

# MAYOR & CITY COUNCIL OCEAN CITY, MARYLAND



PROCUREMENT DEPARTMENT

## PROPOSAL DOCUMENT FOR

### Information Technology - Nutanix Datacenter Refresh

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PROPOSAL TIMELINE OF EVENTS
<b>Pre-Proposal Meeting:</b> Thursday, December 1, 2022 at 11:00 A.M 214 65 <sup>th</sup> Street, Procurement Conference room
<b>Last Day for Questions:</b> Thursday, December 8, 2022 at 3 PM.
<b>Addendum:</b> Close of business on Monday, December 12, 2022
<b>Proposal Due date and location:</b> Thursday, December 22, 2022 at 3:00 P.M. shall be sent to Procurement Office, 214 65 <sup>th</sup> Street, Ocean City, MD, 21842
<b>Opening Date, Time, &amp; Location:</b> Tuesday, December 27, 2022 at 11:00 AM 214 65 <sup>th</sup> Street, Procurement Office
<b>Ad Run:</b> Thursday, November 10, 2022

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## SECTION I: INTRODUCTION

1. PURPOSE
  - 1.1. The purpose of this Invitation to Bid is for the Mayor & City Council Ocean City (“Town”) to contract for Information Technology Nutanix Datacenter Refresh.
2. CLARIFICATION OF TERMS
  - 2.1. Professional Vendors, organizations, or individuals that submit a solicitation for award of a contract (“Contract”) are referred to as Vendor (“Vendor”) in this Proposal Document. The Vendor that is awarded the Contract is herein referred to as the (“Successful Vendor”).
3. QUESTIONS AND INQUIRIES
  - 3.1. For information regarding Proposal Documents and solicitation requirements, please contact Scott Wagner at [swagner@oceancitymd.gov](mailto:swagner@oceancitymd.gov) or call 410-723-6647 or [gneal@oceancitymd.gov](mailto:gneal@oceancitymd.gov) or call 410-723-6653
  - 3.2. Copies of the Bid Documents are available on the Town’s [website](#).
4. FILLING OUT Proposal DOCUMENTS
  - 4.1. Use only forms supplied by the Town.
  - 4.2. Submit one **unbound original, (1) bound copies**
  - 4.3. All blanks on the Proposal Documents will need to be filled in electronically or manually in ink.
  - 4.4. Where so indicated by the make-up of the Bid Documents, sums will be expressed in both words and figures, and in the case of a discrepancy between the two, the amount written in words will govern.
  - 4.5. Any interlineation, alteration, or erasure will be initialed by the signer of the Bid Documents.
  - 4.6. Each copy of the Bid Documents will be signed by the person(s) legally authorized to bind the Vendor to a contract, using the legal name of the signer. Bid Documents submitted by an agent will have a current Power of Attorney attached certifying the agent’s authority to bind the Vendor.
  - 4.7. Vendor will supply all information and submittals required by the Bid Documents to constitute a proper and responsible “Completed Bid Document” package.
  - 4.8. Any ambiguity in the Bid Documents as a result of omission, error, lack of clarity or non-compliance by the Vendor with specifications, instructions, and/or all conditions of bidding will be construed in the light most favorable to the Town.
5. SUBMISSION OF BID DOCUMENTS
  - 5.1. All copies of the Bid Documents and any other documents required to be submitted with the Bid Documents will be enclosed in a **sealed envelope**. The envelope will be addressed to the Mayor & City Council Ocean City, Attn: Procurement Manager, 214 65<sup>th</sup> Street, Ocean City, MD 21842 and will be identified with the Work name: **Information Technology Nutanix Datacenter Refresh** and the Vendor’s name and address. If the Bid Documents are sent by mail, the sealed envelope will be enclosed in a separate mailing envelope with the notation “**SEALED Proposal DOCUMENTS ENCLOSED- Information Technology Nutanix Datacenter Refresh**” on the face thereof.
  - 5.2. **Sealed Proposals Documents are due no later than Thursday, December 22, 2022 at 3:00 P.M.** shall be sent to Procurement Office, 214 65<sup>th</sup> Street, Ocean City, MD, 21842. **Completed Proposal Documents will be opened, read into record and then remanded to staff for further review on December, December 27, 2022 at 11:00 AM located at 214 65<sup>th</sup> Street, Procurement Conference room, Ocean City, MD 21842**
  - 5.3. Proposal Documents will be deposited at the designated location prior to the time and date for receipt of Bid Documents as indicated in the Advertisement and this Invitation to Bid, or any extension made by Addendum. Proposal Documents received after the time and date for receipt will be returned unopened.
  - 5.4. Vendor will assume full responsibility for taking whatever measures necessary to ensure that the Bid Documents reach the Town’s office prior to the local time and date specified for receipt of Bid Documents. The Town will NOT BE RESPONSIBLE for any Proposal Document delayed in the postal or

- other delivery service nor any late Bid Document, amendment, or request for withdrawal of Bid Document, received after the Bid Document submission date.
- 5.5. Vendor, or their authorized agents, are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting Bid Documents; failure to do so will be at the Vendor's own risk.
  - 5.6. A fully executed Affidavit of Qualification to Proposal will be attached to each Bid Document.
  - 5.7. MINORITY VENDOR ARE ENCOURAGED TO PARTICIPATE.
  - 5.8. All Vendor submitted Bid Documents will be valid for a minimum of one hundred and twenty (120) days from the date of Bid Document opening. Vendors cannot withdraw their Bid Documents within one hundred and twenty (120) days after the Proposal Recognition Date.
  - 5.9. Email or faxed Proposal Documents will not be accepted.
6. RECOGNITION OF Proposal DOCUMENTS
    - 6.1. Bid Documents received on time will be recognized by the Town by reading Vendor names into record.
    - 6.2. The Contract will be awarded or all Bid Documents will be rejected within one hundred twenty (120) days from the date of the Bid Document opening.
  7. ACCEPTANCE OR REJECTION OF Proposal DOCUMENTS
    - 7.1. Unless otherwise specified, the Contract will be awarded to the highest scoring RESPONSIBLE and RESPONSIVE Vendor complying with the provisions of the Bid Documents, provided the Proposal is reasonable and it is in the best interest of the Town to accept it. The Town reserves the right to reject the Proposal Documents of any Vendor who has previously failed to perform properly in any way or complete on time contracts of a similar nature; or a Proposal Document from a Vendor who, investigation shows, is not in a position to perform the Contract; or Proposal Documents from any person, Vendor, or corporation which is in arrears or in default to the Town for any debt or contract.
    - 7.2. Completed Bid Documents from Vendor debarred from doing business with the State of Maryland or the Federal Government will not be accepted.
    - 7.3. Conditional or qualified Proposals will not be accepted.
    - 7.4. In determining a Vendor's RESPONSIBILITY, the Town may consider the following qualifications to determine best value:
      - 7.4.1. Ability, capacity, and skill to provide the commodities or services required within the specified time, including future maintenance and service, and including current financial statement or other evidence of pecuniary resources and necessary facilities.
      - 7.4.2. Character, integrity, reputation, experience and efficiency.
      - 7.4.3. A minimum of Three (3) years providing the goods/services described in this Proposal Document under the Vendor name that is submitting a Completed Proposal Document, with references to validate this requirement.
      - 7.4.4. Quality of past performance on previous or existing contracts, including a list of current and past contracts and other evidence of performance ability.
      - 7.4.5. Previous and existing compliance with laws and ordinances relating to contracts with the Town and to the Vendor's employment practices.
      - 7.4.6. Evidence of adequate insurance to comply with Contract terms and conditions.
      - 7.4.7. Statement of current work load and capacity to perform/provide the Goods and/or Services.
      - 7.4.8. Explanation of methods to be used in fulfilling the Contract.
      - 7.4.9. The Vendor, if requested, will be prepared to supply evidence of its qualifications, listed above, and its capacity to provide/performance the Goods and/or Services; such evidence to be supplied within a specified time and to the satisfaction of the Town.
    - 7.5. In determining a Vendor's RESPONSIVENESS, the Town will consider whether the Proposal Document conforms in all material respects to the Bid Documents. The Town reserves the right to waive any irregularities that may be in its best interest to do so.

- 7.6. The Town will have the right to reject any and all Bid Documents, where applicable to accept in whole or in part, to add or delete quantities, to waive any informalities or irregularities in the Bid Document received, to reject a Bid Document not accompanied by required Proposal security or other data required by the Bid Documents, and to accept or reject any Bid Document which deviates from specifications when in the best interest of the Town. Irrespective of any of the foregoing, the Town will have the right to award the Contract in its own best interests.
8. NOTICE TO VENDOR
- 8.1. Before a Vendor submits the Proposal Documents it will need to become fully informed as to the extent and character of the Service requirements and are expected to completely familiarize themselves with the requirements of this Bid Document's scope of work including examination of site, review of drawings, if included, and any Addenda. Failure to do so will not relieve the Vendor of the responsibility to fully perform in accordance therewith. No consideration will be granted for any alleged misunderstanding of the Services to be furnished or the work to be performed, it being understood that the submission of a Bid Document is an agreement with all of the items and conditions referred to herein.
- 8.2. The Successful Vendor will supply the names and addresses of major subcontractors when requested to do so by the Town.
9. PRE-PROPOSAL MEETING
- 9.1. A pre-Proposal meeting will be held on **Thursday, December 1, 2022 at 11:00 A.M**, located at **214 65<sup>th</sup> Street, Procurement Conference room**, Ocean City, MD 21842 for any questions concerning the Proposal Documents. The last day for questions will be on **Thursday, December 8, 2022 at 3 PM**. Addendum will be posted by close of business on **Monday, December 12, 2022**.
10. COMMUNICATION RESTRICTION
- 10.1. From the time of the Advertisement of this solicitation until final award is made to the Successful Vendor and such award is announced, interested Vendors are not allowed or permitted to communicate about this solicitation or scope with any staff or official representatives of the Town, except for submission questions as instructed in this document, or as provided by any existing work agreement(s). Potential awardee(s) are restricted from making public statements or press releases about their selection as finalist or their potential award. The Town reserves the right to reject any submittal of any Vendor who violates this restriction.
11. ISSUING OFFICER AND CONTACT
- 11.1. This solicitation is being issued by the Town's Procurement Department which is the only office authorized to change, modify, clarify, etc., the provisions of this solicitation and to award any contract(s) resulting from the solicitation.
- 11.2. Vendor's who have unauthorized contact about this solicitation with employees or officials of the Town or anyone having decision making authority regarding this solicitation will result in disqualification from consideration under this procurement process.
- 11.3. The issuing officer and sole point of contact regarding this solicitation is:
- Scott Wagner  
214 65<sup>th</sup> Street  
Ocean City, MD 21842  
410-723-6647 (office)  
swagner@oceancitymd.gov

**END OF SECTION**

## **SECTION II: GENERAL INFORMATION**

1. ECONOMY OF Proposal DOCUMENTS
  - 1.1. Proposal Documents will be prepared simply and economically, providing straightforward and concise description of the Vendor's capabilities to satisfy the requirements of the Bid Documents. Emphasis should be on completeness and clarity of content. Elaborate brochures and other representations beyond that sufficient to present a complete and effective Bid Document are neither required nor desired.
2. RESPONSIBILITIES OF THE VENDOR
  - 2.1. The Vendor will be responsible for the professional quality and technical accuracy of their advice and other Work furnished in the Bid Documents. The Vendor will perform the Services with the degree of skill that is normally exercised by recognized professionals as the Standard of Care with respect to services of a similar nature.
  - 2.2. Neither the Town's review, approval or acceptance of, nor receipt of payment for any of the work/services required under the awarded Contract will be construed to operate as a waiver of any rights under the Contract or any cause of action arising out of the performance of the Contract, and the Vendor will be liable to the Town in accordance with applicable law for all damages to the Town caused by the Vendor's negligent performance of the Contract.
  - 2.3. The rights of the Town provided for under the awarded Contract are in addition to any rights and remedies provided by law.
3. PROPRIETARY INFORMATION OR TRADE SECRETS
  - 3.1. The Vendor may invoke proprietary information or trade secret protection for submission of any data/material by (1) identifying the data/material in a written description, (2) clearly marking the data/material as proprietary, and (3) providing a written statement detailing the reasons why protection is necessary. The Town reserves the right to ask for additional clarification prior to establishing protection.
4. OWNERSHIP OF MATERIALS
  - 4.1. Ownership of all material and documentation originated and prepared pursuant to the Bid Documents will belong exclusively to the Town and is subject to public inspection in accordance with the Freedom of Information Act. Trade secrets or proprietary information submitted by a Vendor in connection with a procurement transaction will not be subject to disclosure under the Freedom of Information Act. However, the Vendor must invoke the protections of this section and be in accordance with Section 3.1.
5. CONTRACT AWARD
  - 5.1. A written award by the Town to the Successful Vendor in the form of a contract document will result in a binding Contract. If the Successful Vendor fails or refuses to sign and deliver the Contract and the required insurance documentation, the Town will have the right to award to the next highest scoring responsible and responsive Vendor. The Successful Vendor will be required to execute the Contract within fourteen (14) calendar days from the date on the Notice of Award letter. The Town will send the Contract with the Notice of Award letter.
  - 5.2. Bid Documents and Contracts issued by the Town will bind the Vendor to applicable conditions and requirements herein set forth, unless otherwise specified in the Bid Documents, and are subject to all federal, state, and municipal laws, rules, regulations, and limitations.
  - 5.3. Town personal property taxes ("Taxes") must be on a current basis; if any such Taxes are delinquent, they must be paid before award of Contract. Failure to pay will result in the award of Contract to another Vendor.
  - 5.4. The Town reserves the right to engage in individual discussions and interviews with those Vendor deemed fully qualified, responsible, suitable and professionally competent to provide the required work/services should the work/service size warrant it. Vendor will be encouraged to elaborate on their qualifications,

- performance data, and staff expertise. Proprietary information from competing Vendor will not be disclosed to the public or to competitors.
- 5.5. The Town will enter into negotiations for best and final offers with one or more Vendor based on Vendor's Completed Bid Documents and the Evaluation and Selection Process prior to awarding any Contract, if the Town deems it necessary to make an award. The award of any Contract will solely be for the benefit of the Town.
6. AUDIT
- 6.1. The Successful Vendor agrees to retain all books, records, and other documents relative to the awarded Contract for five (5) years after final payment, or until audited. The Town, its authorized agents, and/or State auditors will have full access to and the right to examine any of said materials during said period.
7. NONPERFORMANCE
- 7.1. The Town reserves the right to inspect all operations and to withhold Services for any goods not performed or not performed in accordance with the specifications in this Bid Document. Errors, omissions or mistakes in performance will be corrected at no cost to the Town. Failure to do so will be cause for Cancelling the Contract. In addition, if deficiencies are not corrected in a timely manner, the Town may characterize the Successful Vendor as uncooperative, which may jeopardize future solicitations.
8. MODIFICATION OR WITHDRAWAL OF Proposal DOCUMENTS
- 8.1. A Proposal Document may not be modified, withdrawn, or cancelled by the Vendor during the stipulated time period following the time and date designated for the receipt of Bid Documents, and each Vendor so agrees in submitting Bid Documents.
9. DEFAULT
- 9.1. The Contract may be cancelled or annulled by the Town in whole or in part by written notice of default to the Successful Vendor upon non-performance, violation of Contract terms, delivery failure, bankruptcy or insolvency, any violation of state or local laws, or the making of an assignment for the benefit of creditors. An award may then be made to the next most highly rated Vendor, or when time is of the essence, similar commodities and/or service may be purchased on the open market. In either event, the defaulting Vendor (or its surety) will be liable to the Town for cost to the Town in excess of the defaulted Contract price.
- 9.2. If the Vendor defaults under any of the Contract's terms, the Town will give to the Vendor a written notice of the default ("Cure Notice"). The Vendor will have seven (7) days after receipt of the Cure Notice to cure the default. If the Vendor fails to cure the default within the time period, the Town may exercise those remedies granted under this Bid Document or applicable law.
10. COLLUSION/FINANCIAL BENEFIT
- 10.1. The Vendor certifies that its Completed Bid Document is made without any previous understanding, agreement, or connection with any person, Vendor, or corporation making a Bid Document for the same work/services; without prior knowledge of competitive prices; and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action.
- 10.2. Upon signing the Bid Document, Vendor certifies that no member of the governing body of the Town, or members of his/her immediate family, including spouse, parents or children, or any other officer or employee of the Town, or any member or employee of a Commission, Board, or Corporation controlled or appointed by the Mayor or Council has received or has been promised, directly or indirectly, any financial benefit, related to this Bid Document and subsequent Contract.
11. TAX EXEMPTION
- 11.1. The Town is exempt from Federal Excise Taxes, Maryland Sales and Use Taxes, and Transportation Taxes. This exemption cannot be used by Vendor doing business with the Town. Vendor are responsible for State Sales Tax of real property furnished and installed or constructed for the Town.
12. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION



12.1. All Vendor are subject to, and must comply with, the provisions of all applicable state and federal anti-discrimination laws. The Town encourages equal employment opportunity to businesses owned and controlled by minorities and women.

12.2. The Successful Vendor will not discriminate against any employee or applicant for employment or any member of the public because of race, color, creed, religion, national origin, sex, sexual preference, disability, marital status, age; or otherwise commit an unfair employment practice. Vendor further agrees that this nondiscriminatory agreement will be incorporated by the Vendor in all contracts entered into with suppliers of commodities and services, contractors and subcontractors, and all labor organizations furnishing skilled, unskilled, and craft union skilled labor, or who may perform any such labor or services in connection with the Contract.

### 13. STATUS OF VENDOR

13.1. The Vendor will be responsible to the Town for acts and omissions of their employees, subcontractors, and their agents and employees, and other persons performing portions of the work/services under the Contract or other arrangement with the Vendor.

13.2. It is understood that the relationship of Vendor to the Town will be that of an "Independent Contractor." Nothing contained herein will be deemed or construed to (1) make the Vendor the agent, servant, or employee of the Town, or (2) create any partnership, joint venture, or other association between the Town and the Vendor.

### 14. APPLICABLE LAWS

14.1. Vendor will observe and comply with all applicable federal, state, and local laws and regulations in the performance of the Contract. The Contract will be construed and interpreted in accordance with the laws of the State of Maryland and all questions of performance hereunder will be determined in accordance with such laws.

### 15. SUSPENSION OR TERMINATION FOR CONVENIENCE

15.1. The Town will have the right, at any time by written notice, for its convenience, to suspend the Services for such time as may be determined by the Town to be necessary or desirable up to ninety (90) days, unless a longer time is agreed upon in writing by both parties; and thereafter, to require resumption of the whole or any part of the work/services without invalidating the provisions of the Contract.

15.2. The Town will have the right, at any time by written notice, for its convenience, to terminate the Services in whole or in part.

15.3. Any notice issued pursuant to Sections 15.1 and/or 15.2 will state the extent and effective date of such notice, except as otherwise directed, the Vendor will stop work/services on the date of receipt of the Notice of Termination or other date specified in the notice; place no further orders or subcontracts for materials, services, or facilities, except as necessary for the completion of such portion of the work/services not terminated.

15.4. The Vendor will not be paid on account of loss of anticipated profits or revenues or for work/services not completed prior to the date of termination of the Contract.

### 16. TERMINATION FOR CAUSE

16.1. Either party may terminate the Contract in the event the other party has materially breached or defaulted in the performance of any of its obligations hereunder, and such default has continued for thirty (30) days after written notice thereof was provided to the breaching party by the non-breaching party. Any termination will become effective at the end of such thirty (30) day period unless the breaching party has cured any such breach or default prior to the expiration of such period. If a party defaults under any of the Contract's terms, the non-defaulting party will give the defaulting party a written notice of the default. The defaulting party has ten (10) business days after receipt of this notice to cure the default. If the defaulting party fails to cure the default within this time period the non-defaulting party may exercise those remedies granted under the Contract or applicable law. Notwithstanding the above, in the case of a failure to pay any amount due hereunder the period for cure

of any such default following notice thereof will be ten (10) days and, unless payment is made within such period, the termination will become effective at the end of such period.

#### 17. ADDENDUM

- 17.1. No oral statements of any person will modify or otherwise affect or interpret the meaning of the Contract specifications, or the terms, conditions, or other portions of the Contract. All modifications and every request for any interpretation must be addressed to the Town of Ocean City's Procurement Manager and to be given consideration, must be received by noon on the last day for questions.
- 17.2. Any and all interpretations, corrections, revisions, and amendments will be issued by the Procurement Manager to all holders of Bid Documents in the form of written addenda. Vendor are cautioned that any oral statements made by any Town employee that materially change any portion of the Bid Documents will not be relied upon unless subsequently ratified by a formal written amendment to the Bid Document.
- 17.3. All addenda will be issued so as to be received at least five (5) days prior to the time set for receipt of Bid Documents, and will become part of the Contract and will be acknowledged in the Bid Document form. Failure of any Vendor to receive any such addenda will not relieve said Vendor from any obligation under the Bid Document as submitted.
- 17.4. Vendor are cautioned to refrain from including in their Bid Document any substitutions which are not confirmed by written addenda. To find out whether the Town intends to issue an amendment reflecting an oral statement made by any employee, contact the Town of Ocean City's Procurement Manager during normal business hours.
- 17.5. The Town of Ocean City's Procurement Manager reserves the right to postpone the Bid Document recognition for any major changes occurring in the 5-day interim which would otherwise necessitate an Addendum.

#### 18. INSURANCE REQUIREMENTS

- 18.1. Unless otherwise required by Special Conditions for this Agreement, the Vendor will be required to purchase and maintain during the life of the Agreement the following types and amounts of insurance (minimum).
  - 18.1.1. Commercial General Liability: \$1,000,000 (One million dollars) per occurrence \$2,000,000 (Two million dollars) aggregate for bodily injury and property damage.
  - 18.1.2. Professional Liability: \$1,000,000 (One million dollars) per claim.
  - 18.1.3. Commercial Automobile: \$1,000,000 (One million dollars) combined single limit per accident for bodily injury and property damage. Including hired, non-ownership coverage and owned vehicle coverage if company owns a vehicle.
  - 18.1.4. As mandated by the Code of the State of Maryland and Employer's Liability the Vendor will be required to provide Worker's Compensation Insurance.
- 18.2. The Vendor will provide the Town with certificates of insurance evidencing the coverage required above. Such certificates will provide that the Town be given at least thirty (30) days prior written notice of cancellation of, intention to not renew, or material change in such coverage. Vendor will provide certificates of insurance before commencing Work in conjunction with this Agreement.
- 18.3. Failure to provide and continue in force such insurance as required above, will be deemed a material breach of the Agreement, will cause the Vendor to be in DEFAULT, and will operate as an immediate termination thereof. The Town reserves the right to require higher limits on any Agreement. A thirty (30) day notice in writing of cancellation or non-renewal will be furnished by certified mail to the Procurement Manager at the address listed in solicitation. The Vendor agrees to be responsible for, indemnify, defend and hold harmless the Town, its officers, agents and employees from the payment of all sums of money by reason of any claim against them arising out of any and all occurrences resulting in bodily or mental injury or property damage that may happen in connection with the Goods and/or Services performed under this Agreement including, but not limited to, claims under the Worker's Compensation Act.

18.3.1. ON THE COMMERCIAL GENERAL LIABILITY POLICY, THE TOWN MUST BE NAMED AS ADDITIONAL INSURED AND THE INSURANCE CERTIFICATE FURNISHED TO THE TOWN WILL INDICATE SUCH COVERAGE.

18.3.2. THE PROVIDING OF ANY INSURANCE REQUIRED HEREIN DOES NOT RELIEVE THE VENDOR OF ANY OF THE RESPONSIBILITIES OR OBLIGATIONS ASSUMED BY THE VENDOR IN THIS AGREEMENT, OR FOR WHICH THE VENDOR MAY BE LIABLE BY LAW OR OTHERWISE.

19. ASSIGNMENTS

19.1. Neither the Successful Vendor nor the Town will sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or of its right, title, or interest therein, or its obligations thereunder, without the written consent of the other party.

20. INDEMNIFICATION

20.1. The Successful Vendor will indemnify and hold harmless the Town and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the work/services provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom; and caused in whole or in part by any negligent or willful act or omission of the Successful Vendor, and subcontractor or, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Successful Vendor or any subcontractor or under workmen's compensation acts, disability benefit acts or other employee benefits acts.

21. CONTRACT CHANGES

21.1. NO CLAIMS may be made by anyone that the scope of the project or that the Vendor's Goods and/or Services have been changed (requiring changes to the amount of compensation to the Vendor or other adjustments to the Contract) UNLESS such changes or adjustments have been made by an approved WRITTEN AMENDMENT (Change Order) to the Contract signed by the City Manager (and the Town Council, if required), prior to additional Goods and/or Services being initiated. Extra Goods and/or Services performed without prior, approved, written authority will be considered as unauthorized and at the expense of the Vendor.

21.2. NO ORAL conversations, agreements, discussions, or suggestions, which involve changes to the scope of the Contract, made by anyone including any Town employee, will be honored or valid. No written agreements or changes to the scope of the Contract made by anyone other than the Procurement Manager (with Town Council approval, if required) will be honored or valid.

21.3. If any Change Order in the Goods and/or Services results in a reduction in the Goods and/or Services, the Vendor will neither have, nor assert any claim for, nor be entitled to any additional compensation for damages or for loss of anticipated profits on Goods and/or Services that are eliminated.

22. AVAILABILITY OF FUNDING

22.1. Any resulting Agreement, Contract, or issuance of Purchase Orders is contingent upon the availability of funding and allocation of Town funds. The Town may cancel any Agreement, Contract, or Purchase Order immediately, by giving written notice to the Successful Vendor, in the case of a reduction or elimination of funds or funding for any project, commodity or service.

23. FORCE MAJEURE

23.1. Neither party will be liable for delays, or defaults in the performance of this contract due to Acts of God or the public enemy, riots, strikes, fires, explosions, accidents, governmental action of any kind or any other causes of a similar character beyond its control and without its fault or negligence.

24. DEBRIEFING PROCESS

24.1. Non-Successful Vendor, upon request and that responded to a Invitation to Bid or an invitation for bid, will be provided a Vendor debriefing regarding the reasons that the proposal or bid submitted by the

Non-Successful Vendor was not awarded the solicitation. The debriefing may occur five (5) business days after the Vendor request but prior to contract signatures.

24.2. The Procurement Department will hold one debriefing meeting with all Vendor who requested such.

25. PROTESTS

25.1. To ensure fairness to all Vendor and to promote open competition, the Town will actively follow-up and be consistent in responding to a Vendor's protest concerning contract awards.

25.1.1. The Vendor will submit to the Procurement Manager a written request for a protest meeting which will be received by the Procurement Department within 14 consecutive calendar days from the date of the contract award. The Vendor's letter will contain specific reasons and any supporting documentation for the reasons, describing why they have a concern with the award. If the letter does not contain this information, or if the Procurement Manager determines that a meeting would serve no useful purpose, then the Procurement Manager may, within 10 consecutive calendar days from the date of receipt of the letter, respond in writing to the Vendor and refuse the protest meeting request. Otherwise, the Procurement Manager must notify the protesting Vendor within the 10-calendar day period that a protest meeting will be scheduled.

25.1.2. If the protest meeting is granted, the Procurement Manager will attempt to schedule the meeting within 10 consecutive calendar days after receipt of the letter, or as soon as possible thereafter. Within 10 consecutive calendar days from the date of the protest meeting, the Procurement Manager will respond to the Vendor in writing with the decision.

26. FEDERAL TAX IDENTIFICATION NUMBER.

26.1. All Vendor must furnish upon request a federal tax identification number to the Town. Failure to provide this information could result in invoice payments being withheld.

27. BID RESULTS

27.1. Only Vendor who receive awards will be notified of bid results; Non-Successful Vendor will not be notified. Non-Successful Vendor can visit the Town's website to see whom solicitations were awarded to.

28. NEGOTIATIONS

28.1. The Town may commence negotiations with the highest ranked Vendor or commence simultaneous negotiations with all eligible Vendor. The Town may negotiate:

28.1.1. The statement of work;

28.1.2. The Contract price as it is affected by negotiating the statement of Work; and

28.1.3. Any other terms and conditions determined by the Town in its sole discretion to be reasonably related to those expressly authorized for negotiation.

28.1.4. Terms and conditions within the sample contract that are unrelated to the statement of work or Contract price may be negotiated after award, but before legal review or execution of the Contract. If a successful contract cannot be negotiated in a timely manner after award, the Town may conclude contract negotiations and rescind its award to that Vendor and return to the most recent Bid Document stage to negotiate with another Vendor for award.

29. PAYMENT

29.1. Solicitations which require payment in less than 30 days after receipt of invoice or delivery of goods, whichever is later, may be rejected.

30. INVESTIGATION OF REFERENCES AND CONSIDERATION OF PAST PERFORMANCES

30.1. The Town reserves the right to investigate the references and the past performance of any Vendor, including but not limited to the Vendor's performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, sub-contractors, and workers and Vendor so agrees to the aforementioned by listing references. The Town may postpone the award or execution of the contract after the announcement of the apparent Successful Vendor in order to complete its investigation and may take the results of its investigation into account when conducting evaluations. The Town reserves the right to reject any Completed Bid Document or to reject all

Completed Proposal Documents at any time prior to the Town's execution of contract if it is determined to be in the best interest of the Town to do so.

31. Proposal ARE OFFERS

31.1. The Proposal is the Vendor's offer to enter into a Contract pursuant to the terms and conditions specified in the Invitation to Bid, its Exhibits, and Addenda. The offer is binding on the Vendor for one hundred twenty (120) days. The Town's award of the Contract constitutes acceptance of the offer and binds the Vendor. The Vendor must be a complete offer and fully Responsive to the Invitation to Bid.

32. CONTINGENT Proposals

32.1. Vendor will not make its Completed Proposal Document contingent upon the Town's acceptance of specifications or contract terms that conflict with or are in addition to those in the Invitation for Proposal, its Exhibits, or Addenda.

33. REPRESENTATIONS AND WARRANTIES

33.1. Vendor represents and warrants that (1) Vendor has the power and authority to enter into and perform this Contract; (2) The individual signing for Vendor is authorized to execute this Contract on behalf of Vendor; (3) The Contract, when executed and delivered, will be a valid and binding obligation of Vendor, enforceable in accordance with its terms; (4) The work under the Contract will be performed in a good and workmanlike manner and in accordance with the highest professional standards; (5) Vendor will, at all times during the term of the Contract, be qualified, professionally competent, and duly licensed to perform the work; and (6) Vendor's name, as it appears in the Contract, is Vendor's legal name, as it will appear in the Vendor's W-9, and if Vendor is an entity rather than an individual that the entity named in the Contract is validly existing and in good standing. The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

34. CONFLICT OF INTEREST

34.1. Vendor covenants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner with or prohibit Vendor's full performance of the Contract. Vendor also covenants that in the performance of the Contract no person having any such interest will be employed. Vendor further covenants that its performance of the Contract will not cause any employee of the Town to violate the Town's Conflict of Interest Policy.

35. NO THIRD-PARTY BENEFICIARIES

35.1. The Town and Vendor are the only parties to the Contract and are the only parties entitled to enforce its terms. Nothing in the Contract gives, is intended to give, or will be construed to give any benefit or right, whether directly or indirectly, to third persons unless such persons are individually identified by name and expressly described in the Contract as intended beneficiaries.

36. TIME IS OF THE ESSENCE

36.1. Vendor agrees that time is of the essence under the Contract.

37. FOREIGN VENDOR

37.1. If Vendor is not domiciled or registered to do business in the State of Maryland, Vendor will demonstrate its legal capacity to perform these services in the State of Maryland prior to entering into a Contract.

38. ATTACHMENTS

38.1. All attachments, addenda, schedules and exhibits which are referred to in the Contract are incorporated in the Contract.

39. MERGER

39.1. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED IN THE CONTRACT REGARDING THE CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THE CONTRACT WILL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. VENDOR, BY THE SIGNATURE TO THIS CONTRACT OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE CONTRACT AND VENDOR

AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

40. ANTI-KICKBACK ACT OF 1986

40.1. Prohibits any person from—

40.1.1. Providing, attempting to provide, or offering to provide any kickback;

40.1.2. Soliciting, accepting, or attempting to accept any kickbacks; or

40.1.3. Including, directly or indirectly, the amount of any kickback in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.

40.2. The Anti-Kickback Act of 1986 as referenced in FAR 52.203-7 is hereby incorporated into this solicitation as a condition of acceptance. If you have reasonable grounds to believe that a violation, as described in paragraph (b) of FAR 52.203-7, may have occurred, you should report this suspected violation to the Town's City Manager. You may report a suspected violation anonymously.

**END OF SECTION**

## **SECTION V: EVALUATION AND SELECTION PROCESS**

### **1. EVALUATION**

1.1. All Vendors are advised that in the event of a receipt of adequate number of Bid Documents which, in the opinion of the Town, require no clarification and/or supplementary information, such Bid Documents may be evaluated without discussion. Hence, Bid Documents should be initially submitted on the most complete and favorable terms which Vendors are capable of offering the Town. Evaluation Criteria may include, but will not be limited to:

### **2. EVALUATION**

1.2. The Town will conduct an evaluation of Completed Bid Documents. The evaluation will be completed based on the criteria below:

### **3. EVALUATION PROCESS**

3.1. Evaluation Committee. Completed Bid Documents submitted will be evaluated by a committee composed of subject matter experts to determine the lowest cost but most responsive and responsible vendor.

3.2. Review of Completed Bid Documents. The Evaluation Committee will review all Completed Bid Documents. Each member will first assess each Completed Bid Document by each of the criteria described in Section

**THIS AND PREVIOUS SECTIONS DO NOT NEED TO BE RETURNED WITH SUBMITTAL.**

## REFERENCES

List five (5) references for similar Services successfully completed within the last three years. Include contact name, address, telephone number and Services consumed.

Company Name:		Company Name:	
Type of Work:		Type of Work:	
Address:		Address:	
Town, State, Zip Code:		Town, State, Zip Code:	
Contact Person:		Contact Person:	
Telephone Number:		Telephone Number:	
Date of Service:		Date of Service:	
Company Name:		Company Name:	
Type of Work:		Type of Work:	
Address:		Address:	
Town, State, Zip Code:		Town, State, Zip Code:	
Contact Person:		Contact Person:	
Telephone Number:		Telephone Number:	
Date of Service:		Date of Service:	
Company Name:			
Type of Work:			
Address:			
Town, State, Zip Code:			
Contact Person:			
Telephone Number:			
Date of Service:			

\_\_\_\_\_  
Sign for Identification

\_\_\_\_\_  
Printed Name



**ADDENDA ACKNOWLEDGEMENT**

The undersigned hereby certifies that, except as listed below, or on separate sheets attached hereto, the enclosed Proposal Document covers all items as specified.

**EXCEPTIONS:**

(If none, write NONE) \_\_\_\_\_

THE VENDOR HEREBY ACKNOWLEDGES RECEIPT OF THE FOLLOWING ADDENDA.

<u>Number</u>	<u>Date</u>	<u>Initials</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_  
Sign for Identification

\_\_\_\_\_  
Printed Name

**INDIVIDUAL PRINCIPAL**

Vendor Name: \_\_\_\_\_

Signed By: \_\_\_\_\_ In the presence of: \_\_\_\_\_

Address of Vendor: \_\_\_\_\_ Town, State, Zip \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax: \_\_\_\_\_

\*\*\*\*\*

CO-PARTNERSHIP PRINCIPAL

Name of Co-Partnership: \_\_\_\_\_

Address: \_\_\_\_\_ Town, State, Zip \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax: \_\_\_\_\_

Signed By: \_\_\_\_\_ In the presence of: \_\_\_\_\_

Partner

Witness

Signed By: \_\_\_\_\_ In the presence of: \_\_\_\_\_

Partner

Witness

Signed By: \_\_\_\_\_ In the presence of: \_\_\_\_\_

Partner

Witness

\*\*\*\*\*

CORPORATE PRINCIPAL

Name of Corporation: \_\_\_\_\_

Address: \_\_\_\_\_ Town, State, Zip \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax: \_\_\_\_\_

Signed By: \_\_\_\_\_ In the presence of: \_\_\_\_\_

President

Witness

Attest: \_\_\_\_\_

Corporate Secretary

Affix Corporate Seal

**VENDOR'S AFFIDAVIT OF QUALIFICATION TO PROPOSAL**

I HEREBY AFFIRM THAT:

I, \_\_\_\_\_ am the \_\_\_\_\_  
(Printed Name) (title)  
and the duly authorized representative of the Vendor of  
\_\_\_\_\_ whose address is  
(name of corporation)

\_\_\_\_\_ and that I possess the legal authority to make this affidavit on behalf of myself and the Vendor for which I am acting.

Except as described in paragraph 3 below, neither I nor the above Vendor, nor to the best of my knowledge any of its officers, directors or partners, or any of its employees directly involved in obtaining contracts with the State or any county, bi-county or multi-county agency, or subdivision of the State have been convicted of, or have pleaded nolo-contendere to a charge of, or have during the course of an official investigation or other proceeding admitted in writing or under oath acts or omissions which constitute bribery, attempted bribery, or conspiracy to bribe under the provisions of Article 27 of the Annotated Code of Maryland or under the laws of any state or federal government (conduct prior to July 1, 1977 is not required to be reported).

(State "none" or, as appropriate, list any conviction, plea or admission described in paragraph 2 above, with the date, court, official or administrative body, the individuals involved and their position with the Vendor, and the sentence or disposition, if any.)

\_\_\_\_\_ I acknowledge that this affidavit is to be furnished to the Town, I acknowledge that, if the representations set forth in this affidavit are not true and correct, the Town may terminate any Contract awarded and take any other appropriate action. I further acknowledge that I am executing this affidavit in compliance with section 16D of Article 78A of the Annotated Code of Maryland, which provides that certain persons who have been convicted of or have admitted to bribery, attempted bribery or conspiracy to bribe may be disqualified, either by operation of law or after a hearing, from entering into contracts with the State or any of its agencies or subdivisions.

I do solemnly declare and affirm under the penalties of perjury that the contents of this affidavit are true and correct.

\_\_\_\_\_ Sign for Identification

\_\_\_\_\_ Printed Name

## NON-COLLUSIVE AFFIDAVIT

\_\_\_\_\_ being first duly sworn,  
deposes and says that:

1. He/she is the \_\_\_\_\_, (Owner, Partner, Officer, Representative or Agent) of \_\_\_\_\_, the Vendor that has submitted the attached Proposal Document;
2. He/she is fully informed respecting the preparation and contents of the attached Proposal Document and of all pertinent circumstances respecting such Proposal Documents;
3. Such Proposal Document is genuine and is not a collusive or sham Proposal Document;
4. Neither the said Vendor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Vendor, Vendor, or person to submit a collusive or sham Proposal Document in connection with the Goods and/or Services for which the attached Proposal Document has been submitted; or to refrain from bidding in connection with such Goods and/or Services; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Vendor, Vendor, or person to fix the price or prices in the attached Proposal Document or of any other Vendor, or to fix any overhead, profit, or cost elements on the Proposal Document price or the Proposal Document price of any other Vendor, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any disadvantage against (Recipient), or any person interested in the Goods and/or Services;
5. The price or prices quoted in the attached Proposal Document are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Vendor or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

## SECTION IV: SCOPE OF WORK

### Scope of Work

An RVTOOLS extract of existing virtual guests that would need to be migrated to the proposed Nutanix Cluster can be provided electronically by contacting \_\_\_\_\_. The proposal should include recommended sizing of cluster, number of nodes required by the Town and associated configurations.

#### Professional Services

Professional services will include:

- Instruction to City staff on migration from existing infrastructure to Nutanix Cluster.
- Nutanix training recommendations
- Block of 10 hours to assist with any implementation / configuration hurdles

#### Requirements

- The proposed solution should include 20% additional capacity than current virtual guest load as indicated in the RVTOOLS extract.
- Minimum of 8000 series nodes, 2048 memory, and all SSD.
- Proposal will include the following products in addition to recommended hardware sizing:
  - 1 Year Nutanix Pro Software License.
  - 1 Year Production Support for hardware.

**NOTE: THIS BID FORM MUST BE SIGNED BY AN OFFICER OF YOUR COMPANY OR AN AUTHORIZED AGENT FOR THIS BID TO BE CONSIDERED VALID.**

**NOTE: Completed Proposal Documents will include all applicable fees.**

Please indicate percentage of "Work" that will be assigned to sub-contractors: \_\_\_\_\_%, as defined in Section II General Information, Subsection 22 of this Bid Document.

Vendor agrees to obtain TOC business license upon award? (Yes)\_\_\_\_ (No) \_\_\_\_\_ CHECK One.

Is your company currently involved in any active litigation? (Yes)\_\_\_\_ (No) \_\_\_\_\_ CHECK One.

Is your company currently involved in any mergers or acquisitions? (Yes)\_\_\_\_ (No) \_\_\_\_\_ CHECK One.

\*If you answered Yes to either of the two questions directly above, please attach documentation to your Bid describing further.

Respectfully submitted,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
License Number

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
Title

**END OF SECTION**