



**CITY OF FREDERICKSBURG
VIRGINIA**

NOTICE OF AWARD

March 15, 2019

Tourism Study

RFP 19-0116

The City of Fredericksburg awards the contract for Tourism Operations Analysis and ongoing for \$35,000 to DMO Proz, Madison, WI 53708.

Timothy J. Bafoody, City Manager



**CONTRACT CoF-19-0116-DMO
BETWEEN
CITY OF FREDERICKSBURG, VIRGINIA
AND
ZEITGEIST CONSULTING dba DMO PROZ**

This is a Contract between the City of Fredericksburg, Virginia ("City") and DMO Proz (the "Contractor") for the provision of an analysis of the City's tourism operation under the City's Request for Proposal #19-0116 and the Contractor's proposal dated January 21, 2019 and modified through any negotiated agreements.

I. SCOPE OF CONTRACT

All requirements proposed for a tourism operation analysis as stated in the Request for Proposal; and the solution as delineated in Contractor's proposal and any negotiated agreements.

II. TERM

The Contract shall be effective from May 1, 2019 through August 30, 2019. All orders and related documents shall survive the period of performance stated in this section until all orders (executed prior to the expiration date of the contract) have been completely performed.

III. RENEWAL OF CONTRACT

This contract has no renewals.

IV. INTERPRETATION OF CONTRACT

The contract consists of, in this order of precedence,: (1) this contract form; (2) all executed orders and attachments referencing this contract (3) the original request for proposal and any addenda; and (4) the Contractor's solution, as set out in the Contractor's proposal submitted and modified through any negotiated agreements.

V. PRICING AND PAYMENT SCHEDULE

Progress payments will be made during the project at the intervals indicated in the payment schedule below. In the event that additional work is requested to update the study, invoices for hourly rates of service shall be submitted for authorization and payment.

Completion Milestones	Payment %
Assessment and Analysis – inclusive of all travel expenses.	
Project Kickoff	
Scoping /Identification and Request for Documentation	10
Review of documentation and research, general operations, structure, Governance & productivity/ROI	30
Interviews with key stakeholders & professional staff	30

Compilation of data and interview notes / Follow up phone interviews, if necessary / Preparation of analysis & recommendations / Oral presentation of the final report to the City Council	30
Total Fees not to exceed \$35,000	

Optional Services	Fee
Hourly Rate for Bill Geist	\$200/hr.
Hourly Rate for Terri White	\$175/hr.

VI. REPORTING AND DELIVERY INSTRUCTIONS

The contractor shall provide a semi-monthly progress report to the City's Project Manager beginning May 15, 2019, and continuing on the 30th and 15th of every month until the contract work is completed outlining the following:

1. The specific accomplishments achieved during the reporting period.
2. The specific tasks completed pursuant to the provisions of the contract and the completion dates of such tasks.
3. The projected completion dates for the remaining specific tasks required by the contract.

At least two (2) weeks prior to the submission of the final report, the Contractor shall present a preliminary draft of the final report to the City Project Manager. The City shall have the right to require additional elaboration as it deems necessary to ensure a comprehensive written report. On or before the ending period of performance specified in the contract, the final report shall be delivered to the Project Manager. The contractor shall furnish **four (4) copies** of the final report and an electronic file.

The contractor shall make at least one (1) oral presentation of the final report to the City Council as deemed necessary by the Project Manager.

Timeline of Events		Date
1/2 Day Project Kickoff Meeting Scoping /Identification and Request for Documentation	On Site	May 1, 2019
2-3 Days Initial Research and Document/Data Collection		
1/2 Day Travel to and from= 1 Full Day 5 Days in market for Stakeholder Interviews and Meetings	On Site	June 3-7, 2019
3-4 Days Compilation of Productivity, Operations, Governance and Interview Notes 5 Days Writing, Analysis and Recommendations		
1/2 Day Additional Conference Calls to review and discuss		
1 Day to Present Findings, Analysis and Recommendations		
1/2 Day Travel to and from= 1 Full Day Oral presentation of the final report to the City Council	On Site	August 13, 2019

VII. TERMS

1. **Authorization to do Business in Virginia.** Contractor is authorized to do business in Virginia as a domestic or foreign business entity under Title 13.1 or Title 50 of the Virginia Code. Contractor will not allow its existence to lapse or its certificate of authority or registration to do business in Virginia to be revoked or cancelled during the term of this contract.
2. **Relation to City.** Contractor is an independent contractor of the City. This contract does not create an employment relationship between the City and Contractor or any of its employees.
3. **Prime Contractor and Subcontractors.** Contractor has prime responsibility for all services and goods to be provided under this contract, specifically including adequate supervision of work to be performed. This contract is only between Contractor and the City, and Contractor accepts full responsibility for the work performed and goods provided by, and the acts and omissions of, its subcontractors.

Subcontractor will not subcontract for any part of this contract without the advance written permission of the City Purchasing Manager. Contractor will provide the names, qualifications, and experience of any proposed subcontractors to the City Purchasing Manager.

4. **Modifications.** Only the City Manager or City Purchasing Manager may modify this contract on behalf of the City. Only the original signatory of the contract on behalf of Contractor, or another individual authorized in writing by Contractor to modify the contract, may modify the contract on behalf of Contractor. Modifications to this contract can only be authorized in accordance with Code of Virginia § 2.2-4309. Modifications can only be authorized by the following methods:

City and Contractor may agree in writing to modify the terms of the contract. Any additional goods or services to be provided must be of a sort that is ancillary to, or within the same broad product or services categories as, those provided for in the original contract.

The City may issue written change orders for changes such as services to be performed, methods of packing or shipping, and place of delivery or installation. If Contractor determines that the change order will not necessitate a change in compensation or schedule, Contractor will comply with the change order upon receipt. If Contractor determines that the change order will necessitate a change in compensation or schedule, Contractor will notify the City of that determination, and only proceed to comply with the change order upon the City's written approval.

The contract may be renewed by agreement if provided for in the description of the contract term.

Contractor shall not require any employee or agent of the City other than the City Manager or Purchasing Manager to execute any additional contract, license, or other agreement pertaining to this contract.

5. **Freedom of Information Act.** All records pertaining to this contract may be open to inspection by the public under the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et. seq.*) unless specifically exempted under the Act (including records properly exempted under Code of Virginia § 2.2-4342).
6. **Audit.** Contractor will retain all records related to this contract for 5 years after final payment or until audited by the City, whichever comes first. The City may inspect these records upon reasonable notice to Contractor.

7. **Ethics in Public Contracting.** Contractor certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.
8. **Immigration.** Contractor does not, and will not during the performance of this contract, knowingly employ an unauthorized alien as defined in federal Immigration Reform and Control Act of 1986. Contractor will register for and participate in the federal E-Verify Program if required to do so under Code of Virginia § 2.2-4308.2. Contractor will provide the City with a copy of their E-Verify "Maintain Company" page to the City upon request. Failure to comply with E-Verify requirements subjects Contractor to automatic disbarment from City procurement until the requirements are met.
9. **Non-Discrimination.** Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. Contractor will post in conspicuous places, available to employees and applicants for employment, notices stating the terms of this section.

Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that the contractor is an equal opportunity employer.

Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation are sufficient for the purposes of this section.

Contractor will include the terms of this section in every subcontract or purchase order of over \$10,000, so that the terms will be binding upon each subcontractor and vendor.

Contractor will conform to the Federal Civil Rights Act of 1964, the Virginia Fair Employment Contracting Act of 1975, the Virginians with Disabilities Act, and § 2.2-4343.1E of the Virginia Public Procurement Act.

10. **Drug-Free Workplace.** Contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violating that prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace; and (iv) include the terms of this section in every subcontract or purchase order of over \$10,000, so that the terms will be binding upon each subcontractor and vendor.
11. **Payments.** Contractor must provide its federal employer identification number and W-9 to the City before requesting payment.

Contractor will submit itemized invoices, with appropriate documentation, to the City, at the payment address shown on the purchase order or contract. All invoices must show the City contract or purchase order number and Contractor's federal employer identification number. No invoice may include any cost other than those listed in the contract or in an individual purchase order referencing the contract.

The City will pay invoices within 30 days of receipt. Any invoice not paid within 30 days will accrue 1% interest per month. When payment is made by mail, the date of the postmark will be considered the date of payment. If offset proceedings have been instituted under the Virginia Debt Collection Act, the date of offset will be considered the date of payment.

Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time an order is placed. In these cases, payments are contingent on the City's determination that all invoiced charges are reasonable. The City will notify Contractor within 30 days of invoice of any charges it determines to be unreasonable. Payment for those charges will be suspended until a settlement is reached. Contractor will not take legal action concerning the charges unless a settlement is not reached within 30 days of notification.

12. **Subcontractor Payments.** Within 7 days after receipt of payment by the City for work performed by a subcontractor, Contractor shall a) pay the subcontractor for the proportionate share of the total payment received from the City attributable to the subcontractor's work, or b) notify the City and the subcontractor, in writing, of Contractor's intention to withhold payment and the reason for withholding the payment.

Contractor will pay interest of 1% per month to subcontractors on all amounts owed to the subcontractors which has not been paid or withheld under the terms of the preceding paragraph.

Contractor must require individual subcontractors to provide their social security numbers, and proprietorship, partnership, and corporate subcontractors to provide their federal employee identification numbers. Contractor will provide this information to the City upon request.

Contractor must require subcontractors to include the terms of this section in all contracts with other subcontractors.

13. **Non-appropriation.** All funds for payments after June 30 of the current fiscal year are subject to appropriation by the City Council. If Council does not appropriate the required funds, the City will terminate this contract on June 30 of the then-current fiscal year.

14. **Indemnification.** Contractor will save, defend, hold harmless, and indemnify the City, and all of its elected and appointed officials, officers, employees, agents, departments, agencies, boards, and commissions from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with Contractor's negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor in performance or nonperformance of its work under the contract. This indemnification survives the termination of the contract.

15. **Insurance.** Contractor and any subcontractors will maintain the following insurance coverage, provided by insurance companies authorized by the Virginia SCC to offer insurance in Virginia, during the entire term of the contract. Contractor will provide copies of its Certificates of Insurance to the City.

- a. Workers' Compensation—as required by law.
- b. Employer's Liability--\$100,000.
- c. Commercial General Liability--\$1,000,000 per occurrence and \$2,000,000 in the aggregate. The City must be named as an additional insured on this policy.
- d. Automobile Liability -- \$1,000,000 combined single limit, if any motor vehicle not owned by the City is to be used in performance of the contract.

16. **Licensing.** Contractor will maintain all licenses and certifications required by applicable federal, state, and local governmental entities for provision of the goods and services to be provided under this contract.
17. **Assignment.** Contractor will not assign or otherwise transfer any of its rights, obligations, or interests in this contract without the written permission of the City.
18. **Antitrust.** By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the City all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the City under said Contract.
19. **Choice of Law, Venue.** This contract is governed by Virginia law. The Circuit Court of Fredericksburg, Virginia is the exclusive venue for any litigation regarding this contract.
20. **Claims.** Contractor must notify the City in writing of its intention to file a claim at the time of the occurrence or beginning of the work upon which the claim is based. All claims must be submitted less than 60 days after the final contract payment.
21. **Dispute Resolution.** The parties will first endeavor to resolve any disputes, claims, or other matters in question between them through direct negotiations, and if direct negotiations fail, by non-binding mediation, with the exclusive venue of the mediation being the City of Fredericksburg. Should the dispute remain unresolved either (i) following negotiation and mediation, or (ii) more than 90 days after a party has requested mediation, either party may institute a lawsuit or chancery action, as appropriate, in Fredericksburg Circuit Court, and may pursue all available appeals in Virginia state courts, to the extent they have jurisdiction. Any agreement reached in mediation must be reduced to writing and executed by the parties; upon execution, the agreement will be enforceable as a settlement agreement.
22. **Default.** The City is in default 1) if it fails to pay any amount due to Contractor; or 2) upon any other material failure to comply with the terms of the contract. Contractor is in default upon any material failure to comply with the terms of the contract.

A party alleging that the other party is in default must provide the allegedly defaulting party with written notice specifying the alleged default and allow 30 days for the default to be cured.
23. **Remedies.** If the City does not cure a default after receiving notice, Contractor may a) terminate this contract, and b) exercise all remedies available at law. If Contractor does not cure a default after receiving notice, the City may a) terminate the contract, b) exercise all remedies available at law, and c) collect liquidated damages if available under Special Contract Terms. If the default is a failure to provide required goods or services, the City may, upon written notice to Contractor, procure those goods or services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs.
24. **Termination.** The City may terminate this contract for any reason upon 30 days notice to Contractor. The City will promptly pay all amounts already earned by Contractor and reasonable expenses incurred in reliance upon the contract, up to the effective date of the termination. Receipt of the notice does not affect Contractor's obligations under the contract, including fulfillment of outstanding orders, up to the effective date of termination.

The parties can agree to terminate this contract at any time.

25. **Notices.** Any notices pertaining to this contract must be sent by first-class mail to:

To the City:

Economic Development and Tourism
Attn: Bill Freehling
706 Caroline Street
Fredericksburg, VA 22401

To the Contractor:

The address listed on Contractor's Proposal. Contractor may change its address for notices by notifying the City in writing of the change.

26. **Severability.** If a court declares any part of this contract to be invalid, void, or unenforceable, the rest of the contract remains in effect.
27. **Strict Performance.** The failure of a party to insist upon the other party's strict performance of the terms of the contract is not a waiver of the right to insist upon strict performance of those terms at a later time.
28. **Cooperative Procurement.** Public bodies other than the City of Fredericksburg may purchase goods and services from Contractor under the terms of this contract, under Virginia Code § 2.2-4304.
29. **Confidentiality.** Contractor will hold confidential any information provided by the City under this contract. Contractor will not disclose this information to any third party, during or after the term of this contract, unless required to do so by valid court order or subpoena.
30. **Project Manager/Officer.** Contractor shall designate an employee as project manager for this contract. Contractor shall not assign any duties to the project manager that would conflict with the manager's responsibilities under this contract. Contractor will only designate a different project manager with the City's written permission, which will not be unreasonably withheld.

The project manager is responsible for coordination of all of Contractor's work under the contract, such as overall control over Contractor's work, communication with the City's point-of-contact, securing required approvals and permissions (work orders, etc.) from the City, attending meetings with the City, and consulting with the City as requested.

31. **No Other Costs.** Contractor warrants that the City will incur no costs either on a one-time or continuing basis, other than those specified in this contract.
32. **Adjustments for Change in Scope.** The City may order changes in the work within the general scope of the work consisting of additions, deletions or other revisions. No claim may be made by the Contractor that the scope of the project or of the Contractor's services has been changed requiring adjustments to the amount of compensation due the Contractor unless such adjustments have been made by a written amendment to the Contract signed by the City and the Contractor. If the Contractor believes that any particular work is not within the scope of the project or is a material change or otherwise will call for more compensation to the Contractor, the Contractor must immediately notify the Project Officer in writing of this belief. Within ten (10) days after any change or event which the Contractor believes calls for more compensation, the Contractor must provide to the Project Officer a proposal which sets forth the amount of additional compensation claimed, the basis for the claim, and documentation supporting the claim. The Contractor will not be compensated for performing any work unless a proposal complying with this paragraph has been submitted in the

time specified above and a written amendment has been signed by the City and the Contractor and a City purchase order is issued covering the cost of the services to be provided under the amendment. If the Project Officer believes that the work is within the scope of the Contract as written, the Contractor will be ordered to continue work.

33. **Personnel.** All of Contractor's personnel providing goods and services under the contract shall be adequately qualified to provide those goods and services. Contractor shall remove from the project and replace any of Contractor's personnel that the City deems unsuitable for the project.
34. **Assessment Reviews.** Contractor and the City shall meet through the contract term at the City or via phone conference, to review the planning and progress of the project. Contractor's project manager shall attend all of these meetings. Contractor shall respond promptly to any concerns raised by the City at the meetings.
35. **Ownership of Documents.** All information supplied by the City under this contract remains the sole property of the City. All materials (such as methods, formulae, processes, improvements, strategies, data, and original works of authorship) prepared by Contractor specifically in performance of this contract become property of the City. Upon completion of the task orders or termination of the contract, the Contractor shall promptly return to the City all data supplied by the City still in Contractor's possession, and Contractor shall turn over to the City originals of all materials prepared specifically in performance of this contract, in hard copy, electronic format, or both, as desired by the City. Contractor assigns to City the copyrights to all work prepared, developed, or created under this contract, including the right to: 1) reproduce the work; 2) prepare derivative works; 3) distribute copies to the public; and 4) display the work publicly.
36. **Report Standards.** Reports or written material prepared by the Contractor in response to the requirements of this Contract shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with the Contract requirements shall be borne by the Contractor.
37. **Advertising.** Contractor will not make any news or advertising releases pertaining to this contract for any purpose, specifically including use for marketing references, without advance written permission from the City.

VIII. METHOD OF PAYMENT

The contractor shall be paid using one of the following methods for all procurements:

1. **Small Purchase Charge Card (SPCC):** At the time of verified receipt of goods or services, if the Contractor accepts credit cards in payment, the City will authorize payment by SPCC, currently Bank of America Visa. Any "Check-out fees" imposed by the contractor must be disclosed prior to the purchase and shall be detailed in a separate line item on the receipt at point of sale. No check-out fee or surcharge may be greater than 4% of the total sale.

2. Check or ACH: Payment will be made 30 days after satisfactory performance of the contract in all provisions thereof and upon receipt of a properly completed invoice, whichever is later; in accordance with the Virginia Prompt Payment Act. Ref.: Code of Virginia, Sections 11-62.1 through 11-62.9.

To be considered eligible for payment, **all invoices must be received at the following address and should reference the purchase order and contract numbers:**

Economic Development and Tourism
 Attn: Danelle Rose
 706 Caroline Street
 Fredericksburg, VA 22401

IX. ORDERING PROCEDURES

The City intends to issue one purchase order for the specific work identified in the proposal.

X. AUTHORIZED REPRESENTATIVES

DMO PROZ

Bill Geist
 President
 PO Box 14493
 Madison, WI 53708
 Tel: 608.999.0325
 Email: info@DMOproz.com

CITY OF FREDERICKSBURG

Lynn Enders, CPPO, VCM, VCO
 Purchasing Manager
 715 Princess Anne Street
 Fredericksburg, VA 22401
 Tel: 540.479.8776
 Email: lenders@fredericksburgva.gov

By signing below, I represent that I am authorized to enter into this contract on behalf of the party that I represent, and intend to bind that party to the terms of the contract.

BY: *Bill Geist*
 NAME: Bill Geist
 TITLE: PRINTED President
 DATE: 03/15/2019

BY: *Timothy J. Baroody* WGF
 NAME: Timothy J. BAROODY
 TITLE: PRINTED City Manager
 DATE: 3/21/19

Approved as to form: *Rob Eckstrom*
 Rob Eckstrom
 Assistant City Attorney