CITY OF DAYTON
WATER RECLAMATION FACILITY ANAEROBIC DIGESTER IMPROVEMENTS PROJECT
REQUEST FOR QUALIFICATIONS FOR CONSTRUCTION MANAGER AT RISK SERVICES
REQUEST FOR QUALIFICATIONS (RFQ) No. 22-001WTWT

December 15, 2021

Proposals are due January 24, 2022 at 12:00 P.M. Local Time.
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SECTION 1 – REQUEST FOR QUALIFICATION INSTRUCTIONS

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

City of Dayton
Larry Kremer, P.E. WRF Sr. Engineer II
2800 Guthrie Road
Dayton, Ohio 45417
Telephone: (937) 333-3736
E-Mail: Larry.Kremer@daytonohio.gov

All communications/questions concerning this RFQ must be submitted in writing referencing the specific paragraph and page number. The deadline for questions is listed in Section 1.02 (RFQ 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 RFQ will be made only by formal written correspondence issued by the City.

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

http://daytonohio.gov/bids.aspx

1.02 RFQ SCHEDULE. The proposed RFQ schedule is to be reviewed with City Purchasing and HRC, if required, and shall be mutually agreed upon. RFQ schedule to be determined prior to finalization of RFQ. The following is the anticipated schedule for the RFQ Process:

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue RFQ:</td>
<td>December 15, 2021</td>
</tr>
<tr>
<td>Notification of Attendance of Pre-Submittal Meeting:</td>
<td>January 10, 2022</td>
</tr>
<tr>
<td>Mandatory Pre-Submittal Meeting:</td>
<td>Meeting will be at Dayton Water Reclamation Facility (WRF), 2800 Guthrie Rd., Dayton Ohio 45417 at 9:00 AM local (Dayton OH) time on January 13, 2022</td>
</tr>
<tr>
<td>Due Date for RFQ Submittals:</td>
<td>2:00 PM local (Dayton OH) time on January 24, 2022</td>
</tr>
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1.03 PRE-SUBMITTAL MEETING. The City shall conduct a MANDATORY pre-submittal meeting. The date and location of the meeting is listed in Section 1.02 (RFQ Schedule). The intent of the pre-qualification meeting is to:

- Discuss the RFQ/RFP Process
- Review the Request for Qualifications
- Review the City’s Procurement Enhancement Plan (PEP) procedures
- Project Overview Presentation
- Tour of the WRF Facility
- Answer questions

This may be the only opportunity for the Firms to meet with the City. Each proposer should limit representation at this meeting to no more than 2 persons. Firms shall notify the City as directed in Section 1.02 (RFQ Schedule) if they will be attending the pre-qualification meeting and how many persons will attend.
1.04 **MANDATORY SITE VISIT.** The City shall conduct a Site Visit during the Pre-Submittal meeting as outlined in Section 1.02 (RFQ Schedule). The intent of the site visit is to:

- Review the Project Location and site conditions
- Discuss Project Scope of Improvements
- Answer questions

This may be the only opportunity for the Firms to visit the project location. Each proposer should limit representation at the site visit to no more than 2 persons.

1.05 **SUBMITTING QUALIFICATIONS.** Each Firm seeking consideration for performance of services related to this RFQ must submit their Letter of Interest and Statement of Qualifications. Firms shall submit one electronic version with all documents in Adobe PDF format 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 Firm’s qualifications document exceed this limit, your Firm will have to submit its document in multiple parts (emails). Should bid documents require multiple emails, please designate in the “Subject” line of each email sent: **RFQ No 22-001WTWT CONSTRUCTION MANAGER AT RISK.**

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

**Topic:** RFQ No. 22-001WTWT Construction Manager at Risk Services  
**Time:** Jan 24, 2022 12:00 PM Eastern Time (US and Canada)

Join Zoom Meeting  
https://us02web.zoom.us/j/82608594291?pwd=V09Eb0h3THJlbjAwSUkxTWxuQTA3Zz09

Meeting ID: 826 0859 4291  
Passcode: 493941  
One tap mobile  
+13017158592,,82608594291#,,,,,*493941 US (Washington DC)  
+13126266799,,82608594291#,,,,,*493941 US (Chicago)

Meeting ID: 826 0859 4291  
Passcode: 493941

Letter of Interest and Statement of Qualifications must be received in the Procurement bid email in-box (BIDS@DAYTONOHIO.GOV ) by 2 pm on the date indicated in Section 1.02 (RFQ Schedule). Qualifications received after the scheduled date/time will not be considered. All supporting materials and documentation must be included with the qualification. The responsibility of timely delivery lies solely with the proposer.

The City reserves the right to reject any and all qualifications, to waive any irregularities in a qualification, or to accept the qualification(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 qualification unless otherwise restricted in the RFQ or issue subsequent RFQs. The City reserves the right to approve or reject any sub-Firms proposed for work under this qualification or waive any minor irregularities

Upon review of qualifications, the City may designate the most qualified Firms as finalists. The finalists may be sent the Request for Proposal (RFP) in which they will be invited to submit a proposal. After reviewing and evaluating proposals, these finalists will 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. Following these steps, the City may select the successful Firm.

All federal, state, and local laws regarding competitive bidding, anti-competitive practices, and conflict of interest shall be applicable to this RFQ.
The City does not guarantee that any contract will be awarded because of this RFQ. If a contract award is made but the contract is not executed, the City does not guarantee that the contract will be re-awarded.

1.06 REQUIRED QUALIFICATION CONTENTS. All brochures and supplemental documentation shall be included with the original and all copies. If not, the Firm may be considered as non-responsive. Firms are required to submit the following information in their qualification:

- **Letter of Transmittal.** The Firm shall provide a transmittal letter with authorizing signature for the qualifications. The letter must briefly summarize the Firm’s ability and willingness to perform the services required by the RFQ. The letter must be on the form provided in Exhibit A.

1.07 ITEMS THAT DISQUALIFY A FIRM IMMEDIATELY.
- Incomplete or non-responsive qualification
- Inexperience on Similar CMAR Projects

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

Firms shall not assume that any information shared with the City prior to this RFQ will be considered in the evaluation process of this RFQ. 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 RFQ only.**

CONTENTS OF RFQ - STATEMENT OF QUALIFICATIONS (SOQ)

A. **SOQ Required Information**

Provide the following information for consideration by the Owner as part of the evaluation of Proposer’s qualifications. The SOQ must be organized as follows:

- **Competence and Services.** When providing the following information, if the firm is a national firm with a branch office in Ohio, provide information limited to the firm’s Ohio office projects and experience.
  - Provide an Executive Summary of the Proposer with the firm’s history and philosophy. What is the firm’s approach to the CMAR delivery method? What is it that makes the firm unique? How long has the firm been in business, and how long have key employees and principals been associated with the firm?
  - Identify the Proposer’s employees who would be assigned to perform services for the Project including key consultants, if any.
  - Describe the proposed CMAR Team in more detail, building from the Executive Summary – i.e., credentials, technical training, experience with BIM, education, and experience of the CMAR Team, in-house, full-time employees and in-house professional disciplines. Provide bios for Project Executive/Project Manager, Project Administrator (Site Level), and Construction Technical Staff (Estimating, Budgeting, Scheduling) only. Include consultants to be used for the Project and the firm’s experience with each on past projects. Limit bios to one page in length.

- **Ability to Provide the Required Services.**
  - What is the capacity of the CMAR Firm and members of the CMAR Team to provide the required services for the Project in terms of workload and availability? Include a list of current projects and the status of each and relevant information (i.e., budget, type of work, stage of completion, committed staff, and consultants).
  - Identify and give details regarding the Proposer’s and CMAR Team members’ representative project experience and CMAR delivery method on similar projects, with an emphasis on public water or wastewater projects in the State of Ohio. Include Owner contact information for each project. Identify those projects that had a GMP and state whether the GMP was exceeded, and if so, identify the adjusted GMP and actual cost of the work plus fee, plus general conditions costs.
o Identify the proximity of the CMAR Firm’s primary office where the majority of the Project work will be managed/performed to the Project site – Identify distance in miles, straight-line method.

• Other qualifications consistent with the scope and needs for the Project.
  o Firm’s Average Revenue.
  o Identify Proposer’s annual revenue from similar construction projects for the past 7 years.
  o Identify Proposer’s total annual revenue for each of the past 7 years.

• Insurance Coverage & Claims History.
  o Identify Professional Liability coverage of the Proposer, including claims history for the last 5 years.
  o Identify Commercial General Liability coverage of the Proposer, including claims history for the last 5 years.
  o Identify specific information about any claims in excess of $250,000 asserted by Proposer and against Proposer within the last 5 years, including the resolution of the claim(s).

• Value Added Experience. Demonstrate the Proposer’s past success in improving past construction manager at risk projects with value added components thru the Proposer’s creative or innovative value engineering, construction technique or other similar methods. For each example, provide a brief summary. Include recommendations that enhanced the cost effectiveness and functionality of similar facilities.

• Familiarity with Local Area. Identify knowledge of the local area and working relationships with local subcontractors and suppliers.

• Firm Profile and Background. Provide the following information:
  o Location – The street address of the proposer’s Firm headquarters.
  o 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.
  o Firm’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.
  o State the legal make-up of your Firm: sole proprietorship, partnership, corporation, etc.
  o 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.

• Procurement Enhancement Program: Identify in detail the Firm’s history of performance with respect to the City’s Procurement Enhancement Program and Affirmative Action Assurance processes set forth at 3.03 and 3.06, below, and the Firm’s plan for compliance with those programs and processes for this Project. In addition, identify in detail the Firm’s history of compliance with similar Diversity and Inclusion Goals of other public owners in Ohio.

• Statement of Exceptions to RFQ requirements. Provide a detailed description of any exceptions taken to the requirements of this RFQ, including the City Standard Terms and Conditions in Section 3. Exceptions shall be referenced to the applicable RFQ section/sub-section numbers. Any other departures from the city’s RFQ are to be identified and failure to do so shall make the qualification 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 RFQ 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.

| Evaluation Criteria for Statement of Qualifications |
|---------------------------------|------------------|
| Item   | Description                                                                 | Points Possible |
| 1      | Competence and Service                                                      | 30              |
| 2      | Ability to Provide the Required Services                                    | 40              |
| 3      | Other qualifications consistent with the scope and needs for the Project    | 5               |
| 4      | Insurance Coverage & Claims History                                         | 10              |
| 5      | Value Added Experience                                                      | 10              |
| 6      | Dayton Local Business (required)                                            | 5               |
| **Total Points**                  |                                                              | **100**         |

1.09 **RFQ/RFP PROCESS**

The City is conducting the following three steps to this process of entering into agreement for the Construction Manager at Risk, which are explained in the paragraphs that follow.

1. Request for Qualifications
   1. This RFQ is the first step to entering into agreement with the City for the Construction Manager at Risk for the City of Dayton’s Anaerobic Digester Project. It is the City’s intent to review all Statement of Qualifications (SOQ’s) submitted and short list a three (3) qualified Firms. The short-listed firms would then receive a Request for Proposal. It is anticipated that notification of the shortlisted firms would occur shortly following RFQ submission.

2. Request for Proposals
   1. Each short-listed firm will be provided the “Basis of Design Report” and the 30% Design Drawings and Estimates and all current plant operating data as may be necessary for the firm’s review. The Request for Proposal will contain a proposed draft contract agreement (agreement) for review and comment by proposers. Firms would provide constraints, requirements, or exclusions to the draft contract agreement required to execute. The proposal would also include the Firm’s monetization “best price” Pre-Construction costs for the Construction Manager at Risk for such costs to review design plans between 30% - 90%. If agreeable to the City, the most beneficial proposal could then be selected for the City to enter into the proposed agreement with the Firm, with the agreement terms including the Firm’s markups considered binding. It is anticipated that notification of the selected firm would occur approximately 1 month following RFP submission.

3. Entering into agreement.
The City of Dayton, Ohio owns and operates the Dayton Water Reclamation Facility. The WRF has a permitted and design capacity of 72 mgd and an average annual flow of approximately 50 mgd. The WRF provides preliminary, primary, secondary, advanced secondary, filtration, chlorination/dechlorination, and post-aeration treatment before discharging to the Great Miami River. The liquid stream side of the plant is mainly composed of two offsite influent flow pump stations (Broadway and Westwood), four grit basins, seven primary clarifiers, twenty trickling filters, a low lift pump station, ten intermediate clarifiers, an intermediate pump station, eight aeration basins, four activated sludge compressors, and eight final clarifiers.

The WRF currently has the following solids handling unit processes for treatment of the solids to Class B biosolids characterization:

- Sludge from the trickling filters is conveyed into the south primaries.
- Primary sludge from the north and south primaries is pumped directly into the digesters.
- Waste activated sludge from the final clarifiers is thickened via dissolved air flotation (DAF) before being pumped to the digesters.
  - The DAF system will soon be replaced by rotary drum thickeners.
- Primary and thickened waste activated sludge are stabilized in eight anaerobic digesters.
- Digested solids are pumped from the digesters to the Biosolids Processing Building where they are dewatered via centrifuges prior to cake storage. A surge tank is installed between pumping and dewatering.
- Class B biosolids are typically land applied, while unclassified biosolids are typically landfilled.
  - Methane-rich biogas produced during anaerobic digestion is either burned at one of three waste gas flares or sent to beneficial use via the Cogeneration Building where it is conditioned, dried, and
Compressed. Compressed biogas is stored in a large gas holder before being converted into energy via engine generators or burned to heat the hot water boilers.

- Hot water boilers are utilized for heating the digesters and buildings through a set of recirculation hot water loops.

In 2018, the City completed the *Dayton WRF Master Plan* to identify and prioritize improvements to its WRF. One of the projects identified as highest priority was repairing and improving the capacity of the anaerobic digesters, including the associated hot water system, related electrical components, and certain aspects of the primary and TWAS sludge pumping systems. In addition to these improvements, replacement of all fiberglass-reinforced plastic odor control covers was originally planned as a component of this project, but due to recent damage to the odor control covers at the South Primary Clarifiers, these replacements are being performed on an accelerated timetable. The areas and facilities associated within these improvements are shown in the following figure.

The *Dayton WRF Master Plan* called for a two-phase digester improvements approach, with four new digesters constructed in Phase 1 and eight existing digesters rehabbed in Phase 2 ten years later. During the proposal process, Hazen recommended revising this approach with concerns that the City would be investing too much capital money in digestion capacity it may not need while leaving operators struggling with existing operational issues for too long before Phase 2 would be constructed. Dayton agreed with this revised, more operator-friendly approach. The revised approach being implemented includes construction of two new digesters, rehab of the four existing East Digesters, construction of a new digester blending complex, replacement of the main switchgear, construction of new diesel generators for standby power, and several other various improvements during Phase 1. Additional improvements will be completed under a future Phase 2 project, including rehabilitation and conversion of the West Digesters to dedicated digested sludge holding tanks, rehabilitation of the north primary sludge pumping station, and implementation of a plant-wide hybrid hot water/natural gas building heating system. This alternate approach is possible because the master plan did not account for the anticipated near-term decrease in industrial loading and the
possibility of increasing sludge retention time through operational changes.

Design for Phase 1 will be completed by September 2022 and the design for Phase 2 is scheduled for completion by February 2023. After Phase 1 reaches 90% design, the CMAR will provide the Guaranteed Maximum Price (to be discussed in the RFP), while Phase 2 will be saved for a future date when funding is available. Phase 2 construction is anticipated to commence sometime in the next ten years. This report will capture basis of design information for both phases.

The scope of improvements for Phase 1 is as follows:

- Replacement of odor covers for South Primary Clarifiers, Influent Parshall Flume, Main Diversion Chamber, and Manhole 16 – Under separate contract with Ulliman Schutte Construction
- Addition of gates and stop plates to the Main Diversion Chamber - Under separate contract with Ulliman -Schutte Construction
- Construction of two new pancake style digesters, new Digester Complex, and tie-ins to existing East Digesters and gas handling facilities.
- Rehabilitation of East Digesters and Digester Complex.
- Rehabilitation of Boiler Room.
- Installation of isolation valves at key locations on existing plant hot water loops.
- Minor piping improvements to provide conveyance of digested sludge to and from West Digesters. Improvements will be limited to those allowing conveyance to and from tanks without the need for comprehensive code upgrades and to high priority structural rehabilitation.
- Construction of a new Digester Blending Complex and tie-ins to existing north primary sludge and TWAS force mains. Digester Blending Complex will be connected to the existing south primary complex via a buried tunnel.
- Relocation of South Primary Clarifier sludge pumps to the Digester Blending Complex.
- Replacement of North Primary Clarifier sludge pumps (in kind/to match existing).
- Replacement of flare piping from the digester complexes to the flares, including isolation valve and flame arrestors.
- Replacement of Main Switchgear.
- Construction of three new Tier II Generators.
- Replacement of Substation 9.
- Replacement of Feeders AR-F-1B and AR-F-2B.
- Associated site work, including relocation of existing utilities where required for the above improvements.
- Ancillary improvements including electrical, instrumentation and control, architectural, HVAC, and plumbing required for the above improvements.

The work under Phase 2, which will be done at a later date includes:

- Rehabilitation of North Primary Sludge Pumping Station.
- Equipment demolition and code improvements in South Primary Sludge Pumping Station.
- Rehabilitation and conversion of West Digesters and Digester Complex to dedicated sludge holding tanks.
- Heat Exchanger Building demolition and modifications for electrical improvements.
- Replacement of Feeders AR-F-1A, AR-F-2A, AR-CB-1, AR-CB-2, and feeders for Cogen.
- Walkable buried utility corridor for sludge piping between existing West and East Digester Control Facilities.
- Rehabilitation of plant hot water piping and implementation of hybrid hot water/natural gas heating system.
- Associated site work, including relocation of existing utilities where required for the above improvements.
- Ancillary improvements including electrical, instrumentation and control, architectural, HVAC, and plumbing required for the above improvements.

**Preliminary Opinion of Probable Construction Cost**

Construction costs for the most elements of the project were estimated based on the selected alternatives from workshops and discussions with the Owner along with vendor quotations and the basis of design drawings. This is an AACE Class 4 cost estimate equivalent to approximately 10% level of design effort. Class 4 has a typical accuracy range of -30% and +50%. The Preliminary Opinion of Probably Construction Costs will be contained within the Basis of Design Report.
SECTION 3 – REQUIREMENTS AND CONDITIONS FOR ALL RFQ/RFP SUBMITTALS

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 firm is required to submit with their response, an Affidavit stating that neither the proposer nor agents thereof, nor any other party of the firm 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 Firms 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 response 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 RFQ. All materials and documents submitted by the firm in response to this RFQ 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 Firm must electronically submit an Affirmative Action Assurance application via the City’s online Firm 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 Date TBD, whichever date is earlier. The Agreement shall be renewable for Optional periods TBD at the discretion of the City.

ARTICLE 2. SERVICES TO BE PERFORMED BY FIRM
Firm 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
Firm shall submit invoices, not more frequently than monthly, for payment of the Services 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 Firm, 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
Firm 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. Firm shall have no liability for defects in the Services attributable to Firm’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 Firm's failure to meet such standards and City has notified Firm in writing of any such error within that period, Firm 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
Firm 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 Firm and its agents, employees, Firms, sub-Firms 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, Firm shall maintain, at its sole cost and expense, no less than the following insurance issued by an insurance Firm 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) Firm 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 Firm 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. Firm 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 Firm as part of the Services shall become the sole and exclusive property of the City upon payment. However, Firm shall have the unrestricted right to their use.

Firm 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 Firm.

ARTICLE 9. TERMINATION

This Agreement may be terminated by the City upon written notice in the event of substantial failure by Firm to perform in accordance with the terms of this Agreement. Firm 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 Firm. In the event of termination by the City hereunder, the City will pay Firm for Services provided up to the date of termination.

Any such termination shall not relieve the Firm of any liability to the City for damages sustained by any breach by the Firm. The City will be under no further monetary obligation or commitment to the Firm. The City may terminate this contract at any time upon 30 days written notice to the Firm. 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 Firm 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 Firm 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, Firms, sub-Firms 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:

Firm Name: ________________________________
Address: ________________________________
City, State Zip Code: _________________________
Attention: ________________________________
Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Firm and the City.

D. EQUAL EMPLOYMENT OPPORTUNITY

Firm 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 Firm from receiving future City contracts.

E. WAIVER

A waiver by the City or Firm 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 FIRM

By executing this Agreement for professional services, Firm acknowledges and agrees that it will be providing services to the City as an “independent Firm”. As an independent Firm for the City, Firm shall be prohibited from representing or allowing others to construe the parties’ relationship in a manner inconsistent with this Article. Firm 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.

Firm, its employees and any persons retained or hired by Firm 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, Firm shall be responsible to withhold and pay, or cause such agents, Firms and sub-Firms to withhold and pay, all applicable local, state and federal taxes. Firm acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System (“OPERS”) membership.

H. ASSIGNMENT

Firm 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 Firm from employing independent Firms, associates, and sub-Firms 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 Firm.
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
Firm 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 Firm. This Agreement
supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written,
relating to the subject matter of this Agreement.

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

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

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
EXHIBIT A – LETTER OF TRANSMITTAL
The undersigned hereby certifies that items furnished as a result of this qualification will be in full accordance with
the City of Dayton specification applying thereto unless exception are stated above. This must be completed for firm
and any sub-firms.

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 qualification.

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
qualification on behalf of your business entity. Please continue completing this exhibit on the next page.
EXHIBIT A – LETTER OF TRANSMITTAL (continued)

COMPANY PROFILE AND BACKGROUND

Name of Proposing Company: ________________________________

<table>
<thead>
<tr>
<th>Primary Business</th>
<th># of Years</th>
<th># of Employees Assigned</th>
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If a corporation, state of incorporation: ________________________________

Current Pending Lawsuits: Please provide all suits either with the City of Dayton or any other Municipalities and Government Agencies; including, but not limited to Federal, State, Local or other Municipalities and Governmental Agencies:

Local Office of Proposer: Office in/nearest to Dayton, Ohio: ________________________________

Federal Identification Number (or SSN if sole proprietorship): ####-#####

Key Personnel:

<table>
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<tr>
<th>Name</th>
<th>Title</th>
<th>Contact Information: Mailing address, telephone number, fax number and email address</th>
<th>Designated as Primary Contact for the City of Dayton? YES / NO</th>
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EXHIBIT B – REFERENCES FOR PROPOSING FIRM

Name of Proposing Firm: ____________________________________________________________

List Firm names, addresses, and telephone numbers for at least three references presently or previously served by your Firm for RFQ No. 22-001WTWT. Do not use the City of Dayton as a reference.

Firm Name: ____________________________________________________________
Address: _________________________________________________________________
Contact Person: __________________________________________________________
Telephone Number: _______________________ Fax Number: ______________________
Email Address: ___________________________________________________________

Firm Name: ____________________________________________________________
Address: _________________________________________________________________
Contact Person: __________________________________________________________
Telephone Number: _______________________ Fax Number: ______________________
Email Address: ___________________________________________________________

Firm Name: ____________________________________________________________
Address: _________________________________________________________________
Contact Person: __________________________________________________________
Telephone Number: _______________________ Fax Number: ______________________
Email Address: ___________________________________________________________
EXHIBIT C – PRODUCT MANUFACTURE LABOR STANDARDS: FIRM COMPLIANCE FORM

By informal resolution 31876-21, 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 31876-21.

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.

Anti-Genocide. The factory or producer does not purchase goods or services from countries or suppliers that have any involvement in the act or acts of genocide.

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 Firm: _______________________________________________________
Address: ___________________________________________________________
_________________________________________________________________
Signature/Title: _____________________________________________________
Federal I.D.#: _______________________________________________________
Phone No.: _________________________________________________________
Fax No.: ___________________________________________________________
EXHIBIT D- BUSINESS INCOME TAX QUESTIONNAIRE

Business Income Tax Questionnaire

The following information is required to determine your City of Dayton, Ohio income tax liability, if any, and to set up your account if required.

Type of Tax Filing: (check all that apply)
1. ☐ Employee Withholding FEIN # ________________
2. ☐ Corporate Earnings FEIN # ________________
3. ☐ Individual Ownership Earnings SSN # ________________
4. ☐ Partnership Earnings FEIN # ________________

Company Name_________________________________________Phone # __________________

Mailing Address_________________________________________City__________St______Zip__________

Local Business Address_________________________________________City__________St______Zip__________

Check the jurisdictions that we administer that you operate in:
☐ Dayton City Limits ☐ Dayton Wright Brothers Airport ☐ Dayton International Airport ☐ NONE

Date Business Started in Our Taxing Jurisdiction ____________________________

Your Accounting Period? Calendar Year _________ or Fiscal Year ending on _____________

Withholding Information *Quarterly Withholding cannot exceed $600.00

☐ Do you have employees? Yes ☐ or No ☐ Date First Employee Started Working in Our Jurisdiction _____________

☐ Do you submit withholdings QUARTERLY* or MONTHLY? _____________

☐ Is this a courtesy withholding for your employees who are residents of the above cities only? Yes ☐ or No ☐

Do you rent or sublease property or space in the Dayton jurisdiction to another business or individual? Yes ☐ No ☐

If so list Names, Addresses, and Tax ID below. If Yes, do they have employees working at that location? Yes ☐ No ☐

Do you use Subcontractors? Yes ☐ No ☐ If so list Names, Addresses, and FEIN or Social Security Numbers below.

If you have filed returns with our office before, show Name and Tax ID #s used, and for what tax years you filed.

Full name of Owner of Company ______________________________

If this is a change of ownership, please provide the date of change, the name, address, and phone number of former owner ______________________________

If you are not liable to pay taxes in our jurisdiction, please explain why.

______________________________________________________________

Signature ______________________________________ Title_____________ Date _____________

Thank you for your cooperation in this request. For more tax information is available at www.daytonohio.gov

Please return by MAIL or by FAX to: City of Dayton, Division of Revenue & Taxation, 101 West 3rd Street, P.O. Box 2806, Dayton, Ohio 45401 (937) 333-3500 ~ Fax (937) 333-4280

CS-25c