

REQUEST FOR PROPOSALS
for
NEK Broadband
COMMUNICATIONS UNION DISTRICT

AUDITING SERVICES

Date of Issuance: November 29, 2021

Intent to Respond & Questions Deadline: December 6, 2021

Proposal Submission Deadline: December 13, 2021

NEK Broadband Auditing Services RFP

NEK Broadband (“NEK Broadband”) is issuing this Request for Proposals (“RFP”) for Auditing Services (“Services”) as it has begun to construct its NEK Broadband Fiber Network for which it expects to receive more than \$40 million dollars in local, state, and federal grants over the next five years. The management, tracking, handling, and accounting for these funds requires consistent, professional expertise. Proposals from experienced individuals and firms are welcome. Those submitting a Proposal (“Proposer”) shall do so in accordance with this RFP.

I. Introduction

NEK Broadband is a Communications Union District (CUD), a nonprofit, municipal organization established in 2020 in accordance with Title 30 V.S.A. Chapter 82.

NEK Broadband is comprised of 50 Northeast Kingdom Vermont communities: Albany, Averill, Avery’s Gore, Barnet, Barton, Bloomfield, Brighton, Brownington, Brunswick, Burke, Canaan, Charleston, Concord, Coventry, Craftsbury, Danville, Derby, East Haven, Ferdinand, Glover, Greensboro, Groton, Guildhall, Hardwick, Holland, Irasburg, Kirby, Lewis, Lowell, Lyndon, Lunenburg, Maidstone, Morgan, Newark, Newport City, Newport Town, Peacham, Ryegate, Sheffield, St. Johnsbury, Stannard, Sutton, Troy, Walden, Warner’s Grant, Warren Gore, Waterford, Westfield, Westmore, Wheelock and Wolcott.

NEK Broadband is currently in the preconstruction engineering and design phase of developing a fiber optic network that will bring broadband internet access to our member communities. We are currently constructing a pilot phase of our network in two communities in the last quarter of 2021. Construction of the NEK Broadband Community Network is scheduled to begin in 2022.

Additional information about NEK Broadband may be found at NEKBroadband.org.

II. Scope of the Work

The scope of the work is set out in Attachment I, Auditing services Scope of Work. Work must be accomplished according to industry standards and in compliance with applicable laws and regulations. We are particularly interested to know whether respondents have the capacity to complete a single audit for 2021 prior to February 18, 2022. We need our first audit complete in order to qualify for an application for grant funds in the USDA ReConnect program.

III. RFP Instructions and Procedures

A. Submissions

Proposals must be received via email at rfps@NEKBroadband.org by 5:00 PM on Monday, December 13, 2021.

Notification of an intent to respond as well as any questions regarding the RFP should be submitted by email to the address above on or before Monday, December 6, 2021 at 5:00 PM ET. By Wednesday, September 8, 2021, NEK Broadband will post answers online at <https://NEK Broadband.org/category/rfps/> and sent by email to all who have indicated an intent to respond. NEK Broadband will not identify the names of those who submit questions in writing in its email or online.

All Proposals shall become the property of NEK Broadband.

Proposers are prohibited from contacting any person or institution involved in the selection process concerning this RFP.

B. Cancellation; Rejection

NEK Broadband reserves the right to cancel this RFP, in whole or in part, at any time. NEK Broadband may reject any or all Proposals received in response to this RFP in its sole discretion.

C. Costs and Expenses

Each Proposer is responsible for its own costs and expenses involved in the preparation and submission of its Proposal, and any supplemental information requested by NEK Broadband. NEK Broadband shall not reimburse any such costs or expenses.

D. Notification

NEK Broadband will notify Proposer of their selection for negotiation on or before December 17, 2021.

E. Public Information

NEK Broadband is a municipal organization that must conduct its business subject to existing laws and regulations. Accordingly, the following principles will apply to the Proposal, negotiations, and contract:

The names of all Proposers submitting Proposals may be announced publicly, but the Proposals and individual negotiations with Proposers will not be made public.

Any Agreement negotiated with a Vendor will be made public after execution except trade secrets of NEK Broadband and Vendor in accordance with 1 V.S.A. § 317(c)(9) and 30 V.S.A. § 3084.

F. Intellectual Property Rights

All work performed shall be “work for hire” and shall be owned exclusively by NEK Broadband, and the Proposer shall not obtain or retain any rights or licenses from any work produced under the contract, unless otherwise agreed to by the parties in writing.

IV. Selection Criteria

This RFP is designed to enable NEK Broadband to determine which Proposer will best satisfy the organization’s requirements and ability to enter into a satisfactory agreement. NEK Broadband reserves the right to select the best value for the performance of the Services, which may not be the lowest price bidder.

Each Vendor will be evaluated against the same set of criteria, which shall include:

1. Experience, key personnel, references, and relevant professional credentials
2. Price
3. Acceptance of terms and conditions
4. Ability to complete 2021 single audit prior to February 18, 2022

V. Proposal Format

A. Proposal Submissions

Proposals shall be submitted using the following format:

1. Table of Contents
2. Executive Summary
3. Individual/Company name, address, point of contact w/ email and phone number, DUNS #
4. Experience, Credentials, Qualifications, and Accomplishments
5. Key Personnel List (if a company proposing multiple parties for services)
6. Subcontractor information, if any
7. References with email and phone number
8. Proposed cost
9. Assumptions and Exclusions, if any
10. Miscellaneous Information of the Proposer's choosing
11. Relationships and Conflicts of Interest (Describe any relationship between the individual or company with NEK Broadband, or members of its Board.)
12. Resumes of Key Personnel

VI. Required Contract Provisions

A. Contract Funding

1. This contract may be funded by state and federal funds that have contract requirements, and from whom additional requirements may be forthcoming that may require contract amendments in the future.
2. See Attachment 2 for state contract requirements.
3. See Attachment 3 for federal contract requirements.

Attachment 1

Auditing Services Scope of Work

NEK Broadband has been awarded Coronavirus State and Local Fiscal Recovery Fund grants with CFDA # (aka assistance listing #) 21.027 and Coronavirus Relief Fund grants with CFDA #21.019. NEK Broadband has also been awarded a sub-grant of a Coronavirus State and Local Fiscal Recovery Fund grant made to Lamoille FiberNet (another CUD) with CFDA # 21.09. We have also been directly awarded a USDA Rural Business Development Grant with CFDA # 10.351. Additional grant funding may be awarded to NEK Broadband in the remainder of this fiscal year ending December 31, 2021, and in future years.

The contractor's primary function will be to perform a Single Audit that meets the Single Audit requirements as defined at PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS Subpart F Audit Requirements, and the requirements at 30 VSA 3070 (Vermont requirement for audits of financial condition of Communications Union Districts). Work must be accomplished according to industry standards and in compliance with applicable laws and regulations. NEK Broadband is required by Vermont Statute to have an annual audit of financial condition and will need to meet Federal audit requirements (Single Audit) this year and for several years into the future. In addition, NEK Broadband may approach the bond market in 2022 or 2023 and will need to provide a history of financial audits as a condition of bond issuance.

In December 2021, NEK Broadband moved its bookkeeping from Quickbooks Online to a remotely hosted Quickbooks Desktop Enterprise environment. All of our books and backup materials are stored and backed up in the cloud and will be made available remotely. Meetings will occur via video conference.

The contractor will provide:

- Planning meetings in preparation for the audit
- Perform a financial audit from inception to 31Dec2020
- An audited financial statement for Fiscal Year 2021 (1Jan21-31Dec21)
- Preparation of a management letter including a management action plan as a part of the final submission to the Governing Board
- Preparation of any IRS forms and applicable State of Vermont forms and filings
- Presentation of final audited financial statements and management letter to the Governing Board
- Preparation of all reports required for compliance with OMB's Uniform Guidance and 30 VSA 3070, and
- Availability to answer questions throughout the year.

Attachment 2

Vermont State Contract Requirements ("Attachment C")

The following provisions will be required by the state of Vermont and shall be included in the agreement awarded to the selected contractor, if NEK Broadband receives State funds in support of Auditing services. [Note: "Party" includes "Vendor".]

1. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 et seq. If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

2. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

3. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

4. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

5. Taxes Due to the State:

A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or

in full compliance with a plan to pay any and all taxes due to the State of Vermont.

D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

6. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

A. is not under any obligation to pay child support; or

B. is under such an obligation and is in good standing with respect to that obligation; or

C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

7. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

8. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

9. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

10. Requirements Pertaining Only to State-Funded Grants:

A. Certification Regarding Use of State Funds: If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

(End of Standard Provisions)

Attachment 3

STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT

(Non-Construction) Connected with 2020 Pandemic for all Contracts and Purchases of Products and Services

BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of \$100,000 or more certify that each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the recipient who in turn will forward the certification(s) to the awarding agency

PROCUREMENT OF RECOVERED MATERIALS

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated Items unless the products cannot be acquired

1. Competitively within a time frame providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price

Information about this requirement, along with the list of EPA-designated items, is available at the EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The Contractor also agrees to comply with all other applicable requirements of section 6002 of the Solid Waste Disposal Act.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
4. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
5. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
6. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA. **a.** Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

CONTRACTOR BREACH, ERRORS AND OMISSIONS

1. Any breach of the terms of this contract, or material errors and omissions in the work product of the contractor must be corrected by the contractor at no cost to the State, and a contractor may be liable for the State's costs and other damages resulting from errors or deficiencies in its performance. These terms, developed by the Vermont Attorney General's Office, are to be included, without any changes, ***in all contracts, and any amendments to contracts***, intended or expected to be used in connection with the State of Vermont's response to the 2020 Pandemic. **THESE TERMS ARE ALSO TO BE USED AND ADDED FOR ANY TRANSACTIONS, SUCH AS BUT NOT ONLY PURCHASE ORDERS, TAKING PLACE UNDER AN EXISTING CONTRACT, IF THE PURCHASE IS FOR THE PANDEMIC AND IF THERE IS ANY POTENTIAL DOUBT AS TO WHETHER THE OVERLYING CONTRACT HAS THESE TERMS.** These terms and conditions shall also be added in instances in which a purchase without formal contract is otherwise duly authorized.
2. Neither the States' review, approval or acceptance of nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract.
3. The rights and remedies of the State provided for under this contract are in addition to any other rights and remedies provided by law or elsewhere in the contract.

TERMINATION FOR CONVENIENCE

1. General

- a. Any termination for convenience shall be effected by delivery to the Contractor an Order of Termination specifying the termination is for the convenience of the Agency, the extent to which performance of work under the Contract is terminated, and the effective date of the termination.
- b. In the event such termination occurs, without fault and for reasons beyond the control of the

Contractor, all completed or partially completed items of work as of the date of termination will be paid for in accordance with the contract payment terms.

c. No compensation will be allowed for items eliminated from the Contract.

d. Termination of the Contract, or portion thereof, shall not relieve the Contractor of its contractual responsibilities for work completed and shall not relieve the Contractor's Surety of its obligation for and concerning any just claim arising out of the work performed.

2. Contractor Obligations After receipt of the Notice of Termination and except as otherwise directed by the State, the Contractor shall immediately proceed to:

a. To the extent specified in the Notice of Termination, stop work under the Contract on the date specified.

b. Place no further orders or subcontracts for materials, services, and/or facilities except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.

c. Terminate and cancel any orders or subcontracts for related to the services, except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.

d. Transfer to the State all completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the State.

e. Take other action as may be necessary or as directed by the State for the protection and preservation of the property related to the contract which is in the possession of the contractor and in which the State has or may acquire any interest.

f. Make available to the State all cost and other records relevant to a determination of an equitable settlement.

3. Claim by Contractor

After receipt of the Notice of Termination from the state, the Contractor shall submit any claim for additional costs not covered herein or elsewhere in the Contract within 60 days of the effective termination date, and not thereafter. Should the Contractor fail to submit a claim within the 60-day period, the State may, at its sole discretion, based on information available to it, determine what, if any, compensation is due the Contractor and pay the Contractor the determined amount.

4. Negotiation

Negotiation to settle a timely claim shall be for the sole purpose of reaching a settlement equitable to both the Contractor and the State. Settlement shall be based on actual costs incurred by the Contractor, as reflected by the contract rates. Consequential damages, loss of overhead, loss of overhead contribution of any kind, and/or loss of anticipated profits on work not performed shall not be included in the Contractor's claim and will not be considered, allowed, or included as part of any settlement.