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**TOWN OF LOVETTSVILLE, VIRGINIA**

**INVITATION FOR BID (IFB) NO. FY2023-01**

**FEBUARY 10, 2023**

**To grant the right for the term and upon the conditions herein stated to use the streets and alleys of the Town of Lovettsville, Virginia, and to acquire, construct, install, operate, maintain and use, and to the extent now construct or installed to operate, maintain and use, poles, towers, structures, attachments, wires, cables, conduits, ductways, manholes, handholes, meters, appliances and other equipment necessary or useful in the distribution, transmission or sale of electricity in, over, along, on and under the streets and alleys of the Town of Lovettsville, for the purpose of distributing, transmitting and selling electricity at any point within the corporate limits of the Town of Lovettsville as the same now exist or may hereafter be extended or altered, together with the right to attach, operate, and maintain, additional cables, including but not limited to fiber optic cables, wires, attachments, and other transmission facilities, and all equipment, accessories and appurtenances desirable in connection therewith, including the right to increase or decrease the number of wires for the purpose of transmitting voice, text, data, internet services, and other communication services, including the wire and attachments of third parties; the right to lease or license the right to transmit signals, data, or other communications through broadband facilities to third parties as may be useful or practical, including the rights to transmit third party data and the right to lease or license surplus communications capacity to third parties through broadband facilities; and the right to install such additional pole, guys, and anchors on said property as may be necessary for the purposes of the safety and stability of broadband facilities.**

The Town of Lovettsville, Virginia, (the “Town”) is considering granting a franchise agreement (Franchise) for the use of the streets, alleys, and other public places of the Town to operate, maintain and use poles, towers, structures, attachments, wires, cables, conduits, ductways, manholes, handholes, meters, appliances and other equipment (the “Facilities”), for the purpose of distributing, transmitting and selling electricity at any point within the corporate limits of the Town, and for the purpose of installing broadband facilities for the use by third parties in accordance with the language in the proposed ordinance, above. Because the Franchise will be in excess of five (5) years, the Town is advertising bids in accordance with Section 15.2-2101 of the 1950 Code of Virginia, as amended.

Interested parties should submit three (3) complete copies of their bid, in writing, addressed to the Town of Lovettsville, ATTN: Charles A. Mumaw, P.E., Project Manager, P.O. Box 209, Lovettsville, Virginia 20180. Bids, addressed as indicated above, may be hand-delivered to the Town of Lovettsville, Charles A. Mumaw, P.E., at 6 E. Pennsylvania Avenue, Lovettsville, Virginia 20180. **ALL BIDS ARE DUE ON OR BEFORE 4:30 P.M., Friday, February 24, 2023.** Bids shall also be received by the Mayor of the Town of Lovettsville at the regular meeting of the Town Council, which will be held in the Town Council Chambers located next to Town Hall, at 6 E. Pennsylvania, Avenue, Lovettsville, Virginia on **Thursday, March 9, 2023, at 6:30 P.M.**

After the receiving and opening of bids, the Town Council, after consideration of the bids, will make a determination of which, if any, of the bids to accept, at which time the Town Council may hold a public hearing to adopt an ordinance granting such franchise to the selected bidder. The Town reserves the right to reject any and all bids. **The bid instructions, captured below, must be followed.**

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**BID INSTRUCTIONS**

**To grant the right for the term and upon the conditions herein stated to use the streets and alleys of the Town of Lovettsville, Virginia, and to acquire, construct, install, operate, maintain and use, and to the extent now construct or installed to operate, maintain and use, poles, towers, structures, attachments, wires, cables, conduits, ductways, manholes, handholes, meters, appliances and other equipment necessary or useful in the distribution, transmission or sale of electricity in, over, along, on and under the streets and alleys of the Town of Lovettsville, for the purpose of distributing, transmitting and selling electricity at any point within the corporate limits of the Town of Lovettsville as the same now exist or may hereafter be extended or altered, together with the right to attach, operate, and maintain, additional cables, including but not limited to fiber optic cables, wires, attachments, and other transmission facilities, and all equipment, accessories and appurtenances desirable in connection therewith, including the right to increase or decrease the number of wires for the purpose of transmitting voice, text, data, internet services, and other communication services, including the wire and attachments of third parties; the right to lease or license the right to transmit signals, data, or other communications through broadband facilities to third parties as may be useful or practical, including the rights to transmit third party data and the right to lease or license surplus communications capacity to third parties through broadband facilities; and the right to install such additional pole, guys, and anchors on said property as may be necessary for the purposes of the safety and stability of broadband facilities.**

**CONTENT OF BID PACKAGE**

Each bid package must contain, at a minimum, the following written information with documentation suitable for evaluation:

1. **Completed Bid Form.** The respondent shall complete the Bid Form, attached hereto as Exhibit A, setting forth the information requested for the respondent’s offer, including the proposal for the use of the franchise area. Completion of the Bid Form signifies acceptance of the terms outlined in the General Terms of the Franchise set forth in Exhibit B.

**SCOPE OF SERVICES/QUALIFICATIONS**

The successful bidder shall demonstrate that it is authorized to transact business in the

Commonwealth of Virginia and is duly authorized to transmit and distribute electric current in the Commonwealth.

The successful bidder shall demonstrate through current and past similar projects, the

professional, financial, and technical ability to install and maintain its Facilities. The successful bidder must also demonstrate that installation of the Facilities will serve the public interest.

The successful bidder shall be solely responsible for obtaining consent from the Virginia

Department of Transportation for any Facilities to be located on the right of way subject to its jurisdiction.

As a precondition to the grant, the successful bidder shall enter into a franchise

agreement prepared by the Town, which sets forth the conditions for the construction, maintenance, and operation of the Facilities. The franchise agreement furthers sets forth, among other things, that the franchise is non-exclusive, subject to the Town’s prior rights, and the successful bidder must maintain liability insurance and hold harmless and indemnify the Town.

**CONSTRUCTION, OPERATION, AND MAINTENANCE OF FACILITIES**

In connection with the above, the successful bidder shall be solely responsible for

furnishing all capital, labor, materials, equipment, appurtenances, incidentals, and all other items necessary to construct, operate, and maintain the Facilities.

All engineering and all other costs, fees or other expenses, including, but not limited to

necessary permits related to installing and maintaining the Facilities and any costs for advertising the notice of the public hearing for the franchise agreement shall be the sole responsibility of the successful bidder.

The successful bidder shall develop construction plans showing the location of the

Facilities and indicate the depth at which the Facilities are to be buried. The plans shall be submitted to the Town of Lovettsville for approval. Franchisee shall not construct or install the Facilities without first obtaining the Town of Lovettsville’s approval of the plans. Franchisee shall construct and install the Facilities in strict accordance with the plans approved by the Town of Lovettsville. Franchisee shall make available to the Town of Lovettsville, at no cost, a copy of any applicable construction plans for the Facilities.

**OTHER INFORMATION**

Bond.

The successful respondent shall be required to execute a bond, with good and sufficient security, in a sum to be determined by the Town, pursuant to Section 15.2-2104 of the 1950 Code of Virginia, as amended.

**PAYMENT FOR ADVERTISEMENT**

The successful respondent shall be required to reimburse the Town for the cost of the advertisement inviting bids and proposing to make the grant of the franchise, pursuant to Section 15.2-2101 of the 1950 Code of Virginia, as amended.

**PROCESS**

All proposals must be submitted to the Town of Lovettsville’s Project Manager, Charles A. Mumaw, P.E., by **4:30 P.M., on Friday, February 24, 2023**. Submissions after this date and time shall not be received by the Town’s Project Manager, but may be offered to the Mayor of the Town of Lovettsville at the regular meeting of the Town Council, which will be held in the Town Council Chambers located next to Town Hall at 6 E. Pennsylvania Avenue, Lovettsville, Virginia, on **Thursday, March 9, 2023, at 6:30 P.M.**

The Town of Lovettsville reserves the right to reject any and all proposals, to proceed with a

specific respondent or respondents, or to take any action that the Town of Lovettsville determines to be in the best interest of the Town of Lovettsville. The Town of Lovettsville also reserves the right to abandon the proposed franchise after the award of the bid to the selected respondent but before entering into a franchise, in the event the Town elects for any reason whatsoever not to grant the franchise upon the property shown on the attached Exhibit C (the “Franchise Area”).

**ATTACHMENTS:**

Exhibit A: Bid Form

Exhibit B: General Terms of Franchise

Exhibit C: Franchise Area

**EXHIBIT A**

**BID FORM**

In compliance with and subject to this Invitation for Bids, which is made pursuant to Virginia Code § 15.2-2101, and the documents herein specified, all of which are incorporated herein by reference, the undersigned bidder agrees to furnish all expertise, labor, equipment, materials, and professional services necessary to construct, operate, and maintain the Facilities.

Failure to complete all parts of this Bid From and furnish Bid Submittals A and B as requested, may result in rejection of said bid. One (1) original, so marked, and two (2) copies of the entire bid must be submitted. Completion of this Bid Form signifies acceptance of the terms outlined in the General Terms of the Franchise set forth in Exhibit B.

**1. BIDDER INFORMATION:**

**Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**I certify that the information provided herein is true and complete and that the bidder is legally qualified to perform the work and services included in this bid.**

**Bidder: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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

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

1. **BID SUBMITTALS**

Bidder shall complete and enclose with its Bid, the following bid submittals. Failure to do so may result in rejection of the bid in its entirety:

Submittal A – Statement of Qualifications: Proof that the respondent is authorized to transact business in the Commonwealth of Virginia and is duly authorized to transmit and distribute natural gas in the Commonwealth.

Submittal B – Plan for Improvements: A written plan for the construction, maintenance, and operation of an electric current system upon the Franchise Area.

---------------------------------------**END OF BID FORM**------------------------------------------

**EXHIBIT B**

**GENERAL TERMS OF FRANCHISE**

It is anticipated that the successful respondent will enter into a thirty- (30) year franchise

term with the Town. The franchise may not be renewed after the expiration of the thirty- (30) year term; a new franchise agreement will have to be negotiated and entered into between the parties upon the expiration of the thirty- (30) year term, in accordance with applicable law. The successful respondent shall be responsible for the construction, operation, and maintenance of its facilities within the Franchise Area, which area is described on Exhibit C. Neither the Town nor the successful bidder will be obligated to satisfy the terms set forth herein unless the successful bidder files its unconditional acceptance of the terms and provisions of the Ordinance upon its passage, which shall include additional terms or conditions deemed necessary by the Town and other necessary and/or appropriate definitive agreements executed in the furtherance thereof.

**FRANCHISOR:** The Town of Lovettsville, Virginia

**FRANCHISEE:** To be determined

**FRANCHISE AREA:** See Exhibit C, attached

**TERM:** 30 years

**USE OF FRANCHISE AREA:** The Franchise Area shall be used only for the purpose of construction, maintenance and operation of a system of electricity and other equipment, facilities and appliances (“Facilities”) necessary or convenient for the maintenance, distribution, and transmission of electricity, and the attachment, operation and maintenance of additional cables, including but not limited to fiber optic cables, wires, attachments, and other transmission facilities and all equipment, accessories and appurtenances, for the purpose of transmitting voice, text, data, internet services, and other communications services to third parties, including the right to lease or license the right to transmit signals, data, or other communications through broadband facilities, including the right to transmit third party data and the right to lease or license surplus communications capacity to third parties through broadband facilities, and the right to install additional poles, guys, and anchors on the property as may be necessary for purposes of safety and stability of broadband facilities.

**ASSIGNMENT AND SUBLETTING:** The Franchisee shall not assign or sublet any of its rights or duties under the franchise agreement or any interest it may have herein without the prior written consent of the Town.

**INSURANCE:** The Franchisee shall obtain and maintain, or cause to be maintained, at all times from the effective date of the Franchise, insurance coverage(s) in the type(s) and amount(s) as shall be determined by the Town. In addition to workers’ compensation insurance, the insurance coverage required to be maintained pursuant to the Franchise, shall include, **but not be limited to**: commercial general liability insurance and employers’ liability insurance.

**AMENDMENTS:** Pursuant to Section 15.2-2105 of the 1950 Code of Virginia, as amended, the Town shall not grant any modification to the Franchise which shall extend the time or territory of such Franchise until the provisions of §§ 15.2-2101 through 15.2-2104 have been followed.

**SITE INSPECTION:** Submission of a bid on this project shall imply that the bidder has examined the sites of work upon which it is bidding, has verified any measurements herein, and has satisfied itself as to existing and probable conditions under which it will be obligated to perform its work.

**SUPERVISION:** Franchisee shall supervise and direct the work using its best skill and attention. The successful bidder shall be solely responsible for all work means, methods, techniques, sequences and procedures and for coordinating all portions of the work subject to the franchise agreement.

**GOVERNING LAW:** The franchise agreement shall be governed, interpreted and enforced by the laws of the Commonwealth of Virginia without regard to its conflicts of laws principles.

**VENUE:** Unless otherwise required by law, any action arising out of or related to the franchise agreement or the performance obligations thereunder shall be brought in the Circuit Court for the County of Loudoun, Virginia, or if applicable, the United States District Court for the Eastern District of Virginia – Alexandria Division.

**ACCESS TO WORKSITE:** The Town, its officials, agents, employees and representatives shall at all times have access to the property subject to the franchise agreement, regardless of whether the Franchisee is in preparation or progress of the permitted use, and the successful bidder shall provide safe facilities for such access and inspection by the Town.

**INDEMNIFICATION/HOLD HARMLESS CLAUSE:** The successful bidder, its agents, representatives, affiliates, subsidiaries, and assigns shall indemnify, defend and hold the Town, its departments, its officials, employees, agents and representatives harmless against any and all claims under any theory of liability, including but not limited to, third-party claims, expenses, costs, losses, and damages, reasonable attorney fees, personal injury, property damage or death which arises out of or in connection with the franchise agreement or the successful bidder’s shared use of the property subject to the franchise agreement.

**EXHIBIT C**

**FRANCHISE AREA**

  