

## **RFP GENERAL TERMS AND CONDITIONS**

### **PUBLIC RECORD**

After an award is made, copies of the proposals will be available for public inspection, under the supervision of the City's Finance Department from 8:00 a.m. to 5:00 p.m., Monday through Friday, at 100 West End Street Chester, SC.

### **PROPRIETARY INFORMATION**

The constrictors are asked for any restriction on the use of data contained in their responses and told that proprietary information will be handled in accordance with applicable laws, regulations and policies of the City of Chester South Carolina. All proprietary information shall be labeled as such in the proposal.

### **BACKGROUND CHECK**

The City reserves the right to conduct a background inquiry of each Contractor which may include the collection of appropriate criminal history information, contractual business associates and practices, employment histories and reputation in the business community. By submitting a proposal to the City, the Contractor consents to such an inquiry and agrees to make available to the City such books and records as the City deems necessary to conduct the inquiry.

### **TAXES**

The City of Chester pays South Carolina State Sales Tax. The City is exempt from Federal Excise Tax and will issue exemption certificates as are requested. All applicable taxes should be shown as separate line items on the bid form.

### **BASIS OF BID AWARD**

Award of bid shall be made to the responsive and responsible bidder meeting the scope of specifications and having the lowest possible cost consistent with the quality needed for effective use and service; the following criteria will be used in making this determination:

- Adherence to the specifications
- Past Experience
- References
- Cost

### **BID SUBMISSION FORM**

Each bidder must submit a Bid on the forms attached. The bidder shall sign his/her bid correctly. Bids not signed will be rejected. Bids may be rejected if they show any omissions, alterations of form, additions not called for, conditional bid or any irregularities of any kind. All information shall be typewritten or entered in ink. Mistakes may be crossed out and corrections inserted before submission of bid. Corrections shall be initialed in ink by the person signing the bid.

### **RECORDS**

The Contractor shall maintain accurate and detailed books, records, correspondence and accounts relating to all parts of the project. Records shall be kept in accordance with sound generally accepted accounting principles. The City shall have the right to audit all records pertaining to the costs incurred under this contract. Such records shall be available during the term of the contract and for four (4) years after final payment under this contract.

### **REQUIREMENTS**

The successful Contractor shall comply with all instructions and shall perform services in a manner commensurate with the highest professional standards by qualified and experienced personnel.

### **INDEPENDENT CONTRACTOR**

The selected Contractor shall be legally considered an independent Contractor and neither the Contractor nor its employees shall, under any circumstances, be considered employees of the City; and

the City shall be at no time legally responsible for any negligence or other wrong doing by the Contractor or its employees. The City shall not withhold from the contract payment to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the City shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation.

#### **JURISDICTION**

This agreement shall be governed by the laws of the state of South Carolina.

#### **ASSIGNMENT**

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any or all of its rights, title, or interest therein, without prior written consent of the City.

#### **ACCEPTANCE OF PROPOSAL CONTENT**

Before submitting an offer, each respondent shall make all investigations and examinations necessary to ascertain all site conditions and requirements affecting the performance of the contract and to verify any representations made by the City upon which the offer will rely. If the Bidder receives an award as a result of its proposal, failure to have made such investigations and examinations will in no way relieve the Bidder from its obligation to comply in every detail with all provisions and requirements of the contract documents, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever by the Contractor for additional compensation.

#### **COMPETITIVE NEGOTIATION SOLICITATION**

Negotiations shall be conducted, beginning with the Bidder ranked first. If a contract satisfactory and advantageous to the City can be negotiated at a price considered fair and reasonable, the award shall be made to that Bidder. Otherwise, negotiations with the Bidder ranked first shall be formally terminated and negotiations with the Bidder ranked second shall be conducted.

#### **FORCE MAJEURE**

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by the contract due to legal strikes, fires, riots, rebellions, and acts of God beyond the control of the Contractor, unless otherwise specified in the contract.

#### **FAILURE TO ENFORCE**

Failure by the City at any time to enforce the provisions of the contract shall not be construed as a waiver of any provisions. The failure to enforce shall not affect the validity of the contract or any part or the right of the City to enforce any provision at any time in accordance with its terms.

#### **FAILURE TO DELIVER**

In the event of failure of the Contractor to deliver services in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the City may have.

#### **EMPLOYMENT DISCRIMINATION**

During the performance of the contract, the selected Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin; however, some conditions may be a bona fide occupational qualification reasonably necessary for the normal operations of the Contractor. The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

**DETERMINATION OF RESPONSIBILITY**

The City may make such investigation as it deems necessary to determine the ability of a Contractor to furnish the required services, and the Contractor will furnish to the City requested information and data for this purpose. The City reserves the right to reject any Contractor if the evidence submitted by or investigation of the Contractor fails to satisfy the City that such Contractor is properly qualified to carry out the obligations of a Contract, and to deliver the services contemplated herein. Contractor will fully inform themselves as to conditions, requirements, and scope and manner of services before submitting their proposal. Failure to do so will be at the Contractor's own risk.

**INDEMNIFICATION**

The selected Contractor covenants to save, defend, keep harmless, and indemnify the City and all of its officers, departments, agencies, agents, and employees from and against all claims, loss, damage, injury, fines, penalties, and costs, including court costs, attorney's fees, charges, liability, and exposure, however, caused, resulting from, arising out of, or in any way connected to the selected Contractor's negligent performance or nonperformance of the terms of the contract.

**INSURANCE**

The Contractor shall procure and maintain, during the life of the contract, insurance coverage, for not less than any limits of liability shown below and shall include contractual liability insurance as applicable to the Contractor's obligations, with a carrier authorized to do business in the State of South Carolina. All coverage shall be primary and shall apply separately to each insured against whom claim is made or suite is brought, except with respect to the limits of the insurer's liability. Original certificates, signed by a person authorized to bind coverage on its behalf, shall be furnished to the City by the successful bidder.

Certificates of insurance must be included in the proposal.

- (a) Commercial General Liability: The Contractor shall maintain insurance for protection against all claims arising from injury to person or persons not in the employ of the Contractor and against all claims resulting from damage to any property due to any act or omission of the Contractor, his agents, or employees in the operation of the work or the execution of this contract. Where the work to be performed involves excavation or other underground work or construction, the property damage insurance provided shall cover all claims due to destruction of subsurface property such as wire, conduits, pipes, etc., caused by the Contractor's operation. The minimum shall be as follows:

Bodily Injury (Injury or Accidental Death) and Property Damage ..... \$3,000,000 per occurrence

- (b) Comprehensive Automobile Liability: The Contractor shall maintain Automobile Liability Insurance for protection against all claims arising from the use of vehicles, rented vehicles, or any other vehicle in the prosecution of the work included in this contract. Such insurance shall cover the use of automobiles and trucks on and off the site of the project. The minimum amounts of Automobile Liability Insurance shall be as follows:

Bodily Injury (Injury or Accidental Death) and  
Property Damage ..... \$1,000,000 Combined Single Limit

- (c) South Carolina Workers' Compensation Insurance: The Contractor shall maintain Workers' Compensation Insurance for all of his employees who are in any way connected with the performance under this agreement. Such insurance shall comply with all applicable state laws.

South Carolina Workers' Compensation -	Statutory Limits
Employers Liability Insurance -	\$500,000 - Each Accident
	\$500,000 - Disease Each Employee
	\$500,000 - Disease Policy Limit

- (d) Professional Liability Insurance: If providing a professional service, the vendor shall maintain Professional Liability Insurance to cover errors, acts of omission by the vendor, its agents and representations in the performance of its obligations herein:

.....\$1,000,000 per occurrence.

Contractor shall provide the City with a Certificate of Insurance showing proof of insurance acceptable to the City. Certificates containing wording that releases the insurance company from liability for non-notification of cancellation of the insurance policy are not acceptable.

Contractor and/or its insurers are responsible for payment of any liability arising out of Workers' Compensation, unemployment or employee benefits offered to its employees.

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, and licensed to operate in South Carolina by the South Carolina Department of Insurance, unless otherwise acceptable to the City.

Workers' Compensation policy is to be endorsed to include a waiver of subrogation in favor of the City, its officers, officials, employees, and agents.

The successful Contractor shall maintain the Automobile Liability and General Liability insurance, naming the City, its officers, officials, employees and agents as Additional Insured as respects liability arising out of the activities performed in connection with this request for bids. It shall be an affirmative obligation upon the Contractor to advise the City Administrator at fax number 803-377-1116 or by e-mail within two days of the cancellation or substantive change of any insurance policy/coverage required above. Failure to do so shall be construed to be a breach of contract.

Should Contractor cease to have insurance as required during any time, all work by Contractor pursuant to this agreement shall cease until insurance acceptable to the City is provided.

Deductibles, Co-Insurance Penalties, & Self-Insured Retention: The Contractor shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, or self-insured retention.

Subcontractor's Insurance: The Contractor shall agree to cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified herein, unless the Contractor's insurance provides coverage on behalf of the subcontractor. When requested by the City, the Contractor shall agree to obtain and furnish copies of certificates of insurance evidencing coverage for each subcontractor.

#### **SPECIFICATION DEVIATIONS BY THE BIDDER**

The specifications, as listed herein, represent our preference in equipment, however, the City is fully cognizant that no two pieces of equipment from different manufacturers are the same. Therefore, if your equipment is similar and/or same in size, function, and operation, but some of the specifications do not completely coincide with those listed in our specifications; please list your exceptions and explanations separately. It is not our intent to write specifications for a piece of equipment that only one manufacturer can submit a bid.

Any deviation from the specifications MUST be noted in detail and submitted in writing with this Bid. Complete specifications should be attached for any substitutions offered, or when amplifications are desired or necessary. The absence of the specifications deviation statement and accompanying specifications will hold the bidder strictly accountable to the specifications as written herein. If specifications or descriptive papers are submitted with a bid, the bidder's name should be clearly shown on each document.

### **SPECIFICATIONS CHANGES AFTER BID AWARD**

Any changes in specifications after the Purchase Order/Contract has been awarded must be with the written consent of the Purchasing Agent and given prior to any shipment.

### **SPECIFICATION CHANGES, ADDITIONS, AND DELETIONS**

All changes in specifications shall be in writing and furnished to ALL BIDDERS. Verbal information obtained otherwise will NOT be considered valid nor acceptable in awarding of bids.

### **PRICING**

Unit pricing will govern over extended prices unless otherwise stated. All prices quoted should be firm. In those cases where a firm bid cannot be made, consideration will still be given to all bidders. However, those bidders submitting firm bids will be given first consideration over those that fail to submit a firm bid, all other factors being equal. Also, in those cases where a firm bid cannot be made, all non-firm pricing should be stated and explained as explicitly as possible showing escalation factors, stating costs that may increase and the conditions of those increases such as subcontractor cost increases passed on at cost, and any other conditions that may apply to cost increases. Also, maximum or ceiling prices should be quoted where possible when bids contain non-firm prices.

### **CASH DISCOUNTS**

Cash discounts, if allowed, should be so stated on the bid form. Prices must, however, be based upon payment in thirty (30) days. The cash discounts so stated will be considered in the making of the award. Where the invoice is received prior to the receiving of the item(s), the time used in the taking of cash discounts, where applicable, will be computed from the date of delivery of the commodities to the carrier when inspection and acceptance is at the point of origin. When final inspection and acceptance is at the point of destination, the date of delivery will be used.

### **PAYMENTS**

The City does not normally make early or partial payment. Any requests for early and/or partial payments prior to the completion of the entire contract or order must be made by the bidder in the bid. Such request will be given due consideration in the awarding of the bid.

### **DETERMINATION OF RESPONSIBILITY**

The City may make such investigation as it deems necessary to determine the ability of a bidder to furnish the required services, and the bidder will furnish to the City all such information and data for this purpose as the City may request. The City reserves the right to reject any offer if the evidence submitted by or investigation of such bidder fails to satisfy the City that such bidder is properly qualified to carry out the obligations of a Contract, and to deliver the services contemplated herein.

Bidders will fully inform themselves as to conditions, requirements, and scope of work before submitting their bid. Failure to do so will be at the bidder's own risk.

### **PROFESSIONAL LICENSING**

Contractor shall secure and pay for licenses and/or certificates that may be necessary for proper execution and completion of the contract and which are legally required when proposals are received or negotiations concluded.

### **CITY BUSINESS LICENSE**

The Contractor must obtain all business license(s) required by the Chester City Code and ordinances. A Business License is not required to submit a bid. However, any firm that receives an award under this bid proposal shall be required to obtain a City Business License before work can begin. For further information on the provisions of The City Business License Regulations and their applicability to this contract, contact the Chester City Business Office at (803) 581-2123.

### **TERMINATION FOR CONVENIENCE OR FOR CAUSE**

The performance of work under the contract may be terminated by the City in whole or in part whenever the City determines that termination is in the City's best interest. Any such termination shall be effected by the delivery to the selected Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under the contract is terminated and the date upon which such termination becomes effective.

The performance of work under the contract may be terminated by the City in whole or in part whenever the City determines, in its sole discretion that the selected Contractor is not performing as set out in the contract. Any such termination shall be effected by the delivery to the selected Contractor of a written notice of termination at least seven (7) days before the date of termination, specifying the extent to which performance of the work under the contract is terminated and the date upon which such termination becomes effective.

After receipt of a notice of termination, except as otherwise directed, the selected Contractor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further order or subcontracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.

### **COMPLIANCE WITH LAWS**

The selected Contractor shall, in the performance of work under this contract, fully comply with all applicable Federal, State, County, or Municipal Laws, Rules, Regulations, or Ordinances and shall hold the City harmless from any liability resulting from failure of such compliance.

### **RIGHTS RESERVED BY CITY**

The right is reserved by the City to reject any or all proposals; to waive any informality or irregularity not affected by law; to evaluate, in its absolute discretion, the proposals submitted; and to award the contract based on the established criteria and according to the proposal which best serves the interest of the City.

### **NON-COLLUSION AFFIDAVIT**

As part of the Respondent's proposal, the Contractor shall include the attached Non-Collusion Affidavit duly signed by a principal of the firm certifying that it is not a party to any collusive action or any action that may be in violation of the Sherman Antitrust Act. Any or all proposals shall be rejected if there is any reason for believing that collusion exists among the proposers.

The City may or may not, at its discretion, accept future proposals for the same work from participants in such collusion.

### **ETHICS IN PUBLIC CONTRACTING**

To comply with the provision of Section 8-13-100 et seq., Code of Laws of South Carolina, the proposer shall certify in writing and include with its proposal that its offer was made without fraud; that it has not offered or received any kickbacks or inducements from any other proposer, supplier, manufacturer, or subcontractor in connection with the offer; and that it has not conferred on any public employee, public member, or public official having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money services, or anything of more than nominal value.

The proposer shall certify further that no relationship exists between itself and the City, another person, or organization that interferes with fair competition or constitutes a conflict of interest with respect to a contract with the City.

**NON-RESIDENT TAXPAYER REGISTRATION AFFIDAVIT**

Nonresident proposers receiving income from business conducted in South Carolina are required to pay taxes to the state on that income. To facilitate this requirement, a nonresident proposer must register with the South Carolina Secretary of State or the South Carolina Department of Revenue. In compliance with South Carolina Code Section 12-8-540 and 12-8-550, a proposer located outside of South Carolina that receives a contract from the City, must furnish to the City Form 1-312 (Rev.10/5/07), Nonresident Taxpayer Registration Affidavit Income Tax Withholding, properly executed and signed. If your firm is not presently registered with the appropriate state office, you may indicate the intent to do so should your firm be awarded a contract. Questions concerning this form may be directed to the South Carolina Department of Revenue.

**EMPLOYEE VERIFICATION PER THE SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT**

By entering into this Agreement, the Contractor hereby certifies to City that the Contractor will verify the employment status of any new employees, and require any subcontractors performing services hereunder to verify any new employees status, per the terms of the South Carolina Illegal Immigration Reform Act, and as set out in Title 41, Chapter 8 of the Code of Laws of South Carolina, 1976.

**NON-APPROPRIATION**

Any contract entered into by the City resulting from this RFP shall be subject to cancellation without damages or further obligation when funds are not appropriate or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year.