



STANDARD TERMS AND CONDITIONS

Attachment A-1 (rev. 12/31/08)

1. Application

These standard terms and conditions shall apply to all City of Irving (hereafter "City") solicitations and procurements, unless specifically excepted in the solicitation specifications.

2. Requirements

By submitting a bid or proposal, the respondent agrees to provide the City of Irving with the specified goods or services described in the solicitation in accordance with these standard terms and conditions, at the agreed upon bid price and in compliance with the stated specifications and any subsequent addendums issued prior to the date of the bid opening.

3. Legal Compliance

Bidder or proposer must comply with all Federal, State and Local laws, statutes, ordinances, regulations and standards in effect at the time of delivery of goods and services, and must maintain any and all required licenses and certificates required under the same laws, statutes, ordinances, regulations and standards for services and/or goods provided in response to this solicitation.

4. Estimated Quantities

If the solicitation calls for unit pricing on specific items, the quantities described for each item are estimates only and not guaranteed amounts. The actual amount ordered over the contract period may be more or less than the estimate. Quantities represent the City's best estimate, based on past history and anticipated purchases.

5. Modifications and Addendums

The City shall have the right to modify any of the solicitation documents prior to submission deadline and will endeavor to notify potential bidders, but failure to notify shall impose no liability or obligation on the City. All modifications and addendums must be in written form prepared by the City department issuing the solicitation. Bidders are responsible for incorporating any and all modifications and addendums into their bid responses.

6. Interpretation of Solicitation Documents

The City is the final judge of the meaning of any word(s) sentences, paragraphs or other parts of the solicitation documents. Bidders are encouraged to seek clarification, before submitting a bid, of any portion of the bid documents that appears to be ambiguous, unclear, inconsistent, or otherwise in error. Clarifications will be in writing.

7. Late Bids

Bids must be received in the Purchasing Office by the time specified in the solicitation. The City will not accept late bids and is not responsible for the lateness or non-delivery of bids by the Postal Service or any private delivery firm. The time/date stamp in the Purchasing Office shall be the official time of receipt.

8. **Conditional Bids**
The City will not accept conditional bids which qualify the bidder's response in any way.
9. **Minor Irregularities**
The City reserves the right to waive any minor irregularities that do not materially affect the scope or pricing of submitted bids.
10. **Responsiveness of Bids**
The City wants to receive competitive bids, but will declare "non-responsive" bids that fail to meet significant requirements outlined in the solicitation documents.
11. **Discrepancies and Errors**
In the case of a discrepancy between the unit price and the extended total for a bid item, the unit price will prevail. The unit prices of bids that have been opened may not be changed for the purpose of correcting an error in the bid price.
12. **Identical Bids**
In the event two or more identical bids are received, and are lowest, responsible and responsive, award will be made as prescribed in the Texas Local Government Code, Chapter 271.901.
13. **Reciprocal Local Preference**
Some states provide a preference for vendors within their borders and add percentages to bids received from outside states. Where this happens, the state of Texas responds in like manner by applying the same percentage to bids received from vendors who are not from Texas. This applies to the purchase of materials, supplies, equipment and services.
14. **Withdrawal of Bids**
Bidders may withdraw any submitted bids prior to the bid submission deadline. Bidders may not withdraw once the bids have been publicly opened, without the approval of the City's purchasing manager. Bidders will be allowed to withdraw bids that contain substantial mathematical errors in extension
15. **Disqualification of Bidder**
The City may disqualify bidders, and their bids not be considered, for any of the following reasons: Collusion among bidders; Bidder's default on an existing or previous contract with the City, including failure to deliver goods and/or services of the quality and price bid; Bidder's lack of financial stability; any factor concerning the bidder's inability to provide the quantity, quality, and timeliness of services or goods specified in the solicitation; bidder involved in a current or pending lawsuit with City; bidder's attempt to influence the outcome of the solicitation through unauthorized contact with City officials outside of those listed in the solicitation documents; and bidder's attempt to offer gifts, gratuities, or bribes to any City employee or elected official in connection with a solicitation.
16. **Cost of Bid**
The cost of submitting bids shall be borne by the bidders, and the City will not be liable for any costs incurred by a bidder responding to this solicitation.
17. **Inclusive Pricing**
Bid pricing is to include all expenses, fees and charges related to the delivery of the specified goods or services. The City will not pay any additional charges other than the bid price unless requested by the City on the bid response sheet.

18. Firm Prices

Unless otherwise stated in the specifications, bidder's prices remain firm for 120 days from date of bid opening and, upon award, remain in effect for the contract period specified in the solicitation. If formal award has not occurred within 120 days of bid opening, the vendor and the City may mutually agree to extend the firm price period.

19. Delivery Terms

Unless otherwise stated in the specifications, all goods delivered through this solicitation shall be FOB City of Irving specified delivery address or site.

20. Transportation Charges

Bidder shall be responsible for all charges which relate to the delivery of goods to the City's specified receiving point, and for shipping or transportation charges for returning to bidder any goods rejected as non-conforming to the specifications.

21. Delivery and Acceptance

The City will receive only those goods as authorized by City purchase order. Bidder must obtain City employee signature upon delivery. Bidder warrants that all deliveries relating to this solicitation be of the type and quality specified by the City. The City may refuse or reject any delivery failing to meet specifications and shall not be held to have accepted any delivery until after it has made an inspection of same. The City is the final judge as to acceptability of goods under this solicitation.

22. Failure to Deliver

If a bidder is unable to deliver the quantity or quality of specified goods, or is unable to deliver goods within a time period when included in the specifications, the City shall be authorized to purchase from any other available source, consistent with State of Texas procurement statutes.

23. MSDS

Bidders must submit Material Safety Data Sheets for any hazardous chemical quoted or supplied under this solicitation.

24. Taxpayer Identification

Bidders must provide the City with a current W-9 "Request for Taxpayer Identification and Certification" before goods or services can be procured from the bidder.

25. Taxes

The City is exempt from all federal excise taxes and all state and local sales and use taxes. If such taxes are listed on a bidder's invoice, they will not be paid. Additionally, bidders cannot use the City's tax exemption status to purchase goods or services related to this solicitation.

26. Payment

Payment will be made after receipt of all invoiced goods. Bidder will be paid within thirty days of date invoice is received or date goods are received, which is later. Additional discount may be taken by the City based on the Summary Response Page. The discount date begins with the date the invoice is received or the date all items covered by the invoice is received, whichever is later. Bidder is entitled to interest, at a rate stipulated by state law, if payment is not made within thirty days.

27. Outstanding Liabilities

Bidders shall not have outstanding, unpaid liabilities owed to the City. Liabilities may include, but are not limited to, property taxes, hotel occupancy taxes, license or permit fees, and water bills. Bids will be considered non-responsible and not given further consideration if submitted by a bidder with such outstanding liabilities.

28. Offset

The City may, at its option, offset any amounts due and payable under a contract award under this solicitation against any debt lawfully due the City from a vendor, whether or not the amount due arises pursuant to the terms of the contract and whether or not the debt has been reduced to judgment by a court.

29. Independent Contractors

It is expressly agreed and understood by both parties that the City is contracting with the successful bidder as an independent contractor. The City shall not be liable for any claims which may be asserted by any third party occurring in connection with services performed by the successful bidder, and the successful bidder has no authority to bind the City.

30. New Products

The City will accept only new products, such products having not been used or owned by any entity, company or individual except the manufacturer and the manufacturer's distributors. Used or reconditioned products will not be accepted unless specifically requested in the accompanying solicitation.

31. Warranties

Bidder warrants that any and all goods delivered are newly manufactured, free from defects in materials and workmanship, and conform in every respect to the City's specifications. Goods are warranted for one year from date of acceptance by the City, following delivery and inspection. If at any time during the twelve months following acceptance of the goods, said goods fail to perform their intended purpose or are discovered to be defective or nonconforming to the City's specifications, the bidder will replace the goods at no cost to the City, including any delivery or installation costs. This warranty shall be unconditional, except it shall not apply to damage caused by clear abuse or misuse by the City. If a manufacturer of goods or of component parts of goods provides a warranty longer than the period provided for herein, the provisions of this warranty shall not be construed to diminish or conflict with the manufacturer's warranty.

32. Governing Law

All bids submitted in response to this solicitation and any resulting contract shall be governed by, and construed in accordance with, the charter and ordinances of the City of Irving, and the laws and court decisions of the State of Texas.

33. Controlling Document

In the case of a discrepancy between this solicitation and the formal contract, the formal contract will prevail and control.

34. Assignment

Bidder shall not assign, transfer, or pledge a contract awarded under this solicitation, in whole or in part, with the prior written consent of the City's purchasing manager. Assignment of this contract, if approved by the City, shall not relieve the bidder's obligations under the contract. Approval by the City of one assignment shall not constitute approval of any future assignment of the contract.

35. Termination

If an awarded bidder fails in any manner to fully perform each and all of the terms, conditions and covenants of a contract awarded by this solicitation, he shall be in default and notice of default shall be given to the bidder by the City's purchasing manager. In the event that the contractor continues in default for a period of seven (7) days after receipt of the above-mentioned notice of default, the City may terminate or cancel the contract. The City may also cancel a contract for convenience and without cause with thirty days notice. In any cancellation of contract, the City will pay the bidder for all goods received and accepted, and for all services provided and accepted up to and including the date of termination.

36. Indemnification

Bidder shall defend, indemnify, and hold harmless the City of Irving, its officers, agents, employees, appointees and volunteers against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by bidder's breach of any of the terms or provisions of any contract awarded as a result of this solicitation, or by any negligent or strictly liable act or omission of the bidder, its officers, agents, employees, or subcontractors, in the performance of an awarded contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its officers, agents or employees, and in the event of joint and concurrent negligence or fault of the bidder and City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

37. Venue

The obligations of all parties under a contract awarded through this solicitation are performed in Dallas County, Texas, and if legal action is necessary to enforce same, exclusive venue shall be within Dallas County, Texas.

38. Funding

State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Orders or other obligations that may arise beyond the end of the current fiscal year shall be subject to approval of budget funds.

39. Solicitation Results

The City normally posts solicitation results on-line by the end of the next business day after bids are received. The City's Web site is www.cityofirving.org. Results are on the Purchasing Solicitation page, in the same place as the original solicitation documents. Posted results are for informational purposes only, not a notice of award.

40. Open Records

Bid pricing is not considered confidential and is open to public inspection. Trade secrets and other material considered confidential by the bidder should be clearly marked as such. If a request is made under the Texas Open Records Act to inspect information designated as a trade secret or confidential in a bid, the City will forward the appropriate documents to the Attorney General of Texas who will contact the bidder to request sufficient written reasons as to why the information should be protected from disclosure. Upon review of the bidder's response, the Attorney General will make a determination as to the confidentiality of the requested material(s), or lack thereof, and the City will respond accordingly.