

Request for Quotation 39458

Title **24 Foot Open Utility Trailer, Tandem**
 Preview Date **22-MAY-2019 14:32:34** Open Date **22-MAY-2019 14:32:34**
 Close Date **05-JUN-2019 12:00:00** Award Date **Not Specified**
 Time Zone **Central Time**

Note **Vendors must be registered as a supplier with the City of Memphis in order to participate in City of Memphis bids. Bidders must have a username and password in order to access the City's eProcurement System, which will allow the bidder to fully view this RFQ in ORACLE as well as open the attachments. To register as a City of Memphis supplier please follow the instructions at the following link:
<http://www.memphistn.gov/Business.aspx/SupplierRegistration.aspx>.**

Bids are only accepted via the City's eProcurement system, or via hardcopy. Emailed bids are not accepted. If a hardcopy bid is submitted the vendor must physically sign the bid or the bid will be considered non-conforming.

If attachments are included with this RFQ, Bidders are to fill out and return, in their entirety, all required attachments (attachments may include, but are not limited to: Bid Sections, Exceptions to Specifications Pages, Comply/Exception Pages, and EBO Participation Plan documents). ALL Bidders must complete each of the required forms that are attached to this RFQ and submit ALL required documentation with the Bidder's quote, per the specifications and the Terms & Conditions.

Failure to submit ALL of the required documentation may cause the Bidder's quote to be considered non-conforming.

*****Please review the City of Memphis insurance requirements for this RFQ.*****

THIS PROCUREMENT MAY BE SUBJECT TO THE REQUIREMENTS OF ORDINANCE NO. 5114 WHICH ESTABLISHES A LOCAL PREFERENCE FOR LOCAL BUSINESSES LOCATED WITHIN THE CITY OF MEMPHIS. A COPY OF YOUR MEMPHIS AND SHELBY COUNTY TENNESSEE BUSINESS TAX RECEIPT MUST ACCOMPANY YOUR BID FOR CONSIDERATION OF THIS ORDINANCE.

Please submit your response to:

Company **City of Memphis, Tennessee**
 Buyer **Boyles, Timothy**
 Location **City of Memphis, Tennessee**
125 North Main Street
Room 354
Memphis, TN 38103
United States
 Phone **Not Specified**
 Fax
 Email **tim.boyles@memphistn.gov**

Your Company Name	
-------------------	--

Address	
Contact Name	
Phone	
Signature	

This document has important legal consequences. The information contained in this document is proprietary of City of Memphis, Tennessee. It shall not be used, reproduced, or disclosed to others without the express and written consent of City of Memphis, Tennessee.

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1 Header Information**1.1 General Information**

Title **24 Foot Open Utility Trailer, Tandem**
 Description **24 Foot Open Utility Trailer, Tandem, as per attached specifications.**
 Preview Date **22-MAY-2019 14:32:34** Open Date **22-MAY-2019 14:32:34**
 Close Date **05-JUN-2019 12:00:00** Award Date **Not Specified**
 Time Zone **Central Time** Buyer **Boyles, Timothy**
 Quote Style **Sealed** Email **tim.boyles@memphistn.gov**
 Outcome **Standard Purchase Order**

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1.2 Terms

Ship-To Address	206111-GEN Fleet Mgmt Administration 206111-GEN Vehicle Svs Center Administration 671 St. Jude Place Memphis, TN 38105 United States	Bill-To Address	206111-GEN Fleet Mgmt Administration 206111-GEN Vehicle Svs Center Administration 671 St. Jude Place Memphis, TN 38105 United States
Payment Terms	Net 30	Carrier	Best Way
FOB	Delivered Price	Freight Terms	Prepaid & Allowed

1.3 Response Rules

This negotiation is governed by all the rules displayed below.

- Negotiation is restricted to invited suppliers
- Suppliers are allowed to view other suppliers' contract terms, notes and attachments
- Suppliers are allowed to respond to selected lines
- Suppliers are required to respond with full quantity on each line

- Suppliers are allowed to provide multiple responses
- Buyer may close the negotiation before the Close Date
- Buyer may manually extend the negotiation while it is open

2 Price Schedule**2.1 Line Information**

Display Rank As **No indicator displayed**
 Ranking **Price Only**
 Cost Factors **None**

Line	Item, Rev	Target Quantity	Unit	Unit Price	Amount	Promised Date
1	24 Foot Oopen Utility Trailers	3	Each			

2.2 Line Details**2.2.1 Line 1 24 Foot Oopen Utility Trailers**

Category **07066** Start Price (USD) **Not Specified**
 Need-By Date **Not Specified** Target Price (USD) **Not Specified**
 Ship-To Address **206111-GEN Fleet**
Mgmt Administration
206111-GEN Vehicle Svs
Center Administration
671 St. Jude Place
Memphis, TN 38105
United States

Note In Oracle, enter the delivered cost per trailer from the attached Bid Section. Fill out, in its entirety, the attached Specifications/Bid Section and return for evaluation and award purposes. Any bid submitted without this attachment may be deemed non-conforming.

Attachments

Name	Data Type	Description
Specifications	File	

Contract Terms and Conditions

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Terms and Conditions

RFQ TERMS & CONDITIONS

HEADER FOR CONTRACT SPECIFICATIONS

To the Honorable Mayor of Memphis, Tennessee:

Gentlemen:

N/A

(I/we) do hereby declare that (I am/we are) the only person, firm or corporation interested in this proposal, and that no other person, firm or corporation than the one herein named has any interest herein or in the contract proposed to be taken; that it is made without any connection with any person, firm or corporation making proposal for the same work, and that it is in all respects fair as to each item bid upon and as to the proposal as a whole and without collusion or fraud: also that no officer or employee of the City of Memphis, who is by law excluded from participating therein, is directly or indirectly interested herein, or in the furnishing of the supplies, or doing the work to which it relates, or in furnishing surety, or in any portion of the profits thereof;

With the understanding that any contract resulting from the bids taken herein shall be governed, construed and enforced according to the laws of the State of Tennessee. All actions whether sounding in contract or in tort, relating to the validity, construction, interpretation, and enforcement of this contract shall be instituted and litigated in the courts of the State of Tennessee located in Shelby County, Tennessee, without regard to conflicts of laws principles. In accordance herewith the parties to this proposal submit to the jurisdiction of the courts of the State of Tennessee, located in Shelby County, Tennessee;

And do further declare that (I/we) have carefully examined the annexed specifications, and hereby propose to furnish the following items, and/or do the following work for the sum hereinafter set forth, VIZ:

REQUEST FOR QUOTE TERMS AND CONDITIONS

QUOTATION CONDITIONS:

1. THE CITY OF MEMPHIS ENCOURAGES THE PARTICIPATION OF SMALL, MINORITY AND WOMEN-OWNED BUSINESSES IN THE PURCHASING PROCESS.

2. Bids must be received at 125 N MAIN ST, ROOM 354, MEMPHIS, TN 38103 no later than 12:00 NOON CT on JUNE 5, 2019 in order to be considered. Only bids submitted on the provided form(s) with no changes, additions or deletions to the terms and conditions will be considered. Bids containing terms and conditions other than those contained herein may be considered nonconforming.

LATE BIDS WILL BE CONSIDERED NONCONFORMING AND WILL NOT BE CONSIDERED IN THE EVALUATION PROCESS.

3. Any questions or concerns concerning the solicitation must be submitted in writing via e-mail at purchasingbidinquiries@memphistn.gov or the Oracle online discussion tool. The preferred method of correspondence should be through the Oracle online discussion tool. Please be aware that a vendor's contact with any City personnel (other than the person clearly identified in the solicitation) regarding the solicitation may disqualify such vendor from consideration of award for the solicitation. The written correspondence should reference the section of the solicitation to which the question pertains, and must clearly specify the question(s) and identify the solicitation number to which such questions pertain. Unless otherwise specified in the solicitation, questions or concerns must be submitted at least three (3) days before the bid or proposal deadline date. Any questions or concerns not submitted within a timely manner will be deemed waived. Any response to the submitted questions or concerns will be made via an addendum or Question and Answer document, which will be issued to each vendor known to have received a copy of the solicitation, pursuant to Section 7.5, and/or posted on the City's website (www.memphistn.gov). The Addendum/Question and Answer document will become a part of the solicitation.

Any oral interpretations or instructions given by a City employee or other person do not affect the terms and conditions of the solicitation, as amended.

4. All bids must be signed by an authorized representative of your firm. Unsigned bids will be considered nonconforming.

5. DEL N/A DAYS ARO" SHALL MEAN THE NUMBER OF CONSECUTIVE CALENDAR DAYS FOLLOWING RECEIPT OF A FULLY EXECUTED CONTRACT, F.O.B. TO DESIGNATED FACILITY, CITY OF MEMPHIS, TENNESSEE: THERE WILL BE NO EXCEPTIONS.

6. The award of a contract will be made on the basis of the lowest and best bid, as determined by the City, which meets the requirements and criteria set forth in the solicitation. The City of Memphis Purchasing Department will issue a contract to the successful vendor for execution. Upon execution, the vendor shall return the signed contract to the City for signatory execution by the necessary officials of the City. Any vendor who manufactures or delivers an order or provides services without a fully executed contract does so at its own risk.

7. The City reserves the right to itemize and award individually, where applicable.

8. The City reserves the right to cancel this solicitation at any time prior to making an award based on this solicitation. The City reserves the right to reject any and all bids, and to waive any informality in bids.

9. Any protest of award must be filed in writing with the Purchasing Agent within 5 calendar days of the intent to award announcement at the following address: City of Memphis Purchasing Agent; 125 North Main, Room 354; Memphis, Tennessee 38103. Notice will be posted on the City's website and outside Council Chambers, located on the lobby floor of City Hall. The intent to award notification shall be deemed publicly announced on the date specified on the notice.

10. BRAND NAMES or TRADE NAMES are given as a quality reference and aid bidders in offering the right quality for this solicitation. Except where said quality reference is followed by the word "ONLY", any quotation will be considered if, in the opinion of the City, the products are equal to those specified. PLEASE INDICATE BRAND AND MODEL PROPOSED.

11. The successful bidder must return the Certificate of Insurance evidencing the required insurance coverage, and all other required information, within five (5) days of notification of bid award.

12. Upon opening, all bids and attendant documents become a matter of public record.

13. Vendors must comply with all applicable licensing requirements. Pursuant to the City of Memphis Charter, Article 71, Section 777 et seq., it is unlawful to operate a business within the limits of the city of Memphis without possessing a Memphis and Shelby County business license, excepting non-profit organizations that qualify as tax exempt under Sec. 501(c)(3) of the Internal Revenue Code. Upon award notification and prior to the City issuing a properly executed purchase order or entering into a contract with the vendor, the successful vendor, whose principal business address is located within the limits of the city of Memphis, will be required to submit, along with the required insurance and other required documentation, a copy of (1) the tax-exempt ruling or determination letter from the Internal Revenue Services; or (2) its current Memphis and Shelby County Business Tax Receipt/License.

14. The City reserves the right to split award among various manufacturers depending on the City's inventory needs.

15. The City of Memphis is exempt from Federal Excise, State and local taxes on all purchases and will issue tax exemption certificates, as requested.

16. The bid/proposal submitted in response to this solicitation is not a legally binding document; however any ensuing contract shall be subject to the City of Memphis Contract General Terms and Conditions, which are included in this procurement. The successful Contractor shall be required to execute the contract originated by the City of Memphis.

17. The City reserves the right to audit the records of the Contractor. The Contractor shall make and keep as the same accrue, full and complete records and books as account of revenue and income, costs and expenses that specifically relate to performance under this Agreement. Records and books of accounts together with any and all other memoranda pertaining thereto that may be kept, maintained or possessed by the Contractor, shall be open to examination during regular business hours by the City or its representatives for the purpose of inspecting, auditing, verifying or copying the same or making extracts therefrom. The Contractor shall make and keep said records and books of accounts for a period of three years from the completion of the contract obligations or the final payment under the contract, whichever is later.

The City of Memphis is an Equal Opportunity Employer and does not discriminate on the basis of race, color, national origin, sex, religion, age or handicap status in employment or in the provision of services.

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This procurement shall be in accordance with the City of Memphis Purchasing Policies and Procedures, which may be amended from time to time by the City.

Published in The Daily News: MAY 28 & 29, 2019 (2) copies

By Order of the Mayor of the City of Memphis, Tennessee.

Jim Strickland

MAYOR

ERIC S. MAYSE, CITY PURCHASING AGENT

INSTRUCTIONS TO BIDDERS

1. The bidder is required to list all exceptions, deviations or variations to the specifications in a clear, logical fashion on a sheet designated by the bidder as such. Brochures, standard catalog sheets or technical data should accompany each proposal, but may not be considered as notice of exceptions, deviations, or variations to the specifications.

2. The successful bidder shall submit all invoices associated with the resulting purchase order/contract to: TIM BOYLES at 671 ST. JUDE PLACE; Memphis, Tennessee 38105.

3. If the solicitation requires that the bid/proposal be delivered to a physical location, it shall be submitted in a sealed envelope by the deadline date and time indicating, at minimum, the following information on the outside of the envelope: the Company Name and the applicable Request for Quote/Proposal Number.

4. At any time prior to the scheduled deadline for receipt of bids, the Offeror may withdraw or amend its bid by submitting a written request from the authorized representative whose name and signature appears on the bid to the City's Purchasing Agent.

5. IF YOU ARE NOT QUOTING, RETURN THIS FORM STATING THE REASON, OR YOUR FIRM'S NAME MAY BE REMOVED FROM THE MAILING LIST FOR THIS APPLICABLE COMMODITY CODE. ANY FIRM RECEIVING A MAILED SOLICITATION ON THE ABOVE SUBJECT AND NOT BIDDING WILL BE ELECTRONICALLY REMOVED FROM THE CITY'S MAILING LIST USED FOR THE ABOVE-REFERENCED COMMODITY AFTER 3 CONSECUTIVE NON-RESPONSES OR NO BIDS.

6. For additional information regarding this solicitation, contact TIM BOYLES at TIM.BOYLES@MEMPHISTN.GOV or via facsimile at N/A. Offerors shall not, under any circumstances, contact any City official, employee, agent (including senior City management or City employees with whom Offeror has an existing business or personal relationship) to discuss this solicitation. Utmost discretion is expected from Offerors and all solicitation recipients. Any Offeror attempting to circumvent this process may be subject to elimination from further participation in the solicitation process.

CMEM GOODS AGREEMENT GENERAL TERMS AND AGREEMENT (PROCUREMENT ATTACHMENT)

The successful Contractor will be required to comply with and execute an agreement specifying the following general terms and conditions, as may be modified and/or supplemented at the City's sole discretion:

ENTIRE AGREEMENT. This Agreement constitutes the full and final understanding of the parties with

respect to the subject matter hereof and supersedes and replaces any and all prior or contemporaneous agreements or understandings, whether written or oral, express or implied, between the parties with respect to the subject matter of the Agreement.

HEADINGS. Titles and headings used herein are for the convenience of reference only and shall be disregarded completely in the interpretation and validity of this Agreement or any of its terms.

MODIFICATION AND AMENDMENT. This Agreement shall be amended or modified only by a written document signed by the parties hereto, in accordance with applicable laws and regulations.

EMPLOYMENT OF CITY WORKERS. The Contractor shall not engage, on a full, part-time or any other basis during the term of this Agreement, any professional or technical personnel who are or have been at any time during the term of this Agreement in the employ of the City.

TERMINATION

1. It shall be cause for the immediate termination of this Agreement if, after its execution, the City determines that either:
 - a. the Contractor or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, misappropriation of government funds, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
 - b. the Contractor subcontracted, assigned, delegated, or transferred its rights, obligations or interests, voluntarily or involuntarily, under this Agreement without the City's consent or approval; or
 - c. the Contractor has filed bankruptcy, has been adjudicated bankrupt, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of the Contractor's assets.
2. The City may cancel/terminate this Agreement, in whole or in part, as a result of Contractor's failure to provide the goods specified hereunder or to comply with any of the terms, conditions and/or specifications herein, upon notifying the Contractor in writing and the Contractor's failure to cure such breach within 30 business days of such notice. At its option, the City may return the rejected portion of such goods to the Contractor at Contractor's expense, or hold the same for such disposal as Contractor shall indicate, without invalidating the remainder of this Agreement; or the City may reject the entire shipment for such goods and cancel this Agreement for any undelivered balances of goods. In the event of any such rejection/termination, the City shall have the right to purchase like goods elsewhere and charge the Contractor with any loss or damage (either direct or indirect) sustained by the City, including but not limited to, any difference between the price paid by the City for such like goods and the price specified herein, attorneys' fees and court costs. The City shall not be obligated to pay for any goods shipped which are rejected by it. All claims for monies due to or become due from the Contractor shall be subject to deduction or setoff by the Contractor by reason of any counterclaim arising out of this or any other transaction with the Contractor.
3. Notwithstanding the foregoing or any section herein to the contrary, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor, for the purpose of setoff, until such time as the exact amount of damages due the City from the Contractor is determined.
4. The City may, in its sole discretion, suspend and/or terminate the Agreement for convenience upon giving 30 business days prior written notice to the Contractor. In the event a purported termination for cause by the City is in error, then such termination may, at the City's sole discretion, be deemed to be a termination for convenience under this section. In the event of such termination, the Contractor shall be entitled to receive payment for goods accepted by the City in accordance with the Agreement up to the date of termination. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall not be compensated for any anticipatory profits, or other damages of any description, that have not been earned as of the date of termination.
5. The Contractor shall deliver to the City all hard copy and electronic files maintained on behalf of the City within thirty (30) calendar days of termination of this Agreement. Upon reasonable request, the City reserves the right to obtain such information prior to the termination of this Agreement.

PUBLIC STATEMENTS. The Contractor shall not make any announcement, release any information, or authorize or participate in any interview concerning this Agreement and the goods and/or services required

herein, without obtaining prior written consent from the City. The Contractor shall require its employees, agents, and subcontractors to comply with the requirements of this provision. This provision shall survive the expiration or termination of this Agreement.

TITLE & RISK. The title and risk of loss of the goods shall not pass to the City until the City actually receives and takes possession of the goods at the point or points of delivery.

TRANSPORTATION CHARGES: F.O.B. destination, in which Contractor/Bidder shall be responsible for freight, transportation costs, and all incidental charges, unless delivery terms are specified otherwise herein. In the event shipping other than FOB destination is allowed, the City agrees to reimburse the Contractor for transportation costs in the amount specified in Contractor's bid, or actual costs, whichever is lower, provided that the City shall have the right to designate what method of transportation shall be used to ship the goods.

DELIVERY. Unless specified otherwise herein, substitutions will not be accepted and partial shipments may be allowed; however, full shipment of all items ordered hereunder must be completed by the date specified in the solicitation or in this Agreement, or this Agreement will be subject to cancellation by the City. The Contractor shall not ship excess quantities without the City's prior approval.

REMEDIES CUMULATIVE. All remedies available to the City herein are cumulative and shall be in addition to all other rights and remedies provided by law. The termination, expiration, or suspension of this Agreement shall not limit the City from pursuing other remedies available at law or in equity.

PATENT INDEMNIFICATION. The Contractor warrants that the goods furnished hereunder do not infringe or violate any United States or Canadian patent, trademark, copyright, trade secret, or any other proprietary right of any third party; that it shall defend all suits that may arise with respect thereto; and that it shall indemnify, defend, save and hold harmless the City, its officials, employees, agents, successors and assigns, from and against all liabilities, suits, claims, damages, costs or expenses, including without limitation attorney and expert witness fees, for or by reason of any actual or alleged claim the goods purchased by City hereunder infringe any patent, copyright, or is a violation of trade secret disclosure laws, whether by reason of the Contractor's purchase or otherwise.

SUBCONTRACTING, ASSIGNMENT OR TRANSFER. The Contractor shall not subcontract, assign, delegate or transfer all or part of its rights, responsibilities, or interest under this Agreement without the prior written consent of the City. Any purported assignment, transfer, or delegation in violation of this Section shall be voidable by the City. No subcontracting, assignment, delegation or transfer shall relieve the Contractor from performance of its duties hereunder; neither shall the City be responsible for the fulfillment of the Contractor's obligations to its transferors or subcontractors. Upon request of the City, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the transfer. At any time, City may, in its sole discretion, revoke its prior approval of a subcontractor and direct Contractor to replace such subcontractor or perform the services that were being performed by such contractor itself if the City finds in its reasonable judgment that (i) such subcontractor's performance is materially deficient or otherwise unacceptable to City; (ii) good faith doubts exist concerning the subcontractor's ability to render future performance because of changes in the subcontractor's ownership, management, financial condition, or otherwise; or (iii) there have been one (1) or more material misrepresentations by or concerning the subcontractor. The City reserves the right to terminate the Agreement if Contractor, in whole or in part, is acquired by another entity during the term of this Agreement.

In addition, Contractor shall submit and, as necessary, update subcontractor information (including but not limited to payments thereto), for **any and all subcontractors** used on City project(s), in the City's compliance tracking software, B2GNow. The City shall have the right to withhold future disbursement of funds under this Agreement and any future Agreements until the requirements of this provision have been met.

CONFLICT OF INTEREST. Neither party shall engage in any conduct or activity in the performance of this Agreement that constitutes a conflict of interest under applicable federal, state or local laws, rules and regulations.

The Contractor covenants that it has no public or private interest, and shall not acquire, any interest, directly or indirectly, which would conflict in any manner with the performance required under this Agreement, and the Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer, official, agent or employee of the City, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement. The Contractor warrants

that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the Contractor in connection with any work contemplated or performed relative to this Agreement. For breach or violation of this provision, the City shall have the right to recover or withhold the full amount of such gratuities.

COVENANT AGAINST CONTINGENT FEES. The Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision, the City shall have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

GENERAL COMPLIANCE WITH LAWS. The Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it shall take such action as, from time to time, may be necessary to remain so qualified and shall obtain and maintain, at its own expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement. Such permits and licenses shall be made available to the City, upon request.

The Contractor is assumed to be familiar with and shall comply with all applicable federal, state, and local laws, ordinances, and regulations in performing any of its obligations under this Agreement, including but not limited to the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA), and the Americans with Disabilities Act (ADA). The Contractor shall promptly notify the City of any conflict discovered between this Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict. Failure to comply with this provision may be cause for the City to terminate this Agreement.

NON-DISCRIMINATION. The Contractor hereby agrees to comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other federal, state or local laws prohibiting discrimination, which provide in whole or in part, that no person shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the Contractor's employment practices on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, State or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination. In the event the Contractor fails to comply with the City's non-discrimination policy and any and all other laws prohibiting discrimination, this Agreement may be canceled, terminated or suspended in whole or in part by the City.

The City reserves the right to investigate any claims of illegal discrimination by the Contractor and in the event a finding of discrimination is made and upon written notification thereof, the Contractor shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the City. The Contractor's failure or refusal to do so shall be cause for termination of this Agreement in accordance with the terms of this Agreement.

EMPLOYMENT OF ILLEGAL IMMIGRANTS. The Contractor hereby certifies to comply with all applicable federal and state laws prohibiting the employment of individuals not legally authorized to work in the United States. Contractor shall not knowingly (i) utilize the services of illegal immigrants; or (ii) utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. In the event the Contractor fails to comply with any and all local, state and federal laws prohibiting the employment of individuals not legally authorized to work in the United States, this agreement may be canceled, terminated or suspended in whole or in part by the City, and the Contractor may be prohibited from contracting to supply goods and/or services to the City for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of a contract with the City.

SEVERABILITY. If any terms or provisions of this Agreement are held to be illegal, invalid or unenforceable as a matter of law, such provision shall be fully severable, and the remaining provisions of this Agreement shall remain in full force and effect and continue to be binding and shall not be affected by such provision or by its severance herefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, the parties may negotiate in good faith to replace such provision with a valid, legal and enforceable provision that most closely approximates the parties' original intent.

NO WAIVER OF CONTRACTUAL RIGHT. No term or provision of this Agreement, or of any document executed pursuant hereto, shall be held to be waived, modified or deleted unless in writing and executed by the parties hereto and specifically identified as a waiver of any succeeding breach thereto or of any other provision herein contained. No delay or failure of the City to enforce any right or provision of this Agreement or in any document executed pursuant hereto shall operate as a waiver or relinquishment of the City's right to subsequently enforce and compel strict compliance with such provision or any other provision herein or in any document related hereto.

SUBJECT TO FUNDING. This Agreement is subject to availability and annual appropriation of funds by the Memphis City Council. In the event sufficient funds for this Agreement are not available or appropriated by the Memphis City Council for any of its fiscal period during the term hereof, then the City shall immediately terminate this Agreement upon written notice to the Contractor. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work performed up to the termination date. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall have no right to any actual, general, specific, incidental, consequential, or any other damages whatsoever of any description or amount that have not been earned as of the date of termination.

CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISE. The Contractor shall take affirmative action to ensure that small, minority-owned and women-owned businesses, which have been certified by the City, are utilized when possible as sources of supplies, equipment, construction and services.

PUBLIC RECORDS. Notwithstanding anything to the contrary contained herein or within any other document supplied to the City by the Contractor, the Contractor understands and acknowledges that the City is a governmental entity subject to the State of Tennessee Public Records Act, and any reports, data or other information supplied to the City regarding services performed hereunder may be subject to disclosure as a public record in accordance with the laws of the State of Tennessee..

ORGANIZATION STATUS AND AUTHORITY. The Contractor represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

The execution, delivery and performance of this Agreement by the Contractor has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the Contractor, any provision of any indenture, agreement or other instrument to which the Contractor is a party, or by which the Contractor's respective properties or assets are bound, in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

Each person executing this Agreement represents that: he/she is lawfully authorized to execute the Agreement on behalf of the party he/she represents and execution of the Agreement was duly and regularly authorized by the party's governing body.

WARRANTY. The Contractor warrants to the City that all goods/work shall be free from defects in design and faulty or improper materials and/or workmanship, shall be in strict compliance with the terms of this Agreement and shall be fit and sufficient for the purpose intended. This warranty shall be effective for a period of not less than one year from the date of acceptance by the City of such goods and/or services as satisfactorily complete, and shall be in addition to all other warranties, express, implied or statutory. The warranty shall survive the termination or expiration of this Agreement.

RECORDS AND AUDITS. The Contractor shall make and keep as the same accrue, full and complete books, documents, accounting records and other evidence, that specifically relate to this Agreement, in accordance with generally accepted accounting principles. The Contractor shall retain such records, and shall make same available to the City, upon reasonable request, during the term of this Agreement, and for a minimum period of three (3) full years after completion of the contract obligations or from the date of final payment under this Agreement, whichever is later. In the event any litigation, claim or audit is instituted prior to the expiration of the required three-year retention period, such records shall be retained until such litigation, claim or audit finding has been resolved. Copies of said records shall be furnished to the City upon request.

Upon reasonable notice, the Contractor shall permit the City, any other governmental entity, any agency participating in the funding of this Agreement, or any of their duly authorized representatives, to enter the Contractor's offices, during regular business hours, to interview employees and to inspect and/or copy said records and books of accounts together with any and all documents pertaining hereto that may be kept, maintained or possessed by the Contractor. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

DISPUTE RESOLUTION. In the event of any dispute(s), controversy, or claim arising out of or relating to this Agreement or the breach thereof, the parties agree that they shall first use their best efforts in an attempt to settle the dispute through negotiations, involving themselves or their representatives as they each deem appropriate.

Any dispute concerning a question of fact in connection with this Agreement between the Contractor and the City shall be referred in successive order for resolution, first to the City Purchasing Agent, second to the City Attorney, and thirdly to the City Mayor, whose decision regarding same shall be final.

FORCE MAJEURE. The City shall not be deemed in default hereunder, nor shall the City be responsible for any delay, interruption, or cessation in the performance of its obligations under this Agreement where such failure of performance is the result of any force majeure event, including, but not limited to, acts of God, riots, wars, strikes, epidemics, acts, governmental authorities or acts of nature or other similar cause beyond its control.

SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

NOTICES. All notices and other communications required or permitted to be given hereunder shall be written and hand delivered with signed receipt; delivered by facsimile; delivered by a nationally recognized overnight courier; or mailed via certified U.S. mail, postage prepaid and return receipt requested. All notices shall be deemed received and effectively given as follows: (i) if by hand delivery, on the date of delivery; (ii) if by fax, on the day the fax transmission is received at the receiving location and receipt is telephonically confirmed by the sender; (iii) if by delivery via U.S. mail, on the date of receipt appearing on a return receipt card; or (iv) if by overnight courier, on the date receipt is confirmed by such courier service. All notices must be addressed to the respective party at the following addresses or to such other person or address as either party may designate in writing and deliver as provided herein.

NO THIRD PARTY BENEFICIARY: This Agreement is entered into solely between, and may be enforced only by, City and Contractor. Unless otherwise specified herein, this Agreement shall not be deemed to create any rights in third parties, including suppliers or customers of either party.

SERVICE MARKS: The Contractor agrees that it shall not, without City's prior written consent, use the name, service mark or trademarks of the City.

NUMBER AND GENDER. Unless the context requires otherwise, (i) use of a specific gender imports the other gender(s); and (ii) use of the singular imports the plural and vice versa.

SURVIVAL. The parties hereto acknowledge that provisions that require or contemplate performance or observance after expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and continue in full force and effect.

CITY LIABILITY. The City shall have no liability except as specifically provided in this Agreement. The City, by execution of this Agreement, assumes no liability for damages caused to persons or property by reason of Contractor providing services herein or for injury to any employee, agent or subcontractor of the Contractor performing under this Agreement.

INDEMNIFICATION. Contractor shall indemnify, defend, save and hold harmless the City and its officers, agents and employees from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses, or other liabilities of any kind and character, including without limitation attorney fees and litigation expenses, arising out of or in connection with the breach of this Agreement by Contractor, its employees, subcontractors, or agents, or any negligent acts or omission of Contractor, its employees, subcontractors, or agents, which occurs pursuant to the performance of this Agreement, excepting those losses or damages directly caused solely by the acts, errors, or omissions of the City or any of its officers, agents or employees. This indemnification shall survive the expiration or termination of this Agreement.

The Contractor expressly understands and agrees that any insurance protection required by this Agreement

or otherwise provided by the Contractor shall in no way limit the Contractor's responsibility to indemnify, defend, save and hold harmless the City or its elected or appointed officials, officers, employees, agents, assigns, and instrumentalities as herein required.

The City reserves the right to appoint its own counsel regarding any matter defended hereunder. The Contractor acknowledges that the City has no obligation to provide legal counsel or defense to the Contractor, its employees or subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against the Contractor as a result of or relating to obligations under this agreement. The City shall have no obligation for the payment of any judgments or the settlement of any claims asserted against the Contractor or its subcontractors or employees as a result of or relating to the Contractor's obligations hereunder.

The Contractor shall immediately notify the City c/o City Attorney; 125 North Main, Suite 336; Memphis, TN 38103, of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under this Agreement and agrees to cooperate, assist and consult with the City in the defense or investigation thereof.

GOVERNING LAW, JURISDICTION AND VENUE. The terms and conditions of this Agreement shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, without regard to conflicts of laws principles. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

INSURANCE

A. The Contractor shall not commence any work under this agreement until it has obtained and caused its subcontractors to procure and keep in force all insurance required hereunder. The Contractor shall require all subcontractors to carry insurance as outlined below, in case the subcontractor(s) are not protected by the policies carried by the Contractor. Prior to commencing any work under this contract, the Contractor shall furnish the City a Certificate of Insurance and/or policies, upon request, executed by an authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. Failure to maintain or renew coverage or to provide evidence of renewal may result in termination of the contract by City. Failure of the City to identify any deficiency in the evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance. The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent. Insurance coverage shall be provided by companies rated A:VI or better by Best's Insurance Rating. The City reserves the right to reject any or all insurance carrier(s) with an unacceptable financial rating. All insurance companies must be acceptable to the City of Memphis and licensed in the State of Tennessee.

B. If any of the insurance requirements are non-renewed at the expiration dates of any policy, payment to the Contractor may be withheld until those requirements have been met, or at the option of the City, the City may pay the renewal premiums and withhold such payments from any monies due the Contractor. Contractor's insurance shall be primary as respects the City, its officers, employees, and agents. Any insurance or self-insurance maintained by the City, its officers, employees and agents shall be excess of the Contractor's insurance and shall not contribute with it.

C. The Contractor shall maintain, at its expense, at minimum, the following insurance coverage during the life of the Agreement:

1. WORKERS COMPENSATION in accordance with the statutory requirements and limits of the State of Tennessee

Employer's Liability	\$100,000 Each Accident
	\$500,000 Disease - Policy Limit
	\$100,000 Disease - Each Employee

The workers compensation policy shall include a waiver of subrogation in favor of the City, its officials, employees and agents.

2. AUTOMOBILE LIABILITY covering owned, non-owned and hired vehicles with a minimum limit of: \$1,000,000 Each Occurrence - Combined Single Limits. The policy shall include a waiver of

subrogation in favor of the City, its officials, employees and agents.

3. The Contractor shall be responsible for maintaining any and all PROPERTY INSURANCE on its own equipment and shall require all subcontractors to do likewise.

4. COMMERCIAL GENERAL LIABILITY covering Bodily Injury and Property Damage on an "occurrence" basis. The policy shall include a waiver of subrogation in favor of the City, its officials, employees and agents. The coverage shall be provided on ISO occurrence Form CG 00 01 07 98 (or substitute form for providing equivalent or greater coverage) and include Premises and Operations, Contractual Liability, Independent Contractor's Liability, Broad Form Property Damage, including Premises/Completed Operations, and Personal Injury liability, with employee and contractual exclusions deleted.

General Aggregate	\$2,000,000
Products - Completed Operations	\$1,000,000
Personal & Advertising	\$1,000,000
Each Occurrence	\$1,000,000 (Bodily Injury & Property Damage)
Fire Damage (any one fire)	\$50,000
Medical Expense (any one Person)	\$5,000

5. A Separation of Insureds condition shall be included in all general liability and automobile liability policies required by this Agreement.

D. Each certificate or policy shall require and state in writing the following clauses:

1. The vendor shall provide notice to the City of Memphis within three (3) business days following receipt of any notice of cancellation or material change in the vendor's insurance policy. This notice shall be given to the City of Memphis Risk Manager by registered mail, return receipt requested to the following address:

City of Memphis
 Attn: Risk Management
 170 N. Main Street, 5th Floor
 Memphis, TN 38103

2. **"The City of Memphis, its officials, agents, employees and representatives shall be named as Additional Insured on all liability policies." The additional insured endorsements shall be attached to the Certificate of Insurance.**

SIGNATURE FOR CONTRACT SPECIFICATIONS

For either of the two following numbered reason, (I/we) herewith declare that (I/we) will forfeit any claim to any contract resulting from the bid stated herein:

(AND, IF A BID BOND IS REQUIRED IN ORDER TO COMPLY WITH THE ENCLOSED "LEGAL NOTICE TO BIDDERS")

(I/we) will forfeit as liquidated damages to the City of Memphis (my/our) bidder's bond, or certified or cashier's check on a solvent bank in the sum of _____:

- 1) if the contract is not signed and returned to the City WITHIN TEN (10) DAYS AFTER RECEIPT OF SAME, or:
- 2) if a performance bond is required, failure to enter into a contract with a good and solvent bond in surety company, licensed to do business in the State of Tennessee and acceptable to the City of Memphis, in an amount equal to the gross amount of said contract (or for an amount as specified), and the contract is not signed and returned to the City WITHIN TEN (10) DAYS AFTER RECEIPT OF SAME.

The full name and residence of all persons interested in the foregoing as principals are as follows: (If out-of-the state company, PLEASE list Tennessee office address.)

BUSINESS ADDRESS OF BIDDER (including City, State and Zip Code):

 If Bidder is an INDIVIDUAL, fill out the following:

(NAME OF OWNER)

If Bidder is a PARTNERSHIP, fill out the following:

PARTNER NAME:

ADDRESS:

If Bidder is a CORPORATION, fill out the following:

NAME OF CORPORATION

PRESIDENT: _____

NAME OF CORPORATION

SECRETARY: _____

NAME OF COMPANY:

SIGNATURE OF

BIDDER: _____

PHONE NUMBER: _____

TITLE: _____