

City of Murfreesboro



REQUEST FOR COMPETITIVE SEALED PROPOSALS (RFCSP)

FOR

EXHAUST SYSTEMS FOR FIRE STATIONS

ISSUE DATE: JANUARY 30, 2018

RESPONSE DUE DATE: FEBRUARY 28, 2018

1. Introduction

The City of Murfreesboro, Tennessee, is seeking to install exhaust systems at 9 fire stations to protect the safety and health of the City's firefighters. Each fire station is comprised of multiple bays.

Competitive Sealed Proposal Process and Schedule

The Competitive-Sealed-Proposal method is appropriate when qualifications and experience are of particular importance and price is one of several factors used to determine the best service provider. This method requires each participant to submit a proposal based on certain specified elements with knowledge of the factors used to evaluate the proposal and their relative weight. Those interested in participating in the selection process are afforded the opportunity to pose questions in writing about the RFCSP and services sought before submitting a proposal. After the sealed proposals have been submitted and reviewed, the City may obtain additional information or clarifications including additional "best and final offers" from participants, prior to making its final selection, provided that information from one proposer is not disclosed to another. The City will select a responsible and responsive proposer whose proposal is determined to be most advantageous to the City taking into consideration the evaluation factors.

2. Schedule

The City intends to adhere to the schedule below for the selection process. Dates may be adjusted by City as needed.

No proposals will be accepted after February 28, 2018 at 3:00 P.M. Central Standard Time

Proposers shall provide three (3) printed and one (1) digital copy of their proposal. All proposals received by the deadline will be publicly opened on February 28, 2018 at 3:00 P.M. Central Standard Time in the City Manager's Office, 111 West Vine Street, Murfreesboro, Tennessee.

Activity	Target Date
RFCSP Issued	January 30, 2018
Submittal of questions	February 16, 2018
Answers to questions	February 23, 2018
Proposals submitted	February 28, 2018
Finalist Presentations	TBD
Select Top Proposer	March, 2018
Negotiation of contract	March, 2018
City Council action	April, 2018

2.2 Finalist Selection

The City intends to select two or more Proposers from the RFCSP responses to further evaluate as finalists. Finalists then will be allowed to submit revisions to their proposal to make a last and best final offer. Additional discovery may be performed to assist in selecting the finalist.

The finalist will be selected based on all of the evaluation criteria so that the City obtains the best professional services for an appropriate fee.

3. Contact Information

Proposers are required to register with **Vendor Registry** to insure that all relevant written communications are available to them in the preparation of their proposal. Registration can be accomplished free of charge at:
<https://vrapp.vendorregistry.com/Vendor/Register/Index/murfreesboro-tn-vendor-registration>.

Any inquiries or requests for explanation in regard to the City requirements must be received no later than February 16, 2018. No oral interpretation or clarifications will be given as to the meaning or any part of the Request for Proposal documents. Prospective proposers desiring further information or interpretations must make requests in writing by email to Purchasing Director Paul Boyer at: purchasing@murfreesborotn.gov. Inquires along with the responses will be shared with all prospective proposers who have registered to received responses to inquiries in advance of the deadline for submission of proposals. Answers to all inquiries or requests involving substantive matters will be given to all proposers of record, in addendum form, and such information will be taken into account in the preparation of proposals.

4. Background

Murfreesboro Fire Rescue stations are not currently equipped with exhaust systems to ensure the safety of Fire Rescue personnel and the public from carbon monoxide and numerous other particulates generated from vehicle exhaust. Direct source capture exhaust systems will provide

for the removal of 100% vehicle exhaust emissions from apparatus whenever they are in the apparatus bays. The systems shall work from start up to door threshold and from door threshold to vehicle shut down.

5. Services Requested/Specifications.

Direct Source Capture Vehicle Exhaust Systems

- Shall be 100% direct source capture vehicle exhaust systems.
- Station bay allotments shall be:
 - Station 1 - 5 bays
 - Station 2 – 2 drive-through bays (one bay multiple drops)
 - Station 3 – 2 bays
 - Station 5 – 2 drive-through bays (both bays multiple drops)
 - Station 6 – 2 bays
 - Station 7 – 2 bays (one bay multiple drops)
 - Station 8 – 2 bays (one bay multiple drops)
 - Station 9 – 2 bays (one bay multiple drops)
 - Station 10 – 2 bays (both bays multiple drops)
- System shall be mounted in a way that the exhaust will be captured within 5 feet of a bay door threshold; this includes both entrances and exits for the bays that have both. System shall maintain connection while the vehicle is between thresholds.
- Exhaust capture systems shall meet all applicable OSHA and NFPA standards.
- Vendors shall provide details of their design for each designated station.
- Vendors shall list any options (with pricing) available for their systems with preference given to magnetic vehicle connections and automatic control features.
- Installation details and timeframes shall be provided.
- System service details shall be provided.
- System warranties shall be listed.

For site visits requests, contact Deputy Chief Roger Toombs at: (615) 849-2605

6. City Terms and Conditions

It is important for each Proposer to become familiar with each paragraph within this section, as these paragraphs will prevail in the event of any discrepancies or differences between this document and a Proposer's response.

If Proposer seeks a modification or exception from the Terms and Conditions imposed by this section, Proposer must clearly and specifically detail all such modifications and exceptions in the transmittal letter accompanying its RFCSP response.

6.1 Standards

Proposer must affirm that under its employment policies, standards and practices, it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to the individual's race, creed, color, national origin, age or sex and that it is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.

It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, Proposer will be required to certify and warrant that it will comply with this policy.

Proposer further acknowledges that the City is a federal government contractor, and that by virtue of any contract awarded pursuant to this RFCSP, Proposer will be a federal government subcontractor. Therefore, in accordance with federal law, Proposer specifically acknowledges and agrees as follows:

- a. **The City and Proposer shall abide by the requirements of 41 CFR 60-1.4(a). This regulation prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin, and requires federal government Proposers and sub-Proposers to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.**
- b. **The City and Proposer shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime Proposers and sub-Proposers to employ and advance in employment qualified protected veterans.**
- c. **The City and Proposer shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime Proposers and sub-Proposers to employ and advance in employment qualified individuals with disabilities.**

Proposer understands that it shall be a breach of City's ethical standards policies for any person to offer, give, or agree to give to any City employee or former employee, or for any City employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, evaluation, recommendation, preparation of any part of a requirement or request, influencing the content this RFCSP, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to this RFCSP or any contract or subcontract resulting therefrom.

A breach of these ethical standards may result in civil and/or criminal sanctions and/or debarment or suspension from being a contractor or subcontractor for any City contract.

6.2 Warranties

Proposer warrants it will perform the services in a professional manner according to the standards established in the industry for the type of work to be performed and as outlined in Section 5.

6.3 Indemnification

The Proposer shall indemnify the City and hold it harmless against all claims, liability, demands, liens, taxes, loss or damages of any character suffered by the City arising from any operations, acts or omissions of Proposer related to the work. Proposer's indemnification shall also encompass any and all financial damages to City resulting from the activities and responsibilities of the Proposer, Proposer's employees, and subcontractors.

6.4 Terms for Payment

Payment for services delivered will be thirty (30) days from the date of the invoice.

6.5 Assignment

The successful Proposer shall not assign, transfer, convey, sublet or otherwise dispose of any contract award or any or all if its rights, title or interest therein, without prior written consent of the City. Such consent by the City shall not relieve the assignor of liability in the event of default by the assignee.

6.6 Insurance

The successful Proposer shall maintain at least the following commercial insurance policies for the duration of the Contract that satisfy the additional terms and amounts specified in Exhibit B to the Sample Construction Contract included at the end of this RFCSP.

6.7 Scope of Insurance and Special Hazards

The insurance required under the preceding paragraphs shall provide adequate protection for the successful Proposer and any sub-contractors against damage claims that may arise from operations under this contract, whether such operations are by the insured or by anyone directly or indirectly employed by the successful Proposer.

6.8 Governing Law and Venue

The contract will be governed by the laws of the State of Tennessee. Venue for any action shall be in the applicable court for Rutherford County, Tennessee.

6.9 Compliance with Laws

The Proposer's contract shall comply with applicable Federal, State, and Local statutes, rules, and regulations. Proposers shall be approved by the appropriate regulatory authorities, if any, in the State of Tennessee to provide the services herein described.

6.10 Compliance with Iran Divestment Act

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not a person included within the list created pursuant to Tennessee Code Annotated §12-12-106.

6.11 Contractor's License

Pursuant to Tennessee Code Annotated Title 62, Chapter 6, Part 1, if a bid is \$25,000 or above, bidder must be a licensed contractor as required by the Contractor's Licensing Act of 1976, Public Chapter No. 822 of the General Assembly of the State of Tennessee as amended. In accordance with T.C.A. §62-6-119, Bidder shall place their bid in an envelope showing: (1) the bidder's name, license number, expiration date thereof, and license classification of the contractor applying to bid for the prime contract; (2) The name, license number, expiration date thereof, and license classification of the contractor applying to bid for the masonry contract (if applicable) where the total cost of the materials and labor for the masonry portion of the construction project exceeds one hundred thousand dollars (\$100,000); (3) The name, license number, expiration date thereof, and license classification of the contractor applying to bid for the electrical, plumbing, heating, ventilation, or air conditioning contracts except when such contractor's portion of the construction project is less than twenty-five thousand dollars (\$25,000); (4) For each vertical closed loop geothermal heating and cooling project, the company name, department of environment and conservation license number, classification (G, L or G,L) and the expiration date, except when the geothermal portion of the construction project is in an amount less than twenty-five thousand dollars (\$25,000); (5) Prime contractor bidders who are to perform the masonry portion of the construction project which exceeds one hundred thousand dollars (\$100,000), materials and labor, the electrical, plumbing, heating, ventilation or air conditioning or the geothermal heating and cooling must be so designated; and (6) Only one (1) contractor in each of the classifications listed above shall be written on the bid envelope or provided within the electronic bid document.

Bids not conforming with this provision shall not be opened. Failure of any bidder to comply therewith shall void such bid and such bid shall not be considered.

7 Guidelines for this Request for Competitive Sealed Proposals Process

7.1 Basis for Proposals

Only information supplied by the City in writing should be used in the preparation of a proposal. Oral and other interpretations or clarifications shall not be binding. Proposers must acknowledge any subsequently issued addenda by signing and including such documents in the proposal.

7.2 Proposer Terms and Conditions

The Proposer must submit a complete set of any additional terms and conditions that it proposes to have included in contract negotiations with the City with its proposal. City will not accept any contract term limiting Proposer's liability to the amount of the contract. Additionally, the Proposer must submit any and all documents/agreements City must sign with its proposal.

7.3 Disclosure of Proposals

As a matter of state law, each Proposer's RFCSP response in its entirety will become a public record after completion of the selection process. The content of any proposal will not be disclosed to other Proposers during the selection process.

7.4 Late Proposals

Proposals must be received at the specified location on or before the published proposal due date and time. Any proposal received after the time and date set for receipt of proposals will be late and, at the discretion of City, may not be considered.

7.5 Signing of Proposals

The submission and signature of a proposal shall indicate the intention of the Proposer to adhere to the provisions described in this RFCSP and therefore must be signed by a representative with the authority to do so.

7.6 Cost of Proposal

This RFCSP does not commit the City to pay any costs incurred by any Proposer in preparation and/or submission of a proposal or for procuring or contracting for the items to be furnished under the RFCSP. All costs directly or indirectly related to responding to this RFCSP (including all costs incurred in supplementary documentation or on-site interviews) until contract execution will be borne by the Proposer.

7.7 Conflict of Interest, Non-Collusion and Anti-Lobbying

The Proposer promises that its officers, employees or agents will not attempt to lobby or influence a vote or recommendation related to the firm's proposal, directly or indirectly, through any contact with City Council members or City employees between the release of this RFCSP and award of contract by City and that there will be no collusion and no conflict of interest.

7.8 Ownership of Proposals

All documents submitted in response to this RFCSP shall become the property of City.

7.9 Disqualification or Rejection of Proposals

Proposers may be disqualified for any of the following reasons:

- The Proposer's proposal does not satisfy the product, technical, or service specifications set forth in this RFCSP;
- There is reason to believe that collusion exists between or among two or more Proposers;
- The Proposer is in arrears on an existing City contract or has defaulted on a previous City contract;
- The Proposer lacks financial stability;
- The Proposer has failed to perform under a previous or current City contract;
- The Proposer has failed to adhere to one or more of the provisions established in this RFCSP;
- The Proposer has failed to submit its proposal in the format specified herein;

- The Proposer has failed to submit its proposal on or before the deadline established herein; or
- The Proposer has failed to adhere to generally accepted ethical and professional principles during the proposal process.

7.10 Right to Waive Irregularities

Proposals shall be considered irregular if they show any omissions, alterations of form, additions, conditions not called for, or irregularities of any kind.

The City reserves the right to waive irregularities. The City also reserves the right to waive any mandatory requirement provided that all proposals failed to meet the same mandatory requirement, and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of City.

7.11 Withdrawal of Proposals

Proposals may be withdrawn by written notice if received by the City prior to the exact hour and date specified for receipt of proposals. A proposal also may be withdrawn in person and the Proposer signs a receipt for the proposal, but only if the withdrawal is made by a person clearly authorized to do so prior to the exact hour and date set for the receipt of proposals.

7.12 Amendment of Proposals

A Proposer must submit any amended proposal before the deadline for receipt of proposals. Such amended proposal must be a complete replacement of a previously submitted response and must be clearly identified as such in the transmittal letter. City will not merge, collate, or assemble proposal materials.

7.13 Proposal as Firm Offer

Responses to this RFCSP, including cost, will be considered firm for one hundred twenty (120) after the due date for receipt of response or receipt of the last best and final offer submitted. All proposals must include a statement to that effect.

7.14 Exceptions to RFCSP Specifications

It is extremely important that the Proposer make very clear where exceptions are taken to the specifications and how the Proposer will provide alternatives. Therefore, exceptions, conditions, or qualifications to the provisions of City's specifications must be clearly identified as such together with reasons for taking exception, and inserted into the proposal response. If the Proposer does not make clear that an exception is being taken, City will assume the proposal response is responding to and will meet the specification as written.

However, the City does not anticipate approving any exceptions to the specifications stated herein.

Where the Proposer does not agree with City's terms and conditions, the proposal must enumerate the specific clauses that the Proposer wishes to amend or delete and suggest alternative wording. Any minimum terms that City will have to agree to in order to enter into a

contract with the Proposer and any item the Proposer considers to be a mandatory term must be submitted with the RFCSP response.

7.15 Consideration of Proposals

Discussions may be conducted with responsible Proposers for the purpose of clarification to assure full understanding of the proposal. In conducting discussions, there will be no disclosure of any information derived from proposals submitted by competing Proposers. Until the City awards the contract, it reserves the right to reject any or all proposals and waive technicalities, to re-advertise for new proposals, or to proceed with the work in any manner as may be considered in the best interest of City.

7.16 Termination

The City reserves the right to cancel this RFCSP at any time. City reserves the right to reject any or all proposals submitted in response to this RFCSP.

7.17 Taxes

Proposer will be responsible for the payment of any applicable tax on the services it will provide. At the time of this RFCSP, neither the State of Tennessee nor the City impose a sales tax on consultant services of this type. Proposers will include in its fee proposal all applicable local, City, state, and federal taxes.

7.18 Award of Contract

The City reserves the right to withhold final action on the RFCSP for a reasonable time, not to exceed one hundred and twenty (120) days after the date of submitting proposals, and in no event will an award be made until further investigations have been made as to the responsibility of the proposed Proposer. The award of the contract, if an award is made, will be to the most responsible and responsive Proposer whose proposal meets the requirements and criteria set forth in the Request for Competitive Sealed Proposals and whose contract terms are acceptable to City. City reserves the right to abandon, without obligation to the Proposer, any part of the project, or the entire project, at any time before the successful Proposer begins any work authorized by City.

The award of the contract shall not become effective until the contract has been executed by the successful Proposer and City.

7.19 Appeal Process

Each Proposer shall be notified of the Proposer selected for recommendation to the City Council before the proposed City Council action. A protest by an aggrieved Proposer who is not selected will be heard by the City Council if filed with the City Council, through the City Recorder, within seven (7) days after the intended award is announced. Any issue raised by the protesting party after the seven day period shall not be considered as part of the protest. The City Council may stay an award due to a pending protest without financial or other obligation to the Proposer recommended to the Council. The City Council may, by resolution, adopt rules and procedures applicable to protests.

7.20 Execution of Contract

The City shall authorize award of the contract to the successful Proposer. City will require the successful Proposer to sign the necessary documents entering into the required contract with City within ten (10) days of receipt and to provide the necessary evidence of insurance as required under the contract.

No contract for this project may be signed by City without the authorization of the City Council. No contract shall be binding on City until it has been approved as to form by the City Attorney, and approved and executed by the Mayor or designee.

7.21 Interviews and Presentations

If deemed necessary to fully understand and compare the proposer's capabilities, the City may request presentations by proposers with possible subsequent interviews. Oral presentations may be time-limited. Presentations may include but not be limited to demonstrations of end-user reporting, ad-hoc or (other) report writing and uploading of files.

7.22 Auditable Records

The successful proposer must be prepared to maintain accounts and records in connection with its performance of services for City as reasonably required. The proposer must afford City agents or auditors reasonable facilities and access for the examination and audit of its records pertaining to its performance. The records may be examined at any reasonable time during the term and for a period of one year following the completion of work under any contract. Upon request by the City, winning proposer shall be able to produce and exhibit all such records as requested. Records must be available within an office environment located not more than a 45 minutes' drive from the City's local office or the reasonable expenses incurred to access the records must be borne by successful proposer.

7.23 Miscellaneous

The City reserves the right to cancel this RFCSP and contract under a separate process. The selected proposer will be required to contract with the City and all contract terms are subject to negotiations after the selection is made. The City may contract with any other proposer without renewing the RFP in the event the City and selected proposer are unable to mutually agree upon a contract for the desired services. Nothing herein may be taken as a commitment by the City upon which any proposer may act in reliance. All costs incurred in preparing a response are to be borne solely by each proposer.

NOTE: All responses are subject to public disclosure in accordance with the Tennessee Open Records Law. In the event a proposer desires to share proprietary or confidential information, arrangements must be made with the City prior to disclosure of that information to any person or agent of the City.

8. Criteria Used To Evaluate Proposals

The City will use a combination of objective and subjective criteria to determine each consultant's suitability to perform this work. Evaluation criteria for the proposals are as follows:

1. Successful experience with similar types of projects (20%)
2. Previous project references (15%)
3. Quality of the proposal and understanding of the work to be completed (40%)
4. Project team and key personnel qualifications (15%)
5. Proposed time schedule and budget (10%)

9. RFCSP Requirements and Format

Please use the following format to structure your RFCSP response. Your response should include each section detailed below in the order presented. The detail represents the items that are to be covered in each section of your response. Failure to follow the directions or to address all items will impact the evaluation. Failure to address a significant portion of the items may classify the response as non-responsive and preclude it from further consideration. **The number of pages in the RFCSP response cannot exceed 50 pages.** Appendices will not be counted as part of the 50 page limit. Resumes and marketing material may be included and will not be counted towards the 50 page limit; however this information must be in its own section at the back of the RFCSP response. All materials must fit into a single binder. Please supply five hard copies and one electronic copy.

Proposal

- 1) Proposer Profile: The Proposer will provide a description of its organization and any other firms who will be providing products or services through a subcontracting arrangement with the Proposer.
- 2) Qualifications: Proposer's qualifications to perform the services requested that will also address the evaluative criteria.
- 3) Experience: Please describe your organization's experience in providing similar services. Identify and briefly describe any pending criminal or civil suits brought against the Proposer, or suits which have resulted in an adverse judgment or settlement within the past five (5) years, arising out of Proposer's inability to complete similar services and projects.
- 4) References: Please provide references for at least three organizations for whom Proposer is or has provided similar services. Identify any public sector experience in Tennessee.
- 5) Key Personnel: Identify and provide a brief professional resume of the key personnel anticipated to be used to provide the services sought.
- 6) City's responsibilities: Identify and briefly describe the role and responsibilities Proposer would expect City to perform in achieving delivery of the requested services.

Submittal

All Proposals should be delivered to the City Manager, City of Murfreesboro, 111 West Vine Street, Murfreesboro, TN 37130; All Proposals must be delivered by 3:00 p.m. local time, February 28, 2018.

Iran Divestment Act

“By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not a person included within the list created pursuant to §12-12-106.”

Signature: _____ Date: _____

Title: _____

**FAILURE TO SIGN AND RETURN THIS FORM IN BID PACKET BY DEADLINE
WILL AUTOMATICALLY DISQUALIFY BIDDER.**

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of _____)

:

County of _____)

_____, being first duly sworn, deposes and says that;

- (1) The undersigned is the (owner, partner, officer, representative, or agent) of _____
_____, the bidder submitting the attached bid.
- (2) Bidder is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid.
- (3) Such bid is genuine and is not a collusive or sham bid.
- (4) Neither the said bidder 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 bidder, firm or person to submit a collusive or sham bid in connection with the contract for which the attached bid has been submitted or to refrain from bidding 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 bidder, firm or person to fix the price or prices in the attached bid or of any other bidder, or, to fix any overhead, profit or cost element of the bid price or unlawful agreement any advantage against the City of Murfreesboro or any person interested in the proposed contract;
- (5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the bidder or any of its agent, representatives, owners, employees, or parties in interest, including this affidavit.

(Signed) _____

(Title) _____

**BIDDER AFFIDAVIT ON COMPLIANCE
WITH DRUG-FREE WORKPLACE ACT AND CERTIFICATE**

Bidder, after being first duly sworn, affirms that it has a Drug-Free Workplace Program that complies with Tennessee Code Annotated, Title 50, Chapter 9, in effect at the time of submission of its bid, at least to the extent required of governmental entities. Bidder affirms that:

1. it has received a Certificate of Compliance with the applicable sections of the Drug-Free Workplace Act from the Department of Labor and Workforce Development and has attached a copy of such certificate to this Affidavit; or,
2. it operates a drug and alcohol testing program at least as stringent as the City of Murfreesboro's drug and alcohol testing program as contained in Sections 3005, 3006, and 3023 of the City of Murfreesboro Employee Handbook and shall, upon request, provide documentation of such program to the City.

Name of Bidder

Printed Name and Title of Principal Officer

Signature by Principal Officer

SEALED RESPONSE ENVELOPE LABEL

The label provided below, with all appropriate information completed, should be used for the proper processing of the RFCSP submittal. The label will facilitate the City Manager's Office to properly handle the sealed envelope without revealing the contents until the solicitation is opened.



SEALED QUOTATIONS & PROPOSAL ENCLOSED

Company Name: _____

Company Address: _____

Company Telephone Number: _____

**City of Murfreesboro
Attn: City Managers' Office
Purchasing Department
111 West Vine Street
Murfreesboro, TN 37130**

License #
License Status:
Expiration Date:
Bond Limits:
Subcontractors: _____

License Expiration Dates: _____

Solicitation No: RFCSP-14-2018
Solicitation Title: Exhaust Systems for Fire Stations
Solicitation Due: February 28, 2018, 3 P.M. Central Standard Time

SAMPLE
CONSTRUCTION CONTRACT
BETWEEN
THE CITY OF MURFREESBORO
AND
-
FOR
-

This Construction Contract is entered into as of _____ (the "Effective Date"), by and between the City of **MURFREESBORO**, a Tennessee municipal corporation (the "City") and ----- a corporation of the state of Delaware.

A. The project for which Contractor is providing [] (the "Work") is described as follows (the "Project"):

[-]

B. The following constitute the contract documents for the Project (the "Contract Documents"):

- (1) This Contract
- (2) Exhibit A - Supplemental Conditions
- (3) Exhibit B – Insurance Requirements
- (4) Non-Collusion Affidavit
- (5) Drug Free Workplace Affidavit
- (6) Performance bond
- (7) Payment bond
- (8) Specifications as listed in ["-"]

Agreement

1. Duties and Responsibilities of Contractor. In addition to the duties and responsibilities set forth in the above referenced documents, the Contractor will:

- a. Provide post-construction warranty and repair as needed for a period of one year upon completion of the Work. Any required repairs during this warranty period will be further warrantied for a period of one year with the exception of warranties provided by manufacturer of equipment, all of which must be transferred to the City upon completion of the Work.
- b. Provide all supervision, supplies, labor, transportation and equipment reasonably required for the proper execution of the Work and Contractor is solely responsible for all construction means, methods, techniques, sequences, and procedures, including properly coordinating all portion of the Work.
- c. Maintain sole responsibly for the safety of Contractor personnel, all subcontractors and materialmen, and all other persons within the worksite and in the immediate vicinity of the worksite that is effected by any Work. Establishment and execution of a comprehensive personnel safety program appropriate for the type of work

involved with the various Work assignments as may be required by the appropriate local, state, and federal agencies such as OSHA and TOSHA.

- d. Keep the premises of the Work and the surrounding area free from any accumulation of debris or trash and Contractor will properly disposal of all surplus or waste materials upon completion of the Work. Comply with any additional Contractor duties and responsibilities as specified in the Supplementary Conditions, if attached hereto.

2. Representations of the Contractor. In order to induce the City to enter into this Contract, Contractor makes the following representations:

- a. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- b. Contractor has had the opportunity to visit and inspect the work site and become familiar with and satisfy itself as to the general, local, and site conditions that may affect cost, progress, and performance of the Work.
- c. Contractor is familiar with and has satisfied itself as to all laws and regulations that may affect cost, progress, and performance of the Work.
- d. Contractor has a clear understanding the Work Assignments will involve work with resurfacing the tennis courts.
- e. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing the construction activities and delivering the construction services; information and observations obtained or that should have been obtained from site inspections; the Contract Documents; with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- f. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price (as defined below), within the Contract Times as defined below), and in accordance with the other terms and conditions of the Contract.
- g. Contractor is aware of the general nature of work that may be performed by the City and/or others at the various Work Assignment sites that relate to the Work as indicated in the Contract Documents.
- h. Contractor has given the City written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by the City is acceptable to Contractor.
- i. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

3. Duties and Responsibilities of the City. In addition to the duties and responsibilities set forth in the above referenced documents, the City will provide suitable surveys, sketches, or drawings of the requirements and/or limits of the various individual Work Assignments; appropriate schedules for the progress of the various Work Assignments; and other

information as may be requested and/or appropriate for the Contractor to execute the various Work Assignments.

- 4. Term and Progress of the Work.** This Contract is not effective until approved by the City and signed by all required parties.
 - a. The Contract time is for a period specified in the documents identified in Section 1(a) of this Contract. No adjustment to this time will be made except by a written Change Order signed by a person duly authorized by the City and no course of conduct, verbal agreement, singularly or cumulatively, is a valid means of modifying the Contract price and no person may waive this provision.
 - b. No work on this Project may begin prior to a Notice to Proceed being issued by the City and Contractor hereby waives any claim for any compensation or reimbursement performed prior to the Notice to Proceed.
 - c. The City may perform construction related to the Project with its own forces or award separate contracts in connection with other portions of the Project. Contractor must cooperate and coordinate all Contractor work with all City work.
 - d. Additional Progress of Work requirements are as specified in the Supplementary Conditions, if any.
- 5. Price.** The maximum price for services rendered pursuant to this Contract is ----- (the "Contract Price"). No increases in the price of this Contract is authorized unless a written Change Order is signed by a person duly authorized by the City and no course of conduct, verbal agreement, singularly or cumulatively, is a valid means of modifying the Contract Price and no person may waive this provision.
- 6. Payment.**
 - a. Payment will be made by the City based on Work progress after services have been received, accepted, and properly invoiced. Once Contractor has submitted a monthly invoice, the City will issue payment within 30 days from submittal. The final payment will be made only after Contractor has completely performed its duties under this Contract and the work has been approved and accepted by the City.
 - b. If Contractor fails to carry out the Work in accordance with the Contract Documents or within a reasonable time after receipt of written notice from the City or to correct any deficiency of the work with diligence and expedience, the City may correct the default or deficiency and, without prejudice to other remedies in law or at equity, the Contract Price will be reduced equal to the cost of the correction.
- 7. Termination for Breach.** In the event that any of the provisions of the Contract are violated by the Contractor, the City may serve written notice upon the Contractor of its intention to terminate the Contract, and unless within 72 hours after the serving of such notice upon the Contractor such violation or delay ceases and satisfactory arrangement for correction be made, the City may immediately terminate the Contract at any time after said 72 hours. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
- 8. Suspension of Work.** Any unauthorized work stoppage due to any type of strike by the Contractor's labor force is grounds for immediate termination of this Contract by the City; provided however, in the City's sole discretion, during any period of work stoppage by the

Contractor's labor force, the City reserves the right to have any and all Work Assignments performed by City crews or crews from another Contractor or Contractors and to deduct from the Contract Price all costs associated with such performance.

- 9. Termination for Convenience.** The City may terminate this Contract at any time after 30 days' written notice to Contractor. In that event, the Contractor is entitled to receive just and equitable compensation for any satisfactory authorized work completed as of the termination date.
- 10. Compliance with Laws.** Contractor agrees to comply with any applicable federal, state, and local laws and regulations.
- 11. Maintenance of Records.** Contractor must maintain documentation for all charges associated with services provided pursuant to this Contract. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Contract, will be maintained for a period of three full years from the date of final payment and will be subject to audit at any reasonable time and upon reasonable notice by the City or its duly appointed representatives.
- 12. Modification of Contract.** This Contract may be modified only by written amendment executed by all parties and their signatories hereto. Depending upon the nature and amount of the amendment, the approval of the City may be required. Minor modifications to the Contract may be executed by signature of the City Manager.
- 13. Priority of Documents.** In the event of conflicting provisions, all documents are to be construed according to the following priority: (i) any properly executed amendment or change order to this contract (most recent with first priority); then (ii) this Contract and exhibits thereto; then (iii) the provisions of the required Payment and Performance Bond provisions; then (iv) the specifications referenced herein; and lastly (v) any other documents referenced herein.
- 14. No Partnership or Joint Venture.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party is liable for any representation, act, or omission of any other party contrary to the terms of this paragraph.
- 15. Waiver.** No waiver of any provision of this Contract, including modification of the Contract Price, affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
- 16. Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Contract, the Contractor certifies and warrants it will comply with this policy.
- 17. Indemnification.** Contractor indemnifies and hold harmless the City, its officers, agents, and employees from (i) any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Contractor, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the Contract, and (ii) Any claims, damages, penalties, costs and attorney fees arising from any failure of Contractor, its

officers, employees and/or agents, including its sub or independent Contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws. Contractor must pay the City any expenses incurred as a result of Contractor's failure to fulfill any obligation in a professional and timely manner under this Contract.

- 18. Insurance and Bonds.** Contractor must maintain commercial general liability insurance for bodily injury and property damage, automobile liability insurance, and workers' compensation insurance as required by the State of Tennessee. Contractor must name the City and the City of Murfreesboro as an additional insured on all liability insurance policies and provide the City a copy of the endorsement. Contractor must notify the City within five days if the insurance policy is renewed, cancelled, or altered in any manner and provide written documentation of such alteration.

 - a. Insurance requirements are specified in Exhibit B, attached hereto.
 - b. Contractor must furnish a Performance Bond and a Payment Bond, each in the amount of 100% of Contractor's entire obligation under the Contract, as security for faithful payment.
- 19. Attorney Fees.** Contractor agrees that, should either party deem it necessary to take legal action to enforce any provision of the Contract and the City prevails to any extent, Contractor must pay all expenses of such action including the City's attorney fees and costs incurred at all stages of the litigation or dispute resolution.
- 20. Assignment—Consent Required.** The provisions of this Contract inure to the benefit of and is binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Contract, neither this Contract nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer will not release Contractor from its obligations hereunder.
- 21. Entire Contract.** This Contract and all documents listed above set forth the entire agreement between the parties with respect to the subject matter hereof and govern the respective duties and obligations of the parties and supersede any and all prior or contemporaneous, written or oral negotiations, correspondence, understandings and agreements between the parties respecting the subject matter of this Contract. No supplement, modification or amendment to this Contract is binding unless evidenced in writing and signed by the party against whom it is sought to be enforced. No waiver of any of the provisions of this Contract constitute, or may be deemed to constitute, a waiver of any other provision, whether or not similar, nor does any waiver constitute a continuing waiver. No waiver is binding unless executed in writing by the party making the waiver.
- 22. Force Majeure.** In the event of any occurrence of an event of *force majeure*, meaning any act of war, order of legal authority, act of nature, or other unavoidable causes that could not have been prevented by and which are not attributed to fault or negligence of Contractor, (i) the City may choose to cancel this Contract, pay only for work performed by Contractor, and have no further liability whatsoever under the Contract, or (ii) at the City option, Contractor will be granted an equitable extension of the period of performance.
- 23. Governing Law.** The validity, construction and effect of this Contract and any and all extensions or modifications thereof is governed by the laws of the State of Tennessee. Tennessee law governs regardless of any language in any attachment or other document that the Contractor may provide.

- 24. Venue.** Any action between the parties arising from this Contract must be maintained in the courts for Rutherford County, Tennessee.
- 25. Severability.** Should any provision of this Contract be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Contract.
- 26. Notices.** Notices to the City, including but not limited to notice of assignment of any rights to money due to Contractor under this Contract, must be mailed or hand delivered to the address below. Any notice to Contractor from the City relative to any part of the Contract will be considered delivered and the service thereof completed when said notice is posted by registered mail, to the said Contractor at its last given address or delivered in person to said Contractor or its authorized representative on the Work.

VENDOR.

CITY OF MURFREESBORO

By:
Its:

By: Shane McFarland
Its: Mayor

Approved as to form:

Craig D. Tindall, City Attorney

Address for notice to Contractor:

Address for notice to the City:
City Manager
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130

Exhibit A
Supplementary Conditions

Each party acknowledges that no Supplementary Conditions are necessary for this project by initialing below:

City: _____

Contractor: _____

Exhibit B
Insurance Requirements

Contractor must, as a material obligation to the City and a condition precedent to any payment otherwise due to Contractor, furnish and maintain, and cause its Subcontractors to furnish and maintain, insurance in accordance with the provisions of this Exhibit.

Contractor must secure and maintain without interruption, from the date of commencement of the Work until the later of the date of Final Completion, the date of final payment, or the date until which this Contract requires any coverage to be maintained after final payment, policies of commercial general liability, commercial auto, umbrella/excess, workers' compensation and employer's liability insurance, providing the following coverages, limits and endorsements:

1. Commercial General Liability Insurance ("CGL").

- | The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU, and products and completed operations, with a combined single limit of liability of not less than \$1,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than \$1,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.

- | The CGL insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.

- | Each CGL policy must be endorsed or written to:

- | | Include the per project aggregate endorsement;

- | | Name as additional insureds the following: the City of Murfreesboro and its elected officials, officers, employees, representatives and agents (collectively, the "Additional Insureds");

- | | Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors;

- | | Includes a severability of interest clause; and

- | | Waive all rights of recovery against the Additional Insureds.

2. Workers' Compensation Insurance. Workers' Compensation policy must meet all Tennessee statutory requirements, including Employers' Liability Insurance with limits of at least \$ 1,000,000 per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

3. **Auto Liability Insurance.**

Commercial auto liability must be carried with minimum combined single limit of \$1,000,000 per occurrence.

This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles.

This policy must be endorsed, by specific or blanket endorsement, to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.

4. **Term of Coverage.**

The products and completed operations liability coverage required by this Contract must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Contract (the "Completed Operations Term").

If at any time during the Completed Operations Term, Contractor cannot obtain equivalent coverage by replacement or renewal, Contractor must acquire a tail policy prior to expiration of the existing policy that will extend coverage until the end of the Completed Operations Term.

Contractor will furnish certificates of insurance and other evidence that the City may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.

All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

5. **Subcontractor and Lower-Tier Entities Insurance Requirements.**

Contractor must require all of Contractor's Subcontractors and must require its Subcontractors to require their Lower Tier Entities, as a condition of working on the Project, and of receiving payment, to:

Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverages, endorsements, terms of coverage and other provisions as are required of Contractor under by this Exhibit, **EXCEPT THAT** the combined coverage limits of the general liability insurance to be furnished by Lower Tier Entities must be \$1,000,000 per occurrence, and \$1,000,000 as the annual aggregate limit; and

Timely furnish to the City proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.

The Lower Tier Entities' general liability policy must also be endorsed to provide primary insurance, the general liability insurance furnished by

Contractor must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be excess, tertiary and non-contributory to the insurance furnished by Contractor and Subcontractor.

The City has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

6. Other Policy Provisions. Each policy to be furnished by Contractor and each Subcontractor must:

Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;

Provide that attorney's fees are outside of the policy's limits and be unlimited;

Include the Project per aggregate endorsement;

Waive all rights of subrogation against the City;

Provide a Certificate that contains a provision that coverages afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days' prior written Notice has been given to the City; and

Be otherwise satisfactory to the City. The City agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that the City is satisfied the insurance is not commercially available to the insured. In such event, the City has the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that the City be a loss-payee under the policy.

7. Certificates and Endorsements

Within 10 days after the execution of this Contract, Contractor must provide the City with certificates and endorsements;

Upon City request, Contractor must provide the City with certificates and endorsements from each of its Subcontractors, in all cases evidencing compliance by Contractor, each Subcontractor, and Lower Tier Entities with the requirements of this Exhibit together with letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no known or pending claims or incidents which have resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to the City under the policy and that available coverage has not been reduced because of revised limits or payments made (or, in the event such representations cannot be given, Contractor, its Subcontractors, and its Lower Tier Entities must furnish the particulars thereof to the City.

If any of the foregoing insurance coverages are required to remain in force after Final Completion, Contractor must submit an additional certificate evidencing continuation of such coverage with its application for final payment.

8. **Reduction in Coverage.** Contractor must promptly inform the City of any reduction of coverage resulting from revised limits, claims paid, or both and must require its Subcontractors and Lower Tier Entities to promptly inform Contractor of same. The City has the right to require Contractor or the applicable Subcontractor to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of Contractor or the applicable Subcontractor.
9. **Suppliers and Materialmen Coverages**
- | Contractor will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.
 - | With respect to any equipment, machinery or other goods for which the City or Contractor has paid a deposit, Contractor will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming the City and Contractor as loss payee as their interests appear.
10. **Condition Precedent to Starting Work**
- | Prior to, and as a condition of its right to begin performing any Work on the site, Contractor and each Subcontractor and Lower Tier Entities must deliver to the City certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other proof satisfactory to the City that the required insurance is in place; together with the original of each bond required under this Contract. Contractor and each Subcontractor and Lower Tier Entities hereby authorize the City to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;
 - | The City is under no obligation or duty to make any such inquiry and the City is entitled to rely on any proofs of insurance tendered by Contractor or its Subcontractors and Lower Tier Entities. The City's acceptance of any proof of insurance and bonds offered by Contractor or any Subcontractor or Lower Tier Entities will not be deemed a waiver of the obligations of Contractor and Subcontractors and Lower Tier Entities to furnish the insurance and bonds required by this Exhibit.
11. **Additional Proofs of Insurance.** Contractor must, within 10 days after request, provide the City with certified copies of all policies and endorsements obtained in compliance with this Contract.
12. **Indemnity.** The fact that Contractor and its Subcontractors are required by this Contract to purchase and maintain insurance in no way limits or restricts any other obligations or duties Contractor and its Subcontractors and Lower Tier Entities may have to indemnify, defend or hold harmless the City and the other Additional Insureds from and against any and all demands, liabilities, losses or expenses of whatever kind or nature.

13. **Interpretation.** In the event of any inconsistency between the provisions of this Exhibit and those of the other provisions of the Contract, the terms of this Exhibit will govern.