

PART IV
GENERAL CONDITIONS
GOVERNING RESPONSES AND SUBSEQUENT CONTRACTS
City of Lee's Summit, MO

1. **SCOPE:** The following terms and conditions, unless otherwise modified by the City of Lee's Summit within this document, shall govern the submission of proposals and subsequent contracts. The City of Lee's Summit reserves the right to reject any proposal that takes exception to these conditions.
2. **DEFINITIONS AS USED HEREIN:**
 - a. The term "request for proposals" means a solicitation of a formal, sealed proposal submittal.
 - b. The term "respondent" means the person, firm, corporation, or "contractor" or "service provider" or "seller" who submits a formal sealed proposal submittal and who may enter into an agreement with the City to perform such services.
 - c. The term "City" means City of Lee's Summit, MO.
 - d. The term "City Council" means the governing body of the City of Lee's Summit, MO. The term "Board" means the governing body of the City of Lee's Summit Parks and Recreation Board. The term "Board Administrator" means the Parks and Recreation Board's department administrator.
 - e. The term "Service Provider" means the respondent awarded an agreement under this submittal.
 - f. The term "Unit cost", "Unit Price", or "Price" are reflective of those product items that are proposed for use in this contract. The proposed unit price shall be shown and such a price shall include packing unless otherwise specified. Freight or shipping shall be included in the Unit Price unless requested as a single line item.
3. **COMPLETING SUBMITTAL:** All information must be legible. Any and all corrections and/or erasures must be initialed. Each submittal must be signed in ink by an authorized representative of the respondent and required information must be provided. The contents of the proposals submittal submitted by the successful respondent of this RFP will become a part of any agreement award as a result of this solicitation.
4. **REQUEST FOR INFORMATION:** Any requests for clarification of additional information deemed necessary by any respondent to present a proper submittal shall be submitted via email to the Procurement Officer responsible for the project; or submitted in the questions section of the City's e-bidding system, referencing the RFP number, a minimum of five (5) calendar days prior to the proposal submission date. Any request received after the above stated deadline will not be considered. All requests received prior to the above stated deadline will be responded to in writing by the City in the form of an addendum addressed to all prospective respondents.
5. **CONFIDENTIALITY OF SUBMITTAL INFORMATION:** Each submittal must be uploaded in the City's e-bidding system or as otherwise stipulated in the Request for Proposals. All submittals and supporting documents will remain confidential until a final agreement has been executed. Information that discloses proprietary or financial information submitted in response to request for proposals will not become public information. This is in accordance with the Missouri Sunshine Law.
6. **SUBMISSION OF SUBMITTAL:** Submittals are to be uploaded into the City's e-bidding system or as otherwise stipulated in the Request for Proposals prior to the date and time indicated on the cover sheet. At such time, all submittals received will be formally opened. The opening will consist of only the name and address recording of respondents.
7. **ADDENDA:** All changes, additions, modifications and/or clarifications in connection with this submittal will be issued by the City in the form of a Written Addendum. All addendums will be signed and uploaded with the submittal. Verbal responses and/or representations shall not be binding on the City.
8. **LATE SUBMITTALS AND MODIFICATION OR WITHDRAWALS:** A submittal may only be withdrawn by one of the following methods prior to the official closing date and time specified: 1. A submittal may be withdrawn by signed, written notice. 2. A submittal may also be withdrawn in person by the respondent or its authorized representative who provides proper identification. 3. A submittal may be withdrawn via email by the respondent or its authorized representative. A submittal may only be modified by one of the following methods prior to the official closing date and time specified: 1. A submittal may be modified by signed, written notice provided in a sealed envelope with the RFP solicitation number, description and the word "modification" identified on the envelope. 2. A RFP modification may also be submitted in person by the respondent or its authorized representative who provides proper identification and provides written notice in a sealed envelope with the RFP solicitation number, description and the word "modification" identified on the envelope. All modifications **shall not** be opened until the official closing date and time to preserve the integrity of the RFP solicitation process. Telephone, telegraphic or electronic requests to modify a RFP solicitation shall not be honored. No modification or withdrawal of any response will be permitted after the RFP solicitation official closing date and time specified. Submittals received after the date and time indicated on the cover sheet shall not be considered. Submittals that are resubmitted or modified must be sealed and uploaded into Public Purchase or as otherwise stated in the Request for Proposals prior to the submittal submission deadline. Each respondent may submit only one (1) response to this RFP.
9. **BONDS:** When a Bond is required it shall be executed with the proper sureties, through a company licensed to operate in the State of Missouri, and hold a current Certificate of Authority as an acceptable surety under 31 CFR Part 223 (and be listed on the current U.S. Department of the Treasury Circular 570 and have at least A Best's rating and a FPR9 or better financial performance rating per the current A.M. Best Company ratings.)
10. **NEGOTIATION:** The City reserves the right to negotiate any and all elements of this submittal.
11. **TERMINATION:** Subject to the provisions below, any agreement derived from this Request For Proposals may be terminated by either party upon thirty (30) days advance written notice to the other party; but if any work or service hereunder is in progress, but not completed as of the date of termination, then said agreement may be extended upon written approval of the City until said work or services are completed and accepted.
 - a. **TERMINATION FOR CONVENIENCE:** In the event that the agreement is terminated or cancelled upon request and for the convenience of the City, without the required thirty (30) days advance written notice, then the City shall negotiate reasonable termination costs, if applicable.
 - b. **TERMINATION FOR CAUSE:** Termination by the City for cause, default or negligence on the part of the Service Provider shall be excluded from the foregoing provision; termination costs, if any, shall not apply. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.
 - c. **TERMINATION DUE TO UNAVAILABILITY OF FUNDS IN SUCCEEDING FISCAL YEARS:** When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the agreement shall be cancelled and the Service Provider shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the agreement.

12. **TAX EXEMPT:** The City and its Agencies are exempt from State and local sales taxes. Sites of all transactions derived from this proposal shall be deemed to have been accomplished within the State of Missouri.
13. **SAFETY:** All practices, materials, supplies, and equipment shall comply with the Federal Occupational Safety and Health Act, as well as any pertinent Federal, State and/or local safety or environmental codes.
14. **RIGHTS RESERVED:** The City reserves the right to reject any or all proposals, to waive any minor informality or irregularity in any submittal, and to make award to the respondent deemed to be most advantageous to the City.
15. **RESPONDENT PROHIBITED:** Respondents are prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this submittal or any resultant agreement or its rights, title, or interest therein or its power to execute such agreement to any other person, company or corporation without the previous written approval of the City.
16. **DISCLAIMER OF LIABILITY:** The City, or any of its agencies, will not hold harmless or indemnify any respondent for any liability whatsoever.
17. **INDEMNITY AND HOLD HARMLESS:** To the fullest extent allowable by law, Contractor agrees to indemnify, release, defend, and forever hold harmless the City, its officers, agents, employees, and elected officials, each in their official and individual capacities (collectively "Indemnitee"), for, from and against any and all claims, demands, damages, losses, fines, judgments, or liabilities, including costs, expenses, and attorneys' fees (collectively "Claims") to which Indemnitee may become subject, under any theory of liability whatsoever, incurred in the defense of such Claims, or incurred in the establishment of the right to indemnity hereunder, caused in whole or in part by Contractor, and arising out of Contractor's performance or non-performance under this contract. The obligations under this indemnification provision shall also apply to any and all any intentional, reckless, or negligent acts, mistakes, directives, errors, or omissions of Contractor's agents, directors, officers, employees, volunteers, contractors, whether employed directly or indirectly by Contractor, and any other person for which Contractor may be legally liable.
18. **LAW GOVERNING:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Missouri. Any dispute regarding this contractual agreement shall be decided by a Missouri Court.
19. **COMPLIANCE WITH APPLICABLE LAW:** Service Provider shall comply with all federal, state or local laws, ordinances, rules, regulations and administrative orders, including but not limited to Wage, Labor, Unauthorized Aliens, EEO and OSHA-type requirements which are applicable to Service Provider's performance under this agreement. Service Provider shall indemnify and hold the City harmless on account of any violations thereof relating to Service Provider's performance under this agreement, including imposition of fines and penalties which result from the violation of such laws.
20. **ANTI-DISCRIMINATION CLAUSE:** No respondent on this request shall in any way, directly or indirectly discriminate against any person because of age, race, color, handicap, sex, national origin, or religious creed.
21. **DOMESTIC PRODUCTS:** The City of Lee's Summit has adopted a formal written policy to encourage the purchase of products manufactured or produced in the United States (City of Lee's Summit Resolution No. 87-18, MO. State Statute No. 34.353, Section 3, (5)).
22. **CONFLICTS:** No salaried officer or employee of the City and no member of the City Council shall have a financial interest, direct or indirect, in this agreement. A violation of this provision renders the agreement void. Federal conflict of interest regulations and applicable provisions of Sections 105.450 – 105.496 shall not be violated. Service Provider covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this agreement. The Service Provider further covenants that in the performance of this agreement no person having such interest shall be employed.
23. **DEBARMENT:** By submission of its response, the Service Provider certifies that neither it nor its principals is presently debarred or suspended by any Federal Department or agency, including listing in the U.S. General Services Administration's List of Parties Excluded from Federal Procurement or Non-Procurement programs; or if the amount of this response is equal to or in excess of \$100,000, that neither it nor its principals nor its subcontractors receiving sub-awards equal to or in excess of \$100,000 is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by a Federal Department, agency or provision of law. If the Service Provider is unable to certify any of the statements in this certification, the responder must attach an explanation to its response.
24. **FUND ALLOCATION:** Continuance of any resulting Agreement, Contract, or issuance of Purchase Orders is contingent upon the available funding and allocation of City funds. The Service Provider understands that the obligation of the City to pay for goods and/or services under the agreement is limited to payment from available revenues and shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City nor shall anything contained in the agreement constitute a pledge of the general tax revenues, funds or moneys of the City, and all provisions of the agreement shall be construed so as to give effect to such intent.
25. **FREIGHT/SHIPPING:** Freight/shipping shall be F.O.B. Destination whereby all transportation charges shall be paid by Service Provider.
26. **DAVIS BACON ACT:** The wages for any work utilizing this agreement in which federal funding is utilized shall comply with any and all applicable federal laws and/or requirements to include but not limited to the Davis Bacon Act.