

CITY OF FRANKLIN, TENNESSEE PROCUREMENT AGREEMENT

(City of Franklin Contract No. 2019-0316)

THIS PROCUREMENT AGREEMENT ("AGREEMENT") is by and between the City of Franklin, Tennessee ("CITY"), and 360 Network Solutions of Marietta, Georgia ("SUPPLIER"), who mutually agree as follows:

1. CITY issued (a) on October 3, 2019 Purchasing Office Solicitation No. 2020-014, a procurement solicitation for bids for access security components for traffic signals and intelligent transportation system, (b) on October 10, 2019 Addendum No. 1 to Purchasing Office Solicitation No. 2020-014, and (c) on October 15, 2019 Addendum No. 2 to Purchasing Office Solicitation No. 2020-014 (collectively, "SOLICITATION").
2. In response to CITY's SOLICITATION, SUPPLIER submitted a bid dated October 21, 2019 ("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. SUPPLIER included in SUBMITTAL CITY's Standard Procurement Terms and Conditions with SUPPLIER'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 November 26, 2019 to SUPPLIER the purchase of access security components for traffic signals and intelligent transportation system pursuant to SOLICITATION and SUBMITTAL.
5. Products shall be delivered to the satisfaction of CITY by not more than twice the estimated time of delivery, measured in number of calendar days after receipt of order, as indicated by SUPPLIER on its completed Bid Submittal Form as included in SUBMITTAL unless a later delivery has been authorized in writing by CITY. Failure by SUPPLIER to meet the delivery schedule shall constitute grounds for CITY to cancel order and/or consider SUPPLIER to be in breach of contract.
6. 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 _____ DAY OF _____ 20____.

For SUPPLIER:



(signature of SUPPLIER's authorized representative)

TITLE: Director IoT Ops

For CITY:

(signature of CITY's authorized representative)

TITLE: City Administrator

Approved as to Form:

Maricruz R. Fincher, Staff Attorney for CITY

**CITY OF FRANKLIN, TENNESSEE
PROCUREMENT AGREEMENT**

(City of Franklin Contract No. 2019-0316)

Attachment No. 1


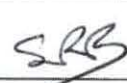
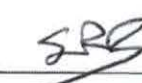
Excerpts from SUBMITTAL

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.: 2020-014

Bidder's name, street address, and mailing address (if different):	360 Network Solutions 1800 Sandy Plains Industrial Pkwy Suite 304 Marietta, GA 30067
Bidder's contact person's name (printed), title, telephone number and e-mail address:	Steve Bowles Director IoT 770-718-7437 steve@360ns.net
Does the bidder take any exceptions to the City's procurement solicitation?	<input type="checkbox"/> Yes, see enclosed. <input checked="" type="checkbox"/> No, bidder takes no exceptions.
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?	<input type="checkbox"/> Yes, see enclosed. <input checked="" type="checkbox"/> No, bidder takes no exceptions.
Are the City's preferred delivery terms (FOB destination, freight prepaid and allowed) acceptable to bidder?	<input checked="" type="checkbox"/> Yes. <input type="checkbox"/> No, bidder requests the following delivery terms: _____
Are the City's preferred payment terms (net 30 days from date of delivery or date of invoice, whichever is later) acceptable to bidder?	<input checked="" type="checkbox"/> Yes. <input type="checkbox"/> No, bidder requests the following payment terms: _____
Estimated time of delivery of the specified products:	30-45 days after receipt of order.
Last date (no sooner than December 31, 2019) that bid and associated quoted line-item unit pricing is valid and may be accepted by the City:	Jan 31, ²⁰²⁰ 2019 
For all but the AWS cloud-hosted server annual license fee, last date (no sooner than December 31, 2019) that quoted line-item unit pricing is valid for potential future orders:	Jan 31, ²⁰²⁰ 2019 
For only the AWS cloud-hosted server annual license fee, last date (no sooner than December 31, 2019) that quoted unit pricing is valid for potential future orders:	Jan 31, ²⁰²⁰ 2019 





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.: 2020-014

Bidder's name:	360 Network Solutions
Method of payment – The City's default method of payment is by electronic means, either by direct deposit (i.e., "ACH" or "Electronic Funds Transfer"), or by bank credit card, rather than by conventional check. Which electronic payment method would the bidder prefer?	<input checked="" type="checkbox"/> ACH or Electronic Funds Transfer. <input type="checkbox"/> Bank credit card.
Are the following components included with this Bid Submittal Form in the bid submittal? <ul style="list-style-type: none">• City of Franklin Specifications, marked by the bidder as to compliance therewith as per the instructions therein;• Identification, listing and description of any exceptions to the procurement solicitation including the Specifications;• Contact information for required references (see Instructions for Bidders);• City of Franklin Standard Procurement Terms and Conditions, with the bidder's contact information inserted;• Bidder's proposed agreement or contract, if any, the terms and conditions of which are not inconsistent with the City's Standard Procurement Terms and Conditions; and• City of Franklin Affidavit of Non-Collusion, executed in full.	<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).
Acknowledge any and all issued addenda to this solicitation: (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. 1. <input checked="" type="checkbox"/> Addenda Nos. 1 through <u>2</u> . <input type="checkbox"/> No addenda.
Subscription and affirmation of bidder's authorized representative: By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to Tennessee Code Annotated § 12-12-106.	 (signature)
Signature of bidder's authorized representative: I affirm that I am authorized by the bidder to sign this Bid Submittal Form as well as any and all companion forms and documents included herewith. 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) Director IoT
Title of bidder's authorized representative:	Steve R. Bowles
Date of signatures:	10-21-2019

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.: 2020-014

Bidder's name:					360 Network Solutions		
Quoted bid pricing and other information for specified products:							
<u>Line No.</u>	<u>Qty</u>	<u>UoM</u>	<u>Product Description</u>	<u>Name of Manufacturer</u>	<u>Duration of Manufacturer's Product Warranty</u>	<u>Bid Unit Price</u>	<u>Bid Extended Price</u>
1	160	Each	Traffic signal cabinet locks p/n TrafficCab 101	Medeco	24 months	\$ 175.43	\$ 28,069.09
2	20	Each	XT slim line key (G3B) & charger bundle to include: (a) Bluetooth key; (b) charger; and (c) USB cable	Medeco	24 months	\$ 114.53	\$ 2,290.67
3	1	Each	XT USB programming station only w/ USB cable	Medeco	24 months	\$ 137.76	\$ 137.76
4	1	Each	USB cable ea-200058	Medeco	24 months	\$ 13.30	\$ 13.30
5	2	Each	Key charger options XT remote wall programmer – program and update XT keys remotely via an internet connection to the XT web manager	Medeco	24 months	\$ 2,225.11	\$ 4,450.22
6	1	Each	XT multi key charger – charge up to 10 XT keys simultaneously (does not program keys)	Medeco	24 months	\$ 314.56	\$ 314.56
7	10	Each	Indoor/outdoor padlock, key retaining, 1 1/8" shackle clearance diameter, with cylinder	Medeco	24 months	\$ 185.78	\$ 1,857.78
8	1	Each	Server options XT web plus (AWS cloud-hosted) annual license fee – adds remote & mobile programming – limit 750 key holders	Medeco	24 months	\$ 1,258.89	\$ 1,258.89
Bid Grand total:							\$ 38,392.26



City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2020-014

1. Solicitation identified: These Specifications apply to the following procurement solicitation:

access security components for traffic signals and intelligent transportation system

Purchasing Office Solicitation No.: 2020-014

2. Notice to Bidders publication date: **October 3, 2019**
3. Solicitation release date: **October 3, 2019**
4. Deadline for optional submittal in writing of questions of a non-procedural nature seeking to clarify or revise any aspect of this procurement solicitation: **October 15, 2019, 2:00 p.m. Central Time**
5. Bids submittal deadline and scheduled opening: **October 22, 2019, 2:00 p.m. Central Time**
6. Tentative date of release of City's tabulation of bids received and notice of intent to award: **November 8, 2019**
7. Tentative date of award: Meeting of Board of Mayor and Aldermen at which the procurement is tentatively scheduled to be awarded to the responsible bidder that submits the lowest priced responsive bid: **November 26, 2019**
8. Objective: To award, by means of a competitive procurement process, to the responsible bidder that submits the lowest priced responsive bid to furnish all labor, materials and means necessary to supply and deliver the products as specified below. See the accompanying Instructions for Bidders for additional information and instructions, including the definitions of the terms "responsible bidder" and "responsive bid."
9. Exceptions:
- 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 of a non-procedural nature seeking to clarify or revise any aspect of this procurement solicitation. See the accompanying Instructions for Bidders for contact information.
 - Any deviation or variance from the City's specifications shall be considered by the City to be an exception.



City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2020-014

- 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 by the bidder and included in or with the bid, 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. 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 expects bidder awarded the purchase to ship any and all deliverables FOB destination, freight prepaid and allowed. The City's preferred delivery terms, as described in the preceding sentence, are offered to the bidder as a condition of award. If the City's preferred delivery terms are unacceptable to the bidder, then the bidder shall indicate on its completed Bid 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 pays for goods and/or services only after receipt by the City of such goods and/or services as ordered, and only after receipt of an accurate, proper, complete and itemized invoice for such goods and/or services as ordered, net thirty (30) calendar days from date of delivery, or date of invoice, whichever is later. The City's preferred payment terms, as described in the preceding sentence, are offered to the bidder as a condition of award. If the bidder prefers alternate payment terms, then the bidder shall indicate on its completed Bid 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. Other documents to be required of the bidder recommended to be awarded the purchase: See the accompanying "Instructions for Bidders" for a listing of other documents to be required of the bidder recommended to be awarded the purchase.
- f. Standard Procurement Terms and Conditions: By submitting its bid, the bidder 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's Standard Procurement Terms and Conditions attached hereto and hereby incorporated by reference.



City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2020-014

- g. Refusal to honor submittal: If and after an award is made by the City, if the bidder 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.
- h. 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 bidder 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 bidder's representation that materials supplied by the bidder do not contain trade secrets or proprietary information which is not subject to public disclosure.
11. Detailed specifications: Please note:
- Bidders are required to mark with a "C" the blank line next to any specification below to which their bid COMPLIES. (Specifications without a blank line are for context and need not be marked.)
 - Bidders are required to mark with an "E" the blank line next to any specification below to which their bid takes EXCEPTION. (Specifications without a blank line are for context and need not be marked.)
 - 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 by the bidder and provided in or with the bid, 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. Products.
- 11.1.1. C City intends for the end-user department to use the specified products as access security components for traffic signals and the City's intelligent transportation system (ITS). Products as bid shall be designed and manufactured according to industry standards for this intended use.
- 11.1.2. C Products are to be purchased new and unused by the City.
- 11.1.3. C Purchased products shall be current model only and shall have been manufactured within twelve (12) months of the bids submittal deadline and scheduled opening.
- 11.1.4. C No product substitutions are permitted.



City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2020-014

- 11.1.5. C The products to be bid, and the respective quantities, are exactly as listed in the Bid Submittal Form.
- 11.1.6. C The product descriptions listed on the Bid Submittal Form for the specified products are to be considered City specifications.
- 11.1.7. C Bidder shall quote unit pricing for exactly all specified products. Bids for less than exactly all specified products shall be deemed non-responsive and shall be rejected.
- 11.1.8. C No manufacturer descriptions and specifications or product warranty descriptions are required for bids for the products as specified by the City.
- 11.2. **Delivery, Documentation and Training.**
- 11.2.1. Delivery schedule:
- 11.2.1.1. C Material may not ship until after receipt of order from the City. Order is not to be placed by the City until after notice of award is issued by the City. Notice of award is not to be issued until after, but typically within two (2) weeks of, date of award.
- 11.2.1.2. C Bidder shall indicate on its completed Bid Submittal Form the estimated time of delivery, measured in number of calendar days after receipt of order.
- 11.2.1.3. C Unless a later delivery has been authorized in writing by the City, the specified products shall be delivered to the satisfaction of the City by not more than twice the estimated time of delivery, measured in number of calendar days after receipt of order, as indicated by the bidder on its completed Bid Submittal Form.
- 11.2.1.4. C Failure by the bidder to meet the delivery schedule shall constitute grounds for the City to cancel order and/or consider the bidder to be in breach of contract.
- 11.2.2. C Bidder specifically acknowledges and accepts City's standard delivery terms as expressed under "General terms and conditions" above.
- 11.2.3. C Bidder shall include in the bid pricing delivery and unloading or offloading and deposit of the deliverable at the following location:
- City of Franklin Engineering TOC
City Hall, Suite 133
109 3rd Ave. South
Franklin, TN 37064



City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2020-014

- 11.2.4. C Bidder awarded the purchase 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.
- 11.2.5. C Delivery shall be made between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday except holidays observed by the City.
- 11.2.6. C Documentation, including both operator and service manuals, warranties, detailed troubleshooting information, and any available product-specific training videos, shall be provided upon delivery of the products.

360ns References

Medeco XT CyberSecureITS Lock System

City of Atlanta/ RENEW

Department of Public Works
55 Trinity Avenue, SW
Atlanta, Georgia 30303
Troy Galloway- Traffic Engineer
renewatl-tgalloway@AtlantaGa.Gov
706-892-5364

Provided and installed Medeco XT offline cabinet lock and Medeco HES630REL online lock with Medeco XT key override. Medeco XT Web Client is being used for the offline locks and Genetec Access Control software is being used for the online locks.

GDOT

935 United Ave SE
Atlanta, GA 30316
Esteban Carrillo, PE- State Signal Maintenance Engineer
JCarrillo@dot.ga.gov
404-635-2947

Provided and installed Medeco XT offline cabinet lock and Medeco HES630REL online lock with Medeco XT key override. Medeco XT Web Client is being used for the offline locks and Genetec Access Control software is being used for the online locks.

City of Suffolk

800 Carolina Road
Suffolk, VA 23434
Brian DeFreeuw- Traffic Signal Superintendent
bdefreeuw@suffolkva.us
(757)514-7603/7646

Provided 150 Medeco XT locks and XT Client software to secure traffic intersections in the downtown area of the city.

Arlington County

4300 S 29th Street
Arlington, VA 22206
Mohammad Habibi- Traffic Engineering Mgr
mhabibi@arlingtonva.us
703-228-3523

Provided 450 Medeco XT locks with Medeco XT Client software to manage key holders and access to cabinets.

FDOT District 1

10041 Daniels Parkway
Ft. Myers, Florida 33913
David Burnside- Transcore Project Mgr
David.Burnside@TransCore.com
239-225-1900

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 Georgia)
County of Cobb) SS

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

1. He or she is the Representative of
(Owner or Authorized Partner, Officer, Representative or Agent of Owner)
360 Network Solutions, LLC,
(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.



(signature of Affiant)

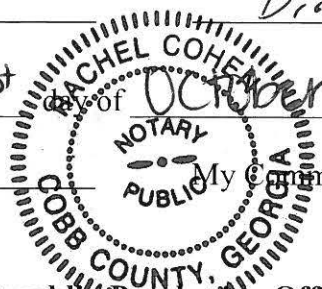
Director IoT

(title of Affiant)

Sworn and subscribed to before me this 21st day of OCTOBER, 2019



(Notary Public)



My Commission Expires: April 2024

(Submitted in response to City of Franklin Purchasing Office Solicitation No. 2020_014)

CITY OF FRANKLIN, TENNESSEE PROCUREMENT AGREEMENT

(City of Franklin Contract No. 2019-0316)

Attachment No. 2

CITY'S TERMS

Standard Procurement Terms and Conditions

City of Franklin, Tennessee

1. Assignment and Successors. Neither party may assign any rights or obligations under these Standard Procurement Terms and Conditions, or any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, without the prior written consent of the other party. These Standard Procurement Terms and Conditions, and any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
2. Subcontracting. 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 and any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply.
3. Time of the Essence. The parties agree that TIME IS OF THE ESSENCE with respect to the vendor's performance of all provisions of the contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply.
4. 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.
5. Notices. Any notice provided pursuant to these Standard Procurement Terms and Conditions, or any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, 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 to which these Standard Procurement Terms and Conditions apply, 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. 2020_014

109 Third Ave. South

P.O. Box 305

Franklin, TN 37065-0305

FAX: 615-550-0079

E-mail: purchasing@franklintn.gov

In the case of Vendor:

360 Network Solutions, LLC

Rachel Cohen

1800 Sandy Plains Ind Pkwy

Suite 304

Marietta, GA 30066

770-329-6915

rachel@360ns.net

Search

Standard Procurement Terms and Conditions

City of Franklin, Tennessee

6. 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.
7. 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.
8. Arbitration/Mediation. No arbitration shall be required as a condition precedent to filing any legal claim arising out of or relating to any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply. No arbitration or mediation shall be binding.
9. Waiver. Neither party's failure or delay to exercise any of its rights or powers under these Standard Procurement Terms and Conditions, or any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, 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.
10. 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.
11. 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

12. Precedence. In the event of conflict between the provisions of these Standard Procurement Terms and Conditions and that of any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, 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.
13. 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 any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, excepting only such losses as shall be occasioned solely by the negligence of the City of Franklin.
14. Additions/Modifications. If seeking any addition or modification to any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, 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 any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.
15. Applicable Law; Choice of Forum/Venue. These Standard Procurement Terms and Conditions and any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply 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.
16. Termination. Unless the City has indicated otherwise in the contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, either party may terminate the contract or agreement or purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, 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



Standard Procurement Terms and Conditions

City of Franklin, Tennessee

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 30th calendar day as stated in the notice or until a contractual benchmark has been achieved, or as the parties may otherwise agree.

17. Breach. Upon deliberate breach of these Standard Procurement Terms and Conditions, or of any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, by either party, the non-breaching party shall be entitled to terminate the contract or agreement or purchase order or other procurement to which these Standard Procurement Terms and Conditions apply 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.
18. Default. If Vendor fails to perform or comply with any provision of these Standard Procurement Terms and Conditions, or of any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, then the City (i) may cancel the contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, 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.
19. Entire Agreement. These Standard Procurement Terms and Conditions, including any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, 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.
20. Survival. These Standard Procurement Terms and Conditions shall survive the completion of or any termination of any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply.

