

CITY OF PHILADELPHIA
SERVICE SUPPLY EQUIPMENT (SSE) CONTRACTS TERMS AND CONDITIONS OF BIDDING AND CONTRACT

SUBMISSION OF QUOTE

1. PREPARATION AND SUBMISSION OF QUOTE AND AUTHORIZATION TO CONTRACT.

All quotes must be electronically submitted to PHLContracts by a seller with legal authority to bind the seller's Company as that authority is more fully described in the "Consent and Authorization Agreement," which Company has completed, signed and submitted to the City at the time of vendor registration or as an attachment to the first submitted quote; in no event will the City accept a quote from seller unless City has received a duly completed and signed Consent and Authorization Agreement by the time of bid opening. "Seller" as used herein shall refer to either the authorized individual submitting the quote on behalf of the Company or the Company on whose behalf the quote is submitted.

The contract awarded hereunder shall consist of: the Company's duly completed and signed Consent and Authorization Agreement which Agreement is made a part of and incorporated by reference herein, the Bid Solicitation and Quote, all specifications and amendments issued thereto by the City whether acknowledged or not by the seller, any surety bonds approved as to legal form by the Law Department, all representations and certifications made herein by seller including without limitation the certification relating to Local Business Entity preference, any Solicitation for Participation and Commitment Form, all warranties, exhibits and attachments reviewed and accepted by the City, including information entered into PHLContracts, and these SS&E Terms and Conditions of Bidding and Contract (the "Contract"). The Contract contains all the terms, conditions and requirements agreed upon by the parties and no other contract or agreement, oral or otherwise, regarding the subject matter of the Contract shall be deemed to exist or to bind any party hereto or to vary any of the terms contained in the Contract. In the event of a conflict or inconsistency between these Terms and Conditions of Bidding and Contract and any term, condition or provision contained elsewhere in the Contract including without limitation the Bid Solicitation, these Terms and Conditions of Bidding and Contract shall control. The Contract shall not be legally binding upon the City of Philadelphia unless and until it is executed in accordance with Paragraph 13 below.

The Contract may not be changed, amended or renewed, in whole or in part, except by a written amendment executed by the parties, the form of which may be a "Renewal Letter" or an "Add-On Letter" as issued by the Procurement Department. No waiver by the City of any breach or noncompliance by seller with any provision of the Contract shall relieve seller of any of its obligations or representations made under this Contract.

It is the responsibility of the seller to ensure that seller has reviewed any and all amendments to the Bid Solicitation and the Procurement Commissioner may in his/her sole discretion reject any quote for which all amendments have not been acknowledged in accordance with the instructions provided in PHLContracts and PHLContract Seller Guides. No quote may be considered if received after the date and time for the opening of bids established by the Bid Solicitation, nor may any quote be modified after that date and time. The time of bid opening shall be the time displayed in PHLContracts. In the event of any discrepancy between actual time and the time displayed in PHLContracts, the latter shall determine the time of bid opening. Notwithstanding the foregoing, the Procurement Commissioner reserves the right to accept a late quote if it is the only response and it is in the best interest of the City to do so. In the event seller submits more than one quote to the same Bid Solicitation, only the last quote submitted by the time of bid opening will be considered for award.

2. BID SECURITY.

In order to be eligible to bid, all sellers must be enrolled in the City's Annual Bid Security Program. All sellers must complete the registration form and pay a non-refundable Annual Bid Security Program fee of \$100.00, payable annually to the order of "The City of Philadelphia." Enrollment and payment of the Annual Bid Security Program fee must be completed prior to bid opening to be eligible for award. If applicable, an individual bid bond may also be required in the Bid Solicitation; where a bid bond is required, seller shall submit a scanned copy of the bid bond as an attachment to the quote and the City reserves the right to further require submission of the original bid bond at any time following the bid opening. Notwithstanding seller's enrollment in the Annual Bid Security Program, an awarded seller who fails to execute its contract will be subject to the City's remedies set forth in Paragraph 17.

3. BID PROCESSING FEE.

In addition to enrollment in the City's Annual Bid Security Program, seller must pay, for each submitted quote, a non-refundable Bid Processing Fee of \$25.00. Seller shall pay this fee by mail in the form of a company check, bank money order or United States postal money order made payable to the "City of Philadelphia and mailed to "Procurement Department, 1401 JFK Boulevard, Room 170A, Philadelphia, PA 19102-1605;" please indicate Bid Solicitation number on both the envelope and check and mail in sufficient time to be received by the City prior to bid opening. Cash is not an acceptable form of payment. Failure to submit the bid processing fee may result in the seller's disqualification from bidding. In addition, if an award is made pursuant to the Bid Solicitation, any unpaid processing fees owed by the seller to the City must be paid prior to the City's release of any payments to the seller under the Contract.

4. SPECIFICATIONS.

When a specification is issued in connection with the Bid Solicitation, no deviation will be permitted, except if/as indicated in the Bid Solicitation and the seller will be required to furnish articles and/or services in conformity with that specification. When catalogues, model numbers, trade names, or cuts are listed in the Bid Solicitation, they are, unless otherwise specified, included for the purpose of furnishing sellers with reference to information concerning the style, type or kind of article and /or service desired. A seller may offer an article, service and/or equipment, which he/she certifies to be equal or better in quality, performance and other essential characteristics. If submitting an alternate, the seller must specify the alternate (e.g., make and model #) in the quote and submit with the quote a complete description of the article (including any technical supporting documentation) and/or service proposed to be furnished. Failure to do so will require the seller to furnish the article and/or service as specified in the Bid Solicitation. The Procurement

Commissioner reserves the sole right to determine whether alternates offered are equal or better.

Unless otherwise provided in the specification, all items offered by the seller must be new. A "new" item is one which will be used first by the City. This clause shall not be construed to prohibit sellers from offering goods, supplies, equipment, or materials containing recycled materials or printing with recycled content; sellers intending to provide goods made with recycled materials should notify the Procurement Department.

Any and all specifications issued in connection with the Bid Solicitation are deemed incorporated into and become part of the Contract.

5. PATENTS.

The successful seller (also referred to throughout these Terms and Conditions of Bidding and Contract as the "awarded seller" or "Contractor") shall be solely responsible for all royalties and charges that may be due to any patent holder for or on account of the use of any patented appliance, product or processes. Evidence of such payment shall be submitted upon request of the Procurement Commissioner and failure to submit such evidence may, in the sole discretion of the Procurement Commissioner, result in rejection of the quote or constitute an event of default, entitling the City to all rights and remedies as provided herein in Paragraph 19 Default and Termination.

6. LOCAL BIDDING PREFERENCE.*

In accordance with Chapter 17-109 of the Philadelphia Code relating to Local Bidding Preferences for Procurement Contracts, this bid may be subject to a local bid preference¹. In order to determine eligibility to receive the preference, if applicable, seller must be certified by the Procurement Department as a Local Business Entity ("LBE") at the time of bid opening and must indicate that seller's company is an LBE on the general tab of the seller's quote in PHLContracts. By submission of the quote, seller makes the following certification in connection with the grant of any local bidding preference which certification is incorporated into any Contract resulting from this Bid Solicitation:

"Throughout the entirety of the Contract, my company or my LBE certified subcontractors(s)² will perform the majority of any work on the subject Contract within the geographic limits of the City of Philadelphia and my company or my LBE certified subcontractor(s) will maintain within the City a majority of the inventory or equipment that will be used on the Contract or the amount of inventory that is customary for that industry."

If the Procurement Commissioner determines that the awarded seller fails to comply with the foregoing representation at any time during the term of its Contract, the awarded seller's LBE certification will be revoked and the awarded seller shall be deemed in substantial breach of such Contract, shall be required to pay liquidated damages of 10% of the awarded Contract amount, and may be debarred by the Procurement Commissioner in accordance with the Procurement Department Debarment Regulation for a period up to three years.

*Note: If you wish to apply for Local Business Entity (LBE) certification, go to www.phila.gov/quotes. Please allow sufficient time prior to bid opening for processing of the LBE application.

¹ For applicable bids of One Million Dollars or less, the preference is ten percent (10%); for all other applicable bids the preference is five percent (5%).

² If the seller relies upon LBE subcontractor(s) to perform the majority of the work and maintain the majority of the inventory or equipment within the City, the subcontractor(s)' LBE certification and most recent annual affidavit of continuing eligibility must be submitted to the Procurement Department.

EVALUATION AND AWARD

7. TYPES OF SELLERS RESTRICTED.

Sellers must not be a party to more than one bid for the same article or service. A violation of this condition may, in the sole discretion of the Procurement Commissioner, result in rejection of any or all such bids in which the seller has an interest.

8. RESPONSIVENESS.

Subject to the right of the Procurement Commissioner to waive non-responsiveness as set forth below in this Section, these Terms and Conditions of Bidding and Contract and the specifications and requirements included in the Bid Solicitation are mandatory and must be strictly followed by all sellers in the preparation and submission of their quotes. After quotes are opened, the Procurement Department, and other City departments or agencies where appropriate or specified, shall review all quotes for responsiveness to these Terms and Conditions of Bidding and Contract and the specifications and requirements included in the Bid Solicitation.

Any quote which is incomplete, obscure, conditional, or unbalanced, which contains additions not called for, or irregularities of any kind, including alterations or erasures, or which fails to conform in any respect to the specifications and requirements included in the Bid Solicitation and these Terms and Conditions of Bidding and Contract, **including any stated exceptions taken by seller to these Terms and Conditions of Bidding and Contract submitted through PHLContracts**, is non-responsive and shall be rejected, except where the Procurement Commissioner, in his/her sole discretion, determines that the non-responsiveness is not material or that a waiver of the non-responsiveness is otherwise permitted by the Bid Solicitation, by these Terms and Conditions of Bidding and Contract or by law. The Procurement Department's determination of non-responsiveness shall be final and any quote rejected as non-responsive shall not be eligible for award of the Contract.

9. RESPONSIBILITY.

Unless otherwise specified, after quotes are opened the Procurement Department and, where appropriate or specified, other City departments or agencies shall review and may investigate the lowest responsive seller's responsibility including, but not limited to, its integrity, qualifications, references, capacity and ability to perform the Contract resulting from the Bid Solicitation in accordance with

its terms. All determinations of responsibility shall be vested in the sole discretion of the Procurement Commissioner and other City officials. Any seller who is deemed not responsible shall be ineligible for award of the Contract.

Sellers deemed not responsible will be notified of such determination and the reasons therefore in writing by the Procurement Department, and shall have the right to contest the determination by submitting to the Procurement Department, within forty-eight (48) hours after receipt of its written determination, a written request for reconsideration that includes information relating to the seller's qualifications and responsibility and demonstrating the insufficiency of the reasons stated in the written determination finding the seller not responsible. Any further determination of a contesting seller's responsibility shall be vested in the sound discretion of the Procurement Commissioner and other City officials.

10. CANCELLATION AND AWARD.

The Procurement Commissioner, in his/her sole discretion, may cancel any Bid Solicitation prior to opening. After bid opening, the Procurement Commissioner, in his/her sole discretion, may reject all quotes, if deemed in the best interest of the City. In all cases where a Contract award is made by the Procurement Department, the seller is bound by the terms and conditions of the Bid Solicitation upon the submission of its quote. All quotes are valid for a period of not less than sixty (60) days, or as otherwise specified in the Bid Solicitation. If the quote has not been awarded within the specified period of time, the quote shall be valid for subsequent award only upon the express consent of the seller with no change to the submitted quote. Any price increases/decreases expressly provided for in the Bid Solicitation will be allowed. All Contract awards made in PHLContracts are preliminary and shall be made by the Procurement Department to the seller who is determined by the Procurement Department to be the lowest responsive and responsible seller and are subject to cancellation by the Procurement Commissioner in the best interests of the City. Awards of contracts are subject to Paragraph 13 b. and are contingent upon the seller's satisfaction of the conditions set forth in Paragraph 13 b.

11. UNIT PRICING AND QUANTITIES AWARDED.

When applicable, unit pricing quoted will prevail in the event of any discrepancy(ies) between unit price and the extended amount. This same quoted unit price will be the determining factor in establishing applicable Contract amount(s) and award(s).

For requirements contracts only, the articles and quantities of such articles as set forth in the Bid Solicitation are estimates and the Procurement Commissioner, in his/her sole discretion, may make an award for none or all or some of the articles quoted and in such quantities as the Procurement Commissioner shall deem appropriate. For firm limit contracts, it is the City's intent to award based upon the quantities set forth in the Bid Solicitation, but the City reserves the right to award more or less.

12. DELIVERY, PRICE INCREASES AND TIE BIDS. All articles must be delivered at the price(s) quoted, FOB Destination. Quotes containing reservations of the right to increase the price(s) quoted including, but not limited to, late payment charges, will not be considered, except where the Procurement Commissioner, in his/her sole discretion, finds it in the City's best interest to do so. In the event of an absolute tie, the award decision will be made in the best interests of the City as determined by the Procurement Commissioner as informed by Mayoral Executive Order 04-12, "Procurement of Local and American Goods and Services."

CONTRACT EXECUTION AND CONFORMANCE

13. CONTRACTS.

- a. Awards of contracts in amounts less than or equal to \$34,000 shall become Contracts binding upon the City upon notice of award made through PHLContracts.
- b. Awards made in PHLContracts of contracts in amounts greater than \$34,000 shall not become contracts binding upon the City until the following conditions have been satisfied:
 - i. Successful seller posts sufficient performance security, as required in the Bid Solicitation, within the time specified in the written notice of award;
 - ii. Successful seller posts a payment bond or other payment security, if and as required by the Bid Solicitation, within the time specified in the written notice of award;
 - iii. Approval of the Contract as to form by the City's Law Department;
 - iv. Certification by the Director of Finance and City Controller as to the availability of funds; and
 - v. Execution of the Contract by approval in PHLContracts by the Procurement Commissioner.

The Procurement Commissioner may, in his/her sole discretion, cancel any Contract award if any of the above conditions (i-v) are not satisfied, or if the Procurement Commissioner, in his/her sole discretion, determines cancellation to be in the best interests of the City. The seller agrees that in the event of such cancellation, it shall not have any claim against the City, including any claim for breach of Contract or of any other legal duty, or for lost profits, costs, damages, or expenses of any kind.

14. PERFORMANCE SECURITY.

When applicable, the successful seller is required to furnish an individual performance bond, issued by a surety approved by the City and in the amount specified in the Bid Solicitation.

15. INSURANCE.

a. Unless otherwise specified, the successful seller (referred to in this Section as "Contractor") shall, at its sole cost and expense, procure and maintain in full force and effect, during the entire period of the Contract (including any applicable warranty and/or renewal periods), the minimum types of insurance specified below. All insurance shall be procured from reputable insurers authorized to do business in the Commonwealth of Pennsylvania and shall be acceptable to the City. All insurance required herein shall be written on

an "occurrence" basis and not a "claims-made" basis. The City of Philadelphia, its officers, employees, and agents are to be named as additional insureds on the General Liability policy required hereunder. Also, an endorsement is required stating that the coverage afforded these parties as additional insured will be primary to any other coverage available to them. The City's coverage as an additional insured shall be primary coverage. The insurance policy or the Contractor shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, canceled or non-renewed. Certificates of insurance evidencing the required coverages shall be submitted to the City within fifteen (15) days of notice of contract award and for each renewal period. The City reserves the right to require the Contractor to furnish certified copies of the original policies of all insurance required hereunder at any time upon fifteen (15) days prior written notice. The insurance requirements set forth herein are not intended and shall not be construed to modify, limit, or reduce the indemnifications made in this Contract by the Contractor to the City or to limit the Contractor's liability under this Contract to the limits of the policies of insurance required to be maintained by the Contractor hereunder.

(a) WORKERS COMPENSATION AND EMPLOYERS LIABILITY

- i. Workers' Compensation – Statutory limits
- ii. Employers Liability - \$100,000 Each Accident – Bodily Injury by Accident; \$100,000 Each Employee – Bodily Injury by Disease; \$500,000 Policy Limit – Bodily Injury by Disease
- iii. Other states insurance including Pennsylvania

(b) GENERAL LIABILITY INSURANCE

- i. Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- ii. Coverage: Premises operation: Blanket Contractual liability; Personal Injury liability; Products and completed operations; Employees as insureds; Cross liability; Broad form property damage (including loss of use) liability; Asbestos abatement liability coverage (Note: Required for asbestos abatement projects only).

(c) AUTOMOBILE LIABILITY

- i. Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- ii. Coverage: owned, non-owned and hired vehicles.

Contractors providing only supplies and equipment to the City via Common Carrier are only required to maintain General Liability insurance, naming the City of Philadelphia, its officers, employees and agents as additional insureds.

b. Certificates of Insurance. No Contract will be executed nor purchase order issued unless and until all required Certificates of Insurance, including all required coverages and limits are received. All insurance MUST meet the following requirements:

Insured must be in the same name and address as the Contractor
The insurance carrier must be rated "A-VII" or better by AM Best
The certificate holder must be the City of Philadelphia
The City of Philadelphia, its officers, employees and agents
must be specifically named as additional insureds on the
Certificate of Insurance in the "Description of Operations" section
Certificate of Insurance must be signed by an authorized representative of the insurance company/carrier
Certificates of Insurance evidencing the required coverage must specifically reference the City Contract Number for which
they are being submitted

All Certificates of Insurance must be sent to the following address:

Procurement Department
1401 J.F.K. Boulevard
Room 120 Municipal Services Building
Philadelphia, PA 19102
Attention: Contract Department- Insurance Certificates

16. INDEMNIFICATION.

All sellers (referred to in this Section as "Seller Company") shall indemnify, defend and hold harmless the City, its officers, employees and agents from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, liabilities and expenses, occasioned wholly or in part by the Seller Company's act or omission or fault or negligence or the act or omission or fault or negligence of Seller Company's agents, subcontractors (including suppliers), employees or servants in connection with the Contract, including, but not limited to, those acts or omissions or fault or negligence in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, the Seller Company's default under the Contract, intentional acts, failure to pay subcontractors and suppliers and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret). This obligation to indemnify, defend and hold harmless the City, its officers, employees and agents shall survive the termination of the Contract resulting from the Bid Solicitation.

17. FAILURE TO EXECUTE CONTRACT.

Any seller not lawfully released from its quote, or who fails, refuses or is unable to furnish any required payment security, performance

security or insurance, as may be required by the Bid Solicitation and/or these Terms and Conditions of Bidding and Contract, shall be liable for 10% of the amount of its quote, as liquidated damages to the City; or where the damages are readily ascertainable by the City, for the actual loss, cost or damage incurred by the City as a result of its failure to execute the Contract or to furnish such bonds, performance security or insurance.

18. ASSIGNMENT.

The successful seller shall not assign the Contract resulting from the Bid Solicitation, or any part of the Contract, or any right to any monies to be paid under the Contract, or delegate performance of the Contract, without obtaining the prior written consent of the Procurement Commissioner. The decision whether to consent to an assignment is within the Procurement Commissioner's sole discretion. In no case shall the Procurement Commissioner's consent to the assignment of any monies to be paid under the Contract relieve the seller from faithful performance of any of its obligations under the Contract or change any of the terms and conditions of the Contract. Any purported assignment in violation of this provision shall be of no effect.

19. DEFAULT and TERMINATION.

All work performed and goods and services rendered by a successful seller (referred to in this Section as "Contractor") under any Contract resulting from the Bid Solicitation shall strictly conform to these Terms and Conditions of Bidding and Contract and the specifications and requirements contained in the Bid Solicitation.

a. The following shall constitute events of default under any Contract resulting from the Bid Solicitation:

- i. Failure by Contractor to comply with any provision of the Contract, including the specifications contained in the Bid Solicitation and these Terms and Conditions of Bidding and Contract and/or failure by Contractor to comply with "applicable law" as that term is defined in Paragraph 24.
 - ii. Falseness of any representation or warranty by Contractor in the Contract or in other document(s) submitted to the City by Contractor in connection with the Bid Solicitation or fraud in connection with the performance of the Contract.
 - iii. Failure by Contractor to pay its suppliers or subcontractors, misappropriation of any funds provided under the Contract or failure to notify City upon discovery of any misappropriation.
 - iv. A violation of law by Contractor which results in its making a guilty plea, a plea of nolo contendere, or conviction of a criminal offense by Contractor, its directors, employees, or agents or indictment or charges, which in the sole judgment of the Procurement Commissioner, adversely affects the performance of the Contract or Contractor's responsibility or fitness to provide goods and services to the City.
 - v. Failure by Contractor to comply with Chapter 17-1600 of The Philadelphia Code entitled "Economic Opportunity Plans," or the Mayoral Executive Order establishing the City's Antidiscrimination Policy relating to the participation of Minority, Woman and Disabled owned business enterprises.
 - vi. The Procurement Department's determination that the Contractor is not responsible as such term is described in Paragraph 9 above, where such determination is made, and is based upon, information received after award of the Contract and/or after execution of the Contract by the Procurement Commissioner and/or after satisfaction of any or all other conditions of a binding Contract set forth in Paragraph 13 above.
 - vii. Any other act or omission identified in these Terms and Conditions of Bidding and Contract or elsewhere in the Bid Solicitation as an event or condition constituting default.
- b. Upon the occurrence of an event of default, the Procurement Commissioner, in his/her sole discretion, may require Contractor to cure the default within a period of time to be determined by the Procurement Commissioner, or terminate the Contract in whole or in part and exercise any one or more of the following remedies (which remedies may be concurrent and shall be in addition to and not in lieu of the remedies available to the City at law, in equity, under any bond(s) filed in connection with the Contract or under other sections of these Terms and Conditions of Bidding and Contract):
- i. Purchase goods and/or services from others in substitution of goods or services that were not furnished or performed by Contractor or that were defective or otherwise in violation of any provision of the Contract; the cost of such substituted goods and services shall be the sole responsibility of Contractor and Contractor agrees to pay immediately, upon receipt of the City's invoice, the difference between the Contract price and the substituted product or service cost, plus any other loss, cost or damages incurred by the City.
 - ii. Appropriate to the payment of the difference between the Contract price and the cost of such substitute goods or services, and the amount of any other loss, cost or damage incurred by the City as a result of the default, any monies which may then be due and payable to Contractor under this Contract or any other Contract that Contractor then has with the City.

The City shall notify Contractor in writing of such termination, which shall be effective as of the date specified in the notice of termination (the "Termination Date"). The Procurement Commissioner may, in his/her sole discretion, require Contractor to continue to furnish all goods and perform all services required under the Contract until the Termination Date, in which case, subject to the remedies enumerated above, the successful seller shall be paid in accordance with the Contract therefore. If the City requires Contractor to cure the event(s) of default, or to continue to furnish goods or services until the Termination Date, and Contractor refuses or fails to do so, then such failure shall itself be deemed an event of default under this Section, for which the City may exercise any of its rights hereunder.

20. PAYMENT FOR EQUIPMENT.

Unless otherwise provided in the specifications, when equipment involves installation, (which shall also be interpreted to mean erection and/or setting up or placing in position for service or use) and/or testing, and where such installation or testing is delayed through no fault of the seller (referred to in this Section as "Contractor"), Contractor shall be entitled to a payment equal to 50% of the price quoted when such equipment is delivered on site and to a further payment equal to an additional 25% of the price quoted when the equipment is installed and ready for test. The balance shall be paid only after the equipment is tested and found to be satisfactory by the City. If the equipment must be tested, but installation is not required to be made by the supplier or if the equipment must be installed but testing is not required, and the installation or testing is delayed through no fault of the Contractor, Contractor shall be entitled to a payment equal to 75% of the price quoted at the time of delivery and the balance shall be paid after satisfactory testing and/or installation, as required.

TAX MATTERS**21. TAX EXEMPTION.**

The City of Philadelphia is exempt from the payment of any federal excise or transportation taxes and any Pennsylvania sales tax. The price quote must be net, exclusive of taxes. The City will not pay any sales taxes imposed on the seller. The seller must not include any sales taxes imposed on the seller in its costs to be reimbursed by the City. However, when under established trade practice any federal excise tax is included in list prices, seller may bid the list price and shall show separately the amount of the federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the City. In the event seller pays any sales or use tax, seller hereby assigns to City, or City's agent, all of its rights, title and interest in any sales or use tax which may be refunded as a result of the purchase of any articles furnished in connection with the Contract and seller, unless directed by the City, shall not file a claim for any sales or use tax refund subject to this assignment. Seller authorizes the City, in City's name or the name of Seller Company, to file a claim for refund of any sales or use tax subject to this assignment.

22. TAX INDEBTEDNESS.

The City of Philadelphia does not wish to do business with tax delinquents or other businesses indebted to the City. In furtherance of this policy, the following certifications have been developed and shall form a part of any Contract resulting from the Bid Solicitation. The successful seller or other entity contracting with the City is referred to below as the "Contractor".

- a. Contractor's Certification of Non-Indebtors - Contractor hereby certifies and represents that Contractor and Contractor's parent company(ies) and subsidiary(ies) are not currently indebted to the City of Philadelphia (the "City") and will not at any time during the term of this Contract (including any extensions or renewals thereof) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, Contractor acknowledges that any breach or failure to conform to this certification may, at the option of the City, result in the withholding of payments otherwise due to Contractor and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments and/or the termination of this Contract for default (in which case Contractor shall be liable for all costs, losses and other damages resulting from the termination).
- b. Subcontractor's Certification of Non-Indebtors - Contractor shall require all subcontractors performing work in connection with this Contract ("subcontractor" shall also include suppliers providing goods or materials) to be bound by the following provision, and Contractor shall cooperate fully with the City in exercising the rights and remedies described below or otherwise available at law or in equity:

"Subcontractor hereby certifies and represents that subcontractor and subcontractor's parent company(ies) and subsidiary(ies) are not currently indebted to the City of Philadelphia ("City"), and will not at any time during the term of Contractor's Contract with the City (the "Contract"), including any extensions or renewals thereof, be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available at law or in equity, subcontractor acknowledges that any breach or failure to conform to this certification may, at the option of the City, result in the withholding of payments otherwise due to subcontractor for services rendered in connection with the Contract and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments otherwise due to subcontractor and/or the termination of subcontractor for default (in which case subcontractor shall be liable for all costs, losses and other damages resulting from the termination)."

23. TAX REQUIREMENTS.

Any person or entity that quotes on and/or is awarded a contract by the City and/or School District of Philadelphia, is subject to Philadelphia's business tax ordinances and regulations.

- a. The City Solicitor has determined that anyone who is awarded a contract by the City and/or School District pursuant to a quote has entered into a contract within the City, and the subsequent delivery of goods into the City or performance of services within the City constitutes doing business in the City and subjects the successful seller, including but not limited to, one or more of the following taxes:
 - i. Business Income and Receipts Tax
 - ii. Net Profits Tax
 - iii. City Wage Tax

The successful seller, if not already paying the aforesaid taxes, is required to apply to the Department of Revenue, 1401 John F. Kennedy Blvd., Public Service Concourse, Municipal Services Building, Philadelphia, PA 19102 for a tax identification number and to file appropriate business tax returns as provided by law. Questions should be directed to the Business and Earnings Tax Unit at (215) 686-6600.

GENERAL INFORMATION

24. COMPLIANCE WITH LAWS.

Successful Seller (sometimes referred to in paragraphs 25 through 31 herein as "Contractor"), in the performance of the Contract shall comply with, and all goods, services, documents and other materials furnished under the Contract shall conform with, all applicable present and future federal, state or local laws, ordinances, executive orders, rules, regulations and all court orders, injunctions, decrees and other official interpretations thereof of any federal, state or local court, administrative agency or governmental body, including the City, the Commonwealth of Pennsylvania and the United States of America ("applicable law"). Applicable law shall include, without limitation, the specific laws referenced in paragraphs 25 through 31 herein and Chapter 17-1700 (Contractors are obligated to pay their subcontractors promptly after Contractor receives payment from the City) and Chapter 17-1800 (Contractor shall cooperate with the City in addressing its goal of securing employment for Returning Citizens). Contractor shall maintain during the term of the Contract all licenses, and authorizations required by any applicable law.

25. NONDISCRIMINATION.

- a. Any Contract awarded pursuant to the Bid Solicitation is entered into under the terms of the Philadelphia Home Rule Charter and in its performance, Contractor shall not discriminate nor permit discrimination against any person because of race, color, religion, ancestry, national origin, sex, gender identity, sexual orientation, age or disability. Such discrimination shall constitute an event of default under this Contract entitling City to terminate this Contract forthwith. This right of termination shall be in addition to any other rights or remedies as provided herein in Section 19 or otherwise available to the City at law or in equity.
- b. In accordance with Chapter 17-400 of The Philadelphia Code, Contractor agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment, on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin or ancestry, shall constitute an event of default under this Contract and shall entitle the City to all rights and remedies as provided herein in Section 19 or otherwise available to the City at law or in equity. Contractor agrees to include the immediately preceding sentence, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into pursuant to this Contract. Contractor further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute an event of default under this Contract entitling the City to all rights and remedies as provided herein in Section 19 or otherwise available to the City at law or in equity.

26. ETHICS REQUIREMENTS.

To preserve the integrity of City employees and maintain public confidence in the competitive bidding system, the City intends to vigorously enforce the various ethics laws as they relate to City employees in the soliciting for bids and execution of City contracts. Such laws are in three categories:

- a. Gifts. Executive Order No. 10-16 which prohibits any City officer or employee from accepting or receiving a gift as defined in Executive Order No. 10-16, of any monetary value from any Person who either, (a) engages in lobbying on behalf of a principal for economic consideration, and is registered as such pursuant to the requirements of Section 20-1202 of The Philadelphia Code, including any attorney at law while engaged in lobbying; or (b) at the time or within twelve (12) months preceding the time a gift is received, (i) is seeking, or has sought, official action from that City employee; or (ii) has operations or activities regulated by that City employee's department, agency, office, board or commission; or (iii) has a financial or other substantial interest in acts or omissions taken by that City employee, which the City employee is able to affect through official action. Seller understands and agrees that if it offers anything of value to a City officer or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order, seller may be subject to sanctions with respect to future City Contracts. Such sanctions may range from disqualification from participation in a particular Contract to debarment, or loss of financial assistance depending on the nature of the violation. All sellers, agents or intermediaries who are solicited for gifts or gratuities by City employees are urged to report these incidents to the Inspector General, Curtis Center, 601 Walnut Street, Suite 300 East, Philadelphia, PA 19106.
- b. City Employee Interest in City Contracts. In accordance with Section 10-102 of The Philadelphia Home Rule Charter, no bid shall be accepted from, or Contract awarded to, any City employee or official, or any firm in which a City employee or official has a direct or indirect financial interest. All sellers are required to disclose any current City employees or officials who are employees or officials of the seller's firm, or who otherwise would have a financial interest in the Contract.
- c. Conflict of Interest. Both the State Ethics Act and the City Ethics Code prohibit a public employee from using his/her public office or any confidential information gained thereby to obtain financial gain for himself/herself a member of his/her immediate family, or a business with which he/she or a member of his/her immediate family is associated. "Use of public office" is avoided by the employee or official publicly disclosing the conflict and disqualifying himself/herself from official action in the matter, as provided in The Philadelphia Code Section 20-608.

27. NORTHERN IRELAND, IRAN or SUDAN.

Section 17-104(4)(a) and (b) of The Philadelphia Code prohibits the City from accepting bids from companies that do business in Northern Ireland, Iran and Sudan unless, in the instance of Northern Ireland, that business has implemented the fair employment

principles embodied in the MacBride Principles or in the instance of Iran or Sudan, there exists a federal override or the business is excluded from disqualification as described in the Sudan Accountability and Divestment Act of 2007. In furtherance of this ordinance, seller makes the following certification and representations:

- a. In accordance with Section 17-104 of the Philadelphia Code, seller by submission of its quote certifies and represents that (i) seller (including any parent company, subsidiary, exclusive distributor, or company affiliated with Seller Company) does not have, and will not have at any time during the term of any Contract resulting from this quote (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland, Iran and Sudan and (ii) no product to be provided to the City under any resulting Contract will originate in Northern Ireland, Iran or Sudan unless, in the instance of Northern Ireland, seller has implemented the fair employment principles embodied in the MacBride Principles or in the instance of Iran or Sudan, there exists a federal override or the seller is excluded from disqualification as described in the Sudan Accountability and Divestment Act of 2007. In addition to any other remedies reserved under this Bid Solicitation and Contract, any false certification by seller is subject to the penalties stated in Section 17-104 (c) (.3) which include relinquishment of any Bid Security, termination of the Contract and ineligibility for future quote submissions and contract awards.

28. DISCLOSURES: SLAVERY ERA RECORDS, FEMALE EXECUTIVES and SOLE SOURCE CONTRACTS.

- a. In accordance with Philadelphia Code Section 17-104 (2), the successful seller, after award of the Contract, will complete an affidavit certifying and representing that the seller (including any parent company, subsidiary, exclusive distributor or company affiliated with seller) has searched any and all records of the seller or any predecessor business entity regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

The seller expressly understands and agrees that any false certification or representation in connection with this disclosure and/or any failure to comply with these requirements shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity and the Contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

- b. In accordance with Philadelphia Code Section 17-104 (3), seller must provide the following information with its quote:
 - (i) the current percentage of female executive officers in the company and the current percentage of females on the company's executive and full boards;
 - (ii) the company's aspirational goals for the inclusion of females in executive positions and on the executive and full boards; and
 - (iii) the intended efforts by the seller to achieve the aspirational goals.

This information should be submitted with the quote but the City reserves the right to allow seller to submit this information at any time prior to award of a Contract.

- c. If this is a Sole Source Contract, seller is subject to the disclosure requirements established under Chapter 17-1400 of The Philadelphia Code.

29. MINIMUM WAGE & BENEFITS AND PREVAILING WAGE.

- a. If this quote is for the furnishing of services, except where services are incidental to the delivery of supplies or equipment, it is subject to Chapter 17-1300 of The Philadelphia Code and Mayoral Executive Order 03-14 which establish minimum benefits (health benefits and sick leave) and wages for employees. If Contractor and Contractor's first tier subcontractor(s) furnishing services to the City meet the definition of "Employer," as set forth in Philadelphia Code Sections 17-1302(5) and 17-1303, each shall comply with the minimum wage and benefits provisions established by these laws: from May 20, 2014 through December 31, 2014, the minimum wage shall be \$10.88 per hour; on January 1, 2017, the minimum wage shall be \$12.10 per hour, which wage amount shall be adjusted annually thereafter, by the CPI Multiplier.* Contractor and its first tier subcontractor(s) shall notify each affected employee what wages are required to be paid. Accordingly, Contractor by submission of its quote, acknowledges and certifies its compliance with Chapter 17-1300 and Executive Order 03-14 and shall also require its first tier subcontractors to likewise certify and acknowledge their compliance. Contractor shall promptly provide to the City, at its request, all documents and information verifying its compliance and its first tier subcontractor(s)' compliance with these laws. Any request for a partial or total waiver of these requirements must be based on specific stipulated reasons elaborated in Philadelphia Code Section 17-1304 and should be directed to the attention of the Office of Labor Standards within the City's Managing Director's Office (MDO). Failure to comply with these provisions absent an approved waiver or partial waiver, is an event of default under the Contract and shall also subject Contractor and its first tier subcontractor(s) to the enforcement provisions in Philadelphia Code Section 17-1312.
- b. The following services require the payment of prevailing wages and submission of certified payroll records under Philadelphia Code Section 17-107 for compensation that exceeds \$200,000.: landscaping; building care and maintenance; custodial/janitorial housekeeping; security guard service; demolition; snow removal; stucco; roof capping; furniture moving; locking systems and repairs; mechanical/HVAC maintenance and repairs; elevators, escalators, and electrical maintenance and repair, and subcontracts of all or a portion of such contracts. In addition, building service contracts for compensation exceeding \$100,000. are also subject to Section 17-107.

*The CPI Multiplier shall be calculated by the Director of Finance for quotes issued on or after January 1 of each year by dividing the most recently published Consumer Price Index for all Urban Consumers (CPI – U) All Items Index, Philadelphia, Pennsylvania, as of January of such year, by the most recently published CPI – U as of January 1, 2017.

30. PROTECTION OF DISPLACED CONTRACT WORKERS.

If this quote is for the furnishing of the following services, Security, Janitorial, Building Maintenance, Food and Beverage, Hotel or Non-Professional Health Care Services, then this quote is subject to the "Protection of Displaced Contract Workers" Law, Chapter 9-

2300 of the Philadelphia Code. The successful Contractor, if it is a Successor Contractor is required, among other things, to retain certain service employees of the Predecessor Contractor for a ninety (90) day period.

31. EQUAL BENEFITS.

If this is a Service Contract, as defined in Philadelphia Code Section 17-1901(4), for an amount in excess of \$250,000, Contractor shall, for employees providing services under the Service Contract who reside in the City or employees who are non-residents subject to City wage tax under Philadelphia Code Section 19-502(b), extend the same employment benefits the Contractor extends to spouses of its employees to life partners of such employees. By submission of its quote, Contractor so acknowledges and certifies its compliance with Chapter 17-1900 of the Philadelphia Code and shall notify its employees of the employment benefits available to life partners pursuant to Chapter 17-1900. Following the award of a Contract subject to Chapter 17-1900 and prior to execution of the Contract by the City, Contractor shall certify that its employees have received the required notification of the employment benefits available to life partners and that such employment benefits will actually be available, or that the Contractor does not provide employment benefits to the spouses of married employees.

Contractor's failure to comply with the provisions of Chapter 17-1900 or any discrimination or retaliation by the Contractor against any employee on account of having claimed a violation of Chapter 17-1900 shall be a material breach of the Service Contract.

32. PROTECTED HEALTH INFORMATION.

- a. The City of Philadelphia is a "Covered Entity" as defined in the regulations issued pursuant to the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The City's business activities include both (1) functions which make the City a Covered Entity and, therefore, subject to HIPAA, and (2) functions that are not subject to HIPAA. In accordance with 45 CFR §164.105(a)(2)(iii)(D), the City has designated certain departments and units of the City as health care components that must comply with HIPAA ("Covered Components"). The Covered Components of the City as of August 1, 2013, include: Ambulatory Health Services, a unit of the Philadelphia Department of Public Health ("PDPH"); the Office of Behavioral Health and Intellectual Disability Services; the Philadelphia Nursing Home (a unit of PDPH); the Benefits Administration Unit of the Office of Human Resources; Emergency Medical Services (a unit of the Philadelphia Fire Department); and the Philadelphia Public Health Laboratory (a unit of PDPH). This list is subject to change, and any department or unit of the City that the City in the future determines to be a Covered Component under HIPAA shall be deemed to be a Covered Component for purposes of this Section 32.
- b. To the extent (1) this Contract is awarded by the City for or on behalf of a Covered Component and/or requires the performance of services that will be delivered to or used by a Covered Component (whether or not the City department or unit through which the City entered the contract is a Covered Component) and (2) Contractor is a "Business Associate" of the City, as defined in 45 CFR §160.103, Contractor shall comply with the City's Terms and Conditions Relating to Protected Health Information ("City PHI Terms") posted on the City's website (at <https://secure.phila.gov/eContract/> under the "About" tab). The City PHI Terms are hereby incorporated in this Section 32 as if fully set forth herein.

33. FORUM SELECTION, CONSENT TO JURISDICTION, AND NOTICES.

The Contract and all disputes arising under this Contract shall be governed, construed and decided in accordance with the laws of the Commonwealth of Pennsylvania. The parties agree that any lawsuit, action, claim or legal proceeding involving, directly or indirectly, any matter arising out of or related to the Contract or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two forums. The parties further agree not to raise any objection to any lawsuit, action, claim or legal proceeding which is brought in either of these two forums and the parties expressly consent to the jurisdiction and venue of these two forums. The seller hereby waives trial by jury in any legal proceeding in which the City is a party and which involves, directly or indirectly, any matter (whether sounding in tort, Contract or otherwise) in any way arising out of or related to the Contract or the relationship created or evidenced hereby. This provision is a material consideration upon which the City relied in entering into the Contract. The parties further agree that service of original process in any such lawsuit, action, claim or legal proceeding may be duly affected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in the vendor registration in PHLContracts. Any and all other notices by the City may be issued to seller through PHLContracts or by other means to the address provided in seller's Vendor Registration.

34. ELECTRONIC PAYMENTS.

For any contract awarded for work to be performed on or after July 1, 2019 the City has instituted a policy of making its payments under the contract through electronic deposits into the awarded entity's designated bank account. Before any City payments are made, the awarded entity shall supply the City with the information necessary for the City to initiate electronic payments by completing one of the electronic payment processing enrollment forms available on the City's vendor portal at <https://secure.phila.gov/finance/vendorpayments>. Applicants awarded a contract before July 1, 2019 are encouraged to complete one of the electronic payment processing enrollment forms before the conversion to electronic payments becomes mandatory. The City intends to stop issuing paper checks.