

## GENERAL CONDITIONS

1. **DEFAULT:** In case of default by the Contractor, the City reserves the right to purchase any or all items in default in the open market, charging the Contractor with any excessive costs. Should such charge be assessed, no subsequent bids of the defaulting Contractor will be considered until the assessed charge has been satisfied.
2. **NON-APPROPRIATION:** Any contract entered into by the City resulting from this bid invitation shall be subject to cancellation without damages or further obligation when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year.
3. **INDEMNIFICATIONS:** The Contractor agrees to indemnify any save harmless the City of Gaffney and all City officers, agents and employees from claims, suits, actions, damages and costs of every name and description, arising out of or resulting from the use of any materials furnished by the Contractor, provided that such liability is not attributable to negligence on the part of the City or failure of the City to use the materials in the manner outlined by the Contractor in descriptive literature or specifications submitted with the Contractor's bid.
4. **CONTRACT ADMINISTRATION:** Questions or problems arising after award of this contract shall be directed to the City Administrator. Copies of all correspondence concerning this contract shall be sent to the City of Gaffney, 201 North Limestone Street, Gaffney, SC 29340. All change orders must be authorized in writing by the City Administrator. The City of Gaffney shall not be bound to any change in the original contract unless approved in writing by the City Administrator.
5. **FORCE MAJEURE:** 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 fault or negligence of the Contractor. Such causes may include, but not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, 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. The Contractor shall not be liable for any excess costs if the failure to perform is caused by default of a subcontractor if such default arises out of causes beyond the control of both the Contractor and subcontractor, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contract to meet the required delivery schedule.
6. **PUBLICITY RELEASES:** Contractor agrees not to refer to award of this contract in commercial advertising in such a manner as to state or imply that the

products or services provided are endorsed or preferred by the City. The Contractor shall not have the right to include the City's name in its published list of customers without prior approval of the City. With regard to news releases, only the name of the City, type and duration of contract may be used and then only with prior approval of the City. The Contractor also agrees not to publish, or cite in any form, any comments or quotes from the City staff.

7. **QUALITY OF PRODUCT:** Unless otherwise indicated in this bid it is understood and agreed that any items offered or shipped on this bid shall be new and in first class condition unless otherwise indicated herein.
8. **S.C. LAW CLAUSE:** Upon award of a contract under this bid, the person, partnership, association or corporation to whom the award is made must comply with the laws of South Carolina which require such person or entity to be authorized and/or licensed to do business with this State. Notwithstanding the fact that applicable statutes may exempt or exclude the successful bidder from requirements that it be authorized and/or licensed to business in this State, by submission of this signed bid, the bidder agrees to subject himself to the jurisdiction and process of the courts of the State of South Carolina as to all matters and disputes arising or to arise under the control and the performance thereof, including any questions as to the liability for taxes, licenses, or fees levied by the State.
9. **ASSIGNMENT:** No contract or its provisions may be assigned, sublet, or transferred without the written consent of the City of Gaffney.
10. **AFFIRMATIVE ACTION:** The successful bidder will take affirmative action in complying with all Federal and State requirements concerning fair employment and treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin or physical handicap.
11. **BIDDING CONDITION OF PRICE:** All bid prices submitted shall remain effective for a minimum period of 90 days, unless otherwise stated. The City reserves the right to make additional purchases at the submitted bid prices, during the specified period.
12. **S.C. SALES TAX:** A sales tax will be added to all orders; however lump sum bids shall include sales tax in bid price unless otherwise noted. ***By submission of a signed bid, you are certifying, under penalties of perjury, that you comply with section 12-54-1020(B) of the SC Code of Laws 1976, as amended, relating to payment of any applicable taxes. This will certify to the City your compliance.***

**Non-resident contractors (service/labor providers) and rental recipients** must provide an affidavit that the non-resident is registered with the South Carolina Department of Revenue or the South Carolina Secretary of State's Office (See

Form I-312 Non-resident Taxpayer Registration Affidavit, Income Tax Withholding). Reference South Carolina Withholding Tax Amendments Code Section 12-9-310 (A)(3).

Forms to register for all taxes administered by the South Carolina Department of Revenue may be obtained by calling the License and Registration Section at (803) 737-4872 or by writing to the South Carolina Department of Revenue, Registration Unit, Columbia, South Carolina 29214-0140.

13. **PAYMENT TERMS:** Payment will be made within thirty (30) days after acceptance of completed order/project in accordance with the payment schedule. Payment application for construction contracts are to be submitted on an AIA Application for Payment form or approved equal. Retainage for construction contracts will be as follows: 10% of completed, 10% of stored materials. Partial payments will be made as follows: If an application for payment is received and approved by the City, payment shall be made by the City no later than 30 days after the City receives the application for payment. There will be no exceptions to these payment terms unless approval is obtained in writing from the City of Gaffney.
14. **BID REQUIREMENTS:** Bid requirements on the materials and equipment specified are not intended to be restrictive to potential bidders, but indicate the required features for satisfactory performance. The City of Gaffney will determine if minor deviations from these features are acceptable.
15. **DEVIATIONS FROM SPECIFICATIONS:** Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and successful bidder will be held responsible therefore. Deviations must be explained in detail on separate attached sheet(s). The listing of deviations, if any, is required but will not be construed as waiving any requirements of the specifications. Deviations found in the evaluation of the bid and not listed may be cause for rejection. Bidders offering substitute or equal items must provide information sufficient enough to determine acceptability of item offered.
16. **CONTRACT:** This bid and submitted documents, when properly accepted by the City of Gaffney, along with a written purchase order and signed contract form, shall constitute a contract equally binding between the successful offeror and the City of Gaffney. No different or additional terms will become a part of this contract, with the exception of a Change Order.
17. **CHANGE ORDERS:** No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders to the contract will be made in writing by the City of Gaffney.

18. AMENDMENTS: All amendments to and interpretations of this solicitation shall be in writing and issued by the City of Gaffney. The City of Gaffney shall not be legally bound by any amendment or interpretation that is not in writing.
19. BID EVALUATION: Bids received will be evaluated by the City Administrator or his designee. However, based on bid total, final decision for bid award may rest with the City Council. Factors to be considered during the evaluation process include, but are not limited to, cost, qualifications, reputation and dependability of the Contractor.
20. ARBITRATION: Under no circumstances and with no exception will the City of Gaffney act as arbitrator between the Contractor and any subcontractor.
21. SHIPPING: All deliveries shall be shipped F.O.B. point Destination-freight prepaid, the seller pays and bears all freight charges; collect shipments will not be accepted. It is agreed by the parties hereto that delivery by the Contractor to the common carrier does not constitute delivery to the City. Any claim for loss or damage shall be between the Contractor and the carrier.
22. "OR APPROVED EQUAL": Certain processes, types of equipment or kinds of material are described in the specifications and/or on the drawings by means of trade/brand names and catalog numbers. In each instance where this occurs, it is understood and inferred that such description is followed by the words "or approved equal". Such method of description is intended merely as a means of establishing a standard of comparability. However, the Owner reserves the right to select the items which, in the judgment of the Owner, are best suited to the needs of the Owner based on price, quality, service, availability and other relative factors. Bidders must indicate brand name, model, model number, size, type, weight, color, etc., of the item bid, if not exactly the same as the item specified. Vendor's stock number or catalog number is not sufficient to meet this requirement. If any bidder desires to furnish an item different from the specifications, vendor shall submit along with the bid, the information, data, pictures, designs, cuts, etc., of the material they plan to furnish so as to enable the Owner to compare the material specified; and, such material shall be given due consideration. The Owner reserves the right to insist upon, and receive items as specified if the submitted items do not meet the Owner's standards for acceptance.
23. ALTERNATE BIDS: Bidders wishing to submit an alternate for consideration that does not meet the City's specifications (or approved deviations), must submit their proposal as an alternate bid.