



Article 1 – City of La Porte Standard Terms and Conditions for Bidding and Contracting

1.0 General Definitions

Wherever used in the bidding requirements of Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural, thereof. In addition to the terms specifically defined, terms with initial capital letters in the Contract documents include references to identified articles and paragraphs, and the titles of other documents or forms.

Addendum: official revision of the solicitation documents issued by the Purchasing Division prior to Bid Opening Date which clarify, correct, or change the Bidding Requirements or the proposed Contract documents.

Additional Services: are those services which are within the general scope of Services of the contract, but beyond the description of services in the detailed specifications and all services reasonably necessary to complete the additional services to the standards of performance required by the Contract.

Advertise: to make a public announcement of the intention to purchase goods or services.

Agreement: The written instrument which is evidence of the agreement between Owner and Contractor covering the work, services or goods.

Amended: A status change to a Bid, RFP, RFQ or Contract that indicates a modification to that document.

Amendment: Written addition or change to a contract.

Assignment: Transfer of contractual rights from one party to another party.

Attachments: all exhibits and other documents attached to the solicitation documents and/or incorporated into them by reference.

Best Value: factors that may be considered in determining lowest overall cost and value in making certain purchases. Ref. Texas Government Code, Section 2155.074 (Non-Information Technology Related) and Texas Government Code, Section 2157.003 (Information Technology Related).

Bid: an offer to contract with the City, submitted in response to a solicitation invitation. The term “bid” may also be used generically to reference a response to another type of solicitation, e.g., a quote. Bids are usually nonnegotiable and price is the major determining factor for selection.

Bidder: person, firm or entity submitting an offer (a “bid”) in response to an invitation for bids; for RFPs and RFQs, references may be made to “Respondents”. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as agents, employees and representatives. Once the Contract is awarded the Contractor shall assume that all references to a Bidder or Respondent and such attendant obligations apply to the Contractor.

Bid Deposit: A deposit required of bidders to protect the City in the event a low bidder attempts to withdraw its offer or otherwise fails to enter into a contract with the City. Acceptable forms of bid deposits are limited to: cashier’s check,



certified check, or irrevocable letter of credit issued by a financial institution subject to the laws of Texas and entered on the United States Department of the Treasury's listing of approved sureties; a surety or blanket bond from a company chartered or authorized to do business in Texas.

Bid Opening: The public opening of bids, in which the names of the bidders responding to an invitation and prices of the bidders are publicly read and recorded. See Proposal Opening.

Bid Opening Date: date and time publicly advertised by the Purchasing Division as the

Bidding Requirements: The Advertisement or Invitation to Bid, Instructions to Bidders, Bid Security of acceptable form, if any, and the Bid Form with any Supplements.

Change Order: A document which is used when it becomes necessary that amends, clarifies, changes, or cancels contract issues and/or provisions.

City: means the City of La Porte, a home ruled government municipality as defined by the State of Texas.

Citywide Contract: a legal and binding instrument between the city and a vendor(s) which is made available to multiple city departments to purchase frequently used commodities and services.

Competitive Sealed Bidding: The process of advertising an invitation for bids, conducting a public bid opening and awarding of a purchase order/contract to the lowest responsive, responsible bidder in accordance with state

Competitive Sealed Proposals: The process of advertising a request for proposal (RFP), the evaluation of submitted proposals and

deadline for submission of Bids; this may be referred to as a "Proposal Due Date" for RFP and RFQ solicitations.

Bid Tabulation: The recording of bids and bid data submitted in response to a solicitation. The bid tabulation is used for comparison, analysis and record keeping.

Bidding Documents: The bidding requirements and the proposed Contract Documents (including all Addenda).

awarding of the contract.

Consultant: A person that provides or proposes to provide a consulting service.

Consulting Services: The practice of studying and advising an entity in a manner not involving the traditional employer/employee relationship per the Texas Government Code, Section 2254.021.

Contract: upon notice of award by Purchasing Division, the contract consisting of all Bid Documents relating to a specific invitation for bids or proposals, and all amendments, modifications, or revisions made from time to time in accordance with the terms thereof. All such documents comprising the Contract are referred to as the "Contract Documents".

Contractor: the Bidder (person, firm or entity; vendor) that is awarded the Contract to provide goods or services to the City of La Porte. This term is used interchangeably with the term "vendor". Any reference to the Bidder in the Contract documents is understood to apply to the Contractor.



Deliverables: a unit or increment of supplies, work or product produced by Contractor, including but not limited to written reviews, reports, recommendations, charts, analysis, designs, plans, specifications, drawings, or other similar products.

Department: which may also be referred to as the using/user Department is the City Department which appears on the applicable purchase order release for goods, work or services provided under this contract.

Detailed Specifications: refers to the contract specific requirements that includes but is not limited to a detailed description of the scope, term, compensation, price escalation, and such other additional terms and conditions governing this specific Contract.

Effective Date of the Agreement: The date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver or, date of award by City Council.

Emergency: A purchase made when

Independent Contractor: A person working for an entity under contract and not an employee of the contracting entity. The contracting entity does not pay unemployment, disability, or worker's compensation insurance or withholding taxes from payments to the person. An independent contractor normally follows the contracting agency's direction on the results of the work but not on the means of accomplishing the work.

Law(s): The word "Law" or "Laws," whether or not capitalized, is intended in the broadest possible sense, including without limitation all

unforeseen and/or a sudden unexpected occurrence creates a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Compliance with normal procurement practice is impracticable or contrary to the public interest.

Force Majeure Event: an event beyond the reasonable control of a party to this Contract, which is limited to acts of God, explosion, acts of the public enemy, fires, floods, earthquakes, tornadoes, epidemics, quarantine restrictions, work stoppages not caused or unmitigated by the Contractor.

Goods: A transportable article of trade or commerce that can be bartered or sold. Goods do not include services or real property.

Historically Underutilized Business: a minority or women-owned business as defined by Texas Government Code, Title 10, Subtitle D, Chapter 2161.

<http://www.window.state.tx.us/procurement/prog/hub/>

applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction; requirements and prohibitions of permits, licenses or other similar authorizations of any kind; court decisions; common law; and all other legal requirements and prohibitions.

Liquidated Damages: A specified contract provision which entitles the city to demand a set monetary amount determined to be fair and equitable repayment to the city for loss of service due to vendor's failure to meet contract requirements.



Notice of Award: The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the Conditions precedent listed therein, Owner will sign and deliver the Agreement.

Notice to Proceed: A written notice given by Owner to Contractor fixing the date on which the Contract times will commence to run and on which Contractor shall start to perform the work under the Contract Documents.

Owner: The entity, City of La Porte, Texas, with whom the Contractor has entered into the Agreement and for whom the Works are to be performed or goods supplied.

Party: or collectively Parties refers to the entities that have entered into this Contract including the Contractor and the City.

Payment Bond: A bond executed in connection with a contract which secures the payment requirements of the contractor.

Performance Bond: A surety bond which provides assurance of a bidder's performance of a certain contract. Acceptable forms of bonds are those described in the definition for "bid deposit."

Posted Date: The date a procurement document is made available to the public.

Pre-Bid/Proposal Conference: A meeting chaired by City personnel which is designed to help potential bidders/respondents understand the requirements of a solicitation.

Purchasing Division: The office designated to purchase goods and services for the City of La Porte.

Professional Services: Services directly related to professional practices as defined by the Professional Services Procurement Act (Government Code, Section 2254.002) including those services within the scope of the practice of: accounting; architecture; optometry, medicine; land surveying; and professional engineering. Services provided by professionals outside the scope of their profession, e.g., management consulting services provided by accounting firms, are not considered professional services.

Proposal: An executed offer submitted by a respondent in response to a Request for Proposal (RFP) and intended to be used as a basis to negotiate a contract award.

Proposal Opening: The public opening of Requests for Proposals or Requests for Qualification responses, in which the names only of the bidders responding to an invitation are publicly read and recorded.

Proprietary Information: Information provided in response to solicitations to which vendor claims ownership or exclusive rights and which is protected from disclosure under the Texas Public Information Act (Texas Government Code, Chapter §551)

Proprietary Purchase: a product or service is having a distinctive feature or characteristic that is not shared or provided by competing companies or similar products or service. Texas Government Code Section 2155.067.

Purchase Order: a written purchase order from the City referencing this Contract.

Renewal: When an existing contract is extended for an additional time period in accordance with



the terms and conditions of the original contract.

Request for Information: A general invitation to contractors requesting information for a potential future solicitation. The request for information is typically used as a research and information gathering tool for preparation of a solicitation.

Request for Proposal: A solicitation requesting submittal of a proposal in response to the required scope of services and usually includes some form of a cost proposal. The RFP process allows for negotiations between proposer and the city.

Request for Qualifications: A solicitation document requesting submittal of qualifications or specialized expertise in response to the scope services required. No pricing is solicited with an RFP.

Request for Quote: An informal solicitation document requesting pricing on small dollar purchases.

Respondent: An entity submitting a proposal in response to a solicitation (See Bidder)

Responsive: The respondent has complied with all material aspects of the solicitation document, including submission of all required documents.

Responsible: The respondent has the capability to fully perform and deliver in accordance with the contract requirements. The city may include past performance, financial capabilities and business management as criteria for determining if a bidder or proposer is capable of satisfying the contract requirements.

Services: Refers to all work, services (primarily

labor) and materials whether ancillary or as required by the Detailed Specifications that Contractor provides in performance of its obligations under this Contract.

Solicitation: A document requesting submittal of bids or proposals for goods or services in accordance with the advertised specifications.

Specification: means the Bid Documents, including but not limited to the detailed or technical specifications that fully describe the physical or functional characteristics or nature of supplies or services to be purchased. It may include a description of any requirements for inspecting, testing, or preparing supplies or services for delivery.

Subcontractor: means any person or entity with whom the Contractor contracts to provide any part of the goods, services or work to be provided by Contractor under the Contract, including subcontractors of any tier, suppliers and material men, whether or not in privity with the Contractor.

Successful Bidder: The Bidder submitting a responsive Bid to whom Owner makes an award.

Surety: A person or entity providing a bond to a contractor to indemnify the City against all direct and consequential damages suffered by failure of the contractor to perform the contract and to pay all lawful claims of subcontractors, materials suppliers and laborers as applicable.

Term Contract: a contract that addresses the estimated requirements for a department or number of departments for supplies or services used repeatedly or in significant quantities over a period of time.

Vendor: A business entity or individual that



City of La Porte

Established 1892

Purchasing Department

Cherell Daeumer, Purchasing Manager

has a contract to provide goods or services to the City of La Porte. Used interchangeably with the term "contractor".

End of Definitions

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2.0 Contract Interpretation

2.1 Order of Precedence

The order of precedence of the contract parts will be as follows:

- Addenda, if any
- Detailed Specifications/Scope
- Plans or drawings, if any
- Special Conditions
- Supplemental Special Conditions, if any
- Insurance Requirements
- Standard Terms and Conditions
- Invitation to bid and proposal pages

2.2 Interpretation and Rules

Unless a contrary meaning is specifically noted elsewhere, the phrases "as required", "as directed", "as permitted", and similar words mean the requirements, directions, and permissions of the Council or Purchasing Division, as applicable to this solicitation.

The words "necessary", "proper", or similar words used with respect to the nature or extent of work or services mean that work or those services must be conducted in a manner, or be of a character which is necessary or proper for the type of work or services being provided in the opinion of the Council and the Purchasing Division, as applicable. The judgment of the Council, and or the Purchasing Manager in such matters will be considered final.

Wherever the imperative form of address is used, such as provide equipment "required" it will be understood and agreed that such address is directed to the Contractor unless the provision expressly states that the City will be responsible for the action.

2.3 Funding

The State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the current fiscal year shall be subject to budget approval. Accordingly, the City of La Porte reserves the right to terminate this contract by giving Bidder thirty (30) days written notice, without liability to the City, in the event that funding for this contract is discontinued or no longer available.

2.4 Severability



The invalidity, illegality, or unenforceability of any one or more phrases, sentences, clauses or sections in this Contract does not affect the remaining portions of this Contract.

2.5 Survival of Terms

Termination of the Contract for any reason shall not release the Respondent from liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification.

2.6 Entire Contract

The Contract Documents constitute the entire agreement between the parties and may not be modified except by the subsequent written agreement of the parties.

3.0 Subcontracting and Assignment

3.1 No assignment of Contract

Contractor may not assign this Contract without the prior written consent of the City. In no case will such consent relieve Contractor from its obligations, or change the terms of the contracts.

3.2 Subcontracts

No part of the goods, work or services to be provided under this Contract may be subcontracted without the prior written consent of the City; but in no case will such consent relieve the Contractor from its obligations, or change the terms of the contracts. Contractor must notify the City of all Subcontractors to be used and shall not employ any that the City does not approve of. Prior to proposing the use of a certain Subcontractor, the Contractor is responsible to verify that neither the Subcontractor nor any of its owners is debarred from or otherwise ineligible to participate on City Contracts.

Subcontracting of the services or work or any portion of the Contract without the prior written consent of the City is null and void. Further, Contractor will not make any substitution of a previously approved Subcontractor without the prior written consent of the City; any substitution of a Subcontractor without the prior written consent of the City is null and void.

Contractor will only subcontract with competent and responsible Subcontractors. If, in the judgment of the City, any Subcontractor is careless, incompetent, violates safety or security rules, obstructs the progress of the services or work, acts contrary to instructions, acts improperly, is not responsible, is unfit, violates any laws applicable to this Contract, or fails to



follow the requirements of this Contract, then the Contractor will, immediately upon notice from the City, discharge or otherwise remove such Subcontractor and propose an acceptable substitute for City approval.

3.3 No Pledging or Assignment of Contract Funds without City approval

The Contractor may not pledge, transfer, or assign any interest in this Contract or contract funds due or to become due without the prior written approval of the City. In no case will such consent relieve the Contractor from its obligations, or change the terms of the Contract. Contractor must notify the City, in writing, of the name of any proposed assignee and the reason for the assignment; consent to which is solely in the City's discretion.

4.0 Contract Governance

4.1 Governing Law and Jurisdiction

This Contract will be governed in accordance with the competitive bidding requirements of the City and Texas Local Government Code §252, as amended. Bidders shall comply with all applicable federal, state and local laws and regulations. Bidder is further advised that these requirements shall be fully governed by the laws of the State of Texas and that the City of La Porte may request and rely on advice, decisions and opinions of the Attorney General of Texas and the City Attorney concerning any portion of these requirements.

4.2 Cooperation by Parties and between Contractors

The Parties hereby agree to act in good faith and cooperate with each other in the performance of this Contract. Contractor further agrees to implement such measures as may be necessary to ensure that its staff and its Subcontractors will be bound by the provisions of this Contract.

Unless otherwise provided in Detailed Specifications, if separate contracts are let for work within or adjacent to the project site as may be further detailed in the Contract Documents, each Contractor must perform its Services so as not to interfere with or hinder the progress of completion of the work being performed by other contractors. The Contractor must as far as possible, arrange its work and space and dispose of the materials being used, so as not to interfere with the operations of the other contractors within or adjacent to the limits of the project site.

4.3 Independent Contractor

This Contract is not intended to and does not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Contractor and the City. The rights and obligations of the parties are only those set forth in this Contract. Contractor must perform as an independent



contractor and not as a representative, employee, agent, or partner of the City.

This Contract is between the City and an independent contractor and, if Contractor is an individual, nothing provided for under this Contract constitutes or implies an employer-employee relationship such that any membership in any pension, insurance, vacation, sick leave or any other benefits ordinarily provided to individuals employed and paid through the regular payrolls of the City. Furthermore, the City is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to the Contractor.

4.4 Authority

Execution of this Contract by the Contractor is authorized and signature(s) of each person signing on behalf of the Contractor have been made with complete and full authority to commit the Contractor to all terms and conditions of this Contract, including each and every representation, certifications, and warranty contained herein, attached hereto, and collectively incorporated by reference herein, or as may be required by the terms and conditions hereof. If other than a sole proprietorship, Contractor must provide satisfactory evidence that the execution of the Contract is authorized in accordance with the business entity(s) rules and procedures.

4.5 Joint and Several Liability

In the event that Contractor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof), then and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Contractor will be the joint and several obligation or undertaking of each such individual or other legal entity.

4.6 Contractor Compliance to Ordinance 98-2217

City of La Porte Ordinance 98-2217 prohibits any expenditure for goods or services by the City to any person firm or corporation owing any delinquent indebtedness to the City. Contractor certifies that it is in compliance with the requirements of said ordinance. Failure to disclose non-compliance with said ordinance may be cause for rejection or disqualification of bid. In addition, if Contractor is not in compliance with Ordinance 98-2217, Contractor hereby assigns to the City of La Porte the amount of its delinquent indebtedness to the City to be deducted by the City from any amounts due to Contractor.

4.7 Contractor Compliance to Protection of Resident Workers

The City of La Porte, Texas supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in



the United States (i.e., citizens and nationals of the United States) and aliens authorized to work in the United States.

Employer must verify, which includes completing the Employment Eligibility Employer Verification Form (I-9), the identity and employment eligibility of anyone to be hired and must also establish appropriate processes and controls so that no services or products related to this contract will be performed or manufactured by any worker who is not legally eligible to perform such services or employment.

4.8 Ethics

City of La Porte officials and employees are responsible for protecting the safety and welfare of the public's monies. All City officials and employees should endeavor to pursue a course of conduct that does not raise suspicion among the public. Therefore, they shall avoid acts which are improper or give the appearance of impropriety. This conduct is particularly important for City purchasing personnel and contract management personnel who are charged with the disposition of City funds.

City of La Porte Ordinance No. 2013-3489 establishes an ethics and conflict of interest policy applicable to city council members, appointive members to city boards and commissions, and city employees. Any vendor entering into a contract or agreement with the City of La Porte, Texas expressly acknowledges that it has familiarized itself with the provisions of this Ordinance.

4.9 Conflict of Interest

Chapter 176 of the Texas Local Government Code requires that any person, who enters or seeks to enter into a contract for the sale or purchase of property, goods or services with a local government entity and who has an employment or other business relationship with a local government officer or a family member of the officer, as described by Texas Local Government Code Section 176.006 (a) and (a-1), shall file a completed conflict of interest questionnaire with the City not later than the seventh business day after the later: 1) date the vendor (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or (2) the date the vendor becomes aware (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a); (B) that the vendor has given one or more gifts described by Subsection (a); or (C) of a family relationship with a local government officer. The Conflict of Interest Questionnaire (Form CIQ) is included as Exhibit C and must be returned with your submission. The form is also available from the City's website at



www.laportetx.gov or from the Texas Ethics Commission at www.ethics.state.us. A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm> . Please consult your own legal advisor if you have questions regarding this form.

4.10 Certificate of Interested Parties (Form 1295)

The Texas Legislature adopted House Bill 1295 which states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed (City of La Porte requires such action for any contract \$50,000 or greater) or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

As of January 1, 2016, the Texas Ethics Commission has made available on its website a filing application that **must** be used to file Form 1295. A business entity must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 with the certification of filing must be filed with the governmental body or state agency with which the business entity is entering into the contract. The City is then responsible for notifying the commission of the receipt of the Filed Form 1295 with the certification of filing in accordance with the law. Additional information regarding the implementation of House Bill 1295 maybe found at www.ethics.state.tx.us .

4.11 Local Bidder Preference

Sections 271.905 and 271.9051 of the Texas Local Government Code authorize a municipality to consider a vendor's location in the determination of a bid award if the lowest bid received is from a business outside the municipality and contracting with a local bidder would provide the best combination of price and other economic benefits to the municipality. If the City receives one or more competitive sealed bids from a bidder whose principal place of business is in the municipality and whose bid is within 5% of the lowest bid price received by the City from a bidder who is not a resident of the City, the City may enter into a contract for construction services in an amount of less than \$100,000 or a contract for other purchases in an amount of less than \$500,000 with the lowest bidder; or the bidder whose principal place of business is in the municipality. Exclusions to the local preference include expenditures of \$25,000 or less, and those purchases which are: sole source, emergency, federally-funded,



cooperative contracts, service contracts subject to the Professional Services Procurement Act, contracts awarded through request for proposals or qualifications, or via inter-local agreement. The City of La Porte, Texas has determined that the allowable preference shall be applied to local vendor's bids for the purposes of evaluation when requested in writing by local bidder and when determined to be in the best interest of the City to do so. **The request form, included as Exhibit D, and any supporting documentation must be submitted with quote/bid in order to be considered by the City of La Porte, Texas.**

This section does not prohibit the City from rejecting all bids.

4.12 House Bill 89 Verification

H.B. No. 89 mandates that a company representative being an adult over the age of eighteen years of age verifies that the company named, under the provisions of Subtitle F, Title 10, Government code Chapter 2270:

- 1) Does not boycott Israel; and
- 2) Will not boycott Israel during the term of the contract.

This statement is exempt for sole proprietorship vendors, vendors who have less than 10 full time employees and contracts that are under \$100,000 of public funds.

By participating in this solicitation, Contractor's signature on form acknowledges full understanding of and compliance with this requirement.

4.13 Confidentiality

All deliverables and reports, data, findings or information in any form prepared, assembled or encountered by or provided by Contractor under this Contract are property of the City and are confidential, except as specifically authorized in this Contract or as may be required by law. Contractor must not allow the Deliverables to be made available to any other individual or organization without the prior written consent of the City. Further, all documents and other information provided to Contractor by the City are confidential and must not be made available to any other individual or organization without the prior written consent of the City.

Contractor must not issue any publicity new releases or grant press interviews, and except as may be required by law during or after the performance of this Contract, disseminate any information regarding its Services or the project to which the Services pertain without the prior written consent of the City.

Any request for documents regarding any records, data or documents which may be in Contractor's possession by reason of this Contract, Contractor must immediately give notice



to the Purchasing Division of the City with the understanding that the City will have the opportunity to seek counsel or contest such process by any means available to it before the records or documents are submitted to a court or other third party. Contractor, however, is not obligated to withhold the delivery beyond the time ordered by a court or administrative agency, unless subpoena or request is quashed or the time to produce is otherwise extended.

4.14 Indemnity

Contractor must defend, indemnify, keep and hold harmless to the fullest extent of the law, its successors, assigns and guarantors shall pay, defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, including claims of patent or copyright infringement, damages, losses, expenses, including but not limited to attorney's fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expenses, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work, services, and/or products provided in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by or working as an independent contractor for Contractor or said Subcontractors or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees or independent contractors.

The Contractor expressly understands and agrees that any insurance policies required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City of La Porte, its Council members, officers, agents and employees and herein provided.

4.15 Drug Free Work Place

The Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

This section does not prohibit the City from rejecting all bids.

5.0 Compensation Provisions



5.1 Ordering, Invoices and Payment

Requests for work, services or goods in the form of a Purchase order will be issued by the Purchasing Division and sent to the contractor to be applied against the Contract. Contractor must not honor any order(s), perform work or services or make any delivery of goods without receipt of a Purchase Order issued by the City.

5.2 Invoices

Invoices shall be submitted to the attention of Accounts Payable at 604 W. Fairmont Parkway, La Porte, Texas 77571 or at accountspayable@laportetx.gov.

5.3 Recordkeeping and Audits

Contractor shall maintain a separate accounting and itemized records for these operations in accordance with Generally Accepted Accounting principles (GAAP). Contractor shall pay all costs and expenses, including lawful taxes, connected with its operations when due. The City or its authorized agents shall have the right to inspect such books or original entries and other related books, records or receipts, wherever located at such reasonable times and as often as may be requested during the term of this Contract until such time as is necessary to complete an audit should an audit be required beyond 3 years after the termination of this Contract for any reason.

5.4 Audits

The City may, in its sole discretion audit the records of Contractor or its Subcontractors, or both, at any time during the term of this Contract or within three years after the Contract ends, in connection with the goods, work, or services provided under this Contract. Each calendar year or partial calendar year may be deemed an "audited period".

5.5 Federally Funded Contracts

If this Contract is federally funded, the Contractor will ensure that it and its Subcontractors comply with the applicable provisions of the Davis-Bacon Act (prevailing wages) Act 40 U.S.C. sec 276, as amended and related regulations and pay such applicable prevailing wage rates.

The term general prevailing hourly rate, when used in this requirement will mean the hourly cash wages plus fringe benefits for health and welfare, insurance, vacations, and pensions paid generally, in the locality in which the work is being performed to employees engaged in work of a similar character on public works.

As a condition of making payment to the Contractor, the City may require the Contractor to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers, mechanics, and other workmen employed on this Contract in accordance



with Texas of federal law, as applicable

6.0 Compliance with all laws

6.1 General

Contractor must observe and comply with all applicable federal, state, county and municipal laws, statutes, regulations, codes, ordinances and executive orders in effect now or later and as amended whether or not they appear in the Contract Documents.

Any agreement resulting from this solicitation shall be construed according to the laws of the State of Texas. The City and vendors agree that the venue for any legal action under this agreement shall be Harris County, Texas. In the event that any action is brought under any agreement resulting from the solicitation in Federal Court, the venue for such action shall be in the Federal Judicial District of Harris County, Texas.

6.2 Compliance with Environmental Laws and related matters

Any noncompliance, by Contractor or any Subcontractor, with any Environmental Law during the time that this Contract is effective is an event of default, regardless of whether the noncompliance relates to performance of this Contract. This includes without limitation any failure by Contractor or any Subcontractor to keep current, throughout the term of this Contract, all insurance certificates, permits and other authorizations of any kind that are required, directly or indirectly, by any Environmental law.

6.2.1 Proof of Noncompliance

Any adjudication, whether administrative or judicial, against Contractor or any Subcontractor, for a violation of any Environmental Law, is sufficient proof of noncompliance, and therefore of an event of default, for purposes of this Contract.

Any citation issued to/against Contractor or any Subcontractor, by any government agent or entity, alleging a violation of any Environmental sufficient proof of noncompliance for purposes of this Contract, and therefore of an event of default, if the citation contains or is accompanied by, or the City otherwise obtains any evidence sufficient to support a reasonable conclusion that a violation has occurred.

The City shall have the authority to determine whether noncompliance with an Environmental Law has occurred, based on any of the foregoing types of proof. The city may, at its discretion may declare an event of default, whether to offer an opportunity to



cure, and if so any requirements for cure, such as by taking specified actions, which may include without limitation ceasing and desisting from utilizing a Subcontractor.

6.2.2 Costs

Any cost arising directly or indirectly, in whole or in part, from any noncompliance, by Contractor or any Subcontractor with any Environmental Law, will be borne by the Contractor and not by the City. No provision of this Contract is intended to create or constitute an exception to this provision

6.3 Copyright and Patents

Contractor agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights for goods supplied.

6.4 Contract Disputes and Termination

6.4.1 Termination

The City may terminate this Agreement, in whole or in part, at any time by written notice to the vendor. The effective date of termination will be the date the notice is received by the Contractor or the date stated in the notice, whichever is later. Vendor may terminate this agreement upon thirty (30) days written notice to the City. During such termination period, the vendor shall continue to diligently perform all duties hereunder. After a receipt of termination notice and except as otherwise directed by the City, the vendor shall: stop work on the date and to the extent specified; terminate and settle all orders and subcontracts relating to the performance of the terminated work; transfer all work in process, completed work, and other materials related to the terminated work as directed by the City; and continue and complete all parts of that work that have not been terminated.

The City of La Porte budget is funded on an October 1st to September 30th fiscal year basis. Accordingly the City of La Porte Texas reserves the right to terminate this contract without liability to the City in the event that funding for this contract is discontinued or is no longer available. No payments will be made under this Contract beyond those amounts appropriated and budgeted by the City to fund payments under this Contract. Thirty (30) days written notice will be provided to Vendor where possible.

6.4.2 Dispute Resolution

The Contractor and using Department must attempt to resolve all disputes arising under this Contract in good faith, taking such measures as, but not limited to investigating the



facts of the dispute and meeting to discuss the issues.

6.4.3 Resolution Process

Pursuant to subchapter 1, Chapter 271, Texas Local Government Code, contractor agrees that, prior to instituting any lawsuit or other proceeding arising from any dispute or claim of breach under this Agreement (a "Claim"), the parties will first attempt to resolve the claim by taking the following steps: (i) A written notice substantially describing the factual and legal basis of the claim shall be delivered by the contractor to the City within 30 days of the event giving rise to the claim, which notice shall request a written response to be delivered to the contractor not less than fourteen business days after receipt of the notice of claim; (ii) if the response does not resolve the claim, in the opinion of the contractor, the contractor shall give notice to that effect to the city whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the claim; (iii) if those persons cannot or do not resolve the claim, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person in an effort to resolve the claim.

6.4.4 Events of Default and Termination

In addition to any breach of contract and events of default described within the Contract Documents, the following constitute an event of default:

- A. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the City.
- B. Contractor's material failure to perform any of its obligations under this contract including:
 - failure to perform services with sufficient personnel and equipment or with sufficient material to ensure the timely performance of the services;
 - failure to have and maintain all professional licenses required by law to perform the services;
 - Contractors repeated or continued violations of City law or ordinances whether related to the performance of this contract or not;
 - failure to perform due to insolvency, filing for bankruptcy or assignment for the benefit of creditors or failure to seek approval for any change in ownership or control of Contractor;
 - Contractor's default under any other Contract with the City during the life of this Contract;
 - failure to promptly correct erroneous or unsatisfactory services;



- discontinuance of the services for reasons within Contractor's reasonable control;
- failure to comply with any other term of this contract

6.4.5 Cure or Default

The City, at its sole discretion, may give Contractor an opportunity to cure a default within a specified period of time or, if no opportunity to cure is granted, will issue a written default notice. The decision to issue a default notice is within the sole discretion of the City and neither that decision nor the factual basis for it is subject to review or challenge under the Disputes provision of this Contract.

6.4.5.1 Notice of Default

A default notice will also indicate any present intent to terminate this contract. This decision is final and effective upon giving the notice. If there is no present intent to terminate this contract, this decision does not preclude the City from later deciding to terminate in a later notice, which is final and effective upon the giving of the notice.

7.0 Department-specific requirements

Contractor must comply with the relevant user Department's specific requirements in the performance of this Contract, when applicable.

7.1 Codes, Permits, Licenses

Vendor shall comply with all federal, state and local standards, codes and ordinances and other authorities such as utilities and those having jurisdiction pertaining to equipment and materials used and their application. None of the terms of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. Prior to start of work, successful bidder will obtain all necessary permits, certificates and/or licenses as required by law to fulfill contractual obligations to the City. City of La Porte permit fees will be waived.

8.0 Special Conditions for Services Contracts

8.1 Providing Services

Contractor must not honor any verbal order(s), make any deliveries or commence any work related to the contract without receipt of a Purchase Order issued by Purchasing. Any goods or services provided by the Contractor without a written Purchase Order are made at the Contractor's risk. Consequently, in the event a written Purchase Order is not provided by the City, Contractor releases the City from any liability whatsoever to pay for any items or services



provided without a written Purchase Order.

8.2 Timeliness of Performance of Services

Contractor must provide the Services and Deliverables within the term and within the time limits required under this Contract, pursuant to detailed specifications or as specified in the applicable technical information and exhibits. Further, Contractor acknowledges that TIME IS OF THE ESSENCE and that the failure of Contractor to comply with the time limits may result in economic or other losses to the City.

Neither Contractor nor its agents, employees or Subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Contractor by reason of delays or hindrances in the performance of the Services whether or not caused by the City.

8.2.1 Force Majeure

To the extent either party of this agreement shall be wholly or partially prevented from the performance of the term specified, or of any obligation or duty placed on such party by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, act of God, or other specific cause reasonably beyond the parties control and not attributable to its malfeasance, neglect or nonfeasance. In such event, the time for performance of such obligation or duty shall be suspended until such disability to perform is removed.

8.3 Standard of Performance of Services

Contractor must perform all Services required of it under this Contract with that degree of skill, care and diligence normally shown by a Contractor in the community performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Contract. Contractor acknowledges that it may be entrusted with or may have access to valuable and confidential information and records of the City and with respect to that information only, Contractor agrees to be held to the standard care of fiduciary.

Contractor must ensure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Contractor must provide the City copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Contractor or its Subcontractors or others on its behalf. All deliverables must be prepared in a form and content satisfactory to the Department and delivered in a timely manner consistent with the requirements of this Contract.



If Contractor fails to comply with the foregoing standards, Contractor must perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment by the City does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its services and deliverables. The city's rights against Contractor under this Contract at law, or in equity is not limited by this provision.

If the City determines that Contractor has failed to deliver the City will notify the contractor of its failure. If Contractor does not correct the failure after receipt of notice form the City specifying the failure, then the City, by written notice, may treat the failure as a default of this contract.

8.4 Additional Services

Any additional services requested by the Department require the approval by the City through a formal amendment before Contractor is obligated to perform those additional services and before the City becomes obligated to pay for those additional services.

8.5 Suspension of Services

The City may at any time request that Contractor suspend its services, or any part of them, by giving 15 calendar days prior written notice to Contractor or in the event of emergency, upon informal, oral, or even no notice. No costs incurred after the effective date of such suspension are allowed. Contractor must promptly resume its performance of the Services under the same terms and conditions as stated in this contract upon written notice by the City and such equitable extension of time as may be mutually agreed upon by the City and Contractor when necessary for continuation or completion of Services. Any additional costs or expenses actually incurred by Contractor as a result of resuming the services must be treated in accordance with the compensation provisions of this Contract.

8.6 Personnel

Contractor is expected to maintain an adequate force comprised of suitable, competent personnel that are fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. The City reserves the right to request Contractor to adjust staffing levels to reflect workload and level of required Services or Additional Services.

The City relied on the qualifications and experience of Contractor's key personnel to perform the services. Contractor must not reassign or replace key personnel without the written consent of the City, which consent the City will not reasonably withhold. The City may at any time in writing notify Contractor that it will no longer accept performance of Services under this contract by one or more key personnel. Upon that notice contractor must immediately suspend the services of such person(s) and provide a replacement of comparable qualifications and experience that is



acceptable to the City.

8.7 Purchase Orders

Unless otherwise provided in the Scope of Work and Detailed Specifications, orders for products or services to be provided under this contract will be in the form of a City of La Porte purchase order that will be issued by the Purchasing Division and sent to the Contractor.

8.8 Delivery of Goods - Supplies

Upon receipt of a Purchase Order, deliveries are to be made to the location(s) specified on the purchase order or as listed in the Scope and Detailed Instructions. Unless specifically stated in the Detailed Specifications or a written purchase order, all deliveries will be F.O.B. Destination City of La Porte. Initial acceptance of any delivery by the City will not be considered as a waiver of any provision of this Contract and will not relieve the Contractor of its obligation to supply satisfactory goods or services which conform to the Contract.

Title and risk of loss of goods shall not pass to the City until goods are actually received and in the City is in possession of the goods at the point or points of delivery as specified in the solicitation. The delivery address may be included in this solicitation document and will be shown on the Purchase Order as a "Ship To" address.

8.9 Inspection and Defects - Supplies

The City will have the right to inspect any products provided under this Contract. Upon delivery, the City will conduct an initial visual examination solely for the purpose of identifying any obvious damage, defects or non-conformance to specifications. The Contractor may be present for such an inspection. This does not limit the City's right to conduct subsequent inspection of any product(s) delivered.

Should shipment errors defects or non-conformances be discovered in either the initial or subsequent inspection, the City may exercise appropriate remedies in accordance with the U.C.C., in addition to any other remedies specified in this agreement. Any returns to the Contractor, due to fault of Contractor will be at Contractor's expense. No re-stocking fees will apply and, replacements, when applicable shall arrive promptly.

8.10 Quality

Quality of materials and workmanship must comply, at minimum, with best industry practices and standards or, specifically, as per the Detailed Specifications. Unless otherwise specified in the Detailed specifications, all items provided must be new and unused, and in conformance with the Contract.



8.11 Warranty and Product information

Contractor must provide original product warranty and related services for products provided under this Contract in accordance with the standard warranty regularly provided by the original equipment manufacturer for that product, unless the Detailed Specifications call for a different warranty.

Contractor warrants that the title to products provided under this agreement is good and its transfer is rightful, and that the products delivered to the City are free from all liens or security interest or other encumbrance. Additionally, in addition to any implied warranty, the items shall conform to specifications, drawings, and other requirements in the Detailed Specifications and shall be free from defects in materials and workmanship including defects in design except to the extent that they are non-standard products manufactured pursuant to detailed designs furnished by the City and the defect is in the portion of the design furnished by the City. Said warranties, including warranties implied by law, shall run to City, its successors, assigns, customers and to users of the goods.

8.12 Silence of Specifications

The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item(s) bid.