

**STANDARD TERMS AND CONDITIONS
CITY OF LITTLE ROCK, ARKANSAS**

NOTICE: The City of Little Rock selects its board and commission members through a process that utilizes an executive session. Under Arkansas law, this fact deems a volunteer an employee for a limited purpose. The City cannot contract with an employee, and cannot contract with a corporation with an employee in an executive or managerial position who also serves as a volunteer on a City board or commission unless it first passes an ordinance to approve the contract. If any person involved with this solicitation an employee of the City, or a volunteer board or commission member who also holds an executive or managerial position with the Vendor, then the vendor shall identify the person(s) and the nature of the relationship. THIS DOES NOT MEAN that the Vendor is disqualified; but an apparent contractor will not be selected if the Board of Directors fails to pass an ordinance to authorize the contract.

1. **Acceptance of Terms**

Submission of a response to this solicitation constitutes acceptance of all terms and conditions described herein. In the event of a conflict between this solicitation and the Standard Terms and Conditions, the terms of this solicitation shall have priority. The City's Standard Conditions shall become a part of the contract and shall supersede all prior or contemporaneous representations, agreements or understandings between the parties, whether written or oral. In the event of a conflict, the terms of this solicitation shall control. To the extent the Standard Conditions conflict with an existing Master Agreement previously executed by the City, the terms of the Master Agreement control.

2. **Exceptions**

The vendor may submit a list of any necessary exceptions to the solicitation's terms and conditions. All exceptions shall be described on one (1) attachment to the vendor's response, and shall include the legal basis for each exception. The City will not consider an exception unless the vendor establishes that the exception is justified by a requirement or prohibition of federal law, Arkansas law, Arkansas Public Service Commission Rules, or by applicable tariff requirements. Exceptions shall only be approved in writing and signed by the City of Little Rock Purchasing Division.

3. **Compliance**

A. The vendor shall comply with applicable Federal laws, state laws, and local ordinances and regulations in effect during the contract term.

B. The vendor must not be debarred or suspended as designated in the federal System for Award Management.

4. **Addenda**

This solicitation and the Standard Terms and Conditions for all of the City's solicitations shall not be changed or altered except by official written addendum issued by the City of Little Rock Purchasing Division. Addenda to this solicitation will be posted on the City's website at www.littlerock.gov. It is the vendor's responsibility to review the solicitation information online to ensure that they have received and responded to all addenda to the solicitation.

5. **Publicity**

A. The vendor shall not issue a news release pertaining to this solicitation or any portion of the project without the City's prior written approval.

B. Failure to comply with this requirement may be cause for a vendor's response to be disqualified.

6. **Reservations**

A. THE CITY RESERVES THE RIGHT TO REJECT ANY AND ALL RESPONSES.

B. The City Purchasing Office reserves the right to award items, all or none, or by line item(s).

C. Qualifications of the vendor and probability of performance by the vendor are factors in making an award.

D. Any ambiguity in a solicitation that results from omission, error, lack of clarity or non-compliance by the vendor shall be construed in the light most favorable to the City.

- E. Any minor or insubstantial deviations from the requirements of this solicitation, as determined in the sole and exclusive discretion of the City Purchasing Office, shall be permitted.
- F. Any material or substantive deviations from the requirements of this solicitation, as determined in the sole and exclusive discretion of the City Purchasing Office, shall result in the disqualification of the response.

7. **Response Submission**

- A. Responses shall be submitted and time-stamped, on or before the date and time specified. LATE RESPONSES SHALL NOT BE CONSIDERED.
- B. Responses shall contain all documents, information, and attachments as specifically and expressly required in the solicitation.
- C. The response shall be typed or legibly printed in ink. The signature shall be in ink. The official who is authorized to sign contracts on behalf of the vendor shall sign the response and the price sheets in ink. RESPONSES AND PRICE SHEETS THAT ARE NOT SIGNED SHALL NOT BE CONSIDERED.
- D. The solicitation number for example, 18101 or 18001 shall be on the face of the sealed envelope that contains the response. If it is not, the envelope will be opened to identify the solicitation number.

8. **Brand Name References**

Specifications furnished with a solicitation are intended to establish a desired quality or performance level, or other minimum dimensions and capacities, which will provide the best product available at the lowest possible price. Other designated brands or models approved by the City, in its sole discretion, as equal to designated brand name products shall receive equal consideration. When listing other than the brand or model specified in the solicitation, the brand or model number shall be stated by the item in the solicitation and descriptive literature be submitted with the response.

9. **Substitutions**

If while responding to this solicitation the vendor does not believe that a submitted bid meets the exact requirement of a specification requested, but is in compliance with the result to be met by the requirement or specification, then the response can note that a substitution is being submitted. Whether a substitution complies with this solicitation shall be determined at the sole and exclusive discretion of the City of Little Rock Purchasing Division.

10. **Samples**

Samples of items when required shall be furnished to the City free of charge. If the vendor does not retrieve the samples within thirty (30) days of the end of testing, they become property of the City.

11. **Quantities**

Quantities stated in a solicitation for term contracts are estimates only, and are not guaranteed. Vendor shall bid the unit price based upon the estimated quantity specified. The City may order more or less than the estimated quantity on term contracts. Quantities stated on purchase orders are determined by the requirements of the ordering department.

12. **Pricing**

- A. Pricing shall be valid for ninety (90) days after the bid opening and shall remain firm for the term of the contract. Prices are to be based on the unit price for the items or services described on the price sheet(s).
- B. Prices quoted shall be "Free on Board" (F.O.B.) destination to the designated City facility unless otherwise agreed by the City.
- C. Pricing shall include all associated costs. The City shall not be obligated to pay any costs that are not included in the vendor's price proposal even though such cost is subsequently incurred by the vendor in order to provide the contracted services or equipment or to achieve the required quality of service unless agreed to in writing by the City.
- D. Prices quoted are to be net prices. If the vendor makes an error in extending total prices, the City may accept the lesser amount whether reflected by extension or by the correct multiple of the unit price.

- E. The City should receive any discounts offered by, or available to the vendor. For term contracts, the beginning date for computing discounts will be the date of invoice or the date of delivery and acceptance, whichever is later.
- F. The prices in the response have been arrived at without collusion.

13. **Tax**

Applicable sales or compensating use tax shall not be included in the response, but shall be added to the contractor's invoice. Vendors are to register and pay taxes pursuant to Arkansas law.

14. **Price Escalation.**

A. During the term of a resulting contract the opportunity for price escalations may be made available at the time of renewal. The vendor shall submit a written request for price increases. Written price increase requests shall be supported by documentary evidence, including manufacturer or broker discounts and charge backs to justify the increase. Price increases will be limited to the actual dollar increase incurred by the vendor from their supplier or manufacturer. Invoices including manufacturer/broker rebates, discounts and charge backs, both prior and current to date of request, shall be submitted to support a price adjustment request.

NOTE: VENDORS SHALL NOT DELAY OR STOP DELIVERIES PENDING PRICE CHANGES. PRICE CHANGES WILL BE EFFECTIVE ON ITEMS WITH AN ORDER DATE AFTER THE EFFECTIVE PRICE CHANGE DATE. THE ORDER DATE IS THE DATE OF THE CITY ISSUED PURCHASE ORDER TO THE VENDOR. ITEMS THAT HAVE AN ORDER DATE PRIOR TO THE NEWEST EFFECTIVE PRICE CHANGE DATE WILL BE INVOICED AT THE CURRENT PRICE AS OF THE DATE OF THE PURCHASE ORDER REGARDLESS OF WHEN DELIVERY IS ACCEPTED.

B. The City of Little Rock reserves the right to reject any price adjustment request.

15. **Tie Prices**

- A. In the event of a tie on the lowest price between two (2) or more responses that meet the specifications as required and where only one (1) of the vendors is a Little Rock vendor, then the award shall be made to that Little Rock vendor.
- B. In the event of a tie on the lowest price between two (2) or more responses that meet the specifications as required:
 - i. where just two (2) of the vendors are Little Rock vendors, the award shall be determined by a flip of a coin between the Little Rock vendors; or
 - ii. where just two (2) of the vendors are out-of-state vendors, the award will be determined by a flip of a coin among those vendors;
 - iii. where there are more than two (2) Little Rock vendors, the award shall be determined by drawing lots
 - iv. where there are more than two (2) out-of-state vendors, the award shall be determined by drawing lots

16. **Non-Appropriation of Funds**

The City cannot engage in deficit spending. If it becomes necessary for the City to abandon the financing contemplated, the City shall have the right to do so without penalty. To the extent possible, the City shall give the successful contractor written notice.

17. **Purchase Orders**

The City of Little Rock reserves the right to cancel any Purchase Order at any time prior to shipment of the goods and shall not be subject to any charges or other fees whatsoever as a result of such cancellation. The city may by written communication cancel or make changes to any Purchase Order subject to an equitable adjustment in the price, delivery schedule, or both, where appropriate.

18. **Invoicing**

- A. The contractor shall be paid upon the completion of all of the following:
 - i. submission of an original specified number of copies of a properly itemized invoice showing the solicitation and purchase order numbers;

- ii. delivery and acceptance of the commodities, or completion and approval of described service;
- iii. proper and legal processing of the invoice by the City

B. Invoices shall be sent to the address shown on the purchase order, or via City supplier portal.

C. The City shall not be invoiced in advance of delivery and acceptance of any goods or services.

19. **Force Majeure**

Neither the City nor the vendor will be liable for any delay, failure in performance, loss, or damage due to fire, explosion, cable/fiber cuts, power blackout, earthquake, flood, embargo, acts of civil or military authority, war, terrorism, acts of God, acts of public enemy, acts of regulatory or governmental agencies, delays from third parties deterring the vendor from obtaining necessary licensing/construction permits/right of ways, or other causes beyond such party's reasonable control.

20. **Recordkeeping**

The contractor shall maintain all financial and accounting records in accordance with generally accepted principles of accounting. Upon reasonable request by the City, such records shall be made available for inspection.

21. **Confidentiality**

The Arkansas Freedom of Information Act, as amended, is extremely broad in its scope. Any vendor submitting a response to a solicitation which includes proprietary information should be on notice that such response may be deemed a public record subject to disclosure upon completion of the selection process. Any such information that is not intended for disclosure should be placed in a separate sealed envelope, and the response should note appropriate reference to such information. The envelope should note that the proprietary information is not intended for public disclosure, is being provided to the City on loan by the vendor, and is to be returned to the vendor immediately if any request for disclosure of this information is made to the City pursuant to the Arkansas Freedom of Information Act. Upon the receipt of any such request, the City shall immediately return the proprietary information to the vendor. The City shall not maintain a copy. **IF SUCH ACTION RESULTS IN AN INCOMPLETE RESPONSE THAT IS DEEMED BY THE CITY NOT TO BE RESPONSIVE TO THE SOLICITATION, THE RESPONSE SHALL BE DEEMED DISQUALIFIED.**

22. **Bonding**

A. **Bid Security**

Any construction bid exceeding the minimum amount set by the State of Arkansas shall be accompanied by a cashier's check or bid bond prepared on a City-approved form of bid bond, duly executed by the vendor as principal and having as surety thereon a surety company approved by the City of Little Rock, in the amount of five (5) percent of the bid. Such cashier's check or bid bonds will be returned to all except the three (3) lowest vendors within three (3) days after the opening of bids, and the remaining cashier's checks or bid bonds will be returned promptly after the City and the accepted vendor have executed a contract or the purchase order has been issued. A valid contract will not be executed nor a valid purchase order issued until the City has received an acceptable performance bond.

B. **Performance/Payment Bonds**

A Performance Bond equaling the total amount of any bid exceeding the minimum amount set by the State of Arkansas shall be provided for any contract for the repair, alteration or erection of any public building, public structure or public improvement pursuant to Ark. Code Ann. Sec. 18-44-503 (a).

Simultaneously with the delivery of the executed contract, the contractor shall furnish a surety bond or bonds as security for faithful performance of this contract and for the payment of all persons performing labor on the project under contract and furnishing materials in connection with the contract. The surety on such bond or bonds shall be duly authorized to do business in the State of Arkansas and shall be satisfactory to the City.

C. **Bond Verification**

Pursuant to Act 1015 of 2013 which became effective on August 16, 2013, all bonds submitted to the City (bid bonds and Performance/Payment Bonds) shall be issued by surety companies that are listed on current United State Department of Treasury's Listing of Approved Sureties. Any bid bonds submitted by a vendor that are not issued by a surety company qualified and authorized to do business within Arkansas and listed as an approved surety on

the US Department of Treasury list will be rejected.

Any performance and payment bonds provided by the contractor that are not issued by a surety company qualified and authorized to do business within Arkansas and listed as an approved surety on the US Department of Treasury list shall be considered as a contractor's default in failing to execute and deliver the contract and bonds. The contractor is liable to the City as project owner in the amount of the five (5) percent bid surety. To verify the current list of surety companies, go to: https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm.

23. **Construction Licensing**

Vendors shall be in compliance with the requirement of Act 150 of 1965 of the State of Arkansas, effective June 3, 1965, (codified as amended at Ark. Code Ann. §§ 17-25-301 through 17-25-316), which is the current Arkansas State Licensing Law for Contractors. Vendors should indicate on the bid form the current license number as issued by the applicable licensing entity.

24. **Conditions of Work**

Each vendor shall become fully informed of the conditions relating to the construction of the project and the employment of labor. Failure to do so shall not relieve a contractor of their obligation to furnish all material and labor necessary to carry out the provisions of the contract. Insofar as possible, the contractor, in carrying out the work, shall employ such methods or means as will not cause any interruption of or interference with the work of any other contractor.

25. **Past Performance**

A vendor's past performance with the City is used to determine if the vendor is "responsible". Responses submitted by vendors determined to be non-responsible shall be disqualified.

26. **Insurance and Warranties**

A. **Insurance**. The Contractor shall supply the City with evidence of having and maintaining proper and complete insurance, specifically Worker's Compensation Insurance in accordance with the laws of the State of Arkansas, Public Liability Insurance and Property Damage Insurance. All premiums and cost of said insurance shall be paid by the Contractor. The City shall not be responsible or liable in case of accident.

B. When submitting a response to this solicitation, the vendor warrants that the commodities covered by the response shall be free from defects in material and workmanship under normal use and service. In addition the vendor shall deliver new commodities of the latest design and model, unless otherwise specified in the solicitation.

C. Guarantees and warranties should be submitted with the response, as they may be a consideration in making an award.

27. **Governing Law**

The contract with the contractor shall be governed and construed in accordance with Arkansas law. In the event of any legal action to enforce or interpret the contract, the sole and exclusive venue shall be a court of competent jurisdiction in Pulaski County, Arkansas. The statute of limitations, as provided under Arkansas law, shall not be waived.

28. **Liability**

The City assumes no liability for damages or injuries caused by vendor's equipment or personnel, including but not limited to passing vehicular or pedestrian traffic struck by objects displaced by vendor's equipment or operations.

29. **Damages**

If the City elects to pursue liquidated damages, damages may be assessed beginning on the first day following the maximum delivery or completion time entered on the bid form or as provided for by the plans and specifications.

30. **Indemnification**

The contractor shall indemnify and hold harmless the City against any claim or liability arising from the contractor's violation of any applicable law, statute, ordinance, permit or regulation in the performance of the contract.

The contractor covenants and agrees that it will indemnify and hold harmless the City of Little Rock, and all of its officers, agents, and employees, from any claim, loss, damage, cost, charge or expense arising out of any act, action,

neglect or omission by the contractor, or contractor's subcontractors, employees, agents or servants, whether direct or indirect, or whether to any person or property to which the City of Little Rock or said parties may be subject. If the City of Little Rock defends any claim, demand, cause of action, or lawsuit arising out of any act, action, negligent acts or negligent omissions, or willful misconduct of the contractor, its subcontractors, employees, agents or servants during the performance of the contract, whether directly or indirectly, the contractor agrees to reimburse the City for all expenses, attorney's fees, and court costs incurred in defending such claim, cause of action or lawsuit.

31. Intellectual Property

- A. Vendor shall not hold ownership or intellectual property claim on any deliverable produced for the City. For any custom software developed for the City of Little Rock, all property rights, intellectual or otherwise, and technology transfer shall be passed to the City, upon completion of the contract. This includes all rights in relation to any patents, trademarks, copyright, etc. that may be associated. Upon transfer, any and all code, data and the like, both intellectual and tangible, pertaining to any responsibilities including but not limited to reports, records, data, graphic art design, and products under the contract shall be delivered to the City without cost within a time frame of thirty (30) calendar days upon completion of the contract.
- B. Each deliverable/product produced for the City shall become the exclusive property of the City. Vendor shall not utilize any portion of this project, including deliverables and data, without prior written consent of the City.

32. Discrimination

- A. The contractor shall not discriminate on the basis of race, color, creed, religion, sex, national origin, age, disability, marital status, sexual orientation, gender identity, or genetic information, as such relates to the performance of the contract and shall require such compliance in contracts with subcontractors and sub-subcontractors.
- B. The vendor's response shall meet all applicable accessibility requirements through the incorporation of features or other reasonable means in order to comply with the provisions of the Americans with Disabilities Act.
- C. The City of Little Rock encourages participation of small, minority-owned, and woman-owned business enterprises in the procurement of goods, services, professional services, and construction, either as a general contractor or subcontractor. It is further requested that whenever possible, majority contractors that require sub-contractors, seek qualified small, minority, and woman businesses to partner with them.

33. Title VI Civil Rights Act Implementation and Assurances

- A. If the contract involves the use of federal funds, and the city so requires, the contractor shall comply with the following:
 - i. require any sub-recipients, sub-grantees, contractors, successors, transferees, or assignees to comply;
 - ii. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (which prohibits discrimination on the basis of race, color, national origin); and its applicable federal statutory, regulatory authorities, other pertinent directives, circulars, policy, memoranda, and/or guidance and will give assurance that it will promptly take any measures necessary to ensure such;
 - iii. with all applicable provisions governing the City of Little Rock's and applicable federal department's or agency's access to records, accounts, documents, information, facilities, and staff;
 - iv. with any program, or compliance reviews, or complaint investigations, or a combination of such, conducted by the City or applicable federal department or agency;
 - v. with record retention, reporting requirements, and all requests materials in a timely, complete, and accurate way; and
 - vi. with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance
- B. The City of Little Rock, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the applicable federal regulations, hereby notifies all vendors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit responses to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award

34. **Sex Offender**

THE CITY OF LITTLE ROCK DOES NOT EMPLOY SEX OFFENDERS OF ANY LEVEL. NEITHER THE CONTRACTOR, NOR ANY SUBCONTRACTOR, SHALL HAVE SUCH AN EMPLOYEE ON CITY PROPERTY PURSUANT TO THIS CONTRACT, NOR SHALL THE CONTRACTOR PERMIT ANY SUCH EMPLOYEE TO PERFORM ANY TASKS ON ANIMAL SERVICES, PARKS, OR ZOO PROPERTY.