



**REQUEST FOR COMMISSION ACTION**  
**CITY OF INDEPENDENCE**  
**February 16, 2022**

**Department** Emergency Services

**Director Approval** *David Cowan*

**AGENDA ITEM** Consider authorizing a request for proposals for a consultant for a communication tower.

**SUMMARY RECOMMENDATION** Staff approves communication RFP

**BACKGROUND** The City of Independence Emergency Services is requesting permission to seek an RFP for a communication consultant to assist with the 911 center radio tower and communications system.

The 911 center continues to operate on an interim basis with car antennas on top of Bldg D to run the 911 center. The Independence Emergency Services also continue to deal with communications issues and the inability of emergency responders to communicate with the 911 center or other agencies in the field. A majority of these difficulties are related to the narrow banding done by the FCC several years ago.

A consultant will provide the City with the analysis of our current communications system and the necessary improvements needed to ensure P25 compliance and safety for our personnel. The consultant will be tasked with looking at all options and providing the City with a detailed analysis and recommendations to consider for a radio tower and communications system.

The consultant will be funded from Special Use Sales Tax.

**SUGGESTED MOTIONS** I move to authorize the RFP for a communications consultant.

**SUPPORTING DOCUMENTS** RFP – Communications consultant



City of Independence  
Emergency Services  
811 West Laurel Street  
Independence, Kansas 67301

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## Request for Proposal

### **RFP # 20-001 Radio Consultant**

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#### Contact Information:

Questions concerning proposals should be in writing addressed to:

David Cowan & Jerry Harrison  
City of Independence  
811 W. Laurel  
Independence, Kansas 67301

620-332-2528 voice  
620-332-1700 voice  
620-331-1628 Fax  
[davidc@independenceks.gov](mailto:davidc@independenceks.gov)  
[jerryh@independenceks.gov](mailto:jerryh@independenceks.gov)

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## **1.0 PURPOSE**

The City of Independence is currently remodeling our City Hall building and building a 911 center addition to the building. A part of this construction requires the City to construct a new radio tower for the 911 center. The City would like to become P25 compliant by joining the State of Kansas 800 MHz wide-area P25 complaint trucked radio system and provide interoperability between the City, Region, and State.

The expectation is that the Consultant will have an extensive radio systems background and audit the current system, analyze the system's functionality and operations, and develop a comprehensive plan to provide improved communications and operations for the City emergency services, including Police and Fire-EMS.

The current remodel and build of the 911 center is scheduled to be April 1, 2022, with a seven to eight-month construction time. The 911 center communication tower would need to be constructed and in service by December 2022.

## **2.0 BACKGROUND**

The City of Independence is located in Southeast Kansas and was formed in January 29, 1861. Independence is 7.74 square miles in size.

Independence has a population of approximately 8,400 people, which includes an approximately 3,847 households in the City. The population density is 1,225 people persquare mile.

### **Current radio information:**

The City's current radio system consists of: Independence Police Department is on VHF with two 100 watt repeaters, car mobiles, and officers each are assigned handheld radios. One of the repeaters is currently located at 811 W. Laurel Street, temporary City Hall, and the primary repeater is located on a water tower located at Hackney and Enterprise Drive.

The Independence Fire-EMS is operating on a 100 Watt UHF system with mobile radios in vehicles and handheld portables provided to all employees. The repeater is located on top of the Hackney and Enterprise Drive water tower.

The Independence 911 center is one of two primary 911 PSAP in Montgomery County and serves the Northern half of Montgomery County and some surrounding county coverage depending on cell coverage. The center has multiple radios to communicate with surrounding agencies and includes a range of VHF, UHF, and 800 radio systems. Currently, there are 24 antennas on the building, allowing the 911 center to operate.

### **Independence Police:**

The Police Department is a progressive, mid-sized law enforcement agency. The diversified staff includes 19 sworn law enforcement officers, 1 volunteer auxiliary officer, and 7 communication officers. The Department also employs 2 civilians as support personnel that assists in achieving our goals. The City, emergency communication center, is under the direction of the Chief of Police. This center is responsible for emergency dispatch and communications for Fire, EMS, and Police services. In 2021, dispatchers fielded 8,670 911 calls and over 59,000 non-emergency phone calls for police/fire/ems services.

### **Independence Fire and EMS:**

The Fire and EMS Department, which includes the full and part-time fire/rescue and Emergency Medical personnel, provides emergency medical services and fire suppression at the scene of accidents and emergencies. The Fire and EMS Department is staffed with a full-time Fire and EMS Director, 2 1 full-time and 14 part-time employees in operations. The Department also has 1- animal control officer and 2- building/code enforcement officers. The Fire-EMS, ACO, and Building Department are under the direction of the Assistant City Manager-Director of Safety. These staff and volunteers currently work from 1 location, but a new Fire-EMS station is being built. The building and animal control officers will relocate to the remodeled City Hall. Independence Fire-EMS responded to 4,925 calls in 2021.

## **3.0 STATEMENT OF NEEDS**

The City is soliciting proposals from qualified consultants to examine the City's current communication system, evaluate the current method of operation, and provide a report on recommendations for a new communication system. The Consultant shall provide expertise in the design, provision of a bid document implementation, quality assurance, coordination, performance testing, system cutover, and acceptance stages of the new radio communication system for the City. Consultants must possess demonstrated expertise (subject matter knowledge and relevant experience) with current public safety radio communications systems and technology, the most current industry trends and initiatives as set forth by organizations such as the Association of Public Safety Communications Officials (APCO), the National Public Safety Telecommunication Council (NPSTC), and dominant radio system manufacturers. Consultants must be intimately familiar with governing rules and regulations as issued by the Federal Communications Commission (FCC) and other relevant agencies (FAA, NTIA, etc.), and possess demonstrated subject matter expertise and hands-on experience in the following areas:

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a. P25 Compliant 800 radio system on the Kansas Statewide Interoperable

- Communication System (KSICS)
- b. Alternative systems including digital UHF (Other agencies in county currently utilizing)
  - c. Two-way radio communication hardware
  - d. Software and systems
  - e. Interoperable communications
  - f. Implementation into our current NG911 and Telex communication system
  - g. Radio frequency spectrum allocation – FCC licensing
  - h. High capacity voice and data transport systems that support municipal radio communications systems, such as microwave and fiber optic communications systems
  - i. Mobile data terminals in emergency vehicles
  - j. Determining need for Construction of appropriately sized radio tower for 911 center
  - k. Talk in from mobile, talk in from portable, talk out to mobile and talk out to portable testing and mapping

The City of Independence requires a public safety radio system to cover the varying topography of the City fully. The design should be interoperable during emergencies with the public safety agencies in surrounding counties. These counties currently operate public safety radio systems in multiple areas of the radio spectrum, including VHF, UHF, and 700 / 800MHz. A collaborative system expansion of neighboring systems should be explored and a stand-alone system. The system should also provide alerting for fire/ems station and personnel on and off duty.

#### Project phases

Phase 1: Infrastructure and Needs Assessment, coverage study to ensure portable radiousage throughout the city, tower requirements and construction design, and Preliminary Design and Cost including lease purchase options of the communications equipment. A consultant should review what is already in place and provide comparisons to the required performance requested and any suggestions for maintaining and future maintenance or regulatory requirements.

Please provide separate pricing details for each phase.

Phase 2: Detailed Design, Invitation to Bid Development, Contractor Selection, and Procurement

Phase 3: Implementation and Project Management

High-level objectives include:

Phase 2

Create a functional specification document (including performance requirements), structured to be used in issuing a public Invitation to Bid and to serve subsequently as a requirements traceability matrix and acceptance tool.

Design and stamped plans for tower construction bidding

Analyze the projected costs.

Provide assistance in obtaining funds from potential sources identified in the analysis. Prepare Grant proposals, if any, for accomplishing any recommendations.

Collaborate with City staff to create an Invitation to Bid, issue the Invitation to Bid, and respond to bidder inquiries.

Develop necessary weighting and adjustment factors to ensure bottom-line costs apply to comparable systems and proposals. Cost analysis shall include initial, total implementation and long-term maintenance and support costs.

Assist City in reviewing bid submittals.

Assist City with interview and selection process of vendors needed to implement approved improvements of public safety communications.

### Phase 3

Implementation of the selected solution and contractor to include serving as the City's project reviewer and independent verification and validation resource.

Serve as project manager, including oversight of all vendors, installation, and construction.

Be available for public meetings to explain the project and its impact on the local community.

Monitor and certify acceptance tests.

Prevent Avoidable Failure. A key objective of this engagement should be to identify and avoid or mitigate foreseeable system failures due to planning or obsolescence. This is relevant to both the current state of the system as well as future state of any solution.

## **4.0 PROPOSAL PREPARATION & SUBMISSION**

One original and five copies of the proposal should be forwarded to David Schwenker, City Clerk, 811 West Laurel Street, Independence Kansas 67301 clearly marked "Proposal – Radio Consultant", no later than **2:00 PM on March 18, 2021**.

## **5.0 EVALUATION AND AWARD CRITERIA**

These criteria are to be utilized in the evaluation of qualifications for development of the shortlist of those offerors to be considered for interviews and/or negotiations. Individual criteria may be assigned varying weights at the County's discretion to reflect relative importance. Offerors are required to address each evaluation criterion in the order listed and to be specific in presenting their qualifications.

1. Relevant experience with similar projects (35)
2. Qualifications and experience of key project team members who are actively involved throughout the entire project (25)
3. Overall project approach and timeliness (20)
4. References from other similar projects (15)
5. Cost Proposal (5)

## **6.0 REPORTING AND DELIVERY INSTRUCTIONS**

Submittals should include a proposed schedule for the project.

The City of Independence will adhere to the following schedule:

**Deadline to submit questions** **March 07, 2022 @ 5:00pm**

*All questions shall be submitted by email to David Cowan at:*

[davidc@independenceks.gov](mailto:davidc@independenceks.gov)

**RFP submission deadline** **March 18, 2022 @ 2:00pm**



## **7.0 GENERAL TERMS AND CONDITIONS**

### **7.1 APPLICABLE LAWS:**

This solicitation and any resulting contract shall be governed in all respects by the laws of the State of Kansas. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute.

### **7.2 ANTI-DISCRIMINATION:**

By submitting their proposals, offerors certify to the City that they will conform to the provisions of the Federal Civil Rights Act of 1964.

1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

### **7.3 ETHICS IN PUBLIC CONTRACTING:**

By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

The offeror shall identify any actual or potential conflicts of interest that exist, or which may arise if the offeror is recommended for award, and propose how such conflicts might be resolved.

By his/her signature on the proposal documents submitted, each offeror attests that her/his agents and/or employees, to the best of his/her knowledge and belief, have not in any way colluded with anyone for and on behalf of the offeror, or themselves, to obtain information that would give the offeror an unfair advantage over others, nor has he/she colluded with anyone for and on behalf of the offeror, or itself, to gain any favoritism in the award of this Request for Proposal.

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**7.4 IMMIGRATION REFORM AND CONTROL ACT OF 1986:**

By submitting their proposals, offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

**7.5 ANTITRUST:**

By entering into a contract, the contractor conveys, sells, assigns, and transfers to the City of Independence all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the City of Independence, relating to the particular goods or services purchased or acquired by the City of Independence under said contract.

**7.6 CLARIFICATION OF TERMS:**

If any prospective offeror has questions about any specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

**7.7 PAYMENT:**

**7.7.1 To Prime Contractor:**

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.

- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the City shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (60) days of notification.

### **7.8 QUALIFICATIONS OF OFFERORS:**

The City may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the City all such information and data for this purpose as may be requested. The City reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The City further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the City that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

### **7.9 TESTING AND INSPECTION:**

The City reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

### **7.10 CHANGES TO THE CONTRACT:**

Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as part of their written agreement to modify the scope of the contract.
2. The City may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the City a credit for any savings. Said compensation shall be determined by one of the following methods:
  - a. By mutual agreement between the parties in writing; or

- b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the City's right to audit the contractor's records and/or to determine the correct number of units independently; or

### **7.11 DEFAULT:**

In case of failure to deliver goods or services in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City may have.

### **7.12 TAXES:**

Sales to the City are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form, will be issued upon request.

### **7.13 USE OF BRAND NAMES:**

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the City to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Failure to furnish adequate data for evaluation purposes may result in declaring a proposal nonresponsive. Unless the offeror clearly indicates in its proposal) that the product offered is an equal product, such proposal) will be considered to offer the brand name product referenced in the solicitation.

### **7.14 INSURANCE:**

By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance. The bidder or offeror further certifies that the contractor and any subcontractors will maintain insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Kansas.

### **MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:**

1. Workers' Compensation -
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The City of Independence must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

### **7.15 DRUG-FREE WORKPLACE:**

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

### **7.16 NONDISCRIMINATION OF CONTRACTORS:**

A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, Department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

### **7.17 AUDIT:**

The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the City of Independence, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

### **7.18 AVAILABILITY OF FUNDS:**

It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

### **7.19 CONTRACT DOCUMENTS:**

- (a) The contract entered into by the parties shall consist of the Request for Proposal, the proposal submitted by the vendor; General Terms and Conditions; the Special Terms and Conditions; the drawings, if any; the specifications; and all modifications and addenda to the foregoing documents, all of which shall be referred to collectively as the contract documents.

- (b) All time limits stated in the contract documents, including but not limited to the time for completion of the work, are of the essence of the contract.
- (c) Anything called for by one of the contract documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other contract documents shall have the intended effect.

#### **7.20 LAWS AND REGULATIONS:**

- (a) The contractor shall comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work and shall give all notices required thereby.

#### **7.21 PREPARATION AND SUBMISSION OF PROPOSALS:**

Proposals must give the full business address of the offeror and be signed by him/her with his/her usual signature. Proposals by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or any authorized representative, followed by the designation of the person signing. Proposals by corporations must be signed with the legal name of the corporation followed by the name of the State in which it is incorporated and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A proposal by a person who affixes to the signature the word "President," "Secretary," "Agent" or other designation without disclosing the principal, may be held to be the proposal of the individual signing. When requested by the County, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

#### **7.22 WITHDRAWAL OR MODIFICATION OF PROPOSALS:**

Proposals may be withdrawn or modified by written notice received from offerors prior to the deadline fixed for proposal receipt. The withdrawal or modification may be made by the person signing the proposal or by an individual(s) who is authorized by him/her on the face of the proposal. Written modifications may be made on a separate document. Written modifications, whether the original is delivered, or transmitted by facsimile, must be signed by the person making the modification or withdrawal.

### **7.23 RECEIPT AND OPENING OF PROPOSALS:**

- (a) It is the responsibility of the offeror to assure that his/her proposal is delivered to the place designated for receipt of proposals and prior to the time set for receipt of proposals. Proposals received after the time designated for receipt of proposals will not be considered.

### **7.24 PROPRIETARY INFORMATION:**

however, the bidder, offeror, or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

### **7.25 BID ACCEPTANCE PERIOD:**

Any bid in response to this solicitation shall be valid for (90 ) days. At the end of the (90) days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

### **7.26 SEPARATE CONTRACTS:**

- (a) The owner reserves the right to let other contracts in connection with the project, the work under which may proceed simultaneously with the execution of this contract. The contractor shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work. The contractor shall cooperate with them and shall take all reasonable action to coordinate his work with theirs. If the owner has listed other separate contracts in this Request for Proposals which it expects to proceed simultaneously with the work of the contractor, and has included the estimated timing of such other contracts in the Request for Proposals, the contractor shall integrate the schedule of those separate contracts into his scheduling. The contractor shall make every reasonable effort to assist the owner in maintaining the schedule for all separate contracts. If the work performed by the separate contractor is defective or performed so as to prevent this contractor from carrying out his work according to the drawings and specifications of this contract, this contractor shall immediately notify the owner upon discovering such conditions.
- (b) If a dispute arises between the contractor and separate contractors as to their responsibility for cleaning up as required by Sections 8.38(c) and 8.38(d) of these General Terms and Conditions, the owner may clean up and charge the cost thereof to the respective contractors in proportion to their responsibility. If a contractor disputes the owner's apportionment of clean-up costs, it shall be that contractor's burden to demonstrate and prove the correct apportionment.

## **7.27 TAXES:**

The contractor shall, without additional expense to the owner, pay all applicable federal, state, and local taxes, fees, and assessments except the taxes, fees, and assessments on the real property comprising the site of the project.

## **7.28 INSPECTION:**

- a. All material and workmanship shall be subject to inspection, examination, and test by the owner and its project inspector at any and all times during construction. The project inspector shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefore, and the contractor shall promptly segregate and remove the rejected material from the premises. If the contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the contractor, or may terminate the right of the contractor to proceed, the contractor and surety being liable for any damages.
- b. Job-site inspections, tests conducted on site or tests of materials gathered on site, which the contract requires to be performed by independent testing entities, shall be contracted and paid for by the owner. Examples of such tests are the testing of cast in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings, and steel framing connections. Although conducted by independent testing entities, the owner will not contract and pay for tests or certifications of materials, manufactured products, or assemblies which the contract, codes, standards, etc. require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual, or ASTM. If there are any fees to be paid for such tests and certifications, they will be paid by the contractor. The contractor shall also pay for all inspections, tests, and certifications which the contract specifically requires him to perform or pay, together with any inspections and tests which he chooses to perform for his own quality control purposes. The contractor shall promptly furnish, without additional charge, all reasonable facilities, labor, and materials necessary and convenient for making such tests. Except as provided in (c) below, whenever such examination and testing finds defective materials, equipment, or workmanship, the contractor shall reimburse the owner for the cost of re-examination and retesting.
- c. Should it be considered necessary or advisable by the owner at any time before final acceptance of the entire work to make an examination of any part of the work already completed, by removing or tearing out portions of the work, the contractor shall on request promptly furnish all necessary facilities, labor and material to expose the work to be tested to the extent required. If such work is found to be defective in any respect, due to the fault of the contractor or his subcontractors, he shall defray all the expenses of uncovering the work, of examination and testing, and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual cost of the contractor's labor and material necessarily involved in uncovering the work, the cost of examination and testing, and contractor's cost of material and labor necessary for replacement shall be paid to the contractor and he shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time.
- d. The project inspector will recommend to the owner that the work be suspended when in his judgment the drawings and specifications are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of the owner. The cost of



any such work stoppage shall be borne by the contractor unless it is later determined that no fault existed in the contractor's work.

- e. The project inspector has no authority to and shall not:
  - (1) Authorize deviations from the contract documents;
  - (2) Enter into the area of responsibility of the contractor's superintendent;
  - (3) Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures, or in regard to safety precautions and programs in connection with the work;
  - (4) Authorize or suggest that the owner occupy the project, in whole or in part;
  - (5) Issue a certificate for payment.

### **7.29 SUPERINTENDENCE BY CONTRACTOR:**

- a. The contractor shall have a competent foreman or superintendent, satisfactory to the owner, on the job site at all times during the progress of the work. The contractor shall be responsible for all construction means, methods, techniques, sequences, and procedures for coordinating all portions of the work under the contract except where otherwise specified in the contract documents, and for all safety and worker health programs and practices. The contractor shall notify the owner, in writing, of any proposed change in superintendent including the reason therefore prior to making such change.
- b. The contractor shall, at all times, enforce strict discipline and good order among the workers on the project, and shall not employ on the work any unfit person, anyone not skilled in the work assigned to him, or anyone who will not work in harmony with those employed by the contractor, the subcontractors, the owner or the owner's separate contractors and their subcontractors.
- c. The owner may, in writing, require the contractor to remove from the work any employee the owner deems to be incompetent, careless, not working in harmony with others on the site, or otherwise objectionable.

### **7.30 ACCESS TO WORK:**

The owner, the owner's inspectors and other testing personnel, and inspectors from the Department of Labor and Industry shall have access to the work at all times. The contractor shall provide proper facilities for access and inspection.

### **7.31 TERMINATION BY OWNER FOR CONVENIENCE:**

- a. Owner may terminate this contract at any time without cause, in whole or in part, upon giving the contractor notice of such termination. Upon such termination, the contractor shall immediately cease work and remove from the project site all of its labor forces and such of its materials as owner elects not to purchase or to assume in the manner hereinafter provided. Upon such

termination, the contractor shall take such steps as owner may require to assign to the owner the contractor's interest in all subcontracts and purchase orders designated by owner. After all such steps have been taken to owner's satisfaction, the contractor shall receive as full compensation for termination and assignment the following:

- (1) All amounts then otherwise due under the terms of this contract,
  - (2) Amounts due for work performed subsequent to the latest Request for Payment through the date of termination,
  - (3) Reasonable compensation for the actual cost of demobilization incurred by the contractor as a direct result of such termination. The contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the forgoing, owner shall have no further obligations to the contractor of any nature.
- b. In no event shall termination for the convenience of the owner terminate the obligations of the contractor's surety on its payment and performance bonds.

### **7.32 GUARANTEE OF WORK:**

- a. Except as otherwise specified, all work shall be guaranteed by the contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one (1) year from the date of final acceptance of the entire project by the owner in writing. Equipment and facilities, which have seasonal limitations on their operation, shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the owner.
- b. If, within the guarantee period, defects are noticed by the owner which require repairs or changes in connection with the guaranteed work, those repairs or changes being in the opinion of the owner rendered necessary as the result of the use of materials, equipment or workmanship, which are defective, or inferior or not in accordance with the terms of the contract, then the contractor shall, promptly upon receipt of notice from the owner, such notice being given not more than two weeks after the guarantee period expires, and without expense to the owner:
- (1) Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein;
  - (2) Make good all damage to the structure, site, equipment, or contents thereof, which is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contracts; and
  - (3) Make good any work, materials, equipment, contents of structures, and/or disturbance of the site in fulfilling any such guarantee.
- c. In any case, where in fulfilling the requirements of the contract or any guarantee embraced in or required thereby, the contractor disturbs any work guaranteed under contract, he shall restore such work to a condition satisfactory to the owner and guarantee such restored work to the same extent as it was guaranteed under such other contract.

- d. If the contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the owner may have the defects corrected and the contractor and his surety shall be liable for all expense incurred.
- e. All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the contract shall be subject to the term of this section during the first year of the life of such special guarantee.
- f. Nothing contained in this section shall be construed to establish a period of limitation with respect to any other obligation which the contractor might have under the contract documents, including liability for defective work under Warranty of Materials and Workmanship section of these additional terms and conditions. This paragraph relates only to the specific obligation of the contractor contained in this section to correct the work and does not limit the time within which his obligation to comply with the contract documents may be sought to be enforced, nor of the time within which proceedings may be commenced to establish the contractor's liability with respect to his other obligations under this contract.
- g. In the event the work of the contractor is to be modified by another contractor, either before or after the final inspection, the first contractor shall remain responsible in all respects under the guarantee of work and under any other warranties provided in the contract or by law. However, the contractor shall not be responsible for any defects in material or workmanship introduced by the contractor modifying its work. Both the first contractor and the contractor making the modifications shall each be responsible solely for the work done by each. The contractor modifying the earlier work shall be responsible for any damage to or defect introduced into the work which he is modifying. If any contractor shall claim that another contractor has introduced defects of materials and/or workmanship into the work of the first, it shall be the burden of the contractor making the claim to clearly demonstrate the nature and extent of such introduced defects and the responsibility of the other contractor. Any contractor modifying the work of another shall have the same burden if he asserts defects to have been caused by the contractor whose work he is modifying.

## **8.0 SPECIAL TERMS AND CONDITIONS**

### **8.1 ADDITIONAL USERS:**

This procurement is being conducted on behalf of state agencies, institutions and other public bodies who may be added or deleted at any time during the period of the contract. The addition or deletion of authorized users not specifically named in the solicitation shall be made only by written contract modification issued by this agency or institution and upon mutual agreement of the contractor. Such modification shall name the specific agency added or deleted and the effective date. The contractor shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification.

## **8.2 AWARD OF CONTRACT:**

### **8.2.1 AWARD:**

Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The City may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous. Should the City determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

## **8.3 WORK SITE DAMAGES:**

Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the City's satisfaction at the contractor's expense.

## **9.0 SIGNATURE SHEET**

My signature certifies that the proposal as submitted complies with all Terms and Conditions as set forth in this Request for Proposal.

My signature further certifies that this proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same material, supplies or equipment, and is in all respects fair and without collusion or fraud. I am authorizing to sign this bid for the bidder.

To receive consideration for award, this signature sheet must be returned to the Finance Department as it shall be a part of your response.

If there are any parts of the terms and conditions that your company cannot meet please indicate which ones on an attached page.

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

Address: \_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_

Name (type or print) \_\_\_\_\_

Official Title: \_\_\_\_\_

Date: \_\_\_\_\_ Telephone Number: \_\_\_\_\_