

GENERAL CONDITIONS

RFP

These General Conditions form a part of the contract documents.

DEFINITIONS

All terms are defined in the General or the Compliance Conditions.

Addendum (plural **addenda**) means an addition, correction, deletion, modification, or clarification of or to this specification, issued to prospective submitters prior to the date and time proposals are due.

Awardee means the submitter (or submitters) whose proposal, with or without further negotiation, has been formally accepted for contract by the Board of Commissioners or the General Superintendent of the Park District.

General Superintendent means the General Superintendent of the Chicago Park District. The General Superintendent shall represent and act for the Park District in all matters pertaining to this contract in conjunction therewith. The term General Superintendent shall include any person designated in writing by the General Superintendent to act in his/her stead with respect to this contract and shall also include, with respect to any actions taken prior to the award of this contract, the Director of Purchasing.

Losses means, individually and collectively, liabilities of every kind, including losses, damages, and reasonable costs, payments, and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments, or settlements, any or all of which in any way arise out of or relate to any act, error, or omission of submitter, submitter's breach of the Agreement, or submitter's negligent or otherwise wrongful acts or omissions or those of its officers, agents, employees, consultants, subcontractors, or licensees.

Proposal means a response submitted pursuant to this Request for Proposal, compliant with all of the requirements of the specification documents.

Submitter means a party or entity that submits a proposal in response to this Request for Proposal.

I. COMPLIANCE WITH ALL LAWS

- A. The awardee(s) shall comply with all applicable laws, ordinances, executive orders and regulations of the federal, state, local and city government, which may in any manner affect the performance of this contract. Further, the awardee, including all of its employees, servants, agents, subcontractors, and concessionaires, shall abide by the "Conduct Prohibited" provisions of the Park District Code, IV, B.
- B. To demonstrate compliance with all of the above-mentioned laws, rules, regulations or orders, the awardee and subcontractors will furnish such reports and information as may be required. In the event of the awardee's non-compliance, this contract may be canceled, terminated, or suspended in whole or in part, and the awardee may be declared ineligible for further contracts with the Chicago Park District. Other sanctions may be imposed and remedies invoked as otherwise provided by law.

II. NON-DISCRIMINATION

- A. Awardee shall comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., as amended, and any rules and regulations promulgated in accordance therewith, including, but not limited to the Equal Employment Opportunity Clause, Illinois Administrative Code, Title 44, Part 750 (Appendix A), which is incorporated herein by reference. Furthermore, the awardee shall comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq., as amended.
- B. During the performance of this contract, the awardee agrees that it shall not discriminate against any worker, employee or applicant, or any member of the public, on the basis of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap, unfavorable discharge from military services, parental status, or sexual orientation. Upon request of the Chicago Park District, the awardee also agrees to submit in writing a plan demonstrating compliance with equal employment opportunity laws and Chicago Park District policy requiring equal employment opportunity to all. Awardee further agrees that this clause will be incorporated by the contractor in all contracts entered

into with suppliers of materials or services, subcontractors, and all labor organization furnishing skilled, unskilled and craft union skilled labor, or any other person or organization performing labor or services in connection with this contract.

C. Minority and Women Business Enterprise Participation

1. The awardee shall comply with the Compliance Conditions regarding participation by minority- and women-owned business enterprises, which is incorporated into this contract document.
2. During the term of the contract and any extension thereof, the awardee shall complete and submit quarterly MBE/WBE Utilization Reports, as requested to do so by the Park District.

III. ETHICAL CONDUCT. Any effort to influence any public employee to breach the standards of ethical conduct constitutes a breach of ethical standards. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former 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, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or in any other solicitation or proposal therefore.

IV. CONFLICTS OF INTEREST

- A.** No member of the governing body of the Park District or other unit of government and no other officer, employee, or agent of the Park District or other unit of government who exercises any functions or responsibilities in connection with the carrying out of the project shall have any personal interest, direct or indirect, in the contract.
- B.** The submitter covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in the project to which the contract pertains which would conflict in any manner or degree with the performance of its work hereunder. The submitter further covenants that, in its performance of the contract, no person having any such interest shall be employed.

V. NON-COLLUSION. Neither the awardee (or each joint venture partner) nor its agents, employees, officers and any subcontractors, has been engaged in or been convicted of collusion activities as defined on the Signature Page submitted with the proposal.

VI. SELF PERFORMANCE: The contractor shall perform, manage, and/or supervise at least 25% of the work of the contract with its own forces.

VII. PROHIBITION OF ASSIGNMENT. The awardee shall not delegate the performance of any obligation hereunder to any third party, or subcontract or assign this contract, in whole or in part, without the prior written consent of the Director of Purchasing of the Chicago Park District. Such consent, if granted, shall not relieve the contractor of any responsibilities under the contract.

VIII. PREVAILING WAGE RATES. The awardee shall pay prevailing wages. As a condition of making payment to the awardee, the Chicago Park District may request that the awardee submit an affidavit or other evidence to the effect that not less than the prevailing hourly wage rate is being paid to those employed on contracts in accordance with Illinois law.

IX. AWARDEE'S EMPLOYEES

- A.** The Park District has the right to require the awardee to remove from his workforce assigned to a Park District location any employees deemed incompetent, careless, or otherwise objectionable, or any personnel whose actions are deemed to be contrary to public interests or inconsistent with the best interests of a facility.
- B.** Damage and/or pilferage to Park District property and/or its contents by employees of the awardee shall be the awardee's responsibility, and losses shall be the liability of the awardee.

C. Awardee's employees are to be considered the employees of the awardee and not of the Park District; therefore, awardee shall comply with all federal and state tax requirements and government regulations.

X. **INDEMNIFICATION.** Awardee must defend, indemnify, keep and hold harmless the Park District, its Commissioners, officers, representatives, agents, volunteers and employees from and against any and all lawsuits, claims, demands, liabilities, losses, and expenses, including court costs and attorneys' fees, for or on account of any injury to any person or any death at any time resulting from such injury, or any damage to property which may arise or which may be alleged to have arisen out of, or in connection with, the work, goods, and/or services covered by this contract.

XI. **WARRANTIES, LAWS, AND REGULATIONS.** In addition to the warranties provided by law, submitter hereby expressly represents and warrants the following, when applicable:

- A. That any goods and/or services to be delivered hereunder shall be in full conformity with all manufacturer and seller express warranties and that the goods and/or services shall be free from defects in material, workmanship, or performance and shall conform to the specifications, drawings, and/or samples. Submitter agrees that this warranty shall survive inspection, acceptance, and payment.
- B. That no article sold and delivered hereunder shall infringe any trademark, trade name, patent, copyright, or application therefore. In the event that any article sold and delivered hereunder shall be covered by any trademark, trade name, patent, copyright, or application therefore, awardee shall indemnify and save harmless the Chicago Park District, its commissioners, officers, employees and agents from any and all loss, cost, or expense on account of any and all claims, suits, or judgments on account of the use or sale of such article in violation of rights under such trademark, trade name, patent, copyright, or application.
- C. That any goods to be delivered hereunder shall be manufactured, sold, and installed in compliance with the provisions of all applicable federal, state, and local laws and regulations.
- D. That any goods to be delivered hereunder shall be free and clear of all liens, claims, or encumbrances of any kind.
- E. That nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of the Chicago Park District.

XII. **PROTECTION OF WORK, DAMAGES, AND REPAIRS.** If applicable, awardee shall be responsible for any financial losses incurred by improper or negligent work performance at a site and shall repair or replace and pay for any replacement or damages to pavement, lawns, landscaping, new and existing structures, material, equipment, fixtures, appliances, and apparatus during the course of work, where such damage is directly due to work under this contract, or where such damage is the result of the neglect or carelessness on the part of the awardee or his employees, or on the part of the awardee's subcontractor or his employees.

XIII. **OWNERSHIP OF DOCUMENTS.** If applicable, all drawings, tracings, specifications, reports, test results, models, electronic media, renderings, and all such other documents to be prepared and furnished by the awardee, including copyrights, are and shall become and remain the sole property of the Park District, whether the project for which they are made is executed or not. The Park District shall have the right to use such documents on additional projects as the Park District sees fit. If such documents are used on another project, awardee shall not be responsible for such use and shall not receive additional compensation. Without the prior written consent of the Park District, awardee shall not use any documents prepared or furnished for the project by awardee or the Park District for any use other than its performance under this agreement.

XIV. **PRICING AND PRICE ESCALATION**

- A. Pricing will be firm for the initial contract period.
- B. After an extension option has been utilized, requests for increases in prices may be submitted in writing to the Director of Purchasing. Requests must be based on and include documentation of

increases in the awardee's cost that are due to (1) direct labor increases, (2) consumer price inflation index increases for appropriate supply items, or (3) if the actual usage levels of the supplies vary substantially from the given usage estimates. Such increased costs must not represent an increase for profits or other overhead. No more than one price increase will be considered during any consecutive twelve-month period. No tied increases should exceed the maximum amounts according to the Producers Index or the Consumer Price Index.

- C. If the Director of Purchasing approves price increases, both the Park District and the awardee must sign a properly executed contract modification reflecting the price changes and the date on which such changes are effective. Original prices shall remain in effect until such a contract modification has been fully executed.
- D. The Park District reserves the right to reject any proposed price increase and to terminate without cost the future performance of this contract.

XV. PURCHASE ORDERS. A valid order exists only when a written purchase order has been issued and the following two conditions have been met:

- A. A typed purchase order number appears in the designated space on the purchase order.
- B. The signature of the General Superintendent or the Director of Purchasing (or designee) appears in the designated space on the purchase order.

XVI. INVOICES. The awardee shall submit itemized original invoices in triplicate to the Comptroller's Office, Chicago Park District, 541 North Fairbanks Court, 6th Floor, Chicago, Illinois 60611. All invoices must include the specification number, purchase order number, delivery location, description of goods, materials and/or services, quantity, unit price, extended price and invoice total. Invoices submitted without the above information shall be returned to the awardee for correction.

XVII. TAXES. As a municipal body, the Chicago Park District is not subject to Federal Excise Tax, Illinois Retailer's Occupation Tax, Use Tax, or Municipal Retailer's Occupation Tax. The Illinois Department of Revenue tax exemption number for the Chicago Park District is E-998-0363-02. Upon request, the Comptroller's Office of the Park District will provide a Federal Excise Tax Exemption Certificate. The prices quoted herein shall include all other federal and/or state taxes that apply, direct and/or indirect.

XVIII. PAYMENT. Unless specified otherwise in the contract, the awardee will be paid monthly, beginning thirty (30) days after receipt of invoice. Subsequent payments will be made in the same manner each month in succession for the remaining term of the contract. An audit to reconcile shortage or overpayment will be done at the end of the twelve-month cycle, at which time, if necessary, adjustments will be made for the remaining length of the contract. Any additional costs incurred by the vendor, such as service calls, will be paid on a monthly basis as they arise. Payments shall be made in accordance with applicable provisions of the "Local Government Prompt Payment Act" (50 ILCS 505/1 et seq.).

XIX. MODIFICATIONS, SUBSTITUTIONS, AND AMENDMENTS. The Chicago Park District may from time to time request changes in the scope of services to be performed under this contract, or it may become necessary to substitute one item for another. Such changes, including any increase or decrease in the amount of the awardee's compensation, which are mutually agreed upon by and between the Park District and the awardee, shall be incorporated in written amendments to the contract. No changes, amendments, modifications, substitutions, cancellation or discharge of the proposed contract, or any part hereof, shall be valid unless in writing and signed by the parties hereto, or their respective successors.

XX. DISPUTES. In the event any questions or disputes as to the meaning or requirements of anything in this contract arise, the matter shall at once be referred for consideration and decision to the General Superintendent of the Park District, who shall reduce his/her decision to writing and who shall mail or otherwise furnish a copy to the awardee(s). The decision of the General Superintendent shall be final and binding.

XXI. DEFAULT. Time is of the essence of the contract, and if the rendering of services or the delivery of acceptable items is not completed by the time promised, the Chicago Park District reserves the right, without liability, and in addition to its other rights and remedies, to terminate the contract by notice, effective when received by the awardee, as to stated items not yet shipped or services not yet rendered,

and to secure substitute materials and/or services from any other available source. The awardee shall be liable to and promptly reimburse the Chicago Park District for any difference in price, over and above the contract price, incurred by the Park District in purchasing substitute materials and/or services, from the time of non-performance to the contract expiration date. In addition to the difference in price, the awardee shall promptly reimburse the Park District for expenses in securing alternative goods, materials or services due to the awardee's failure to meet its obligations, and for all attorney's fees and court costs incurred to seek or enforce collection of said difference, costs, fees, and expenses, or any other amounts due the Park District. The Park District reserves the right to hold back any monies due the awardee at the time of the awardee's inability or failure to perform, and to deduct from these funds any said difference, costs, fees and expenses.

XXII. TERMINATION

- A. Termination for Convenience:** The Chicago Park District reserves the right to terminate a contract in whole or in part, without showing cause, upon giving written notice to the awardee. The Park District shall only pay for the goods delivered and accepted and/or services performed prior to the date of termination at the related contract unit prices. The awardee will not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.
- B. Termination for Cause:** Failure on the part of the awardee to fulfill contractual obligations shall be considered just cause for termination of the contract, and the Chicago Park District shall have against the awardee all remedies provided by law and equity. The Park District shall have the option of paying for services performed and/or goods delivered and accepted by the Park District that are in compliance with the requirements of the contract documents prior to the date of termination, or the Park District may return the unused or unconsumed goods to the awardee without obligation for payment thereof or for any shipping costs associated therewith.

XXIII. AUDITS. The Park District reserves the right to conduct an audit, at the Park District's expense, for a period of two (2) years after the expiration of the term of the contract. The awardee shall make all records related to the Park District activities available for audit during regular business hours.

XXIV. NON-APPROPRIATION OF FUNDS. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds. In the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period, the Park District will notify the awardee of such occurrence.

XXV. SEPARATE CONTRACTS AND COOPERATIONS. The Park District reserves the right to obtain other contracts or to employ its own forces to do work adjacent to or immediately connected with services performed under this contract. Awardee shall cooperate with all other contractors and workmen employed by the Park District in such manner and to such extent as to facilitate the completion of all Park District contracts.

XXVI. OTHER SUPPLIERS. It shall be understood and become a condition of the contract that the Chicago Park District reserves the right to secure services from other suppliers when necessary.

XXVII. CHANGE OF ADDRESS OR BUSINESS INFORMATION. The Director of Purchasing must be notified immediately of any change of address of the awardee, or change in name and/or ownership, or of any change in the awardee's business organization as described in the Economic Disclosure Statement submitted with the proposal.

End of General Conditions