

REQUEST FOR PROPOSAL TITLE	RELEASE DATE
<b>Cable Television Franchise Renewal Consulting Services</b>	<b>Wednesday, March 11, 2009</b>
OPENING DATE AND TIME	PROCUREMENT CONTACT
<b>Wednesday, April 8, 2009 11:00 AM DST</b>	<b>Patrick M. Burke, Assistant Purchasing Agent</b>

On behalf of the City of Omaha, Nebraska, the Douglas County Purchasing Agent is issuing this Request for Proposal for the purpose of selecting a qualified contractor for consulting services for renewal of two (2) cable franchises held by the City of Omaha.

Written questions are due no later than **4:00 p.m. DST, Friday, March 20, 2009**, and should be sent to Patrick M Burke, Assistant Purchasing Agent, via email at [pburke@douglascounty-ne.gov](mailto:pburke@douglascounty-ne.gov) or by facsimile to (402) 444-5423. Questions should be plainly labeled “Questions for Cable Television Franchise Renewal Consulting Services”. The response to questions or any other clarifications will be provided **solely** through addendum posted on the Douglas County Purchasing Department’s web site [www.douglascountypurchasing.org](http://www.douglascountypurchasing.org) by approximately **Wednesday, March 25, 2009**.

NOTE SCHEDULE OF EVENTS IN RFP FOR ACTIVITY DATES AND TIMES.

Contractor should submit one (1) original, five (5) copies and one (1) electronic copy of their entire proposal. Proposals must be submitted by the proposal due date and time.

**PROPOSALS MUST MEET THE FOLLOWING REQUIREMENTS TO BE CONSIDERED VALID. PROPOSALS WILL BE REJECTED IF NOT IN COMPLIANCE WITH THESE REQUIREMENTS.**

1. Proposals must be received in the **Office of the Omaha City Clerk, LC 1 Civic Center, 1819 Farnam St., Omaha, Nebraska 68183** by the date and time of proposal opening indicated above. No late proposals will be accepted. No fax or emailed proposals will be accepted.
2. Proposals must meet all specifications, terms and conditions of this Request for Proposal (RFP).
3. The contractor’s proposal **MUST** be manually signed, in ink, and returned by the proposal opening date and time along with any other requirements as specified in the RFP in order to be considered for an award.
4. Proposals must be in a sealed envelope/container and marked “RFP for Cable Television Franchise Renewal Consulting Services”. A proposal may not be altered after opening. The proposal must stay in effect throughout the award.

## I. STANDARD CONDITIONS AND TERMS

**SCOPE:** These standard conditions and terms of the Request for Proposal (RFP) and acceptance apply in like force to this inquiry and to any subsequent contract resulting there from.

**PAYMENT:** Payments to be made by the CITY of Omaha (CITY) will be made by the responsible department. The CITY may request that payment be made electronically instead of by CITY warrant.

**COLLUSIVE BIDDING:** The contractor's signature on submitted Proposal is a guarantee that the prices quoted have been arrived at without collusion with other eligible contractors and without effort to preclude the CITY from obtaining the lowest possible competitive price.

**SPECIFICATIONS:** Contractors must submit a proposal in accordance with the terms and conditions in this Request for Proposal.

**ALTERNATE TERMS AND CONDITIONS:** The CITY, at its sole discretion, may entertain alternative terms and conditions which deviate from the Request for Proposal Requirements. Alternative terms and conditions may be considered if overall contract performance would be improved but not compromised, and if they are in the best interest of the CITY. Alternative terms and conditions must be submitted with the proposal and must be clearly identified and detailed in such a way that allows such deviations to be fully evaluated. Alternative terms and conditions are discouraged and unless explicitly accepted by the CITY, are deemed to be rejected.

### **INSURANCE:**

For CITY projects where the scope of work will be less than \$200,000 the following levels of insurance will be required: The successful contractor shall provide a certificate of insurance indicating (1) adequate workers' compensation; (2) public liability in an amount not less than \$250,000.00 for injuries including accidental death to any person and subject to the same limit to each person in an amount not less than \$500,000 where more than one person is involved in any one accident; (3) property damage insurance in an amount not less than \$500,000; and naming the City of Omaha an additional insured.

For CITY projects where the scope of work will exceed \$200,000 the following levels of insurance will be required: The successful contractor shall provide a certificate of insurance indicating (1) adequate workers' compensation; (2) public liability in an amount not less than \$1,000,000 for injuries including accidental death to any person and subject to the same limit to each person in an amount not less than \$5,000,000 where more than one person is involved in any one accident; (3) property damage insurance in an amount not less than \$500,00; and naming the City of Omaha an additional insured.

**AWARD:** All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the Request for Proposal. The CITY reserves the right to reject any or all proposals, wholly or in part, or to award to multiple contractors in whole or in part. The CITY reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve the contractor's competitive position. All awards will be made in a manner deemed in the best interest of the CITY.

**PERFORMANCE AND DEFAULT:** The CITY reserves the right to require a performance bond from the successful contractor, as provided by law, without expense to the CITY. Otherwise, in case of default of the contractor, the CITY may contract the service from other sources and hold the contractor responsible for any excess cost occasioned thereby.

**NONDISCRIMINATION:** SELLER shall not, in the performance of this Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, or disability as recognized under 42 USCS 12101 et. seq. and Omaha Municipal Code 13-89, political or religious opinions, affiliations or national origin.

**DRUG POLICY:** Contractor certifies that contractor maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the CITY.

## **II. SCOPE OF THE REQUEST FOR PROPOSAL**

### **A. SCOPE**

The City of Omaha (CITY) is issuing this Request for Proposal (RFP) to obtain bids from qualified contractors/vendors to enter into a contract for consulting services for renewal of two (2) cable franchises held by the CITY.

The contractor will be responsible for all requirements and successful performance of this contract.

### **B. INQUIRIES**

Any explanation desired by a contractor regarding the meaning or interpretation of any RFP provision or questions must be submitted in writing to Patrick M. Burke, Assistant Purchasing Agent, no later than **4:00 p.m. DST on Friday, March 20, 2009** and clearly marked "Questions for Cable Television Franchise Renewal Consulting Services". Questions may be sent via email or facsimile to:

[pburke@douglascounty-ne.gov](mailto:pburke@douglascounty-ne.gov) or Facsimile (402) 444-5423.

The response to questions or clarifications will be provided **solely** through addendum posted on the Douglas County Purchasing Department's web site [www.douglascountypurchasing.org](http://www.douglascountypurchasing.org).

Company interviews are anticipated to begin the week of April 27, 2009. Interviews will be scheduled by the City of Omaha.

### **C. PRIME CONTRACTOR RESPONSIBILITIES**

The contractor will be required to assume responsibility for all contractual services offered in this proposal whether or not the contractor performs them. Further, the CITY will consider the contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated contract.

### **D. TERMINATION**

1. The CITY may terminate the contract at any time if the contractor fails to carry out the terms or fails to make substantial progress toward the fulfillment of the contract obligations.
2. In such event, the CITY shall provide the contractor with thirty (30) days written notice of conditions which endanger contract performance. If after such notice the contractor fails to remedy these conditions, the CITY may send a certified letter to the contractor for immediate cancellation of the contract. In such event, the CITY would receive a pro-rated portion of the value of the performance bond depending on the value of the remaining portion of the contract.
3. The CITY will give the contractor sixty (60) days written notice of termination of contract if appropriations cease.

### **E. COMMUNICATION WITH STAFF**

From the date this RFP is issued until a determination is announced regarding the selection of the contractor contact regarding this project between potential contractors and individuals employed by CITY is restricted to only written communication with the person designated as the point of contact for this RFP.

Once a contractor is preliminarily selected, as documented in the City Ordinance, that contractor is restricted from communicating with CITY staff until a contract is signed. Violation of this condition may be considered sufficient cause to reject a contractor's proposal and/or selection irrespective of any other condition.

The following exceptions to these restrictions are permitted:

1. Written communication with the person designated as the point of contact for this RFP or procurement;
2. Contacts made pursuant to any pre-existing contracts or obligations;
3. CITY staff and/or contractor staff present at a Pre-Proposal Conference when recognized by the CITY as staff facilitating the meeting for the purpose of addressing questions; and,
4. CITY-requested presentations, key personnel interviews, clarification sessions or discussions to finalize a contract.

**F. SCHEDULE OF EVENTS**

The CITY expects to adhere to the tentative procurement schedule shown below. It should be noted, however, that some dates are approximate and subject to change.

<b>ACTIVITY</b>		<b>DATE/TIME</b>
1.	Release Request for Proposal	Wednesday, March 11, 2009
2.	Deadline to submit written questions	Friday, March 20, 2009 by 4:00 p.m. DST
3.	CITY'S response to written questions posted	Wednesday, March 25, 2009
4.	Deadline for submitting proposal(closing)	Wednesday, April 8, 2009 11:00 a.m. DST
5.	Proposal Opening Location: Legislative Chambers LC-4 1819 Farnam Street Omaha, Nebraska 68183	Wednesday, April 8, 2009 at 11:00 a.m. DST
6.	Interviews for selected firms	Anticipated to begin week of 4/27/2009

### III. OVERVIEW

The CITY is a community of approximately 434,000 residents, with about 172,800 residences subscribing to cable television service by the two franchised companies. The existing franchises were awarded at separate times. The initial franchise was awarded to Cox Cable of Omaha, Inc., now Cox Communications Omaha, LLC., (hereafter “Cox”) in 1980 for a term of 15 years and it has been extended once and renewed once. That franchise now expires in September, 2011. During the term of the franchise the service area covered has increased due to annexation and Cox has acquired the franchises of two competitors who obtained franchises through annexation. Cox also holds a franchise with Douglas County, Nebraska, to serve subscribers residing in unincorporated areas outside the Omaha city limits.

In 1996 a second CITY franchise was granted to US West Communications, Inc., now Qwest Broadband Services, Inc., (hereafter “Qwest”) to serve a portion of the CITY. Qwest previously offered television service in that area under FCC video dialtone regulations and converted that service to a cable television franchise. The Qwest service area has not changed since then and Qwest currently serves approximately 6,600 residences. The Cox franchise overlaps the Qwest service area with direct competition between the companies in that area. The Qwest franchise has not been renewed or extended and expires in September, 2010.

During the time period described in the federal Cable Act, the CITY received requests for renewal from Cox and Qwest using the renewal processes provided by that Act. Those requests have been referred to the City Cable Television Advisory Committee (CTAC) for processing and recommendation. CTAC is a seven-member citizen committee appointed by the City Council to advise on cable television related matters, resolve complaints and disagreements, and maintain lines of communications with the cable television franchisees. The initial renewal proceedings will be conducted under the guidance of CTAC, together with the Omaha Law Department and City Council staff. The CITY does not have a separate media or cable television office but, instead, monitors and oversees cable television issues through staff members in the City Council office, Law Department, and Finance Department. It is expected that renewal negotiations will follow the Cable Act’s process with concurrent informal negotiations.

The CITY has an active PEG community. All PEG programming is administered solely by Cox, which is required to maintain a PEG studio and mobile equipment. Some PEG programming is delivered to Qwest subscribers through an interconnection of the systems that is required by both franchise agreements. Three basic tier channels and one digital tier channel on the Cox system are currently dedicated to access programming. Initially six channels were dedicated for this purpose and that number was reduced by a franchise agreement amendment in 2007 that increased the bandwidth available for Cox’s exclusive use and required an upgrade of the Cox system to provide additional high definition channels. PEG programming in Omaha is generally provided by two types of users: (a) individual public access users who produce their own programs on a regular or irregular basis, and (b) groups with a common interest, commonly called a consortium, which are assigned a channel and given regularly scheduled blocks of time for their programs. Government programming consists primarily of City Council and a few other City board meetings. The 2007 reduction in dedicated access channels was a contested issue and the

approved amendment expressly provides that the return of three public access channels may be a condition of franchise renewal if there is a showing of unmet public access need. Because of the continuing discussion about public access availability, the CITY is interested in support from a consultant experienced in determining PEG access needs and requirements.

The CITY intends to conduct a contemporaneous review of the two franchises, recognizing that they expire one year apart. Completion of the services is anticipated before September, 2010. The franchise agreements are similar, but not identical, and retaining that similarity will be a goal of the renewal process.

CITY ordinances governing the cable franchise can be viewed by going to the CITY website at [www.ci.omaha.ne.us](http://www.ci.omaha.ne.us) and linking to Chapter 19, Article 12, of the Omaha Municipal Code. The existing franchise agreements can be viewed at that website via the links to "Departments" and "City Clerk".

#### **IV. PROPOSAL SUBMITTAL**

The proposal must include information supporting the respondent's expertise in providing the requested services. This information must include the following:

- A. Company history and experience in consulting and/or negotiation services for cable television franchise renewal, as described in the scope of work, including identifying the cable television franchisees involved in the experience.
- B. Evidence of a track record of satisfaction with similar renewal efforts, including recommendations successfully implemented, examples of similar efforts, or other information demonstrating subject matter expertise.
- C. The name and resume of the company's representative(s), both primary and backup, who will be responsible for providing any aspect of the requested services.
- D. References, including names, addresses, and telephone numbers, from five or more organizations that have used your company for similar services within the last five years.
- E. A written description of the proposed methodology, including an outline of the approach and methods anticipated for completing the project.
- F. Pricing, as required.

The proposal must be signed by the person submitting the proposal or a duly authorized representative of a firm submitting the proposal. The signature shall include the title of the individual signing the proposal.

#### **V SCOPE OF WORK**

The CITY is seeking comprehensive professional consultation services during the renewal of its cable television franchises and any advice regarding beneficial revision of ordinances. To the extent necessary, the renewal process will include the steps set out in section 626 of the Cable

Communications Policy Act of 1984 and subsequent amendments. The CITY has received a request for renewal from each of the two franchised cable television companies in accordance with sections 626(a) of that Act. The consulting services will include analysis, recommendations, and assisting with negotiations with the franchisees. Informal renewal negotiations are likely to also occur contemporaneously with the formal renewal steps.

The City Attorney's Office and City Council staff will work closely with the consultant to complete activities related to the technical, financial, and legal aspects of franchise renewal as well as a review of past performance. The City Attorney's staff will provide counsel for assistance with legal review and will provide clerical support for revising the agreements and ordinances.

Joint proposals from consulting and technical firms are welcome. The following describes requirements and anticipated activities. Proposals may include other activities the submitter deems important or necessary. **The proposal must include a work plan detailing the planned approach to accomplish the Tasks.**

**A. Scope of Work Tasks**

1. Assist CITY staff in preparing a written plan for the renewal process, accompanied by a timeline, and work with staff to modify the plan as appropriate.
2. Assist CITY staff and CTAC with various review activities, including a community needs assessment, customer satisfaction survey, public meetings, or public workshops.
3. Review existing cable television franchise agreements and suggest additional elements for the CITY to consider including in any proposal for renewal, utilizing the experiences and solutions of other governmental franchisors across the nation.
4. Attend and/or assist with negotiations with franchised companies as needed. The City Attorney and his staff will provide most of the legal review and all drafting of the franchise agreements and ordinance revisions and will be the primary negotiator. See, itemized price requirements.
5. Provide engineering expertise related to any technical review or system upgrade, or assist the CITY in developing an RFP for these services. Engineering firms submitting proposals must be licensed in the State of Nebraska.
6. Provide guidance and assistance, as needed, regarding various regulatory requirements at the Federal and state level.
7. Attend meetings and events as requested to receive public input and discuss aspects of the proposed franchise agreement with CTAC, the City Council, etc. At a minimum, the consultant needs to plan on attending three live presentations of the report. Additional meetings will be paid on a per diem and travel expense basis.

8. Review PEG access under the existing franchises and offer guidance and recommendations on forms of PEG access administration and/or oversight to meet community and governmental needs, including identifying the appropriate management entity and funding. For example, provide guidance on the benefits and disadvantages of PEG access programming administered and/or produced by CITY staff, by a nonprofit corporation operating under CITY supervision, by a private entity, or by one or more cable operators continuing the current practice of administering PEG access programming as a franchise obligation.

9. Provide guidance on best methods of CITY administration of the franchise with emphasis on models used in other cities across the nation.

10. Provide any other subsequently agreed upon input or assessments of potential improvements in cable television franchise regulation, monitoring, and administration.

11. Provide a written report, including an executive summary, outlining the analysis, advice, and recommendations related to the Work Tasks. The report must include estimated cost impacts associated with the recommendations. A draft report must be submitted for review and comment by CITY staff and a final report shall be submitted after consideration of the comments.

12. If a preliminary assessment is issued that one or more of the franchises should not be renewed, the consultant's participation in any subsequent administrative or judicial proceedings will be on terms agreed upon by the parties at that time.

## **VI. PRICING AND INVOICING**

### **A. Price Submittal.**

Your proposal must provide pricing to cover the following items:

1. A maximum fee that covers the complete scope of the project and all Tasks. The maximum fee shall indicate (a) the estimated hours, (b) the hourly rate, and (c) the total that will not be exceeded to complete each Scope of Work Tasks. Include the names of the individuals who will be working on each task, the estimated hours they will be spending on each task, and the price per hour for each task.

2. Please include any pertinent comments relevant to your cost to complete each Task. Pricing should include an itemized amount (hourly or lump-sum) for participating in negotiations.

### **B Billing**

The proposal should provide a schedule of payments. For each individual charging personnel time on an invoice, the invoice must be accompanied by documentation showing: (a) Staff person's name; (b) Staff person's hourly rate; (c) Total hours worked for that billing period; (d) and Total Hours worked on each Scope of Work Task with bullet points of tasks accomplished for that billing period



Expenses will be paid on a cost reimbursement basis, with invoices submitted monthly. Expenses for any travel and materials must be itemized. Copies of receipts must be provided for any itemized expenses. The CITY will not reimburse any costs incurred in the preparation and presentation of a proposal.

**VII. TIME LINE**

The current franchises expire September 3, 2010, and September 3, 2011. The firm receiving the award is expected to begin in May, 2009, (or at another agreed-upon time) and finish before September 3, 2010. Receipt of public input is anticipated during June, July, and August, 2009. Please include a time line in your proposal, detailing expected completion dates for each Scope of Work Task and for successful completion of the project.

**VIII. EVALUATION AND ASSESSMENT OF PROPOSAL**

An evaluation committee will rank the interested firms based on the written proposals. To assist in preparing the proposals, the following ranking system is offered as an example of some anticipated considerations. The CITY will check references using similar evaluation considerations.

<b>Qualification</b>	<b>Standard</b>
Scope of Proposal	Does the proposal show an understanding of the project objective, methodology to be used, and the results that are desired from the project?
Assigned Personnel	Do the people who will work on the project have the necessary skills? Are sufficient skilled people assigned to the contract? Do the personnel have any helpful familiarity with Omaha and the expectations of its residents? Do the personnel have experience with a governmental perspective on cable television franchising as opposed to a cable industry perspective?
Availability	Can the work be completed in the time frame required? Can targeted start- and completion-dates be met? Are other qualified personnel available, if required, to assist in meeting the project schedule? Is the project team available to attend meetings as required by the Scope of Work?

<b>Qualification</b>	<b>Standard</b>
Cost and Work Hours	Do the proposed cost and work hours compare favorably with the CITY'S estimate? Are the work hours reasonable for the effort required in each project task or phase? Will the work be completed within the anticipated budget?
Capability and Experience	Does the submitter have the support capabilities and the financial viability to do the project? Has the submitter done previous projects of this type and scope? Is the submitter familiar with established and emerging issues and solutions in cable television franchising?

**IX. PROPOSAL ACCEPTANCE**

All proposals shall remain subject to acceptance for 90 days after the date submitted. The selected person or firm will be expected to sign the City of Omaha's Professional Services Agreement.

The CITY reserves the right to reject any or all of the proposals. Any proposals received after the submittal deadline will be rejected.

The firm awarded the contract for this study must comply with the Contract Compliance Ordinance and have on file with the Human Rights and Relations Department the annual Contract Compliance Report (Form CC-1). This report shall be in effect for 12 months from the date received. Any questions regarding the Contract Compliance Ordinance should be directed to the Human Rights and Relations Department at (402) 444-5055.

**X. ADDITIONAL PROVISIONS**

**A. Increase of Fees**

The parties hereto acknowledge that, as of the date of the execution of an Agreement, Section 10-142 of the Omaha Municipal Code provides as follows: Any amendment to contracts or purchases which taken alone increase the original fee as awarded (a) by ten percent, if the original fee is one hundred fifty thousand dollars (\$150,000) or more, or (b) by seventy-five thousand dollars (\$75,000) or more, shall be approved the City Council in advance of the acceptance of any purchase in excess of such limits. However, neither contract nor purchase amendments will be split to avoid advance approval of the City Council.

**B. Non-Discrimination**

Contractor shall not, in the performance of an Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, or disability as recognized under 42 USCS 12101 et seq. and

Omaha Municipal Code 13-89, political or religious opinions, affiliations or national origin.

**C. Interest of the City**

Pursuant to Section 8.05 of the Home Rule Charter, no elected Official or any officer or employee of the CITY shall have a financial interest, direct or indirect, in any CITY Agreement. Any violation of this section with the knowledge of the person or corporation contracting with the CITY shall render the Agreement voidable by the Mayor or Councils.