

REQUEST FOR LETTER OF INTEREST, QUALIFICATIONS

CONSTRUCTION ENGINEERING INSPECTION (CEI) SERVICES RFQ # 6079



City of Johnson City, Tennessee

**Proposal due:
by 4:00 PM EST
October 17, 2016**

City of Johnson City
Purchasing Department
209 Water Street (37601)
P. O. Box 2150 (37605)
Johnson City, TN

REQUEST FOR LETTER OF INTEREST & QUALIFICATIONS

GENERAL

The City of Johnson City, an Equal Opportunity Employer, is seeking experienced consulting engineering firms to perform services regarding Construction Engineering Inspection (CEI) for a federally funded roundabout project to reconstruct the intersection of Mountainview Road and Browns Mill Road. The construction plans were completed by Volkert.

This project will be a locally managed project funded by a combination of federal, state and local funds and shall be accomplished in accordance with the project plans and all federal and state laws, rules and regulations that pertain to the project and the process. Firms must be on TDOT's pre-approved list and must have unlimited status. The RFQ, existing Construction Plans, and scope of services are posted on the Johnson City's website at <http://www.johnsoncitytn.org/purchasing/bids/>. Proposals for the **Construction Engineering Inspection (CEI) Services** shall be submitted based on TDOT's standard DT-330 Form, Part II format and shall include any sub consultants to be used and their qualifications.

The Statement of Qualifications must be submitted to the **Purchasing Director, Purchasing Department, 209 Water Street, Johnson City, Tennessee, 37601** in a sealed envelope. All Statement of Qualifications must be received in the Purchasing Director's Office on or before **4:00 pm on October 17, 2016**.

The City will evaluate the Statement of Qualification considering the following factors as they pertain to this project:

- The consultant's ability and expertise for each discipline on the project.
- Past experience with TDOT and other local clients.
- The consultant's staff qualifications and availability.
- Demonstrated ability to meet schedules and perform the work efficiently without compromising sound engineering practices.
- Evaluations on prior TDOT projects, if available.
- Current workload with TDOT and others
- Familiarity and demonstrated experience with the Tennessee Department of Transportation's *Local Government Guidelines for the Management of Federal and State Funded Transportation Projects*.
- Current and previous experience on City of Johnson City projects. Proximity to the City of Johnson City and the subject projects may also be a consideration.

Evaluation proceedings will be conducted within the established guidelines regarding equal employment opportunity and nondiscriminatory action based upon the grounds of race, color, sex, creed or national origin. Interested certified Disadvantaged Business Enterprise (DBE) firms as well as other minority-owned and women-owned firms are encouraged to respond to all advertisements by the City of Johnson City. For information on DBE certification, please contact Mr. Ross Webb at (615) 741-3681 or

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Ross.H.Webb@state.tn.us. Details and Instructions for DBE certification can be found at the following website: <http://www.tdot.state.tn.us/civil-rights/smallbusiness/>. The scope of work and responsibilities of the CEI are defined in the latest revision of the TDOT Proposed Scope of Work for CEI, and can be obtained at <http://www.tdot.state.tn.us/construction/CEI/ceiscope.pdf>. For paper copies of the scope of work, contact Debbie Dillon, Purchasing Director, City of Johnson City, P.O. Box 2150, Johnson City, TN 37605, Telephone: 423-975-2716 (office) or ddillon@johnsoncitytn.org. It may be downloaded from Johnson City's website at <http://www.johnsoncitytn.org/purchasing/bids/>. Prequalification procedures, example DT-330 Form, Part II, list of pre-qualified firms and certified DBEs, TDOT's standard procurement policy, and additional information can be found at this internet address www.tdot.state.tn.us/consultantinfo.htm. Interested firms without internet access may obtain this information by calling Anthony Todd, 423-975-2733, at the Public Works Department – Traffic Division Office.

RFQ SUBMITTALS

Proposers must submit a complete response to this RFQ using the format provided below. RFQ package shall contain one (1) original (designated as such) and **must be submitted with one (1) digital copy.**

Responses must be signed by an official authorized to bind the Proposer to its provisions. Unsigned offers will not be considered. Proposals must include a statement as to the period during which the proposal remains valid, but not less than ninety (90) days.

One (1) digital copy and one (1) original of the proposal shall be enclosed in a sealed envelope plainly identified in the upper left hand corner with the proposer's name and address and in the lower left hand corner with "RFQ # 6079 – Construction Engineering Inspection (CEI) Services". Qualifications shall be received by the Director of Purchasing, P. O. Box 2150 (37605) or 209 Water Street (37601), Johnson City, TN on or before 4:00 p.m., Monday **October 17, 2016**.

A list of respondents will be available the following business day. Responses may be delivered or mailed to the above address. It is the responsibility of the proposer to ensure that the RFQ is received by the specified time.

Late submittals will not be considered and will not be opened. Telephone or facsimile offers will not be accepted.

The contents of any proposal received shall be the contractual obligation of the Proposer unless modified by mutual consent of the Proposer and the City. Failure of the successful Proposer to accept these obligations may result in cancellation of the award.

The City reserves the right to reject any and all responses for any reason and to waive informalities, irregularities, and technicalities in the RFQ process.

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The City may negotiate with a Proposer that the City selects through the selection process.

Conditions and requirements noted in the document “General Terms and Conditions” shall apply.

CONTACT

All questions or requests for clarifications regarding submittals shall be directed to Debbie Dillon, City of Johnson City Purchasing Department at (423) 975-2717 or Anthony Todd at (423) 975-2733 or email at anthonytodd@johnsoncitytn.org.

SUBMITTAL OF QUALIFICATIONS

1. Letter of Interest

A letter of interest signed by a principal of your firm with a statement as to the availability of the firm to provide the CEI services noted in the Scope of Work, assurance of firm’s insurance coverage and demonstration of authority to perform requested services within the City of Johnson City should be submitted. This letter shall also include a brief history of the firm.

2. Execution of Applicable Proposal Forms

Each Proposer shall complete and execute the following documents which are included in this solicitation, including:

- A. Insurance Checklist – Construction Engineering Inspection (CEI) Services;
- B. General Contract Form;
- C. Drug-Free Workplace Affidavit; and
- D. Requirements for Bids, Requests for Proposals, and Contracts between the City of Johnson City and Other Parties; and
- E. Acknowledgment of Requirements for Bids, Requests for Proposals, and Contracts between the City of Johnson City and Other Parties and the Requirements of the Iran Divestment Act.

3. Experience of Individuals

Provide resumes of key personnel to be assigned to this project. If partnering with other firm(s) is proposed, please identify project team members and roles for all participants. The City acknowledges that personnel changes and partnering opportunities may change over the duration of this project.

4. Experience of Firm

In this section the Proposer will provide a narrative statement of qualifications and experience with respect to this project.

- A. The Proposer will provide at least three (3) references. The references should contain the name of the organization for which the services were provided, a

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brief description of those services, dollar amount of the contract, and a name and address of a contact person.

B. Projects used as reference shall have been completed within the last 7 years.

Proposal response shall address each of the above qualifications criteria and should be prepared in a complete, concise manner. Brochures, project photos and other illustrative information may be submitted as an appendix to your response. Provide any additional information which may be of value during the selection process.

SELECTION PROCESS

The City reserves the right to reject any or all request for qualifications for providing services. Consideration will be given to the firm which demonstrate(s) that it possesses the skills, experience, availability of appropriate manpower, and ability and track record of providing prompt service. All judgments as to skill, experience, availability of appropriate staff, and record of on-time delivery will be made in the sole judgment of the City. Project contract negotiations will commence after the selection process with the selected Proposer. The City may utilize any process it deems in its best interest to arrive at a project contract with the selected consultant.

The City will not pay any costs associated with the preparation or submission of qualifications and/or presentations and/or interviews.

All respondents must initially represent themselves solely by their written submittal. The responses will be reviewed by a selection committee, and based upon the selection committee's findings, the finalists may be requested to provide additional information and/or appear before the committee.

ADDENDA

In the event it becomes necessary to revise any part of this RFQ, addenda will be provided to all known Proposers. No oral interpretations or communication will affect or change in any way the information contained herein.

It is the Proposer's responsibility to assure receipt of all addenda. All Proposers should contact the City prior to submitting a response to ascertain whether any addenda have been issued.

WITHDRAWAL

Proposals may be withdrawn on written request received from Proposers prior to the time fixed for opening.

PROPRIETARY/CONFIDENTIAL INFORMATION

Proposers are hereby notified that all information submitted as part of, or in support of, proposals will be available for public inspection after opening of proposals, in compliance with Tennessee Statutes.

ACCURACY OF PROPOSAL INFORMATION/NON-COLLUSION AFFIDAVIT

Proposers who submit in their proposal to the City any information which is determined to be substantially inaccurate, misleading, exaggerated, or incorrect shall be disqualified

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from consideration. All proposers shall fully execute the attached document entitled "Non-Collusion Affidavit."

NEGOTIATIONS

The City may negotiate separately with any source in any manner necessary to arrive at an agreement with any Proposer that is in the best interest of the City.

RIGHTS AND OPTIONS OF THE CITY OF JOHNSON CITY

The City reserves the following rights and options:

- Reject any or all proposals for any reason, at its sole discretion.
- Supplement, amend, or otherwise modify this RFQ.
- Cancel this RFQ with or without the submission of another RFQ.
- Issue additional solicitations for information and proposals, and conduct investigations with respect to the qualifications of each respondent.

INSURANCE

The attached Insurance Checklist – Construction Engineering Inspection (CEI) Services (including a section for both the Insurance Agent and Proposer to fill out) and General Contract Form must be completed and returned with the RFQ package. Successful Proposer shall provide insurance certificate, as specified, prior to entering into an agreement and must keep all coverage's current during length of contract.

DEFAULT

In case of Proposer default, the City may, by written notice, cancel the agreement. All costs associated with default will be borne by the Proposer.

LICENSES, FEES, PERMITS

The Proposer is responsible for furnishing the proper licenses, fees, permits required by law to do business in the City of Johnson City in completion of the requirements stated herein.

REQUIREMENTS FOR BIDS, REQUEST FOR PROPOSALS AND CONTRACTS AND THE GENERAL TERMS & CONDITIONS.

By submitting a response, the vendor hereby agrees to the attached "Requirements For Bids, Requests For Proposals, and Contracts, etc." and "Sealed Solicitation General Terms and Conditions" attached hereto and set forth herein as if verbatim.

CONTRACT AWARD

Contract award in the form of an agreement, if made, shall be to the most responsible proposer (s) who offer(s) the most responsive proposal. The City reserves the right to choose the proposal(s) that is in its best interest.

ACCEPTANCE OF PROPOSAL CONTENT

Proposals are to be valid for a minimum period of ninety (90) days from date of receipt by the City.

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The contents of any proposal received shall become contractual obligations upon the execution of a contract by authorized representatives of both the City and the Proposer. Failure of the successful consultant to accept these obligations may result in cancellation of the award.

SCOPE

The following proposed Scope of Services is for the Construction Engineering Inspection (CEI) Services for the City of Johnson City's Mountainview Road and Browns Mill Road Roundabout Project (PIN # 114592.00, State Project # 90LPLM-F2-021, Federal Project # STP-M-3964(10)). This scope includes the general description, proposed tasks and special technical requirements needed to complete the implementation of the project.

General Description

The project is a reconstruction of the intersection of Browns Mill Road and W. Mountain View Road to convert it from a traditional intersection to a roundabout. The project will be constructed while maintaining traffic.

TDOT PROPOSED SCOPE OF WORK – CEI

SCOPE OF SERVICES SUMMARY

The following is to define as clearly as possible the duties of the consultant with regard to administration of the TDOT construction contract. The intent of the following is to give the Consultant the same responsibility and authority as TDOT personnel when administrating a state highway construction contract. The administration of the TDOT highway construction contract will be conducted by the consultant in full cooperation with the TDOT Project Supervisor and/or his representative(s) assigned to the project. The TDOT Project Supervisor will have the final word in regard to challenges of consultant authority by the contractor or decisions made by the consultant regarding the work. The ultimate goal of the Department, City and the Consultant should be to administer the contract in a highly professional manner, conducive of a cooperative relationship between the Consultant, contractors, the City, and the Department, and to complete the work on budget and on time with a minimum inconvenience and maximum safety to the public.

The responsibilities of the Consultant are negotiated and estimated before the beginning of the work. The Consultant responsibilities on this project include:

- 1. Erosion Control and Preconstruction Conferences:** Prepare for and conduct the Erosion Control and Preconstruction Conferences. Address and resolve all issues that arise at the meeting with appropriate offices, agencies and divisions. Prepare and distribute detailed minutes of the meeting.
- 2. Attend Weekly meeting:** Prepare the agenda, attend, and conduct meeting every week with TDOT personnel, contractor, sub-contractors, utility personnel and other agencies affected by the project. Be prepared to discuss recent progress, upcoming events in the schedule, and problems associated with the project. Record significant information revealed and discussed at the meeting and distribute written minutes to the appropriate agencies.
- 3. Project Administration:** Provide project administration and coordinate with the assigned TDOT Project Supervisor. Prepare for and attend, when requested, any periodic or in-depth FHWA inspections that may be conducted on the project related to project work, progress, or records. Prepare for, cooperate with, and assist auditors that may be assigned to review project records, payments, reports, etc. Provide ample inspectors and assistance to adequately oversee all

SCOPE OF WORK FOR CEI - JOHNSON CITY ITS PROJECT

work being done on the contract. Monitor Consultant hours worked on the project and justify need for overtime. Prior to starting work, submit to TDOT Project Supervisor a listing of personnel assigned to the project for review and approval. In addition, a list of persons with emergency phone numbers should always be supplied to the TDOT Project Supervisor and be available at any time in the case of an emergency on the project. The project Administrator should also obtain from the contractor a list of contractor's personnel that will be responsible for any occurrence that may arise on the project for the life of the project.

- 4. Provide Construction Inspection:** Provide effective and qualified supervision of all inspection services being conducted by Consultant and sub-consultants. Field technicians must be certified in the applicable TDOT certification workshops listed below:

OSHA 10 Safety Training Construction (All field personnel)
Asphalt Roadway Paving Inspector
Asphalt Plant Technician Class 1 Concrete Technician
Soils and Aggregate Technician
Nuclear Gauge Training
EPSC TDEC Level I

Certification from another State Highway Department, nationally recognized institution, or other approved agency may be acceptable in lieu of the TDOT certification. Prior approval is required.

- 5. Conduct Field Surveys:** Conduct and supervise surveying services to obtain original, final, as well as progress estimate quantities for payment of all earthwork pay items to the contractor. Establish horizontal and vertical control on the project to be utilized by the contractor for construction layout. Be prepared to justify quantities in case of discrepancies by contractors or the Department. Upon request, check construction layout when deemed necessary by the TDOT Project Supervisor.
- 6. Supplemental Agreements/Construction Change, Force Account, VECP:** Notify the TDOT Project Supervisor of the necessity of any Supplemental Agreements/Construction Changes. Negotiate prices for additional pay items with the contractor while adhering to the "Average Unit Price" listing when possible. Coordinate acceptance of prices with the TDOT Project Supervisor. Prepare the Supplemental Agreement/Construction Change on the supplied standard form and submit to the TDOT Project Supervisor for final review and submittal for processing. Any work that cannot be negotiated with the prime contractor will be pursued by Force Account as defined in the Standard Specifications and recorded on forms supplied by the Department. Submit Value Engineering Change Proposals to the TDOT Project Supervisor for analysis and distribution to the appropriate division(s).
- 7. Quality Assurance, Testing for Acceptance, and Training:** *(The intent is for the Consultant to provide all field testing normally provided by the Department with employees certified to perform the tests. Copies of all certifications should be filed in the project records for review by the Department at any time. Any temporary waivers of certification or licensing will be reviewed by the Department for the final decision.)* Provide certification training to Consultant personnel for all necessary field testing and inspection. Monitor the testing provided by the contractor in the field as defined in the Contract, Plans or Specifications. Document Consultant testing on standard forms provided by the Department and distribute as required. Monitor documentation of testing by the contractor. Field testing by the Consultant includes, but is not limited to, all ACI tests for concrete including concrete plant for acceptance by the Department, nuclear density testing of earthwork, base stone, asphalt, structural backfill, and pipe backfill as defined in the Standard

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Specifications and the Departments sampling and testing schedule. The Consultant will also provide aggregate analysis and moisture testing for roadway embankment and base stone materials as defined in the Standard Specifications and the Departments sampling and testing schedule. *(Note: All test normally to be performed by TDOT project personnel will be performed by the consultant.)* Also included as the responsibility of the consultant is miscellaneous checking of application rates and dimensions and bearings to assure conformance to Plans and Specifications. In case of notification of defective concrete as defined in the Specifications, the Consultant will submit the initial information on forms supplied by the Department and receive the final disposition of the material after review. Certifications of material submitted by the contractor will be reviewed by the Consultant for conformity to the Specifications. The certification documents submitted to the Department will also be reviewed for completeness and conformance to the Department's standard form of submission. A Final Materials and Tests Certification will be submitted to the Materials and Tests Manager with the Final Records.

- 8. Progress Payments:** The Consultant will document and assemble accurate quantities for Monthly Progress Payments to the prime Contractor from actual project field records, as directed by Special Provisions in the contract, from Supplemental Agreements/Construction Changes or Force Accounts. The quantities for payment will be referenced to field records prior to submission for payment. Test reports will be on file prior to payment. The TDOT Project Supervisor must approve any waiver of testing documents prior to payment. Pay quantities will be submitted to the TDOT Project Supervisor for review and payment on a printout from the "Final Record Book" program provided by the Department. Payments for stockpiled material may be made as defined in the Standard Specifications and approved by the Project Supervisor. Estimate "cutoff" will be the first Thursday of the month.
- 9. Revisions to the Contract Plans:** Any revisions to the contract plans or cross sections will be submitted to the TDOT Project Supervisor for processing.
- 10. Distribution of Correspondence:** Submit to the TDOT Project Supervisor a copy of all correspondence between the Consultant, contractor, subcontractors, or others concerning matters related to the project. Maintain an office file copy for submission with the project Final Records.
- 11. Inspection of Work:** Provide inspection services for conformance to Plans and Specifications for all roadway, structures, and specialty items that are being incorporated into the project. Observe, measure, and record all quantities for payment. Record field measurements in project records for review by the Department or auditors. The records will be recorded on a standard form (field book) supplied or defined by the Department and/or on field inspection forms to be submitted to the Department. Check traffic control daily, and additionally as required or requested. Notify the contractor of deficiencies or problems immediately. The consultant is not charged with the role of safety inspector, but expected to have unsafe issues corrected by the Prime Contractor. Document weekly (or as often as necessary) project traffic control on forms supplied by the Department and distribute as required. Inspect daily erosion control items for conformance to the plans as well as effectiveness in the field. Notify the contractor of deficiencies. Prepare to justify any and all pay quantities in the case of questions by the contractor or Department. Prepare an accurate daily diary, signed by the inspector, consisting of:
 - A record of the contractors on the project
 - Their personnel (number and classification)
 - Equipment (number and type or size)
 - Location and work performed by each contractor or subcontractor
 - Orders given the contractor
 - Events of note on the project

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- Accidents on the project and any details surrounding the accident such as police report number, fatalities, causes, time, etc. Obtain a copy of the police report for the project records whenever possible.
- Weather, amount of precipitation, temperature at morning, noon, and evening, cloudy, clear, etc.
- Days charged, with explanation if not charged
- Equipment arriving or leaving the project, idle equipment
- Any other details that may be important later in the project life

12. Contractor's Payrolls, Employee Interviews and Contract Compliance:

Receive and check the contractor's payrolls for conformance to state wage rates as defined in the contract. Late payrolls (two weeks late) are justification to withhold progress payment. Notify the prime contractor of late payrolls and request immediate submission. Notify the TDOT Project Supervisor prior to withholding payments. Conduct employee interviews on the forms submitted by the Department and compare to the submitted payrolls for accuracy. Notify the prime contractor of inaccuracies and resolve discrepancies. Adhere to Special Provisions concerning reports to be submitted to the Contract Compliance office.

13. Reports: There are numerous reports, documents, etc., that must be generated in the process of contract administration. A copy (electronic or paper) will be provided by the Department prior to construction, or as needed. Any questions regarding the requirements can be forwarded to the TDOT Project Supervisor for clarification at any time.

14. Final Records: Submit a compilation of project records in the Department's standard format to the Final Records Department after project completion. Make corrections when/if notified and resubmit the records and a final estimate for the project at the appropriate time. Submit all final forms (FHWA-47, CC3, etc.) with the final records. Coordinate consultant hours after the project completion with the TDOT Project Supervisor for approval.

15. Project Claims: Prepare documentation and assist in the defense of the Department, when requested, in preparation for Claims or possible Claims resulting in the execution of the contract.

16. Utility Relocations: Utility relocation is subject to be a part of this contract. Relocations that are reimbursable will be inspected for quantities that will be reviewed and verified comparing utility company records prior to payment by the Department.

The responsibilities of the Tennessee Department of Transportation on this project are:

1. **TDOT Project Supervisor:** Provide a project supervisor to oversee and coordinate with CEI Supervisor.
2. **Public Information/Relations:** Provide public information/relations for project development.
3. **Materials Testing Laboratory:** Provide designated materials testing laboratory for all applicable testing requirements.
4. **Offsite Fabrication Inspection:** Provide inspection services for all materials manufactured off site (i.e. bridge beams, concrete pipe, etc.)
5. **Geotechnical Services:** Provide all Geotechnical services needed to complete project.

Some of the department responsibilities can be estimated and included as part of the consultant responsibilities.

CITY OF JOHNSON CITY

Consultant Selection Policy for Projects Funded in Whole or in Part with Funds Provided by the Federal Highway Administration or the Tennessee Department of Transportation

AUTHORITY: 23 CFR 172.9. If any portion of this policy conflicts with applicable state or federal laws or regulations, that portion shall be considered void. The remainder of this policy shall not be affected thereby and shall remain in full force and effect.

PURPOSE: To prescribe the policy of the (THE CITY OF JOHNSON CITY, HEREINAFTER REFERRED TO AS the AGENCY), applicable to the retention of consultant services for architectural, engineering, and technical services for projects funded in part or in whole with funds provided by the Federal Highway Administration.

APPLICATION:

- A. **Engineering and Design Related Services.** This policy is to include all engineering and design related services described in Title 40 U.S.C. Chapter 11, Title 23 U.S.C. Section 112 (b)(2), 23 C.F.R. Part 172 and 49 C.F.R. Section 18.36(t) for projects funded in whole or in part with funds from the Federal Highway Administration through the Tennessee Department of Transportation (TDOT) or state funds through the same entity.

Broadly defined, these services include program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping or architectural related services with respect to construction projects. They may include emergency contracts.

Examples of services included within the scope of this policy are comprehensive transportation planning, project planning, environmental studies, context sensitive solution/design services, cultural resources studies, geotechnical studies, historic studies, archeological studies, socio-economic and environmental justice analyses, inspection services, intelligent transportation system design and development, traffic control systems design and development, materials inspection and testing, value engineering, and utility analysis/design services.

- B. **Technical Services** Technical services such as inspection of structural steel fabrication, laboratory testing, inspection of welds on existing bridges, overhead sign inspection, underwater inspection, utility installation inspection, geotechnical sub-surface exploration/drilling and lab testing, etc., are also included in this policy.

DEFINITIONS:

- A. ***Project Specific Contract*** – A project specific contract provides for all the work associated with a specific project that is desired to be contracted with the consultant firm and requires a detailed scope of services. These contracts may provide for all work to be placed under contract at the same time depending on availability of funds. A project specific contract is the traditional type of consultant contract between the AGENCY and a consultant for the performance of a fixed scope of work related to a specific project or projects.

- B. ***Multiphase Contract*** - Multiphase contracts are similar to project specific contracts except that the work is divided into phases such as survey, environmental or design. The consultant contract is based on a general scope of work with a maximum contract ceiling. Individual phases are negotiated and the work authorized while future phases may wait until later in the contract period before completing negotiation and authorization. Multiphase contracts are helpful for complex projects where the scope of a future phase is not well defined. Multiphase contracts may be terminated at the end of a phase. A multiphase contract incorporates the work order concept for a specific project.

- C. ***Competitive Negotiation*** - Competitive negotiation is the preferred method of procurement for engineering related services. These contracts use qualifications-based selection procedures in the manner of a contract for architectural and engineering services under the “Brooks Act” provisions contained in Title 40 U.S.C. Chapter 11 (formerly 40 U.S.C. §541-544). The proposal solicitation process is by public advertisement and provides qualified in-state and out-of-state consultants a fair opportunity to be considered for award of the contract. Price is not used as a factor in the evaluation and selection phases.

- D. ***Noncompetitive Negotiation*** – Noncompetitive negotiation is used to procure engineering and design related services when it is not feasible to award the contract using competitive negotiation or small purchase procedures. Circumstances which may justify a noncompetitive negotiation include when the service is available only from a single source or there is an emergency which will not permit the time necessary to conduct competitive negotiations.

- E. ***Small Purchase Procedures*** - Small purchase procedures are relatively simple and informal procurement methods where an adequate number of qualified sources are reviewed and the total contract costs do not exceed the simplified acquisition threshold fixed in 41 U.S.C. 403(11) (currently \$150,000.00). Competitive negotiation in the manner of a “Brooks Act” qualifications-based selection procedure is not required.

- F. **Technical Service Procurement Procedure** – A technical service procurement procedure is used for the procurement of services as described in this policy at “APPLICATION”, Item B, Technical Services. Price quotations are obtained from qualified firms for the specified work either by public advertisement or by requests. Awards are made to the responsible firm whose proposal is most advantageous to the AGENCY with price and other relevant factors considered.

POLICY:

I. CONSULTANT EVALUATION COMMITTEE

- A. **Establishment of a Consultant Evaluation Committee:** The Agency’s legally designated selection authority shall designate the members of the Consultant Evaluation Committee (“CEC”), which shall at a minimum be composed of professional employees of the Agency capable of providing a review of the technical qualifications of the consultant to perform the job(s) in question. The legally designated selection authority must approve any change in membership of the CEC prior to advertisement and approve any substitutions. The CEC membership may vary depending on the type of service being procured.
- B. **Role:** The CEC shall have the responsibility of submitting to the legally designated selection authority a recommended list of qualified firms.
- C. **Record of Proceedings:** The CEC shall designate either a member or staff person to create and maintain a record of proceedings before the CEC which shall include information submitted to the CEC for consideration, summary minutes of meetings, findings and/or recommendations to the legally designated selection authority.

II. PREQUALIFICATION

- A. **Tennessee Department of Transportation’s Prequalified Consultant List:** Firms must be currently on TDOT’s list of prequalified consultants.
- B. **Expiration or termination.** Expiration or termination of a consultant’s prequalification status may be cause for AGENCY to terminate any contract with a consultant.

III. COMPETITIVE NEGOTIATION PROCUREMENT PROCEDURE

- A. **Confidentiality:** To the extent allowed by applicable State law, all documents relating to the evaluation and selection of consultants, and negotiations with selected consultants, shall remain confidential until selection is complete and a contract is awarded.
- B. **Consultant Advertisement:** The Agency shall advertise for proposals from prequalified firms by advertising through appropriate media and its internet website. Advertisement shall provide, at a minimum, the following:
1. General scope of the work.
 2. Evaluation criteria.
 3. Method of payment.
 4. Contact information.
 5. Deadline for submittals.
 6. A statement that all firms must be pre-qualified or have a completed prequalification form filed with the Tennessee Department of Transportation by the deadline.
 7. Disadvantaged Business Enterprise (DBE) encouragements.

The advertisement may include multiple phases of a project. Note that for mid-range and large size projects, the CEI consultant shall not be associated with any other aspect of the project (please see [Attachment A](#)). The advertisement shall separate the project into phases and the consultant must indicate to which portion they are responding. If a consultant responds to the construction inspection phase along with other phases in an advertisement for a mid-range or large size project, they may not be selected for the entire project. This will be clearly indicated in the advertisement.

- C. **Consultant Evaluation Criteria:** The evaluation criteria for proposals shall, at a minimum, include the following:
1. Ability and relevant expertise of the firm's personnel to be used in performing the service.
 2. Past experience in the required disciplines with TDOT and/or other clients.
 3. Qualification and availability of staff.
 4. Demonstrated ability to meet schedules without compromising sound engineering practice.
 5. Evaluations on prior federally-funded projects, if available.
 6. Size of project and limited or unlimited prequalification status.
 7. Amount of work under contract with the Agency.
 8. Whether the consultant can perform the work efficiently without compromising sound engineering practice.
 9. Other factors, including interviews and demonstrations, as approved by the Agency.

D. *Sub-consultants for Engineering Services*

1. A consultant who has been asked to submit a proposal shall specifically identify any sub-consultant(s) required to complete the project team. All sub-consultants identified on the submittal shall be pre-qualified by TDOT to perform the required tasks or have an application pending prior to submittal of the proposal. Failure to meet these requirements would void the submittal.
2. Once a contract has been awarded, the consultant may negotiate directly with sub-consultants. A change in sub-consultants must be approved by the Agency. A written request must be submitted to the Agency to initiate the change. This request must include an explanation of the need to change sub-consultants and the impact on the project schedule and financial elements of the contract. The substitute sub-consultant must be pre-qualified by TDOT to perform the required tasks. After consideration of all factors of the request, the Agency will respond to the request in writing.

E. *Contract Selection*

1. The proposal shall contain a section wherein a firm may identify certified Disadvantaged Business Enterprises (DBEs) that the firm commits to use during the project. Although it is not a mandatory requirement that consultants submitting proposals commit to DBE participation, a good faith effort toward diversity is encouraged in the team make-up. The Agency may set DBE goals on projects involving federal funds, in which case the selected consultant must either meet the goal or show good faith efforts to meet the goal, consistent with the DBE program regulations at 49 C.F.R. 26.53.
2. Evaluation of Proposals by CEC
 - a) The Agency shall evaluate the proposals of firms using the evaluation criteria.
 - b) Separate formal interviews, if approved as an evaluation criteria, should be structured and conducted with a specified time limit. Competing consultants may be asked to bring additional information or examples of their work to the interviews if such information will contribute to the evaluation process. Specific questions may be asked of each consultant to clarify qualifications, written proposals, or oral presentations.
 - c) The CEC shall recommend to the legally designated selection authority a list of no fewer than three of the firms deemed most qualified to provide the services required.

3. **Contract Selection:** The legally designated selection authority shall rank the firms in order of preference based upon the evaluation criteria. The AGENCY will negotiate with the firm(s) in rank order. All considered firms who were unsuccessful in the selection process shall be so notified.

F. *Negotiation of Contract*

The following shall apply to all negotiations of scope and cost for contracts, work orders, and supplemental agreements.

1. **Determination of Contract Amount:** Following a decision to use consultant services, AGENCY staff shall prepare an estimate of man-days or project cost required based on:
 - a) Relative difficulty of the proposed assignment or project, size of project, details required, and the period of performance, and,
 - b) A comparison with the experience record for similar work performed both by AGENCY personnel and previously negotiated consultant contracts.

This estimate shall be done independently, prior to negotiation, and shall remain confidential to the extent allowed by applicable law.

2. **Scope of Work Meeting with Selected Firm:** The Agency will negotiate with the selected firm. The Agency may arrange a conference with the prospective consultant at which the parties must come to a mutual understanding of the scope of work and all technical and administrative requirements of the proposed undertaking. In lieu of a conference, this may be done by phone or correspondence. The prospective consulting firm may be represented as it wishes; however, a project manager and accounting representative are recommended.
3. **Cost Proposal:** The prospective consulting firm will be invited to submit a cost proposal for the project. This cost proposal is to be broken down by the various items of work as requested and supported by estimated labor requirements. Instructions shall be given regarding the method of compensation and the documentation needed to justify the proposed compensation.

In evaluating the consultant's cost proposal(s), the Agency shall judge the reasonableness of the proposed compensation and anticipated labor and equipment requirements by the following and other appropriate considerations.

- a) The proposed compensation should be comparable to that of other projects of similar nature and complexity, including as applicable salaries and man-hours to accomplish the work, and allocation of labor within the man-hour estimates.
 - b) The Agency, as deemed appropriate, will assess the fairness of the proposed fee.
 - c) The proposed compensation shall be studied for reasonableness and to assure sufficient compensation to cover the professional quality of the work items desired.
4. **Contract Negotiations:** If the consultant's first cost proposal is rejected by THE AGENCY, the negotiating parties shall hold a second conference to discuss those points of the cost proposal which are considered unsatisfactory. The consultant shall submit a second cost proposal based upon this second conference. If THE AGENCY rejects the consultant's second cost proposal, negotiations shall cease and commence with the second most qualified firm. If like negotiations are unsuccessful with the second most qualified firm, THE AGENCY will undertake negotiations with the third most qualified firm and others on the selected list in sequential order. With the concurrence of the legally designated selection authority, the AGENCY may, at any time, in lieu of continuing negotiations, elect to redefine the scope of the project and invite another group of consultants to submit proposals pursuant to "POLICY", Section III, Competitive Negotiation Procurement Procedure.

G. *Contract Development and Execution:*

1. In the event the parties reach agreement, the Legally Designated Selection Authority shall approve the preparation of a contract.
2. The contract will include a clause requiring the consultant to perform such additional work as may be necessary to correct errors in the work required under the contract without undue delays and without additional cost to the AGENCY.
3. If the consultant contract includes a DBE goal, the consultant shall report at least quarterly all amounts paid to any DBE sub-consultants.
4. **Method of Payment:** The preferred method of contract is Cost Plus Fixed Fee (CPFF). Cost accounting records must be maintained. In accordance with 23CFR 172.5(c), the cost plus a percentage of cost and percentage of construction cost methods of compensation shall not be used.

5. The Agency shall maintain a record of the negotiations and all required approvals.
6. Prior to approval of the contract, the AGENCY must have on file a contract specific Certificate of Insurance for the consultant. It shall confirm that the firm has professional liability insurance for errors and omissions in the amount of \$1,000,000, as a minimum, and the policy shall be maintained for the life of the contract.

H. *Monitoring of Active Projects:*

1. After the contract has been approved, a work order issued, and productive work on the consultant's assignment has begun, representatives of the AGENCY shall periodically review and document the consultant's progress. Said monitoring reviews shall be directed toward assurance that the consultant's assignment is being performed as specified in the agreement, that an adequate staff has been assigned to the work that project development is commensurate with project billings, and that work does not deviate from the contracted assignment.
2. An employee of THE AGENCY shall be responsible for each contract or project. Annually and/or at project close, the assigned employee will prepare a performance evaluation report covering such items as timely completion of work, conformance with contract cost, quality of work, and whether the consultant performed the work efficiently. A copy of this report will be furnished to the firm for its review and comments upon request.

I. *Supplemental Agreements:*

1. No contract may be supplemented to add work outside the scope of the project or the general scope of services the consultant was initially evaluated to perform. For example, a roadway design contract may be supplemented to add work related to additional phases of project design (e.g. preliminary engineering with related technical services such as survey or geotechnical work, preparation of right-of-way plans, or preparation of final construction plans); however, a project specific or multiphase contract for roadway design shall not be supplemented to add a new project or to add a different type of service, such as construction engineering and inspection.

J. Contract Accounting Policies:

1. Overhead Charge

Federally funded projects: The overhead charge, effective for contracts advertised on or after December 1, 2005, shall be the actual rate as determined in compliance with Federal Acquisition Regulation Standards and approved by a cognizant agency as defined by 23 CFR 172. The cognizant agency is the home state transportation department, a federal agency, or TDOT in the absence of any of the other. A Certified Public Accountant (CPA) may perform the audit, but the audit work papers may be reviewed by the governmental agency. The overhead rate for firms with multiple offices shall be a combined rate for all offices. The rate for the overhead charge will be valid for a one year accounting period. If the overhead rate expires during the contract period an extension may be considered on a case-by-case basis in accordance with 23 CFR 172.7(b).

2. Net Fee Calculation:

The fee for profit is negotiable. The maximum allowable net fee is 13% and should be negotiated depending on the type work, complexity, time restraints, etc., of the project. Net fee is calculated using the following formula: $\text{Net Fee} = 2.35 \times \text{Direct Salary} \times \text{Allowed Net Fee Rate}$.

For cost plus fixed net fee contracts, net fee shall be invoiced as follows: Net fee is invoiced based on the total approved net fee multiplied by the estimated percentage of project completion during the invoicing period as stated in the progress report, less any previous partial payments.

3. Contract and Project Closing:

The Agency is responsible for keeping up with contract costs and knowing when a contract is complete. It is also responsible for closing the contract in a timely manner. By letter to the consultant, the Agency shall affirm that the contract or work order has been satisfactorily completed. In the event that additional services are required within the original scope of the project, the contract or work order may be re-opened. All terms and conditions of the contract shall remain the same.

4. Audit Requirements

- a) Pre-award audits consist of a review of a proposed indirect cost (overhead) rate based upon historical data, review of the consultant's job cost accounting system, and review of project man-day or unit price proposals. Awarded contracts are subject to interim and final audits. The audits consist of determining the accuracy of invoice

charges by reviewing time sheets, payroll registers, travel documents, etc. Charges that cannot be supported will be billed back to the consultant. Annual reviews of the indirect cost rate for non-fixed indirect cost rate contracts will be required and adjustments to the invoiced billing rate may be necessary based on audit results.

5. Computer Aided Drafting and Design (CADD) Expenditures:

All CADD equipment and software expenditures are to be treated as part of overhead. CADD expense will not be allowed as a direct expenditure based on an allocation rate.

6. Facilities Capital Cost of Money (FCCM) Rate:

FCCM referenced in 48 CFR 31.20510 shall be allowed as part of overhead and applied to direct labor.

7. Direct Cost.

- a) Direct Costs include job related expenses which are required directly in the performance of project services such as travel, subsistence, long distance telephone, reproduction, printing, etc. These should be itemized as to quantities and unit costs in arriving at the total cost for the expense.
- b) The proposed direct cost shall not exceed the Tennessee Department of Transportation's maximum allowable rate when a rate for such cost is specified. All direct costs must show supporting documentation for auditing purposes. Documentation for proposed rates should show how they were developed including historical in-house cost data or names and phone numbers of vendors that supplied price quotes along with receipts, invoices, etc., if available.
- c) Electronic equipment, such as personal computers, cameras, and cellular phones, shall be included in the consultant's overhead.
- d) The cost of the use of the consultant's vehicle(s) to the AGENCY'S project shall be paid for according to Attachment A, Schedule of Vehicle Reimbursements.

8. Collection of Funds Due as Result of Contract Audit:

Once an audit is completed and the consultant is found to owe the AGENCY, the Auditor will notify in writing the consultant,. The Agency will notify the consultant in writing about the indebtedness and request payment within 30 days from the date of the letter. If after 30 days payment is not received, the consultant will then be notified that any funds held in retainage or funds owed to the consultant under other

agreements will be used to satisfy the indebtedness. If funds or payables to the consultant in the AGENCY'S possession are in excess of the indebtedness, anything owed the consultant will be remitted under normal payment procedures. If the funds in the AGENCY'S possession are not sufficient to satisfy the indebtedness, the Agency will take appropriate action.

K. *Geotechnical Contracts:*

Contracts for geotechnical services are considered separately because they may involve a mixture of two types of services, i.e., geotechnical studies (engineering services) and subsurface exploration/drilling or laboratory testing (technical services). Additionally, some firms offer one or the other of these services, others offer both, and others offer some combination as well as other services, e.g., design. Firms offering both services must, for accounting purposes, separate the two operations. Cost of equipment, supplies, etc., used in technical services may not be applied towards overhead computations for engineering services.

1. Sub-surface Exploration/Drilling: These services shall be procured as required by applicable law and in accordance with the procedures noted in "POLICY", Section VI, Technical Service Procurement Procedure.
2. Geotechnical Studies Only: These services shall be procured as noted in "POLICY", Section III, Competitive Negotiation Procurement Procedure.
3. Geotechnical Studies and/or Laboratory Testing Combined: The services of these firms shall be procured as noted in "POLICY", Section IV, Competitive Negotiation Procurement Procedure. The technical services costs shall be negotiated by the Agency based on usual industry standards.
4. Geotechnical Studies and/or Sub-surface Exploration/Drilling and/or Laboratory Testing within another Engineering Services Firm: These services shall be procured as part of the larger contract, e.g., roadway design. Payment for sub-surface exploration/drilling shall be invoiced as a direct cost. Overhead cost restrictions as previously stated in Section III, Item J, Contract Accounting Policies, also apply to hourly labor charges. Geotechnical studies shall be invoiced as other engineering services.

L. *Sub-consultants for Engineering Services:*

1. Geotechnical Studies and/or Sub-surface Exploration/Drilling and/or Laboratory Testing within another Engineering Services Firm:

These services shall be procured as part of the larger contract, e.g., roadway design. Payment for sub-surface exploration/drilling shall be invoiced as a direct cost. Overhead cost restrictions as previously stated in Section III, Item J, Contract Accounting Policies, also apply to hourly labor charges. Geotechnical studies shall be invoiced as other

engineering services.

2. Geotechnical Studies Firms as Sub-Consultants

- a) Geotechnical Studies Only: The services of these firms may be procured by negotiation with the prime consultant as described previously herein.
- b) Geotechnical Studies and Sub-surface Exploration/Drilling and/or Laboratory Testing Firms as Sub-Consultants: The services of these firms shall be procured by negotiation with the prime consultant.

M. *Sub-consultants Not Covered Under Engineering Services:*

In the event a sub-consultant is required whose hiring process, as a prime, would be governed by "POLICY", Section IV, Noncompetitive Negotiation Procurement Procedure, or other applicable state policy, that sub-consultant shall be retained by the same method used if he were a prime.

1. Example: Design consultants are occasionally asked to provide laboratory testing services under their design contract. These services procurement methods are described under "POLICY", Section VI, Technical Service Procurement Procedure. The design consultant shall use, and document, the procedures described under "POLICY", Section VI, Technical Service Procurement Procedure, when hiring the laboratory testing consultant.
2. The Agency should monitor the hiring and documentation of sub-consultants by the prime. Documentation should detail the method used and should be satisfactory for a final project audit.

IV. NONCOMPETITIVE NEGOTIATION PROCUREMENT PROCEDURE

The following procedures may be used by the AGENCY, subject to TDOT's prior approval, in those circumstances where there exists only one viable source for the desired services, when competition among available sources is inadequate, or in emergencies when adherence to normal procedures will entail undue delays for projects requiring urgent completion.

Upon determination of a need for this type of procurement, the AGENCY shall request an estimate from the qualified firm for the accomplishment of the desired assignment. The request for an estimate shall define the full scope of the desired services, together with minimum performance specifications and standards, the date materials and services are to be provided by the consultant to the AGENCY, and the required assignment completion schedule. Response to the request for an estimate shall be evaluated, giving due consideration to such matters as a firm's professional integrity,

compliance with public policies, records or past performances, financial and technical resources, and requested compensation for the assignment.

V. SMALL PURCHASE PROCUREMENT PROCEDURE

When the contract cost of the services does not exceed the simplified acquisition threshold fixed in 41 U.S.C. 403(11), which is currently \$150,000, small purchase procedures may be used. Contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures. Proposals will be obtained from an adequate number of qualified sources with a minimum of three. It is the responsibility of the Local Government to determine the level of advertisement in order to ensure a qualified pool of candidate consultants is available to choose from.

Awards will be made to the responsible firm whose proposal is most advantageous to the program with relevant factors considered. Contact the LPDO for approval to proceed with this process.

POLICY FOR STANDARD PROCUREMENT OF ENGINEERING AND TECHNICAL SERVICES

Vehicle Reimbursement Schedule

For all projects except Construction Engineering and Inspection (CEI), the consultant shall be reimbursed at the rate specified in the State of Tennessee Comprehensive Travel Regulations in effect at the time the cost was incurred.

For CEI projects, the consultant shall be reimbursed at the rate of \$27.00 per day for compact pick-up trucks used on the AGENCY's projects. For full size pick-up trucks used on the AGENCY projects, the consultant shall be reimbursed at the rate of \$30.25 per day

Rate changes are approved: _____
AGENCY HEAD DATE

ATTACHMENT A - Consultant Selection for Locally Managed Projects

Size of Project	Type of Project	Procurement Requirements
<p>SMALL projects</p> <ul style="list-style-type: none"> • Must have a full-time employee on staff with experience managing transportation projects. • Must hire consultants for all phases of the project from TDOT's approved list if the Local Government has not been approved by TDOT to use their own forces. The consultants must be qualified in the required area of expertise. 	<ul style="list-style-type: none"> • Transportation Alternatives • intersection improvements without significant ROW (under one acre of disturbance) • Safe Routes to School • resurfacing • striping • signing • guardrail installation • signalization • some bridge replacement projects (under one acre of disturbance) • non-construction/service contracts (as listed in Chapter 10 of the LGG) • low-risk and exempt ITS 	<ul style="list-style-type: none"> • Local Government can use the same consultant for the entire project (planning, preliminary engineering and CEI)
<p>MID-RANGE projects</p> <ul style="list-style-type: none"> • Must have a qualified, full-time professional engineer on staff. • Must hire consultants for all phases of the project from TDOT's approved list. The consultants must be qualified in the required area of expertise. 	<ul style="list-style-type: none"> • roadway widening • realignment of existing roadway • signalization projects with the addition of turn lanes • intersection improvements with significant ROW (over one acre of disturbance) • bridge replacement projects requiring significant land acquisition (over one acre of disturbance) • projects with environmental requirements greater than a categorical exclusion but lesser than an EIS • high-risk ITS 	<ul style="list-style-type: none"> • The selected CEI consultant shall not be associated with any other aspect of the project.
<p>LARGE projects</p> <ul style="list-style-type: none"> • Must have a qualified, full-time professional engineer on staff with extensive experience working with federally-funded transportation projects. • Must hire consultants for all phases of the project from TDOT's approved list. The consultants must be qualified in the required area of expertise. 	<ul style="list-style-type: none"> • construction of new facilities • widening of existing roadways • realignment of existing roadways that require significant land acquisition (over 10 acres) • environmental clearances that require an EIS 	<ul style="list-style-type: none"> • The selected CEI consultant shall not be associated with any other aspect of the project.

INSURANCE CHECKLIST

(PW Traffic – Mtn. View/Browns Mill Roundabout CEI Services)

REQUIRED COVERAGE (marked by "x")

MINIMUM LIMITS

- 1. Worker's Compensation (proprietor/partners/executive officers exclusion not allowed) Statutory limits of Tennessee and Employer's Liability \$100,000/accident, \$100,000/disease, \$500,000/disease policy limit
- 2. Commercial General Liability (including Premises/Operations) \$1,000,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- 3. Automobile Liability & Owned/Hired/Non-Owned Vehicles \$500,000 BI/PD each accident, Uninsured Motorist
- 4. Independent Contractors \$1,000,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- 5. Products/Completed Operations \$1,000,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- 6. Contractual Liability \$1,000,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- 7. Personal and Advertising Injury Liability \$1,000,000 each offense, \$1 Million annual aggregate
- 8. Umbrella Liability \$1 Million Bodily Injury, Property Damage and Personal Injury
- 9. Per Project Aggregate
- 10. Professional Liability
- a. Architects and Engineers \$1 Million per occurrence/claim
- b. Asbestos Removal Liability \$2 Million per occurrence/claim
- c. Medical Malpractice \$1 Million per occurrence/claim
- d. Medical Professional Liability \$1 Million per occurrence/claim
- 11. Miscellaneous E & O \$1 Million per occurrence/claim
- 12. Motor Carrier Act End. (MCS-90) \$1 Million BI/PD each accident, Uninsured Motorist
- 13. Motor Cargo Insurance
- 14. Garage Liability \$1 Million Bodily Injury, Property Damage per occurrence
- 15. Garagekeepers Liability \$500,000 Comprehensive, \$500,000 Collision
- 16. Inland Marine-Bailee's Insurance \$ _____
- 17. Moving and Rigging Floater Endorsement to CGL
- 18. Dishonesty Bond \$ _____
- 19. Builder's Risk/Installation Floater Provide coverage in the full amount of contract
- 20. XCU Coverage Endorsement to CGL
- 21. Carrier Rating shall be Best's Rating of B++V or better or its equivalent
- 22. Notice of cancellation, non-renewal or material change in coverage shall be provided to City at least **30 days** prior to action. Worker's Compensation notification may be **10 days** prior to action.
- 23. The City of Johnson City shall be named as Additional Insured on all policies except Worker's Compensation, Auto and Professional Liability. **Per Acord 25 (2009/01), policies must be endorsed to incl. on-going & completed operations; please submit copy of endorsement.** (Cert. Holder: City of Johnson City, Attn: Purchasing, P.O. Box 2150, Johnson City, TN 37605. Email: purchasing@johnsoncitytn.org.)
- 24. Certificate of Insurance shall show project number or other contract identifier used by the City.
- 25. OTHER INSURANCE REQUIRED: _____

INSURANCE AGENT'S STATEMENT:

I have reviewed the above requirements with the bidder named below. The bidder has coverage with this agency for all of the areas marked with the exception of the following numbers:

Comments: _____

- Is Professional Liability excluded under General Liability? Yes _____ No _____
- Is Contractual Liability excluded under Comm. General Liability? Yes _____ No _____
- Is Independent Contractors excluded under Comm. General Liability? Yes _____ No _____

Carrier ratings: Insurer A _____; Insurer B _____; Insurer C _____; Insurer D _____

AGENCY NAME: _____ AUTHORIZED SIGNATURE: _____

Date: _____

CONTRACTOR'S STATEMENT:

I have reviewed the above requirements with my insurance agent(s) and, if awarded a contract, will provide all coverage marked.

CONTRACTOR'S NAME: _____ AUTHORIZED SIGNATURE: _____

Date: _____

Bid Number: _____

Bid or Project Name: _____

This form and the General Contract Form must be signed and returned with the bid package (if applicable). The Certificate of Insurance must be provided to Purchasing prior to contract award.

GENERAL CONTRACT FORM

The General Contract Form is included in every solicitation requiring insurance. The general requirements of the contract form are supplemented by items checked on the **Insurance Checklist that identify specific requirements for the bid or project.**

INSURANCE

Review this section carefully with your insurance agent or broker prior to submitting a bid or proposal. See Insurance Checklist (part of the Bid Forms) for specific coverage applicable to this contract. The term "Contract" as used in this section shall mean the Agreement covering the work that is entered into between the City of Johnson City, Tennessee and the Contractor.

1. General Insurance Requirements:

1.1 The Contractor shall not start work under this contract until the Contractor has obtained at its own expense all of the insurance called for hereunder and such insurance has been approved by the City; nor shall the Contractor allow any subcontractor to start work on any subcontract until all insurance required of the subcontractor has been so obtained and approved by the Contractor. Approval of insurance required of the Contractor will be granted only after submission to the Director of Purchasing of original, signed Certificate(s) of Insurance, General Contract Form, and Insurance Checklist or, alternately, at the City's request, certified copies of the required insurance policies.

1.2 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Contractor, or the surety, or its bond, from any liability or obligation imposed upon either or both of them by the provisions of the Contract Documents.

1.3 The City of Johnson City (including its elected and appointed officials, agents, and employees) is to be named as an additional insured under all coverage except Worker's Compensation, Automobile Liability, and Professional Liability and the Certificate of Insurance or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as

respects the City, its elected and appointed officials, agents and employees. The following definition of the term “City” applies to all policies issued under the contract:

“The City of Johnson City, Tennessee together with all of its various departments, bureaus, and agencies, as well as any affiliated or subsidiary board, committee, or authority, including but not limited to the Johnson City Public School System.”

1.4 The contractor shall provide insurance as specified in the Insurance Checklist contained in this document.

1.5 The Contractor covenants to save, defend, hold harmless and indemnify the City of Johnson City, Tennessee together with its various departments, elected or appointed officials, employees, officers, counsel, agents, and any and all other persons or entities acting on behalf of the same (collectively the City) from and against any and all claims of any sort based upon any theory of liability whatsoever, for any and all harm, loss, damage, injury, cost (including court cost and attorney fees) charges, or other liability of any nature whatsoever, however caused, resulting from or arising out of or in any way connected with the contractors performance or non-performance of the terms of the contract documents or its obligations under the contract based upon any theory of liability whatsoever, including claims brought by third persons, and further covenants to discharge all of the aforesaid persons and entities and forever hold them harmless from the same. The foregoing obligation to indemnify and defend shall continue in full force and effect after the aforesaid contractor completes all of the work required under the contract, until such time as the applicable statutes of limitation or repose have expired.

1.6 The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work, until final acceptance of the work by the City.

1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. If the Contractor fails to provide acceptable evidence of current insurance within ten days of written notice at any time during the Contract Term, the City shall have absolute right to terminate

the Contract without any further obligation to the Contractor and the Contractor shall be liable to the City for the entire additional cost of procuring performance by another vendor and the cost of performing the incomplete portion of the Contract at time of termination. **Contractor** is required to provide the City with notice of cancellation, non-renewal, or material change in coverage at least thirty (30) days prior to cancellation, non-renewal, or material change in coverage.”

1.8 Contractual and other liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the City from supervising or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors and any persons employed by the subcontractor.

1.9 Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the City. The Contractor shall be as fully responsible to the City for acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by the Contractor.

1.10 Precaution shall be exercised by the Contractor at all times for the protection of persons (including employees) and property. All existing structures, utilities, roads, services, trees and shrubbery shall be protected against damage or interruption of service at all times by the Contractor and its subcontractors during the term of the Contract, and the Contractor shall be held responsible for any damage to property occurring by reason of its operation on the property.

1.11 If a Contractor can not meet the insurance requirements contained in a bid, proposal, or project description, alternate insurance coverage may be considered. Written requests for consideration of alternate coverage must be received by the Director of Purchasing at least ten working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternate coverage, the specified coverage will be required to be submitted. If the City permits alternate coverage, an amendment to the Insurance Requirement will be prepared and distributed prior to the time and date set for receipt of bids or proposals.

1.12 All required insurance coverage must be acquired from insurers authorized to do business in the State of Tennessee, and acceptable to the City. The insurers must also have policyholders’ rating of “B++” or better, and a financial size of “Class V” or better in the latest edition of Best’s

Insurance Reports, unless the City grants specific approval for an exception in the same manner as described in 1.11 above.

1.13 The City may consider deductible amounts as part of its review of financial stability. The Contractor shall assume all deductibles.

2. Contractor's Insurance – Occurrence Basis:

2.1 The Contractor shall purchase the following insurance coverage, including the terms, provisions and limits shown in the Checklist:

- **Commercial General Liability** – The Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
 - i. General aggregate limit is to apply per project;
 - ii. Premises/Operations;
 - iii. Action of Independent Contractors;
 - iv. Contractual Liability including protection for the Contractor from claims arising out of liability assumed under this contract;
 - v. Personal Injury Liability including coverage for offenses related to employment;
 - vi. Explosion, Collapse, or Underground (XCU) hazards.
- **Professional Liability/Miscellaneous Errors and Omissions** insurance which will pay for injuries arising out of errors or omissions in the rendering, or failure to render, professional services under the contract, in the amount shown in the Checklist.

- **Business Automobile Liability** including coverage for any owned, hired, or non-owned motor vehicles, Uninsured Motorists insurance, and Automobile Contractual Liability.
- **Worker's Compensation** – statutory benefits as required by the State of Tennessee, or other laws as required by labor union agreements, including standard Other States coverage; Employers' Liability coverage.

3. Commercial General or other Liability Insurance – Claims-made Basis:

If Commercial General or other liability insurance purchased by the Contractor has been issued on a claims-made basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described in the Checklist remain the same. The Contractor must either:

- i. Agree to provide certificates of insurance evidencing the above coverage for a period of three years for Professional Liability; two years for CGL and other Liability, after final payment for the contract. Such certificates shall evidence a retroactive date, no later than the beginning of the Contractors or subcontractors' work under this contract, or
- ii. Purchase an extended (minimum three years for Professional Liability; two years for CGL and other Liability) reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.

4. Alternative Coverage (Self Insurance)

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self-insurance for all or any part of the insurance required, provided that the alternative coverage is acceptable to the City.

5. Limits of Liability Coverage

Specific limits of liability coverage on the Insurance Checklist may be adjusted according to project risk if the adjustment is deemed appropriate and the amended amount is approved by the City Manager.

6. Verification of Compliance

I have read this General Contract Form and agree to all the terms and conditions contained therein.

Contractor's Name: _____

EIN or SSN: _____

Signed by: _____

Title: _____

Date: _____

This form and the Insurance Checklist must be completed and returned with Certificate of Insurance, as specified, prior to contract award.

Equal Opportunity

It is the policy of the City of Johnson City to ensure compliance with Title VI of the Civil Rights Act of 1964; 49 CFR, Part 21; related statutes and regulations to that end that no person shall be excluded from participation in or be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or any other funding source on the grounds of race, color, sex, national origin, or ancestry. By virtue of submitting a response to this solicitation, bidders agree to comply with the same non-discrimination policy.

Indemnification

Engineer, on behalf of itself and its agents (all of said parties are herein sometimes collectively referred to as the “Indemnitors”), shall fully indemnify, save and hold Client, all entities related to Client, all elected officials of Client or its related entities, and anyone else acting for or on behalf of any of them (all of said parties are herein collectively referred to as the “Indemnitees”) harmless from and against all liability, damage, loss, claims, demands, actions and expenses of any nature whatsoever, including, but not limited to reasonable attorney’s fees which arise out of or are connected with, or are claimed to arise out of or be connected with: (i) any negligent act or omission or any willful misconduct by any Indemnitor in the performance of work to be performed hereunder; or (ii) the failure to comply with the laws, statutes, ordinances or regulations of any governmental or quasi-governmental authority. Without limiting the generality of the foregoing, the indemnity hereinabove set forth shall include all liability, damages, loss, claims, demands and actions on account of personal injury, death or property loss to any Indemnitee, any of Indemnitee’s employees, agents, licensees, or invitees. The provisions of this indemnification article shall not be construed to indemnify any Indemnitee for any loss or damage attributable to the negligent acts or omissions of such Indemnitee. The liability of the Engineer hereunder shall not extend to the Contractor or any Separate Contractor. The indemnity set forth in this paragraph shall survive any termination of this Agreement.

Default

In case of Contractor default, the city may, by written notice, cancel the contract and purchase from another source and may recover the excess costs by either invoice, deduction from outstanding balance due, collection against bid and/or performance bond, or a combination of the aforementioned remedies or other remedies provided by law. All costs associated with default will be borne by the Contractor.

Drug Free Workplace

All bidders must execute the enclosed Drug Free Workplace Affidavit to verify compliance with TCA 50-9-113 and return same with bid response. Failure to comply with this requirement will declare that bid non-responsive.

City of Johnson City

Policy HR-131

SECTION I—PURPOSE OF THE DRUG & ALCOHOL TESTING PROGRAM

The City of Johnson City recognizes its responsibility to provide safe and efficient operations for our employees, our citizens and the general public. Our commitment to provide safe and efficient operations is shown by the implementation of programs and procedures which ensure compliance with appropriate safety measures, as well as the letter and intent of all applicable laws and regulations. There is sufficient evidence to conclude that the use of illegal drug/alcohol; drug/alcohol dependence and drug/alcohol abuse seriously impairs an employee's performance and general physical and mental health. The illegal possession and use of drugs, alcohol and/or narcotics by employees of the City is a crime in this jurisdiction and is clearly unacceptable. Therefore, the City of Johnson City has adopted this written policy to ensure an employee's fitness for duty as a condition of employment; to ensure the drug tests and alcohol tests are conducted on safety-sensitive positions in the categories of: pre-employment, random testing, suspicion testing, and return-to-duty testing.

To comply with TCA Title 50 Chapter 9 Part 1, all bidders and/or proposers of service to the City must have a testing program of the same or better than the requirements of the City of Johnson City.

Drug-Free Workplace Affidavit

State of _____

County of _____

I, _____ being duly sworn, depose, and say that:

1) I am a principal officer of _____; the firm that has submitted the attached or enclosed bid or proposal, my title being

_____ of the firm; and

2) I have personal knowledge of the policies of the above-named firm with respect to the maintenance of a drug-free workplace; and

3) I certify that all provisions and requirements of the Tennessee Drug-Free Workplace Program, as established by Tennessee Code Annotated §§ 50-9-113 have been met and implemented.

(Signed) _____

(Title) _____

Subscribed and sworn to before me this _____ day of _____, 20____

Signature

Title

My commission expires: _____



CITY OF JOHNSON CITY, TENNESSEE
<http://www.johnsoncitytn.org/purchasing>

**SEALED SOLICITATION
GENERAL TERMS AND CONDITIONS
(Read Carefully)**

1. ACCEPTANCE, REJECTION AND POSTPONEMENT

Issuance of a bid/rfp/rfq does not commit the City to make an award. The City reserves the right to postpone or reject any or all bids/rfp's/rfq', to waive informalities and to accept the bid/rfp judged to be in the best interest of the City.

2. ADDENDA

Addendum's will be issued to all known interested parties and posted on the City's website (listed above). All addenda issued shall become part of the solicitation documents. It is the vendor's responsibility to determine and acknowledge any or all addenda's issued for a solicitation. No addenda will be issued less than two (2) working days prior to the solicitation opening as per TCA, Title 12, Chapter 4, Part 1, as amended

3. AWARD

An award, if made, shall be to the lowest responsible, responsive bidder(s) or best solicitation meeting quality and performance standards as described in the solicitation documents and whose bid/rfp is determined to be in the best interest of the City. The City also reserves the right to award this product/service based on other contracts in-place (state or cooperative contracts), as may be in our best interest.

4. AWARD PERIOD

The City shall have 60 days to issue a contract. Any contract past that period must be mutually agreed upon by both parties.

5. BID TABULATIONS/RFP/RFQ RESPONSES

Bid tabulations and RFP/RFQ respondent's lists will be posted and available the next business day on our above website. Select "awarded/opened solicitations".

6. BRAND NAMES

By referencing a brand name or equal, the City intends to establish a minimum level of quality by which alternate offers can be judged. If an alternate is offered, the vendor must include complete descriptive literature and specifications that clearly describe the item and how it differs from the referenced item. Vendor reference to literature previously submitted will not satisfy this provision. Unless specified otherwise, it is understood that the referenced product will be furnished. The City alone will determine whether an alternate is equivalent and meets the standards of quality and performance for the City's use. A sample or demonstration may be required at the expense of the vendor.

7. CONDITION STANDARDS

It is understood and agreed that any item offered or shipped as a result of this solicitation shall be new and unused and the manufacturer's latest model unless otherwise called for in the solicitation.

8. CONSTRUCTION DOCUMENTS

If a fee is required for bid documents then only those bidders of record with the issuing office are eligible to bid.

9. COOPERATIVE PURCHASING:

Bidders/Proposers are to indicate whether it is permissible for other governments in Tennessee to purchase these items or services at the same price. Freight charges can be adjusted to reflect differences in delivery costs.

10. DEFAULT

In case of contractor default or failure to provide material or service according to the solicitations, the City may cancel this contract and acquire from another source and may recover any excess cost by (1) invoice; (2) deduction from an unpaid balance due; (3) collection against the bid and/or performance bond; or (4) a combination of the aforementioned remedies or other remedies provided by law. All costs associated with default will be borne by the contractor. The City reserves the right to remove a company in default from the active vendor list for a time period to be determined by the Director of Purchasing.

11. DELIVERY

Delivery/completion schedule must be clearly identified and realistically stated, as this may be a determining factor in the award.

12. DISCOUNT AND PAYMENT

Payment terms are Net 30 following receipt of the material or service and a correct invoice unless otherwise stated in the solicitation document. Discounts for prompt payment will not be considered in the bid evaluation for award. Partial payment will be allowed only if addressed in the solicitation.

13. EQUAL OPPORTUNITY

It is the policy of the City of Johnson City to ensure compliance with Title VI of the Civil Rights Act of 1964; 49 CFR, Part 21; related statutes and regulations to that end that no person shall be excluded from participation in or be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or any other funding source on the grounds of race, color, sex, national origin, or ancestry. By virtue of submitting a response to this solicitation, vendors agree to comply with the same non-discrimination policy.

14. EVALUATION

Bids/RFP's/RFQ's will be evaluated according to the criteria set forth in the document with the degree of importance determined by the City.

15. EXAMINATION OF BIDS/RFP'S/RFQ'S

Bids and associated documents may be examined at the opening. Only the name of the respondent is read aloud for RFP'S/RFQ'S. All solicitations are closed for review and inspection during the evaluation period, prior to award.

16. FOB (FREE-ON-BOARD) POINT

All prices quoted shall be FOB destination, freight prepaid and allowed unless otherwise stated in the solicitation document. The seller pays and bears the freight charges and owns the goods while they are in transit. Title passes at the designated City location.

17. INDEMNIFICATION

The vendor shall guarantee and certify by submitting a response to this solicitation that if successful, they shall indemnify and defend the City against any and all claims or legal actions arising as a result of their performance of the contract, whether or not such claims relate to damages or alleged damages sustained by physical injury to contractors personnel, subcontractors, city employees or other persons, or against any lawsuits arising from alleged or actual patent infringements, and shall hold the City, its various departments, employees, and any and all persons or entities acting on its behalf harmless from the same.

18. INSPECTION

All supplies or materials purchased as a result of this solicitation are subject to inspection and rejection by the City. Rejected materials will be returned at the vendor's expense.

19. INSURANCE

The contractor shall maintain, at their expense, such insurance as required by the solicitation. Such insurance shall protect the City for claims of damages which may arise during operations under this contract whether such operations be by the Contractor or by any subcontractor or anyone directly or indirectly employed by either of them. Any required insurances shall be maintained for the term of the contract and beyond the term of the contract when so required in the solicitation.

20. IRAN DIVESTMENT ACT OF 2014

Pursuant to the Iran Divestment Act of 2014, Tenn. Code Ann. § 12-12-106 requires the State of Tennessee Chief Procurement Officer to publish, using creditable information freely available to the public, a list of persons it determines engage in investment activities in Iran, as described in § 12-12-105. Inclusion on this list makes a person ineligible to contract with the City of Johnson City; if a person ceases its engagement in investment activities in Iran, it may be removed from the list. The State of Tennessee currently uses the State of South Carolina's list, available here: https://www.tn.gov/assets/entities/generalservices/cpo/attachments/List_of_persons_pursuant_to_Tenn._Code_Ann._12-12-106_Iran_Divestment_Act-July.pdf

21. LICENSES, FEES, PERMITS

The contractor is responsible for furnishing the proper licenses, fees, and permits required by law to do business with the City of Johnson City in completion of the project. All work shall be done in accordance with the latest building codes, state and federal laws relative to the contract.

22. MULTIPLE ITEM BIDS

The City will determine the successful bidder(s) either on the basis of the individual line items or the total of all items. ALL OR NONE bids must be clearly identified on the bid form and will be considered only if in the City's best interest.

23. NON-COLLUSION AGREEMENT

By submitting this solicitation, the agent representing all officers, partners, owners, representatives, employees or interested parties of the vendor's firm certifies to the best of his/her knowledge and belief this bid/proposal to the City of Johnson City, Tennessee has not been prepared in collusion with any other seller, proprietor, or manufacturer of similar products or services. The agent also certifies that the prices, terms and conditions of said bid/proposal have been arrived at independently and have not been communicated by the submitter, nor by any of the aforementioned firm associate to any other seller, proprietor, or manufacturer of similar products or services and will not be communicated prior to the official opening of said solicitation. The agent further states that no official or employee of the City of Johnson City has promised any personal, financial or other beneficial interest, either directly or indirectly, in order to influence award of this solicitation.

24. PARTS AND SERVICE

The successful vendor must be able to provide adequate parts and service for all items awarded. Service location and ability to perform may be a consideration in the award.

25. PENALTIES

Vendors may be removed from our active vendor system for any of the following:

- ◆ Failure to respond to three consecutive solicitations
- ◆ Failure to meet delivery requirements
- ◆ Failure to furnish items as a result of a solicitation
- ◆ Failure to provide service or material as a result of the award
- ◆ Offers of gratuities or favors to any City employee

26. PRE-BID MEETING ATTENDANCE

If attendance is mandatory then only those firms whose names are listed on the pre-bid attendance roster are eligible to submit a solicitation.

27. PRICING

All pricing must appear in the spaces provided on the city's form (if applicable) and be in ink or typed. Changes or corrections by the bidder/proposer must be initialed in ink by the person signing. No corrections may be made in pencil. Unit prices will prevail in case of an extension error. The City will correct math computation errors (unit price & totals). No bid may be altered or amended after bid opening time. Obvious mistakes will be given special consideration upon receipt of written request and full disclosure or evidence regarding pricing error.

28. PROPRIETARY/CONFIDENTIAL INFORMATION

Vendors are hereby notified that all information submitted as part of, or in support of, bids/proposals will be available for public inspection after award, in compliance with Tennessee Statutes.

29. PROTEST PROCEDURE

Any protest to the award of a contract by the City of Johnson City shall be submitted in writing to the Director of Purchasing with a copy to the City Manager and delivered not later than seven (7) calendar days from the date of the city's award decision. Such protest must include a protest bond in the amount of \$350 (cashier's check payable to the City of Johnson City or Cash) submitted to the Purchasing Director before the City will consider the protest. This protest bond will serve as a guarantee by the protester of the validity and accuracy of the protest. If the protest is denied by the City Manager the bond will be retained to cover costs associated with the protest.

30. QUESTIONS

Questions must be received by the City at least four (4) working days prior to the scheduled opening. No oral interpretations or instructions given by any city employee or any other person shall apply. Changes relative to any solicitation will be in writing, in the form of an addendum. ,

31. SAFETY STANDARDS

All manufactured items and fabricated assemblies shall comply with applicable requirements of OSHA/TOSHA and any related standards thereto.

32. SAMPLES

Samples will be furnished at no charge to the City. They will remain in the Purchasing Department for testing and evaluation until an award is made. Vendors are responsible for picking up their samples within two (2) weeks after the award. Samples not collected after that time shall become the property of the City. Samples from the successful vendor will be held until delivery is received and accepted as being equal to the sample.

33. SEALED SOLICITATION OPENINGS

Bids will be read aloud at the specified date and time as stated in the document. RFP's/RFQ'S respondent names will be read aloud. All openings are public meetings. Bidders/proposers and interested persons are invited to attend. The City reserves the right to postpone any solicitation opening under circumstances warranting such action, including but not limited to instances when the City receives fewer than two responses.

34. SIGNATURE ON BIDS

When submitting a bid, other than electronically, the bid form must contain the full name and address of the company and be signed in Ink by a person authorized to bind that company to a contract. Submission of an electronic solicitation constitutes acceptance of all terms and conditions. Unsigned paper bids will not be considered, read or tabulated. They may not be signed during or after the bid opening, even if a representative is present.

35. SUBMITTAL OF SEALED BIDS/RFP'S/RFQ'S

Any forms furnished by the city must be completed and returned as specified in the solicitation, otherwise response will be considered as non-responsive. TELEPHONE, FACSIMILE OR E-MAIL RESPONSES WILL NOT BE ACCEPTED. Electronic receipt of bids/proposals is acceptable for those posted at: <https://purchasing.johnsoncitytn.org/bsol/>. **Paper bids shall be sealed in an envelope and may be required to include one (1) electronic (CD or flashdrive) copy of the entire submittal. The electronic version shall be an exact duplicate of the original, and the electronic version will become the official document.** No solicitation received after closing time shall be considered. The official time for paper submittals will be that of the date and time clock in the Purchasing Department. For electronic bids the official time is that posted on the website. Late submittals will not be accepted. The City of Johnson City shall not be responsible for technical difficulties experienced by vendors trying to register or submit their bid/rfp response electronically less than one hour prior to the bid/rfp opening time. If not offering a solicitation response, the vendor is encouraged to complete the "Statement of Decline" form and return prior to the opening.

36. TAXES

The City is exempt from Federal excise tax, State, and city sales tax. Contractors are not exempt from the use tax on materials and supplies used in the production of an item or in the performance of a repair or construction contract. Tax exemption certificates will be furnished upon request.

37. TERM OF CONTRACT

Unless otherwise stated, the City reserves the right to purchase like items at the same contract price for a period of one year from the award date subject to agreement of both parties. The City may cancel any contract for cause, or non-appropriation of funds, following written notification of intent.

38. WARRANTY

Unless otherwise specified by the City, all items shall be guaranteed for a minimum period of one (1) year against defects in material and workmanship.

REQUIREMENTS FOR BIDS, REQUESTS FOR PROPOSALS, AND CONTRACTS BETWEEN
THE CITY OF JOHNSON CITY
AND OTHER PARTIES

The City of Johnson City has established the following requirements for use in all bids and contracts between the City and any other person or entity. The following list is mandatory and modifies any bid, contract, or request for proposal, or conditions applicable to, signed by, or let by the City, notwithstanding anything contained in any particular conditions, contract, request for proposal, or bid to the contrary.

In general, the following provisions apply to all such contracts, bids, requests for proposals, contracts requiring bids, and bids containing contracts:

1. The City of Johnson City shall not answer to any contracting party for the furnishing of public records to a person requesting such in accordance with Tennessee law.
2. The City, while it may designate in writing a representative on a particular project, shall only be bound by a majority vote of the Board of Commissioners or by the limited authority delegated to the City Manager pursuant to City Ordinance. No personal representative of the City assigned to a particular project may bind it in excess of the dollar amounts granted to the City Manager by Ordinance, and no personal representative assigned to a particular project may bind the City for an amount equal to or less than the dollar amounts granted to the City Manager by Ordinance without the City Manager's approval.
3. The City shall not in any event waive or limit any claims for damages including but not limited to consequential damages in any contract for any reason or purpose.
4. No decision of an architect, engineer, or personal representative of the City shall be final and binding on the City, unless the City so agrees in any dispute with any

party including but not limited to an architect, a contractor, a subcontractor, an engineer, etc. If the City agrees to be bound pertaining to a dispute, then the monetary limits contained in the City's ordinances regarding the authority of the City Manager shall prevail, and any amounts exceeding the authority of the City Manager shall be referred to the Board of Commissioners for their consideration.

5. The City shall not participate in any mediation or arbitration regarding any agreement to which it is a party, and all matters left unresolved between the City and any other party, person, or entity shall be resolved in a court of competent jurisdiction in either Washington County, Tennessee, or in Federal District Court in Greeneville, Tennessee.

6. No party or other entity shall file a lien of any nature whatsoever against City property, real, personal, or mixed, no matter where that property is located. Should a party or entity contracting with the City or acting as a subcontractor or subsubcontractor file a lien against any property, real, personal, or mixed, owned by the City, then that party or entity shall take immediate steps at its own cost and expense to remove said lien, or the City shall take such steps as it deems necessary and hold the other party or entity liable for any costs and attorneys' fees associated with the lifting of said lien.

7. The City shall exercise its sole discretion before agreeing to any assignments of any contracts or subcontracts regarding any project in which the City is involved. No contract with the City shall be assignable without the City's sole, discretionary, absolute consent.

8. The City shall not be required to supply any information regarding its title to any property in which it has an interest for any purposes regarding the filing of liens.

9. The City shall not waive any claims it has in the making of final payment in any project in which it is involved. The City shall have the right to terminate any agreement to which this document is attached at any time in its sole discretion without

cause. In the event the City terminates without cause any agreement to which this document is attached, then in such event the City shall be liable only for the actual work and costs that have accrued at or before the date of the City's termination. In no event shall the City be liable for lost profits, consequential damages or incidental damages in the event it terminates a contract without cause.

10. Except to the extent allowed by law, the City shall not indemnify and hold harmless any other party, entity, person, their agents, employees, or anyone else in the world for any reason whatsoever.

11. The City shall not waive the rights of subrogation of its insurers or itself for any purpose whatsoever, and the City shall not cause any such endorsements to be placed on any policies to which it is a party.

12. Unless the City elects otherwise, the City shall not provide any "builders' risk" or an "all-risk" or equivalent policy for any reason whatsoever for any project in which the City has an interest, and the contractor or other such party shall assume this responsibility. That builder's risk policy provided by the contractor or other such interested party shall name the City as an additional insured. The City shall not provide boiler and machinery insurance, but shall require such insurance as applicable, depending on the parameters of whatever project is involved. The cost of boiler and machinery insurance shall be borne by the appropriate contractor, subcontractor, or other interested party. The City shall not insure the interests of any other person or entity, nor shall the City add any other person or entity as an additional insured to any of its policies.

13. The City shall not waive any rights regarding the loss of use of the City's property.

14. As to acts or failures to act or any causes of action by any party to a contract, whether that party be the architect, owner, contractor, City, etc., a cause of action shall accrue according to Tennessee law. No contract provision shall shorten the

statutes of limitations, statutes of repose, or the accrual of any causes of action which the City might have against another party or entity. No contract provision shall waive any warranties, express or implied, nor shall any contract limit the standard of care for any particular service or undertaking to that of the locality where those services or undertakings are performed.

15. Any interest to be paid by the City of Johnson City for late payments shall be at the rate of interest at which the City pays on its most recently issued bonds.

16. The City reserves to itself the right to approve the use of any tests, including but not limited to any borings, test pits, geotechnical work, environmental tests, and the like in its own sole discretion. All design professionals, consultants, subcontractors, or the like shall be duly licensed in the State of Tennessee, if licensure in the State of Tennessee is required for the work to be performed by such design professional, consultants, or subcontractors.

17. Notwithstanding any applicable choice of law or conflict of law provisions or decisions, the law of the State of Tennessee shall govern all contracts to which this document is attached.

18. The City of Johnson City shall not provide any legal advice, legal services, surveys, or procure the same for any other party.

19. Upon payment for services as rendered, all design documents and all instruments of service created by design professionals, including but not limited to architects, landscape architects, engineers, etc., shall become the property of the City of Johnson City, Tennessee. The City of Johnson City shall be allowed to use all design documents and instruments of service, including but not limited to bid drawings, shop drawings, reports, specifications, cost estimates, schematic designs, construction designs, and the like for future additions or alterations to the current project or for use in other projects. Any use of the aforementioned designs and construction documents shall be at

the City's sole risk and without liability to the design professional. The design professional's name and seal will be removed from all such design documents prior to the City's use thereof.

20. No person or entity shall respond to a request for bid or request for proposal with any terms or conditions that might change, alter, amend, or differ with the specifications, terms, or conditions originally provided by the City in its initial request for bids or proposals.

21. The City, as the owner of real property that is the subject of or in any way connected to any bid, request for proposal, or contract, hereby grants to the successful bidder/proposer/contractor the general management of the real property during the time that work is being performed, and the City agrees to transfer information specified in OSHA regulations at 29 CFR §1926.1203(h)(1), so that TOSHA/OSHA shall treat the successful bidder/proposer/contractor as the host employer when working in confined spaces. This paragraph applies only to those areas where the successful bidder/proposer/contractor has access to and performs work within confined spaces as defined in federal OSHA regulations. The successful bidder shall comply with all federal OSHA and state TOSHA regulations, including those regarding confined spaces.

January 6, 2016



**ACKNOWLEDGEMENT OF
REQUIREMENTS FOR BIDS, REQUESTS FOR PROPOSALS, AND
CONTRACTS BETWEEN THE CITY OF JOHNSON CITY AND
OTHER PARTIES AND THE REQUIREMENTS OF THE IRAN DIVESTMENT ACT**

Name of Project: _____

Bid Number: _____

Name of Bidder: _____

The Undersigned hereby acknowledges that the Bidder has carefully reviewed the Requirements For Bids, Requests for Proposals, and Contracts between the City of Johnson City and Other Parties and the requirements of the Iran Divestment Act, and understands that this document is considered part of the Contract Documents and all Bids shall be conditioned by the document.

NOTICE: Pursuant to the Iran Divestment Act of 2014, Tenn. Code Ann. § 12-12-106 requires the State of Tennessee Chief Procurement Officer to publish, using creditable information freely available to the public, a list of persons it determines engage in investment activities in Iran, as described in § 12-12-105. Inclusion on this list makes a person ineligible to contract with the City of Johnson City; if a person ceases its engagement in investment activities in Iran, it may be removed from the list. The State of Tennessee currently uses the State of South Carolina's list, available here:

https://www.tn.gov/assets/entities/generalservices/cpo/attachments/List_of_persons_pursuant_to_Tenn._Code_Ann._12-12-106,_Iran_Divestment_Act-July.pdf

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to T.C.A. § 12-12-106.

**Name of & Title of Signer
(Print or Type):** _____

Signature: _____

Date: _____

COMPLETE AND RETURN WITH BID PACKAGE



STATEMENT OF NO RESPONSE City of Johnson City, Tennessee

NOTE: If you do not intend to respond to this solicitation, complete and return this form on or before the stated deadline to Purchasing Department, P. O. Box 2150, Johnson City, TN 37605 or via facsimile 423/975-2712.

Complete the following:

Bid/RFQ No. _____

Bid/RFQ Name _____

We, the undersigned, decline to respond on the above bid/proposal for the following reason(s):

_____ Insufficient time to adequately prepare a response

_____ Our company does not offer this product or service. Remove us from the vendor list

_____ Our schedule will not permit us to perform in a timely manner

_____ We are unable to meet bond requirements

_____ We are unable to meet insurance requirements

_____ We are unable to offer comparable product or service

_____ We are unable to meet specifications (explain below)

We understand that if this statement is not completed and returned, our company may be deleted from the City's bid list for this commodity or service.

Company Name: _____

Address: _____

Signature: _____

Telephone: _____

E-mail: _____

Date: _____