

CITY OF DES PLAINES  
PROPOSAL AND CONTRACT  
FOR PURCHASE AND DELIVERY OF PRODUCTS  
“BARRACUDA BACKUP SERVER”  
ISSUED: FEBRUARY 2016

**OWNER:**

City of Des Plaines (the “City”)  
1420 Miner Street  
Des Plaines, Illinois 60016

The City seeks sealed proposals and contract agreement for pricing and delivery of the Products described in Exhibit A., titled “Specifications”.

TO BE SUBMITTED TO: City of Des Plaines, 1420 Miner Street, Des Plaines, Illinois 60016  
**Attention: City Clerk, before 10:00 A.M. on FEBRUARY 18, 2016**

The Product(s) must be delivered to the following address:

**City of Des Plaines, IT Department**  
**4<sup>th</sup> Floor**  
**1420 Miner Street**  
**Des Plaines, IL 60016**  
(the “Delivery Address”)

Proposal

By filling out this Contract form, the Vendor proposes to enter into this Contract for delivery of the Products for the stated prices and in accordance with all other terms of this Contract. All contract proposals must be dated on Page 4 of the Contract form and must be signed by an authorized official. All contract proposals shall be accompanied by a cashier’s or certified check, or bid bond in form and from a surety satisfactory to Owner, in amount equal to at least 5 percent of the Total Contract Price named in the Schedule of Prices section of the Contract form.

Clarifications

The City reserves the right to make clarifications, corrections, or changes in this Contract before it is accepted by the City and the Vendor. If any vendor has questions about this Proposal and Contract, vendor may submit inquiries via email to **finance\_purchasing@desplaines.org**. All inquiries must be in writing and received no later than FEBRUARY 10, 2016 at 5:00 P.M. CST. Inquiries will be addressed in a published addendum. All vendors are responsible for monitoring the City’s website, obtaining and acknowledging any and all addenda issued by the City in connection with this Contract, and attaching all such addenda to their contract proposal, which addenda will be incorporated into every vendor’s contract proposal.

Delivery of Contract Proposal

Each proposal shall include both one hard copy and one electronic copy (PDF format) on a CD, DVD, or USB

Flash Drive and shall be delivered to the place set forth above, prior to the date and time set forth above, in a sealed envelope plainly marked with the title of the

Contract and the Vendor’s full legal name. The Contract proposal may be delivered by mail or in person.

Opening of Contract Proposals

If the Products are being priced competitively among several vendors, then the Vendor’s Contract proposal will be publicly opened and read at the time and place specified above. The Vendor is invited to be present.

Withdrawal of Contract

The Vendor may not withdraw its Contract for 30 days after it is delivered to the City.

Rejection of Contract

If the Vendor’s Contract is not prepared or submitted properly, then the City may reject the Contract. If the City does not reject the Contract, then the City may require correction of any deficiency and accept the Contract after it is corrected.

Acceptance of Contract

The City may accept the Vendor’s Contract if the City determines that it is the best and most favorable to the interests of the City and to the public. The City otherwise may reject the Contract or accept it in part if appropriate, and may waive irregularities and informalities in the Contract.

If the City accepts the Contract, then the Contract, together with the City's notification of acceptance in the attached form becomes the Contract.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF DES PLAINES**

By: Joe Catalano

Its: Financial Analyst, Procurement

*[title of City officer]*

CITY OF DES PLAINES

CONTRACT FOR PRICING AND DELIVERY OF A BARRACUDA BACK UP SERVER

Full Name of Vendor \_\_\_\_\_

Principal Office Address \_\_\_\_\_

Local Office Address \_\_\_\_\_

Contact Person \_\_\_\_\_ Telephone Number \_\_\_\_\_

TO: City of Des Plaines
1420 Miner Street
Des Plaines, Illinois 60016
Attention: Joe Catalano

Vendor warrants and represents that Vendor has reviewed and understood all documents included, referred to, or mentioned in this set of documents, including all addenda, Exhibit A, and Exhibit B, all of which are securely stapled to the end of this Contract.

Vendor provides written documentation establishing that the brand or model it proposes to deliver possess equal quality, durability, functionality, capability, and features as the Product specified.

1. Contract to Deliver Products

A. Contract and Products. The Vendor shall, deliver to the City, at the Delivery Address, the products, items, materials, merchandise, supplies, or other items identified in this Contract (the "Products") in new, undamaged, and first-quality condition. Vendor further shall:

- 1. Labor, Equipment, Materials, and Supplies. Provide, perform, and complete, in the manner specified and described in this Contract, all necessary work, labor, services, transportation, equipment, materials, supplies, information, data, and other means and items necessary to deliver the Products to the City in a proper and workmanlike manner;
2. Permits. Procure and furnish all permits, licenses, and other governmental approvals and authorizations necessary for the Products;
3. Bonds and Insurance. Procure and furnish all bonds and all insurance certificates and policies of insurance, if any, specified in this Contract;
4. Taxes. Pay all applicable federal, state, and local taxes; and
5. Miscellaneous. Do all other things required of Bidder by this Contract.

B. Performance Standards. The Vendor agrees that the Products will comply strictly with the description of products in the Specifications attached hereto and by this reference made a part of this Contract. If this Contract specifies a Product by brand name or model, that specification is intended to reflect the required performance standards and standard of excellence that the City requires for the Product. However, the Vendor may propose to deliver a Product that is a different brand or model, if the

C. Responsibility for Damage or Loss. The Vendor shall be responsible and liable for, and shall promptly and without charge to the City, repair or replace, any damage done to, and any loss or injury suffered by, the City as a result of the Vendor's failure to perform hereunder.

D. Inspection/Testing/Rejection. The City shall have the right to inspect all or any part of the Products. If, in the City's judgment, all or any part of the Products is defective or damaged or fails to conform strictly to the requirements of this Contract, then the City, without limiting its other rights or remedies, may, at its discretion: (i) reject such Products; (ii) require Bidder to correct or replace such Products at Bidder's cost; (iii) obtain new Products to replace the Products that are defective, damaged, or nonconforming and charge Bidder with any excess cost incurred thereby; and/or (iv) cancel all or any part of any order or this Contract. Products so rejected may be returned or held at Bidder's expense and risk.

2. Pricing

The Vendor shall deliver the Products to the City in accordance with the prices set forth in Exhibit B titled "Schedule of Prices," attached hereto and by this reference made a part of this Contract.

If the City has specified the Quantity of Products to be delivered to the City in the Schedule of Prices, then the Vendor shall take, in full payment for all Products and other matters set forth under Section 1 of this Contract, including overhead and profit, taxes, royalties, license fees, delivery, contributions and premiums, and compensation to all subcontractors and suppliers, the total Contract Price of:

\_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (in figures only)

If the City has not specified the Quantity of Products to be delivered to the City in the Specifications section of this Contract, then the Vendor shall take, in full payment for all Products and other matters set forth under Section 1 of this

Contract, including overhead and profit, taxes, royalties, license fees, delivery, contributions and premiums, and compensation to all subcontractors and suppliers, a total Contract Price that will be equal to the sum of the Unit Prices (as determined by the Schedule of Prices) applicable to all Products accepted by the City.

B. Basis for Determining Prices. It is expressly understood and agreed that:

1. All prices stated in the Pricing section are firm and shall not be subject to escalation or change;
2. The City is not subject to state or local sales, use, and excise taxes, and no such taxes are included in the Pricing section, and that all claims or rights to claim any additional compensation by reason of the payment of any such tax are hereby waived and released;
3. All other applicable federal, state, and local taxes of every kind and nature applicable to the Products are included in the Pricing; and
4. If a Quantity of Products to be delivered to the City is specified in the Specifications, then that amount is an estimate only. The City reserves the right to increase or decrease such quantity, and the total Contract Price to be paid will be based on the final quantity determined by the City for each Product and the actual number of Products that comply with this Contract that are accepted by the City. The Vendor hereby waives and releases all claims or rights to dispute or complain of any such estimated quantity or to assert that there was any misunderstanding in regard to the number of Products to be delivered.

C. Time of Payment

It is expressly understood and agreed that all payments shall be made in accordance with the following schedule:

After delivery of the Products, the Vendor will submit an invoice to the City for the total Contract Price and, subject to the City's right to deduct or setoff payments for Vendor's failure to perform under this Contract, the City will pay the Contract Price not less than 45 days after receipt of the invoice.

All payments may be subject to deduction or setoff by reason of any failure of the Vendor to perform under this Contract.

3. Contract Time

The Vendor shall deliver the Products to the City at the Delivery Address not later than 30 days after the Owner's acceptance of the Contract.

4. Financial Assurance

A. Indemnification. The Vendor shall indemnify, save harmless, and defend the City against all damages, liability, claims, losses, and expenses (including attorneys' fees) that may arise, or be alleged to have arisen, out of or in connection with the Vendor's performance, or failure to perform, under this Contract, including, without limitation, any failure to meet the representations and warranties set forth in Section 6 of this Contract.

B. Penalties. The Vendor shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with the Vendor's performance, or failure to perform, under this Contract.

5. Firm Contract

All prices and other terms stated in this Contract are firm and shall not be subject to withdrawal, escalation, or change provided the City accepts this Contract within 30 days after the date this sealed Contract is opened.

6. Bidder's Representations and Warranties

In order to induce the City to accept this Contract, the Vendor represents and warrants as follows:

A. The Products. All Products, and all of their components, shall be of merchantable quality and, for a period of not less than **[one year]** after delivery to the City: (1) shall be free from any latent or patent defects or flaws in workmanship, materials, and design; (2) shall strictly conform to the requirements of this Contract, including, without limitation, the performance standards set forth in Subsection 1B of this Contract; and (3) shall be fit, sufficient, and suitable for the purposes expressed in, or reasonably inferred from, this Contract. The warranties expressed herein shall be in addition to any other warranties applicable to the Products (including any manufacturer's warranty) expressed or implied by law, which are hereby reserved unto the City.

B. Compliance with Laws. All Products, and all of their components, shall comply with, and the Vendor agrees to be bound by, all applicable federal, state, and local laws, orders, rules, and regulations, as they may be modified or amended from time to time. Every provision required by law to be inserted into this Contract shall be deemed to be inserted herein.

C. Not Barred. The Vendor is not barred by law from contracting with the City or with any other unit of state or local government as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless the Vendor is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of tax, as set forth in 65 ILCS 5/11-42.1-1; (2) a violation of either Section 33E-3 or Section 33E-4 of Article 33 of the Criminal Code of 1961, 720 ILCS 5/33E-1 et seq.; or (3) any other reason.

D. Qualified. The Vendor has the requisite experience, ability, inventory, capital, facilities, equipment, plant, organization, and staff to enable the Vendor to deliver the Products at the Contract Price and within the Contract Time set forth above.

7. Acknowledgements

In submitting this Contract, the Vendor acknowledges and agrees that:

A. Reliance. The City is relying on all warranties, representations, and statements made by the Vendor in this Contract.

B. Binding Effect. The Vendor is bound by each and every term, condition, or provision contained in this Contract and in the City's written notification of acceptance in the form included in this bound set of documents.

C. Remedies. Each of the rights and remedies reserved to the City in this Contract are cumulative and additional to any other or further remedies provided in law or equity or in this Contract.

E. Time. Time is of the essence in the performance of all terms and provisions of this Contract. Except where specifically stated otherwise, references in this Contract to days shall be construed to refer to calendar days and time.

F. No Waiver. No examination, inspection, investigation, test, measurement, review, determination, decision, certificate, or approval by the City, whether before or after the City's acceptance of this Contract; nor any information or data supplied by the City, whether before or after the City's acceptance of this Contract; nor any order by the City for the payment of money; nor any payment for, or use, possession, or acceptance of, the whole or any part of the any Product by the City; nor any extension of time

granted by the City; nor any delay by the City in exercising any right under this Contract; nor any other act or omission of the City shall constitute or be deemed to be an acceptance of any defective, damaged, or nonconforming Product, nor operate to waive or otherwise diminish the effect of any representation or warranty made by the Vendor; or of any requirement or provision of this Contract; or of any remedy, power, or right of the City.

G. Severability. It is hereby expressed to be the intent of the parties to this Contract that should any provision, covenant, agreement, or portion of this Contract or its application to any Person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Contract and the validity, enforceability, and application to any Person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Contract to the greatest extent permitted by applicable law.

H. Amendments and Modifications. No amendment or modification to this Contract shall be effective until it is reduced to writing and approved and executed by the corporate authorities of the parties in accordance with all applicable statutory procedures.

I. Assignment. Neither this Contract, nor any interest herein, shall be assigned or subcontracted, in whole or in part, by the Vendor except upon the prior written consent of the City.

J. Governing Law. This Contract shall be governed by, construed and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

DATED this \_\_\_\_ day of \_\_\_\_\_ 2016.

By submitting this Contract proposal, Vendor hereby represents, warrants, and certifies that:

- Vendor has carefully examined and read the Contract proposal and all related documents in their entirety.
- The person signing the Contract proposal on behalf of Vendor is fully authorized to execute the Contract and bind Vendor to all of the terms and provisions of the Contract.
- Vendor has fully completed the entire Contract form, including the Total Contract Price.
- Vendor has submitted a certified check or bid bond, as required (see Page 1 - Proposal).
- Vendor has checked the City's website for any addenda issued in connection with this contract proposal, hereby acknowledges receipt of Addenda Nos. \_\_\_\_\_ [VENDORS MUST INSERT ALL ADDENDA NUMBERS], has attached these addenda to Vendor's contract proposal, and acknowledges and agrees that, if Vendor's contract proposal is accepted, these addenda will be incorporated into the Contract and will be binding upon Vendor.
- Vendor has included both one hard copy and one electronic copy (PDF format) on a CD, DVD, or USB Flash Drive of its Contract proposal.
- Vendor has submitted its Contract proposal in a sealed envelope that bears the full legal name of Vendor and the name of the Contract.

Vendor's Status: ( ) \_\_\_\_\_ Corporation ( ) \_\_\_\_\_ Partnership ( ) Individual Proprietor  
 (State) (State)

Vendor's Name: \_\_\_\_\_

Doing Business As (if different): \_\_\_\_\_

Signature of Vendor or Authorized Agent: \_\_\_\_\_ Date: \_\_\_\_\_

(corporate seal)  
 (if corporation)

Printed Name: \_\_\_\_\_

Title/Position: \_\_\_\_\_

Vendor's Business Address: \_\_\_\_\_  
 \_\_\_\_\_

Vendor's Business Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

If a Corporation or Partnership, list all Officers or Partners:

NAME	TITLE	ADDRESS

**ACCEPTANCE**

The Contract attached hereto and by this reference incorporated herein and made a part hereof is hereby accepted by the order of the City of Des Plaines (the "City") this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

This Acceptance, together with the Contract attached hereto, constitutes the entire and only agreement between the parties relating to the Products and the compensation therefor and supersedes and merges any other prior or contemporaneous discussions, agreements, or understandings, whether written or oral, and shall prevail over any contradictory or inconsistent terms or conditions contained in any purchase order, acceptance, acknowledgement, invoice, or other standard form used by the parties in the performance of the Contract. Any such contradictory or inconsistent terms or conditions shall be deemed objected to by the City without further notice of objection and shall be of no effect nor in any circumstances binding upon the City unless accepted by the City in a written document plainly labeled "Amendment to Agreement." Acceptance or rejection by the City of any such contradictory or inconsistent terms or conditions shall not constitute acceptance of any other contradictory or inconsistent terms or conditions.

**CITY OF DES PLAINES**

By: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT A**

### **SPECIFICATIONS BARRACUDA BACKUP SERVER ISSUED: FEBRUARY 2016**

#### **I. Introduction**

The City of Des Plaines ("City") seeks to upgrade and replace the City's existing Backup Server. The City seeks qualified vendors to furnish the new Backup Server and provide necessary services in accordance with the terms, conditions, and specifications contained in this contract proposal. The City also seeks vendors to offer a trade-in value for its current Backup Server.

#### **II. Background Information**

The City of Des Plaines currently utilizes the Barracuda Backup 890 server for its data backup needs. This device has been in place for approximately three years, and has an internally rated capacity of 16TB. Over the course of the past three years, the City's data volumes have increased accordingly that the current Barracuda Backup 890 server's 16TB internal capacity is no longer sufficient to back up all the City's data.

#### **III. Specifications**

The City seeks sealed proposals and contract agreement for pricing and delivery of the following Products and quantities:

Note: Products are manufacturer/brand specific.

- A** 1 Barracuda Backup 990 Server with 33TB of internal capacity.
- B** 1 Year Barracuda Backup 990 Server Energizer Updates and Instant Replacement subscription.
- C** 1 Year Barracuda Backup 990 Server Unlimited Cloud Storage subscription<sup>1</sup>

#### **IV. Trade In**

Vendors may also propose Trade-In credit for the City's existing Barracuda BBS 890 to BBS:

- Hardware: Model 890, S/N 422637
- Energizer Updates
- Instant Replacement
- Cloud Storage

**EXHIBIT B – Schedule of Prices**

The prices inserted must include all of the direct and indirect costs of performing the services.

**Equipment & Materials Costs**

Product No.	Description of Products to be Delivered to the City	Quantity	Price
BC-BBS990a	Barracuda Backup Server 990, 33TB Internal Capacity	1	\$
BC-BBS990a-eh1	BBS990 1 Year EU + IR Bundle	1	\$
BC-BBS990a-b1	1 Year Barracuda Backup Server 990 Unlimited Cloud Storage 22499	1	\$
Freight	Shipping of BBS990 Server	1	\$

Trade In Value	Trade In Upgrade of Barracuda BBS 890 to BBS: <ul style="list-style-type: none"> <li>• Hardware: Model 890, S/N 422637</li> <li>• Energizer Updates</li> <li>• Instant Replacement</li> <li>• Cloud Storage</li> </ul>	1	(\$ )
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Total Cost of Products \$ \_\_\_\_\_.

(Less Trade-In Credit) (\$ \_\_\_\_\_).

**Total Contract Price** \$ \_\_\_\_\_