

## **CITY OF BEAUFORT 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 Purchasing Division from 8:00 a.m. to 5:00 p.m., Monday through Friday, at 1911 Boundary Street, 2nd Floor, City Hall, Beaufort, South Carolina 29902.

### PROPRIETARY INFORMATION

The Proposers 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 Beaufort, 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 proposer 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 proposer 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.

### REQUIREMENTS

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

### JURISDICTION

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

### ASSIGNMENT

The successful vendor 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 a proposal, each proposer 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 proposer receives an award as a result of its proposal, failure to have made such investigations and examinations will in no way relieve the proposer 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 proposer for additional compensation.

### COMPETITIVE NEGOTIATION SOLICITATION

Negotiations shall be conducted, beginning with the proposer 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 proposer. Otherwise, negotiations with the proposer ranked firsts shall be formally terminated and negotiations with the proposer ranked second shall be conducted. The City reserves the right to cease contract negotiations if it is determined that the lowest responsible bidder cannot perform services specified in their response.

#### FORCE MAJEURE

The successful vendor 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 consultant, 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

Awarded Company cannot enter into another professional services contract within the City of Beaufort without the express written approval from City Council. The contract may be terminated by the City in whole or in part whenever the City determines, in its sole discretion that the Awarded Company has entered into another professional services contract within the City of Beaufort without the express written approval from City Council.

#### CONFLICT OF INTEREST

In the event of failure of the successful vendor 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 successful vendor 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 successful vendor 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 successful vendor. The successful vendor 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 proposer to furnish the required services, and the proposer will furnish to the City requested information and data for this purpose. The City reserves the right to reject any proposer if the evidence submitted by or investigation of the proposer fails to satisfy the City that such proposer is properly qualified to carry out the obligations of a Contract, and to deliver the services contemplated herein. Proposer 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 proposer's own risk.

#### INDEMNIFICATION

The successful vendor 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 successful vendor's negligent performance or nonperformance of the terms of the contract.

INSURANCE

The vendor shall not commence any work in connection with the contract until the vendor has obtained all of the following types of insurance, nor shall the vendor allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained.

Prior to the actual contract award vendor must supply certificates of insurance and certified copies of all policies and endorsements to the City Clerk. The City shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the vendor or subcontractor providing such insurance.

The vendor agrees to indemnify, defend and hold harmless the City and its authorized agents, officers, volunteers and employees against any and all claims whatsoever arising from this agreement and any cost or expenses incurred by the City or vendor on account of any claim therefore. In order to accomplish the indemnification herein provided for, but without limiting vendor's liability, the vendor shall secure and maintain throughout the term of the contact the following types of insurance with at least the limits shown.

All coverage shall be primary and shall apply separately to each insured against whom claim is made or suit 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 vendor.

Certificates of insurance must be included in the proposal.

- a) Commercial General Liability: The successful vendor shall maintain insurance for protection against all claims arising from injury to person or persons not in the employ of the successful vendor and against all claims resulting from damage to any property due to any act or omission of the successful vendor, 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 successful vendor's operation. The minimum shall be as follows:

Bodily Injury (Injury or Accidental Death) and Property Damage..... \$1,000,000 per occurrence

- b) Fidelity – Blanket Employee Dishonesty

The successful vendor shall maintain insurance for protection against all claims for the purpose of covering the Company, its agents or employees, in an amount not less than \$100,000 per employee.

- c) Theft, Disappearance, and Destruction Coverage

The successful vendor shall maintain insurance for protection against all claims for the purpose of protecting against loss of money and securities, inside the premises and outside the premises in the care of and custody of a messenger in an amount not less than..... \$500,000 per incident

d) Comprehensive Automobile Liability: The successful vendor shall maintain Automobile Liability Insurance for protection against all claims arising from the use of vehicles, rented vehicles, or any other vehicle in the production 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

e) South Carolina Workers' Compensation Insurance: The successful vendor 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

f) Professional Liability Insurance: If providing a professional service, the successful 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.

The successful vendor 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.

The successful vendor 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 vendor 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 proposal. It shall be an affirmative obligation upon the successful vendor to advise the City at fax number 843-525-7013 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 successful vendor cease to have insurance as required during any time, all work by the successful vendor pursuant to this agreement shall cease until insurance acceptable to the City is provided.

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

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

#### CITY BUSINESS LICENSE

The successful vendor must obtain all business license(s) required by the Beaufort City Code and ordinances. A Business License is not required to submit a statement of proposals. However, any vendor that receives an award under this RFQ shall be required to obtain a City Business License before work can begin. All subcontractors that are involved in the project must obtain a City of Beaufort business license. Anyone who is not classified and paid as a W-2 employee for the successful bidder must obtain a City of Beaufort business license. For further information on the provisions of The City Business License Regulations and their applicability to this contract, contact the Beaufort City Business License Department at (843) 525-7025.

#### 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 affected by the delivery to the successful vendor of a written notice of termination at least ninety (90) 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 successful vendor is not performing as set out in the contract. Any such termination shall be affected by the delivery to the successful vendor 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 successful vendor 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 successful vendor shall, in the performance of work under this contract, fully comply with all applicable Federal, State, County, or City Laws, Rules, Regulations, or Ordinances and shall hold the City harmless from any liability resulting from failure of such compliance.

#### RIGHTS RESERVED BY CITY

This RFQ is not a tender and does not commit the City in any way to select a Proposer, or to proceed to negotiations for a Contract, or to award any Contract. 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 proposer shall include the attached Non-Collusion Affidavit duly signed by a principal of the vendor 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 sub-consultant 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.

#### MINORITY/DISADVANTAGED SMALL BUSINESS PARTICIPATION

It is the policy of the City of Beaufort to undertake every effort to increase opportunity for utilization of small, disadvantaged, and minority businesses in all aspects of procurement to the maximum extent feasible. In connection with the performance of this contract, the successful vendor agrees to use their best effort to carry out this policy and insure that small, disadvantaged, and minority businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract consistent with efficient performance of this contract. To this end, every proposer with the City is required to complete the S/WO/M BUSINESS ENTERPRISE FORM.

#### 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.5/8/15), Nonresident Taxpayer Registration Affidavit Income Tax Withholding, properly executed and signed. The form can be found online at:

<http://www.sctax.org/forms/withholding/i-312-form>

If your company is not presently registered with the appropriate state office, you may indicate the intent to do so should your company be awarded a contract. Questions concerning this form may be directed to the South Carolina Department of Revenue.

NON-APPROPRIATION

Any contract entered into by the City resulting from this RFQ 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.

**ETHICS IN PUBLIC CONTRACTING AFFIDAVIT**

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

\_\_\_\_\_, being first duly sworn, deposes and says that:

1. He/She is \_\_\_\_\_(title) for/of \_\_\_\_\_ (company/business), the Proposer that has submitted the attached Statement of Proposals;
2. He/She is legally qualified and capable of signing this affidavit and is authorized to do so by Proposer;
3. He/She is fully informed regarding the preparation and contents of the attached Statement of Proposal and of all pertinent circumstances respecting such Proposal;
4. Such Proposal is genuine and is made without fraud;
5. Neither the said Proposer, nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest has offered or received any kickbacks or inducements from any offeror, suppliers, manufacturer, or subCompany in connection with the offer, and they have not conferred on any public employee, public member, or public official having official responsibility for this procurement or transaction, any payment, loan, subscription, advance, deposit of money, services, or anything of value as defined in Section 8-13-100 of the South Carolina Code of Laws; and
6. Furthermore, neither the Proposer, nor any of its officers, partners, owners, agents, representatives, employees or parties in interest has any relationship with the City, another person, or organization that interferes with fair competition or that constitutes a conflict of interest with respect to a contract with the City.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
COMPANY/BUSINESS

BY: \_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

SWORN to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_

ITS: \_\_\_\_\_  
TITLE

Notary Public for \_\_\_\_\_(state)  
My commission expires: \_\_\_\_\_  
By: \_\_\_\_\_  
(signature)



**NONCOLLUSION AFFIDAVIT OF PRIME PROPOSER**

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and says that:

1. He/She is \_\_\_\_\_ of \_\_\_\_\_, the Proposer that has submitted the attached proposal;
2. He/She is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
3. Such Proposal is genuine and is not a collusive or sham proposal;
4. Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Proposer, company or person to submit a collusive or sham Proposal in connection with the Contract for which the attached Proposal has been submitted or to refrain from proposing in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other proposer, company or person to fix the price or prices in the attached Proposal or of any other proposer, or to secure through any other proposal, or to fix any overhead, profit or cost element of the bid price or the bid price of any other proposer, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Beaufort, SC or any person interested in the proposed contract.

\_\_\_\_\_  
(signed)

\_\_\_\_\_  
(title)

SWORN to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_\_

Notary Public for \_\_\_\_\_(state)

My commission expires: \_\_\_\_\_

By: \_\_\_\_\_  
(signature)

## SMALL/WOMAN-OWNED/MINORITY BUSINESS ENTERPRISE FORM

YOUR COMPANY'S CURRENT STATUS	SUPPLIER BUSINESS CLASSIFICATIONS
<p>Is this a small business?</p> <p>Yes      No</p>	<p>A small business is a business which is independently owned and operated, not dominant in its field of operation, and can qualify under criteria concerning number of employees, average annual receipts, or other criteria as outlined by the Small Business Administration. (See CFR Title 13, Part 121, as amended)</p>
<p>Is this a woman-owned business?</p> <p>Yes    No</p>	<p>A woman-owned business is a business which is at least 51% owned by a woman or women who also control and operate the business.</p>
<p>Is this a minority-owned business?</p> <p>Yes      No</p> <p>If Yes, please indicate minority group:  <input type="checkbox"/> Asian American    <input type="checkbox"/> Black American  <input type="checkbox"/> Hispanic American    <input type="checkbox"/> Native American</p>	<p>A minority-owned business is a business which is at least 51% owned, controlled and operated by socially and economically disadvantaged individuals. The following groups are among those presumed to be socially and economically disadvantaged: Asian Americans, Black Americans, Hispanic Americans, and Native Americans.</p>
<p>Is this a disabled-owned business?</p> <p>Yes      No</p>	<p>A disabled-owned business is a business which is at least 51% owned, controlled and operated by an individual or individuals who are disabled.</p>
<p>Is this a veteran-owned business?</p> <p>Yes      No</p>	<p>A veteran-owned business a business which is at least 51% owned, controlled and operated by an individual or individuals who are U.S. veterans.</p>
<p>Is this a disabled veteran-owned business?</p> <p>Yes      No</p>	<p>A disabled veteran-owned business is a business which is at least 51% owned, controlled and operated by an individual or individuals who are U.S. veterans and disabled.</p>
<p>Are the individuals who own, control and operate this business U.S. citizens?</p>	<p>Yes    No</p>
<p>Is this business a non-profit organization?</p>	<p>Yes    No</p>
<p>Is this business incorporated?</p>	<p>Yes    No</p>