to provide a feasibility analysis of current and future needs for a Convention/Conference Center/Sports Arena.

The study will provide a feasibility analysis to determine the market demand and appropriate size of any recommended facility. The proposed venue should serve not only local businesses, conferences and sporting events, but have the ability to attract regional and statewide events to New Bedford. The study will identify the types of uses are in demand and identify the competing facilities or areas being underserved.

An important goal of the study will be to assist in determining the best location of any new development. The study will also analyze the economics, project income and expenses, operational models and financing scenarios. The successful proposer will be responsible for supplying all labor and materials necessary to satisfy the requirements of this proposal.

While no decisions have been made, it is a presumption of the City that a successful facility would need to be located downtown near New Bedford’s historic waterfront. This Request for Proposal (RFP) describes the study background, proposed scope of services, schedule, and submission requirements.

One contract will be awarded to the one responsive and responsible Proposer whom the City determines offers the most advantageous proposal, taking into consideration all evaluation criteria set forth in the RFQ, as well as price. The contract that is awarded as a result of this Request for Proposals will be effective upon completed execution of a contract signed by both the successful Proposer and the appropriate City officials.

SCOPE OF SERVICES

1. BACKGROUND INFORMATION

The City of New Bedford is the eighth largest city in the Commonwealth of Massachusetts with an estimated population of 96,549 in 2018. Located on the Atlantic coast in the southeastern part of the state, it is a city with a rich industrial, social and cultural history derived from its advantageous access to the sea. The city also enjoys its unique location to other major metropolitan and destination areas such as Boston (54 miles), Providence, Rhode Island (33 miles) and Cape Cod (30 miles). New Bedford is rich in diversity, with large Portuguese and Cape Verdean communities, as well as a growing number of Central Americans. 19.7% of residents are foreign born, compared to 14.7% statewide, and 37.5% speak a language other than English at home, compared to 22.2% statewide.

While the past 40 years have witnessed a steady contraction in the traditional manufacturing base, New Bedford has proven resilient. Today, the City remains the number one commercial fishing port in America and is home to 3,600 businesses that support more than 45,000 jobs in the manufacturing, healthcare, service, and emerging sectors such as medical device
manufacturing and renewable energy. New Bedford is home to such companies as Southcoast Health Systems, Titleist, Joseph Abboud, Precix, HTP Solutions, Ahead Head Gear and many more.

The past decade has seen a continuation of positive trends, and highlights included:

- 1,399 New jobs created, bringing the total jobs in the New Bedford labor market to 45,236. This is an increase of 6,133 jobs since 2010. It is also important to note that from November of 2015 to November of 2016 the unemployment rate in New Bedford saw a decline of 2.8 percentage points to 3.7%, the greatest decrease in the nation.
- The Port of New Bedford generates $3.3 billion in direct business revenues annually—only a portion of the $9.8 billion in total economic value generated to the Commonwealth by maritime activities that support more than 6,000 direct jobs.
- In the past two years we have had a new $11 million boutique hotel and two new brewpubs opened in historic downtown New Bedford. Add to this the continued expansion of the New Bedford Whaling Museum, a bustling arts and culture scene, and nearly a dozen new smaller retail and food/drink establishments welcoming residents and visitors alike.
- Opened in 2010 on the New Bedford waterfront, The Fairfield Inn and Suites by Marriott has 106 guest rooms and includes the Waypoint Event Center; a full service conference center with 3,000 sq ft. of meeting space with a capacity of 290. Located within walking distance of downtown business district, the facility is a five minute commute from the New Bedford Business Park.
- The New Bedford Business Park covers 1,300 acres and has 39 companies employing more than 3,200 people. All manors of goods are manufactured in the park, from the world’s #1 golf ball, to medical devices and textile products.
- Nearly 450 new loft style residential units are part of the proposed re-use plans for three historic mills in New Bedford. The proposed projects have a total value of more than $100 million and either in pre-development or fully permitted. Each would add to seven such mill projects completed in the past ten years and would transform the classic red-brick mill structures into market rate housing with breathtaking views of the cove and riverfront.
- The UMass Dartmouth School for Marine and Science Technology (SMAST) cut the ribbon on its new $55 million research facility in the fall of 2017. The Clark’s Point project adds a state-of-the-art research facility on South Rodney French Boulevard and also include renovations to their adjacent existing facility. Beyond the investment and expansion of research capacity, the 76,000 square foot project represents meaningful job creation opportunities.
- New Bedford was ranked as the most creative city in the Commonwealth, as awarded by the Massachusetts Cultural Council.

Over the past decade, New Bedford has continued to attract young professionals, families, and empty nesters who all contribute to the city’s growing economy. As in many urban centers, New Bedford is also home to many residents in need of more education, comprehensive job training, and extra supports until they become self-sufficient.

- The City will consider any sites within its municipal boundaries. Developers may offer alternative proposals for more than one site.
- Site selection will be a key factor in evaluation of proposals. Sites will be evaluated based on their capacity to accommodate the recommended building program, accessibility, availability of related infrastructure, compliance with building and zoning requirements, proximity to tourist amenities, and impact on neighboring land uses.
II. ALIGNMENT WITH THE NEW BEDFORD MASTER PLAN 2020

In 2010, the City adopted a Master Plan for the City of New Bedford to guide decision-making, growth and development over the next 20 years. That plan does not specifically call for the establishment of a convention center/sports arena, but it does define several goals that would be supported by the establishment of a successful convention center. The Downtown New Bedford Revitalization and Redevelopment Study calls for strengthening employment base and enhancing the creative economy through ongoing support of downtown businesses and investments in infrastructure that support the downtown core. The plan also discusses land use and development including the infill of underutilized land within the downtown business core and central waterfront. It identifies potential areas around the downtown core as priority infill areas. The plan sites the presence of the University of Massachusetts in the downtown and continued need for residential development to create a 24-hour environment around the downtown core, which enhances opportunities for retail and cultural development. A number of other objectives stated in the Master Plan are consistent with an effort to establish a convention space.

III. PROJECT GOALS:
The intent of a convention center/sports arena is to create jobs, develop residential units, conduct research and educate students that will be substantially enhanced by collaborations that promote innovation. The goal of a sports venue and convention center is to activate the New Bedford Business community, generate revenue, and catalyze urban and campus revitalization as regional destinations, this to be accomplished by the following goals:

- To identify the potential for economic benefit in the form of sports tourism, business expositions and conference events and venues.
- To recommend sustainable funding models, including examples currently in operation.
- To identify opportunities for public-private participation.
- To stimulate business activity, attract capital, and generate jobs by creating conditions that lead to the utilization of a multi-faceted facility within the greater New Bedford area.
- To increase the city’s property tax revenue by opening up for private development a valuable, yet underutilized parcel of publicly owned land.
- To strengthen New Bedford’s brand by establishing the City as a center for arts, culture, sports and convention space.

IV. SCOPE OF WORK AND EXPECTED TASKS
The chosen consultant will work collaboratively with the City of New Bedford and its partners on a market study/feasibility analysis. Consultants are anticipated to provide strategic direction to the city, which seeks to create a venue to accommodate sporting events, conventions, business expositions, entertainment, and attract a broader range of businesses to New Bedford.

1. Phase I Study Tasks

A. Task 1: Kick-Off Meeting and Area Research
The Consultant shall thoroughly review previous community visioning studies, planning and documents, to be provided by the City Team. Upon completion of this review, the City Team and Consultant will meet to review project priorities. Plans to review include, but are not limited to:
New Bedford 2020: A Citywide Master Plan, 2010;  
http://www.vhb.com/newbedfordmasterplan/masterplan.asp

New Bedford Waterfront Redevelopment Plan 2018;
- Draft – Focus Area North
- Draft – Focus Area South


Downtown District
- 2009 Downtown Revitalization Study
- 2008 Downtown Action Plan
- FXM Economic Development Strategy

B. Convention Center/Sports Arena Market Validation

This study involves two components. 1. The evaluation, and market viability of a new convention center in New Bedford to serve the Greater New Bedford area, and consider the possibility of positioning the center as a regional convention option for Eastern Massachusetts. 2. The evaluation, and market viability of a new sports arena in New Bedford to serve the Greater New Bedford area, and consider the possibility of positioning the center as a regional sports and entertainment option for Eastern Massachusetts. As part of this objective, provide a thorough overview of competing facilities, their viability and the impact of a facility in New Bedford entering the market.

a. Provide a summary of other facilities (minimum four) in the market (State of Massachusetts, Rhode Island, southern New Hampshire and southern Maine), including their capacity, their utilization rate, parcel size, parking requirements, construction costs, financing sources and general information about their operating budget. In addition, provide a summary of two other facilities outside the New England market in a city of similar size to New Bedford.

b. Estimate the approximate number of events per year for a New Bedford convention center/sports arena by event type (e.g., conventions, trade shows, sporting events, or exhibitions, business meetings, banquets/social events, etc.)

c. Project the probable annual attendance figures for the convention center/sports arena center by event type, and indicate marketing and operational approaches for maximizing attendance and facility usage.

d. Based upon the market validation analysis, develop blocking and stacking diagrams depicting approximate massing of a new convention center/sports arena. Recommend potential sites within New Bedford that would accommodate the facility, including parking and any related amenities or accessory uses. Provide an analysis of a minimum of three potential sites with parcel size, land ownership and current zoning.

e. Assuming a facility is constructed that follows the recommendations put forth in items b through d, provide a summary of the potential impact a convention center in New Bedford might have on other local facilities. It will be vital to understand if success for a new convention center would come at the expense of nearby facilities, or whether the facility could be designed in such a way as to complement other local facilities and grow the overall events market.
C. Support Facilities

a. Assuming a facility is constructed that follows the recommendations put forth in the previous section, provide comments as to the adequacy or shortage of nearby complementary facilities, such as parking and hotel space.

b. If existing facilities are deemed inadequate, present recommendations for attracting, incentivizing or constructing necessary support facilities to adequately support the effective operation of the convention center/sports arena.

2. Phase II Study Tasks

The successful respondent will be asked to complete the following tasks only if the results of the Phase I study tasks indicate that market demand exists for a convention center/sports arena in New Bedford.

A) Financial Analysis

a. Based upon the market validation analysis, separately project annual (each year over 20 years) facility-related operating revenues for a new convention center/sports arena.

b. Based upon the market validation analysis, separately project annual (each year over 20 years) on-going operating expenditures for a new convention center.

c. Prepare a net operating income statement (by year over 20 years) that incorporates the operating revenues and expenditures to arrive at a projected surplus or loss that will require a subsidy.

d. Specify the potential economic impact of proposed new facilities outlined in the study results and recommendations.

e. Analyze community capacity and willingness to support recommendations outlined in the study, including availability of parcels of land.

f. Provide realistic projections for job creation as a result of recommendations outlined in the study and identify types of jobs (part-time, seasonal, and full-time) and realistic wage ranges for the projected jobs.

B) Community Input and Participation

Conduct interviews with stakeholders and user groups. The City will assist by providing contact information for these groups which include, but are not limited to:

- Sports/special interest groups
- Professional Sports affiliates
- Economic development related groups
- Sports tourism groups
- Regional Tourism Groups
- New Bedford Port Authority
- Marine Technology and Maritime Industry Trade Groups
Key partners and other local providers
UMass Dartmouth and College of Marine Science and Technology
Trade Show Organizations; i.e. Wind Energy Industry, Maritime and Seafood Groups
City and County government groups, including the METRA Board

C) Capital Construction Analysis
a. Based upon a project scope as called for in Phase I, provide a schematic level cost estimate of capital construction, site related property acquisition, and land preparation expenses associated with a facility of this nature. Estimate should be in the format of price per gross square footage ($/SF).

b. Project annual (each year over 20 years) ongoing revenue sources that may be available to pay for the initial capital cost of the convention center.

c. Based upon the market validation analysis, separately project initial, one time revenue sources that may be available for the initial capital cost of a new convention center.

d. Prepare a sources and uses statement that incorporates the revenue and bond proceeds and a detailed uses of funds.

PLEASE RETURN WITH TECHNICAL PROPOSAL

SUBMISSION REQUIREMENTS

Proposers must submit two (2) originals of the Technical Proposal with all required information included and one (1) original of the Price Proposal. The Technical and Price Proposals must be submitted in separate sealed envelopes bearing on the outside the name and address of the Proposer, addressed to the Procurement Officer of the City of New Bedford.

The Technical envelope must be labeled:
“Proposal # 19750028 Convention Center/Sports Arena Technical Proposal”

The Price envelope must be labeled:
“Proposal # 19750028 Convention Center/Sports Arena Price Proposal”

Complete proposal packages must be received by:

December 19, 2018, at 11:00 Am
In the Office of the Purchasing Agent
Attn: Susan Bruce, Director of Purchasing
New Bedford City Hall
133 William Street, Room 208
New Bedford, MA 02740
MINIMUM EVALUATION CRITERIA

The following information must be submitted with the proposal to be considered responsive. These are minimum standards, considered essential for satisfactory performance of the contract.

- Inclusion of all documentation as specified within this RFQ;
- Favorable responses on all references provided; and
- Evidence that the consultant firm has direct relevant experience with large-scale, urban, waterfront master planning projects as well as direct relevant experience with land-use planning and design projects on commercial industrial ports, with a similar or larger scale.

COMPARATIVE EVALUATION CRITERIA

Each of the following five criteria pertains to requirements listed in this RFQ and will be applied to all Technical Proposals submitted that meet the above minimum criteria. Each proposal will receive one rating of Highly Advantageous, Advantageous, Not Advantageous or Unacceptable for each criterion. The rating each criterion receives will be used to compile a composite rating for each Proposer, to be used in the Selection Process segment of this RFQ. If any criterion receives a rating of “Unacceptable” that proposal will be REJECTED.

Each competing firm must submit a concise plan to complete the Scope of Work presented herein, including the approach and timeline. Please include all assumptions and any information on which you plan to rely on the City to provide. The City has referenced all known planning documents in this RFQ and will work with the selected consultant to identify any additional information. Each firm must indicate if and how they meet the following Comparative Evaluation Criteria.

1. QUALITY OF PROPOSAL AND APPROACH

Each Proposer must convey understanding of the scope of work to include a spatial analysis of the marine economy. Each proposal will be evaluated based on the quality of its content, and will be rated as follows:

- Highly Advantageous: The proposal contains strong, concise, and complete technical approach, format and responsiveness to the RFP.
- Advantageous: The proposal contains a clear technical approach, format and responsiveness to the RFP.
- Not Advantageous: The proposal contains a general technical approach, format and responsiveness to the RFP.
- Unacceptable: The proposal does not contain a clear technical approach, format and responsiveness to the RFP.

2. QUALIFICATIONS AND EXPERIENCE OF THE FIRM AND COMMITTED STAFF

Each Proposer must present qualifications and brief examples of work. The Proposer must agree to commit key staff to the project for the duration of the contract and may not replace key staff without consent of the City Team. The experiences of the firm and committed staff will be rated as follows:

- Highly Advantageous: The proposer has strong experience (more than 5 implemented projects) with downtown, waterfront planning projects as well as strong experience with land re-use planning and design projects on commercial waterfronts and downtowns, with a similar scale or larger than New Bedford.
- Advantageous: The proposer has experience (3 to 5 implemented projects) with downtown, waterfront planning projects as well as strong experience with land re-use
planning and design projects on commercial waterfronts and downtowns, with a similar scale or larger than New Bedford.

- Not Advantageous: The proposer has limited prior experience (1 to 2 implemented projects) with downtown, waterfront planning projects as well as strong experience with land re-use planning and design projects on commercial waterfronts and downtowns, with a similar scale or larger than New Bedford.
- Unacceptable: The proposer does not have any prior experience with downtown, waterfront planning projects as well as strong experience with land re-use planning and design projects on commercial waterfronts and downtowns, with a similar scale or larger than New Bedford.

3. **EXAMPLES OF RELEVANT WORK**

Proposals must include examples of previous experience and must be reflective of each firm’s relevant work with urban development and waterfront planning projects as well as strong experience with land re-use planning and design projects in downtowns and commercial waterfronts, with a similar scale or larger than New Bedford. All materials submitted will be collectively evaluated as follows:

- Highly Advantageous: Examples excel with respect to graphics, format, writing style, understanding of subject matter, and relevance to the scope of work described herein.
- Advantageous: The examples are clear and complete with respect to graphics, format, writing style, understanding of subject matter, and relevance to the scope of work described herein.
- Not Advantageous: The majority of, or all of the examples are not clear and complete with respect to any of the aforementioned areas.
- Unacceptable: No examples of previous work are provided.

4. **CAPACITY TO MEET PROJECT DELIVERABLES AND SCHEDULE**

Proposer’s demonstrated ability to complete projects on a timely basis will be rated as follows:

- Highly Advantageous: All of the proposer’s relevant work experiences indicate that the projects were completed at a level of high quality and on schedule.
- Advantageous: Only one of the proposer’s relevant work experiences indicate that the project was completed at a level of high quality and on schedule.
- Not Advantageous: Two of the proposer’s relevant work experiences indicate that the projects were not completed at a level of high quality and/or experienced substantial delays attributable to the proposer.
- Unacceptable: More than two of the proposer’s relevant work experiences indicate that the projects were not completed at a level of high quality and/or experienced substantial delays attributable to the proposer.
SELECTION PROCESS

As a result of this RFP, the City of New Bedford intends to award the contract to one Consultant from the proposals received. All proposals will be submitted to the Purchasing Agent. The department responsible for evaluation will review all proposals, rate each of the Comparative Evaluation Criteria questions and assign a composite rating for each proposal. Background checks, requests for additional information, and interviews will be performed as needed. The evaluators will then submit a recommendation to the Chief Procurement Officer who will review the recommendation and, if in agreement with the recommendation, award the contract.

This Request for Proposals does not commit the City to award a contract, to pay any costs incurred in the preparation of a response to this request, or to procure or contract for any services of any kind.

In the evaluation of the proposals, the City, at its discretion, may obtain technical support from outside sources. The Proposers, by virtue of their proposal submissions, agree to fully cooperate with the personnel of such outside sources in the evaluation of their respective proposal. Failure to cooperate may result in the rejection of your Proposal.

______________________________  ________________________________
Signature of Authorized Agent        Company Name  (Please Type)

______________________________
Printed Name & Title

______________________________
Date

TO BE RETURNED WITH TECHNICAL PROPOSAL
PRICE PROPOSAL
The proposal pricing is to cover all work required for this project as outlined in the Technical Proposal portion of this RFP document. Proposal prices must be all-inclusive, including all fees, charges, expenses, travel, postage, fax and telephone charges, preparation of reports, meeting attendance, etc., for all work proposed to be performed by the successful proposer. No separate fees will be paid for mileage, postage, telephone, reports, presentations, etc.

PRICE ESCALATION CLAUSE
Prices offered by the proposer must be firm and not subject to increase during the term of the contract. Price escalation clauses over and above the total submitted proposal price(s) are not allowed. Only the total proposal price(s) will be accepted. Proposers cannot insert/include a statement indicating their price(s) will increase above or beyond their submitted proposal price(s) due to third party actions or unnamed contingencies. Inclusion of an escalation clause of any kind will result in the rejection of the proposal.

PLEASE COMPLETE EXHIBIT AND RETURN WITH PRICE PROPOSAL

Signature of Authorized Agent

Company Name (Please Type)

Printed Name & Title

Date
To the City of New Bedford, herein called the Owner, acting through its Department of Planning, Housing and Community Development, for CONSULTING SERVICES FOR A MARKET ANALYSIS AND FEASIBILITY STUDY FOR A CONVENTION CENTER/SPORTS ARENA as required by the City of New Bedford.

Proposers’ attention is called to Chapter 268A of the Massachusetts General Laws. In connection with this statute, Proposer is required to submit the following information and any other information deemed necessary by the Proposer. All of the following information regarding the Proposer must be completed:

Please indicate business type by placing an X next to the appropriate category:

Corporation [ ] Partnership [ ] Proprietorship [ ]

If a Corporation, Full Legal Name

________________________________________

State of Incorporation

If a Partnership, Full Legal Name

________________________________________

If a Proprietorship, Name of Owner or d/b/a

________________________________________

Principal Place of Business

________________________________________

Place of Business in Massachusetts

________________________________________

Business Mailing Address

________________________________________

Telephone Number: ________________________ Ext. ________

Qualified to do business in Massachusetts YES [ ] NO [ ]

Give full names and titles of all the persons and parties interested in the foregoing proposals. (Note: give first and last names in full; in cases of corporations, give names of President, Treasurer and Manager; and in cases of partnerships give names of the individual partners.)

Name

________________________________________

Title

________________________________________

________________________________________

________________________________________

A foreign corporation is required to submit its certification of corporation from the Massachusetts State Secretary’s Office, as required by Chapter 151 Section 156.d of the Massachusetts General Laws.
At a meeting of the Board of Directors of ________________ duly called and held on
______________, 20____ at which a quorum was present and acting throughout, the
following vote was duly adopted.

VOTED: That ________________ , the_____________________ of the
corporation, be and hereby is authorized to affix the Corporate Seal, sign and deliver in the name
and behalf of the corporation contract documents with the City of New Bedford, the above
mentioned documents to include but not be limited to Bids, Proposals, Deeds, Purchase and
Sales Agreements, Agreements, Contracts, Leases, Licenses, Releases and Indemnifications; and
also to seal and execute, as above, surety company bonds to secure bids and proposals and the
performance of said contract and payment for labor and materials, all in such form and on such
terms and conditions as he/she, by the execution thereof, shall deem proper. A true copy

ATTEST:

________________________________________
Name (printed)

________________________________________(Affix Corporate Seal)
Signature

________________________________________  Date
Title

MUST BE INCLUDED WITH TECHNICAL PROPOSAL
CITY OF NEW BEDFORD
MASSACHUSETTS

NON-COLLUSION AND TAX COMPLIANCE FORM

CERTIFICATE OF NON-COLLUSION

The undersigned certified under penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

___________________________
Signature of individual submitting proposal

___________________________
Name of business/organization

TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes reporting of employees and contractor, and withholding and remitting child support.

___________________________
Signature of person submitting proposal

___________________________
Name of business

MUST BE INCLUDED WITH TECHNICAL PROPOSAL
As evidenced by the signature of the Contractor’s Authorized signatory below, the Contractor certifies under the pains and penalties of perjury that the Contractor shall not knowingly use undocumented workers in connection with the performance of any City contract; that pursuant to federal and state requirements, the Contractor shall verify the immigration status of all workers assigned to such contracts without engaging in unlawful discrimination; and that the Contractor shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker(s). The Contractor understands and agrees that breach of any of these terms during the period of each contract may be regarded as a material breach, subjecting the Contractor to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.

________________________
Contractor Authorized Signature

________________________
Printed Name

________________________
Date

Title____________________ Telephone:____________________

Fax:____________________ Email:____________________

MUST BE INCLUDED WITH TECHNICAL PROPOSAL
AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
CITY OF NEW BEDFORD
133 WILLIAM STREET
NEW BEDFORD, MASSACHUSETTS
AND
(COMpany NAME)
(COMpany ADDRESS)

(DATE)

WHEREAS, the CITY OF NEW BEDFORD, MASSACHUSETTS, a municipal corporation, 133 William Street, New Bedford, Bristol County, Massachusetts 02740, hereinafter referred to as the “City,” acting by and through its ________________________________, has need for the services of a (CONSULTANT) to ________________________________

WHEREAS, ________________________________ hereinafter referred to as (the “Consultant”) submitted a proposal to perform the Scope of Services described herein in Appendix “A” and undertake related duties and responsibilities required under this Agreement; and

WHEREAS, the Consultant’s proposal indicates that it is qualified by experience and training to perform said Scope of Services and undertake the duties and responsibilities required under this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the City and Consultant hereby agree as follows:

This Agreement is comprised of Part I and Part II, and includes all appendices, attachments, submitted documents, addenda, technical proposal, the price proposal and all documented negotiations relevant to the proposal. Part I includes details of the services to be performed, schedule of the services, and compensation. Part II contains the Terms and Conditions of Agreement, which are the general terms of the engagement between the City and Consultant.

PART I
SCOPE OF SERVICES

The complete Scope of Services, Schedule, and Budget for performance of the Scope of Services are contained herein in Appendixes A, and B and C respectively. The Scope of Services, Schedule, and Budget may be modified by agreement of the City and Consultant, providing any such modification complies with applicable law. The Consultant shall perform services by specific Task authorized by its proposal or on an as needed basis by Change Order or Work Order in accordance with this Agreement.
PART II
TERMS AND CONDITIONS

The City’s engagement of the Consultant is under the following terms and conditions that form an integral part of this Agreement:

1. **Scope**: The Scope of Services, Schedule, and Budget encompass the entire time of performance of the Agreement regardless of whether the term exceeds one (1) year.

2. **Prices; Term**: All prices contained in the Budget attached hereto as Appendix C shall remain the same throughout the term of the Agreement. The TERM OF THIS CONTRACT SHALL BE ______________, beginning ______________ and ending ______________. This contract may be extended ______________ term(s) of ______________

3. **Services Actual Amount**: The services required for the proposed contract are an actual amount.

4. ** Appropriation; Termination**: The City may terminate this Agreement if funds are not appropriated to support continuation of performance beyond the first year.

5. **Payment Responsibility**: Payment to Consultant is the sole responsibility of signatory of this Agreement and is not subject to third party agreements.

6. **Commencement**: All schedules set forth in the Scope of Services commence upon the execution of this Agreement.

7. **Compensation**: The City will compensate Consultant for the satisfactory performance of the Tasks included in the Scope of Services as agreed upon in Appendix A. Compensation will be based on the proposed price to perform the respective Task. Total compensation for all services rendered by the Consultant under Phase 1 of this Agreement shall not exceed $______________, unless authorized by a Change Order duly executed by Consultant and the City. Compensation for subsequent Phases will be determined after the details of each respective Phase have been priced and presented to the City by Consultant and, if accepted by the City, shall be subject to Change Order.

8. **Invoices**: Consultant shall submit a monthly invoice no later than the 15th day of each month for services rendered the previous calendar month. Invoices shall include an attached progress report clearly describing the monthly and cumulative progress for each Phase. Where applicable, invoices shall include a description of services provided, labor categories, and for each labor category the hourly rate(s) and number of hours billed. The City will compensate Consultant for each Phase, or percentage thereof, completed during the invoiced month. The City shall make all reasonable efforts to process payments within thirty (30) days from the date of receipt of each invoice. The City shall give prompt written notice of any disputed invoice amount and shall pay the amount not in dispute.

9. **Insurance**: Consultant agrees to carry the following insurance, with the City clearly designated as additional insured, during the term of this Agreement. Prior to execution of the Agreement, Consultant shall provide proof of the following coverage:

   - Workers Compensation and Employer’s Liability Insurance in compliance with statutory limits;
   - Liability Insurance with $1,000,000 General Liability Coverage
   - $2,000,000 General Aggregate Liability coverage
   - Certificate of Errors and Omissions Insurance will also be required with $1,000,000 minimum coverage
   - Automobile Liability Insurance including non-owned and hired automobiles with combined single limit of $1,000,000 per accident

Prior to execution of this Agreement, Consultant will furnish certificates of insurance evidencing the above coverage to the City for the City’s review and approval.

10. **Indemnification**: Consultant agrees to indemnify and hold the City harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent of its applicable insurance coverage and to the extent that such judgments, losses, damages or expenses are caused by Consultant’s negligent acts, errors, or omissions arising out of its performance of services under this Agreement.

11. **Delays**: Consultant shall not be responsible for failure to perform or for delays in the performance of services that arise out of causes beyond the control and/or without the fault or negligence of Consultant. Consultant shall notify the City promptly in writing whenever a delay is anticipated or experienced, and to inform the City of all facts and details related to the delay.
12. **Services for Use of City:** Consultant’s services will be performed on behalf of and solely for the benefit and exclusive use of the City and the City’s agents and designees for the limited purpose set forth in the Agreement. The City acknowledges that Consultant’s services require decisions that are not necessarily based upon science, but rather upon judgmental considerations.

13. **Ownership and Use of Documents:** All documents prepared or received by Consultant in its performance of this Agreement, including all drawings, designs, specifications, notes, field notes, computer files, data and other documents shall be delivered to and become the property of City. Consultant agrees not to assert any rights or establish any claim under patent, copyright or other laws with respect to the City’s ownership of said documents and hereby grants the City an irrevocable royalty-free license to all such documents, including the right to use them on any other City projects without additional cost to the City. Consultant bears no responsibility whatsoever for reuse by the City of documents prepared under this Agreement for any other purpose than originally intended, and the City agrees to defend, indemnify, and hold harmless Consultant from all claims, damages and expenses (including reasonable litigation fees and costs) arising out of such reuse or alteration by the City or others acting through the City. Consultant shall at all times obtain the prior written approval of the City before it, any of its officers, agents, employees or subcontractors, either during or after termination of this Agreement, makes any statement bearing on the work performed or data collected under this Agreement to the press or issues any material or publication through any medium of communication. If the Consultant, or any of its officers, agents, employees or subcontractors, publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, the City shall have a royalty-free non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the publication.

14. **Confidential Information:** Consultant acknowledges that its services hereunder are being rendered to the City of New Bedford Office of Planning, communications, reports, findings, conclusions, theories, and other work, however characterized, performed by Consultant hereunder is not to be divulged to any person or entity other than Office of City Planner, City of New Bedford, or persons designated by he/she as privileged to receive such information. Consultant further acknowledges that it may receive confidential information as it provides services under this Agreement and agrees that neither it nor its employees, officers, agents, attorneys, subcontractors or other representatives, however described, shall discuss, relay, transmit or otherwise divulge such information in person or by print or electronic media, whether by telephone or e-mail, with or to any person who is not privileged to receive such information by virtue of this Agreement or applicable state or federal law, statute or regulation. This prohibition is absolute, the violation of which will constitute grounds for the City’s termination of this Agreement.

15. **Independent Contractor:** Consultant is an independent contractor, solely responsible for methods and means used in performing the services under this Agreement, and is not an employee, agent, or partner of the City. Consultant is not authorized to enter into any agreement with any party on behalf of the City.

16. **Certifications:** Consultant certifies under the pains and penalties of perjury pursuant to M.G.L. c. 62C, § 49A that the Consultant has filed all state tax returns, paid all taxes and complied with all laws of the Commonwealth relating to taxes; and pursuant to M.G.L. 151A, § 19A(b), has complied with all laws of the Commonwealth relating to contributions and payments in lieu of contributions to the Employment Security System; and with all laws of the Commonwealth relating to Worker’s Compensation, M.G.L. c. 152.

17. **Licenses; Permits:** The Consultant also represents that he is qualified to perform all services required under this Agreement and has obtained all requisite licenses and permits to perform these services.

18. **Appropriations; City’s Obligations:** Appropriations for expenditures by the City and authorization to spend for a particular purpose are ordinarily made on a fiscal year basis. The fiscal year of the City is the twelve (12) month period ending June 30 of each year. The obligations of the City under this Agreement for the present or any subsequent fiscal year following the fiscal year in which the Agreement is executed are subject to appropriation by the City of funds sufficient to discharge the City’s obligations that accrue in this or any subsequent fiscal year. In the absence of such appropriation or authorization, this Agreement shall be terminated immediately upon the Consultant’s receipt of notice to said effect without liability or damages, penalties or other charges arising from such early termination. Expenditures under this Agreement for services that will extend beyond a single fiscal year shall not exceed the amount appropriated or authorized for said fiscal year. The Consultant’s yearly costs, as contained herein, may not exceed the amount appropriated for the year.

19. **Records; Inspection:** The Consultant shall maintain books, records and other compilations of data pertaining to the requirements of this Agreement to the extent and in such detail as shall properly substantiate claims for payment under the Agreement. All such records shall be kept for a period of six (6) years or for such longer period as is specified herein. All retention periods start on the first day after final payment under this Agreement. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the applicable retention period, whichever is later. The City, or any of its
duly authorized representatives or designees, shall have the right at reasonable times and upon reasonable notice, to examine and copy, at reasonable expense, the books, records, and other compilations of data of the Consultant which pertain to the provisions and requirements of this Agreement. Such access shall include on-site audits, reviews, and copying of records.

20. Notices: Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and sent by certified mail for the consultant and , for the City.

21. Representations; Reliance: In entering into this Agreement, the City and Consultant have relied upon the representations set forth herein. No verbal warranties, representations, or statements shall be considered a part of this Agreement or a basis upon which the City or Consultant relied in entering into this Agreement. No statements, representations, warranties, or understandings, unless contained herein, exist between the City and Consultant.

22. No Inducement: Consultant certifies that neither it nor any of its employees, agents, officers, attorneys, subcontractors or representatives, however described, has given, offered or agreed to give any person, corporation or other entity any gift, contribution, offer of employment or other reward as an inducement for, or in connection with, the award of this Agreement.

23. Solicitation: Consultant certifies that no person, corporation or other entity, other than a bona fide full-time employee of Consultant, has been retained or hired by Consultant to solicit for or in any way assist Consultant in obtaining this Agreement upon an agreement or understanding that such person, corporation, or other entity be paid a fee or other consideration contingent upon the award of the Agreement to Consultant.

24. Accounting: Consultant agrees to maintain internal accounting controls and permit the City to view its audited financial statements in camera at Consultant’s offices upon city’s request.

25. Waivers: A waiver by either the City or Consultant of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party’s rights with respect to any other or further breach. Forbearance or indulgence of a breach of this Agreement in any form or manner by either the City or Consultant shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party.

26. Invalidity; Severability: The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The City and Consultant further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close to possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

27. Termination for Cause: This Agreement may be terminated in writing by either party in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. The non-performing party shall have fourteen (14) calendar days from the receipt of the termination notice to cure its failed performance or to submit a plan for such cure acceptable to the other party. All notices hereunder shall be delivered by certified mail, return receipt requested.

28. Termination for Convenience: The City may terminate or suspend performance of this Agreement for the City’s convenience upon Consultant’s receipt of written notice from the City. Consultant shall terminate or suspend performance on a schedule acceptable to the City, and the City shall pay Consultant for all the services performed through and including the date of Consultant’s receipt of such notice. Upon receipt, if performance is suspended hereunder, an equitable adjustment may be made to Consultant’s compensation and schedule. An equitable adjustment shall not apply to work suspended or terminated due to Consultant’s failure to perform in accordance with the terms of this Agreement. Upon termination of this Agreement, with or without cause, Consultant shall, within 14 days, submit to the City all documents and information, as described in Paragraph 13 above herein, in its possession, and shall submit final payment invoice information. The City shall not make final payment until Consultant submits all said documents and information. The City shall place in escrow any amount of the final payment that it disputes is due, and, upon placing said amount in escrow, Consultant shall surrender all said documents and information as though it had been paid in full.

29. Dispute Resolution: The City and Consultant agree to negotiate in good faith to resolve any disputes or differences arising under this Agreement. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve by the dispute by direct negotiation or mediation. Any dispute that cannot be resolved by this negotiation will be submitted to mediation conducted in accordance with the current Industry Mediation Rules of the American Arbitration Association or such other form of non-binding Alternative Dispute Resolution (ARD) as they may mutually agree upon. City and Consultant agree that, in the event their dispute resolution procedures as described above do not resolve any disagreement among them, and any party elects thereafter to institute legal proceedings, the forum for any such action relating to this Agreement shall be in courts located in the Commonwealth of Massachusetts, either state or federal.
30. **Successors and Assigns**: The City and Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this Agreement.

31. **Assignment; Transfer of Ownership**: Neither the City nor Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party. The City reserves the right to terminate this Agreement by written notice in the event of a sale or transfer of ownership in the Consultant’s business entity, however constituted. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Further, except as noted in the Scope of Services, Consultant shall not subcontract for any service or portion thereof to be rendered under this Agreement without the prior written consent of the City.

32. **Project Manager**: Consultant’s Project Manager shall be available to direct and coordinate activities of the project to ensure that the project progresses on schedule and within the prescribed budget. Any change in Project Manager assigned to the City by Consultant requires the written approval of the City or its designee.

33. **Staffing**: Consultant agrees to staff the project with a sufficient number of qualified personnel (“Project Team”) to assure at all times effective and timely management, administration and superintendence with respect to the services to be provided by Consultant under this Agreement. The City may require replacement of any member of the Project Team and may require increased levels of staffing by Consultant if necessary to achieve proper management, administration, and superintendence. Consultant shall not replace members of the Project Team without prior written consent of the City which consent shall not be unreasonably withheld.

34. **Laws Governing Consultant**: Consultant’s activities hereunder shall be governed by the laws of the Commonwealth of Massachusetts, unless otherwise specified.

35. **Entire Agreement**: This Agreement, together with all Attachments, Appendices, Addenda (if applicable), the Certificate of Non-Collusion, Vote of Corporation Authorizing Execution of Corporate Agreements, and Certificate as to Payment of State Taxes constitute the entire Agreement between the City and Consultant and supersede all prior written or oral understandings. This Agreement and said Attachments, Appendices, Certificate of Non-Collusion, Vote of Corporation Authorizing Execution of Corporate Agreements and Certificate as to Payment of State Taxes may only be amended, supplemented, modified or canceled by a written instrument duly executed by the City and Consultant.

36. **Governing Law**: This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, unless otherwise specified.

37. **Paragraph Headings**: The paragraph headings in this Agreement are for convenience of reference only and in no way define, increase or limit the scope or intent of any provision of the Agreement.

38. **Authorized Signature**: The undersigned individual, who has signed and executed this Agreement on behalf of Consultant, hereby: 1) represents, warrants, and certifies to the City of New Bedford that he/she is authorized by Consultant to sign and execute this Agreement on its behalf and bind it to the obligations, terms, and conditions of the corporation set forth herein; 2) acknowledges that the City of New Bedford is relying upon such representation, warranty, and certification and will be damaged thereby if he/she is not so authorized; and, 3) agrees to indemnify and hold harmless, personally and in his/her own stead, the City of New Bedford, its officers, agents, attorneys, employees, and representatives, however described or characterized, against and from legal liability for all judgments, losses, and expenses and any and all claims and/or damages, whether direct or indirect, choate or inchoate, that it, or any of them, may incur and/or suffer, if he/she is not so authorized.
IN WITNESS WHEREOF: The City of New Bedford has caused its corporate seal to be hereto affixed and the parties have executed this Agreement, signed this the ______ day of ______, 2018.

(CONSULTANT)_________________ THE CITY OF NEW BEDFORD, MASSACHUSETTS

<table>
<thead>
<tr>
<th>Title:</th>
<th>CITY OF NEW BEDFORD, MASSACHUSETTS</th>
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<tbody>
<tr>
<td>By:</td>
<td></td>
</tr>
<tr>
<td>Title:</td>
<td>Jonathan F. Mitchell</td>
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<td></td>
<td>Mayor</td>
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CERTIFIED that funds are available

By: Robert Ekstrom
Title: Auditor

DEPT:

By: Patrick Sullivan
Title: Dir. of Planning, Housing and Community Development

APPROVED as to Form and Legality

Chief Financial Office

By: Shannon Shreve
Title: Associate City Solicitor

By: Ari Sky
Title: Chief Financial Officer

Purchasing Department

By: Susan Bruce
Title: Director of Purchasing