Town of Burlington, Massachusetts

Request for Proposals

License Agreement for Use of Town-owned Right of Way

September 27, 2019

PROPOSALS DUE:

October 28, 2019, 2:00 PM

*Late proposals will be rejected

Whitney Haskell
c/o Board of Selectmen
29 Center Street, 2nd Floor
Burlington, MA 01803
781-270-1669
whaskell@burlington.org
# LICENSE FOR TOWN-OWNED RIGHT OF WAY:

## Coversheet

<table>
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<tr>
<th>Field</th>
<th>Information</th>
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<td>Proposer</td>
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<tr>
<td>Street Address</td>
<td>(Number and Street) (City) (State) (Zip)</td>
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<tr>
<td>Taxpayer Identification No:</td>
<td>(Social Security Number) (Federal Identification Number)</td>
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<td>Contact Name</td>
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LICENCE FOR TOWN-OWNED RIGHT OF WAY:
Proposer’s Checklist

Submissions:

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<tr>
<th></th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>1. Cover Sheet</td>
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<tr>
<td>2. Proposer’s Checklist (this sheet)</td>
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<td>3. Non-Price/Technical Proposal</td>
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<tr>
<td>• Required Certifications</td>
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<td>• Required Submittals (section 2.1.1)</td>
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<td>4. Acknowledgement of Addenda:</td>
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Minimum Requirements:

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<tr>
<td>1. Proposer has submitted all forms, supporting materials and other information as required by the “Submittal” section of this RFP.</td>
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<tr>
<td>2. Proposer must provide at least three (3) references from other lessors, licensors, or other similarly situated contracting party.</td>
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<tr>
<td>3. Proposer’s business must be located within the area defined on the map included as “Attachment A”</td>
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</table>
LICESNE FOR TOWN-OWNED RIGHT OF WAY:
Required Certifications

1. NON-COLLUSION:

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

_______________________________________________________________________

2. TAX COMPLIANCE:

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

______________________________________________________________________________

3. CORPORATE BIDDER (if applicable):

I, ___________________________ certify that I am the ______________________ of the corporation named as Bidder in the Bid included herein, that ______________________, who signed said Bid on behalf of the Bidder was then ______________________ of said corporation, that I know his signature, that his signature thereon is genuine and that said Bid was duly signed, sealed and executed for and in behalf of said corporation by authority of its governing body.

____________________________
(Secretary-Clerk)

____________________________________________
(Signature of authorized individual submitting proposal)

____________________________________________
(Printed Name)

____________________________________________
(Name of Proposer)

____________________________________________
(Federal Tax Identification or Social Security Number)

____________________________________________
(Date)
PART 1. GENERAL INFORMATION

1.1 PROCUREMENT DESCRIPTION

The Town of Burlington seeks proposals from interested parties to enter into a license agreement, allowing the licensee access to the Town-owned right of way ("Right of Way") described below for the purpose of erecting a directory/monument sign on the Right of Way, subject to the requirements of the Request for Proposals.

1.1.1 RIGHT OF WAY DESCRIPTION

The Right of Way in question is a Town-owned right of way at the intersection of Cambridge and Center Street. (See Attachment A – Right of Way Map)

The Right of Way is available for physical inspection and independent observation of all conditions by interested respondents.

1.2 APPROVAL

Any license agreement that may result from the solicitation shall be subject to the approval of the Board of Selectmen. The Proposal Evaluation Committee shall make a recommendation to the Board, however the Board shall be the final arbiter of whether to award the license, if so, to which proposer, and have final approval over the design.

1.3 INCORPORATION BY REFERENCE

All requirements, specifications, terms and conditions described in this Request for Proposals ("RFP") shall be incorporated by reference into any contract that may result.

1.4 TIME FOR AWARD

Any contract that may result from the procurement shall be awarded within forty five (45) days after the proposal due date. The time for award may be extended for up to 45 additional days by mutual agreement between the Town and the most advantageous proposer.

1.5 RIGHT TO CANCEL/REJECT

The Town reserves the right to cancel this RFP or reject in whole or in part any and all proposals if the Town determines that cancellation or rejection serves the best interests of the Town.

1.6 TAXATION

Purchases made by the Town are exempt from the payment of Federal excise tax and the payment of Commonwealth of Massachusetts sales tax and any such taxes must not be included in the proposal pricing.
Copies of the Town’s tax exempt paperwork shall be available upon request of the selected contractor.

1.7 OBTAINING THE REQUEST FOR PROPOSALS

The RFP shall be available beginning, September 27, 2019.

Hardcopies of the RFP and related documents may be obtained at the Office of the Chief Procurement Officer, 29 Center Street, 2nd Floor, Burlington, MA 01803

Monday, Tuesday, Thursday: 8:30 AM – 4:30 PM
Wednesday: 8:30 AM – 7:00 PM
Friday: 8:30 AM – 1:00 PM
PART 2. INSTRUCTIONS TO PROPOSERS

2.1 REQUIREMENTS AND SUBMISSIONS

Below please find a description of the requirements and submissions that must be included as part of a proposal.

2.1.1 PROPOSAL COMPONENTS

The following items must be submitted in order for the proposal to be considered:

☐ NON-COLLUSION FORM

Every proposal must include a certification of good faith, certifying that the proposal was made in good faith and without collusion or fraud. See ‘Non-Collusion Form’ attached.

☐ TAX COMPLIANCE FORM

Every proposal must include a written certification that the proposer has complied with all state laws relating to taxes, reporting of employees and contractors, and child support. See ‘Tax Compliance Form’ attached.

☐ CORPORATE BIDDER FORM

If the proposal is being submitted by a corporation the proposal must include a certification that the individual submitting the bid has been authorized to bind the corporation. See ‘Certificate of Corporate Authority’ attached.

☐ REQUIRED SUBMITTALS

A. The proposal must include a detailed description of the project team/ownership entity that will enter into a prospective License Agreement with the Town and subsequently construct and manage improvements on the Right of Way, the individuals and organizations to be involved in such efforts, and their experience. The descriptions of the development team must include the following information:

i. The name, address, and business telephone number of the proposer, the name of any representative authorized to act on the proposer's behalf, the name and address of the person to whom all correspondence should be addressed, and the names and primary responsibilities of each member of the development team;

ii. Proposer must provide at least three references from other lessors, licensors, or similar contractual party (Municipal References are preferred.)
B. A preliminary description of proposed physical improvements to the Right of Way;

   i. A narrative description of the proposed use and estimated square footage by use for both the sign and any related appurtenant improvements. Include any proposed construction or demolition of structures, additions, outbuildings, parking lots, landscaped areas, driveways, and other modifications to the site;

   ii. Preliminary graphic plans, at a scale sufficient to show proposed improvements and to describe the concept including schematic elevations and renderings and proposed setbacks from adjacent properties.

   iii. A narrative discussion of how the design of the proposed signage fits the goals and objectives of the Town Center Overlay District. (Attachment B – Town Center Overlay District Information)

2.2 PROPOSAL DELIVERY

Below please find a description of the manner in which sealed proposals must be submitted. Price and Non-Price proposals must be separately sealed and labeled.

2.2.1 DUE DATE AND TIME

Proposals shall be received by the Office of the Chief Procurement Officer on or before Monday, October 28, 2019, 2:00 PM

Any proposal received after that time shall be rejected as non-responsive.

2.2.2 ADDRESS

Sealed proposals shall be delivered to the Office of the Chief Procurement Officer, 29 Center Street, 2nd Floor, Burlington, MA 01803

Facsimile and email submissions will not be accepted.

2.2.3 HOURS OF OPERATION

Proposals must be delivered during the normal hours of operation of the Town of Burlington:

Monday, Tuesday, Thursday: 8:30 AM – 4:30 PM
Wednesday: 8:30 AM – 7:00 PM
Friday: 8:30 AM – 1:00 PM

2.2.4 COPIES

Proposers must submit one (1) original and three (3) copies of the proposal.
2.2.5 LABELING

Price and Non-Price proposals must be separately sealed and labeled. Each proposal shall be labeled with (1) the proposal number and title, (2) the proposal due date, (3) the name of the proposer and (4) price or non-price proposal.

2.3 SIGNATURES

A proposal must be signed as follows: 1) if the proposer is an individual, by her/him personally; 2) if the proposer is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the proposer is a corporation, by the authorized officer, whose signature must be attested to by the clerk/secretary of the corporation, and with the corporate seal affixed.

2.4 QUESTIONS, CHANGES, MODIFICATIONS AND WITHDRAWALS

2.4.1 QUESTIONS

Questions concerning this RFP must be submitted in writing to: Whitney Haskell at whaskell@burlington.org at least five (5) days prior to the bid opening date. Written responses will be mailed to all bidders on record as having picked up the RFP.

2.4.2 CHANGES

If any changes are made to this RFP, addenda will be issued. Addenda will be posted in the Office of the Purchasing Agent, on the website and e-mailed to all proposers on record as having picked up the RFP.

2.4.3 MODIFICATIONS AND WITHDRAWALS

A proposer may correct, modify, or withdraw a proposals by written notice received by the Town of Burlington prior to the time and date set the proposal due date.

Modifications must be submitted in a sealed envelope clearly labeled "Modification No.__" to the address listed in part one of this section. Each modification must be numbered in sequence, and must reference the RFP.

After the proposal due date, a proposer may not change any provision of the proposal in a manner prejudicial to the interests of the Town or fair competition. Minor informalities will be waived or the proposer will be allowed to correct them.

2.5 UNFORESEEN OFFICE CLOSURES

If, at the time of the scheduled due date, 29 Center Street, 2nd Floor, Burlington, MA 01803, is closed due to uncontrolled events such as fire, snow, ice, wind, or building evacuation, the due date will be postponed until 2:00 PM on the next normal business day. Proposals will be accepted until that date and time.
PART 3. SCOPE OF THE LICENSE

3.1 CONDITIONS

A. The License Agreement will restrict improvements to the Right of Way and the use thereof for erection of a monument/directory signage.

B. The Licensee will conduct, at their own expense, any site testing during the time period after designation as the prospective Licensee and execution of the License Agreement. The Town will assist in obtaining any necessary Town approvals as may be required for such testing. The prospective Licensee shall submit a site access plan subject to Town review and approval, showing where site testing will take place and the nature of the tests. The site access plan should include tentative dates when the Licensee wants to be on the Right of Way and any other information required by the Town.

C. If site testing indicates a Right of Way is unable to adequately support the structure as proposed, or the entirety of necessary approvals cannot obtained by the prospective Licensee from any entity with jurisdiction over the intended use of the Right of Way, the Licensee may request a termination of the award designation, with no obligation or cost resulting therefrom to be due from the Town.

D. The cost of all improvements to the Right of Way, including the erection of new structures and related improvements, and all costs associated therewith including soils, geotechnical, environmental, engineering and other testing and permitting will be the sole responsibility of the Licensee. No structures may be erected, improved, repaired or altered until the Licensee submits detailed plans and specifications to the Town for review and receives written approval of said plans and specifications from the Town and received a ‘Notice to Proceed’ for the specific Site.

E. During the term of the License Agreement, ownership of structures constructed on each Right of Way will remain with the Licensee.

F. Upon expiration or earlier termination of any License Agreement, the Town may elect to have ownership of the structures assigned and transferred to the Town. In the event the Town does not elect to take ownership of the advertising structure, the Licensee will be required to remove the structure at its sole cost.

G. Licensee shall be required to keep the area surrounding the sign in good repair. This shall include be is not limited to maintenance of grass, or other landscaping elements.

H. The proposed signage shall not fall within one or more of the following categories:

   i. Demeaning or disparaging: The sign contains material that demeans or disparages an individual or group of individuals. For purposes of determining whether a sign contains such material, the Town will determine whether a reasonably prudent person, knowledgeable of the Town and using prevailing community standards, would believe
that the advertisement contains material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of, an individual or group of individuals.

ii. Profanity: The sign components contain profane language.

iii. Violence: The sign components contain an image or description of graphic violence, including, but not limited to (1) the depiction of human or animal bodies or body parts, or fetuses, in states of mutilation, dismemberment, decomposition, or disfigurement, and (2) the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal.

iv. Unlawful Goods or services: The sign, or any material contained in it, promotes or encourages, or appears to promote or encourage, the use or possession of unlawful or illegal goods or services.

v. Unlawful conduct: The sign or any material contained in it, promotes or encourages or appears to promote or encourage, unlawful or illegal behavior or activities.

vi. Obscenity or nudity: The sign contains obscene material or images of nudity. For purposes of these Guidelines, the terms "obscene" and "nudity" shall have the meanings contained in Massachusetts General Laws Ch. 272, §31, the terms of which are incorporated herein by specific reference.

vii. Prurient sexual, suggestiveness: The sign contains material that describes, depicts, or represents sexual activities or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults in sex. For purposes of these Guidelines, the term "minor" shall have the meaning contained in Massachusetts General Laws Ch. 272, §31, the terms of which are incorporated herein by specific reference.

viii. Adult-oriented goods or services: The sign promotes or encourages, or appears to promote or encourage, a transaction related to, or uses brand names, Trademarks, slogans or other materials which are identifiable with, motion pictures or video content rated "X" or "NC-17" video games rated M or A O, adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services adult Internet sites, and escort services, or any other product or service advertising to "mature audiences".

ix. Political campaign speech: The sign contains political campaign speech. The term "political campaign speech" shall be considered that which: (1) refers to a specific ballot question, initiative petition, or referendum, or (2) refers to any candidate for public office.

x. Endorsement: Any material contained in it implies or declares an endorsement by the Town or the Commonwealth of any service, product or point of view.

xi. False, misleading, or deceptive commercial speech: Any material contained in it, is deemed false, misleading, or deceptive.
xii. Libelous speech, copyright infringement, etc: Material contained therein is libelous or constitutes an infringement of copyright or is otherwise unlawful or illegal or likely to subject the Town to litigation by third parties.

xiii. The Town shall reserve the right to require that any other material deemed objectionable be removed from the sign upon proper notice to the Licensee.

3.2 PAYMENTS TO THE TOWN

Minimum acceptable licensee fee shall be $2,500 per month.

Upon acceptance of a proposal, by the Board of Selectmen, execution of the license agreement, and receipt of payment for the entire Year 1, license fee, licensee may then proceed with construction of improvements on the Right of Way.

Subsequent license payments shall be due monthly, on the dates specified in the License Agreement.
4.1 MINIMUM REQUIREMENTS

1. Proposer has submitted all forms, supporting materials and other information as required by the “Submittal” section of this RFP.
2. Proposer must provide at least three (3) references from other lessors, licensors, or other similarly situated contracting party.
3. Proposer’s business must be located within the area defined on the map included as “Attachment A”

4.2 COMPARATIVE CRITERIA

1. Quality of References:

Proposer must provide at least three references from other lessors, licensors, or similar contractual party. (Municipal references are preferred.)

Highly Advantageous: All references were positive. A positive reference shall be defined as one that describes the proposer is a responsible and lessee, licensee, contractual party.

Advantageous: References are generally positive.

Not Advantageous: One or more negative reference or other concern was raised.

Unacceptable: All references are negative.

2. Quality of Proposed Site Plan:

The proposed site plan, including the signage and all other relevant improvements to the Right of Way.

Highly Advantageous: The proposed site plan complete, clear and comprehensive demonstration of the proposer’s plan for the intended use.

Advantageous: The proposed site plan adequately demonstrates the proposer’s plan for the intended use.

Not Advantageous: The proposed site plan is incomplete, unclear, or does not adequately demonstrate the intended us.

Unacceptable: No site plan is submitted.

3. Compliance of Proposed Signage with Town Zoning, Bylaws, Regulations and Policies
Highly Advantageous: The proposed sign design is fully compliant with all Town zoning, bylaws, regulations and policies.

Not Advantageous: The proposed sign design is not fully compliant with all Town zoning, bylaws, regulation and policies.

Unacceptable: No sign design is submitted.

4. License Fee

Highly Advantageous: The proposed license fee is greater than the stated minimum.

Advantageous: The proposed license fee is equal to the stated minimum.

Unacceptable: The proposed license fee is less than the stated minimum.

4.3 RULE FOR AWARD

Any agreement that may result from this solicitation shall be awarded to the responsible and responsive proposer offering the most advantageous proposal, taking into consideration all evaluation criteria described herein, as well as price.

4.4 SELECTION PROCESS

Following the deadline for receipt of proposals, the Chief Procurement Officer (‘CPO’) will open the proposals and prepare a register of proposals submitted. The proposals will be evaluated by an evaluation committee based on the Minimum Requirements and Comparative Criteria contained in this RFP. The evaluation committee shall notify the CPO which proposal was deemed most advantageous. The evaluation committee shall make a recommendation to the Board of Selectmen, and the Board shall make the final decision.
5.1 TERM OF AGREEMENT

The initial term of the license agreement shall terminate after ten years (or until the proposer is no longer the owner of a property within the allowable range contained in Attachment A), whichever comes first. The initial term may be extended up to ten additional years in two five year increments, subject to the approval of the Board of Selectmen. The license fee may be renegotiated after the conclusion of the initial 10 year term.

4.3 ASSIGNMENT AND SUBCONTRACTING

The selected contractor(s) shall not assign, sell, subcontract or otherwise transfer any interest in this agreement without the prior written consent of the Town.

4.4 EXAMINATION

By submitting a proposal, the Proposer warrants that he has examined the site of the work and has fully acquainted himself with all conditions and restrictions pertaining to the work and the execution thereof. No claim for any extra or extension of time will be allowed for failure to observe this requirement.

4.5 INSURANCE REQUIREMENTS

**General** - The Licensee shall before commencing performance of the Contract be responsible for providing and maintaining insurance coverage in force for the life of the Contract of the kind and in adequate amounts to secure all of the obligations under the Contract and with insurance companies licensed to write insurance in the Commonwealth of Massachusetts. All such insurance carried shall not be less than the kinds and amounts designated herein, and the Licensee agrees that the stipulation herein of the kinds and limits of coverage shall in no way limit the liability of the Licensee to any such kinds and amounts of insurance coverage. All policies issued shall indemnify and save harmless the Town of Burlington its agents and employees from any and all claims for damages to persons or property as may rise out of the performance of this Contract.

**Licensee’s Comprehensive General Public Liability and Property Damage Liability Insurance** - The Licensee shall carry Comprehensive General Liability Insurance providing for a limit of not less than Five Hundred Thousand Dollars ($500,000.00) for all damages arising out of bodily injury to or death of one person, and subject to that limit for each person, a total limit of not less than One Million Dollars ($1,000,000.00) for all damages arising out of bodily injuries or death of two or more persons in any one accident; and Licensee’s Comprehensive Property Damage Liability Insurance providing for a limit of not less than Five Hundred Thousand Dollars ($500,000.00) for all damages arising out of injury to or destruction of property in any one accident, and subject to that limit per accident, a total (or aggregate) limit or not less than One Million Dollars ($1,000,000.00) for all damages arising out of injury to or destruction of property during the policy period.
Comprehensive Automotive and Property Damage Insurance - The Licensee shall carry Automobile Insurance covering all owned vehicles, hired vehicles or non-owned vehicles under the control of the Licensee while performing work under the Contract in the amount of not less than Five Hundred Thousand Dollars ($500,000.00) for all damages arising out of bodily injuries to or death of one person and subject to that limit for each person, a total of not less than One Million Dollars ($1,000,000.00) for all damages arising out of bodily injuries to or death of two or more persons in any one accident; and Property Damage coverage in the amount of not less than Five Hundred Thousand Dollars ($500,000.00) for all damages to or destruction of property.

The Licensee must carry Workman’s Compensation Insurance in the amounts prescribed under Massachusetts State Law and meet all other Town and State Laws and Regulations.

No cancellation(s) of such insurance, whether by the insurer or by the insured party shall be valid unless written notice thereof is given by the parties proposing cancellation to the other party and to the Town of Burlington at least fifteen (15) days prior to the intended effective date thereof, which date shall be expressed in said notice, which shall be sent by registered mail, return receipt requested. These provisions shall apply to the legal representative(s), trustee in bankruptcy, receiver, assignee, trustee, and successor(s) in interest of the Licensee.

All insurance coverage shall be at the sole expense of the Licensee and shall be placed with such company as may be acceptable to the Town of Burlington and shall constitute a material part of the contract documents. Failure to provide written proof to Town and continue in force such insurance as aforesaid shall be deemed a material breach of the contract, and may constitute sufficient grounds for immediate termination of the same.

4.5 INDEMNIFICATION

Unless otherwise provided by law, the Licensee will indemnify and hold harmless the Town against any and all liability, loss, damages, costs or expenses for personal injury or damage to real or tangible personal property which the Town may sustain, incur or be required to pay, arising out of or in connection with the performance of the Contract by reason of any negligent action/inaction or willful misconduct by the Contractor, its agents, servants or employees.

4.6 FEDERAL AND STATE LAW

The selected contractor shall comply with all applicable Federal, State and Local laws and ordinances.

4.7 SAMPLE LICENSE AGREEMENT

See Attachment B – Sample License Agreement.
ATTACHMENT A – RIGHT OF WAY MAP