

MANDATORY TERMS AND CONDITIONS

Because the City of Rosenberg is a governmental entity that must follow State and Federal Laws and has an obligation to protect its taxpayers, the City requires that certain terms be included in the contract that results from this solicitation. Your response to this solicitation is an offer to contract with the City based on the terms, conditions and specifications contained in this solicitation. If any of the mandatory contract terms are unacceptable to your firm, please do not respond to this solicitation.

CONFLICTING PROVISIONS: The contract consists only of the city-prepared contract and any additional city or vendor contract documents incorporated by reference as a part of the contract. If a conflict or inconsistency exists between the city-prepared contract and a document incorporated by reference, the city-prepared contract controls. If a conflict or inconsistency exists between an additional contract documents incorporated by reference, the city's additional contract document takes precedence over the contractor's additional contract document.

PAYMENT PROVISIONS: The City's payments are under the Contract, including the time of payment and payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code.

MULTIYEAR CONTRACTS: If the City Council does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI, Texas Constitution)

LIABILITY AND INDEMNITY: Any provision of the Contract is void and unenforceable if it:

1. Limits or releases either party from liability that would exist by law in the absence of the provision;
2. Creates liability for either party that would **not** exist by law in the absence of the provision; or
3. Waives or limits either party's rights defenses, remedies or immunities that would exist by law in the absence of the provision (Section 5, Article XI, Texas Constitution)

INSURANCE REQUIREMENTS. Successful bidder (as Contractor) must maintain the insurance types and coverages and comply with the insurance requirements shown in the Owner's Minimum Insurance Policy Limits outlined as part of the Invitation to Bid.

1. Within ten (10) days of the initial request; prior to City Council's award of the contract, the successful bidder must furnish original certificates of insurance and corresponding endorsements that meet these insurance requirements.

CONFIDENTIALITY: Any provision in the Contract that attempts to prevent the City's disclosure of information subject to public disclosure under federal or Texas law or regulation, or court or administrative decision or ruling, is invalid. (Chapter 552, Texas Government Code)

TAX EXEMPTION: The City is **not liable** to Vendor for any federal, state or local taxes for which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any item. The city's Tax Exemption Certificate will be furnished by the city on request of the contractor.

CONTRACTUAL LIMITATIONS PERIOD: Any provision of the Contract that establishes a limitations period that does not run against the City by law or that is shorter than two years is void. (Sections 16.061 and 16.070, Texas Civil Practice and Remedies Code)

GOVERNING LAW AND VENUE: Texas law governs this Contract and any lawsuit on this Contract must be filed in a court that has jurisdiction in Fort Bend County, Texas.

TERMINATION FOR CONVENIENCE: The City may terminate the Contract and/or any other Agreement(s) for convenience and without cause or further liability, upon no less than thirty (30) calendar day's written notice to the Successful Bidder. The City reserves the right to extend this period if it is in the best interest of the City. In the event the City exercises its right to terminate without cause, it is understood and agreed that only the amounts due to the Successful Bidder for goods, commodities and/or services provided and expenses incurred to and including the date of termination, will be due and payable. No penalty will be assessed for the City's termination for convenience.

TERMINATION FOR CAUSE: The City of Rosenberg reserves the right to terminate the contract immediately in the event the successful bidder:

1. Fails to meet delivery schedules;
2. Defaults in the payment of any fees;
3. Otherwise fails to perform in accordance with this contract;
4. Becomes insolvent and/or files for protection under bankruptcy laws.

Such termination is in addition to and not in lieu of any other remedies that City of Rosenberg may have in law or equity. Bidder, in submitting this bid, agrees that City of Rosenberg shall not be liable to prosecution for damages in the event that the City declares the bidder in default.

FORCE MAJEURE: If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.

EX PARTE COMMUNICATION: Please note that to ensure the proper and fair evaluation of a response to a solicitation, the City prohibits ex parte communication (e.g. unsolicited) initiated by the Respondent to any Department Head, City Employee or Committee Member evaluating or considering the responses prior to the time a formal decision has been made. Questions and other communication from vendors will be permissible by the means established in the solicitation until the day and time specified as the deadline for questions. Any communication between Respondent and the City after the deadline for questions will be initiated by the appropriate City Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the response. Ex parte communication may be grounds for disqualifying the offending Respondent from consideration or award of the solicitation then in evaluation. If a Respondent violates these provisions more than once in a three (3) year period, the Purchasing Officer may debar the Respondent from the sale of goods or services to the City for a period not to exceed three (3) years.

OTHER TERMS AND CONDITIONS

REMEDIES: The successful bidder and City of Rosenberg agree that both parties have all rights, duties and remedies available as stated in the Uniform Commercial Code.

CONFLICT OF INTEREST: No public official shall have interest in this contract except in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5, Subtitle C, Chapter 171

ETHICS: The respondent shall not offer or accept gifts or anything of value or enter into any business arrangement with any employee, official or agent of City of Rosenberg. More than one proposal on any one contract from a Respondent or individual under different names shall be grounds for rejection of all proposals in which the Respondent or individual has an interest. One or all proposals will be rejected if there is any reason to believe that collusion exists between Respondents.

Respondents must make every effort to comply with Chapter 176 of the Texas Local Government Code. Chapter 176 mandates the public disclosure of certain information concerning persons doing business or seeking to do business with City of Rosenberg, including affiliations and business and financial relationships such persons may have with City of Rosenberg officers.

By doing business or seeking to do business with City of Rosenberg, including submitting a response to this Invitation to Bid, you acknowledge that you have been notified of the requirements of Chapter 176 of the Texas Local Government Code and you are representing that you are in compliance with them.

Conflict of Interest Questionnaire (CIQ) must be filled out and returned with each proposal.

DISCLOSURE OF INTERESTED PERSONS – CITY COUNCIL APPROVED CONTRACTS: Under Section 2252.908 of the Texas Government Code – the Commission has approved a Certificate of Interested Parties form (Form 1295), which must be completed, signed and submitted to the City at the time of bid submission, along with the certification of filing, generated from the Commission's website. The Certificate of Interested Persons form is available on the Commission's website at:

<https://www.ethics.state.tx.us/filinginfo/1295/>

and the successful Bidder/Proposer must follow the Commission's filing process adopted pursuant to the statute. The successful contractor's Certificate of Interested Parties and certification of filing will be attached to the Contract / Agreement.

PURCHASE ORDER: City of Rosenberg shall generate a purchase order to the successful bidder. The Purchase order number must appear on all invoices, packing lists and all related correspondence. City of Rosenberg will not be responsible for any orders placed and / or delivered without a valid Purchase Order number.

DELIVERY: Any delivery and freight charges (FOB Rosenberg designated location) are to be included in the bid price

PACKING SLIPS: or other suitable shipping documents shall accompany each shipment and shall show:

- a. Vendor Company Name and Address
- b. Name and address of City of Rosenberg department the shipment is being made to
- c. City of Rosenberg purchase order number
- d. Descriptive information as to the items delivered, including quantity and part numbers

INVOICES: submitted for payment shall be addressed to:

City of Rosenberg – Accounts Payable
PO Box 32
Rosenberg, TX 77471
Email: accountspayable@rosenbergtx.gov

and shall reference the City of Rosenberg approved purchase order number. Periodic payments will be made within 30 days of invoice date or satisfactory delivery of the product or service, whichever is later, provided that all other requirements as detailed in the contract have been fulfilled.

QUALITY CONTROL: Goods supplied under this contract shall be subject to approval as to quality and must conform to the highest standards of manufacturing practice. Items found defective or not meeting specifications shall be replaced at the supplier's expense within a reasonable period of time. Payment for defective goods or goods failing to meet specifications is not due until 30 days after satisfactory replacement has been made.

WARRANTY: Successful bidder shall warrant that all items or services shall conform to the proposed specifications and all warranties state in the Uniform Commercial Code and be free from all defects in material, workmanship and title.

PATENTS / COPYRIGHTS: The successful bidder agrees to protect City of Rosenberg from claims involving infringements of patents and/or copyrights.

NOTICE: Any notice provided by this bid or required by law to be given to the successful bidder by City of Rosenberg shall be deemed to have been given and received on the next business day after such written notice has been deposited in the US Mail in Rosenberg, Texas, by Registered or Certified Mail with sufficient postage affixed thereto, addressed to the successful bidder at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.

ASSIGNMENT: The successful bidder shall not sell, assign, transfer or convey this contract, in whole or in part, without the prior written consent of City of Rosenberg.

SILENCE OF SPECIFICATIONS: The apparent silence of the specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of the specifications shall be made on the basis of this statement.

COOPERATIVE PURCHASING PROGRAM: During the term of the Contract resulting from this ITB, the City would like to afford the same prices, terms and conditions to other political subdivisions or public entities. Another entity's participation in the Contract resulting from this ITB is subject to a properly authorized Purchasing Cooperative Inter-local Agreement with the City. Any liability created by purchase orders issued against the Contract shall be the sole responsibility of the governmental agency placing the order.