

STANDARD TERMS & CONDITIONS

RFP is solicited for two (2) day cab tandem axle trucks for Road & Bridge services for Cherokee County, Texas. **By returning this RFP with price(s) quoted and forms executed, the Respondent certifies and agrees to the following:**

1. Alternate bids will not be considered unless authorized. If there is any question as to the specifications or any part thereof, Respondent may submit to the Cherokee County, Texas Auditor, a request for clarification. Such requests must be received a minimum of five (5) days prior to the scheduled opening date.
2. Non-performance or non-compliance of the Standard Terms & Conditions, or non-performance or non-compliance with the Specifications shall be basis for termination by Cherokee County of the bid or final executed contract. Termination in whole, or in part, by the County may be made solely at the County's option and without prejudice to any other remedy to which Cherokee County may be entitled by law or in equity, or elsewhere under this Bid or the agreement, by giving thirty (30) days written notice to the vendor with the understanding that all work being performed under this agreement shall cease upon the date specified in such notice. Cherokee County shall not pay for work, equipment, services, or supplies, which are unsatisfactory. The Respondent may be given a reasonable opportunity prior to termination to correct any deficiency. This, however, shall in no way be construed as negating the basis for termination for non-performance or non-compliance.
3. Respondent shall make all inquiries necessary to be thoroughly informed as to the specifications and all other requirements proposed in the Bid. Any apparent omission or silence of detail in the description concerning any point in the specifications shall be interpreted based on best commercial practices, and best commercial practices shall prevail.
4. The Respondent shall affirmatively demonstrate Respondent's qualifications by meeting or exceeding the following minimum requirements:
 - Have adequate financial resources, or the ability to obtain such resources as required.
 - Be able to comply with any required or proposed delivery schedule.
 - Have a satisfactory record of performance.
 - Have a satisfactory record of integrity and ethics.
 - Be otherwise qualified and eligible to receive the award.
5. Invoices shall be sent to the Cherokee County Auditor, 135 South Main Street, Rusk, Texas, 75785. Invoices must detail the materials/equipment/services delivered and **must reference the Cherokee County Purchase Order Number**. Payments are processed after the Auditor's Office has verified that the material or equipment and/or services have been delivered in good condition and that no unauthorized substitutions have been made according to specifications. Neither a signed receipt nor payments shall be construed as an acceptance of any defective work, improper materials, or release of any claim for damage.

6. Only the Commissioners' Court of Cherokee County, Texas acting as a body may enter into any type of agreement or contract on behalf of Cherokee County. Department heads, other elected or appointed officials, are not authorized to enter into any type of agreement or contract on behalf of Cherokee County, or to agree to any type of supplemental agreements or contracts for goods or services. Contracts are subject to review by the County's attorney prior to signature by the authorized County official.
7. The Respondent shall be considered an independent Contractor and not an agent, servant, employee or representative of the County in the performance of the work. No term or provision, hereof, or act of the Respondent shall be construed as changing that status.
8. The Respondent shall defend, indemnify, and shall save whole and harmless the County and all its officers, agents, employees from and against all suits, actions, or claims of the character, name and description brought for or on account of any injuries or damages (including but not restricted to death) received or sustained by any person(s) or property on account of, arising out of, or in connection with the performance of the work, including without limiting the generality of the foregoing, any negligent act or omission of the Respondent on the execution or performance of the Contract.
9. The Respondent agrees, during the performance of the work, to comply with all applicable codes and ordinances of the City of Rusk, Cherokee County, or State of Texas as they may apply, as these laws may now read or as they may hereafter be changed or amended.
10. The Respondent shall obtain from the appropriate City, Cherokee County, or State of Texas the necessary permit(s) required by the ordinances of the City, County, or State, for performance of the work.
11. The Respondent shall not sell, assign, transfer or convey the agreement in whole or in part, without the prior written consent of the County.
12. The parties herein agree that the agreement shall be enforceable in Cherokee County, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in Cherokee County, Texas.
13. The agreement shall be governed by, and construed in accordance with, the Laws of the State of Texas and all applicable Federal Laws.
14. Funding Clause - Payments required to be made by Cherokee County under the terms of the agreement shall be contingent upon and subject to the initial and continuing appropriation of funding for the agreement by and through the Commissioners' Court of Cherokee County, Texas. In the event appropriations for funding of the agreement are not approved by and through the Commissioners' Court, the contract shall terminate. Cherokee County shall submit written notice to Respondent thirty (30) days prior to such termination. Upon notice of termination, as provided in this paragraph, the Respondent may submit a final invoice to the County and coordinate with the County Auditor to remove all property belonging to said Respondent as soon as possible. Payment for the final invoice will be subject to verification and approval by the County Auditor. Thereupon, Cherokee County will be released from its obligation to make further payments.

15. Cherokee County is exempt from federal excise and sales taxes, ad valorem taxes and personal property taxes; therefore, tax must not be included in Bids tendered. Bids offered must be complete and all inclusive. Cherokee County will not pay additional taxes, surcharges or other fees not included in bid prices.
16. Prices shall remain firm for the term of the contract unless economic adjustments are agreed upon by both parties and based on the most recently published Consumer Price Index at the time of the request. Cherokee County will use the most recent year-over-year data available at the time of request. Cherokee County reserves the right to accept or reject the request for a price increase and if appropriate, to utilize other resources in evaluating escalation requests, including requesting confirmation from the manufacturer. This clause also enables Cherokee County to seek de-escalation based on the same cited index, terms, and other resources.
17. Cherokee County expressly reserves the right to accept or reject in part or in whole, any bids submitted, and to waive any technicalities or formalities as to such waiver is determined to be in the best interest of Cherokee County.
18. In case any one or more of the provisions contained in the agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and the agreement shall be considered as if such had never been contained herein.
19. Bids may be withdrawn prior to the official opening. Alterations made before the time of official opening must be initialed by Respondent guaranteeing authenticity. Bids may not be amended, altered, or withdrawn after the official opening, except upon the explicit recommendation of the County Auditor and the formal approval of the Commissioners' Court.
20. The agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties. A contract will be executed after the determination of the award.
21. Respondent must provide a certificate of insurance conforming to the below listed requirements or a statement of Respondent's insurance carrier certifying that the required coverage shall be obtained by Respondent within ten (10) days of formal award of the Contract. In the case where a certification letter from an insurance carrier is attached to the bid in lieu of an insurance certificate, any formal award of a contract shall be contingent upon required coverage being put into force **prior** to any performance required by subject agreement.
22. Cherokee County reserves the right to terminate an agreement/contract at any time, without cause, upon ten (10) days written notice to Respondent. Upon termination, Cherokee County shall pay Respondent for those costs directly attributable to work done or supplies obtained in preparation for completion or compliance with the Contract, except no payment shall be made for costs recoverable by Respondent in the normal course of doing business or which can be mitigated through the sale of supplies or materials obtained for use under this Contract. It is further agreed by Respondent that Cherokee County shall not be liable for loss or reduction in any anticipated profit.

23. Additional or alternate bonds may be required in accordance with Texas statutes as outlined in the specifications.
24. Cherokee County is wholly committed to developing, establishing, maintaining, and enhancing minority business involvement in the total procurement process. The County, its contractors, their suppliers and sub-contractors, vendors of goods, equipment, services, and professional services, shall not discriminate on the basis of race, color, religion, national origin, age, handicap, or sex in the award and/or performance of contracts. However, competition and quality of work remain the ultimate standards in contractor, sub-contractor, vendor service, professional service, and supplier utilization. All vendors, suppliers, professionals and contractors doing business or anticipating doing business with Cherokee County shall support, encourage and implement steps toward our common goal of establishing equal opportunity for all citizens of Cherokee County.
25. Respondents must agree to provide the following information as part of this Bid:
- Form of business. (If a corporation, limited partnership, or limited liability company, please indicate the state of creation).
 - Name of contact person (single point of contact with the Respondent).
 - List of all criminal charges, civil lawsuits or dispute resolutions to which Respondent is a party in the past five (5) years and the nature of the issue.
 - Indicate if and how it was resolved.
 - List all criminal charges, civil lawsuits, or alternative dispute resolutions to which Respondent becomes a party for the period beginning with the submission of the Bid until the rejection or award of the bid/RFP.
26. Cherokee County reserves the right to accept or reject any or all bids, with or without cause, to waive technicalities, or to accept the bid which, in its sole judgment, best serves the interest of the County, or to award a contract to the next most qualified Respondent if a successful Respondent does not execute a contract within 10 business days after approval of the selection by the Cherokee County Commissioners' Court. Cherokee County reserves the right to award multiple contracts as necessary and in the best interest of the County.
27. Cherokee County reserves the right to request clarification of information submitted and to request additional information from one or more Respondents.
28. Costs of preparation of a response to this request for bids are solely those of the Respondent. Cherokee County assumes no responsibility for any such costs incurred by the Respondent. The Respondent also agrees that Cherokee County assumes no responsibility for any costs associated with any administrative or judicial proceedings resulting from the solicitation process.
29. The awarding Respondent shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least two (2) years after completion of the contract resulting from this request for Bid. Cherokee County shall have access to all records, documents and information collected and/or maintained by others in the course of the administration of this agreement.
30. Respondent understands and agrees that in returning a response to this Bid/bid that it is neither an "offer" nor an "acceptance" until such time a formal contract is authorized/awarded by the Cherokee County Commissioners' Court; if any.

31. Bids must be submitted on the forms provided. Bids will not be considered if submitted by telephone, fax, or any other means of rapid dispatch, nor will a Bid be considered if submitted to any other person or department other than specifically instructed.
32. Gratuities - Cherokee County may, by written notice to the Respondent, cancel this contract without liability to Respondent if it is determined by Cherokee County that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Respondent, or any agent or representative of the Respondent, to any officer or employee of Cherokee County with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such a contract. In the event this contract is canceled by Cherokee County pursuant to this provision, Cherokee County shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Respondent in providing such gratuities.
33. Termination - The performance of work under this order may be terminated in whole or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Respondent of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of Buyer.
34. Force Majeure - If, by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemies, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.
35. Assignment Delegation - No right or interest in this contract shall be assigned or delegation of any obligation made by Respondent without the written permission of the Buyer. Any attempted assignment or delegation by Respondent shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
36. Waivers - No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

37. Modification - Contract can be modified or rescinded only by a written and signed agreement by both of the parties duly authorized agents.
38. Applicable Law - This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
39. Advertising - Respondent shall not advertise or publish, without Buyer's prior consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state, or local government.
40. Right to Assurance - Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
41. Venue - Both parties agree that the venue for any litigation arising from this contract shall be in Rusk, Cherokee County, Texas.
42. No negotiations, decisions, or actions shall be executed by the Respondent as a result of any discussions with any public service official, employee and/or consultant. Only those transactions provided in written form may be considered binding.
43. The contents of each Responders bid, including specifications shall remain valid for a minimum of sixty (60) calendar days from the Bid due date.
44. All documents submitted as part of the Responder's offering will be deemed confidential during the evaluation process.
45. Subcontracting - The Responder must function as the single point of responsibility for the Agency. No Responder shall submit a Bid comprised of separate software packages from multiple subcontractors.
46. Investigation of Conditions - Before submitting a bid, respondent should carefully examine the specifications and fully inform themselves of the conditions of the equipment and limitations.
47. Contract Award:
- 1) Cherokee County reserves the right to reject any or all bids and to waive any minor informality or irregularity in a Responders response if deemed in the best interests of the County.
 - 2) Award of a contract (if any) resulting from this bid will be made only by written authorization from Cherokee County Commissioners' Court.
48. Conflict of Interest - No public official shall have an interest in this contract except in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5, Subtitle C, Chapter 171. State Law (CHAPTER 176 of the Local Government Code) requires the filing of a CONFLICT OF INTEREST QUESTIONNAIRE by certain individuals and businesses.

49. Design, strength, and quality of materials and workmanship must conform to the highest standards of manufacturing and engineering practice.
50. All Hardware of any other item offered in this bid must be new and unused, unless otherwise specified, in first-class condition and of current manufacture.
51. Descriptions - Whenever an article or material is defined or used in the BID specifications by describing a proprietary product or by using the name of a manufacturer, model number, or make, the term "or equal" if not inserted, shall be implied. Any reference to specified article or material shall be understood as descriptive, NOT restrictive, and is used to indicate type and quality level desired for comparison purposes unless otherwise noted. Bids must be submitted on units of quantity specified, extended, and totaled. In the event of discrepancies in extension, the unit prices shall govern.
52. Addendum - Any interpretations, corrections or changes to this Bid and Specifications will be made by addendum, unless otherwise stated. Issuing authority of addendum shall be the Commissioners' Court of Cherokee County, Texas. The addendum will be mailed, emailed, or faxed to all that are known to have received a copy of the Bid. Respondents shall acknowledge receipt of all addenda and include receipt and response to addenda with submission.
53. Patents/Copyrights - The successful Respondent agrees to protect Cherokee County from claims involving infringements of patents and/or copyrights.
54. Contract Administrator - The Contract Administrator will serve as sole liaison between the Cherokee County Commissioners' Court and affected Cherokee County Departments and the successful Respondent. Unless directly outlined in this specification, the Respondent shall consider no one but the Contract Administrator authorized to communicate, by any means, information or suggestions regarding or resembling this bid throughout the Bid process. The Contract Administrator has been designated the responsibility to ensure compliance with contract requirements, such as but not limited to, acceptance, inspection, and delivery. The County will not pay for work, equipment or supplies, which it deems unsatisfactory. Respondents will be given a reasonable opportunity to correct deficiencies before termination. This, however, shall in no way be construed as negating the basis for termination for non-performance.
55. Packing slips or other suitable shipping documents shall accompany each special order shipment and shall include:
 - (a) Name and address of successful Respondent.
 - (b) Name and address of receiving department and/or location.
 - (c) Cherokee County Purchase Order number; and,
 - (d) Descriptive information of the materials shipped or services rendered, including item numbers, serial numbers, quantities, number of containers and package numbers, address/location of services rendered, as applicable.
56. Unless otherwise indicated, items will be new, unused, and in first class condition in containers suitable for damage-free shipment and storage.
57. Invoices must show all information as stated above and will be issued for each purchase order.

58. Equipment, goods, and/or services supplied under this contract shall be subject to the County's approval. Item(s) found defective or not meeting specifications shall be picked up and replaced by the successful Respondent within one (1) week after notification at no expense to the County. If item(s) is not picked up within one (1) week after notification, the item(s) will become a donation to the County for disposition.
59. Warranty - Successful Respondent shall warrant that all equipment, goods, and/or services shall conform to the proposed specifications and/or all warranties stated in the Uniform Commercial Code and be free from all defects in material, workmanship and title.
60. Remedies - The successful Respondent and Cherokee County agree that both parties have all rights, duties, and remedies available as stated in the Uniform Commercial Code.
61. Silence of Specification - The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
62. The Respondent shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Respondent, its agents, representatives, volunteers, employees or subcontractors. The Respondent's insurance coverage shall be primary insurance with respect to the County, its officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officials, employees or volunteers shall be considered in excess of the Respondent's insurance and shall not contribute to it. Further, the Respondent shall include all subcontractors as additional insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein. **All Certificates of Insurance and endorsements shall be furnished to the County Auditor and approved by the County before work commences.**
63. ***Standard Insurance Policies Required:***
- a. Commercial General Liability Policy
 - b. Automobile Liability Policy
 - c. Worker's Compensation Policy

General Requirements applicable to all policies:

- a. Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.
- b. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- c. "Claims Made" policies will not be accepted.
- d. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Cherokee County.
- e. All insurance policies shall be furnished to Cherokee County upon request.

Commercial General Liability:

- a. General Liability insurance shall be written by a carrier with an A: VIII or better rating in accordance with the current Best Key Rating guide.
- b. Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily Injury and property damage with Cherokee County named as an additional insured.
- c. No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.

Automobile Liability:

- a. Automobile Liability Insurance shall be written by a carrier with an A:VIII or better rating in accordance with the current Best Key Rating Guide.
- b. Minimum Combined Single Limit of \$600,000.00 per occurrence for bodily injury and property damage.

Workers Compensation Insurance:

Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas compensation insurance policy; either directly through their employer's policy (the Respondents or subcontractor's policy) or through an executed coverage agreement on an approved TWCC form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Respondents and subcontractors must use that portion of the form whereby the hiring Respondent agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.

The worker's compensation insurance shall include the following terms:

- a. Employer's Liability limits of \$500,000.00 for each accident is required.
- b. "Texas Waiver of Our Right to Recover from Others Endorsement" shall be included in this policy. (Waiver of Subrogation)

Pursuant to the explicit terms of Title 28, Section 110.110 (c) (7) of the Texas Administrative Code, the Bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Worker's Compensation Commission, or a coverage agreement (TWCC-81, TWCC-83, or TWCC-84), showing statutory worker's compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - Includes the time from the beginning of the work on the project until the Respondents/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in section 406.096 {of the Texas Labor Code}) - includes all persons or entities performing all or part of the services the Respondent has undertaken to perform on the project, regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to a project. "Services" does not include activities unrelated to the project, such as food/beverage respondents, office supply deliveries, and delivery of portable toilets.

- The Respondent shall provide coverage, based on the proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the Respondent providing services on the project, for the duration of the project.
- The Respondent must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- If the coverage period shown on the Respondents current certificate of coverage ends during the duration of the project, the Respondent must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- The Respondent shall obtain from each person providing services on a project, and provide to the governmental entity:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file providing services on the project, and certificates of coverage showing coverage for all person; and
 - (2) no later than seven calendar days after receipt by the Respondent, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
 - (3) The Respondent shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

The Respondent shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Respondent knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.

The Respondent shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

The Respondent shall contractually require each person with whom it contracts to provide services on a project, to:

- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreement, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;
- (2) provide to the Respondent, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- (3) provide the Respondent, prior to the end of the coverage period, with a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- (4) obtain from each other person with whom it contracts, and provide to the Respondent:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter.
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (7) contractually require each person with whom it contracts, to perform as required; with the certificates of coverage to be provided to the person for whom they are providing services.

By signing a contract with Cherokee County, or providing, or causing to be provided a certificate of coverage, the Respondent who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier, or, in the case of a self-insured, with the commission's Division of Self-Insurance regulation. Providing false or misleading information may subject the Respondent to administrative penalties, criminal penalties, civil penalties, or other civil actions.

CERTIFICATES OF INSURANCE shall be prepared and executed by the insurance company or its authorized agent, and shall contain the following provisions and warranties:

- a. The company is licensed and admitted to do business in the State of Texas.
- b. The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or ISO.
- c. All endorsements and insurance coverage according to requirements and instructions contained herein.
- d. The form of the notice of cancellation, termination, or change in coverage provisions to Cherokee County.
- e. Original endorsements affecting coverage required by the section shall be furnished with the certificates of insurance.

- Bids /may be withdrawn at any time prior to the official opening. Alterations made before the opening time must be initialed by Respondent guaranteeing authenticity. After the official opening, Bids become the property of Cherokee County and may not be amended, altered or withdrawn without recommendation of the Cherokee County Auditor and the approval of the Cherokee County Commissioners' Court.
- This Bid is issued in compliance with the County Purchasing Act Texas Local Government Code 262.030.
- **Prompt Payment Clause** - Cherokee County, Texas will, after acceptance of goods or services and the receipt of a proper invoice from the awarded Respondent, process request for payment, said payment to be paid within forty-five (45) days. Prime Respondents shall then be required to ensure payment is made to any designated small or disadvantaged business (subcontractors), within fifteen (15) workdays of receipt of payment to the prime Respondent from the County. Upon satisfactory completion of a contract, the County and/or prime Respondent will ensure that any retainage payments are returned within thirty (30) workdays. Failure to comply with the terms of this requirement may be grounds for termination of the contract by the County.
- **Confidentiality** - Any material that is to be considered confidential in nature must be clearly marked as such and may be treated as confidential to the extent allowable in the Texas Public Information Act. Pricing information is not considered to be confidential. Trade secrets or confidential information **MUST** be placed in a separate envelope marked "CONFIDENTIAL INFORMATION" and EACH PAGE must be marked "CONFIDENTIAL INFORMATION". Please be advised that Cherokee County cannot and will not make any agreement to withhold information from the public that is contrary to the County's responsibility under the Act.
- Bids will be considered non-responsive if they show any omissions, alteration of form, additions or conditions not called for, or inconsistencies of any kind. However, Cherokee County reserves the right to waive any inconsistencies mentioned above to make an award in the best interest of the County.
- Respondents may be disqualified and their Bids not considered, among other reasons, for any of the following specific reasons:
 1. Reason for believing collusion exists among the Respondents.
 2. Reasonable grounds for believing that any respondent is interested in more than one Bids for the work contemplated.
 3. The Respondent being interested in any litigation against the county.
 4. The Respondent in arrears on any existing contract or having defaulted on a previous contract.
 5. Lack of competency as revealed by a financial statement, experience.
 6. Respondents shall not owe delinquent property tax in Cherokee County.
 7. Respondent past performance record with Cherokee County.
 8. Limited competition.
- The successful Respondent may not assign their rights and duties under award without written consent of Cherokee County Auditor. Such consent shall not relieve the assignor of liability in the event of default by the assignee.

- Respondents are encouraged to review this entire Request for Bids Packet (BID). All questions regarding this Bid must be in writing and sent by email to County Auditor Steven Daughety at coauditor@cocherokee.org or by fax to 903-683-2393. Contact with other personnel of the county other than the County Auditor regarding the Request for Bids may be grounds for elimination from the selection process.

- TO THE EXTENT PERMITTED BY LAW, RESPONDENT AGREES TO DEFEND, INDEMNIFY AND HOLD CHEROKEE COUNTY, ITS OFFICIALS, AGENTS, SERVANTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO OWNER'S BUSINESS AND ANY RESULTING LOST PROFITS), EMPLOYMENT MATTERS, AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO OR ARISE OUT OF OR BE OCCASIONED BY (i) RESPONDENTS BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF RESPONDENT, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, RELATED TO THE PERFORMANCE OF THIS AGREEMENT. RESPONDENT(S) WILL COMPLY WITH ALL STATE, FEDERAL, AND LOCAL LAWS INCLUDING BUT NOT LIMITED TO THE AMERICANS WITH DISABILITIES ACT, TITLE VII OF THE CIVIL RIGHTS OF 1964, AGE DISCRIMINATION IN EMPLOYMENT ACT, CIVIL RIGHTS ACT OF 1991, FEDERAL INSURANCE CONTRIBUTIONS ACT (FICA), FAIR LABOR STANDARDS ACT, EQUAL PAY ACT OF 1963 AND THE AFFORDABLE HEALTH CARE ACT, AS TO TREATMENT AND COMPENSATION OF ITS EMPLOYEES.

RESPONDENT(S) WILL PREPARE PAYROLL CHECKS, MAKE ALL NECESSARY DEDUCTIONS AND PAY ALL TAXES, MAINTAIN INSURANCE REQUIRED BY FEDERAL, STATE, AND LOCAL LAWS. RESPONDENT ACCEPTS FULL RESPONSIBILITY FOR THE PAYMENT OF WAGES, COMPENSATION, OVERTIME, AND BENEFITS TO PERSONNEL. RESPONDENT ACCEPTS RESPONSIBILITY FOR PAYMENT OF ALL TAXES, ASSESSMENTS, FEES, AND FINES THAT MAY BE DUE AND OWING TO ANY LOCAL, STATE, OR FEDERAL GOVERNMENT AGENCIES.

BONDING REQUIREMENTS

If applicable, a Bid Bond shall be required. Pursuant to the provisions of Section 262.032 (a) of the Texas Local Government Code, if the contract contemplated by this request is a bid for the construction of public works, or will be under a contract exceeding \$100,000.00, Cherokee County may require the Respondent to execute a good and sufficient bid bond in the amount of five percent (5%) of the total contract price. Said bond shall be executed with a surety company authorized to do business in the State of Texas.

If applicable, a Performance Bond shall be required. Pursuant to the provisions of Section 262.032 (b) of the Texas Local Government Code, within thirty (30) days of the date of the signing of a contract or issuance of a purchase order following the acceptance of a bid by Cherokee County Commissioners' Court and prior to commencement of the actual work, the successful Respondent shall furnish a performance bond to Cherokee County for the full amount of the contract if the contract exceeds \$50,000.00. Said bond shall be for the purpose of insuring the faithful performance of the work in accordance with the plans, specifications and contract documents associated with the contract.

If applicable, a Payment Bond shall be required. Pursuant to the provisions of Section 2253.021 of the Texas Government Code, if the amount of the contract awarded to the successful Respondent exceeds \$25,000.00, the successful Respondent shall execute a payment bond in the amount of the contract. Said bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime Respondent or a subcontractor to supply public work labor or material. This bond must be issued to the County within ten (10) days of the award of the contract and before Respondent begins the work.

If applicable, a Performance Bond shall be required. Pursuant to the provisions of Section 2253.021 of the Texas Government Code, if the amount of the contract awarded to the successful Respondent exceeds \$100,000.00, the successful Respondent shall execute a performance bond in the amount of the contract. Said performance bond is solely for the protection of Cherokee County and is conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents. This bond must be issued to the County within ten (10) days of the award of the contract and before the Respondent begins the work.

CRIMINAL BACKGROUND CHECKS

Criminal background checks will be performed on any Awarded Respondents, and employees that will require them to enter/work in any sensitive security areas at any of Cherokee County's Facilities. These include, but are not limited to, Cherokee County Airport, Cherokee County Courthouse, Cherokee County Sheriff's Department and/or Cherokee County Jails and Cherokee County Juvenile.

The following will apply to awarded Respondent personnel.

- The successful respondent shall provide information, including, but not limited to, name, date of birth, and driver's license number for each individual who will be performing work on Cherokee County property.
- Respondent personnel who perform work on Cherokee County property must submit to and pass a Sheriff's Department Criminal Background Check. That status must be maintained by all Respondent personnel entering County buildings for the duration of the contract.
- Criminal Background checks conducted by your firm may or may not be acceptable to certain departments depending on their particular requirements. The County reserves the right to conduct additional Criminal Background Checks as it deems necessary.
- The award of a contract could be affected by your firms' refusal to agree to these terms.
- The award could also be affected if your firm is unable to supply personnel who can pass a Criminal Background Check. **The Criminal Background Check applies to the individual and not the company.**