

**CALHOUN COUNTY ROAD COMMISSION  
SUPPLEMENTAL SPECIFICATIONS FOR ROADSIDE MOWING  
OF FREEWAYS & M Roads**

**SERVICES  
TERMS AND CONDITIONS**

**GENERAL**

Quotations are requested for the commodities or services specified hereunder to be furnished during the period as noted on "Invitation to Bid" form. Exact quantities to be purchased are unknown except that should a contract result from the inquiry, the successful bidder will be required to furnish all such materials as may be ordered during the contract period. Quantities specified, if any, are estimates based on prior purchases, and the Commission is not obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the Contractor by various Commission departments on the Department Purchase Order/Contract Release Form and by the Purchasing Division on the Purchase Order Form. Orders may also be issued by local units of government. Bids are due and will be publicly opened and read at time as noted on the Invitation to Bid Form.

**SPECIFICATIONS**

Definite Specifications – All commodities and services to be furnished hereunder shall conform to the specifications as noted in the "Invitation to Bid" and/or copies of specifications attached.

**PRICE**

Prices quoted shall be the maximum for a period of 365 days from date contract becomes effective with the exception of price revisions due to actual, documented price changes in landfill or disposal facility rates.

Prices are subject to change at the end of each 365-day period. Such changes shall be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any request change. Any such changes will not exceed the current annual change in the Consumer Price Index (CPI-U) for Services, U.S. City Average, as published by U.S. Department of Labor, Bureau of Labor Statistics. Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the contract period unless further revised at the end of the next 365-day period.

Requests for price changes shall be RECEIVED IN WRITING AT LEAST TEN DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the contract may be cancelled.

The continued payment of any changes due after September 30<sup>th</sup> of any fiscal year will be subject to the availability of an appropriation for this purpose.

## **INDEMNIFICATION**

### 1. General Indemnification

The Contractor shall indemnify, defend and hold harmless the Commission, its departments, divisions, agencies, sections commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorney's fees and disbursements and costs of investigation, litigation, settlement, judgments, interest, and penalties), arising from or in connection with any of the following:

(a) any claim, demand, action, citation or legal proceeding against the Commission. Its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions, or omissions of the Contractor or any of subcontractors under this contract.

(b) any claim, demand, action, citation, or legal proceeding against the Commission, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the contract.

(c) any claim, demand, action, citation or legal proceeding against the Commission, its employees and agents arising out of or related to occurrences that the contractor is required to insure against as provided for in this contract.

(d) any claim, demand, action, citation or legal proceeding against the Commission, its employees and agents arising out of or resulting from the death or bodily injury or any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the Commission.

(e) any claim, demand, action, citation, or legal proceeding against the Commission, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

### 2. Patent/Copyright Infringement Indemnification

The Contractor shall indemnify, defend and hold harmless the Commission, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related and costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection

with any action or proceeding threatened or brought against the Commission to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software commodity or service, or the use of reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copy right, trade secret or other proprietary right of any person to entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software commodity, or service, or the operation thereof, become or in the Contractor's opinion be likely to become the subject of a claim infringement, the Contractor shall at the Contractor's sole expense (i) procure for the Commission the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the Commission with appropriate credits to the Commission against the Contractor's charges and reimburse the Commission for any losses or costs incurred as a consequence of the Commission ceasing its use and returning it.

In any and all claims against the, Calhoun County Road Commission, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the contract shall not be limited in any way by the amount or type of damages compensation or benefits payable by or for the contractor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clause.

### **CONTRACTOR'S LIABILITY INSURANCE**

The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's operations under the contract whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' compensation, disability benefit and other similar employee benefit act. A non-resident Contractor shall have insurance for benefits payable under Michigan's Workers' Compensation Law for any employee resident of and hired in Michigan; and as respects any other State the Contractor shall have insurance or participate in a mandatory State fund to cover the benefits payable to any such employee.
- (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees.
- (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees, subject to limits of liability of not less than \$1,000,000 each

occurrence and, when applicable \$1,000,000 annual aggregate, for non-automobile hazards and as required by law for automobile hazards.

(4) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom, subject to a limit of liability of not less than \$1,000,000 each occurrence for non-automobile hazards and as required by law for automobile hazards.

(5) Insurance for Subparagraphs (3) and (4) non-automobile hazards on a combined single limit of liability basis shall not be less than \$300,000 each occurrence and when applicable, \$300,000 annual aggregate.

The insurance shall be written for not less than any limits of liability herein specified or required by law, whichever is greater, and shall include contractual liability insurance as applicable to the Contractor's obligations under the indemnification clause of the contract.

**BEFORE STARTING WORK, THE CONTRACTOR MUST FURNISH TO THE CONTRACT ADMINISTRATOR A CERTIFICATE(S) OF INSURANCE VERIFYING LIABILITY COVERAGE, THE CONTRACT OR PURCHASE ORDER NUMBER MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled until at least fifteen days prior written notice bearing the Contract Number or Purchase Order Number has been given to the Contract Administrator.

### **CANCELLATION**

(A) The Commission may cancel the contract for default of the Contractor. Default is defined as the Failure of the Contractor to fulfill the obligations of the quotation or contract. In case of default by the Contractor, the Commission may immediately and/or upon 30 days prior written notice to the Contractor cancel the contract without further liability to the Commission, its departments, divisions, agencies, sections, commissions, officers, agents and employees, and procure the services from other sources, and hold the Contractor responsible for any excess costs occasioned thereby.

(B) The Commission may cancel the contract in the event the Commission no longer needs the services or product specified in the contract, or in the event program changes, changes in laws, rules or regulations, relocation of offices occur, or the Commission determines that commission-wide implementation of the contract is not feasible, or if prices for additional services requested by the Commission are not acceptable to the Commission. The Commission may cancel the contract without further liability to the Commission, its departments, divisions, agencies, sections, commissions, officers, agents and employees by giving the Contractor written notice of such cancellation 30 days prior to the date of cancellation.

(C) The Commission may cancel the contract for lack of funding. The Contractor acknowledges that, if this contract extends for several fiscal years, continuation of this contract is subject to appropriation of funds for this project. If funds to enable the

Commission to effect continued payment under this contract are not appropriated or otherwise made available, the Commission shall have the right to terminate this contract without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Contractor, The Commission shall give the Contractor written notice of such non-appropriation within 30 days after it receives notice of such non-appropriation.

(D) The Commission may immediately cancel the contract without further liability to the Commission, its departments, divisions, agencies, sections, commissions, officers, agents and employees if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a Commission, public or private contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for Commission employees; convicted under State or Federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the Commission, reflects on the Contractor's business integrity.

(E) The Commission may immediately cancel the contract in whole or in part by giving notice of termination to the Contractor if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article II, Section 5, and Civil Service Rule 4-6.

(F) The Commission may, with 30 days written notice to the Contractor, cancel the contract in the event prices proposed for contract modification/extension are unacceptable to the Commission.

### **MODIFICATION OF SERVICE**

The Managing Director reserves the right to modify this service during the course of this contract. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service to be performed, addition or deletion of tasks to be performed, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the Commission. Changes may be increases or decreases.

**IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE COMMISSION, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.**

### **CONTRACT PAYMENT**

The specific payment for any contract entered into, as the result of this ITB will be mutually agreed upon by the Commission and the Contractor. The schedule should show payment amount

and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates.

### **ANNUAL SERVICE REVIEW**

The Commission may request an audit of the services provided under the terms of this contract. The audit will be a joint activity of the Managing Director and the Contract Administrator.

An unsatisfactory audit will result in cancellation of the contract under the terms of the Cancellation Clause in this contract. Further, should this contract be canceled for cause, the Contractor so canceled will not be allowed to participate in request(s) for continuation of this service.

The audit will consist of an evaluation of the total service quality, including responsiveness, timeliness of required reporting, and any other specifics as required under the terms of the contract. The results of the audit along with contract recommendations will be published by the Contract Administrator and distributed to the Using Agency and the Contractor(s).

Should the Contractor desire, a meeting will be arranged between all concerned parties within 10 calendar days of the date the contractor received, or could have reasonably been expected to received his/her copy of the audit, This meeting will provide an opportunity for the Contractor to present his/her reactions to audit recommendations.

### **NON-DISCRIMINATION CLAUSE**

In the performance of any contract or purchase order resulting herefrom, the bidder agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weights, marital status, physical or mental handicap or disability. The bidder further agrees that every subcontract entered into for the performance of any contact or purchase order resulting herefrom will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37,2201. et seq. and the Michigan Handicapper's Civil Rights Act, 1976 Public Act 220, as amended, MCL 37,1101 et seq. and any breach thereof may be regarded as a material breach of the contract or purchase order.

## **UNFAIR LABOR PRACTICES**

Pursuant to 1980 Public Act 278, as amended, MCL 423,231, et seq. the Commission shall not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice complied pursuant to Section 2 of the Act. A Contractor of the Commission, in relation to the contract, shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to Section 4 of 1980 Public Act 278, MCL 423,324, the Commission may void any contract if, subsequent to award of the contract, the name of the Contractor as an employer, or the name of the subcontractor, manufacturer or supplier of the Contractor appears in the register.