



DAYTON

City of Dayton, Ohio
Department of Recreation and Youth Services
Division of Recreation

Fireworks Display

REQUEST FOR PROPOSAL (RFP) No. 21-019RYSR

May 2021

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SECTION 1 – PROPOSAL INSTRUCTIONS

1.01 COMMUNICATIONS REGARDING THIS PROJECT. Please direct all communications regarding the RFP process to:

City of Dayton, Department of Recreation and Youth Services
Nick Terbay
101 West Third Street
Dayton, Ohio 45402
Telephone: (937) 333-1751
Fax: (937) 333-8318
E-Mail: nick.terbay@daytonohio.gov

All communications/questions concerning this RFP must be submitted in writing referencing the specific paragraph and page number. The deadline for questions is listed in Section 1.02 (RFP Schedule). Written responses will be prepared by the City and posted on the City’s web site by the date listed in *Section 1.02*. Changes to this RFP will be made only by formal written correspondence issued by the City.

A copy of this RFP proposal and any additional documentation may be found at the City’s website at:

<http://www.daytonohio.gov/bids>

1.02 RFP SCHEDULE. The following is the anticipated schedule for the RFP Process:

Issue RFP:	May 7, 2021
Notify City of Intent to Attend Site Visit	3:00 PM local (Dayton OH) time on May 12, 2021
Mandatory Site Visit:	1:00 PM local (Dayton OH) time on May 17, 2021
Last Day to Submit Questions:	12:00 PM local (Dayton OH) time on May 19, 2021
Written Responses to Questions:	May 21, 2021
Due Date for Proposals:	2:00 PM local (Dayton OH) time on June 4, 2021

1.03 SITE VISIT. The City shall conduct a **MANDATORY** site visit. The site visit will be conducted at the Kettering Field Complex, located at 444 N. Bend Blvd. Dayton, OH 45404, on May 17, 2021 at 1:00 pm local (Dayton, OH). The intent of the site visit is to:

- Review the Request for Proposal
- Review the City’s Procurement Enhancement Plan (PEP) procedures
- Review the Project Location and site conditions
- Take questions

This may be the only opportunity for the Contractors to meet with the City and to visit the project location. Each proposer should limit representation at the site visit to no more than 2 persons. Contractors shall notify Nick Terbay at nick.terbay@daytonohio.gov if they will be attending the site visit and how many persons will attend. **Failure of proposer to attend or send a representative to the mandatory site visit will disqualify a vendor immediately.**

1.04 SUBMITTING A PROPOSAL. Each Contractor seeking consideration for performance of services related to this RFP must submit a proposal. All proposals shall be submitted as a PDF via electronic submission to bids@daytonohio.gov. The City has a 20meg limit for incoming e-mail message sizes (20meg includes e-mail itself and any attachments total). Should your company’s proposal document exceed this limit, your company will have to submit its document in multiple parts (emails). Should proposal documents require multiple emails, please designate in the “Subject” line of each email sent: RFP No. 21-019RYSR Annual Fireworks Display, RFP No. 21-019RYSR Part 1, RFP No. 21-019RYSR Part 2, and so forth.

The proposal opening will be facilitated using ZOOM with the following login information:

Topic: RFP No. 21-019RYSR Proposal Opening

Time: June 4, 2021 2:00 PM Eastern Time (US and Canada)

<https://us02web.zoom.us/j/89847321980?pwd=RzVlalp2b21lTk1LTdc3aGFjVVVJdz09>

Meeting ID: 898 4732 1980

Passcode: 651382

One tap mobile

+13126266799,,89847321980#,,,,*651382# US (Chicago)

+19294362866,,89847321980#,,,,*651382# US (New York)

Dial by your location

+1 312 626 6799 US (Chicago)

+1 929 436 2866 US (New York)

+1 301 715 8592 US (Washington DC)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

Meeting ID: 898 4732 1980

Passcode: 651382

Find your local number: <https://us02web.zoom.us/j/89847321980?pwd=RzVlalp2b21lTk1LTdc3aGFjVVVJdz09>

Sealed proposals must be received in the Procurement bid email in-box (bids@daytonohio.gov) by 2:00 PM on the date indicated in Section 1.02 (RFP Schedule). Proposals received after the scheduled date/time will not be considered. All supporting materials and documentation must be included with the proposal. The responsibility of timely delivery lies solely with the proposer.

The City reserves the right to reject any and all proposals, to waive any irregularities in a proposal, or to accept the proposal(s) which in the judgment of proper officials, is in the best interest of the City. The City reserves the right to accept a part or parts of a proposal unless otherwise restricted in the RFP or issue subsequent RFPs. The City reserves the right to approve or reject any sub-Contractors proposed for work under this proposal or waive any minor irregularities

The City reserves the right to select the successful vendor once all proposals are received, without seeking further information for clarification from proposers. Upon review of proposals, the City may designate the most qualified proposals as finalists. These finalists may be invited to make oral presentations and participate in a question and answer session with the City. The City shall have the right to visit selected user sites, should this be deemed necessary.

All federal, state, and local laws regarding competitive bidding, anti-competitive practices, and conflict of interest shall be applicable to this RFP.

The City does not guarantee that any contract will be awarded because of this RFP. If a contract award is made but the contract is not executed, the City does not guarantee that the contract will be re-awarded.

1.05 REQUIRED PROPOSAL CONTENTS. All brochures and supplemental documentation shall be included with the original and all copies. If not, the proposal may be considered as non-responsive. Proposers are required to submit the following information in their proposal:

- **Letter of Transmittal.** The proposer shall provide a transmittal letter with authorizing signature for the proposal. The letter must briefly summarize the vendor's ability and willingness to perform the services required by the RFP. The letter must be on the form provided in Exhibit A.
- **Company Profile and Background.** Provide the following information:
 - **Location** – The street address of the proposer's company headquarters.
 - **Local Office of Proposer** – Provide the location of the proposer's office nearest to Dayton, Ohio. Include the local office, a contact name, address, telephone, and fax numbers.
 - **Company's Primary Business** – State the proposer's primary business, the number of years in the proposer's industry, and the number of employees assigned to these related activities.
 - **State the legal make-up** of your company: sole proprietorship, partnership, corporation, etc.
 - **Please list any Lawsuits that you are currently engaged in.** Please provide any and all suits either with the City of Dayton or any other Municipalities (include, but not limited to Federal, State, Local or other Municipalities and Governmental agencies).

- **Key Personnel Information.** Provide the name, title, mailing address, telephone number and e-mail address of the persons who will function as the City’s primary contact and back-up contact person. Provide brief resumes/qualifications of personnel who will be primarily involved in this project. Include any certifications earned, special training taken, and memberships in professional groups. Complete Form found in Exhibit A.
- **Proposal Response** as per Section 2.
- **Statement of Exceptions to RFP requirements.** Provide a detailed description of any exceptions taken to the requirements of this RFP, including the City Standard Terms and Conditions in Section 3. Exceptions shall be referenced to the applicable RFP section/sub-section numbers. Any other departures from the city’s RFP are to be identified and failure to do so shall make the proposal non-responsive. City’s standard Terms for Payment are Net 30 days from date of invoice once the project is complete, unless otherwise negotiated. If you cannot comply with this, please state any changes in the Statement of Exceptions to the RFP Requirements
- **References.** Provide a list of references on form provided as Exhibit B. The City is particularly interested in contacting your governmental clients in the state of Ohio.

1.06 ITEMS THAT DISQUALIFY A VENDOR IMMEDIATELY.

- Incomplete or non-responsive proposal
- **Failure of proposer to attend or send a representative to the mandatory site visit.**
- Failure to submit a proposal that addresses the minority hiring criteria identified throughout the RFP
- Inability to obtain Affirmative Action Assurance approval prior to award of the contract. See Section 3.06 for information on how to contact the Human Relations Council.

1.07 CRITERIA. The selection committee will evaluate each proposal submitted based on the following criteria. After receipt and review of the written proposal, the City may elect to have the proposal presented in person, or clarifications submitted in writing.

Proposers shall not assume that any information shared with the City prior to this RFP will be considered in the evaluation process of this RFP. Evaluation team may or may not have prior knowledge of any discussions and processes. **Evaluation will be completed on the information submitted in response to the RFP only.**

Evaluation Criteria for Goods and Services		
Item	Description	Points Possible
1	Price	40
2	Previous Firework Display Demonstration	30
3	Previous Experience/References	20
4	Dayton Local Business (required)	5
5	PEP Certified Vendor (required unless there is an assigned goal)	5
	Total Points	100

1.08 MISCELLANEOUS ITEMS.

- **All Contractors submitting a proposal will be notified, upon final determination by the City, of the firm or firms selected to perform the requested work.**

SECTION 2 – SCOPE OF PROJECT

2.01 PURPOSE AND NEED / PROJECT DESCRIPTION. The City of Dayton (“City”), is seeking proposals from highly experienced and professional firms to conduct a fireworks display on the following date: Saturday, July 3rd 2021, with a negotiated alternate date to account for possible inclement weather, with two (2) one (1) year options to renew for calendar years 2022 and 2023.

2.02 BACKGROUND INFORMATION. The City’s Lights in Flight Fireworks Festival has been a long standing tradition in the Dayton community. Celebrating the Declaration of Independence, more than 50,000 people turn out annually to enjoy planned festivities, and watch the beautiful display of fireworks. Designed as a community focused event, the fireworks display is planned around Independence Day, a nationally celebrated holiday with the intent to bring the community together. The event kicks off with a wonderful festival which includes entertainment, food vendors, a kid’s area, beverages, give-a-ways, and more. The event then culminates with one of the most anticipated events of the year, the fireworks display. The fireworks display has been the center piece of the City’s Independence Day celebration since its inception.

2.03 SCOPE OF WORK / TESTING REQUIREMENTS. Proposals must meet, or exceed the minimum requirements outlined in these specifications. Proposals shall include a complete, detailed listing of all the shell sizes and shell types to be fired during the fireworks display and a sample listing of comparable fireworks displays conducted by the vendor within the last five years.

Proposers shall also submit two (2) USB Flash Drives containing video footage of one (1) or more fireworks displays comparable to the event being proposed in this RFP and accompanied by musical production. **Failure to provide two (2) USB Flash Drives containing comparable shows may be grounds for disqualification.**

Fireworks Display and Location

1. The duration of the fireworks display shall not exceed twenty-five (25) minutes.
2. The fireworks display shall be continuous with gaps no greater than five (5) seconds between successful firing of fireworks.
3. Majority of shells shall be in the 4” to 6” size range (including candles/fountains). Maximum size of the shells shall not exceed the measured capability of the site (according to National Fire Protection Association (NFPA) Standard 1123 and Dayton Fire Department modification of 75 feet per inch of mortar diameter to 100 feet).
4. The duration of the finale shall be limited to 45 – 60 seconds with gaps no greater than two (2) seconds between successful firing of fireworks.
5. The fireworks display shall be electronically fired. A description of the proposer’s electronic firing system must be included in proposer’s response.
6. The City shall have sole discretion in determining to feature music to the fireworks display. If music is featured, the City shall also determine the music selection.
7. The 2021 fireworks discharge site is within the fenced area of the City’s Kettering Field Complex, which is located at 444 N. Bend Blvd. The location for 2022 and 2023 sites are to be determined.

Test Site and Location

The contractor shall provide all services related to the discharge of the following “test” devices to assist the City in determining suitability of future fireworks display locations and effects, to be conducted on a jointly agreed date at 10:00 PM local (Dayton OH) time between June 30th and July 2nd, 2021, 2022, 2023.

From a location to be determined by the City:

- One three inch device and one eight inch
- One three inch device and one six inch

- One three inch device and one four inch
- Two three inch devices

Insurance and other Requirements

1. The contractor shall obtain a performance bond in the amount of the bid price at no additional cost to the City. Proposal shall list the proposing agency's ability to obtain such bond.
2. The contractor shall obtain liability insurance in a form and coverage acceptable to the City in the minimum amount of \$10,000,000.00. Said coverage to name the City, its elected officials, officers, employees, volunteers and agents, sponsors of the Fireworks Festival, Five Rivers MetroParks, and others deemed necessary by the City shall be named either as co-insured and/or additional insured whichever provides the greater protection for City. This policy must cover all activities related to fireworks display to include set-up and tear down.
3. The liability insurance policy must be non-cancelable. A copy of the policy, all applicable insurance certificates, and all declarations must be submitted to the City's Law Department, each year, no later than May 30th for review and approval. The City prefers that the entire \$10,000,000.00 of insurance be in the form of an "occurrence" policy, but may accept a "claims made" policy. The contractor must have in effect an extended coverage option that extends the insurance coverage and the time period that claims can be filed for at least twenty-four (24) months. This extended coverage option provides coverage during the twenty-four (24) months statute of limitations for legal claims.
4. A copy of all insurance policies totaling \$10,000,000.00 of coverage along with signed certificates of insurance declarations must be submitted to and received by the City no later than May 30, 2021. Failure of the contractor to provide the requested insurance documentation in a timely manner may be grounds for termination, or non-renewal, with no recourse for the contractor. The vendor shall keep the policy in force through the entire term covered by any contract issued pursuant to this RFP.
5. For each employee participating in fireworks set-up and/or display, the contractor shall submit copies of each employee's contractor's license, employee's driver's license or some other form of acceptable identification confirming employee is 21 years of age or older. Said documentation shall be received by the City no later than June 15th of each year. Failure to provide said documentation may be grounds for termination, or non-renewal, with no recourse for the contractor.
6. The City will provide a proposed discharge site display map after the contract is awarded. The discharge site shall be arranged so that for each 1" of the largest mortar's diameter, there shall be at least 100 ft of separation between the display site, buildings and spectators, unless this requirement is otherwise waived or approved at another distance in writing. The contractor must review and approve the discharge site display map to verify compliance with the requirements of this document and City of Dayton and Ohio Fire Code requirements for site selection and set-up.
7. The contractor must submit all required documents no less than thirty (30) days prior to the date of the event. This will allow the City adequate time to review and approve the documents should revisions or alterations be needed prior to permit being issued.
8. The contractor shall submit to the City all applicable documents including, but not limited to, the certificate of insurance and other information required to be submitted by the contractor. The responsibility for acquiring all permits, insurance and other requirements shall be solely that of the contractor.
9. The fireworks display shall be conducted in accordance with the latest edition of National Fire Protection Association (NFPA) 1123, the Ohio Fire Code (Article 33), the Ohio Revised Code (Chapter 3743), and any and all other applicable statutes, laws, codes, rules, regulations or ordinances.
10. The contractor shall meet with representatives from the City's Departments of Fire, Police, Recreation and Youth Services, and Public Works at least twice before June 15, in 2021, 2022, and 2023. Failure to do so

will permit the City to reduce payments to the vendor by \$1,500.00 for each meeting not attended by the contractor.

SAFETY

1. The contractor shall be responsible for inspecting the discharge and fallout areas and removing all supplied devices the following day after the fireworks display. The Fire Department will also conduct a sweep of the area during daylight hours; these inspections may occur concurrently.
2. Fire Prevention personnel will be on site during the set-up of the fireworks display and during the firing of fireworks to ensure compliance with applicable fire safety codes. Fire Department personnel may require set-up/work/fireworks display to stop until any and all conditions contrary to this document, City Rules, Ohio Fire Code or referenced NFPA standards are corrected to the satisfaction of the City.

SET-UP, SECURITY INSPECTION AND PERMITS FOR SELECTED VENDOR

1. All mortar tubes and special effects, except those used in the finale rack, must be buried and watertight, or otherwise installed with an equivalent level of protection. Proposals shall identify how mortar tubes and special effects will be installed. Ground display devices including "cake boxes" shall also be specifically secured / anchored. Refer to Exhibit D for additional specifications for buried mortars, ground display devices, and secondary containment for above ground mortars.
2. Mortar tubes shall be separated by a minimum distance of not less than the diameter of the largest mortar involved.
3. All buried mortar tubes shall be physically marked at $\frac{3}{4}$ of their lengths to indicate required burial depth. This mark shall be clearly visible.
4. The City may require alcohol and drug testing for all contractor employees involved in the fireworks display production. The contractor and all individuals employed by the contractor (whether employee, volunteer, agent, corporate officer, or any other relationship) in the fireworks display production shall agree to alcohol and drug testing, if so requested by the City.
5. Fireworks may not be stored within the City's corporate limits prior to set-up without securing applicable permits and without prior notification and approval by the City's Fire Department.
6. Site Security for set-up and display / discharge areas – The contractor shall be responsible to restrict public access and to secure the fireworks, set-up, loading and discharge areas. Security must be provided by the contractor for all time periods commencing with the delivery of fireworks and concluding after the post event daylight site check and final approval of the site by the City. The security arrangements must be specified and approved by the City.
7. Site Security during the fireworks display – The City will restrict public access into the fireworks display area (fallout and required public / audience separation areas) during the period of the fireworks display.
8. The contractor and its licensed employees will be responsible for the search and removal of all fireworks remaining in the fireworks display area, potential landing areas, and other areas adjacent to the site. This search will be conducted at the conclusion of the fireworks display and again the morning after the fireworks display.
9. The contractor shall submit, ten (10) days in advance of the fireworks display, a complete set-up schedule including security arrangements for approval by the City of Dayton fire official(s).
10. The contractor shall secure all proper and necessary fireworks permits and have said permits signed by the City's Chief of Police and Chief of Fire at least ten (10) days in advance of the fireworks display. Failure to do so will allow the City to reduce payment by \$250.00 per day for each day the deadline is not met, and may be cause for termination, or non-renewal with no recourse for the contractor.

2.04 PRICING STRUCTURE. Prices proposed will remain firm for acceptance within **180** calendar days after the RFP closing date.

1. The total cost of each fireworks display shall not exceed \$60,000.00, unless additional shells are needed or a modification to the script is required, which must be approved in writing by the City. Proposals shall provide a detailed listing of all possible costs associated with any contract resulting from this RFP. (Per Exhibit E) No cost, fees, or charges other than those explicitly listed in the proposals submitted in response to this RFP may be charged to the City at any time for any fireworks display or related activity resulting from this proposal process. Proposals must specifically list all potential costs to the City, as any additional costs will not be authorized. NOTE: Proposers are encouraged to provide a detailed price list (firm pricing for the entire period is preferred) of standardized fireworks which may be added, or deleted from the event at the City's sole discretion and detail all potential discounts and/or surcharges.
2. Proposals shall also include the contractor's fees, if any, to reschedule the fireworks display due to inclement weather. The decision to reschedule the fireworks display will be at the sole discretion of the City.
3. In the event of cancellation, proposals shall specify any and all applicable fees for set-up and tear down.
4. Proposals shall specify a reimbursement schedule for shells that do not fire. NOTE: All proposers are encouraged to base these credits on standardized price list submitted by the proposer.

Proposals shall specify all applicable fees for music accompaniment. Proposals shall also describe method / procedure used to combine / synchronize music to fireworks display.

SECTION 3 – REQUIREMENTS AND CONDITIONS FOR ALL PROPOSERS

3.01 TAX EXEMPTION. All items purchased under this contract will be exempt from the State of Ohio Sales Tax as provided for in Section 5739-02(b)(1) of the Revised Code of Ohio and will be exempt from the State of Ohio Use Tax, Section 5741.02(C)(2). Blanket Certification of Exemption Forms will be furnished to the Proposer by the Division of Purchasing.

3.02 PROPOSER AFFIDAVIT. If the successful proposer should be a corporation not incorporated under the laws of the State of Ohio, a certificate from the Secretary of State showing the rights of the successful proposer to do business in the State of Ohio shall be furnished. Each proposer is required to submit with their bid, an Affidavit stating that neither the proposer nor agents thereof, nor any other party of the proposer has paid or agreed to pay directly or indirectly, any person, firm or corporation, any money or valuable consideration for assistance in procuring or attempting to procure the contract herein referred to, and further agreeing that no such money or reward will hereafter be paid.

3.03 PROCUREMENT ENHANCEMENT PROGRAM. It is the policy of the City to promote full and equal business opportunity to all persons doing business with the City. The City must ensure that businesses seeking to participate in contracting and procurement activities with the City are not prevented from doing so based on the race or gender of their owners. The City is committed to ensuring that it is not engaged in passive participation in any form of discrimination. (R.C.G.O. Section 35.32) It is the City of Dayton's position to encourage the greatest participation possible on all projects connected with any aspect of the City's auspices through the Procurement Enhancement Program (PEP). All contractors are encouraged to visit <http://daytonhrc.org/business-technical-assistance/certification/> to learn more about PEP and other certification programs, and to review the list of currently certified Minority-Owned, Woman-Owned and Small Business Enterprises.

3.04 PROPOSER'S FINANCIAL OBLIGATION TO THE CITY. No bid may be accepted, or contract awarded to any person, firm or corporation that is in arrears or in default to the City, or that is a defaulter of surety or otherwise upon any obligation to the City or has failed to perform faithfully any previous contract with the City.

3.05 PROPOSER'S INCURRED COSTS. Each proposer shall be responsible for all costs incurred in preparing a response to this RFP. All materials and documents submitted by the proposer in response to this RFP shall become the property of the City and shall not be returned. Respondents selected for further negotiations, as well as the proposer ultimately selected to enter into a contractual agreement with the City, shall be responsible for all costs incurred by it during negotiations.

3.06 AFFIRMATIVE ACTION ASSURANCE (AAA). The selected Contractor must electronically submit an Affirmative Action Assurance application via the City's online vendor portal (citybots.com) and obtain approval from the Human Relations Council (HRC) to do business with the City. You may contact the HRC for the Rules and Regulations regarding AAA certification at:

Human Relations Council
371 West Second Street, Suite 100
Dayton, Ohio 45402
(937) 333-1403 (Office)
(937) 222-4589 (Fax)

Failure to maintain active AAA certification with the HRC may result in termination of the contract and/or denial of future contract awards from the City. AAA certification must be updated annually via citybots.com.

3.07 STANDARD AGREEMENT TERMS FOR PROFESSIONAL SERVICES – These are standard terms are subject to change by the City prior to the award of the contract.

ARTICLE 1. TERM

The Agreement shall commence upon execution by the City and shall terminate upon expenditure of all funds provided herein or on December 31, 2021, whichever date is earlier.

ARTICLE 2. SERVICES TO BE PERFORMED BY CONTRACTOR

Contractor shall provide all services necessary to complete the Services that are described in the Scope of Work above, which is incorporated herein by reference.

ARTICLE 3. COMPENSATION

The total remuneration in this Agreement shall not exceed Sixty – Thousand (\$60,000.00). Contractor shall submit invoices, not more frequently than monthly, for payment of the Services actually provided. Such invoices shall state the invoice period, total amount requested and Services provided during the invoice period. The City will, unless disputed, remit payment of all undisputed amounts of invoices within thirty (30) days from receipt thereof.

ARTICLE 4. CITY'S RESPONSIBILITIES

The City will furnish Contractor, at no cost or expense, all reports, records, data that might be necessary or useful to complete the Services required under this Agreement.

ARTICLE 5. STANDARD OF CARE

Contractor shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional under similar circumstances. Contractor shall have no liability for defects in the Services attributable to Contractor's reliance upon or use of data or other information furnished by the City or third parties retained by the City.

If, during the one-year period following completion of the Services, it is shown there is an error in the Services caused by Contractor's failure to meet such standards and City has notified Contractor in writing of any such error within that period, Contractor shall perform, at no additional cost to City, such Services within the original Project as may be necessary to remedy such error.

ARTICLE 6. INDEMNIFICATION

Contractor shall indemnify and defend the City and its elected officials, officers, employees and agents from and against all claims, losses, damages, and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions, or conduct of Contractor and its agents, employees, contractors, sub-contractors and representatives in undertaking and performing the Services.

This Article shall survive early termination or expiration of this Agreement.

ARTICLE 7. INSURANCE

During the term of this Agreement, Contractor shall maintain, at its sole cost and expense, no less than the following insurance issued by an insurance company authorized to conduct business in the State of Ohio and having an "A" rating or better by A.M. Best:

- (1) General Liability Insurance, having a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate.
- (2) Automobile Liability Insurance, having a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- (3) Employers' Liability Insurance, having a limit of \$500,000 for each occurrence.
- (4) Professional Liability Insurance, having a limit of \$1,000,000 annual aggregate.
- (5) Contractor shall maintain errors and omissions insurance in the amount of \$1,000,000.00.

Current certificates of insurance for all policies and concurrent policies required to be maintained by Contractor pursuant to this Article shall be furnished to the City. All such insurance policies, excluding Professional Liability Insurance, shall name the City, its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of the extent of the policy limits stated herein. All policies of insurance required hereunder shall contain a provision requiring a minimum of thirty (30) days advance written notice to the City in the event of cancellation or diminution of coverage. Contractor also shall maintain Workers' Compensation Insurance in such amounts as required by law for all employees and shall furnish to the City evidence of same.

ARTICLE 8. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided in this Agreement, documents and reports prepared by Contractor as part of the Services shall become the sole and exclusive property of the City upon payment. However, Contractor shall have the unrestricted right to their use.

Contractor shall retain its rights in pre-existing and standard scripts, databases, computer software, and other proprietary property. Rights to intellectual property that is not specifically designed or created exclusively for the City in the performance of this Agreement shall also remain the property of Contractor.

ARTICLE 9. TERMINATION

This Agreement may be terminated by the City upon written notice in the event of substantial failure by Contractor to perform in accordance with the terms of this Agreement. Contractor shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party.

The City may terminate or suspend performance of this Agreement for the City’s convenience upon thirty (30) days prior written notice to Contractor. In the event of termination by the City hereunder, the City will pay Contractor for Services provided up to the date of termination.

Any such termination shall not relieve the vendor of any liability to the City for damages sustained by any breach by the vendor. The City will be under no further monetary obligation or commitment to the vendor. The City may terminate this contract at any time upon 30 days written notice to the vendor. In the event of termination, the City may, at its option, exercise any remedy available to it, including the Uniform Commercial Code, according to Ohio law.

ARTICLE 10. STANDARD TERMS

A. DELAY IN PERFORMANCE

Neither the City nor Contractor shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either the City or Contractor under this Agreement, provided the aforementioned circumstances are not due to the negligence or fault of the asserting party or any of its agents, employees, contractors, sub-contractors and/or representatives.

Should such circumstances occur the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

B. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. Any arbitration, litigation or other legal matter regarding this Agreement or performance by either party must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

C. COMMUNICATIONS

Any written communication or notice required or permitted by this Agreement shall be made in writing and shall be delivered personally, sent by express delivery, certified mail or first-class U.S. mail, postage pre-paid to the address specified below:

Company Name: _____

Address: _____

City, State Zip Code _____

Attention: _____

Title: _____

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Contractor and the City.

D. EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship.

It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this Agreement as fully and as if specifically, rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the City to terminate this Agreement at its option and may bar Contractor from receiving future City contracts.

E. WAIVER

A waiver by the City or Contractor of any breach of this Agreement shall be in writing. Such a waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the waiving party's rights with respect to any other or further breach.

F. 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, unenforceable, invalid or illegal provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the portion or provision.

G. INDEPENDENT CONTRACTOR

By executing this Agreement for professional services, Contractor acknowledges and agrees that it will be providing services to the City as an "independent contractor". As an independent contractor for the City, Contractor shall be prohibited from representing or allowing others to construe the parties' relationship in a manner inconsistent with this Article. Contractor shall have no authority to assume or create any obligation on behalf of, or in the name of the City, without the express prior written approval of a duly authorized representative of the City.

Contractor, its employees and any persons retained or hired by Contractor to perform the duties and responsibilities under this Agreement are not City employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, Contractor shall be responsible to withhold and pay, or cause such agents, contractors and sub-contractors to withhold and pay, all applicable local, state and federal taxes. Contractor acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System ("OPERS") membership.

H. ASSIGNMENT

Contractor shall not assign any rights or duties under this Agreement without the prior written consent of the City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Contractor from employing independent Contractors, associates, and subcontractors to assist in the performance of the Services.

I. THIRD PARTY RIGHTS

Except as expressly provided in this Agreement, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Contractor.

J. AMENDMENT

The parties may mutually agree to amend this Agreement. However, no such amendment shall be effective unless it is reduced to a writing, which references this Agreement, executed by a duly authorized representative of each party and, if applicable or required, approved by the Commission of the City of Dayton, Ohio.

K. POLITICAL CONTRIBUTIONS

Contractor affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

L. INTEGRATION

This Agreement represents the entire and integrated agreement between the City and Contractor. This Agreement supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

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M. PCI COMPLIANCE

Bidder/proposer (“Offeror”) represents and warrants that, for the entirety of any agreement resulting from this solicitation that involves processing credit and/or debit card revenue transactions on behalf of the City of Dayton that the solution is clearly defined to warrant the following:

1. All computer software, hardware, firmware, payment card processing policies, procedures and related services proposed to be utilized to process City of Dayton revenue transactions shall be:
 - a. Completed by a qualified professional payment card processing firm acceptable and approved by the City of Dayton; and,
 - b. Fully compliant with standards established by the PCI Security Standards Council (<https://www.pcisecuritystandards.org/index.shtml>).
2. Offeror shall provide and agrees to maintain the PCI compliance reporting Attestation of Compliance (“AOC”) Form(s) in its/their latest version(s), or within the year of record as requested and/or in an annual transmittal to the City of Dayton. (https://www.pcisecuritystandards.org/documents/PCI-DSS-v3_2-AOC-Merchant.docx?agreement=true&time=1493826893795 or <https://www.pcisecuritystandards.org/documents/PCI-DSS-v3-AOC-Offeror.docx?agreement=true&time=1493826893795>).

Selection one of the following and initial on the adjacent line:

- Not Applicable (“N/A”) _____
- Offeror, reviewed, understands and hereby acknowledges and affirms that its offer to the City of Dayton satisfies these requirements and shall continue to satisfy these requirements for the duration of any resulting agreement; current and relevant AOC’s are attached to demonstrate satisfaction of these requirements at the time of offer to the City of Dayton. _____

N. LIVING WAGE ORDINANCE

“I certify the proposing entity complies with the City of Dayton Ordinance #30829-09 and the City’s Revised Code of General Ordinances Section 35.70 through 35.74 regarding Living Wages.”

YES NO



City of Dayton, Ohio
Department of Recreation and Youth Services
Fireworks Display
RFP No. 21-019RYSR
May 2021

EXHIBIT A – LETTER OF TRANSMITTAL

The undersigned hereby certifies that items furnished as a result of this proposal will be in full accordance with the City of Dayton specification applying thereto unless exception are stated above.

The Proposer’s name and address exactly as it would appear in a contract:

Entity Name: _____

Street Address: _____

City, State, Zip: _____

Proposer’s Phone Number: _____

Proposer’s Fax Number: _____

Proposer’s E-mail Address: _____

Form of Ownership Sole Proprietorship Franchise Partnership Corporation
 Joint Venture LLC Other (Specify): _____

If a corporation, state of incorporation: _____

Federal Identification Number (or SSN if sole proprietorship): _____

Please include your IRS Form W9 with your proposal.

I certify the proposing entity complies with City of Dayton Ordinance #30829-09 and the City’s Revised Code of General Ordinances Section 35.70 through 35.74 regarding Living Wages. Yes No

SIGNATURE: _____

PRINTED NAME AND TITLE: _____

By signing this page, you state that you are an authorized representative, and have reviewed and are presenting this proposal on behalf of your business entity. Please continue completing this exhibit on the next page.



City of Dayton, Ohio
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EXHIBIT B – REFERENCES FOR PROPOSING COMPANY

Name of Proposing Company: _____

List company names, addresses, and telephone numbers for at least three references presently or previously served by your Company for RFP No. 21-019RYSR. Do not use the City of Dayton as a reference.

Company Name: _____

Address: _____

Contact Person: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

Company Name: _____

Address: _____

Contact Person: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

Company Name: _____

Address: _____

Contact Person: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____



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 Department of Recreation and Youth Services
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EXHIBIT C – PRODUCT MANUFACTURE LABOR STANDARDS: VENDOR COMPLIANCE FORM

By informal resolution 301-97, the City of Dayton is prohibited from purchasing, leasing, renting or taking on consignment goods for use or for resale by the City which were produced under sweatshop conditions.

The City of Dayton requests the following information concerning the products you intend to provide to the City because of this bid. This information will allow us to determine your products’ compliance with the standards outlined in informal resolutions 301-97.

We require that you make a good faith effort to ascertain the following about the factories which manufacture the products you intend to supply to the City and that you make information available to us for our verification of your claims.

Child Labor. The factory or producer does not employ anybody younger than the legal age as established by the jurisdiction in which such factory or producer is located for children to work or participate in the production.

Forced Labor. The factory or producer does not use forced labor of any kind-prison labor, indentured labor or bonded labor. However, goods produced by prisoners and/or patients as part of a formal rehabilitation or treatment program shall not be considered “forced labor” under the terms of this section.

Wages and Benefits. The factory or producer pays and/or provides at least the minimum wages and/or benefits as required by law in the jurisdiction in which the factory or producer is located.

Hours of Work. Employees are not required to work more hours than the maximum allowed by law for the jurisdiction in which the factory or producer is located.

Worker Rights. The factory or producer makes available to its employees such rights and procedures as required by law for the jurisdiction in which the factory or producer is located.

Health and Safety. The factory or producer provides at least the minimum safe and healthy working environment as required by law for the jurisdiction in which the factory or producer is located.

Notice to Employees. The factory or producer provides all applicable notices to its workers as required by law for the jurisdiction in which the factory or producer is located.

This compliance form must be submitted with your bid. If at any time your products are found to be out of compliance with these standards, or if you refuse to provide information to the City for our verification of compliance, the City reserves the right to terminate contracts for those products.

City of Dayton Ref. No.: _____
 Bidding Company: _____
 Address: _____

 Signature/Title: _____
 Federal I.D.#: _____
 Phone No.: _____
 Fax No.: _____



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EXHIBIT D – CITY OF DAYTON FIREWORKS RULES

1. Fireworks exhibition shall be conducted in accordance with the Dayton Fire Code, Southwest Ohio Fire Safety Council Unified Standards, Ohio State Fire Code including all referenced materials, specifically National Fire Protection Association Standards, and Rules of the Ohio State Fire Marshal and the Dayton Fire Marshal. In addition, such exhibit shall comply with all other local, state and federal law.
2. Separation distances for mortars shall be increased to 100 feet per inch of mortar diameter from the NFPA standard of 75 feet per inch of mortar diameter.
3. Mortars 6 inches in diameter or larger shall be buried in trenches or adequately configured in an equivalent manner (e.g. - providing a secondary level of containment, utilization of above ground sandboxes, using a trailer with sides, surrounding with metal chain link fence, etc.) approved by the fire official. Any alternative to burying such devices may require demonstration to the fire official to gain approval as equivalent.
4. In addition to the Ohio State Fire Marshal's recommendations, all ground display devices including "cake boxes" shall be stabilized by fastening them to at least two stakes of substantial construction or if on impervious area, each side shall be supported by a structure or sandbag placed on each side of the box and. At least one of the bags shall be secured to the box or equivalent method approved by the fire official.
5. Any device included in the display, intended to fire in a direction other than perpendicular to the ground, shall be specifically identified by the exhibitor to the fire official. The fire official shall evaluate such devices and may require more stringent requirements for use of such than otherwise required, such as increases in separation distances.
6. Any material used as a protective covering over a device shall not obscure the ability of the fire official to properly inspect such devices, unless inspected and approved prior to covering. For example, plastic water proofing materials shall be clear to allow visualization of devices or be removed.
7. Any multi-shot device shall be separated 100 feet for each 1 inch of diameter of the largest tube in the device.
8. A complete plan for the exhibit must be submitted to and approved by the fire official prior to beginning any set-up of exhibit.
9. The fire official and/or his or her designated representative shall be on-site during the entire set-up of the exhibit. During idle times, when no set-up work is being performed on the exhibit, adequate security approved by the fire official shall be in place.
10. Selection of product must comply with Ohio Fire Code (i.e. no 1.4G unless approved with an Ohio Fire Marshal's variance) and all product must be designed so it is "finished" before leaving the designated discharge area site perimeter (i.e. -no long burning parachute type product), etc.

Fire Marshal

Dayton Fire Department

1/2007-Revision 12/2014



City of Dayton, Ohio
 Department of Recreation and Youth Services
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EXHIBIT E – PRICING STRUCTURE

Name of Proposing Company:

THE REQUESTED BREAKDOWN OF ITEMIZED COSTS SHALL INCLUDE LABOR, MATERIALS, AND RELATED ITEMS AS REQUIRED. PROPOSAL PRICING SHALL BE LISTED ON THE PRICING SHEET THAT FOLLOWS. ANY ADDITIONAL PRICING MAY BE SUBMITTED ON SUPPLEMENTAL SHEETS WHICH SHALL BE IDENTIFIED USING THE FOLLOWING:

ITEM No.	Unit	DESCRIPTION	UNIT PRICE
1.	Lot	<p>Fireworks Display TOTAL COST NOT TO EXCEED To include, but not limited to, the cost of fireworks, set-up, labor, all associated insurance requirements and related items</p> <p>Please also provide a standardized price sheet of fireworks proposed for use in Fireworks Display</p>	\$ _____
2.	Lot	<p>Event Reschedule Additional fees, if any, to reschedule event due to inclement weather</p>	\$ _____
3.	Lot	<p>Cancellation Fee All applicable fees associated with event cancellation to include, but not limited to, fees for event set-up and teardown</p>	\$ _____
4.	Ea.	<p>Reimbursement Schedule Threshold for shells that do not fire, if any, that must be surpassed before the City is reimbursed</p> <p>Reimbursement amount, related to cost, of shells that do not fire</p>	_____ % _____ %
5.	Lot	<p>Music All applicable fees to feature and synchronize music to fireworks display</p>	\$ _____



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EXHIBIT F – Frequently Asked Questions

1. **Paragraph 2.03 p.7** It looks like the show is required to be mostly aerial shells with less emphasis on candles, fountains and cakes. Is this correct? Under item 1, the parenthetical “including candles/fountains,” following “3” to 6”,” is confusing since candles and fountains are not normally in these sizes. Also, is the measured capability of the site maximum 6”?

Is the Bid requesting/requiring or encouraging the use of cake box products?

Is the City interested in cake boxes or low level effects?

Answer: The maximum size shell permitted within the designated Kettering Field Complex fireworks discharge area is six inches, using our local discharge ratio of one inch to 100-ft.

The City is discouraging, but not prohibiting, the use of cake box or other lower elevation product (typically those less than three inches). We understand that some vendors might want to include an incidental amount of “novelty” or “signature” set or special effect into their show design.

It is our desire to obtain a fireworks exhibition that can be seen by all of our viewing audience, many of whom are remote from the actual fireworks discharge site. Because of this, we desire the preponderance of our show to consist of higher elevation fireworks product, typically sized three to not more than six inches.

The topography of Dayton is such that our downtown discharge site is located in the bottom of the “bowl” of the Great Miami River Valley. Downtown Dayton is “surrounded” by hills provided with remote parks and green recreational spaces, heavily utilized by residents to view our signature “high-elevation” fireworks show. From past experience we know that this audience cannot see or hear lower elevation fireworks product (less than three inches). We discourage the use of low level product to avoid “show gaps” for this portion of the audience.

2. Is there a bond form that you can provide?

Answer: We do not provide a standard bond form. We request those proposing to have bond forms issued from their insurance provider.

3. What other possible costs besides those in exhibit E are being referred to?

Answer: In the case there should be any other costs, direct or indirect, pertaining to the fireworks display that are not listed in our Exhibit E, that pricing will need to be put on a supplemental pricing sheet, labeled Exhibit E – Supplemental Pricing. The city will not approve, nor pay for pricing that is not listed.

4. Does all of the Dayton show have to be encased within chain link fencing?

Answer: No. Only the six inch product need be buried or provided with immediately adjacent fencing. Product smaller than six inches may utilize “approved” above ground racking, provided it is adequately braced per NFPA and the Ohio Fire Marshal’s “Red Book”. Note: the discharge site is primarily asphalt parking lot, so while stakes maybe used to secure the racks, it is likely the stake holes would need to be “drilled”. The City has permitted vendors to implement a combination system of enhanced rack leg bracing and sand bagging in lieu of staking.

5. Are sections of portable, temporary chain link fence for the 6” adequate?

Answer: Yes. The city has permitted vendors to utilize temporary (rental) construction fence sections. These sections are typically delivered direct to the site by the fence vendor. Show producer will need to coordinate fence deliver and assembly (by non-licensed individual) to ensure fence work is completed before fireworks product is on site, or is completed by Ohio licensed exhibitors or assistants.

6. It seems that the total cost of the fireworks show does not include the music synchronization. Is that correct and is this so that all the budget amount can be applied to the fireworks and labor?

Answer: No. The total bid for fireworks show is inclusive. Your bid is inclusive of all costs, fees product and services, including any royalty/licensing fees for selected music and show synchronization. The City of Dayton reserves the right to have the vendor produce the music in addition to the synchronization.

7. Please explain Reimbursement amount related to cost of shells that do not fire. Are you asking for what percentage of the cost of these shells we are prepared to reimburse the City of Dayton?

Answer: The City is asking for a reimbursement schedule in the event the show occurs, but for some reason (equipment failure, wiring failure, etc.) and more than an incidental amount of product is not ignited and is left over after the show concludes. For example, "if more than 5% of the total show shell count fails to successfully launch, then vendor XXX will reimburse the City for the unfired devices at the following rate:

3-inch shell \$A each 5-inch shell \$C each

4-inch shell \$B each 6-inch shell \$D each