

## **City of Clemson/CAT**

### **GENERAL TERMS & CONDITIONS**

#### **PUBLIC RECORD**

After an award is made, copies of the proposals will be available on request for public inspection, at the office of the City Clerk, 1250 Tiger Boulevard, Clemson, South Carolina 29631.

#### **RIGHTS RESERVED BY CITY/CAT**

The City/CAT reserves the right 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.

#### **DETERMINATION OF RESPONSIBILITY**

The City/CAT 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/CAT all such information and data for this purpose as the City/CAT may request. The City/CAT reserves the right to reject any bid if the evidence submitted or investigation of such bidder fails to satisfy the City/CAT that bidder is properly qualified to carry out the obligations of a Contract and to deliver the services contemplated herein.

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

#### **TERMS OF THE RFP**

All changes in specifications shall be in writing and furnished to all bidders. No verbal interpretation made to any respondent as to the meaning of this RFP shall be binding on the City/CAT. Bidders are cautioned that any statement made by City/CAT staff that materially changes any portion of the RFP shall not be relied upon unless it is subsequently ratified in writing and distributed by the City to bidders.

It shall be each bidder's responsibility to make certain that its proposal includes and addresses all such additions and amendments. Failure to do so may deem a proposal non-responsive.

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

Before submitting an offer, each bidder shall make all investigation and examination necessary to ascertain all site conditions and requirements affecting the performance of the contract and to verify any representations made by the City/CAT 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/CAT 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.

#### SIGNATURE FORM

Proposals shall include a signed Signature Form. Proposals that do not include a signed RFP Signature Form will not be accepted as complete and shall not be considered. The Signature Form must be signed in ink (not typed) in the appropriate space(s) by an authorized representative of the bidder.

#### REQUIREMENTS

The successful bidder (hereinafter "contractor") entering into a contract with the City/CAT shall comply with all instructions and shall perform services in a manner commensurate with the highest professional standards by qualified and experienced personnel.

#### PATENTS AND ROYALTIES

The contractor covenants to save, defend, keep harmless, and indemnify the City/CAT and all of its officers, departments, agencies, agents, appointed representatives, and employees from and against all claims, loss, damage, injury, fines, penalties, and costs - including court costs and attorneys' fees, charges, liability, and exposure, however caused for or on account of any copyright or patented or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the City/CAT. If the contractor uses any design, device, or materials covered by patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way.

#### APPLICABLE LAW AND JURISDICTION

This agreement and the rights, obligations and remedies of the parties hereto, shall in all respects be governed by and construed in accordance with the laws of the State of South Carolina, without reference to its conflict of law provisions. Venue for the resolution of all disputes regarding the terms of this agreement or the performance thereunder, whether in law or in equity, shall be exclusively in the courts of Pickens County, South Carolina.

#### COMPLIANCE WITH LAWS

The contractor, in the performance of work under this contract, shall fully comply with all applicable Federal, State, County, and Municipal Laws, Rules, Regulations, Ordinances, and

the Americans with Disabilities Act (“ADA”) and the regulations promulgated thereunder, including ADA Title II; and shall hold the City and CAT harmless from any liability resulting from failure of such compliance.

#### LABOR LAWS

The contractor, and all subcontractors, suppliers, and vendors, shall comply with all City, State and Federal orders regarding affirmative action to ensure equal employment opportunities and fair employment practices. Failure to file any report due under said orders will result in suspension of periodic progress payments. The contractor shall ensure unlimited access to the job site for all equal employment opportunity compliance officers.

#### INDEPENDENT CONTRACTOR

Contractor shall at all times be considered an independent contractor hereunder, and neither contractor nor its subcontractors, employees, agents, or representatives shall, under any circumstances, be considered employees of the City or CAT; and neither the City nor CAT shall be legally responsible for any harm, negligence, or other wrong-doing, whether intentional or unintentional, by contractor or contractor's subcontractors, employees, agents or representatives. City/CAT shall not deduct from payment to the contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or other amounts for benefits to the contractor. Further, City shall not provide to or for the contractor any insurance coverage or other benefits, including, but not limited to, worker's compensation.

#### ASSIGNMENT

The contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award or any or all of its rights, title, or interest therein, in whole or in part, without the prior written consent of the City/CAT.

#### 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/CAT shall have the right to audit all records pertaining to the costs incurred under the contract. Such records shall be available during the term of the contract and for four (4) years after final payment under the contract.

#### SMALL/DISADVANTAGED/MINORITY BUSINESS ENTERPRISES PARTICIPATION

It is the policy of the City/ CAT 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 Contractor agrees to show a good faith 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 and high quality performance of the contract.

Definitions of small, minority, disability and woman-owned business enterprises are as follows:

- a. Small Business Enterprises are those businesses that are defined in accordance with criteria established by the United States Small Business Administration (SBA);
- b. Minority-Owned Business Enterprises are those businesses owned and controlled by one or more socially disadvantaged persons, including, but not limited to, Black Americans, Native Americans, Asian Americans, Hispanic Americans, American Eskimos and Aleuts;
- c. Disability-Owned Business Enterprises are those businesses that are 51% owned and controlled by disabled persons; and,
- d. Woman-Owned Business Enterprises are those businesses that are 51% owned and controlled by one or more women.

It is a goal of the City/CAT to award a fair share of all contracts to small, minority, disability-owned, and woman-owned businesses, providing they are competitive. Accordingly, affirmative steps should also be used by contractors to assure that small, minority, disability-owned, and woman-owned businesses are utilized whenever possible as sources for supplies, equipment, construction and services. Affirmative steps shall include, but not be limited to, the following:

- a. Including qualified small, minority, disability-owned and woman-owned businesses on solicitation lists;
- b. Assuring that small, minority, disability-owned, and woman-owned businesses are solicited whenever they are potential sources;
- c. When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum participation of small, minority, disability-owned, and woman-owned businesses;
- d. When requirements permit, establishing delivery schedules which will encourage participation by small, minority, disability-owned, and woman-owned businesses;
- e. Using the services and assistance of the U.S. Small Business Administration (SBA) and State Offices for Minority and Women Business Enterprises, as required; and,
- f. If any subcontracts are to be let, the City will require the prime contractor to show good faith efforts in the affirmative steps indicated above.

#### EMPLOYMENT DISCRIMINATION

During performance of the contract, the contractor will not discriminate against any qualified employee or applicant for employment because of race, religion, color, sex, age, disability, sexual orientation, or national origin. The contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

## CERTIFICATES AND LICENSES

The contractor shall secure and pay for all licenses, permits, and/or certificates that may be necessary for proper execution and completion of the contract, and which are legally required when bids are received or negotiations concluded.

## INDEMNIFICATION

Notwithstanding anything herein to the contrary, the contractor shall indemnify and hold City/CAT, its employees, officers, officials, contractors, agents, appointed representatives, and/or representatives, free and harmless from and against any and all liabilities, losses, claims, demands, suits, judgments, causes of action and/or expenses of any kind or nature, including the payment of reasonable attorneys' fees, resulting from property damage and/or personal injury, including any injury or death, to the extent resulting from or arising out of the negligence and/or willful misconduct of contractor under this contract. Such losses, liabilities, expenses, damages and/or claims shall include, but not be limited to, civil or criminal fines or penalties, takings, whether direct, indirect, or inverse, or for loss of use and/or service, personal injury, death, libel, slander, and attorneys' fees in the underlying action through all levels of appeals. Should City/CAT be named in any suit, action, or claim under the terms hereof, then, to the extent of contractor's indemnification obligation hereunder, contractor shall appear and defend City/CAT at contractor's sole cost and expense; provided that City/CAT shall always have the option to appear and defend such action or claim on its own behalf. The foregoing indemnity shall survive the expiration and/or termination of this contract.

## INSURANCE

The contractor shall procure and maintain insurance for the duration of this Contract against any and all claims for injuries to persons and/or damages to property which may in any way arise from, or in connection with, the performance of the work hereunder by the contractor, its subcontractors, agents, representatives, or employees for not less than any limits of liability shown below 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 suit is brought, except with respect to the limits of the insurer's liability. Original endorsements, signed by a person authorized to bind coverage on its behalf, shall be furnished to the City by the successful bidder.

### **Certificate of insurance must be included in the bid.**

- 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, representatives, or employees in the operation of the work and/or the execution of this contract.

Contractor shall maintain General Liability coverage required for a period of not less than five (5) years after project completion. General Liability must include Products/Completed Operations coverage.

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 or alteration of subsurface property, including, but not limited to, wires, cables, conduits, pipes, foundations, storage tanks, soils, etc., as the result of 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 performance or furtherance 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 contractor's employees who are in any way connected with the performance under this agreement. Such insurance shall comply with all applicable state laws, rules, and regulations, and provide a waiver of subrogation against City, its officers, officials, agents, appointed representatives, and employees.

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 contractor shall maintain Professional Liability Insurance to cover errors, acts of omission by the contractor, its agents and representations in the performance of its obligations herein:

Professional Liability.....\$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. Certificates showing proof of such insurance shall be submitted to City prior to

commencement of services under this Agreement by email to bcoleman@cityofClemson.org. Further, it shall be an affirmative obligation upon the contractor to immediately advise City, within two days of the cancellation or substantive change of or to any insurance policy set out herein, and failure to do so shall be construed to be a breach of the contract.

The General Liability policy is to contain or be endorsed to name both CAT and the City, their officers, officials, agents, appointed representatives, and employees as additional insureds with respect to any liability arising out of the activities performed under this contract. Such coverage shall be primary and shall apply separately to each insured against whom claim is made or suit is brought.

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 do business in the State of South Carolina, unless otherwise acceptable to the City; and contractor shall not self-insure in satisfaction of any insurance requirement hereunder without the express, written approval of City. Contractor shall insure that its subcontractors, hereunder, comply with the insurance requirements set out herein; when requested by the City, the contractor shall agree to obtain and furnish copies of certificates of insurance evidencing coverage for each subcontractor.

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, 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.

#### CITY OF CLEMSON BUSINESS LICENSES

The contractor must obtain all business license(s) required by the Clemson City Code and Ordinances. A Business License is not required to submit a proposal. However, any firm that receives an award under this RFP shall be required to obtain a City Business License before work can begin. .

Contractor shall inform all of its sub-contractors and/or sub-consultants performing services hereunder that a like business license requirement applies to them, and contractor shall further disclose to the City the names and addresses of all contractor's sub-contractors performing services.

#### TERMINATION FOR CONVENIENCE OR CAUSE

The performance of work under the contract may be terminated by the City/CAT, in whole or in part, whenever the City/CAT determines that termination is in the City/CAT's best interest. Any such termination shall be affected by delivery to the 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/CAT, in whole or in part, whenever the City/CAT determines, in its sole discretion that the selected contractor is not performing as set out in the contract. If the contract is terminated for cause, the contractor shall be liable for all additional costs incurred by the City/CAT, if any, in the completion of the contract. Any such termination shall be affected 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 contractor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders 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.

#### 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.

#### NONWAIVER

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

#### ETHICS IN PUBLIC CONTRACTING

To comply with the provisions of S.C. Code Ann. §8-13-100, et seq., the bidder shall certify in writing and include with its bid that its offer was made without fraud; that it has not offered or received any kickbacks or inducements from any other bidder, 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 bidder shall certify further that no relationship exists between itself and the City/CAT, another person, or organization that interferes with fair competition or constitutes a conflict of interest with respect to a contract with the City/CAT.



### NONCOLLUSION AFFIDAVIT

As part of its bid, the bidder certifies 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 bids shall be rejected if there is any reason for believing that collusion exists among the bidders. The City/CAT may or may not, at its discretion, accept future bids for the same work from participants in such collusion.

### NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT

Non-resident firms 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 firm 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 firm located outside of South Carolina that receives a contract from the City/CAT, must furnish to the City/CAT Form I-312, 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 at (844) 898-8542.

### COMPLIANCE WITH THE SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT

Any contractor entering into a service contract with the City/CAT must certify to the City/CAT that the contractor intends to verify any new employees' status, and require any subcontractors or sub-subcontractors performing services under the service contract to verify their 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 South Carolina Code of Laws.

### CERTIFICATION OF COMPLIANCE WITH ANTI-DISCRIMINATION PROVISIONS OF SECTION 11-35-5300, CODE OF LAWS OF SOUTH CAROLINA, 1976

If this Agreement shall have a total potential value of ten thousand dollars (\$10,000.00) or more, and/or unless such goods and/or services are offered to City/CAT for at least twenty percent (20%) less than the lowest certifying business, then, by submitting your bid, Contractor hereby certifies to City/CAT that Contractor is not currently engaged in, nor will it engage in, the boycott of a person or entity based in or doing business with World Trade Organization members and/or those with which the United States has free trade or other agreements aimed at ensuring open and nondiscriminatory trade relations, with the understanding that Contractor's failure to make such affirmative certification will prevent the City/CAT from being able to contract with Contractor, thus affecting a rejection of your bid.

### UNIFORM COMMERCIAL CODE

All sections of the Uniform Commercial Code that protect the buyer are hereby incorporated by reference in this contract.

NON-APPROPRIATION

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