



STANDARD TERMS AND CONDITIONS

Attachment A-2 (rev. 02/03/09)

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 or additional documents negotiated by the parties prior to formal award.

2. Requirements

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

3. Legal Compliance

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 indicates estimated quantities, such quantities 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. Proposers are responsible for incorporating any and all modifications and addendums into their submissions.

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. Proposers are encouraged to seek clarification, before submitting a proposal, 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 Proposals

Proposals must be received in the Purchasing Office by the time specified in the solicitation. The City will not accept late submissions and is not responsible for the lateness or non-delivery of proposals 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. Minor Irregularities

The City reserves the right to waive any minor irregularities that do not materially affect the scope or pricing of submitted proposals

9. Responsiveness of Proposals

The City wants to receive competitive proposals, but will declare “non-responsive” submissions that fail to meet significant requirements outlined in the solicitation documents.

10. Withdrawal of Proposals

Proposers may withdraw any submitted proposals prior to the submission deadline. Proposers may not withdraw once the proposals have been publicly opened, without the approval of the City’s purchasing manager. Proposers who no longer wish to negotiate with City will be allowed to withdraw proposals. However, once a proposal has been withdrawn, it can no longer be considered.

11. Disqualification of Proposer

The City may disqualify proposers, and their proposals not be considered, for any of the following reasons: Collusion among proposers; Proposer’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 or agreed upon; Proposer’s lack of financial stability; any factor concerning the proposer’s inability to provide the quantity, quality, and timeliness of services specified in the solicitation; proposer involved in a current or pending lawsuit with City; proposer’s attempt to influence the outcome of the solicitation through unauthorized contact with City officials outside of those listed in the solicitation documents; and proposer’s attempt to offer gifts, gratuities, or bribes to any City employee or elected official in connection with a solicitation.

12. Cost of Submission

The cost of submitting proposals shall be borne by the proposers, and the City will not be liable for any costs incurred by a bidder responding to this solicitation.

13. Failure to Deliver Services

If a proposer is unable to deliver the quantity or quality of specified services, or is unable to deliver within a time period agreed upon prior to award, the City shall be authorized to purchase from any other available source, consistent with State of Texas procurement statutes.

14. Taxpayer Identification

Proposers must provide the City a current W-9 “Request for Taxpayer Identification and Certification” before services can be procured from the proposer.

15. 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 proposer’s invoice, they will not be paid. Additionally, proposers cannot use the City’s tax exemption status to purchase goods or services related to this solicitation.

16. Payment

Payment will be made as agreed upon in the deliverables section of the final proposal. Proposer is entitled to interest, at a rate stipulated by state law, if payment is not made within thirty days.

17. Outstanding Liabilities

Proposers 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. Proposals will be considered non-responsive and not given further consideration if submitted by a proposer with such outstanding liabilities.

18. 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.

19. Independent Contractors

It is expressly agreed and understood by both parties that the City is contracting with the successful proposer 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 by the successful bidder, and the successful bidder has no authority to bind the City.

20. Governing Law

All proposals 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.

21. Controlling Document

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

22. Assignment

Proposer 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 proposer's obligations under the contract. Approval by the City of one assignment shall not constitute approval of any future assignment of the contract.

23. Termination

If an awarded proposer 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 Vendor continues in default for a period of seven (7) days after receipt of the above-mentioned notice of default, 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 any and all services provided and accepted up to and including the date of termination.

24. Indemnification

Proposer 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.

25. Venue

The obligations of the 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.

26. 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.

27. Solicitation Results

The City normally posts solicitation results on-line by the end of the next business day after submissions 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. In the case of RFP's, only the names of the proposers are listed. Results are for informational purposes only, and is not a notice of award.

28. Open Records

Proposals do not become public record until an award is made. 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 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 and information as to why the information should be protected from disclosure. Upon review of the proposer'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.