

TO: All Parties interested in Participating in the Delaware Lottery's Request for Proposal for Professional Services for Lottery Accessibility Inspections and Related Services (FIN15001-ADASERVICES)

FROM: Barbara Hutchins
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RFP Issuing Officer

DATE: January 5, 2015

SUBJECT: Addendum 1 – Questions and Clarifications of RFP

ADDENDUM 1

The following questions and RFP clarifications are issued pursuant to the Professional Services for Lottery Accessibility Inspections and Related Services RFP.

Section II - Scope of Services

Paragraph (1) Page 2.

Text: Inspection of existing Lottery retailers and new retailer applicants, and preparation of reports regarding the site's compliance with the ADA requirements and Lottery Regulations.

Questions:

1. Is there a time line on when the inspections and reports are to be completed?

Inspections and reports should be completed and submitted to the Lottery office within 10 business days from the date of notification of inspection/re-inspection. There may be rare occasions when the vendor may be asked to complete an inspection in a shorter time period.

2. Are the reports to include recommended design solutions and cost estimates for the non-compliance?

No.

Paragraph (4) Page 2.

Text: Providing technical assistance to Retailers whose locations are found to be non-compliant.

Question:

1. Does the technical assistance include designing solutions, preparation of bidding documents and construction administration for the non-compliance items identified in the report?

No. Technical assistance does not have to include designing solutions, preparation of bidding documents or construction administration.

Section IV – Professional Services RFP Administrative Information

B. RFP Submissions, Paragraph 10. Realistic Proposals, Page 8

Text: It is the expectation of the DSL that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

Question:

1. What is the defined timeframe?

You need to be able to meet all obligations of the proposal day one of the contract.

C. RFP Evaluation Process, Paragraph 1. Proposal Evaluation Team, Page 14

Text: The Team may negotiate with one or more vendors during the same period and may, at its discretion, terminate negotiations with any or all vendors.

Question:

1. Does DSL intend to deviate from the selection process in DE Code Title 29, Chapter 69, Sub Chapter IV, 6982 Selection (a), 1 to 5, by negotiating with more than one vendor at a time?

The RFP is amended to remove the reference to “negotiating with one or more vendor during the same period”. The Team will negotiate with the qualified firm designated 1st on the preference list. (See amended Section IV. C. RFP Evaluation Process, Paragraph 1 and 2).

C. RFP Evaluation Process, Paragraph, 2. Proposal Selection Criteria, a. Criteria Weight, Page 15

Text: Cost 25 Points

Question:

1. Cost is not permitted to be a factor in qualifications according to DE Code Title 29, Chapter 69, Sub Chapter IV, 6982 Selection (a), 1 to 5 until the vendor is ranked and selected. Then the cost can be negotiated. Will this be deleted from the submission, if so how will the weighted criteria be modified?

The RFP is amended and cost will not be a factor in qualification. The weighted criteria has been adjusted by shifting the 25 points originally assigned to “cost” into the remaining criteria. The total points will remain at 100. (See amended Section IV. C. RFP Evaluation Process, Paragraph 2a).

D. Contract Terms and Conditions, Paragraph, 6. General Contract Terms, e. Indemnification, 1. General Indemnification, Page 19

Text: By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, the Delaware Lottery, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's

fees, arising out of the vendor's its agents and employees' performance work or services in connection with the contract, regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, in whole or part, to the Lottery, its employees or agents.

Question:

1. Professional Liability policies of vendors do not cover the client or 3rd parties for their own errors or omissions. The policy only covers the vendor, their employees and agents for their errors and omissions since they do not have control over the actions of others.

Please add the following to the paragraph after contract and before regardless on the 7th line.

but only to the extent caused by the negligent acts, errors or omissions of vendor, its employees or agents Otherwise the DSL will limit those vendor who can legitimately submit on this RFP.

The Lottery believes the indemnification language speaks for itself and the section remains as written. Bidder can take an exception and discuss this request at the time of contract negotiation.

Section IV– Professional Services RFP Administrative Information. C. RFP Evaluation Process

29 Del. C. 69 State Procurement. Subchapter 6 – Professional Services

The RFP Scope of Services requests certain professional services which are recognized as being within the scope of the practice of architecture / professional engineering services pursuant to 29 Del.C. §6981 and 6982, specifically those related to compliance with ADA requirements. As such, the Lottery must use the Qualifications Based Selection process described therein for those professional services.

Additionally, according to the process established under 29 Del. C. Section 6982(a), the State Lottery Office must begin negotiations with the qualified firm that is the first preference according to the criteria established by Section 6981. Price may not be used to rank applicants as implied by 6981(h). As written, these and other sections of the RFP do not comply with State Law.

Question:

1. We respectfully request the Lottery to revise the RFP so as to comply with State Law in relation to the procurement of professional architectural services requested under the RFP. Please confirm.

The RFP is amended and price will not be a factor in qualification. The Team will negotiate with the qualified firm designated 1st on the preference list. (See amended Section IV. C. RFP Evaluation Process, Paragraph 1 and 2).

Section IV– Professional Services RFP Administrative Information, D. Contract Terms and Conditions

General Indemnification and Applicable Law

The General Indemnification and Applicable Law language, as currently written in the RFP, creates an uninsurable contractual liability for which the design professional's insurance provider would have no

responsibility under their policies. We are requesting the Lottery revise the language to be consistent with the standard of care required of design professionals, as follows:

Paragraph IV, D Contract Terms and Conditions, 6e1 General Indemnification

“By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, the Delaware Lottery, its agents representatives and employees from any and all liability, suits, actions, or claims damages, together with all costs, expenses for attorney’s fees recoverable under applicable law, arising out of the vendor’s, its agents and employees’ performance work or services in connection with the contract, but only to the extent caused by the negligent acts, errors or omissions of vendor, its agents or employees regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, in whole or part, to the State, its employees or agents.”

Question:

1. We respectfully request the Lottery to revise the RFP as herein suggested by legal counsel in relation to General Indemnification.

The Lottery believes the indemnification language speaks for itself and the section remains as written. Bidder can take an exception and the Lottery could consider this request at the time of contract negotiation.

Paragraph IV, D Contract Terms and Conditions, 6r Applicable Law, (in part)

“The selected vendor shall keep itself fully informed of and shall observe and ~~comply with all applicable existing Federal and State laws~~ perform the services in a manner that is consistent with all applicable existing Federal and State laws, and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.”

Question:

1. We respectfully request the Lottery to revise the RFP as herein suggested by legal counsel in relation to Applicable Law. Please confirm.

This language remains as written. Bidder can take an exception and the Lottery could consider this request at the time of contract negotiation.

APPENDIX “A”, PRICE PROPOSAL, 3. FORMAT OF PRICE SUBMISSION, Page 26

Text: The bidders must submit pricing in the following format:

Question:

1. The format does not include a space for an Architect, Technical Staff, Cost Estimator or Expert Witness. Will these be included in the Hourly Rate Schedule?

The form does include a space for “Expert Witness Testimony”, however the remaining should be included in the hourly rate schedule factored into “Professional Engineer” or “Management working on assigned task”. The vendor would not be expected to provide Cost Estimates for non-compliance inspections.

APPENDIX “A”, PRICE PROPOSAL, 4. CALCULATION OF POINTS FOR PRICE SUBMISSION, Page 26

Text: The Committee will calculate the total estimated cost of each proposal based on the Lottery’s expected needs for approximately one-hundred (100) retail site inspections per year, along with other related services. Points for pricing will be calculated as follows:

$$\text{PRICE POINTS} = 25 \times (\text{LOWEST PROPOSAL COST} / \text{PROPOSAL COST})$$

Questions:

1. What is the Proposal Cost to be based on? One vendor may be able to do the inspection in less time and expense than another.
2. Why is the proposal cost not established by the vendor based on his time and expense needed to do the inspections?

The RFP is amended and cost will not be a factor in qualification. The weighted criteria has been adjusted by shifting the 25 points originally assigned to “cost” into the remaining criteria. Appendix” A”, Price Proposal, 4. Calculation of Points for Price Submission has been removed.