

**Town of Mount Pleasant South Carolina
Standard Terms and Conditions for purchases under \$25,000**

GENERAL:

Terms and Conditions Applicable to all Purchase Orders

Laws, Regulations, Ordinances and Rules:

All applicable laws, ordinances, rules and regulations of any regulatory agency shall be binding upon the Contractor throughout the term of the Contract. The Contractor shall be responsible for compliance with all such laws, ordinances, rules and regulations, and shall hold the Town harmless and indemnify it in the event of non-compliance.

Delivery:

Contractor shall deliver the equipment at a location agreed upon by both parties. Shipping terms shall be F.O.B. destination. All equipment shall be successfully received as per agreed to by both parties.

Delays:

It shall be the responsibility of the Contractor to communicate any and all problems or delays, and any information pertaining to the Contract to Town by phone to 843-849-5344.

Inspection by Town:

Acceptance of the items and approval for final payment by the Town is expressly conditioned upon satisfactory inspection of the installed equipment. Such inspection shall be completed by the Town no later than ten (10) calendar days upon installation of the equipment.

Payment Terms:

Payment will be made within thirty (30) days from successful completion of the service or upon receipt of a correct invoice, whichever is later.

Progress payments may be allowed for this project and if applicable will be noted on the resulting Purchase Order.

Guarantee; Warranties:

a) The Contractor warrants to the Town that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved or authorized may be considered defective. If required by the Town, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

b) The Contractor shall guarantee all workmanship and materials to be free of defects of any type for the time specified in the Manufacturer's Product Warranty, or the time reasonably expected by the discipline, or provided by the Statue of Limitations, whichever time is greater after the date of final payment.

c) Any and all manufacturers' warranties on any equipment or materials will be passed on to the Town and copies of said warranties will be furnished by the Contractor to the Town upon completion and final acceptance of the project.

d) Upon written notice from the Town, the Contractor shall within five (5) calendar days, correct all reported defects without any additional cost to the Town.

Termination:

Subject to the provisions below, any Contract resulting from this quote may be terminated by the Town, provided a fifteen (15) day advance notice, in writing, is given to the Contractor.

a) Non-Appropriations: In the event sufficient appropriations are not made to pay the charges under the Contract it shall terminate without obligation to the Town.

b) Convenience: In the event that this Contract is terminated or canceled upon request and for the convenience of the Town without the required Fifteen (15) day advance written notice, then the Town shall negotiate reasonable termination costs, if applicable.

c) Cause: Termination by the Town for cause, default or negligence on the part of the Contractor shall be excluded from the foregoing provisions. Termination costs, if any shall not apply. The fifteen (15) day advance notice requirement is waived and the default provision listed herein shall apply.

Default

In case of default by the Contractor, the Town reserves the right to purchase any or all items and services in default 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.

The Town reserves the right to withhold payments on account and recover costs for, 1) defective work not remedied, 2) claims filed by third parties, 3) failure of the Contractor to make payments properly to Sub-Contractors or for labor, materials or equipment, 4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract sum, 5) damage to the Town or another Contractor, 6) reasonable evidence that the Work will not be completed with the Contract time and that the unpaid balance would not be adequate to cover actual or liquidated damages, if any, for the anticipated delay, or 7) persistent failure to carry out the Work in accordance with the Contract Documents.

Should such charge(s) be assessed, no subsequent offers of the defaulting Contractor will be considered until the assessed charge(s) have been satisfied.

Prohibition of Gratuities:

Amended Section 8-13-420 of the 1976 Code of Laws of South Carolina states: "It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor or any person associated therewith as an inducement for the award of a subcontract order." All awards made as a result of a Bid shall conform to applicable South Carolina statutes.

Certificate of Independent Price Determination:

GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16 9 10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS. CONTRACTOR CERTIFIES COMPLIANCE. [02 2A032 1] (MAY 2008)

SPECIFIC:

Terms and Conditions Applicable to Product Installation, Services and Construction Purchase Orders

Affirmative Action:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, physical disability, or sex in the performance of this contract. The contractor shall carry out all applicable requirements of state and federal law as well as the Town's anti-discrimination policies in the award and administration of contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Town deems appropriate.

Contractor:

The Contractor shall be required to assume the sole responsibility for the complete effort as required by this solicitation. The Town will consider the Contractor to be the sole point of contact with regard to contractual matters and will be responsible for the quality and timeliness of the work.

Business License/Permits:

The Contractor and all subcontractors, if any, shall have or obtain a Town of Mount Pleasant business license. The Contractor and all subcontractors, if any, shall obtain permits, as may be necessary, and required by the Town, County and State agencies. Any Town required permits shall be issued by the Town at no cost to the Contractor.

Indemnification:

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Town and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity that would otherwise exist.

Ethics Certification:

Contractor certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8 13 700, regarding use of official position for financial gain; Section 8 13 705, regarding gifts to influence action of public official; Section 8 13 720, regarding offering money for advice or assistance of public official; Sections 8 13 755 and 8 13 760, regarding restrictions on employment by former public official; Section 8 13 775, prohibiting public official with economic interests from acting on contracts; Section 8 13 790, regarding recovery of kickbacks; Section 8 13 1150, regarding statements to be filed by Contractors; and Section 8 13 1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover

all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8 13 1150 to the procurement officer at the same time the law requires the statement to be filed. [02 2A075 2] (May 2008)

Certification Regarding a Drug-Free Workplace:

The Contractor certifies that the he will provide a "Drug-Free Workplace" as that term is defined in Section 44-107-30 of the Code of Laws of South Carolina, 1976, as amended, by complying with the requirements set forth in Title 44, Chapter 107.

Illegal Immigration:

Contractor certifies that they will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub subcontractors; or (b) that Contractor and their subcontractors or sub subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8 14 60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub subcontractors language requiring the sub subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07 7B097 1] (NOV. 2008) (An overview is available at www.procurement.sc.gov)

Insurance:

The Contractor shall within ten (10) days of execution of Contract, provide to the Town a Certificate of Insurance certifying proof of insurance for all coverages specified in the Contract Documents

Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to the commencement of the Work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled unless at least thirty (30) days prior written notice has been given to the Owner. All insurance policies shall be issued by responsible companies whom are acceptable to the Town and licensed and authorized to do business under the laws of the State of South Carolina. The Contractor shall affect insurance to protect the interest of the Contractor, subcontractors and sub-subcontractors in the Work. The Contractor shall provide proof of such insurance to the Town by providing a Certificate of Insurance reflecting such coverage and adding the Town as a Certificate holder. The Certificate of Insurance shall endorse the Town as an additional insured on all policies.

The Contractor shall procure and maintain, at the Contractor's own expense during the Contract time, Liability Insurance as hereinafter specified.

- A) Contractor's General Public Liability and Property Damage Insurance, including vehicle coverage issued to the Contractor and protecting the Contractor from all claims for personal injury; including death and all claims for destruction of or damage to

property arising out of or in connection with any operations under this Contract, whether such operations be by the Contractor or subcontractor employed by the Prime Contractor.

- B) Insurance shall be written with a limit of liability of not less than \$1,000,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$1,000,000 aggregate for any such damages sustained by two or more persons in any one accident.
- C) Insurance shall be written with a limit of liability of not less than \$500,000 for all property damage sustained by any one person in any one accident, and a limit of liability of not less than \$1,000,000 aggregate for any such damage sustained by two or more persons in any one accident.

The Contractor shall procure and maintain, at the Contractor's own expense during the Contract time, in accordance with the provisions of the laws of the State of South Carolina Workers' Compensation Insurance, including occupational disease provisions, for all of the Contractor's employees, and in case any Work is sublet, the Contractor shall require such subcontractor identically to provide Workers' Compensation Insurance, including an occupational disease provision for all the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous Work under this Contract are not protected under the Workers' Compensation Law, the Contractor shall provide, and shall cause each subcontractor to provide adequate and suitable insurance for the protection of its employees not otherwise protected.

Use and Cleaning of Site:

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Work-Site with any materials or equipment. The Contractor shall keep the Work-Site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the Work-Site and the Project and remove all waste, together with all of the Contractor's property.

Safety of Persons and Property:

The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:

- A) All employees on the Work Site and all other persons who may be affected thereby;
- B) All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody, or control of the Contractor or any of his subcontractors or sub-subcontractors; and
- C) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, watercraft, and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury, or loss.

The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying Towns and users of adjacent utilities.

When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care, shall notify the Town in writing, shall carry on such activities under the supervision of properly qualified personnel, and shall comply with all applicable laws, rules and regulations and codes pertaining thereto.

The Contractor shall promptly remedy all damage or loss to any properties caused in whole or in part by the Contractor, any subcontractor, and sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible, except damage or loss attributable to the acts or omissions of the Town's Construction Administrator, and not attributable to the fault or negligence of the Contractor. The Contractor shall designate a responsible member of his organization at the Work-Site whose duties shall be safety compliance and prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor, in writing, to the Town and the Construction Administrator.

The Contractor shall designate a responsible member of his organization at the Work-Site whose duty shall be safety compliance and prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Town and the Construction Administrator.

The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

The Contractor shall provide, at the several locations of active Work, such equipment and medical facilities as are necessary for first-aid treatment of anyone who may be injured on the Work. He shall have standing arrangements for the removal and hospital treatment of any person who shall be injured while engaged in the performance of the Work.

The Contractor shall report promptly, in writing, to the Construction Administrator all accidents occurring in the performance of the Work whether on, adjacent to, or remote from the Work-Site that caused death, personal injuries, or property damage, and shall give full details and statements of witnesses.

The Contractor shall furnish, as required by any applicable laws, rules, regulations and codes, safe shoring, enclosed confinement safeguard requirements, scaffolding, and protection against accidents. Failure on the part of the Contractor to carry out the above regulations after notification by the Town shall be just cause for the Town to afford all necessary protection and charge the cost of the same to the Contractor.

Should hurricane or other emergency warnings be issued during the construction period, the Contractor shall take every precaution to minimize danger to persons and damage to the Work and property. He shall take similar and appropriate action in the event of warnings of other such natural occurrences, storms, earthquakes, etc.

During the construction period, the Contractor shall provide and maintain at all times in a neat and sanitary condition, at his expense, such toilet accommodations, for the use of his employees as are necessary to comply with the requirements of any Federal, State, or Local laws, ordinances, or regulations. All such accommodations and connections shall be removed upon completion of the Contract and the premises shall be left clean.

Care shall be taken to keep all parts of the Work in sanitary condition and free from refuse and decaying or other objectionable, unsafe, or unhealthy matter.

Failure to perform and meet the requirements of this Section or any apparent danger to persons or property shall be grounds for the Town or the Town's Construction Administrator to suspend the Work until the conditions creating the hazard has been removed.

Emergencies

In any emergency affecting the safety of persons or property at the Work Site and vicinity, the Contractor shall act, at his discretion, to prevent threatened damage, injury, or loss and notify the Town immediately.

Neighborhood Safety

The Contractor shall be responsible and exercise necessary **SAFETY IMPLEMENTATION** at all times within the neighborhoods for the duration of each project. This includes, but is not limited to, safety barriers, flagmen, etc., necessary during working and non-working hours or days. The Contractor is required to follow the traffic control specifications for street and highway construction and maintenance operations as set forth in Division 600, Traffic Control, of the South Carolina Department of Transportation (SCDOT) Standard Specifications for Highway Construction, Edition of 2007, Federal Highway Administration (FHWA) Manual of Uniform Traffic Control Devices, latest Edition, and latest Occupational Safety and Health Administration (OSHA) construction regulations.

Rights and Remedies:

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law or equity. No action or failure to act by the Town, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Claims for Damages:

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Change Orders:

The Town, without invalidating the Contract may order changes within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order and shall be performed under the applicable conditions of the Contract Documents.

Terms and Conditions Applicable to Construction Purchase Orders Only

Underground Utilities:

It is required that the contractor notify Palmetto Utility Protection Services at 1-888-721-7877, three (3) working days in advance of commencing work. Also, if in areas where work that is not completed in ten (10) working days, the Contractor is required to contact Palmetto Underground Utilities and give them the original request number.

Safety Requirements:

The Contractor is required to follow the traffic controls for street and highway construction and maintenance operations in accordance with Part VI (6) of the Federal Highway Administration Manual on Uniform Traffic Control Devices – 2009 Edition and latest OSHA construction regulations.

Existing Improvements:

The Contractor shall be responsible for all damages to existing improvements resulting from Contractor's operations. Including but not limited to, protecting the downstream lake from construction debris and site restoration to include sod where disturbed.