

# CITY OF FRANKLIN, TENNESSEE PROCUREMENT AGREEMENT

(City of Franklin Contract No. 2016-0044)

THIS PROCUREMENT AGREEMENT ("AGREEMENT") is by and between the City of Franklin, Tennessee ("CITY"), and Cumberland Fire Apparatus & Equipment of Nashville, Tennessee ("VENDOR"), who mutually agree as follows:

1. CITY issued on January 7, 2016 Purchasing Office Solicitation No. 2016-016, a procurement solicitation for bids for a minimum of 155 new and unused firefighter fire escape systems ("SOLICITATION").
2. In response to CITY's SOLICITATION, VENDOR submitted a bid dated January 21, 2016, and thereafter submitted documentation dated January 28, 2016 to clarify aspects of VENDOR's bid (collectively, "SUBMITTAL"), a copy of excerpts from which is attached hereto as Attachment No. 1 and hereby incorporated by reference as if fully set forth herein.
3. VENDOR included in SUBMITTAL CITY's Standard Procurement Terms and Conditions with VENDOR's contact information inserted ("CITY'S TERMS"), a copy of which is attached hereto as Attachment No. 2 and hereby incorporated by reference as if fully set forth herein.
4. CITY awarded on March 8, 2016 to VENDOR the purchase of exactly 155 new and unused firefighter fire escape systems pursuant to SOLICITATION and SUBMITTAL.
5. In the event of a conflict between the following documents, the order of precedence shall be as follows: (a) this AGREEMENT; (b) CITY'S TERMS; (c) SOLICITATION; and (d) SUBMITTAL.

EXECUTED THIS 23 DAY OF March 2016

For VENDOR:

  
(signature of VENDOR's authorized representative)

TITLE: SALES MANAGER

For CITY:

  
(signature of CITY's authorized representative)

TITLE: City Administrator

Approved as to Form:

  
Attorney for City of Franklin

**CITY OF FRANKLIN, TENNESSEE  
PROCUREMENT AGREEMENT**

(City of Franklin Contract No. 2016-0044)

---

**Attachment No. 1**

Excerpts from SUBMITTAL

# Bid Submittal Form

a form required of Bidders and Proposers on purchases of supplies, materials, equipment and services for the  
**City of Franklin, Tennessee**


Purchasing Office Solicitation No.: 2016-016

<b>Vendor's name, street address, and mailing address:</b>	Cumberland Fire Apparatus & Equipment 3504 Dickerson Pike Nashville, TN. 37207
<b>Vendor's contact person's name (printed), title, telephone number and e-mail address:</b>	Bobby Lively Sales Manager (615) 440-2676 blively@cumberlandtrucks.com
<b>Does the bidder take any exceptions to the City's procurement solicitation?</b>	<input type="checkbox"/> Yes, see enclosed. <input checked="" type="checkbox"/> No, bidder takes no exceptions.
<b>Are exceptions, if any, to the City's procurement solicitation listed separately, described, compared to the City's intention as expressed and implied by the City's solicitation documents and submitted?</b>	<input type="checkbox"/> Yes, see enclosed. <input checked="" type="checkbox"/> No, bidder takes no exceptions.
<b>Total quoted bid price per unit, supplied and delivered for initial order (minimum of 155):</b>	\$ 353.05 per unit.
<b>Last date (no sooner than March 31, 2016) that bid and bid pricing on a per unit basis for initial order is valid and may be accepted by the City:</b>	03/31/2016
<b>Total quoted bid price per unit, supplied and delivered for any subsequent order placed before June 30, 2016 (minimum of 1):</b>	\$ 353.05 per unit.
<b>Last date (no sooner than June 30, 2016) that bid pricing on a per unit basis for any subsequent order placed before June 30, 2016 is valid for potential future orders:</b>	06/30/2016
<b>Are the City's preferred delivery terms (FOB destination, freight prepaid and added) acceptable to bidder?</b>	<input checked="" type="checkbox"/> Yes. <input type="checkbox"/> No, bidder requests the following delivery terms:
<b>Are the City's preferred payment terms (net 30 days from date of delivery or date of invoice, whichever is later) acceptable to bidder?</b>	<input checked="" type="checkbox"/> Yes. <input type="checkbox"/> No, bidder requests the following payment terms:
<b>Estimated time of delivery:</b>	90-120 days after receipt of order.
<b>Method of payment</b> – The City prefers to pay its vendors electronically, either by direct deposit (i.e., "ACH" or "Electronic Funds Transfer"), or by Visa credit card, rather than by conventional check. Which payment method would the bidder prefer?	<input checked="" type="checkbox"/> ACH or Electronic Funds Transfer. <input checked="" type="checkbox"/> Visa credit card.

# Bid Submittal Form

a form required of Bidders and Proposers on purchases of supplies, materials, equipment and services for the  
**City of Franklin, Tennessee**

Purchasing Office Solicitation No.: **2016-016**

<b>Vendor's name:</b>		Cumberland Fire Apparatus & Equipment
<b>Warranties:</b>		
<b><u>Firefighter Fire Escape System Component</u></b>	<b><u>Minimum duration of product warranty from date of delivery</u></b>	<b><u>Duration of the manufacturer's product warranty included in the bid pricing</u></b>
PB3 Pocket Bag:	90 days	90 days
Hook Pull Strap:	90 days	90 days
Sterling Lightening GT Hook:	life of the product (typically 10 years when used as directed by manufacturer)	10 year(s)
Custom Lanyard:	90 days	90 days
Halo Descent Device:	one (1) year from the date of delivery	1 year(s)
Sterling Rope Company Carabineer:	life of the product (10 years in good conditions)	10 year(s)
Sterling Fire Tech32 Escape Rope:	life of the product (typically 10 years when used as directed by manufacturer)	10 year(s)
<b>Are the following components included with this Bid Submittal Form in the bid submittal?</b> <ul style="list-style-type: none"> <li>Detailed vendor-supplied description of bid product(s) or item(s);</li> <li>Detailed vendor-supplied description of the warranty(ies) included in the pricing;</li> <li>City of Franklin specifications for this procurement, marked by the bidder as to compliance therewith as per the instructions therein;</li> <li>Detailed vendor-supplied identification, listing and description of any exceptions to the written specifications as per the instructions therefor;</li> <li>Vendor-supplied contact information for minimum of three references;</li> <li>City of Franklin Standard Procurement Terms and Conditions, with the vendor's contact information inserted;</li> <li>Vendor proposed terms and conditions, if any, that are not inconsistent with the City's Standard Procurement Terms and Conditions; and</li> <li>City of Franklin Affidavit of Non-Collusion, executed in full.</li> </ul>		<input checked="" type="checkbox"/> Yes, see enclosed.  <input type="checkbox"/> No, bidder chooses not to include all of these components (WARNING: doing so may cause the City to deem the bid non-responsive).
<b>Acknowledge any and all issued addenda to this solicitation:</b> (Prior to submitting its bid, it is the responsibility of each potential bidder to determine whether any addenda to this procurement solicitation have in fact been issued by the City.)		<input type="checkbox"/> Addendum No. _____ <input type="checkbox"/> Addenda Nos. _____ <input checked="" type="checkbox"/> No addenda.
<b>Signature of bidder's authorized representative:</b> I have obtained and read, and do understand and consent, to all instructions, terms and conditions, including those imposed by reference, which apply to this procurement solicitation and compliance with which is required as a condition precedent to consideration of the bid submitted herewith.		 _____ (signature)
<b>Title of bidder's authorized representative:</b>		Sales Manager
<b>Date of signature:</b>		01/21/16

# PROPOSAL PRICING

**To The:** City of Franklin, TN. Purchasing Office  
Franklin City Hall, Suite 107  
109 3<sup>rd</sup> Ave. South  
Franklin, TN. 37064

**Date:** January 21, 2016

## FOR YOUR REVIEW:

We hereby propose and agree to furnish the following firefighter fire escape systems upon your acceptance of the proposal:


**Cumberland proposes to supply, assemble, & deliver (155) one hundred & fifty five firefighter fire escape systems for \$353.05 each. The individual systems contents are listed below in detail:**

- (1) #1102-0019.09-Bailout Rope Bag: PB3 Pocket
- (1) #1102-0041-Anchor/Hook Pull-Strap: Kevlar
- (1) #1190-0201.53-Sterling® NFPA Escape Rope: FireTech 7.5mm: 50': Lightning GT® Hook
- (1) #1105-0053.10 – 10" NFPA Lanyard: Kevlar: Multi-to-End
- (1) #1190-0275-Sterling® Carabiner : Safe-D™ 3 stage alum NFPA
- (1) #1109-4601 –Xtreme Rescue Halo Decender

**Total quoted price for (155) @ \$353.05 each = \$54,722.75**

Respectfully Submitted,

Bobby Lively  
(Cumberland Sales Manager)

X  Date: 01/28/16

# City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2016-016

---

1. Solicitation identified: These specifications apply to the following procurement:  
**a minimum of 155 new and unused firefighter fire escape systems**  
**Purchasing Office Solicitation No.: 2016-016**
2. Notice to Bidders publication date: **January 7, 2016**
3. Solicitation release date: **January 7, 2016**
4. Deadline for optional submittal in writing of questions seeking to revise or clarify any aspect of this procurement solicitation: **January 14, 2016, 2:00 p.m. Central Time**
5. Bids submittal deadline and scheduled opening: **January 21, 2016, 2:00 p.m. Central Time**
6. Tentative date of release of City's tabulation of bids received and notice of intent to award: **February 5, 2016**
7. Tentative date of award: Meeting of Board of Mayor and Aldermen at which is tentatively scheduled to be awarded the selection of the lowest and best responsive and responsible bid: **February 23, 2016**
8. Objective: To secure, by means of a competitive procurement process, the selection of the lowest and best responsive and responsible bid from a vendor to furnish all materials and means necessary to supply and deliver to the City of Franklin Fire Department a minimum of 155 new and unused firefighter fire escape systems as specified below. See the accompanying Instructions for Bidders for additional information and instructions.
9. Exceptions:
  - a. In order to avoid the need to take an exception to a specification, potential bidders may request revisions to the specifications before the deadline for optional submittal in writing of questions seeking to revise or clarify any aspect of the specifications. See the accompanying Instructions for Bidders for contact information.
  - b. Any deviation or variance from the City's specifications shall be considered to be an exception.
  - c. Any exceptions to the City's specifications shall be identified by the bidder on the City's specifications document as well as listed and described in detail, along with any other exceptions to this procurement solicitation, in a separate written document to be prepared and submitted by the bidder, referencing any subsection number. Such listing

# City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2016-016

---

shall include a description of exactly how such exceptions deviate from the City's expectations as expressed and implied by the procurement solicitation, and shall indicate why such exceptions should be judged by the City to meet or exceed those expectations. Any and all exceptions to this procurement solicitation which the City, in its sole discretion, deems not to meet or exceed the City's intention as expressed and implied by the procurement solicitation may be considered by the City as a factor in evaluating the bid.

10. General terms and conditions:

- a. Bid price: The bid price shall include all equipment, labor, materials, permit(s), freight and required insurance to supply and deliver the specified products.
- b. Delivery terms: As a matter of practice, the City of Franklin expects vendor to ship any and all deliverables FOB destination, freight prepaid and added. The City's preferred delivery terms, as described in the preceding sentence, are offered to the bidder or proposer as a condition of award. If the City's preferred delivery terms are unacceptable to the bidder or proposer, then the bidder or proposer shall indicate on the Submittal Form its preferred delivery terms. Delivery terms may be a factor in the City's selection criteria. Delivery terms are non-negotiable after award is made.
- c. Payment terms: As a matter of practice, the City of Franklin pays for goods and/or services only after receipt and acceptance by the City of such goods and/or services, and only after receipt of an accurate, proper, complete and itemized invoice for such goods and/or services, net thirty (30) calendar days from date of delivery and/or completion/installation/rendering or date of invoice, whichever is later. The City's preferred payment terms, as described in the preceding sentence, are offered to the bidder or proposer as a condition of award. If the City's preferred payment terms are unacceptable to the bidder or proposer, then the bidder or proposer shall indicate on the Submittal Form its preferred payment terms. Payment terms may be a factor in the City's selection criteria. Payment terms are non-negotiable after award is made.
- d. Applicable laws and regulations: All applicable federal and state laws, city ordinances, orders, rules and regulations of all authorities having jurisdiction over the specified products shall apply to the quoted purchase price, and they will be deemed to be included in these specifications the same as though they are written out in full herein.
- e. Standard Procurement Terms and Conditions: By submitting its bid, the vendor certifies that it has read and accepts all terms, conditions and requirements of this solicitation, including the terms and conditions identified and listed in the City of Franklin Standard Procurement Terms and Conditions attached hereto and hereby incorporated by reference.
- f. Refusal to honor submittal: If and after an award is made by the City, if the vendor refuses to execute an agreement or contract or in any other way honor the terms and conditions of its submittal, the City shall be entitled to seek compensation for its damages, which may include the cost of conducting a new solicitation.

# City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2016-016

---

- g. Confidential and/or proprietary information; trade secrets. All contents of all submittals are subject to public disclosure and shall not contain any confidential and/or proprietary information and/or trade secrets. Further, by submitting its bid, the vendor indemnifies and holds the City of Franklin harmless against any loss or damage, including reasonable attorney fees, it may incur as a result of the City's reliance upon the vendor's representation that materials supplied by the vendor do not contain trade secrets or proprietary information which is not subject to public disclosure.

11. Detailed specifications: Please note:

- Bidders are required to submit with their bid a detailed description of all bid products and/or items.
- Bidders are required to mark with a "C" the blank line next to any specification below to which their bid COMPLIES.
- Bidders are required to mark with an "E" the blank line next to any specification below to which their bid takes EXCEPTION.
- Any exceptions to the City's specifications shall be identified by the bidder on the City's specifications document as well as listed and described in detail, along with any other exceptions to this procurement solicitation, in a separate written document to be prepared and submitted by the bidder, referencing any subsection number. Such listing shall include a description of exactly how such exceptions deviate from the City's expectations as expressed and implied by the procurement solicitation, and shall indicate why such exceptions should be judged by the City to meet or exceed those expectations.
- Bidders are required to submit with their bid these Specifications for this procurement, marked by the bidder as to compliance herewith as per the instructions above.

11.1. General.

11.1.1. C City intends for the Franklin Fire Department to use the specified firefighter fire escape system in fire suppression operations as a means to facilitate the firefighter's escape from hazardous conditions. Firefighter fire escape system as bid shall be designed and manufactured according to industry standards for this intended use, and shall be certified to NFPA 1983-2012 as a complete fire escape system.

11.1.2. C Firefighter fire escape system shall be designed to be carried in a pocket of structural firefighting turn-out gear pants and pre-attached to a personal escape belt. Neither the turn-out gear nor the personal escape belt are to be included in this procurement.

11.1.3. C Firefighter fire escape systems and all components are to be purchased new and unused by the City.



# City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2016-016

---

- 11.1.4. C Purchased firefighter fire escape systems and all components shall be of current production only and manufactured no earlier than six (6) months prior to receipt of order.
- 11.1.5. C The minimum quantity of firefighter fire escape systems the City expects to order is 155. However, quoted bid prices are to be offered by the bidder on a per unit basis for potential future orders at least through June 30, 2016 and until the date indicated on the bidder's Bid Submittal Form as the "last date that bid price on a per unit basis is valid for potential future orders," up to when the specified item is no longer available for purchase new.
- 11.1.6. C Firefighter fire escape systems shall be delivered completely pre-assembled and ready for deployment.
- 11.2. C **Warranties.**
- 11.2.1. C Manufacturer's warranties, for durations not less than the durations indicated below, shall be included in the bid.
- 11.2.2. C Bidder shall indicate the durations of the manufacturer's warranties on the Bid Submittal Form.
- 11.2.3. C Bidder shall supply a description of the manufacturer's warranties along with the Bid Submittal Form.
- 11.2.4. C A copy of the Sterling Rope Company "No Hassle" policy shall be included with the bid submittal.
- 11.3. C **Delivery, Documentation and Training.**
- 11.3.1. C Vendor shall indicate on the Bid Submittal Form the estimated time of delivery of the complete firefighter fire escape systems, measured in number of calendar days after receipt of order.
- 11.3.2. C Vendor specifically acknowledges and accepts City's standard delivery terms as expressed under "General terms and conditions" above.
- 11.3.3. C Vendor shall include delivery and unloading or offloading and deposit of all equipment at the following location:  
City of Franklin Fire Department Training Center  
419 Century Court  
Franklin, TN 37064
- 11.3.4. C Vendor shall provide any labor and equipment necessary to unload or offload the deliverable in a manner (a) consistent with best practices for shipping and receiving, (b) that does not involve undue risk to the safety of anyone at the delivery site or the condition of the deliverable, (c) that does not involve City personnel, and (d) without the need for a loading dock.

# City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2016-016

---

- 11.3.5. C Delivery shall be scheduled between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday except holidays observed by the City.
- 11.3.6. C Manufacturer's documentation, including any available operator and service manuals, warranties, detailed troubleshooting information, and any available unit-specific training videos, shall be provided upon delivery of unit.
- 11.4. **Firefighter Fire Escape System Components.**
- 11.4.1. Pocket Bag:
- 11.4.1.1. C Shall be PB3.
- 11.4.1.2. C Shall incorporate a main compartment designed to accommodate 50' of Fire Tech32 personal escape rope.
- 11.4.1.3. C Shall incorporate a minimum of two (2) front compartments to hold the Sterling Lightening GT hook and the Halo descender.
- 11.4.1.4. C Shall be made of Starfire resistant material, nylon thread, with nylon mesh material on the sides.
- 11.4.1.5. C Shall be warranted by the product manufacturer to be free from defects in construction and workmanship for a minimum of 90 days from the date of delivery.
- 11.4.1.6. C Closure of main compartment shall have opposing hook and loop Velcro for securing the main compartment.
- 11.4.1.7. C Velcro strips shall be a minimum of one inch (1") wide and a minimum of six inches (6") long.
- 11.4.2. Hook Pull Strap:
- 11.4.2.1. C Shall be constructed of a minimum of one-inch (1") tubular Kevlar webbing of natural color.
- 11.4.2.2. C Shall have a loop at one end to fit around the hook portion of the Lightening GT hook.
- 11.4.2.3. C Shall incorporate a minimum of one-inch (1") opposing hook and loop Velcro for securing to turn out pant pocket closure.
- 11.4.2.4. C Lower portion of the strap shall be stuffed with a minimum of four-inch (4") piece of rope to provide an easier gripping surface.
- 11.4.2.5. C Shall be warranted by the product manufacturer to be free from defects in construction and workmanship for a minimum of 90 days from the date of delivery.
- 11.4.3. Hook:
- 11.4.3.1. C Shall be Sterling Lightening GT hook.
- 11.4.3.2. C Shall be machined from aerospace grade 7075-T6 aluminum.

# City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2016-016

---

- 11.4.3.3. C Shall be heat-treated for strength.
- 11.4.3.4. C Shall have a wire gated hitching slot incorporated in the handle.
- 11.4.3.5. C Shall have an integrated closed eye for rope attachment incorporated into the handle.
- 11.4.3.6. C Shall weigh less than eight (8) ounces.
- 11.4.3.7. C Shall be certified to NFPA 1983-2012.
- 11.4.3.8. C Shall be guaranteed for the life of the product (typically 10 years when used as directed by manufacturer) against defects in construction and workmanship, when used as designed, pursuant to Sterling Rope Company's "No hassle policy".
- 11.4.4. Custom Lanyard:
- 11.4.4.1. C There shall be a multi-configuration strap, manufactured by Fire Innovations, sewn onto the Halo Descender.
- 11.4.4.2. C Shall be rated as sewn to NFPA 1983-2012.
- 11.4.4.3. C Shall possess a total length of a minimum of twelve inches (12") with a finished length of a minimum of ten inches (10").
- 11.4.4.4. C Shall be warranted by the product manufacturer to be free from defects in construction and workmanship for a minimum of 90 days from the date of delivery.
- 11.4.5. Descent Device:
- 11.4.5.1. C Shall be Halo descent device.
- 11.4.5.2. C Shall be manufactured by the Xtreme Rescue Company.
- 11.4.5.3. C Shall be made from aluminum.
- 11.4.5.4. C Shall possess a minimum breaking strength of 13.5 kilonewtons (kN).
- 11.4.5.5. C Shall be certified to NFPA 1983-2012.
- 11.4.5.6. C Shall be warranted by the product manufacturer to be free from defects in construction and workmanship for a period of a minimum of one (1) year from the date of delivery.
- 11.4.6. Carabineer:
- 11.4.6.1. C Shall be a 3 stage "Safe-D" carabineer manufactured by Sterling Rope Company.
- 11.4.6.2. C Shall include a capturing eye.
- 11.4.6.3. C Shall be certified to NFPA 1983-2012.

# City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2016-016

---

- 11.4.6.4. C Shall be guaranteed for the life of the product (10 years in good conditions) against defects in construction and workmanship, when used as designed, pursuant to Sterling Rope Company's "No hassle policy".
- 11.4.7. Rope:
- 11.4.7.1. C Shall be Sterling Fire Tech32 Escape Rope.
- 11.4.7.2. C Shall be fifty feet (50') in length.
- 11.4.7.3. C Shall be 7.5 MM in diameter.
- 11.4.7.4. C Shall possess a safe working load of a minimum of 575 lbs.
- 11.4.7.5. C Shall be certified to NFPA 1983-2012 as a personal escape rope.
- 11.4.7.6. C Shall be sewn onto the Sterling Lightening GT Hook, utilizing the closed eye in the handle of the hook, with a termination that meets requirements set forth in NFPA 1983-2012.
- 11.4.7.7. C Shall be guaranteed for the life of the product (typically 10 years when used as directed by manufacturer) against defects in construction and workmanship, when used as designed, pursuant to Sterling Rope Company's "No hassle policy".

# Affidavit of Non-Collusion

a form required of Bidders and Proposers on purchases of supplies, materials, equipment and services for the  
**City of Franklin, Tennessee**

State of Tennessee )  
County of Davidson ) SS

Affiant, Bobby Lively, deposes and makes oath that:  
(printed name of person signing Affidavit)

1. He or she is the Sales Manager of  
(Owner or Authorized Partner, Officer, Representative or Agent of Owner)  
Cumberland Fire Apparatus & Equipment,  
(legal name of entity submitting bid or proposal)

the Bidder or Proposer who has submitted the attached bid or proposal;

2. The Bidder or Proposer is fully informed respecting the preparation and content of the attached bid or proposal and of all pertinent circumstances respecting such bid or proposal;
3. Such bid or proposal is genuine and is not a collusive or sham bid or proposal;
4. Neither the said Bidder or Proposer nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this Affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any official or agent of the City of Franklin or with any other firm, person, or potential or actual bidder or proposer to submit a collusive or sham bid or proposal in connection with the contract for which the attached bid or proposal has been submitted, or to refrain from bidding or proposing indirectly, or sought by agreement, or collusion, or communication, or conference with any other firm, person, or potential or actual bidder or proposer to fix the price or prices or cost element of the bid, quoted or proposed price or the bid, quoted or proposed price of any other potential or actual bidder or proposer, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City of Franklin or any person interested in the proposed contract;
5. The price or prices quoted in the attached bid or proposal are fair and proper and are not tainted by a collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this Affiant; and
6. He or she understands that Article VIII, Section 16, of the City Charter of Franklin, and T.C.A. §6-54-107, prohibit any member of the Board of Mayor and Aldermen, or officer elected by said Board, from being interested in any contract, or work of any kind whatever, under its control and direction, and any contract in which any such person shall have an interest shall be void and unenforceable, subjecting any funds received by contractor to be returned in full to the City, in addition to any other penalties provided by law.

Bobby Lively  
(signature of Affiant)

Sales Manager

(title of Affiant)

Sworn and subscribed to before me this

January, 2016

Ginger A. Sweat  
(Notary Public)

My Commission Expires: 7-2-18

(Submitted in response to City of Franklin Purchasing Office Solicitation No. 2016-016)

MY COMMISSION EXPIRES:  
JULY 2, 2018

Law Dept. approved 03.17.16

# **CITY OF FRANKLIN, TENNESSEE PROCUREMENT AGREEMENT**

(City of Franklin Contract No. 2016-0044)

---

## **Attachment No. 2**

### **CITY'S TERMS**

# Standard Procurement Terms and Conditions

## City of Franklin, Tennessee

---

1. Assignment/Subcontracting. Neither party may assign any rights or obligations under these Standard Procurement Terms and Conditions or any Statement of Work without the prior written consent of the other party. These Standard Procurement Terms and Conditions will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Vendor may subcontract any portion of the work only with the prior consent of the City, but such subcontracting will not relieve Vendor of its duties under these Standard Procurement Terms and Conditions.
2. Time of the Essence. The parties agree that TIME IS OF THE ESSENCE with respect to the vendor's performance of all provisions of this procurement.
3. Taxes. As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. Upon request, the City shall supply Vendor with a copy of its Sales and Use Tax Exemption Certificate. Vendor shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred.
4. Notices. Any notice provided pursuant to these Standard Procurement Terms and Conditions, if specified to be in writing, will be in writing and will be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) City business days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or set forth in such other document which these Standard Procurement Terms and Conditions may accompany, or such other address as either party may in the future specify in writing to the other):

In the case of the City:

City of Franklin

Attn: Purchasing Manager

Re: City of Franklin Purchasing Office Solicitation No. 2016\_016

109 Third Ave. South

P.O. Box 305

Franklin, TN 37065-0305

FAX: 615/550-0079

E-mail: [purchasing@franklintn.gov](mailto:purchasing@franklintn.gov)

In the case of Vendor:

Cumberland Fire Apparatus & Equipment

Bobby Lively Sales Manager

3504 Dickerson Pike

Nashville, TN 37207

615/865-0144

blively@cumberlandtrucks.com

# Standard Procurement Terms and Conditions

## City of Franklin, Tennessee

---

5. Confidentiality and Proprietary rights. Vendor waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page (or section as the case may be) as confidential or proprietary. Proprietary rights do not extend to the data created by the City's users of the System; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation and City shall retain exclusive rights, title, and ownership of all data and images created therefrom at the moment of creation and utilization, through and including image creation. City may be required to disclose documents under state or federal law. City shall notify Vendor if a request for documents has been made and shall give Vendor a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. In exchange, Vendor agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Vendor's representation that materials supplied by Vendor (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Vendor and Vendor assumes control over that claim.
6. Derivative Works. To the extent that the Agreement contains Vendor's reservation of rights, such definitions and limitations are superseded by the following: "Derivative Work" means a program that is based on or derived from one or more existing programs or components. If the original software is modified to create a new program, a derived work is created. If the original software was designed to accept plug-ins or drivers using a defined mechanism, such a driver or plug-in does not form a derived work. Linking to a library in the way it was designed to be interfaced with, does *not* constitute deriving a work. "Derivative work" is *not* the data that the Licensee inputs, manipulates, modifies or otherwise improves, nor the images resulting therefrom.
7. Arbitration/Mediation. No arbitration shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.
8. Waiver. Neither party's failure or delay to exercise any of its rights or powers under these Standard Procurement Terms and Conditions will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.
9. Warranties/Limitation of Liability/Waiver. City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Vendor to limit its liability shall be void and unenforceable.
10. Severability. If any term or provision of these Standard Procurement Terms and Conditions is held to be illegal or unenforceable, the validity or enforceability of the remainder of these Standard Procurement Terms and Conditions will not be affected.



# **Standard Procurement Terms and Conditions**

## **City of Franklin, Tennessee**

---

11. Precedence. In the event of conflict between the provisions of these Standard Procurement Terms and Conditions and any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, the provisions of these Standard Procurement Terms and Conditions will to the extent of such conflict take precedence unless such document expressly states that it is amending these Standard Procurement Terms and Conditions.
12. Indemnification. Vendor agrees to indemnify and save the Government of Franklin, the City of Franklin and individual, on or off duty, officers, and employees of the City of Franklin, harmless from any and all losses, damages and expenses, including court costs and attorneys' fees, by reason of any loss, whatsoever, arising out of or relating to or in consequence of the work done in connection with the contract of which this agreement is a part, excepting only such losses as shall be occasioned solely by the negligence of the City of Franklin.
13. Additions/Modifications. If seeking any addition or modification to the Contract, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Contract or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Contract; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.
14. Applicable Law; Choice of Forum/Venue. These Standard Procurement Terms and Conditions are made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, TN.
15. Termination. Unless the City has indicated otherwise for a specific procurement solicitation, either party may terminate these Standard Procurement Terms and Conditions, with or without cause, upon thirty (30) calendar days' notice to the other. Upon termination by the vendor, the City shall be entitled to retain ownership of any and all goods and equipment purchased. Upon termination by the City, the vendor shall be entitled to receive any amounts due as a result of goods and equipment already delivered and/or services already rendered; however, the City shall maintain ownership and control of any goods and equipment purchased. Upon termination of services, whether connected or unconnected to goods and equipment, such services shall be rendered until the conclusion of the 30<sup>th</sup> calendar day as stated in the notice or until a contractual benchmark has been achieved, or as the parties may otherwise agree.

## Standard Procurement Terms and Conditions

### City of Franklin, Tennessee

---

16. Breach. Upon deliberate breach of these Standard Procurement Terms and Conditions, or of any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, by either party, the non-breaching party shall be entitled to terminate these Standard Procurement Terms and Conditions without notice, with all of the remedies it would have in the event of termination under section 10 ("Severability") above, and may also have such other remedies as it may be entitled to in law or in equity.
17. Default. If Vendor fails to perform or comply with any provision of these Standard Procurement Terms and Conditions, or of any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, then the City (i) may cancel the purchase award and/or the accompanying contract or agreement or purchase order, in whole or in part, without penalty or protest by Vendor; (ii) may consider such failure to perform or comply as a breach of contract; (iii) reserves the right to purchase its requirements from the vendor that submitted the next lowest and best responsive and responsible bid, or the vendor that submitted the next best proposal, if that vendor will still honor that bid or proposal, or to seek new bids or proposals, or to pursue one or more other options available to the City in compliance with its then current purchasing policy; and (iv) may hold the defaulting vendor liable for all damages provided by law, including cost of cover.
18. Entire Agreement. These Standard Procurement Terms and Conditions, including any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, constitutes the entire agreement between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of these Standard Procurement Terms and Conditions. The terms and conditions of these Standard Procurement Terms and Conditions may not be changed except by an amendment expressly referencing these Standard Procurement Terms and Conditions by section number and signed by an authorized representative of each party.
19. Survival. These Standard Procurement Terms and Conditions shall survive the completion of or any termination of any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany.