

Request for Quotation 108135,4

Title **Metro Wide Heavy Duty Full Commercial Grade Exercise Equipment**
 Amendment Date **07-SEP-2012 10:55:20**
 Amendment Description **Revised Section "P"**

Preview Date **07-SEP-2012 10:55:20** Open Date **07-SEP-2012 10:55:20**
 Close Date **07-SEP-2012 15:00:30** Award Date **Not Specified**
 Time Zone **Central Time**

Note **Review Step 1 Instructions before completing Step 1 Proposed Equipment 9-4-2012 Revised Step 1 Equipment Proposal Sheet Attached. Shall replace "Step 1 Submittal".**

Please submit your response to:

Company **Metro Govt Of Nashville and Davidson County**
 Buyer **YANCEY JR, CHARLES**
 Location **Metro Govt Of Nashville and Davidson County**
 Phone **Not Specified**
 Fax
 Email **Chuck.Yancey@nashville.gov**

When submitting your response, please include the following information.

Your Company Name	
Address	
Contact Details	
Response Valid Until	

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1 Header Information**1.1 General Information**

Title **Metro Wide Heavy Duty Full Commercial Grade Exercise Equipment**
Description **5 Year Metro Wide Indefinite delivery contract for the purchase of various types of Heavy Duty Full Commercial Grade exercise equipment.**
Amendment Date **07-SEP-2012 10:55:20**
Amendment Description **Revised Section "P"**

Preview Date **07-SEP-2012 10:55:20** Open Date **07-SEP-2012 10:55:20**
Close Date **07-SEP-2012 15:00:30** Award Date **Not Specified**
Time Zone **Central Time** Buyer **YANCEY JR, CHARLES**
Quote Style **Sealed** Email **Chuck.Yancey@nashville.gov**
Outcome **Blanket Purchase Agreement**

This is a Two-Stage RFQ and all responses will be evaluated in two stages - Technical and Commercial.

Note Review Step 1 Instructions before completing Step 1 Proposed Equipment 9-4-2012 Revised Step 1 Equipment Proposal Sheet Attached. Shall replace "Step 1 Submittal".

1.2 Terms

Effective Start Date **Not Specified** Effective End Date **Not Specified**
Ship-To Address Bill-To Address **BILL TO: METRO PAYMENT SERVICES**
BILL TO: METRO PAYMENT SERVICES
PO BOX 196301
NASHVILLE, TN 372196301
United States

Payment Terms **Net 30** Carrier
FOB **Inside Delivery** Freight Terms **Supplier Prepaid**
Currency **USD (US Dollar)** Price Precision **Any**
Total Agreement **Not Specified** Minimum Release **Not Specified**
Amount (USD) Amount (USD)

1.3 Requirements

ITB General Language for BPA	RFQ Stage - Technical
<p>Pursuant to § 4.12.030 M.C.L., this solicitation document serves as the written determination of the Purchasing Agent, that this solicitation is an Invitation to Bid. Awards, if made, shall be to the lowest, responsive and responsible, evaluated bidder. For bid evaluation purposes only, the Purchasing Agent may include objectively measurable discounts to determine the lowest evaluated bidder submitted by small or service disabled veteran owned businesses.</p> <p>There may be one or more amendments to this solicitation. Solicitation amendments are included as updates to the original solicitation. It is the offeror's responsibility to remain informed on all solicitation amendments and submit the solicitation response incorporating all amendments.</p> <p>Any alterations to the document(s) made by the offeror other than completing questions, worksheets, or forms may be grounds for rejection of the bid, cancellation of any subsequent award, or any other legal remedies available to the Metropolitan Government.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p>	
Solicitation Objective	RFQ Stage - Technical

Solicitation Objective	RFQ Stage - Technical
The objective of this solicitation is to enter into a multiple year contract, not to exceed sixty (60) months. This is an indefinite delivery quantity contract for a Blanket Purchase Agreement (BPA).	
.....	
Target Value .	
Type No Response Required	
Scope Summary	RFQ Stage - Technical
To enter into a 5 Year Metro Wide Indefinite delivery contract or contracts for the purchase of various types of fitness equipment.	
.....	
Target Value .	
Type No Response Required	
Scope Detail and Functional Requirements	RFQ Stage - Technical
Provide Heavy Duty Commercial Grade Fitness Equipment for Various Metro Agencies. See "Constraints on Contractor" attachment below.	
.....	
Target Value .	
Type No Response Required	
Contractor Requirements	RFQ Stage - Technical
All equipment must be Heavy Duty Commercial Grade. Light Grade Commercial, Home or Residential Exercise Equipment will not be acceptable and may result in an Offeror's proposal being deemed non-responsive.	
.....	
Provide your answer below	
.....	
Determination of acceptability of any and all equipment will be at the sole discretion of Metro.	
.....	
Provide your answer below	
.....	
All deliveries shall be pre-paid inside delivery to the facility the equipment is purchased for at no additional cost to Metro. No drop shipments will be accepted. Delivery arrangements must be made through the Project Manager a minimum of two days in advance.	
.....	
Provide your answer below	
.....	
Vendor is responsible for the removal and disposal of all packaging materials associated with their delivery or equipment. Vendor shall not use any Metro dumpsters unless prior approval and arrangements have been made by the receiving agency.	
.....	

Contractor Requirements	RFQ Stage - Technical
Provide your answer below	
Any damage to floors, walls or any part of a facility or property shall be repaired at the cost of the vendor. Provide your answer below	
All Vendors must acquire and pay for all installers to go through the Metro administered TAPPS background check. Vendors must visibly display a Metro Vendor ID at all times. Provide your answer below	
Vendor must service and repair all brands of Commercial Equipment sold to Metro and shall provide documentation that they and/or their third party(ies) is/are certified by the manufacturer to assemble, service, and maintain the equipment. Is certification from the manufacturer attached? Target Value Yes / No Provide your answer below	
Offer must include specifications/technical information from the manufacturer for each piece of equipment included with the Step One submission. Failure to submit the required information with the Step One bid may be grounds for deeming the bid non-responsive. Are specifications/technical information attached? Provide your answer below	
Vendors must provide on-going documentation of all equipment purchases to include facility location, date of purchase, date of installation, brand, model, serial number and warranty expiration dates.	

Contractor Requirements	RFQ Stage - Technical
Provide your answer below	
<p>Vendors must service all warranty claims as they occur.</p> <p>Vendors must respond to service calls within 2 business days of notification. Failure to respond to service calls within 2 business days will result in liquidated damages of \$100.00 per day.</p>	<p>Provide your answer below</p>
Metro reserves the right to award one or multiple contracts from this ITB.	Provide your answer below
Standard Solicitation Requirements	RFQ Stage - Technical
<p>Inquiries Offerors must clearly understand that the only official answer or position of Metro will be the one stated in writing by Division of Procurement staff. All questions must be submitted no later than 3:00 PM 8/31/2012.</p>	<p>Target Value .</p>
Type No Response Required	<p>Pre-Bid Conference A pre-Bid conference will be held on August 29th, 2012, at 10:00 AM in the Peabody Conference Room of the Lindsley Hall Building located at 730 2nd Ave. South, Nashville, TN, 37219. Metro urges all prospective Offerors to attend planned pre-bid conferences. All questions regarding this procurement must be submitted in writing no later the 72 hours of the bid due date.</p>
Target Value .	Type No Response Required
<p>Public Record All proposals submitted are public record after an award is made. Submission of an offer shall constitute an official waiver of any confidentiality statements.</p>	<p>Target Value .</p>
Type No Response Required	Accurate Information

Standard Solicitation Requirements	RFQ Stage - Technical
<p>Failure to provide complete and accurate information in an offer to this solicitation may result in Metro instituting debarment proceedings against the Offeror and/or termination proceedings against any contract that has been awarded.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p>	
<p>Extraneous Information</p> <p>Offers should be brief and concise. Specific responses that exceed page limitations described in this solicitation may be considered non-responsive and excluded from evaluation. Information provided beyond the requirements described in this solicitation may be considered extraneous and as a result discarded.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p>	
<p>Minor Irregularities</p> <p>Metro reserves the right to waive minor irregularities in offers, provided that such action is in the best interest of the Metro. Any such waiver shall not modify any remaining solicitation requirements or excuse the Offeror from full compliance with the solicitation specifications and other contract requirements if the Offeror is awarded a contract.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p>	
<p>Ambiguity, Conflict or Other Errors in the Solicitation</p> <p>If an Offeror discovers any ambiguity, conflict, discrepancy, omission, or other error in the solicitation, they shall immediately notify the Procurement Division of such error in writing and request modification or clarification of the document. The Procurement Division may make modifications by solicitation amendment.</p> <p>The Offeror is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in this solicitation prior to submitting their offer, or it shall be waived. Claims of ambiguity after submission of the offer shall not serve as grounds for a protest.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p>	
<p>Validity of Proposals</p> <p>All offers shall be valid for a period of one-hundred and twenty (120) days from the opening date of the solicitation. Receipt of an offer by the Metro Procurement Division or a submission of an offer to the Metro Procurement Division offers no rights upon the Offeror nor obligates the Metropolitan Government of Nashville and Davidson County in any manner.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p>	
<p>Offer and Presentation Costs</p> <p>Metro will not be liable for any costs incurred by an Offeror in the preparation of its response (bid or proposal) to a solicitation, nor for the presentation of its offer and/or participation in any clarifications, discussions, negotiations or protests.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p>	
<p>Rejection of Offers</p> <p>Metro reserves the right to accept or reject, in whole or in part, any, or all, offers submitted. The Metro Division of Procurement shall reject the offer of any Offeror that is determined to be non-responsive. The unreasonable failure of an Offeror to promptly supply information in connection with, or with respect to,</p>	

Standard Solicitation Requirements	RFQ Stage - Technical
reasonable requests may be grounds for a determination of non-responsibility.	
..... Target Value .	
Type No Response Required	
Subcontractors	
Offeror must include all subcontractors to be utilized in their response to this solicitation. Metro provides Offerors an incentive to maximize the participation of small and/or service-disabled veteran owned businesses. In the evaluation of proposals, Metro rewards Offerors for committing to use these businesses as subcontractors by considering the total contract dollars committed to these businesses as subcontractors. If the Offeror is a small and/or service-disabled veteran owned businesses, Metro rewards the Offeror for work it commits to self-perform. Small and/or service-disabled veteran owned businesses included in offers must be registered online with Metro and approved by the Business Assistance Office (BAO) prior to the proposal submission date. Changes to the proposed subcontractors must be submitted in writing and approved in advance by Metro.	
..... Target Value .	
Type No Response Required	
Assistance in Locating Small/or Service-Disabled Veteran Owned Businesses	
Assistance is provided to offerors who are SBE or SDV, or who need assistance in locating potential subcontractors and suppliers are encouraged to contact the Business Assistance Office (BAO) by email at BAO@Nashville.gov or call the BAO at (615) 880-2814.	
For SBE information go to the Metro website:	
http://nashville.gov/dmsba/metro_small_business_program.asp	
For SDV information go to the Metro website: http://nashville.gov/dmsba/svc_disabled_vets.asp	
..... Target Value .	
Type No Response Required	
Payments to Sub-Contractors	
As a condition of payments to the Contractor, Metro will require that the Contractor enter payments to sub-contractors into the iProcurement system.	
..... Target Value .	
Type No Response Required	
Americans with Disabilities Act	
The Contractor shall assure to Metro that all services provided through this resulting contract shall be completed in full compliance with the Americans with Disabilities Act ("ADA") and Architectural and Transportation Barriers Compliance Board, Federal Register 36 CFR Parts 1190 and 1191, Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; proposed rule, published in the Federal Register on July 23, 2004, as has been adopted by Metro The Contractor will ensure that participants at public meetings with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.	
..... Target Value .	
Type No Response Required	
Contractor Personnel Requirements	
Subsequent to submission of a proposal and prior to award of a contract, key personnel identified in the proposal shall not be changed without the approval of Metro. Any changes in key personnel without Metro approval may result in the proposal being rejected and not considered for award.	
..... Target Value .	

Standard Solicitation Requirements	RFQ Stage - Technical
Type No Response Required	
Unauthorized Work	
<p>The Successful Offeror(s) shall not begin work until Metro issues a Notice to Proceed (Purchase Order). Such Notice to Proceed (Purchase Order) shall constitute Metro's authorization to begin work. Any unauthorized work performed by the Offeror(s) shall be deemed non-compensable by Metro and the Offeror will have no recourse against Metro.</p> <p>.....</p>	
Target Value .	
Type No Response Required	
<p>Vendors submitting bids to qualify for STEP 1 must be an established business in the Commercial Fitness Industry for sales and service for a minimum of 3 years.</p> <p>.....</p>	
Provide your answer below	
Vendors must provide references of 3 jobs/projects of similar size and scope performed in the past 5 years.	
Target Value yes / no	
Provide your answer below	
Insurance Requirements	RFQ Stage - Technical
<p>Any potential supplier receiving an award shall be required to provide proof of this insurance, in the form of a Certificate of Insurance. The awarded supplier must provide Metro with original Certificates of Insurance within fifteen days of notification of award. General Liability and automobile liability policies must be endorsed to include The Metropolitan Government of Nashville & Davidson County as an additional insured with respect to liability arising out of work or operations performed by on behalf of supplier. The following insurance(s) shall be required:</p> <p>.....</p>	
Target Value .	
Type No Response Required	
<p>· Products Liability Insurance in the amount of one million (\$1,000,000.00) dollars (If the supplier will be shipping to a receiving department of Metro)</p> <p>.....</p>	
Target Value .	
Type No Response Required	
<p>· General Liability Insurance in the amount of one million (\$1,000,000.00) dollars (if the supplier will be making on-site delivery)</p> <p>.....</p>	
Target Value .	
Type No Response Required	
<p>· Automobile Liability Insurance in the amount one million (\$1,000,000.00) dollars (if supplier will be making on-site deliveries)</p> <p>.....</p>	

Insurance Requirements	RFQ Stage - Technical
Target Value .	
Type No Response Required	
<p>Worker's Compensation Insurance with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee. (Workman's Comp Insurance is not required for companies with fewer than five (5) employees.)</p>	
.....	
Target Value .	
Type No Response Required	
Method of Award	RFQ Stage - Technical
<p>This ITB will consist of multiple rounds. The first rounds will be to determine the technical qualifications of the offer and the offeror. Those firms determined to be qualified will participate in a final priced round.</p>	
<p>If an award is made, Metro shall award this bid to the responsible and responsive offeror(s) offering the lowest Evaluated Bid Price (EBP) for the item, as defined below.</p>	
<p>The Purchasing Agent has authorized the use of an Evaluated Bid Price (EBP) award methodology in this Invitation to Bid in order to encourage and assist small business participation in Metro's procurement process. The EBP will be calculated through the use of a formula that discounts bids offered by small businesses by the following percentage:</p>	
.....	
Target Value .	
Type No Response Required	
Four (4) percent	
<p>This discount will be used for bid evaluation purposes only. The formula to be used in calculating the EBP of a small business is as follows:</p>	
<p>EBP = unit bid price x 0.96</p>	
.....	
Target Value .	
Type No Response Required	
<p>A Small Business, as defined by the Metro Procurement Code, is "... a United States business which is independently owned and operated and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation." Furthermore, in order to qualify as a small business, a business must meet the size standards established by the Metro Procurement Code. These standards are included with this bid package.</p>	
.....	
Target Value .	
Type No Response Required	
<p>If Offerors desire to claim status as a small business, it must 1) be registered to do business with Metro, and 2) have been approved as a small business through the submission to Metro of documentation to confirm small business status including a copy of their two most recently submitted business tax returns as well as IRS form 941-Employer's Quarterly federal tax return. Metro's small business standards are included as an Exhibit to this ITB. This information will be reviewed by Metro and used to confirm the small business status. Small business status must be approved by Metro prior to bid submission. While Metro commits to having documents reviewed and status granted as quickly as possible after the receipt of the necessary documentation, to be safe, documents should be submitted no later than four business days before the bid is due to allow time for status to be granted. For the purposes of this procurement, Metro will not consider subcontractor small business participation in the EBP.</p>	
.....	
Target Value .	
Type No Response Required	
<p>Metro will not discount bids submitted by businesses that do not qualify as small businesses in accordance with Metro's definition and size standards. The EBPs for businesses that do not qualify as small businesses shall be the same as the unit prices offered by those businesses.</p>	

Method of Award	RFQ Stage - Technical
<p>The EBP is being used for evaluation purposes only. Awarded prices shall be the same as the unit prices bid.</p> <p>.....</p>	
<p>Target Value .</p> <p>Type No Response Required</p>	
<p>Metro reserves the right to eliminate one or more pieces of equipment from any category.</p> <p>.....</p>	
<p>Type No Response Required</p>	
<p>Awards shall be made to the Offeror providing the lowest evaluated bid price for each category (A through H). The net result could be one contract with one offeror providing equipment for all 8 categories if that one vendor has the low evaluated bid for each category or up to eight (8) separate contracts with 8 different providers (Different provider for each of the 8 categories).</p> <p>.....</p>	
<p>Type No Response Required</p>	
Affidavit	RFQ Stage - Technical
<p>Enter your City, County, State and Zip Code</p> <p>.....</p>	
<p>Provide your answer below</p> <p>.....</p>	
<p>Taxes and Licensure: Thus, Affiant states that Offeror has all applicable licenses, including business licenses, copies of which are attached hereto. Finally, Affiant states that Offeror is current on its payment of all applicable gross receipt taxes and personal property taxes. M.C.L. 4.20.065</p> <p>.....</p>	
<p>Circle one from the response values below:</p> <p>No</p> <p>Yes</p>	
<p>Nondiscrimination: Offeror, affirms that by its employment policy, standards and practices, it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age or sex, and are not in violation of, and will not violate, any applicable laws concerning the employment of individuals with disabilities. With regard to all aspects of this contract, Offeror certifies and warrants it will comply with this policy. M.C.L. 4.28.020</p> <p>.....</p>	
<p>Circle one from the response values below:</p> <p>No</p> <p>Yes</p>	
<p>Employment Requirement: Offeror, declares that neither the prime, subcontractors, sub-consultants, nor providers of day laborers employ any person who is not a legal resident of the United States. Any contractor who knowingly violates the provisions of this section is subject to debarment or suspension. M.C.L. 4.40.060</p> <p>.....</p>	
<p>Circle one from the response values below:</p> <p>No</p> <p>Yes</p>	
<p>Contingent Fees: It is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After first being duly sworn according to law, the undersigned (Affiant) states that the Offeror has not retained anyone in violation of the</p>	

Affidavit	RFQ Stage - Technical
foregoing. M.C.L. 4.48.080	
Circle one from the response values below: No Yes	
<i>And Further Affiant Sayeth Not:</i> Name of Company Officer: Provide your answer below	
Title: Provide your answer below	
<i>The provision of false information is a material breach.</i> Target Value . Type No Response Required	

1.4 Attachments

Name	Data Type	Description
Revised Section "p"	File	
Step 1 Instructions	File	
Revised Step 1 Equipment Proposal	File	

1.5 Response Rules

This negotiation is governed by all the rules displayed below.

- Negotiation is restricted to invited suppliers
- Suppliers are allowed to view other suppliers' contract terms, notes and attachments
- Suppliers are allowed to respond to selected lines
- Suppliers are allowed to provide multiple responses
- Buyer may close the negotiation before the Close Date
- Buyer may manually extend the negotiation while it is open

2 Price Schedule**2.1 Line Information**

Display Rank As **No indicator displayed**
 Ranking **Multi-Attribute Scoring**
 Cost Factors **Buyer**

Suppliers see their response price transformed **Yes**

Line	Item, Rev / Job	Target Quantity	Unit	Unit Price	Amount	Bid Minimum Release Amount
1	Fitness Equipment		Each			

2.2 Line Details**2.2.1 Line 1 Fitness Equipment**

Category **49200000** Start Price (USD) **Not Specified**
 Shopping Category **Fitness equipment** Target Price (USD) **Not Specified**
 Minimum Release Amount (USD) **Not Specified**
 Estimated Total Amount (USD) **Not Specified**

Contract Terms and Conditions

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Terms and Conditions

1. GOODS AND SERVICES CONTRACT

1.1. Heading

This contract is initiated by and between **The Metropolitan Government of Nashville and Davidson County** ("METRO") and **Enter Legal Name** ("CONTRACTOR") located at **Enter Address, City, ST ZIP**. This contract consists of the following documents:

- *Any properly executed contract amendment (most recent with first priority),*
- *This document and affidavit(s),*
- *The solicitation documentation (made a part of this contract by reference),*
- *Purchase orders (and PO Changes),*
- *CONTRACTOR's response to solicitation,*
- *Procurement Nondiscrimination Program forms (incorporated by reference).*

In the event of conflicting provisions, all documents shall be construed in the order listed above.

2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

2.1. Duties and Responsibilities

CONTRACTOR agrees to provide the goods and services defined in the solicitation per the terms and conditions listed in the solicitation.

2.2. Delivery and/or Installation.

All deliveries (if provided by the performance of this contract) are F.O.B. Destination, Prepaid by Supplier, Inside Delivery, as defined by Metro.

METRO assumes no liability for any goods delivered without a purchase order. All deliveries shall be made as defined in the solicitation or purchase order and by the date specified on the purchase order.

Installation, if required by the solicitation and/or purchase order shall be completed by the date specified on the purchase order.

3. CONTRACT TERM

3.1. Contract Term

The term of this contract will begin on the date this contract is approved by all required parties and filed in the office of the Metropolitan Clerk. The initial contract term will end sixty (60) months from the beginning date.

This contract may be extended by contract amendment. The option to extend shall be exercised by and in the

discretion of the Purchasing Agent. In no event shall the term of this contract, including extensions, exceed sixty (60) months from the date of filing with the Metropolitan Clerk's Office.

3.2. COMPENSATION

3.2.1. Contract Value

This contract has an estimated value of \$_____. The pricing details documented in the solicitation offer are made a part of this contract by reference. CONTRACTOR shall be paid as work is completed and METRO is accordingly, invoiced based on the following schedule:

Single payment following completion of contract

Monthly as work is completed and approved by METRO

Quarterly as work is completed and approved by METRO

As milestones are completed and approved by METRO

Other

3.2.2. Other Fees

There will be no other charges or fees for the performance of this contract. METRO will make reasonable efforts to make payments within 30 days of receipt of invoice but in any event shall make payment within 60 days. METRO will make reasonable efforts to make payments to Small Businesses within 15 days of receipt of invoice but in any event shall make payment within 60 days.

3.2.3. Escalation/De-escalation

This contractor is eligible for annual escalation/de-escalation adjustments. If the contract is eligible, the request for adjustment must be submitted to the Purchasing Agent no less than sixty (60) days prior to the **annual anniversary** of the contract signing by the contractor. Any such adjustment shall become effective on the anniversary of the filing of the contract with the Metro Clerk's office. The amount of escalation is subject to the process identified in Pricing Section of this contract.

3.2.4. Electronic Payment

All payments shall be effectuated by ACH (Automated Clearing House).

4. TERMINATION

4.1. Breach

Should CONTRACTOR fail to fulfill in a timely and proper manner its obligations under this contract or if it should violate any of the terms of this contract, METRO shall have the right to immediately terminate the contract. Such termination shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of any breach by CONTRACTOR.

4.2. Lack of Funding

Should funding for this contract be discontinued, METRO shall have the right to terminate the contract immediately upon written notice to CONTRACTOR.

4.3. Notice for A&E Termination

METRO may terminate this contract at any time upon thirty (30) days written notice to CONSULTANT. Should METRO terminate this Contract, the CONSULTANT shall immediately cease work and deliver to METRO, within thirty (30) days, all completed or partially completed satisfactory work, and METRO shall determine and pay to CONSULTANT the amount due for satisfactory work.

5. NONDISCRIMINATION

5.1. Metro's Nondiscrimination Policy

It is the policy of the METRO not to discriminate on the basis of age, race, sex, color, national origin, sexual orientation, gender identity, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities.

5.8. Americans with Disabilities Act (ADA)

CONTRACTOR assures METRO that all services provided through this Contract shall be completed in full compliance with the Americans with Disabilities Act ("ADA") and Architectural and Transportation Barriers Compliance Board, Federal Register 36 CFR Parts 1190 and 1191, Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; proposed rule, published in the Federal Register on July 23, 2004, as has been adopted by METRO. CONTRACTOR will ensure that participants with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.

Nondiscrimination Requirement

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in METRO's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with METRO or in the employment practices of METRO's CONTRACTORS. **CONTRACTOR certifies and warrants that it will comply with this nondiscrimination requirement.** Accordingly, all Proposers entering into contracts with METRO shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

6. INSURANCE

6.1. Proof of Insurance

During the term of this Contract, for any and all awards, CONTRATOR shall, at its sole expense, obtain and maintain in full force and effect for the duration of this Contract, including any extension, the types and amounts of insurance identified below by a checked box. Proof of insurance shall be required naming METRO as additional insured and identifying the Purchase Order on the Acord document.

6.2. Products Liability Insurance

In the amount of one million (\$1,000,000.00) dollars (If the vendor will be shipping to a receiving department of METRO)

6.3. General Liability Insurance

In the amount of one million (\$1,000,000.00) dollars

6.4. Automobile Liability Insurance

In the amount one million (\$1,000,000.00) dollars (if vendor will be making on-site deliveries)

6.5. Worker's Compensation Insurance

with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee (Not required for companies with fewer than five (5) employees).

6.6. Such insurance shall:

Contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

For any claims related to this agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects METRO, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering METRO, its officials, officers, employees, and volunteers shall be excess of CONTRACTOR's insurance and shall not contribute with it.

Automotive Liability Insurance including vehicles owned, hired, and non-owned. Said insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of CONTRACTOR.

Worker's Compensation (If applicable), CONTRACTOR shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance.

CONTRACTOR shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by CONTRACTOR's workers' compensation insurance coverage.

7. GENERAL TERMS AND CONDITIONS

7.1. Taxes

METRO shall not be responsible for any taxes that are imposed on CONTRACTOR. Furthermore, CONTRACTOR understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to METRO.

7.2. Warranty

CONTRACTOR warrants that for a period of one year from date of delivery and/or installation, whichever is later, the goods provided, including software, shall be free of any defects that interfere with or prohibit the use of the goods for the purposes for which they were obtained.

During the warranty period, METRO may, at its option, request that CONTRACTOR repair or replace any defective goods, by written notice to CONTRACTOR. In that event, CONTRACTOR shall repair or replace the defective goods, as required by METRO, at CONTRACTOR's expense, within thirty (30) days of written notice. Alternatively, METRO may return the defective goods, at CONTRACTOR's expense, for a full refund. Exercise of either option shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of CONTRACTOR's breach of warranty.

7.3. License

CONTRACTOR warrants and represents that it is the owner of or otherwise has the right to and does hereby grant METRO a license to use any software provided for the purposes for which the software was obtained or proprietary material set forth in METRO's solicitation and/or the CONTRACTORs response to the solicitation.

7.4. Copyright, Trademark, Service Mark, or Patent Infringement

CONTRACTOR shall, at its own expense, be entitled to and shall have the duty to defend any suit that may be brought against METRO to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. CONTRACTOR shall further indemnify and hold harmless METRO against any award of damages and costs made against METRO by a final judgment of a court of last resort in any such suit. METRO shall provide CONTRACTOR immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable CONTRACTOR to do so. No costs or expenses shall be incurred for the account of CONTRACTOR without its written consent. METRO reserves the right to participate in the defense of any such action. CONTRACTOR shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon METRO unless approved by the METRO Department of Law Settlement Committee and, where required, the METRO Council.

If the products or services furnished under this contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing CONTRACTOR's obligation to satisfy the final award, CONTRACTOR may at its option and expense:

Procure

Procure for METRO the right to continue using the products or services.

Replace

Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to METRO, so that they become non-infringing.

Remove

Remove the products or discontinue the services and cancel any future charges pertaining thereto.

Provide

Provided, however, that CONTRACTOR will not exercise the Remove option above until CONTRACTOR and METRO have determined that the Procure and/or Replace options are impractical. CONTRACTOR shall have no liability to METRO, however, if any such infringement or claim thereof is based upon or arises out of:

The use of the products or services in combination with apparatus or devices not supplied or else approved by CONTRACTOR;

The use of the products or services in a manner for which the products or services were neither designated nor contemplated; or

The claimed infringement in which METRO has any direct or indirect interest by license or otherwise, separate from that granted herein.

7.5. Maintenance of Records

CONTRACTOR shall maintain documentation for all charges against METRO. The books, records, and documents of CONTRACTOR, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by METRO or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles. In the event of litigation, working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this paragraph is a material breach of this Contract.

All documents and supporting materials related in any manner whatsoever to the contract or any designated portion thereof, which are in the possession of CONTRACTOR or any subcontractor or sub-consultant shall be made available to METRO for inspection and copying upon written request from METRO. Said documents shall also be made available for inspection and/or copying by any state, federal or other regulatory authority, upon request from METRO. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos or other writings or things which document the procurement and/or performance of this contract. Said records expressly include those documents reflecting the cost, including all subcontractors' records and payroll records of CONTRACTOR and subcontractors.

7.6. Monitoring

The CONTRACTOR's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by METRO, the Department of Finance, the Division of Internal Audit, or their duly

appointed representatives.

7.7. METRO Property

Any METRO property, including but not limited to books, records and equipment that is in CONTRACTOR's possession shall be maintained by CONTRACTOR in good condition and repair, and shall be returned to METRO by CONTRACTOR upon termination of the contract. All goods, documents, records, and other work product and property produced during the performance of this contract are deemed to be METRO property. All documents which make up this Contract; all other documents furnished by METRO; all conceptual drawings, design documents, closeout documents, and other submittals by CONTRACTOR; and, all other original works of authorship, whether created by METRO or CONTRACTOR embodied in any tangible medium of expression, including, without limitation, pictorial, graphic, sculptural works, two (2) dimensional works, and three (3) dimensional works.

The CONTRACTOR may keep one (1) copy of the aforementioned documents upon completion of the contract; provided, however, that in no event shall the CONTRACTOR use, or permit to be used, any portion of the documents on other projects without METRO's prior written authorization.

7.8. Modification of Contract

This contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

7.9. Partnership/Joint Venture

This Contract shall not in any way be construed or intended to create a partnership or joint venture between the Parties or to create the relationship of principal and agent between or among any of the Parties. None of the Parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this Contract.

7.10. Waiver

No waiver of any provision of this contract shall affect the right of any party to enforce such provision or to exercise any right or remedy available to it.

7.11. Employment

CONTRACTOR shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

CONTRACTOR shall not knowingly employ, permit, dispatch, subcontract, or instruct any person who is an undocumented and/or unlawful worker to perform work in whole or part under the terms of this contract.

Violation of either of these contract provisions may result in suspension or debarment if not resolved in a timely

manner, not to exceed ninety (90) days, to the satisfaction of METRO.

7.12. Compliance with Laws

CONTRACTOR agrees to comply with all applicable federal, state and local laws and regulations.

7.13. Taxes and Licensure

CONTRACTOR shall have all applicable licenses and be current on its payment of all applicable gross receipt taxes and personal property taxes.

7.14. Ethical Standards

CONTRACTOR hereby represents that CONTRACTOR has not been retained or retained any persons to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards, which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under METRO contracts.

7.15. Indemnification and Hold Harmless (non-negotiable clause due to state law)

CONTRACTOR shall indemnify and hold harmless METRO, its officers, agents and employees from any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligence of CONTRACTOR, its officers, employees and/or agents, including its subcontractors, sub-consultants or independent contractors, in connection with the performance of this contract, and, any claims, damages, penalties, costs and attorney fees arising from any failure of CONTRACTOR, its officers, employees and/or agents, including its subcontractors, sub-consultants or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

METRO will not indemnify, defend or hold harmless in any fashion the CONTRACTOR from any claims arising from any failure, regardless of any language in any attachment or other document that the CONTRACTOR may provide.

CONTRACTOR shall pay METRO any expenses incurred because of CONTRACTOR's failure to fulfill any obligation in a professional and timely manner under this Contract.

7.16. Attorney Fees.

CONTRACTOR agrees that in the event either party takes legal action to enforce any provision of the contract or to obtain a remedy for any breach of this contract, and in the event METRO prevails in such action, CONTRACTOR shall pay all expenses of such action incurred at any and all stages of the litigation, including costs, and reasonable attorney fees for METRO.

7.17. Assignment--Consent Required

The provisions of this contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to CONTRACTOR under this contract, neither this contract nor any of the rights and obligations of CONTRACTOR hereunder shall be assigned or transferred in whole or in part without the prior written consent of METRO. Any such assignment or transfer shall not release CONTRACTOR from its obligations hereunder.

NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF:

METRO'S CHIEF ACCOUNTANT

DIVISION OF ACCOUNTS

DEPARTMENT OF FINANCE

PO BOX 196300

NASHVILLE, TN 37219-6300

Funds Assignment Requests should contain complete contact information (contact person, organization name, address, telephone number, and email) for Metro to use to request any follow up information needed to complete or investigate the requested funds assignment. To the extent permitted by law, Metro has the discretion to approve or deny a Funds Assignment Request.

7.18. Entire Contract

This contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

7.19. Force Majeure

No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

7.20. Governing Law

The validity, construction and effect of this contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the CONTRACTOR may provide.

7.21. Venue

Any action between the parties arising from this agreement shall be maintained in the courts of Davidson County, Tennessee.

7.22. Severability

Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.

7.23. Notices and Designation of Agent for Service of Process

All notices to METRO shall be mailed or hand delivered to:

**PURCHASING AGENT
PROCUREMENT DIVISION
DEPARTMENT OF FINANCE
PO BOX 196300
NASHVILLE, TN 37219-6300**

Notices to CONTRACTOR shall be mailed or hand delivered to:

CONTRACTOR:

Att'n:

Addr:

Telephone:

Fax:

E-mail:

CONTRACTOR designates the following as the CONTRACTOR's agent for service of process and will waive any objection to service of process if process is served upon this agent:

Designated Agent:

Att'n:

Addr:

7.24. Effective Date

This contract shall not be binding upon the parties until it has been signed first by the CONTRACTOR and then by the authorized representatives of the Metropolitan Government and has been filed in the office of the Metropolitan Clerk.