

## **TERMS AND CONDITIONS OF THE REQUEST FOR COMMODITY PRICING**

All purchases are subject to the following terms and conditions. Any acknowledgement which contains terms and conditions in addition to or inconsistent with the following shall not be binding upon Purchaser unless acceptance thereof is made in writing by Purchaser.

### **1. AWARD OF BID**

a. Bids will be awarded to the lowest responsive and responsible bidder whose bid conforms to the specifications.

b. The Housing Authority of the City of Milwaukee (HACM) reserves the right to reject any and all bids and all or part of a bid; to waive informalities, technical defects, and minor irregularities in bids received; and to select the bid(s) deemed most advantageous to the HACM. The HACM shall consider bids submitted on an "all or nothing" basis if the bid is clearly designed as such.

c. The HACM may accept any item or group of items of any bid, unless the bidder qualifies his bid by specific limitations. Unless otherwise provided in the solicitation, bids may be submitted for any quantities less than those specified and the HACM reserves the right to make an award of any item for a quantity less than the quantity bid at the unit prices bid unless the bidder specifies otherwise in their bid.

d. Upon acceptance by the HACM, the solicitation, Invitation to Bid, Request for Proposals and/or purchase orders issued to the successful bidder within the time specified, shall be deemed to result in a binding contract without further action by either party. Items are to be furnished as described in the bid and in strict conformity with all instructions, conditions, specifications, and drawings contained in the complete contract.

### **2. BID DOCUMENT REQUIREMENTS**

All bids must be submitted on forms furnished by the HACM and shall be subject to all requirements of the Specifications and Drawings (if applicable).

Bids shall be sealed in an envelope, which shall be clearly labeled with the bid number, and date and time of opening (if applicable).

### **3. CASH DISCOUNTS**

All bidders must state their best cash discount on this bid form for payments made thirty (30) days following acceptance. Discounts will not be considered in determining the award. In connection with any discount offered, time will be computed from date correct invoice is received by HACM, provided that the delivery and acceptance of supplies has already been made. If not, time will be computed from the date the

supplies are delivered and accepted.

**4. DELAYS IN DELIVERY**

Delays in delivery caused by any bona fide strikes, government priority or requisition, riots, fires, sabotage, acts of God, or any other delays deemed by the HACM to be clearly and unequivocally beyond the contractor's control will be recognized by the HACM. The contractor may be relieved of the responsibility of meeting the delivery time as stipulated in the contract upon contractors' filing with the HACM just and true statements requesting an extension of delivery, signed by the contractor and giving in detail all the essential circumstances which, upon verification by the HACM. The request for extension must be filed with the Procurement and Contracts Director or designee no later than seven (7) calendar days prior to the actual delivery date. Failure to file this request for delivery extension shall render the contractor liable for the difference between the "Open Market" and the contract price, and other costs, as applicable, under the uniform commercial code.

**5. DELIVERY F.O.B. DESTINATION**

All bid prices must include delivery "Free On Board" (F.O.B.) destination unless otherwise specified in the bid invitation.

**6. GOVERNMENT PRICING**

Suppliers may bid lower than U.S. Government contract prices. The HACM is exempt from the Robinson Patman Act. Quotation must conform to government regulations on prices and wages.

**7. INSPECTION AND ACCEPTANCE**

Inspection and acceptance will be at destination unless otherwise specified. Inspection and acceptance shall take place at the specified location shown in the shipping address. Upon delivery and acceptance, or rejection, any risk of loss will be the responsibility of the Contractor unless loss results from negligence of the HACM. Vendor will be notified of rejected shipments. Unless agreed otherwise, items will be returned freight collect.

**8. LATE SHIPMENTS**

Vendor is responsible for notifying the Procurement and Contracts Director or designee of any late or delayed shipments. The HACM reserves the right to cancel all or any part of an order if the shipment is not made as promised.

**9. INSURANCE**

Work can NOT proceed unless an up-to-date "Certificate of Insurance" is on file in the Housing Authority Office. You may obtain Insurance Requirements from the Housing Authority, Purchasing Section.

**10. LIQUIDATED DAMAGES**

The Contractor or supplier is responsible for completing the project or supplying the

materials within the time frame established in the contract unless written requests for time extensions are authorized in writing by the Procurement and Contracts Director or designee. If the work is not completed by the contract delivery date or performance date, the contractor or supplier shall be liable for liquidated damages resulting from such unexcused delays. Damages will be assessed according to a formula that is reasonable in light of the harm caused by default or act or omission.

**11. LOSS AND DAMAGED SHIPMENTS**

Risk of loss or damage to items prior to the time of their receipt and acceptance by the Authority is upon the supplier. The Authority has no obligation to accept damaged shipments and reserves the right to return at the supplier's expense damaged merchandise even though the damages were not apparent or discovered until after receipt of the items.

**12. COMPLIANCE WITH LAWS**

Vendor agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back, collusion, and the provisions of the Americans with Disability Act.

**13. NONDISCRIMINATION** The successful bidder will not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, sexual orientation, handicaps or national origin or ancestry, and as provided by section 109-15 of the Milwaukee Code of Ordinances and Authority. Contractor shall provide equal opportunity in all employment practices. This provision must be included in all subcontracts.

**14. CONFLICTS OF INTEREST**

Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this Order and a Contractor's organizational, financial, contractual or other interests are such that (i) award of the Goods may result in an unfair competitive advantage, or (ii) Vendor's objectivity in performing the contract work may be impaired. Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this Order or any task/delivery under this Order, he or she shall make an immediate and full disclosure in writing to the Purchasing Department, which shall include a description of the action which Contractor has taken or intends to take to eliminate or neutralize the conflict.

**(a). NON-INTEREST OF HACM EMPLOYEES AND OFFICIALS**

No official or employee of the HACM shall have any financial interest, either direct or indirect, in the bid or contract. No official or employee of the HACM shall exercise any undue influence in the awarding of the bid or contract.

It is the policy of the HACM that contracts shall not be awarded to any officials that includes individuals who have left HACM employment within the past 12 months, or individuals who are currently members of HACM board or commissions.

**15. INDEPENDENT CONTRACTORS**

While engaged in carrying out other terms and conditions of this Order, Vendor is an independent Contractor, and not an officer, employee, agent, partner, or joint venture of HACM.

**16. INDEMNIFICATION**

The Vendor shall hold HACM harmless and at HACM's request defend from any or all damages, liability, costs, judgments or obligations arising out of death, injuries or damage to any person or property resulting from or in any way connected with the performance or failure to perform this Order by the Contractor, its officers, employees, subcontractors or agencies.

**17. PACKAGING**

Materials shall be clearly labeled and packaged according to industry standards. Improper packaging which may cause material loss, damage, or delay shall be the liability of the contractor/supplier.

**18. PAYMENT FOR CONTRACT PERFORMANCE**

Upon the complete performance of this contract by the contractor, and after the acceptance of said performance by the HACM, the HACM shall pay to the contractor any balance then remaining due and payable under the terms of this contract for said work, material, services, items, supplies or equipment.

**19. PRICE**

Prices quoted are to be firm and final. All prices quoted shall be net and shall reflect any available discount except for discounts for timely payment. All prices are to be F.O.B. designated delivery point. All shipping, packing and drayage charges are the responsibility of the supplier. C.O.D. shipments will not be accepted unless otherwise agreed to in writing by the Procurement and Contracts Director or designee.

**20. QUALITY**

Unless otherwise required by terms of the solicitation, all goods furnished shall be new, in current production, and the best of their kind. When applicable, parts and maintenance service shall be reasonably available. New equipment that is obsolete or technically outdated is not acceptable. Remanufactured or reconditioned items are not considered new. Items shall be properly packaged, packed, labeled, and identified in accordance with commercial standards acceptable to the trade and as required by Interstate Chambers of Commerce and other federal and state regulations. Packing slips shall accompany the shipment.

**21. SUBSTITUTIONS AND EQUIVALENTS**

Brand name or equal. Whenever the name of the manufacturer or the supplier is mentioned on the face hereof and the words "or equal" do not follow, it shall be deemed that the words "or equal" shall follow such designations unless the face hereof specifies "No Substitutions." The HACM reserves the right to return at the bidder's expense all items that are not acceptable as equals, said items to be replaced by the bidder with satisfactory items at the original bid price or less.

**22. TAXES TO BE EXCLUDED FROM PRICE**

All bids must be submitted without the inclusion of federal excise and Wisconsin sales taxes as the HACM is exempt therefrom.

**23. WARRANTY**

The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the Authority by any other clause of this contract.

**24. WITHDRAWAL OF BIDS**

Bids may be withdrawn only in total and only by a written request addressed to the Procurement and Contracts Director or designee prior to the award of the contract. The Procurement and Contracts Director or designee has sole discretion to grant a request for a withdrawal of bid only in the case of an error that will result in a significant financial hardship. Partial bid withdrawal is not acceptable.

**25. SLAVERY DISCLOSURE**

"If the successful bidder was in existence during or prior to the slavery era (i.e. before 1865), then the bidder or shall complete an Affidavit of Compliance for Disclosure Of Participation In Or Profits Derived From Slavery By Contractors affidavit in accordance with Milwaukee Code of Ordinance 310-14 before a purchase order or contract can be executed (unless such an affidavit has already been submitted and it is on file with the Business Operations Division of the City of Milwaukee). For details on this requirement, see the following website:

<http://city.milwaukee.gov/Directory/Procurement/Forms.htm#.U4oSpKMo71l>"

**26. WISCONSIN PUBLIC RECORDS LAW**

Both parties understand that the HACM is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. 19.21, *et seq.* The Contractor acknowledges that it is obligated to assist the HACM in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement, and that the Contractor must defend and hold the HACM harmless from

liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Agreement.

**27. EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

**28. RIGHT IN DATA AND PATENT RIGHTS (Ownership and Proprietary Interest).**

The HACM shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials, and documents discovered or produced by Contractor pursuant to the terms of this Contract, including, but not limited to, reports, memoranda or letters concerning the research and reporting tasks of the Contract.

**29. ENERGY EFFICIENCY**

The Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

**30. PROCUREMENT OF RECOVERED MATERIALS**

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State;

and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

**31. TERMINATION FOR CAUSE AND FOR CONVENIENCE (contracts of \$10,000 or more).**

(a) HACM may terminate this contract in whole, or from time to time in part, for the HACM's convenience or the failure of the Contractor to fulfill the contract obligations (cause/default). The HACM shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the HACM all information, reports, papers, and other materials accumulated or generated in performing the contract, whether completed or in process.

(b) If the termination is for the convenience of the HACM, the HACM shall be liable only for payment for services rendered before the effective date of the termination.

(c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (cause/default), the HACM may (1) require the Contractor to deliver to it, in the manner and to the extent directed by the HACM, any work described in the Notice of Termination; (2) take over the work and prosecute the same to completion by contract of otherwise, and the Contractor shall be liable for any additional cost incurred by the HACM; and (3) withhold any payments to the Contractor, for the purpose of set-off or partial payment, as the case may be, of amounts owned by the HACM by the Contractor. In the event of termination for cause/default, the HACM shall be liable to the Contractor for reasonable costs incurred by the Contractor before the effective date of the termination. Any dispute shall be decided by the Procurement and Contracts Director or designee.

Any questions regarding this bid please call Kent Britton, Procurement and Contracts Director at (414) 286-5863 or [kent.britton@hacm.org](mailto:kent.britton@hacm.org).

**ACCEPTED BY:**

Company Name \_\_\_\_\_

By \_\_\_\_\_ Print Name \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

Revised 5/31/2022