



PROCUREMENT POLICIES AND STANDARDS

1. No Contact Period

This solicitation is an active procurement and is subject to the No Contact Period.

No questions may be directed to or contacts made with the mayor, other members of City Council, the City Manager, and other City Staff not identified in this solicitation as points of contacts during the period of time this solicitation is made public until the final selection is made, except as otherwise provided for herein. Violation of this prohibition may disqualify the contractor and/or consulting firm from further consideration.

2. Confidentiality

Unless otherwise required by law, and until the public opening of the proposals, all information, materials and other documents submitted by a respondent shall not be released or made available to any person or entity except City representatives assisting in this procurement process. Unless required by law, proprietary or financial information submitted to the City by a respondent will not be disclosed if the respondent visibly marks each part of the proposal that the respondent considers confidential, financial or proprietary information with the word "Confidential."

3. Respondent's Duty to Inspect, Advise and Declare All Costs

Each respondent shall become fully acquainted with the City's requirements and the scope of the services to be provided. Bidders have a duty to request any information from the City as it deems necessary to prepare the IFB. Such requests shall be made in compliance with Paragraph 2 of this section. No contract amendment will be granted or additional compensation permitted if it is based upon information that the respondent knew, or should have known, as part of the respondent's duty to become acquainted with the City's circumstances and requirements.

4. Time for Receiving Bids/Proposals

Bids/Proposals/Responses submitted online prior to the time of opening will be encrypted and kept unopened. The official whose duty it is to open them will decide when the specified time has arrived, and no bids/proposals there-after will be considered.

5. Acceptance and Rejection

Any submittals which do not conform to the essential requirements of the solicitation shall be rejected. The City reserves the right to waive informalities and minor irregularities in submittals and reserves the sole right to determine what constitutes informalities and minor irregularities. The City also reserves the right to accept or reject any or all proposals received in response to this solicitation and to negotiate separately with competing respondents. The City is not obligated to enter into any contract on the basis of any submittal in response to this solicitation. The City reserves the right to request additional information from any firm submitting under this solicitation if the City deems such information necessary to further evaluate the firm's qualifications.

6. Acceptance Period

Any submittal in response to this solicitation shall be valid for 90 calendar days. At the end of this time the submittal may be withdrawn at the written request of the respondent if no award has been made. If the solicitation is not withdrawn at that time, the submittal in its entirety, including the price structure, shall remain in effect.

7. Cancellation of Solicitations

Bids/Proposals/Submittals may be cancelled prior to the time fixed for opening. Negligence on the part of the Offeror in submitting the bid, proposal, or response confers no right for the withdrawal of the proposal after it has been opened.

8. Bidders/Offerors Present

At the time fixed for the opening of proposals, their contents will be made public for the information of Bidders/Offerors and the general public. Bidders/Offerors will not be permitted to examine the bids/proposals until award is made.

9. Alternate Bids/Proposals

Any bid/proposal which does not conform to the specifications contained or referenced in the IFB/RFP/RFQu may be rejected unless the invitation authorized the submission of Alternate Bids/Proposal and the equipment or supplies offered as alternates meet the requirements specified in the invitation.

10. Ambiguous Bids/Proposals

Bids/Proposals/Responses which are uncertain as to terms, compliance to requirements and/or specifications shall be rejected.

11. Conflict of Interest

The City is respectfully requesting information to ensure that any actual or potential Conflicts of Interest (COIs) are properly recorded, reviewed and addressed in a manner as deemed appropriate by the City. It is our goal to protect the integrity of the procurement process and to ensure that no unfair competitive advantage exists or existed during any stage of the process. The City, in its sole discretion, will take the steps required to neutralize, mitigate or to perform any other action to resolve any potential or actual conflict of interest if discovered during this discovery phase.

Some examples of COIs in an organization may include, but are not limited to the following:

- A. Unfair Advantage: Assisting or preparing the organization in crafting written specifications, scopes of work or statements of qualifications and subsequently responding to the solicitation.
- B. Potentially biased or impaired objectivity: Assisting the organization with evaluating or assessing the performance of products or services of other potential bidders and also submitting a response to the solicitation.
- C. Unequal access to information not shared with other potential bidders or respondents: Gaining access or pre-solicitation access to non-public information prior to official release (i.e. budget/funding information, procurement information, proposed evaluation criteria, prior award info obtained from the organization through non-FOIA means, etc.).

Bidder/Offeror/Respondent understands and acknowledges failure to disclose any affiliation or relationship which creates or may create a Conflict of Interest shall be deemed a material misrepresentation and sufficient reason for Bidder/Offeror/Respondent and Bidders/Offeror's/Respondents company to be disqualified, suspended, and/or excluded from participating in this and any future solicitation and procurements as well as removal from the City of Columbia vendor database. It may further result in termination of any contractual relationship with the City of Columbia and may be grounds for disciplinary action, up to and including debarment by the City, fines, penalties, imprisonment, or civil suit to be brought against Bidders/Offeror/Respondents or Bidders/Offeror's/Respondents company.

Bidder/Offeror/Respondent acknowledges, no employee or official of the City, nor any public agency or official affected by this Solicitation or the Agreement/Contract to be signed if they become the successful Offeror, has any pecuniary interest in the business of the Offeror's company or Offeror's subcontractor(s), nor does Bidder/Offeror/Respondent or Bidder/Offeror/Respondent subcontractor(s) have any interest which would conflict in any manner or degree with the performance related to this Solicitation or Agreement/Contract.

Bidder/Offeror/Respondent warrants they and their subcontractor(s), if any, have not employed or retained any

company or person other than a bona fide employee working solely for the Offeror's company or subcontractor(s) in order to solicit or secure an agreement with the City of Columbia, as related to this Solicitation or any resulting Agreement/Contract and Bidder/Offeror/Respondent and my subcontractor(s), if any, have not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Bidders/Offerors/Respondents company or Bidders/Offerors/Respondents subcontractor(s) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award of any Agreement/Contract.

Bidder/Offeror/Respondent warrants and represents the offer identifies and explains in a separate attachment to their submittal any unfair competitive advantage they or their company or subcontractor(s) may have in competing for the Agreement to result from this Solicitation and any actual or potential conflicts of interest which may arise from my participation in this Solicitation or my receipt of an award. Bidder/Offeror/Respondent acknowledges the City intends by this statement to identify any and all potential conflicts of interest and unfair competitive advantages held by any Bidder/Offeror/Respondent, to prevent the existence of conflicting roles which might bias a Consultant's/Contractor's judgment, and prevent one Bidder/Offeror/Respondent or company from having an unfair competitive advantage over other Bidders/Offerors/Respondents. The City, in its sole discretion, has the authority and responsibility to determine whether or not a conflict of interest or unfair competitive advantage exists, after a review of the relevant facts. Bidder/Offeror/Respondent acknowledges and understands if they or their company has an unfair competitive advantage or a conflict of interest; the City may withhold the award of this Agreement. Before withholding award on these grounds, a Bidder/Offeror/Respondent will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered.

By submitting a bid/proposal/response, Bidder/Offeror/Respondent warrants should they become aware of an actual or potential conflict of interest involving their company or subcontractor(s), if any, in performing the services under the Agreement/Contract or responding to this Solicitation, they will notify the City immediately. Bidder/Offeror/Respondent also warrants should they become aware of any competitive advantage their company or subcontractor(s) have in responding to this Solicitation or providing services under an Agreement/Contract related to this Solicitation, they will immediately notify the City of the discovery of a possible competitive advantage. Bidder/Offeror/Respondent understands and acknowledges this obligation to inform the City of the discovery of a conflict of interest or competitive advantage is a continuing obligation and extends throughout the Term of the Agreement/Contract for this procurement.

By submitting a bid/proposal/response, Bidder/Offeror/Respondent certifies for themselves and on behalf of their company and any of my subcontractor(s) they have and will comply with, and have not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (Ethics Act). Bidder/Offeror/Respondent acknowledges and understands the City may rescind any Agreement/Contract and recover all amounts expended as a result of any action taken in violation of this provision. If Bidder/Offeror/Respondent or their company or subcontractor(s) participate, directly or indirectly, in the evaluation or award of public Agreements/Contracts, including without limitation, change orders, or task orders regarding a public Agreement/Contract, Bidder/Offeror/Respondent shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the Purchasing Agent at the same time the law required the statement to be filed.

By submitting this bid/proposal/response, the respondent certifies, under penalty of perjury, to the best knowledge and belief of bidder/proposer/respondent, it has no conflict of interest with any employee, agent, elected official or officer of the city or any other conflict as may be set forth herein.

12. Non-Collusion

Bidder/Offeror/Respondent acknowledges he is fully informed respecting the preparation and contents of the attached bid/proposal/submittal and all pertinent circumstances respecting such bid/proposal/submittal.

Neither the said Bidder/Offeror/Respondent nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affidavit, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder/Offeror/Respondent, firm or person to submit a collusive or sham in connection with the Contract for which the attached Bid/Proposal/Submittal 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/Offeror/Respondent, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Columbia, S.C. or any person interested in the proposed Contract

13. Protest Procedures

- A. Right to protest: Any actual or prospective Bidder, Offeror, Respondent, or Subcontractor who is aggrieved in connection with the solicitation or award of a contract may protest to the appropriate procurement officer. The protest setting forth the grievance shall be submitted in writing within five (5) days after such aggrieved persons know or should have known of the facts giving rise thereto, but in no circumstance after 10 days of notification of the award of the contract.
- B. Authority to resolve protests: The appropriate procurement officer shall have the authority, prior to the commencement of an administrative review as provided in this article, to settle and resolve a protest of an aggrieved Bidder, Offeror, respondent or Subcontractor, actual or prospective, concerning the solicitation or award of a contract. This authority shall be applied in a manner consistent with regulations or laws governing the procurement of supplies, services and construction for the City.
- C. Decision: If the protest is not resolved by mutual agreement, the appropriate procurement officer shall issue a decision in writing within 10 days. The decision shall state the reasons for the action taken.
- D. Notice of decision: A copy of the decision under Letter C above of this section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.
- E. Finality of decision: A decision under Letter C of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a review in writing, setting forth the grievance to the City Manager within 10 days of the decision. The protestant may also request an interview with the City Manager.
- F. Request for review. The request for a review shall not stay the contract unless fraudulent.

14. Sales Tax and/or Use Tax (December 2019)

Bidder/Offeror/Respondent shall include in amounts bid payment of State Sales Tax and/or Use Tax on all taxable materials specified to be furnished by the Bidder/Offeror/Respondent and incorporated into the work under this contract. Please also see Exhibit - *Invoicing Procedures*.

15. Assignments

No contract may be assigned, sublet, or transferred without a written consent of the City.

16. Samples

When samples are required, they must be submitted by the Bidder/Offeror/Respondent so as to reach the office designated prior to the hour set for opening the bids or closing of an RFP/RFQu. Samples shall be furnished free of expense to the Owner, properly marked for identification, and accompanied by a list when there is more than one sample. The Owner reserves the right to mutilate or destroy any sample submitted whenever it may be considered necessary to do so for the purpose of testing. Samples not so mutilated or destroyed when no longer required to be retained in connection with the award or delivery of supplies, may be returned at the Offerors expense, if such return is requested in the IFB/RFP/RFQu.

17. Manufacturers Brochures, Literature, Price Lists and Specifications Data

Bidder/Offeror/Respondent shall submit manufacturer's brochures and specifications data as part of the solicitation response. Submittal of such data shall not be deemed a counter offer unless so noted in the solicitation response sheet. Bidder/Offeror/Respondent failing to comply will be deemed non-responsive.

The successful Bidder/Offeror/Respondent must provide a copy of any product literature and price list in excellent quality.

18. Default

In case of default, the City reserves the right to purchase any or all items and/or services on the open market, charging firm with any excessive costs. Should such charges be assessed, no subsequent bids and/or proposals submitted by the defaulting firm shall be considered until the assessed charges have been satisfied.

19. Bid/Proposal Opening Delay

If it becomes necessary to postpone a bid/proposal/response opening, the procurement officer shall issue the appropriate amendments to the solicitation postponing or rescheduling the bid/proposal/response opening. When the purchasing agency is closed due to force majeure, proposal opening will be postponed to the same time on the next official business day.

20. Exceptions

Notwithstanding any prior negotiations, the specifications and terms and conditions provided herein take precedence. Formal objection is hereby made to any or different terms proposed by Offerors unless listed on a separate sheet labeled "Exceptions", and agreed to in writing by the City of Columbia.

21. Affirmative Action Procurement and Contracting Goals

Additional information on the City's affirmative action goals and objectives may be obtained by contacting the following office:

City of Columbia Office of Business Opportunities
1401 Main Street, 4th Floor
Columbia, SC 29201
(803) 545-3950
www.columbiasc.gov/OBO

The City's success in tracking the amount of business received by SBE, MBE and WBE FIRMS (whether as a prime consultant or Subcontractor) is dependent upon the business community partnering with us in this important endeavor. Bidders must ensure the appropriate appendices are submitted with their response as noted in Section VII Mandatory Requirements and Submittal Format.

22. Non-Discrimination in Contracting Policy

In carrying out the work or service, the Contractor shall adhere to Exhibit – *Non-Discrimination in Contracting Policy*.

SPECIAL NOTICE TO BIDDERS ON CONTRACTS OVER \$1,000,000.00

On EPA funded projects, the Environmental Protection Agency requires a pre-award conference if a proposed construction contract exceeds one million dollars to determine if the prospective Contractor is in compliance with the Equal Employment Opportunity requirements of Executive Order 11246 of September 24, 1965.

In such instances, the Environmental Protection Agency may schedule a meeting at which the prospective Contractor must specify what affirmative action he has taken or proposes to take to assure equal employment opportunity which must be approved by the Environmental Protection Agency before award of the contract will be authorized.

23. Special Standards of Responsibility

When it is necessary for a particular acquisition or class of acquisitions, the procurement officer may develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all Respondents. A valid special standard of responsibility must be specific, objective and mandatory.

24. SC Illegal Immigration Reform Act

Chapter 14 of Title 8 of the SC Code of Laws (July 2008). By submitting and signing this bid or offer, you certify you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the City of Columbia upon request any documentation required to established either: (a) that Title 8, Chapter 14 is inapplicable both to you and your subcontractors or sub-contractor; or (b) that you and your subcontractors or

sub-contractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your sub-contractor's language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with their sub-subcontractor's language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

25. Ethics

The Bidder/Offeror/Respondent is subject to the provisions of the 1991 Ethics Reform Act (8-13-100, et seq, South Carolina Code of Laws, 1976, as amended). Under this Act, "A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with intent to:

- A. influence the discharge of a public official's, public members, or public employee's official responsibilities;
- B. influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or
- C. induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public members, or public employee's official responsibilities. "Anything of value" includes, but is not limited to, lodging, transportation, entertainment, food, meals, beverages, money, gifts, honorariums, discounts and interest-free loans.

26. Prompt Payment

Prompt Payment to Subcontractors and Material Suppliers:

- A. The Bidder/Offeror/Respondent is required to pay all Subcontractors and material suppliers for all work that the Subcontractor has satisfactorily completed, no less than twenty (20) calendar days after the Contractor has received payment from the City.
- B. In addition, all Retainage amounts received from the City by the Bidder/Offeror/Respondent must be paid by the Contractor to the Subconsultant or Subcontractor no later than fourteen (14) calendar days after the Subconsultant or Subcontractor has, in the opinion of the Assistant City Engineer for Construction or his/her designee, satisfactorily completed its portion of the work.
- C. A delay in or postponement of payment to the Subconsultant or Subcontractor or material supplier requires good cause and prior written approval of the Assistant City Engineer of Construction or his/her designee.
- D. The Bidder/Offeror/Respondent is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms or other methods to resolve all payment disputes.
- E. The City will not pay the Contractor for work performed unless and until the Bidder/Offeror/Respondent ensures that the Subconsultants or Subcontractors have been promptly paid for the work they have performed under all previous payment requests, as evidenced by the filing with the City lien waivers, canceled checks (if requested), and the Contractor's sworn statement that it has complied with the prompt payment requirements. The Bidder/Offeror/Respondent must submit a Prompt Payment Affidavit, Subconsultant or Subcontractor list which identifies each Subconsultant or Subcontractor (both DBE and non-DBE) with their contract values and the date and amount of the last payment to such Subcontractor(s), with every payment request filed with the City, except for the first payment request, on every Agreement with the City.
- F. Failure to comply with these prompt payment requirements is a breach of this Agreement. The City reserves the right to pursue any and all remedies permitted under law for breach of contract, including, but not limited to, Contractor debarment.

Bidder/Offeror/Respondent shall submit and comply with Exhibit – *Prompt Payment Affidavit* as instructed.