Information Technology & Telecommunications

Anne Roest
Commissioner
255 Greenwich St, 9th FL
New York, NY 10007

July 08, 2015

PIN: 85816RQ00034 Barracuda Web Application

Dear Prospective Vendor(s);

The New York City Department of Information Technology and Telecommunications (DoITT) is issuing a solicitation price for **Barracuda Web Application** pursuant to **OGS Group# 79518**.

This letter is a formal invitation for your firm to submit a response to this solicitation. Attached please find the **Bid Worksheet** (See Attachment-A); **HRO Grand Funding Conditions** (Appendix B); **Hurricane Sandy CDBG-DR** (Attachment -B); **Federal Labor Standards Provision**; (HUD-4010) and **Doing Business Form** (Attachment -C), is attached for your completion/review.

Vendor MUST supply the APPROVED NYS contract pricing pages; cross-reference them to match the items in this solicitation.

The delivery term for the items listed on this solicitation must be ten (10) business days after the receipt of an approved purchase order.

The bid is due to the Department no later than 3:00 PM EST – July 15, 2015. Responses should be submitted to Mr. Jamar Thomas at jthomas@doitt.nyc.gov or by fax at (347) 788-4095. Questions regarding this bid should be submitted no later than 3:00PM EST July 13, 2015, by email to Mr. Jamar Thomas at jthomas@doitt.nyc.gov.

Bids that are not received by the submission deadline will be considered late and will not be accepted.

Sincerely,

Jennie Almeida

Jennie Almeida
Director of Procurement

ATTACHMENT A
BID WORKSHEET
PIN 85816RQ00034

Company Name:_____

NOTICE TO ALL BIDDERS: FAILURE TO COMPLETE THIS SECTION IN DETAIL SHALL RESULT IN REJECTION OF YOUR BID

Line No.	Part Number	Description	Qty.	Unit Price	Extended Price
1	BWFCAZ010A-v0	BARRACUDA WEB APPLICATION FIREWALL FOR MICROSOFT AZURE LEVEL 10 – 1 DAY BAR-WF-482660	180		
			Grand Total		

Award -The contract shall be awarded to the lowest responsive and responsible bidder that submits the lowest Grand Total Price.

Delivery Terms -The awarded vendor must be able to provide items listed on this solicitation ten (10) business days after the receipt of an approved purchase order.

Term- The term of the contract shall be for a period of Six (6) Months from notice to proceed.

Termination of Agreement

A) The Department and/or City shall have the right to terminate this Agreement, in whole or in part:
1. Under any right to terminate as specified in any section of this Agreement.
2. Upon the failure of the Contractor to comply with any of the terms and conditions of this Agreement.
3. Upon the Contractor's becoming insolvent.
4. Upon the commencement under the Bankruptcy Act of any proceeding by or against the Contractor, either voluntarily or involuntarily.
5. Upon the Commissioner's determination, termination is in the best interest of the City.

B) The Department of City shall give the Contractor written notice of any termination of this Agreement specifying therein the applicable provisions of subsection A of this section and the effective date thereof which shall not be less than ten (10) days from the date the notice is received.

Taxpayer Affirmation - Contractor affirms that Contractor is not in arrears to the City of New York upon debt or contract, or taxes, and is not a defaulter as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the Contractor to receive public contracts.

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THE FOLLOWING PROVISIONS PERTAIN TO SOFTWARE

The Contractor shall perform all services in accordance with the terms of this Agreement and the State Contract or GSA Contract. The Contractor is providing computer software under this Agreement under the following conditions:

A. Ownership of Materials

Upon execution of this Agreement, any reports, documents, data, photographs and/or other materials produced pursuant to this Agreement shall become the exclusive property of the City.

B. Ownership of Copyright

To the extent the Contractor is procuring for the City's benefit a license to use third-party software, the licenses shall be perpetual, nonexclusive and nontransferable licenses for the City to use the software described in Exhibit 2. The term, "software" shall mean computer programs in object code format, together with any manuals.

C. Warranties and Indemnification

1. Warranties of Title

To the extent that the Contractor is procuring for the City's benefit a license to use third-party software, the Contractor represents and warrants that it has obtained all necessary permissions and clearances, in writing, to provide such license, copies of which shall be provided to the City upon execution of this Agreement.

2. Intellectual Property Indemnification

The Contractor shall defend, indemnify and hold the City harmless from and against any and all claims, suits, damages, judgments, liabilities, costs and expense, including reasonable attorneys' fees, to which it may be subject because of or related to any claim that any licensed software or enhancements, as applicable, infringes or violates the copyright, trademark, or any other property or personal right of any third party. This indemnification shall survive the termination or expiration of this Agreement. Furthermore, Contractor shall defend and settle at its sole expense all suits or proceedings brought against Contractor arising out of the foregoing. However, in cases involving software, no such settlement shall be made that prevents the City from continuing to use the software without the City's prior written consent, which consent shall not be withheld unreasonably.

Cure for Claimed Breach of Intellectual Property Rights in Software
In the event an injunction or order shall be obtained against the City's use of software under this Agreement by reason of the allegations, or if in Contractor's opinion the software is likely to become the subject of a claim of infringement or violation of a copyright, trade secret or other proprietary right of a third party, or if the City's ability to enjoy use of the software has become materially disrupted by a claim of a third party, Contractor shall at its option and expense: (i) procure for the City the right to continue using the software; or (ii) replace or modify the software so that it becomes non-infringing, but only if the modification or replacement does not adversely affect the specifications for the software or its use by the City.

D. Software Escrow Account

(a) To the extent that this Agreement includes software licensed to the City (excluding "off-the-shelf" software), Contractor represents (i) that it has entered into, and that it shall maintain in full force and effect a Source Code Escrow Agreement with an escrow agent (the "Escrow Agent"), which escrow agreement provides

materially the same terms and conditions as follows, and (ii) that all source code and related documentation for the licensed software is under escrow deposit pursuant to said escrow agreement. The Contractor shall provide thirty (30) days prior written notice of a change of Contractor's Escrow Agent.

(i) Source code must be held by the Escrow Agent in trust for the City;
(ii) All updates must be escrowed as they are issued;
(iii) The Escrow Agent shall verify deposit of the software and all updates and so notify the City;
(iv) The City shall be permitted periodic testing of all source code held in escrow; and;
(v) If the Contractor, its assignees or successor *(a)* becomes insolvent or ceases to exist as a business entity; or *(b)* fails to perform its obligations under this Agreement and fails to cure said failure within thirty (30) days following receipt of written notification of said failure; the City shall have the right to so certify to the Escrow Agent and to direct the Escrow Agent to provide the City with a copy of the Source code and commentary for the installed release level of the product utilized by the City. All Source code materials granted under this clause shall be maintained subject to the confidentiality provisions of this Agreement and shall be used solely for the internal business purposes of the City. Title to any source code released to the City remains the property of the Contractor.

(b) Contractor certifies that it has deposited and hereafter will maintain, a current copy of all source code related to the software, including current commentary, with the Escrow Agent and agrees to adhere to obligations set forth in the agreement between the Escrow Agent and Contractor as required hereby. It is agreed that Contractor shall provide to the City all information necessary for the City to comply with registration requirements, if any, of the Escrow Agent.

(c) The escrow account provisions set forth in subdivisions (a) and (b) above shall apply with equal force to any software licensed to the City (excluding "off-the-shelf" software) by a subcontractor.

E. The City may, at no additional cost, make copies of the software sufficient for disaster recovery, backup, and archival purposes. The City may use such copies for disaster recovery, backup and archival purposes on any City-controlled back-up site, or third-party site, as the City deems appropriate in its sole discretion.

F. The proposer/bidder must include in its proposal/bid a complete copy of all proposed license agreements, click-through agreements or any other agreements that would become a part of a proposed agreement as the result of this solicitation. In addition, the proposer/bidder must provide any third-party license agreements associated with any licensed product (e.g. software) that is incorporated into the Software that is the subject of this solicitation. To the extent that any terms in the third-party licenses place a material limitation on the City's ability to freely use the Software, the bidder will specifically identify the relevant third-party agreement and the relevant clause.

G. Any Agreements Dependent on License from Software Owner

The proposer/bidder acknowledges that any agreement with a reseller resulting from this solicitation is dependent on the City obtaining an appropriate license to use the Software from the owner of the Software ("Proprietary License"). The City reserves the right to negotiate for modifications to any Proprietary License. Any agreement with a reseller under this solicitation shall not take effect unless and until the City enters into such Proprietary License.

H. Validity of Click-Through and Other Terms and Conditions

The proposer/bidder further acknowledges that only DoITT's Commissioner, or a specifically designated Deputy Commissioner (if any), have the authority to enter into an agreement on the City's behalf (whether "click-through" or otherwise). The proposer/bidder expressly disavows any claim of apparent authority of any other person to enter into an agreement on the City's behalf (whether "click-through" or otherwise). In the event that any City consultant or any City employee other than DoITT's Commissioner, or specifically designated Deputy Commissioner (if any) clicks "I agree" (or the equivalent) to one or more of the bidder's "click-through agreements" to utilize the functionality of web pages, software, etc., the terms and conditions of that click-through agreement will be null and void.

Even if the click-through terms are valid, the proposer/bidder acknowledges that the other terms of any agreement resulting from this solicitation shall take precedence over any of proposer's/bidder's "click-through agreements.

ADDITIONAL REQUIRED DOCUMENTATION

Attachment – Doing Business Data Q & A and Contractor Form

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, Proposers are required to complete the attached Doing Business Data Form (Attachment 6) and return it with this proposal, in a separate envelope. (If the responding vendor is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a vendor has failed to submit a Data Form or has submitted a Data Form that is not complete, the vendor will be notified by the agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the agency. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the vendor has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

All bids/proposals must contain a sealed and labeled envelope containing an original, completed Doing Business Data form (see Attachment Doing Business Data Q & A and Contractor Form).

Attachment – Electronic Funds Transfer

In accordance with Section 6-107.1 of the New York City Administrative Code, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, Contractor shall designate one financial institution or other authorized payment agent and shall complete the attached "EFT Vendor Payment Enrollment Form" in order to provide the Commissioner of Finance with information necessary for Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

The agency head may waive the application of the requirements herein to payments on contracts entered into pursuant to §315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the contracting agency may waive the requirements hereunder for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the interest of the City.

Attachment – Iran Divestment Rider and Certification

Pursuant to General Municipal Law §103-g, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer must complete the certification form in Attachment Iran Divestment.

Company Name: _____

Company Address _____

Telephone Number: _____ EIN: _____

Name of Duly Authorized Representative (Print): _____

Title of Duly Authorized Representative: _____

Signature of Duly Authorized Representative: _____

Date signed: _____e-mail address: _____

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IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NEW YORK CITY CONTRACTORS

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law ("SFL") §165-a and General Municipal Law ("GML") §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

(a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder's certification.

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:

(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or

(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

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PROPOSER'S CERTIFICATION OF COMPLIANCE WITH IRAN DIVESTMENT ACT

Pursuant to General Municipal Law §103-g, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

[*Please Check One*]

PROPOSER'S CERTIFICATION

☐ By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

☐ I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: _____, New York
_____ , 20 __

_____
SIGNATURE

_____
PRINTED NAME
TITLE

Sworn to before me this
_____ day of_____, 20___

_____
Notary Public

Dated: