



# DAYTON

City of Dayton, Ohio  
OFFICE OF CITY MANAGER

**This Project is being solicited with 25% Minority Business Enterprise (MBE) participation**

INCLUSIVE BUSINESS RECOVERY OPPORTUNITY CENTER (IBROC) BUSINESS PLAN  
DEVELOPMENT CONSULTANT

REQUEST FOR PROPOSALS (RFP) No. 22-020CMO

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# SECTION 1 – PROPOSAL INSTRUCTIONS

This Project is being solicited with 25% Minority Business Enterprise (MBE) participation.

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

City of Dayton, Office of City Manager  
Contact Person: Lamonte Hall, Jr.  
101 West Third Street  
Dayton, Ohio 45402  
Telephone: (937) 333-3794  
Fax: (937) 234-1600  
E-Mail: lamonte.hall@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://daytonohio.gov/bids.aspx>

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

Issue RFP:	August 26, 2022
Virtual Pre-Proposal Meeting:	9:00 – 10:00 A.M., September 9, 2022
Last Day to Submit Questions:	No later than 4:00 P.M. on September 16, 2022
Q&A Posted to City Website:	No later than close of business on September 23, 2022
Due Date for Proposals:	4:00 P.M. on October 7, 2022
Anticipated Dates for Proposer Interviews:	No later than October 31, 2022

**1.03 PRE-PROPOSAL MEETING.** The City shall conduct a **VOLUNTARY** pre-proposal meeting. The pre-proposal meeting will be held on Friday, September 9, 2022 from 9:00 A.M. through 10:00 A.M.

The meeting will be held virtually for any company interested in participating. The date of the meeting is listed in Section 1.02 (RFP Schedule). The intent of the pre-proposal meeting is to:

- Review the Request for Proposal
- Answer questions
- Review the City's Procurement Enhancement Plan (PEP) procedures

The pre-proposal meeting will be facilitated using ZOOM with the following login information:

<https://us06web.zoom.us/j/82414959559>

**Meeting ID: 824 1495 9559**

Dial by your location

+1 408-961-3927 US

+1 855-758-1310 US Toll-free

Find your local number: <https://us06web.zoom.us/j/kcaAsoV5qx>

This may be the only opportunity for the vendor to meet with the City. You do not need a Zoom account to attend the meeting. Contact your technology department if you have questions about Zoom.

**1.04 QUESTIONS AND ANSWERS.** The City will also accept emailed questions regarding the project's intent, purpose, outcomes, timeline, or other information the company needs to develop a quality and realistic proposal that meets the stated objectives. Please send questions to: [bids@daytonohio.gov](mailto:bids@daytonohio.gov) no later than 4:00 pm, Friday, September 16, 2022. The subject matter has to include RFP 22-020CMO. You may send multiple questions over the course of the question period.

Responses to all questions will be posted to the City's website <https://www.daytonohio.gov/bids.aspx> on Friday, September 23, 2022.

**1.05 SUBMITTING A PROPOSAL.** Each company 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](mailto: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 bid documents require multiple emails, please designate in the "Subject" line of each email sent:

RFP No. 22-020CMO Inclusive Business Recovery Opportunity Center (IBROC) Business Plan Development Consultant , RFP No. 22-020CMO Part 1, RFP No. 22-020CMO Part 2, and so forth.

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

<https://us02web.zoom.us/j/82179588205?pwd=elZOSmZFYVZtRDEyVDhEZU91SWhtUT09>

**Meeting ID: 821 7958 8205                      Passcode: 848072**

One tap mobile

+19294362866 US (New York)                      +13017158592 US (Washington D.C)

+1 312 626 6799 US (Chicago)                      +1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)                      +1 346 248 7799 US (Houston)

Find your local number: <https://us02web.zoom.us/j/82179588205?pwd=elZOSmZFYVZtRDEyVDhEZU91SWhtUT09>

Sealed proposals must be received in the Procurement bid email inbox ([BIDS@DAYTONOHIO.GOV](mailto:BIDS@DAYTONOHIO.GOV)) by time/date as 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 for 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 or clarification from proposers. Upon review of proposals, the City may designate the most qualified proposals as finalists. These finalists will be invited to make oral presentations and participate in a question and answer session with the City and members of the Inclusive Business Recovery Opportunity Planning Team. Each finalist will have a choice of making their presentation in-person or virtually. In-Person presentations will be held at City Hall, 101 W. Third Street, Dayton, Ohio 45402. Specific dates, times, and meeting room locations will be determined as scheduling permits.

The City shall have the right to visit selected user sites, should this be deemed necessary.

All federal, state, and local laws as well as 2 CFR 200 requirements regarding competitive bidding, anti-competitive practices, and conflict of interest shall apply 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.

**1.06 REQUIRED PROPOSAL CONTENTS.** All brochures and supplemental documentation shall be included with the original and all copies. If not, the proposal may be considered non-responsive. The company is required to submit the following information in its proposal:

- **Letter of Transmittal.** The company shall provide a transmittal letter with authorizing signature for the proposal. The letter must briefly summarize the company'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 Company** – Provide the location of the company'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 (including, 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 backup contact person. Provide brief resumes/qualifications of personnel who will be primarily involved in this project. Include any certifications earned, special training previously 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. The city’s standard Terms for Payment are Net 30 days from the 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 the form provided as Exhibit B. The City is particularly interested in contacting your governmental clients in the state of Ohio.

**1.07 ITEMS THAT DISQUALIFY A VENDOR IMMEDIATELY.**

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

**1.08 CRITERIA.** The selection committee will evaluate each proposal submitted based on the criteria below. 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. The evaluation team may or may not have prior knowledge of any discussions and processes. **The evaluation, scoring and final recommendation for award will be completed on the information submitted in response to the RFP only.**

Evaluation Criteria for Goods and Services		
Item	Description	Points Possible
1	Experience and Qualifications	40
2	Approach, Methodology and Demonstrated Ability Meet Proposal and Project Requirements and Timelines	35
3	Price and Value for Services	20
4	Dayton Local Business	5
	<b>Total Points</b>	<b>100</b>

**1.09 MISCELLANEOUS ITEMS.**

- All Companies submitting a proposal will be notified, upon final determination by the City, of the company or companies selected to perform the requested work.

## SECTION 2 – SCOPE OF PROJECT

### 2.01 BACKGROUND INFORMATION.

The City of Dayton is the County seat and the largest city in Montgomery County in southwestern Ohio. As of July 1, 2021, the US Census Bureau shows an estimated Dayton population as 137,571. The 2020 Census shows the City's population is composed of 54.2% White, 38.9% Black, 4.5% Hispanic or Latino, and 1.1% Asian. The Owner-occupied housing rate is about 47.1%, and the median household income in 2020 dollars is \$34,457, according to the 2020 Census Quick Facts.

According to the 2021 Dayton Inclusive Recovery Playbook (See Supplement A) published by Accelerator for America in 2021, “The COVID-19 crisis has devastated Main Street small businesses across America. Since February 2020, almost a quarter of all U.S. small businesses have closed at least temporarily. In the hardest hit sectors, like restaurants, hotels, and retail, the numbers are far higher. In September 2020, Yelp reported that for businesses on its platform, more than half (60%) of closures were permanent. According to Womply data, it has been estimated that 185,000 small businesses — one in seven nationally — had shut down permanently by the end of August 2020. Those closures have left millions of Americans out of work and transformed lively neighborhoods around the country into retail ghost towns, destroying the wealth built by many families over generations in the process.

The impact on black-owned businesses and predominately black neighborhoods are even more drastic because those businesses are far less likely to be well capitalized, have well-established banking relationships or be large enough to sustain significant financial blows like those layered on by Covid-19. The Playbook stated that Black-owned businesses in the City of Dayton and its metro area entered the coronavirus pandemic in a weaker spot than the region's white-owned businesses. According to the most recently available public data, in 2017 the metropolitan area was home to 60,888 businesses, just under 6,000 of which were Black-owned. Of these Black-owned businesses, only 2.3%, or 270 firms, had employees. In Dayton during the same year, the number and size of Black-owned employer businesses dramatically lagged white-owned firms: there were fewer than two Black-owned businesses for every 1,000 Black residents — eleven times less than for white-owned businesses — and annual revenues for Black-owned firms averaged \$615,000, seven times less than their white counterparts. These striking disparities are driven partially by the over-concentration of Black-owned employer businesses in low-wage sectors, with 45% of Black-owned firms in low-wage industries, nearly double the proportion of white-owned employer businesses.

While this sounds bleak, Dayton is a community with a history of overcoming and outperforming bleak and impossibilities. We have recovered from natural disasters, we’ve recovered from recessions, and we’ve recovered from failed social policies. The new lens in this recovery effort is that we must recover equitably and ensure that we focus on inclusive recovery, specifically for black and brown businesses.

### 2.02 PURPOSE AND NEED / PROJECT DESCRIPTION.

The American Rescue Plan Act was signed into law on March 11, 2021, and provides \$350 billion for eligible state, local, territorial, and Tribal governments to meet pandemic response needs and rebuild a stronger, more equitable economy as the country recovers. The City of Dayton OH (City) was awarded \$138 million, and City leadership immediately began working on a framework, The Dayton Recovery Plan to allocate this historical one-time source of funding to address recovery needs and to create long-term, transformative investments for Dayton’s future.

Projects and proposals of the Plan were developed using a data-driven approach that analyzed socio-economic, health, and demographic data to make informed funding decisions that benefit minority communities disproportionately impacted by the pandemic while also addressing long-standing economic and social inequities in our city. One critical community focus area emphasized in the ARPA legislation, but also evident in the City’s growth and equity priorities are the recovery of black and brown businesses.

The City of Dayton, in alignment with a coalition of key community partners, has been granted funding to lead and execute an Inclusive Business Recovery Opportunity Center (“IBROC”). The IBROC will be focused on innovative and effective business programming and funding which is deployed equitably in the City of Dayton for underserved, disenfranchised, and those small minority and women-owned businesses adversely impacted by the Covid-19 pandemic. A community planning team has been assembled, which includes representatives from the City of Dayton’s City Manager’s Office, Economic Development and Human Relations teams, the University of Dayton HUB, the Entrepreneurs’ Center, the Greater West Dayton Incubator, The Miami Valley Urban League, the Dayton Chamber of Commerce’s Minority Business Partnership, and Launch Dayton .

The charge for this team is to **develop an IBROC strategy and business plan** that builds on the data model, ecosystem assessments, best practice identification, and goal setting identified in the Dayton Inclusive Recovery Playbook. The business plan will become the blueprint for achieving the goal of an operational center that is staffed and funded for the sole purpose of assisting black and brown entrepreneurs with the resources and connections needed to support their development and growth.

The IBROC will:

- ✓ Be *equitably focused on underserved communities* disparately impacted by the pandemic
- ✓ *Effectively and efficiently deploy and leverage all resources to optimize goal achievement*
- ✓ Provide *lasting economic advantage* to recipients
- ✓ **Reinforce the entrepreneurial and small business community** in targeted ways that will drive meaningful **job creation and economic impact**

- ✓ **Establish a sustainable business model that will attract ongoing investment** from corporate, foundation and community organizations that leverages and outlasts pandemic-related federal, state, and municipal stimulus funding.

The IBROC aims to provide both opportunity and growth for Dayton’s minority-owned business community, recognizing that growth alone does not naturally lead to opportunity. The IBROC will advance deliberate policies, investments, and programs that connect growth to opportunity, aggregating and leveraging organizations and programming from across the community to support the IBROC’s goals.

The first phase of this project is strategic planning; and as is the case when starting any new business, the best course of action is to start with a business plan.

The City of Dayton and its partners are looking for an expert business startup consultant to lead a team of local small business development leaders in completing a strategic business plan to establish an Inclusive Business Recovery Opportunity Center (IBROC). This consultant will be a neutral third party with the expertise to facilitate creative dialogue and assist the IBROC Team in completing a strategic business plan that incorporates innovative and effective small business programming for the targeted populations. The consultant will also provide professional advice, guidance, management, and implementation strategies for key initiatives defined in the business plan.

### **2.03 SCOPE OF WORK / TESTING REQUIREMENTS.**

At a minimum, the Consultant must perform work in the following focus outcome listed below:

#### **A. Market Research That Leads to A Unique Value Proposition**

1. Aggregate new and existing data sets to develop a robust small business data model to supplement and expand on Dayton’s Inclusive Recovery Playbook.
2. Assess the local small business ecosystem and select best practices for investment to spur sustainable growth.
3. Establish ambitious local recovery goals for the number, size, and sector of minority-owned businesses.
4. Establish mid-term and long-term funding models to supplement federal, state and local ARP investments, and leverage other sources of investment to drive success.
5. Research industry trends, existing agencies and providers’ strengths and weaknesses, duplication and gaps in services, and potential prospects’ pain points and expectations, to gain a thorough understanding of the market.

#### **B. Develop a Strategic Business Plan**

1. Solidify the offering of products, services or solutions. This typically includes planning marketing activities, creating a brand identity, determining how to reach potential customers and defining a path to business expansion.
2. Defining the right scope of viable products and services.
3. What is the ownership of the organization? Is this a non-profit with a board that appoints an executive? Or is this a business that an individual takes ownership of?
4. Setting up a management framework regarding the day-to-day running of the organization, including cash-flow management, HR policies, vendor management, and other internal factors.

#### **C. Project Management, Financial Modeling, and Forecasting**

1. Outline a strategy for effectively moving the business plan towards its specific goals.
2. Map out a realistic forecast for optimal business space, staffing, and product and service mix.
3. Include recommendations in branding, lead generation, marketing, advertising, and other areas of business.

### **2.04 DELIVERABLES**

#### **A. An interim report summarizing the following:**

1. Findings, evaluation of current and 5-year operational needs
2. 3 appropriate and informative organizational business model case studies
3. Analysis of 5 feasibility scenarios, as well as initial recommendations for which features and/or models and operational partnerships, would best fit the current and future-desired operation of IBROC

#### **B. Business Plan Design and Finalization**

1. Develop a business plan based on the model selected by the IBROC Planning Team and create a business plan tailored to the IBROC’s planned operations, and existing and future goals. This should include:
  - a. Financial cash flow projections
  - b. Human resource requirements
  - c. Land acquisition and development proformas
  - d. Mortgage and lending instruments
  - e. Land leasing revenue projections including market rate leases and other legal due diligence related to land and/or building or leasing acquisition

- f. Consideration of cost of the municipal approval process
  - g. Proposed operational partnership & model
  - h. Organizational structuring/ recommendations
  - i. Potential capital sources
  - j. Additional revenue generation recommendations
2. Provide a draft business plan to IBROC Planning Team for review and input
  3. Revise and finalize Final Report and Business Plan
- C. Develop and Submit a communication plan and materials that thoroughly communicate the goals of IBROC and its intentions via the business plan. Recommend collaterals and other supplemental materials that may be needed for communication and ongoing implementation.

## 2.05 EXPERIENCE AND QUALIFICATIONS

1. The firm, agency or individual consultant must be qualified or have the qualified staff for all the necessary functions associated with the proposed work plan and have the capacity to manage the administrative requirements associated with ARPA funding. The minimum requirements of either an individual consultant or team of consultants from a firm are listed below:

- A. A graduate degree in business administration, finance, marketing, management, or a related field; or a team of qualified staff with appropriate credentials well suited for the focus outcomes listed below.
- B. A portfolio of diverse successful business clients with demonstrated growth and development
- C. Strong market research skills, and excellent analytical and strategic abilities.
- D. Proficient in problem identification and business process analysis.
- E. A sound understanding of state and federal business laws and regulations.
- F. Highly organized and efficient, and can drive organizational change effectively.
- G. Strong and effective collaboration, networking, facilitation, and oral and written communication skills.
- H. Skilled in business finance, and capital planning and possess knowledge and experience with various state, local, and federal sources of funding for business services and development.
- I. Be available for on-site and in-person meetings, consultations, and presentations.
- J. Have the administrative and organizational skill and capacity to maintain appropriate financial documentation (e.g., receipts, contracts, etc.), specifically administrative policies, systems, structures and/or personnel in place to adequately collect, manage, and report the required information for this project.

The preferred individual or firm will have some familiarity with the Dayton region.

2. Please provide a detailed narrative indicating how these qualifications are met, and how your firm or you are uniquely qualified to lead the City of Dayton's IBROC Planning Team in developing and launching a strategic business plan to help minority and women-owned businesses develop and grow in Dayton. Include a narrative outlining your strengths and distinguishing skills or capabilities that relate to this project.

3. Client list and summary of related work/successes Include a brief description of the role you/your firm played in each project.

4. References Provide at least three references for projects with similar deliverables to those outlined for this project. Indicate which services were provided to each customer.

5. Resumes/CV Include resumes for key personnel working on this project.

## 2.06 PROJECT APPROACH, METHODOLOGY

Include a complete description of the Consultant's proposed approach and methodology for the project. This section should convey the Consultant's understanding of the proposed project. The approach and methodology should also, at a minimum, address the following:

- A. The proposed method for accomplishing the overall project scope's elements is identified in Section 2.03 A-C.
- B. The proposed method for developing and implementing an inclusive strategy for engaging stakeholders, building trust, and ensuring participation in carrying out project elements identified in Section 2.03 A-C
- C. The proposed method of ensuring transparency and managing communications with other interested individuals.
- D. Proposed strategy for refining, prioritizing, and docketing issues for discussion and recommendation.
- E. Strategy for continuing work following delivery of the Final Business Plan, including identification of how to proceed with implementation.
- F. Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Consultant's knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of the IBROC Planning Team or other City staff.
- G. The Consultant may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation

- H. Outcomes and Performance Measurement: Describe the impacts/outcomes the Consultants propose to achieve as a result of the delivery of these services including how these outcomes would be monitored, measured, and reported to the state agency.
- I. Risks: The Consultant must identify potential risks that are considered significant to the success of the project. Include how the Consultant would propose to effectively monitor and manage these risks, including reporting risks to the IBROC Planning Team and the contract manager.

## **2.07 PROJECT TIMELINE AND SCHEDULE:**

Deliverables are to be delivered within six months from the start of the contract, with the potential for continued consultative services. The Consultant must include a project schedule indicating when the elements of the work will be completed. The Project schedule must ensure that any deliverables requested are met.

## **2.08 PRICING STRUCTURE. THE PRICES PROPOSED WILL REMAIN FIRM FOR ACCEPTANCE WITHIN 180 CALENDAR DAYS AFTER THE RFP CLOSING DATE.**

- A. Pricing will be scored with the lowest total cost receiving the full amount of points. Thereafter, each respondent's total cost will be divided into the lowest cost and multiplied by the total points available. Pricing will be reviewed in accordance with the City's Ordinances and Charter in conjunction with the Ohio Revised Code.
- B. Identify all costs, in U.S. dollars, including expenses to be charged for performing the services necessary to accomplish the objectives of the contract.
  - 1. The Consultant is to submit a fully detailed budget including staff costs and any expenses necessary to accomplish the tasks and to produce the deliverables under the contract. Consultants are required to collect and pay all local, state and federal taxes, as applicable. And, may be required to file company tax return to City of Dayton OH.
  - 2. If the execution of work to be performed requires the hiring of sub-contractors you must clearly state this in your proposal. Subcontractors must be identified and the work they will perform must be defined. The IBROC Planning Team reserves the right to approve all sub-contractors assigned to the project. Costs for subcontractors are to be broken out separately. Please note if any subcontractors are certified by the City of Dayton's Human Relations Council's PEP Program.
  - 3. Include itemized costs for deliverables; provide specific costs for individual activities where applicable. The itemized costs for deliverables will be assessed for the value of services.
  - 4. The total price your company proposes should be inclusive. If your price excludes certain fees or charges, you must provide a detailed list of excluded fees with a complete explanation of the nature of those fees. Please also include expected disbursements.

## 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 Procurement.

**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 STANDARDS 2 CFR PARTS 200.317 – 200.326**

These CFR parts, listed below, may have been updated. For the most current versions please view [www.ecfr.gov](http://www.ecfr.gov).

§200.317 Procurement by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

§200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity. (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.212 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

#### §200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publicly advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.323 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

#### §200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product.

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

#### §200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

#### §200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards

**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, 2024, whichever date is earlier. The Agreement shall be renewable for two (2) one-year optional periods at the sole discretion of the City.

## **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 contained in this RFP, which is incorporated herein by reference.

## **ARTICLE 3. COMPENSATION**

Contractor 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 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 \$500,000 for each occurrence and \$500,000 in the aggregate.
- (2) Automobile Liability Insurance, having a combined single limit of \$700,000 for each person and \$700,000 for each accident.
- (3) Employers’ Liability Insurance, having a limit of \$500,000 for each occurrence.
- (4) Professional Liability Insurance, having a limit of \$500,000 annual aggregate.
- (5) Contractor shall maintain errors and omissions insurance in the amount of \$500,000.00.

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.

Contractor acknowledges and accepts that the City of Dayton’s HRC will attach “Minority Business Enterprise” (MBE) goals to grantee’s projects to encourage the evaluation and, if appropriate, selection of minority-owned businesses in the delivery of projects. The City of Dayton’s aspiration is to engage MBEs in at least 25% of procurements.

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](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. \_\_\_\_\_



City of Dayton, Ohio  
 OFFICE OF CITY MANAGER  
 INCLUSIVE BUSINESS RECOVERY OPPORTUNITY CENTER (IBROC) BUSINESS PLAN DEVELOPMENT CONSULTANT  
 RFP No. 22-020CMO  
 August 2022

**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.

**EXHIBIT A – LETTER OF TRANSMITTAL (continued)**





City of Dayton, Ohio  
 OFFICE OF CITY MANAGER  
 INCLUSIVE BUSINESS RECOVERY OPPORTUNITY CENTER (IBROC) BUSINESS PLAN DEVELOPMENT CONSULTANT  
 RFP No. 22-020CMO  
 August 2022

**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. 22-020CMO. 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: \_\_\_\_\_



City of Dayton, Ohio  
OFFICE OF CITY MANAGER

INCLUSIVE BUSINESS RECOVERY OPPORTUNITY CENTER (IBROC) BUSINESS PLAN DEVELOPMENT CONSULTANT  
RFP No. 22-020CMO  
August 2022

**EXHIBIT C – PRODUCT MANUFACTURE LABOR STANDARDS: VENDOR COMPLIANCE FORM**

By informal resolution 31876-21, the City of Dayton is prohibited from Procurement, 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 Company: \_\_\_\_\_  
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



# PEP-CERTIFIED

# (SELECT ONE) PARTICIPATION FORM

**Instructions for Bidders / Proposers:** Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm's participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE, WBE, or DLSB).

## SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer's Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Primes Base Bid \$ \_\_\_\_\_

Name of Project: \_\_\_\_\_

## SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: \_\_\_\_\_

PEP-Certified Firm's Tax ID#: \_\_\_\_\_

Scope of Work to Be Performed by Certified Firm: \_\_\_\_\_

	Total Dollar Amount Towards Goal	Percentage Towards Goal	Firm for the Work Described:
Total Bid	\$ _____	% _____	\$ _____
Materials	\$ _____	% _____	\$ <b>Amount to Be Paid to This PEP</b>
Labor	\$ _____	% _____	\$ _____

## SECTION 3: AFFIRMATIONS

The above-named **Bidder / Proposer** affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

\_\_\_\_\_  
(Signature of Bidder/Proposer's Authorized Agent)

\_\_\_\_\_  
(Printed Name of Bidder/Proposer's Authorized Agent)

\_\_\_\_\_  
(Title of Bidder/Proposer's Authorized Agent)

\_\_\_\_\_  
(Date)

**IF THE BIDDER/OFFEROR IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.**



# PEP PARTICIPATION COMMITMENT AND/OR WAIVER REQUEST FORM

**Instructions for Bidders/Proposers:** Submit one (1) executed copy of this form with your Bid/Proposal.

- If Option 1 is selected, you must also submit one (1) executed PEP-Certified SBE/MBE/WBE/DLSB Participation Form for each PEP-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s).
- If Option 2 (WAIVER REQUEST) is selected, you must also submit documentation of your Good Faith Efforts to the City of Dayton Human Relations Council (HRC) within two (2) business days of the Bid Opening / Proposal Due Date. **Bidders/Proposers will receive no further reminders about this deadline.**

The undersigned affirms that the Bidder/Proposer has satisfied the requirements of the Bid/RFP Specification in the following manner: (Check the box for Option 1 and/or Option 2, complete the appropriate spaces, and sign below.)

**Option 1.** The Bidder/Proposer has secured enough commitment(s) from one or more PEP-Certified Firms to meet or exceed the project's PEP participation goal(s). The Bidder/Proposer is committed to a minimum of:

% SBE	% MBE	% WBE	% DLSB
-------	-------	-------	--------

participation on this contract, as detailed on the executed PEP-Certified SBE/MBE/WBE/DLSB Participation Form(s) submitted with this Bid/Proposal.

**Option 2 (WAIVER REQUEST).** The Bidder/Proposer is unable to meet the project's PEP participation goal(s) and requests that the following goal(s) be waived: (Check all that apply.)

- SBE                       MBE                       WBE                       DLSB

The Bidder/Proposer's documentation of Good Faith Efforts to meet the participation goal(s) checked above must be submitted to the HRC within two (2) business days of the Bid Opening / Proposal Due Date. *The Bidder/Proposer will receive no further reminders about this deadline.*

A waiver will be granted based on a Bidder/Proposer's documented Good Faith Efforts, and only when the HRC determines that the Bidder/Proposer has completed all of the following activities:

1. *Solicited the interest of all PEP-Certified Firms having the capability to perform the work of the contract.* The Bidder/Proposer must solicit this interest at least ten (10) business days before the Bid Opening / Proposal Due Date in order to allow the PEP-Certified Firm sufficient time to respond to the solicitation. Electronic communication will not be deemed as sufficient Good Faith Efforts, if it is the sole method of communication used.
2. *Divided contract work items into economically feasible units to facilitate PEP participation,* even when the Bidder/Proposer might otherwise prefer to perform these work items with its own forces.
3. *Negotiated in good faith with PEP-Certified Firms,* and considered the firms' prices and capabilities as well as the contract goals. Rejected PEP-Certified Firms as being unqualified only for reasons based on a diligent investigation of their capabilities. The Bidder/Proposer's standing within its industry; membership in specific groups, organizations, or associations; and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes to reject or not solicit bids from particular PEP-Certified Firms.
4. *Provided interested PEP-Certified Firms with plans and specifications at no cost,* or directed them to the Greater Dayton Minority Business Assistance Center (Dayton MBAC) for information about the project's plans, specifications, and requirements at least ten (10) business days prior to the Bid Opening / Proposal Due Date in order to assist them in responding to a solicitation.
5. *Sought the Dayton MBAC's assistance* or used the services of community organizations; contractors' groups; local, state or federal business assistance offices; or similar organizations to find PEP-Certified Firms. Contacting the HRC for a list of certified companies will not be deemed as sufficient Good Faith Efforts.

NOTE: In determining whether a Bidder/Proposer has made Good Faith Efforts, the HRC may take into account the performance of other Bidders/Proposers in meeting the goal(s). For example, when the apparent low bidder fails to meet a participation goal but others meet it, the HRC may reasonably raise the question of whether, with additional reasonable efforts, the apparent low bidder could have met the goal.

\_\_\_\_\_  
(Signature of Bidder/Offeror's Authorized Agent)

\_\_\_\_\_  
(Name of Bidder/Proposer's Firm)

\_\_\_\_\_  
(Printed Name of Bidder/Offeror's Authorized Agent)

\_\_\_\_\_  
(Title of Bidder/Offeror's Authorized Agent)

\_\_\_\_\_  
(Date)