

CITY OF SHREVEPORT LOUISIANA

Section 20-GENERAL CONTRACT CLAUSES (Revised 10-16-09)

(APPLIES TO ALL INVITATION FOR BIDS {IFB}, REQUEST FOR PROPOSALS {RFP} & REQUEST FOR QUOTES {RFQ})

Changes for 2004 included correcting date for software warranty to 2005 and changing revised dates to 1-5-04.

Change for 4-29-05 included changing #12 to "PROCESSING OF DATA WARRANTY" and correcting revised dates to 4-29-05.

Change for 8-3-05 included updated #8, RIGHT OF REVIEW AND AUDIT and correcting revised dates to 8-3-05.

On 6-7-07 changed 16.3.1.

Revised 9.0 on 1-24-08.

Changed #9.0, 10.0 & #25.0 on 11-7-08

Changed 18.0 11-24-08

Changed 3.0 on 10-16-09

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CITY OF SHREVEPORT GENERAL CONTRACT CLAUSES

(APPLIES TO ALL INVITATION FOR BIDS **{IFB}**, REQUEST FOR PROPOSALS **{RFP}** & REQUEST FOR QUOTES **{RFQ}**)

1.0 PROHIBITIONS OF GRATUITIES

1.1 It shall be unethical for any person to offer, or give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal.

1.2 Kickbacks

1.3 It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor, or higher tier subcontractor under a contract to the prime contractor, or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontractor order.

2.0 ORDER OF PRECEDENCE

2.1 In the event of inconsistency between any of the solicitation documents or any part thereof, the more stringent conditions shall govern.

3.0 Termination for Convenience

3.1 The City may, without cause, terminate this contract in whole or in part for its convenience with a thirty (30) day written notice to the contractor.

3.2 Termination costs do not include lost profits, consequential damages, unabsorbed or under absorbed overhead of the Contractor or its subcontractors, and/or failure of contractor to include termination for convenience clause into its subcontracts and material purchase orders and shall not expose the City to liability for lost profits in conjunction with a termination for convenience, settlement or equitable adjustment.

3.3 Contractor expressly waives any damages, delay damages, or indirect costs which may arise from City's election to terminate this contract in whole or in part for its convenience.

3.4 Termination for Cause

3.5 Termination by the City for cause, default, or negligence on the part of the contractor shall be excluded from the foregoing provisions provided the City shall give the contractor thirty (30) days prior written notice and the opportunity to cure the alleged deficiency.

3.6 Termination costs, if any, shall not apply.

3.7 Non-Appropriation

3.7.1 In the event sufficient funds for the performance of this agreement are not appropriated by the City Council of the City of Shreveport in any fiscal year covered by this contract, this agreement may be terminated by the city, without penalties, by giving notice to Contractor of such facts and the City's intention to terminate its financial obligation.

4.0 EXCUSABLE DELAY

4.1 The Contractor shall not be liable for any excess costs, if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor.

4.2 Such causes may include, but are not restricted to, acts of God or of the public enemy, act of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine, restrictions, strikes, freight, embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

5.0 ASSIGNMENT

5.1 The Contractor shall not sublet, assign, nor by means of a stock transfer or sale of its business, assign or transfer this contract without the written consent of the Purchasing Agent.

6.0 CONTRACT ADMINISTRATION

CITY OF SHREVEPORT GENERAL CONTRACT CLAUSES CONTINUED

- 6.1 Questions or problems arising after the award of this contract shall be directed to the City's Project Manager. If a problem cannot be resolved by mutual agreement, then the Purchasing Agent shall be notified.
- 7.0 CHOICE OF VENUE
- 7.1 The parties hereto stipulate that the venue of any possible litigation arising under this agreement shall be in the First Judicial District Court, Caddo Parish, Louisiana. In the event of conflict, the laws of the State of Louisiana shall prevail.
- 8.0 RIGHT OF REVIEW AND AUDIT (26-217 of the City's Code of Ordinances)
- 8.1 Contractor agrees to maintain financial records pertaining to all matters relative to this Contract in accordance with standard accounting principles and procedures and to retain all records and supporting documentation applicable to this Contract for a period of three (3) years, except that records are subject to audit findings shall be retained for three (3) years after such findings have been resolved.
- 8.2 Contractor agrees to permit the audit by the city or its designated representative of all its records relative to the contract at any time upon such notice as specified therein.
- 8.3 If the contractor is not located within Caddo or Bossier Parish, in the event of an audit he shall deliver the records or have the records delivered to the city's designated representative at an address designated by the city within the City of Shreveport.
- 8.4 If the city's designated representative finds the records delivered to be incomplete the contractor shall pay the representative's costs to travel to the contractor's offices to audit or retrieve the complete records.
- 9.0 PAYMENTS DUE THE CITY
- 9.1 Section 26-211 of the City's Code of Ordinances requires the following:
- 9.1.1 **On every contract to which the City is a party and for which written specifications are prepared, the specification shall include the requirement that before the contract is awarded the contractor shall pay all taxes, licenses, fees, and other charges which are outstanding and due to the City.**
- 9.1.2 **No contract to which the city is a party shall be awarded to any person who:**
- 9.1.2.1 **Has not paid all taxes, licenses, fees and other charges which are outstanding and due the city, or**
- 9.1.2.2 **Owens any property which is adjudicated to the city or which has demolition liens, grass cutting liens, or any other property standards liens on it, or**
- 9.1.2.3 **Owens more than 25% of a legal entity that owns any property which is adjudicated to the city or which has demolition liens, grass cutting liens, or any other property standards liens on it.**
- 9.1.2.4 **For purposes of this section, Own" shall mean to be the last record owner of property prior to a tax sale or adjudication.**
- 9.1.3 Bids/proposals will not be accepted from or contract awarded to any person, firm, or corporations which have at any time failed to execute a contract that has been awarded to them by the City, or which is in arrears to the City upon debt or contract, or which is a defaulter as surety or otherwise upon any obligation to the City.
- 10.0 ADDITIONAL ELIGIBILITY
- 10.1 Other City Departments/Divisions/Agencies who utilize the procurement services of the City of Shreveport's Purchasing Division and other public agencies in Louisiana shall, at their option, be eligible for use of any contracts awarded pursuant to this solicitation.
- 11.0 POLITICAL FUNDS
- 11.1 None of the funds provided by the City pursuant to any agreement arising from this solicitation are to be used for any partisan or political activity to further the election or defeat of any candidate for public office or to further the approval or defeat of any referendum.
- 12.0 PROCESSING OF DATA WARRANTY

CITY OF SHREVEPORT GENERAL CONTRACT CLAUSES CONTINUED

- 12.1 The Contractor shall warrant fault-free performance and fault-free results in the processing of date and date-related data (including, but not limited to calculating, comparing and sequencing) of all hardware, software, and firmware products delivered and services provided hereunder individually or in combination, as the case may be from the effective date of the contract.
- 12.2 Also, the Contractor warrants that during the current year and beyond calculations will be recognized and accommodated and will not, in any way, result in hardware, software or firmware failure.
- 12.3 The City, at its sole option, may require the Contractor, at any time, to demonstrate the procedures it intends to follow in order to comply with all the obligations contained herein.
- 12.4 The obligations contained herein apply to products provided by the Contractor, its subcontractor/sub consultant or any third party involved in the creation of the products to be delivered under this contract.
- 12.5 Failure to comply with any of the obligations contained herein may result in the City of Shreveport availing itself of all its rights under the law and under this contract including, but not limited to, its right pertaining to termination or default.
- 12.6 When software is to be used by the City, the Contractor shall be responsible for delivery of the Licensed Software Source Code to the Contractor's escrow account.
- 12.7 Source code for those modules will be made available from the escrow agent to User if:
- 12.7.1 Contractor ceases to do business or Contractor becomes insolvent.
- 12.7.2 In such case, copies of the Software and documentation will be provided to the User under the terms of this agreement. User has unrestricted access to all software it has accepted from Offeror, but may not transfer source code or documentation to any other agency, commercial or private business under any conditions.
- 12.7.3 The warranties contained herein are separate and discrete from any other warranties specified in the solicitation document, and are not subject to any disclaimer of warranty or limitation of the Contractor's liability.
- 13.0 TYPE OF CONTRACT
- 13.1 It is understood and agreed that any contract entered into shall be considered nonexclusive between the parties.
- 14.0 RESTRICTIONS/LIMITATIONS
- 14.1 No purchases are to be made from this Contract of any item that is not listed, nor of any item that is currently authorized under any contract awarded prior to this Contract.
- 15.0 DEFAULT BY CONTRACTOR
- 15.1 In case of default by Contractor, the City reserves the right to purchase any or all items/services in default in open market, charging Contractor with any additional costs. SHOULD EACH CHARGE BE ASSESSED, NO SUBSEQUENT SOLICITATION RESPONSES OF THE DEFAULTING CONTRACTOR WILL BE CONSIDERED UNTIL THE ASSESSED CHARGE HAS BEEN SATISFIED.
- 16.0 SUBCONTRACTOR/SUBCONSULTANT TRACKING
- 16.1 When the contracts are provided to the City by the successful Contractor for appropriate signatures, the contractor shall, on the forms provided by the City, identify the Prime Contractor/Consultant and subcontractors/sub consultants to the second tier and state which of the following categories each fall within:
- 16.2 Those owned 51 percent or more by persons defined as minorities by the Small Business Administration;
- 16.3 Those owned 51 percent or more by women;
- 16.3.1 Those owned by disadvantaged persons certified by the Department of Disadvantaged Business Enterprises Office (DBE), as qualified under 49 CFR Part 23 by the Assistant Chief Administrative Officer of the City of Shreveport;
- 16.4 Small businesses as defined by the Small Business Administration;
- 16.5 Economically disadvantaged businesses certified through the Louisiana Department of Economic Development;
- 16.6 Those which do not fall into any of the above categories.

CITY OF SHREVEPORT GENERAL CONTRACT CLAUSES CONTINUED

- 16.7 Contractor shall provide updated information to the Project Manager and the Purchasing Agent within five days of the time any of the information changes.
- 16.8 This information is to be provided for record keeping purposes in accordance with Section 26-218 of the Code of Ordinances of the City of Shreveport and shall not affect the award of any contract, except as stated below.
- 16.9 On contracts for which the federal funding sources specify that said information will affect the award of the contract, this language shall be inapplicable.
- 16.10 Contractors should verify whether this is the case for each particular project.
- 17.0 **INSURANCE**
- 17.1 Any Contractor working on City property shall furnish an insurance certificate with coverages acceptable to the City's Risk Manager.
- 18.0 **PRICE CHANGES**
- 18.1 Prices will be firm for the contract term(s) as specified in the solicitation document.
- 18.2 After the term of the contract that included options to renew in the solicitation document, the Contractor may request price increases that are limited to the increase in the Contractor's actual documented cost of doing business or the appropriate CPI, PPI or other standard index approved by the Purchasing Agent, whichever is lower.
- 18.3 Written requests for price increases must be sent by Certified Mail-Return Receipt Requested.
- 18.4 The City reserves the right to accept or reject the price increase within fifteen days after receipt of the request.
- 18.5 Should the City reject the price increase, the City reserves the right to cancel the contract and award to the next best Offeror or to initiate a new solicitation process.
- 18.6 No increase will be effective until approved in writing by the Purchasing Agent.
- 18.7 Any decrease in the cost of the contract items shall be forwarded to the Purchasing Office with immediate inception into the contract. Any decrease in pricing shall not be less than the appropriate CPI or PPI.
- 19.0 **FAIR SHARE PROGRAM**
- 19.1 It is the policy of the City that all prime and subcontractors and service providers utilize qualifying small disadvantaged business concerns.
- 19.2 The City has set a goal of 25% for participation of these said business concerns on all City-let contracts and/or purchases.
- 19.3 The Fair Share Program requirements are outlined in Section 40 on our web site and are available in printed form upon request and are made a part hereof.
- 20.0 **CONFIDENTIAL WORK**
- 20.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by or assembled by the Contractor under this Contract shall be disclosed or made available to any individual or organization by the Contractor without the express prior written approval of the City.
- 21.0 **OWNERSHIP**
- 21.1 The Contractor does hereby convey, sell, assign, and transfer to the City any and all right, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United State of America and the State of Louisiana, relating or pertaining to the particular goods or services purchased or acquired by the City, pursuant to this Contract.
- 21.2 Upon acceptance or approval by the City, all reports, information, and other data, given to, prepared or assembled by the Contractor under this Contract, and any other related documents or items shall become the sole property of the City and shall be delivered to the City, without restriction or future use.
- 21.3 The Contractor may make copies of any and all documents for its files.

CITY OF SHREVEPORT GENERAL CONTRACT CLAUSES CONTINUED

21.4 By execution of this Contract and in consideration of the fee for services to be paid under this Contract, the Contractor hereby conveys, transfers, and assigns to the City all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the project designs and other project data developed under this Contract.

22.0 CONTRACTOR'S LIABILITY

22.1 As additional consideration for this Contract, the Contractor hereby agrees to waive the provisions of Act No. 602 of the Louisiana Legislature, LSA-R.S. 9:2773, and the parties hereto agree that none of the provisions of the said Act 602 of 1975 are to have any force and effect whatsoever on the legal relationship of the parties.

23.0 INDEMNITY

23.1 The Contractor agrees to defend, indemnify and hold the City, its officers, agents and employees, harmless against any and all claims lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons that may arise out of or be occasioned by the Contractor's breach of any of the terms or provisions of this Contract, or by any negligent act or omission of the Contractor, its officers, agents, associates, employees or subcontractors, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of the City, its officers, agents, or employees or separate contractors, and in the event of joint and concurrent negligence of both the Contractor and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Louisiana, without, however, waiving any governmental immunity available to the City under Louisiana law and without waiving any defenses of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

24.0 CLAIM OF LIENS

24.1 The Contractor shall hold the City harmless for any and all claims for liens of labor, services, or material furnished to the Contractor in connection with the performance of the Contractor's obligations under this Contract.

25.0 COVENANT AGAINST CONTINGENT FEE

25.1 The contractor warrants that it has not employed any person, corporation, firm, association, or other organization, either directly or indirectly, to secure this Contract, other than persons regularly employed by the Contractor whose services in connection with the construction of the public contract or project or in securing the public contract were in the regular course of their duties for the Contractor. Further, the Contractor warrants that no part of the contract price received was paid or will be paid to any person, corporation, firm, association, or other organization for soliciting the contract, other than the payment of their normal compensation to persons regularly employed by the Contractor whose services in connection with the construction of the public building or project were in the regular course of their duties for the Contractor.

25.2 For breach or violation of this warranty, the City shall have the right to annul this Contract without liability.

26.0 NONDISCRIMINATION

26.1 As a condition of this Contract, the Contractor covenants that the Contractor will take all necessary actions to insure that, in connection with any work under this Contract, the Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or disability unrelated to job performance, either directly, indirectly or through contractual of other arrangements.

26.2 The Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42, U.S.C.A. 12101-12213, as amended.

26.3 In this regard, the Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for the purpose of evaluating compliance with this and other provisions of this Contract.

27.0 COMPLIANCE WITH LAWS

27.1 The Contractor shall comply with all applicable Federal, State, and Local laws and ordinances, as shall all others employed by them in carrying out the provisions of this Contract.

CITY OF SHREVEPORT GENERAL CONTRACT CLAUSES CONTINUED

28.0 INDEPENDENT CONTRACTOR

28.1 In performing services under this Contract, the relationship between the City and the Contractor is that of independent contractor, and the City and the Contractor by the execution of this Contract does not change its independent status.

28.2 No term or provision of this Contract or act of the Contractor in the performance of this Contract shall be construed as making the Contractor the agent, servant, or employee of the City, or making the Contractor or any of its employees eligible for the fringe benefits, such as sick or annual leave benefits, retirement, insurance, worker's compensation and unemployment compensation coverages, which the City provides its employees.

29.0 LEGAL CONSTRUCTION

29.1 In case anyone or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

30.0 SUCCESSORS AND ASSIGNS

30.1 This Contract shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Contract, their assigns.

31.0 CAPTIONS

31.1 The headings used herein are for convenience and may not reference the complete contents of the clause.

31.2 The Vendor/Contractor understands and agrees that it is their responsibility to adhere to all the requirements listed in every clause herein or provide specific exceptions on a deviation page with the required submittal forms.

32.0 ENTIRE AGREEMENT

32.1 This Contract complete with the solicitation document embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Contract, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Contract. **END OF SECTION 20**