



**INVITATION TO BID  
NUMBER 18-075**

**For  
Concession Management Services  
Bid DUE:  
Date March 16, 2018 @ 2:00 PM. EST.**

**MANDATORY PRE-BID  
FEBRUARY 28, 2018 @ 10:00AM  
Location: City of Brookhaven Lynwood Park  
3360 Osborne Rd  
Brookhaven, GA 30319**

**Information concerning this solicitation may be found at:  
<http://www.Brookhavenga.gov>**

This website will have RFQ, Q&A and any clarifications, schedule changes and other valuable information. **Bidders should check these electronic pages daily!**

**Deadline for questions regarding this Bid is March 2, 2018, 5:00 pm Est.**

Questions shall be directed to City of Brookhaven Purchasing Manager,  
[Purchasing@brookhavenga.gov](mailto:Purchasing@brookhavenga.gov)

All spaces below are to be filled in and Qualifications Letter on page two must be signed where indicated. Failure to sign and return bid letter may cause rejection.

Invitation to Bid Submitted by:

Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

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## **INVITATION TO BIDS (18-075)**

### **Concession Management Services**

Sealed Bids for Purchasing ITB 18-075 Concession Management Services will be received by the City of Brookhaven, hereinafter called "City." Service providers whose bids meet the criteria established in the Invitation to Bid, at the sole discretion of the City, may be considered for Contract award. The City may, by direct negotiation, finalize terms with the service provider who is selected for award based on bids. The City reserves the right to reject any or all responses for any reason. Clarification of information may be requested by the City.

This contract shall be for a 2-year period with an optional three-one year extension.

The City, at its sole discretion, may short-list firms that are deemed to best meet the City's requirements, taking into consideration all criteria listed in the BID. The City may, at its sole discretion, ask for formal presentations from all the responsive and responsible bidder, or only from those firms that are short-listed, if short-listing is determined to be in the best interest of the City. Negotiations will be conducted and may take place in person or via telephone with the most qualified firm as identified by the City or, if short-listing occurs, with all the short-listed bidder. Bidder that participate in the negotiations may be given an opportunity to submit their best and final offers. The City of Brookhaven requires pricing to remain firm for the duration of the contract. Failure to hold firm pricing for the duration of the contract will be sufficient cause for the City to declare a bid non-responsive.

A Bid must be submitted in a sealed envelope which shall be clearly marked BID 18-075 and your company name. One (1) printed and signed unbound original, and one (1) USB/CD electronic copy in PDF of the Bid **shall be submitted no later than 2:00pm, March 16, 2018.** (Bids will not be accepted by facsimile or e-mail). At which time noted, all bids received will be publicly read. Any Bid received after the time and date specified for the opening of the bids will not be considered, but will be returned unopened.

**A Mandatory Pre-Bid Conference will be held February 28, 2018 @ 10:00am. Location: City of Brookhaven  
Lynwood Park, 360 Osborne Rd Brookhaven, GA 30319**

**Questions regarding bids should be directed to [purchasing@brookhavenga.gov](mailto:purchasing@brookhavenga.gov) no later than 2:00pm March 2, 2018.** Bids are legal and binding when submitted.

Bids must be addressed as follows:

Purchasing Department  
City of Brookhaven  
4362 Peachtree Road  
Brookhaven, GA 30319

The City of Brookhaven may award to more than one vendor, if it is in the best interest to do so.

No Bid may be withdrawn for a period of sixty (60) days after the time and date scheduled (or subsequently rescheduled) for bid opening.

The City's staff will review all bids submitted. After reviewing the bids, staff may, at its discretion, request formal presentations from one or more of the bidder (at bidder's expense at the City's site) whose bids appear to best meet the City's requirements.

The proposer awarded the Contract must provide proof of liability insurance in the amount of one million dollars (\$1,000,000.00), along with any other required insurance coverage and evidence of business or occupational license, as outlined in the Bid Documents.

The City reserves the right to waive any informalities or irregularities of bids, to request clarification or information submitted in any bid, to request additional information from any proposer, or to reject any or all bids, and to re-advertise for bids. The City also reserves the right to extend the date or time scheduled for the opening of bids.

Award, if made, will be to the responsible and responsive proposer submitting the bid which is deemed by the City, in the sole discretion, to be the most advantageous to the City, price and other factors being considered.

To ensure the proper and fair evaluation of bids, the City highly discourages any communication initiated by a proposer or its agent to an employee of the City evaluating or considering the bid during the period following the issuance of the BID, the opening of bids and prior to the time a decision has been made with respect to the Contract award. An appropriate Purchasing employee of the City may initiate communication with a proposer to obtain information or clarification needed to develop a proper and accurate evaluation of the bid. Any communication initiated by proposer during evaluation should be submitted in writing and delivered to the City of Brookhaven, Purchasing Office, 4362 Peachtree Road, Brookhaven, Georgia 30319, or by e-mail to [purchasing@brookhavenga.gov](mailto:purchasing@brookhavenga.gov). Unauthorized communication by the proposer may disqualify the proposer from consideration.

## **GENERAL INFORMATION**

### **Background**

The City of Brookhaven Parks & Recreation Department is requesting bids to provide concession management service. Since its incorporation in 2013, the City of Brookhaven has provided services to its citizens and businesses through partnership with private firms. Brookhaven has a population of over 55,000 people and covers a geographic area of over 13 square miles. The City functions under the governance of a City Council and the management of a City Manager.

### **Purpose of Procurement**

The purpose of this BID is to select Vendor(s) to provide concession management services. The term of the contract will be for 2 years beginning May 1, 2018 with a three-one year extension at the City's option.

The City is seeking Contractor(s) to provide services in the following areas:

## General Scope of Work

### Concessions for 3 Pools Scope of Work

#### For the Concession Provider

At each facility there is a shared space that will accommodate the concessions contract holder as well as the City of Brookhaven employed pool staff. The concession provider will provide acceptable concession services for the 3 City of Brookhaven Pools at the following locations:

Lynwood Pool  
3360 Osborne Rd  
Brookhaven, GA 30319

Briarwood Pool  
2235 Briarwood Way NE  
Brookhaven, GA 30319

Murphey Candler Pool  
1551 West Nancy Creek Drive  
Brookhaven, GA 30319

Services should include but not limited to food, candy, non-alcoholic beverages, ice cream, consumables, accessories, and paper products.

Hire and manage all personnel that would be staffing the concession stands to provide efficient service. All state and local laws, codes, and regulations regarding food service personnel should be adhered to. All personnel shall maintain a clean and neat appearance. The prospective concession provider will have all personnel drug tested and background checked beforehand and submit records to the City before the pool opens for business.

Keep all food and concession areas clean and sanitary at all time and go through the proper inspection procedures that City of Brookhaven requirements.

Provide all utensils and appliances required to do business including refrigerators, ovens, microwaves and maintain these to all standards set forth by the Dekalb County Board of Health.

Pay all sales and use taxes and any other taxes, fees of whatever nature for the operation of Services.

Keep current all municipal, county, state and/or federal licenses required to perform services and provide copies within 30 days of this agreement.

A list of products and menus are to be submitted within 30 calendar days of the effective date of the contract for Department approval.

**The City of Brookhaven will provide**

Periodic inspections (a minimum of once a month) of the concession stand premises and equipment at the operating facilities during the contract term.

Provide utilities, including electricity, solid waste disposal, and water and sewer service

Provide the concessions provider with a list of excluded venues or activities on a monthly basis.

The City of Brookhaven shall be responsible for structural maintenance of the facilities unless such maintenance is required because of damage caused by the contractor.

**Cost for Rental Space**

The concession vendor shall submit to the City a flat fee for renting the space. This fee will be paid monthly.

**Insurance**

The concession vendor shall provide insurance in the amount of:

General Liability: \$1,000,000 combined single limit per occurrence for comprehensive coverage including bodily injury, personal injury and property damage for premises/operations.

Workers compensation, social security, and additional benefits for employees and staff

**Times Needed**

May 26 – August 5

Pools are open Monday – Thursday from 12-6pm, Fridays and Saturdays from 12-8pm and Sundays from 1-6pm. The concession stands would need to be open during these times.

August 11-September 3

Pools are open Saturdays 12-6pm and Sundays 1-6pm and Labor Day from 12-6pm.

**Concession Information**

The Concessionaire shall not subcontract out any rights under this Agreement without the written consent of the City.

The Concessionaire shall comply with all applicable state and local regulations.

The Concessionaire shall pay for all necessary equipment, fixtures, electrical service modifications, or site modifications needed to place services in operation. All modifications to facilities must be approved by the City of Brookhaven Recreation and Parks Director or designee.

It will be the Concessionaire's responsibility to ensure that Concession Services are available each day the pools are open.

All site furnishings not contained to the designated Concession area will be stored off site when not in use.

The Concessionaire shall not sell, mortgage, assign, or parcel out any rights under this agreement without the written consent of the City. The purpose and spirit of this agreement is to grant rights to the Concessionaire. These rights are not exclusive and are not meant to imply absolute exclusivity.

All expenses for food and beverages, and all things necessary to prepare, cook, and serve the food and beverages (including refilling the propane tanks) shall be the responsibility of the Vendor. The Vendor will receive all revenue generated from the sales of food and non-perishables.

\* \* \* \* \* END OF SPECIFICATIONS \* \* \* \* \*

**COST BID FORM**

Flat Fee for Rental Space \$ \_\_\_\_\_  
Lynwood Park

Flat Fee for Rental Space \$ \_\_\_\_\_  
Briarwood Park

Flat Fee for Rental Space \$ \_\_\_\_\_  
Murphey Candler Park

Please write the amount clearly in the space provided.

**Return this form with you Bid documents.**



**BID FORM**  
**BID 18-075 CONCESSION MANAGEMENT SERVICES**

The undersigned, as Proposer, hereby declares that this Bid is in all respects fair and submitted in good faith without collusion or fraud. Proposer represents and warrants to the City that: (i) except as may be disclosed in writing to the City with its Bid, no officer, employee or agent of the City has any interest, either directly or indirectly, in the business of the Proposer, and that no such person shall have any such interest at any time during the term of the Contract should it be awarded the Contract; and (ii) no gift, gratuity, promise, favor or anything else of value has been given or will be given to any employee or official of the City in connection with the submission of this Bid or the City’s evaluation or consideration thereof.

The Proposer further represents that it has examined or investigated the site conditions if necessary, and informed itself fully in regard to all conditions pertaining to the place where the work is to be done; that it has examined the Contract Documents and has read all Addendum(s) furnished by the City prior to the opening of the Bids, as acknowledged below, and that it has otherwise fully informed itself regarding the nature, extent, scope and details of the services to be furnished under the Contract.

The Proposer agrees, if this Bid is accepted, to enter into the written Contract with the City in the form of Contract attached (properly completed in accordance with said Bid Documents), and the Contract Documents for BID 18-075 Parks & Recreation Contractor(s), at the City of Brookhaven, and to furnish the prescribed evidence of a valid business license, insurance, and all other documents required by these Contract Documents. The Proposer further agrees to commence work and to perform the work specified herein within the time limits set forth in the Contract Documents, which time limits Proposer acknowledges are reasonable.

The undersigned further agrees that, in the case of failure or refusal on its part to execute the said contract, provide evidence of specified insurance, a copy of a valid business or occupational license and all other documents required by these Contract Documents within ten (10) business days after being provided with Notice of Intent to Award the contract (or such earlier time as may be stated elsewhere in these Bid Documents), the Bid award may be offered by the City to the next ranked Proposer, or the city may re-advertise for Bids, and in either case the City shall have the right to recover from the Proposer the City’s costs and damages including, without limitation, attorney’s fees, to the same extent that the City could recover its costs and expenses from the Proposer under section 10 of the Instructions to Bidder if the Proposer withdrew or attempted to withdraw its Bid.

The Proposer further agrees, if it fails to complete the work according to the Specification within the scheduled time or any authorized extension thereof, that damages may be deducted from the Contract price otherwise payable to the Proposer.

Acknowledgement is hereby made of the following Addendum(s) received since issuance of the Contract Documents (identified by number)

Addendum No.	Date	Addendum No.	Date	Addendum No.	Date
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

It shall be the responsibility of each Proposer to visit the City Purchasing Department’s website to determine if addendum(s) were issued and, if so, to obtain such addendum(s). Failure to acknowledge an addendum above shall not relieve the Proposer from its obligation to comply with the provisions of the addendum(s) not acknowledged above.

The services to be performed under this Agreement shall commence on or about May 26, 2018.

The City of Brookhaven requires pricing to remain firm for the duration of the contract. Failure to hold firm pricing will be sufficient cause for the City to declare bid non-responsive.

Termination for Cause: The City may terminate this agreement for cause upon ten days prior written notice to the Consultant of the Consultant's default in the performance of any term of this agreement. Such termination shall be without prejudice to any of the City's rights or remedies by law.

Termination for Convenience: The City may terminate this agreement for its convenience at any time upon 30 days written notice to the Consultant. In the event of the City's termination of this agreement for convenience, the Consultant will be paid for those services actually performed. Partially completed performance of the agreement will be compensated based upon a signed statement of completion to be submitted by the Consultant, which shall itemize each element of performance.

Termination for fund appropriation: The City may unilaterally terminate this Agreement due to a lack of funding at any time by written notice to the Consultant. In the event of the City's termination of this Agreement for fund appropriation, the Consultant will be paid for those services actually performed. Partially completed performance of the Agreement will be compensated based upon a signed statement of completion to be submitted by the Service Provider which shall itemize each element of performance.

The contractor agrees to provide all work to complete the project(s) described in accordance with the Unit Price Schedule submitted with this agreement.

Legal Business Name \_\_\_\_\_

Federal Tax ID \_\_\_\_\_

Address \_\_\_\_\_

Does your company currently have a location within the City of Brookhaven? Yes\_ No\_\_

Representative Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Telephone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

Email Address \_\_\_\_\_

(If Proposer is a Sole Proprietorship complete and sign on the lines below)

\_\_\_\_\_  
(Company Name, If Any)

\_\_\_\_\_  
(Company Owner's Name Printed or Typed)

\_\_\_\_\_  
(Company Owner's/Bidders Signature)

(If Proposer is a Partnership complete and sign on the lines below)

\_\_\_\_\_  
(Partnership's Legal Name)

\_\_\_\_\_  
(General Partner/Member Name Printed or Typed)

\_\_\_\_\_  
(General Partner/Member Signature)

The following information may be provided by a Proposer with this Bid, but must be provided to the City at any time upon the request of the City: The name and business address of all principals, members, and/or partners of the partnership (if a limited partnership, information for general partner(s) only, along with the name of the limited partnership's home state.)

(If Proposer is a Corporation or Other State-Chartered Business Entity complete and sign on the lines below)

\_\_\_\_\_  
(Legal Name)

\_\_\_\_\_  
(Authorized Officer's Name Printed or Typed)

\_\_\_\_\_  
(Signature of Authorized Officer)

\_\_\_\_\_  
(Authorized Officer's Title Printed or Typed)

ATTEST: \_\_\_\_\_  
(Secretary)

(Affix Corp Seal Here)

The Proposer is a corporation or other state-chartered business entity organized under the laws of the State of, and authorized by law to make this bid and perform all work and furnish materials and equipment required under the Contract Documents. If Proposer is a foreign corporation or other business entity, the corporation or entity is or is not registered with the Secretary of State of the State of Georgia. Foreign corporations or other foreign state-chartered business entities must be legally authorized to conduct business in the State of Georgia as a condition to entering into a Contract with the City.

The following information may be provided by a Proposer with this Bid, but must be provided to the City at any time upon the request of the City: The name and business address of each officer, director and holder of 10% or more of the corporation's or entity's outstanding stock, including the corporate office or title of all individuals listed.

### CONTRACT REFERENCES

List below customers for whom you have provided similar services in the past or with whom you are presently contracting. Ensure references below have been contacted and agree to provide the City with a reference including answers to questions posed by the City. References should relate to services of a type similar to the obligations presented in this bid.

1. COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

2. COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

3. COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

## INSTRUCTIONS TO BIDDER

### 1. INTENT

It is the intent of these Instructions to establish guidelines for the proper completion of the Bid Forms. These Instructions to Bidder provide guidance and explanation for subsequent Bid Forms and Contract Documents. Please read all Instruction paragraphs.

### 2. GENERAL

- 2.1 The City's goal is that all the terms and conditions stated in the Bid Documents will constitute the terms of the final Contract between the City and the successful Proposer, without significant or material change to such terms or conditions. Exceptions to any of the terms of the agreement to which a Proposer will not or does not agree must be presented by the proposer in writing as provided in this section and directed to: [purchasing@brookhavenga.gov](mailto:purchasing@brookhavenga.gov). Such exceptions must be specific, and the Proposer must state a reason for each exception and propose alternative language, if appropriate. The purpose of the exception process is to permit the City to correct, prior to the opening of the bids, any technical or contractual requirement, provision, ambiguity or conflict in the solicitation and related documents, which may be unlawful, improvident, unduly restrictive of competition or otherwise inappropriate. Any corrections will be made via an addendum issued prior to the submission deadline. Unless timely submitted as an exception and amended with an addendum, any such ambiguity, conflict or problem shall be resolved in favor of the City of Brookhaven. Bidder shall not substitute entire agreements or sets of terms and conditions but discuss separately each term or condition that they take exception to or desire to change.
- 2.2 The City will award one (1) single contract for the services required under this solicitation. The city has the option to award a contract to more than one vendor, if it is in the best interest of the city to do so.
- 2.3 A Bidders Bid prices shall remain firm for 180 days from the submission deadline. Any anticipated increases in Bidders costs during the initial term of the Contract must be reflected in its prices set forth in its Bid. The City shall not be obligated to renegotiate or increase any price for any work during the initial term of the Contract based on a Bidders mistake or miscalculation of prices, underestimation of costs, or for any other reason. All of the Bidders overhead costs, including, but not limited to, costs of travel and the required bonds and insurance coverage, shall be included in such Bidders prices listed in its Bid.
- 2.4 The Contract, if awarded, shall not be construed to create unto the Contractor any exclusive rights with respect to any of the City's requirements. The City may in its sole discretion award any additional or similar services to any third party, or if the Contract is for the provision of services, the City may elect to perform all or a portion of the services by its own employees.
- 2.5 There shall be no reimbursable or travel expenses associated with this project regarding any category or term. Without limiting the generality of the foregoing, all of the Bidders overhead costs related to travel shall be included in such Bidders prices in its Bid.
- 2.6 The City will contract with the successful Proposer to provide services indicated in the Specifications throughout the duration of the Contract at the price submitted. The City will not price a contract for hourly rates.

### 3. ENVIRONMENTAL SUSTAINABILITY

The City of Brookhaven is committed to environmental sustainability. The City believes we have a unique opportunity to further expand our leadership in the area of environmentally preferable purchasing, and through our actions, elicit changes in the marketplace. By further incorporating environmental considerations into public purchasing, the City of Brookhaven will positively impact human health and the environment, remove unnecessary hazards from its operations, reduce costs and liabilities, and improve the environmental quality of the region. As such the City encourages the incorporation of environmental sustainability into bids.

### 4. EXAMINATION OF BID/CONTRACT DOCUMENTS

All prospective Bidder shall thoroughly examine and become familiar with the Bid package and carefully note the items which must be submitted with the Bid. (These Instructions to Bidder, the Invitation to Bid, the Bid Forms, the Contract, the General Conditions, and the Specifications are referred to herein as the "Bid Documents" or the "Contract Documents.") Submission of a Bid shall constitute an acknowledgment that the Proposer has read and understands the Bid Documents. The failure or neglect of a Proposer to receive or examine any Bid Document shall in no way relieve it from any obligations under its Bid or the Contract. No claim for additional compensation will be allowed which is based upon a lack of knowledge or understanding of any of the Contract Documents or the scope of work.

### 5. ADDENDUM(S)-CHANGES WHILE PROPOSING

Other than during the Pre-Bid Conference, the City shall not be required to provide to any Proposer verbal interpretations as to the meaning of any portion of the Bid Documents. Requests for interpretation, clarification or correction of Bid Documents, forms or other material in this Bid Package should be made in writing and delivered to the City, Purchasing Office, 41 Perimeter Center East, Suite 250, Brookhaven, Georgia 30346, or by e-mail to [purchasing@Brookhavenga.gov](mailto:purchasing@Brookhavenga.gov) or facsimile to (678) 382-6701 at least five

(5) business days before the date and time announced for the Bid opening. Any response by City to a request by a Proposer for clarification or correction will be made in the form of a written Addendum. All parties to whom the Bid packages have been issued will be sent a notification of the issuance of an Addendum either by e-mail and/or by facsimile. The Addendum may be electronically downloaded by visiting either the City web site at <http://www.Brookhavenga.gov> or by visiting Georgia's Department of Administrative Services (DOAS) web site at [http://ssl.doas.state.ga.us/PRSapp/GPR\\_P\\_start.jsp](http://ssl.doas.state.ga.us/PRSapp/GPR_P_start.jsp). However, prior to submitting its response, it shall be the responsibility of each Proposer to visit the City website to determine if addendum(s) were issued and, if so, to obtain such addendum(s).

## **6. PREPARATION OF BIDS**

- 6.1 Bids shall be submitted on reproduced copies of the attached Bid Forms including any revised or additional Bid Forms supplied by Addendum(s). If an award is made, the completed Bid Forms shall constitute a part of the Contract Documents and will be incorporated in the final Contract between the City and the successful Proposer. All blank spaces in the Bid Forms should be filled in legibly and correctly in ink or type.
- 6.2 All Bids shall contain the name and business address of the individual, firm, corporation, or other business entity submitting the Bid and shall be subscribed by either the individual, a general partner, a member of a member-managed LLC, a manager of a manager-managed LLC, or an authorized officer or agent of a Corporation or business entity, and should be properly witnessed or attested. If any officer or agent other than the signatories described in the preceding sentence shall sign any Contract Document on behalf of the Proposer, the City should be furnished with satisfactory evidence of such officer's or agent's authority to bind the Proposer with respect to the contents of the subject Bid Documents so signed by him or her. If the Proposer is an LLC, the Proposer should submit with its Bid its Articles of Organization or other evidence satisfactory to the City, indicating whether the LLC is member-managed or manager-managed, and indicating that the person executing the Bid is authorized to bind the LLC.
- 6.3 If the Proposer is a partnership, joint venture, or sole proprietorship, the City, reserves the right to require the Proposer to submit to the City at any time the name and business address of each owner, principal, partner, or member of the Proposer having an ownership or management position with the Proposer.
- 6.4 If the Proposer is a corporation or other state-chartered business entity, the City reserves the right to require the Proposer to submit to the City at any time, the name and business address of each officer, director and holder of 10% or more of the stock or other ownership interests of such corporation or other business entity. If the Proposer is a corporation, the Bid should have the corporate seal affixed and include the name of the State in which it was incorporated. If the Proposer is a foreign corporation or other state-chartered business entity and is the successful Proposer, the Proposer will be required to submit evidence prior to the execution of the Contract, if awarded, that the corporation or other state-chartered business entity is authorized to do business in the State of Georgia and the City. If the Proposer elects to use a fictitious name in its Bid, a copy of the Bidders fictitious name registration should be provided to City.

## **7. BID GUARANTY**

A Bid Guaranty shall not be required for this Contract.

## **8. DELIVERY OF BIDS**

- 8.1 All Bids shall be submitted in sealed envelopes bearing on the outside the name of the Proposer, address, and the Purchasing Bid #. Each Bid shall consist of (i) an executed copy of the Bid Form, along with all other documents or information required to be submitted pursuant to the terms of the Bid Documents (together, the "Bid"). The documents comprising the Bid must be completed and signed on the forms provided herein, or on exact reproductions thereof.
- 8.2 All Bids shall be submitted pursuant to the terms outlined in these Instructions to Bidder. Any Bids received after the time and date specified in the solicitation document for the opening of the Bids will not be considered, but will be returned unopened.
- 8.3 Each Bidders response shall be at the sole cost and expense of the Proposer and such Proposer shall have no right or claim against the City for costs, damages, loss of profits, or to recover such costs, damages, or expenses in the event the City exercises its right to reject any or all Bids or to cancel an award pursuant to a provision hereof for any reason.
- 8.4 Submission of a Bid shall constitute authorization for the City and its representatives and agents to make such copies of the Bid or portions thereof and to distribute such copies as may be necessary or desirable to carry out the City's objectives or requirements.

## **9. COMMUNICATIONS REGARDING EVALUATION OF BIDS**

To ensure the proper and fair evaluation of Bids, the City highly discourages any oral communication initiated by a Proposer or its agent to an employee of the City evaluating or considering the Bid during the period of time following the issuance of the solicitation document, the opening of Bids and prior to the time a decision has been made with respect to the Contract award. An appropriate Purchasing employee of the City may initiate communication with a Proposer in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Bid. Any communication initiated by Proposer during evaluation should be submitted in writing and delivered to the City of Brookhaven, Purchasing Office, 4362 Peachtree Road Brookhaven, Georgia 30319, or by e-mail to [purchasing@brookhavenga.gov](mailto:purchasing@brookhavenga.gov) or facsimile to (404) 637-0481. Unauthorized communication by the Proposer may disqualify the Proposer from consideration.

**10. WITHDRAWAL OF BIDS**

No Bid may be withdrawn after it is submitted unless the Proposer makes a request in writing and such request is confirmed as received prior to the time set for opening of Bids. No Bid may be withdrawn after the scheduled Bid opening time for a period of one hundred and eighty (180) days. Any Proposer withdrawing or attempting to withdraw its Bid prior to the expiration of the one hundred and eighty (180) day period shall be obligated to reimburse the City for all its costs incurred in connection with such withdrawal or attempted withdrawal including, without limitation, any increased costs for procuring the goods or services from another Proposer or all costs of advertising and re-procuring the goods or services, and all attorneys' fees, in addition to payment of City's other damages. A Bidders submission of a Bid shall be deemed the Bidders acknowledgment of an agreement to the provisions of this Section.

**11. DISQUALIFICATION OF BIDDER**

11.1 Any of the following causes may be considered as sufficient for the disqualification of a Proposer and the rejection of its Bid:

- 11.1.1 Submission of more than one Bid for the same work, or participation in more than one Bid for the same work as a partner or principal of the Proposer, by an individual, firm, partnership or corporation, under the same or different names, or by Bidder which are affiliates, either at the time of submittal, or at the time of award. For purposes of this section, the term "affiliates" means firms, partnerships, corporations or other entities under common control;
- 11.1.2 Evidence of collusion between or among Bidder;
- 11.1.3 Evidence, in the opinion of the City, of Proposer(s) attempting to manipulate the Bid pricing for its own benefit (e.g. pricing resulting in a failure of the City's ability to enforce the Contract or impose the remedies intended following breach by Contractor);
- 11.1.4 Being in arrears on any of its existing contracts with the City or in litigation with the City or having defaulted on a previous contract with the City;
- 11.1.5 Poor, defective or otherwise unsatisfactory performance of work for the City or any other party on prior projects which, in the City's judgment and sole discretion, raises doubts as to Bidders ability to properly perform the work; or
- 11.1.6 Any other cause which, in the City's judgment and sole discretion, is sufficient to justify disqualification of Proposer or the rejection of its Bid.

11.2 The City has adopted a policy which addresses, among other things, the obligations of the City's employees with respect to interest in business entities, unauthorized compensation and acceptance of gifts. Please be aware that any act by a Proposer that could cause a City employee to violate the policy is sufficient cause for the denial of the right of the Proposer to propose on any contract or sell any materials, supplies, equipment, or services to the City for a period of time that is determined by the City Manager.

**12. REJECTION OF IRREGULAR BIDS**

A Bid may be considered irregular and may be rejected if it is improperly executed, shows omissions, alterations of form, additions not called for, unauthorized conditions, or limitations, or unauthorized alternate Bids, fails to include the proper Bid Guaranty, Contract references, other certificates, affidavits, statements, or information required to be included with Bids, including, but not limited to, the Bidders prices, or contains other irregularities of any kind.

**13. NOTICE OF INTENT TO AWARD CONTRACT**

Unless all Bids are rejected, a Notice of Intent to Award is anticipated to be provided within ninety (90) days from the opening of Bids to the responsible and responsive Proposer submitting the Bid deemed to be most advantageous to the City, price and other factors being considered. For all procurements, the City reserves the right to reject any or all Bids and to cancel the procurement or to solicit new Bids.

**14. RESPONSIBILITY OF BIDDER**

- 14.1 City reserves the right, to aid it in determining a Bidders responsibility, to require a Proposer to submit such evidence of Bidders qualifications as the City may deem necessary, and may consider any evidence available to the City of the financial, technical, and other qualifications and abilities of a Proposer, including past performance (experience) with the City and others. The City shall be the final authority in the award of any and all Bids.
- 14.2 All Bidder shall furnish the City with the company name, address, contact person, and telephone number of at least three (3) entities (preferably a firm other than the City) for which they have supplied similar services as requested in this Bid during the past three (3) years. The information should be submitted on the provided Contract References page with the knowledge that the City will use the data for reference purposes. The City does check all references and requires the Proposer to notify the reference, verify contract information, and obtain permission from the reference before completing the form.
- 14.3 For a Proposer to meet the minimum responsibility criteria for this Contract, the Proposer must provide verifiable evidence, through references or otherwise, that the Proposer is an individual, a firm, a corporation, or other entity that is currently employed or otherwise engaged in providing branding services and, taking into account the activities of a related predecessor, affiliate, or principal of Proposer, has been actively engaged in such activity for at least three (3) years immediately preceding the date of the Bidders response to this request.



**15. GUARANTY OF FAITHFUL PERFORMANCE**

A Performance Bond shall not be required for this Contract.

**16. POWER OF ATTORNEY AND COUNTERSIGNATURE**

Not applicable.

**17. EXECUTION OF CONTRACT**

17.1 The Proposer to whom the Notice of Intent to Award is given shall, within ten (10) business days of the date of the Notice of Intent to Award, execute and/or deliver the following to the City: the Contract, a copy of the Bidders valid business or occupational license, and all other documents and information required by the Contract Documents. All of the above documents and information must be furnished and the Contract Documents executed by Proposer, and delivered to the City, before the Contract will be executed by the City.

17.2 A Bidders failure to timely fulfill its obligations under this section shall be just cause for withdrawal of such Notice of Intent to Award. In such case, a Notice of Intent to Award may then be issued to the next ranked Proposer or all Bids may be rejected and the Contract re-advertised. In such event, the City shall be entitled to receive its damages and costs, including, but not limited to, its attorneys' fees caused by or in connection with a Bidders failure to fulfill its obligations under this paragraph. A Bidders liability for failing to timely fulfill the obligations stated in this paragraph shall be the same as for withdrawing its Bid (see Section 10).

17.3 The Contract shall not be binding upon the City until it has been executed by the City and a copy of such fully executed Contract is delivered to the Contractor. The City reserves the right to cancel the award without liability to any Proposer at any time before the Contract has been fully executed by the City and delivered to the Contractor. Accordingly, the Contractor is hereby warned that it should not commence performance or incur costs or expenses in connection with the Contract obligations until it has been delivered a final, fully executed copy of the Contract.

**18. GEORGIA SALES TAX**

The City is a governmental agency and a political subdivision under Georgia law. Purchases by the City under this Contract are exempt from sales tax: A City tax exempt number is not required for a municipality. No purchase made by any entity is qualified to be exempt other than those made directly by the City. The City's sales tax exemption does not apply to goods or services purchased or consumed by a Contractor for which the Contractor is deemed to be the ultimate consumer in connection with the fulfillment of its Contract obligations, and the City shall have no liability for such taxes.

**19. SUBCONTRACTS**

19.1 The Contractor's right to subcontract shall be governed by the provisions of Section 17 of the General Conditions.

19.2 Nothing contained in these Contract Documents shall be construed as creating any contractual relationship between any subcontractor and the City.

19.3 The Contractor shall be fully responsible to the City for the acts and omissions of a subcontractor and of persons employed by said subcontractor to the same extent that the Contractor is liable to the City for acts and omissions of persons directly employed by it.

**20. FAMILIARITY WITH LAWS**

All Bidder and the Contractor are presumed to be familiar with and shall observe all Federal, State and local laws, ordinances, codes, rules and regulations, including, without limitation, the City's rules and regulations, that may in any way affect work herein specified. Ignorance on the part of the Contractor shall in no way relieve Contractor from any such responsibility or liability. Contractor's compliance with requirements of O.C.G.A. 13-10-91 and Rule 300-10-1-.02 will be attested.

**21. SECURITY**

The successful Proposer will be required to comply with all applicable standards of the City relating to security which may be in effect or changed from time to time.

**22. MINORITY AND WOMEN BUSINESS ENTERPRISE ("MWBE") PARTICIPATION**

An MWBE participation goal has not been established for this Contract. Such participation is encouraged, but will not be considered during the evaluation process for award of this Contract.

**23. LOCAL DEVELOPING BUSINESS ("LDB") PARTICIPATION**

An LDB participation goal has not been established for this Contract. Such participation is encouraged, but will not be considered during the evaluation process for award of this Contract.



**24. INSURANCE**

The Proposer to whom the Notice of Intent to Award is given shall provide a signed Certificate of Insurance. The Certificate of Insurance shall evidence the insurance coverage required by the City pursuant to Section 14.7 of the General Conditions and shall be filed with the City within ten (10) business days of the date of the Notice of Intent to Award. The Certificate of Insurance must contain a provision that the coverage provided under the policies will not be cancelled or modified or the limits thereunder decreased unless at least thirty (30) days prior written notice has been given to the City.

**25. BID ERRORS**

In the case of a Bidders error in the extension or addition of Bid prices, the unit prices will govern. Bids having erasures or corrections should be initialed in ink.

**26. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT**

The Proposer certifies that all materials, equipment, chemicals, etc. contained in its Bid or otherwise to be provided or used by the Proposer in its performance of the Contract work, and including any replacements or substitutions therefore, shall meet all EPA and OSHA requirements.

**27. PERFORMANCE STANDARD**

The standards by which the Contractor's performance will be evaluated are set forth in the General Conditions and Specifications. The successful Bidders failure to meet these standards, after receipt of written notice to correct such deficiencies, may in addition to the City's other remedies, in the City's sole discretion, result in a termination of the Contract for cause pursuant to the termination provisions of the General Conditions.

**28. NO BIDS**

In the event a potential Proposer elects not to submit a Bid, such potential Proposer is nonetheless requested to respond by advising the City of the reason for not submitting a Bid.

**29. PUBLIC RECORDS/PUBLIC MEETINGS**

Please be aware that all meetings of the City's Council are duly noticed public meetings and all documents submitted to the City as a part of or in connection with a Bid may constitute public records under Georgia law regardless of any person's claim that proprietary or trade secret information is contained therein. By submission to the City, Bidder waive any declaration that their entire response to be proprietary information. Bids and all related correspondence are subject to the Georgia Open Records Act and may be provided to anyone properly requesting same, after contract award. The City cannot protect proprietary data submitted in vendor bids unless provided for under the open records law. In the event, the proposer deems certain information to be exempt from the disclosure requirements, the bid must specify what content is considered exempt and cite the applicable provision of the law to support that assessment. In the event such information is requested under the open records law, the bidders assessment will be examined by the City Attorney who will make a determination. The decision to withhold or release the information will be at the City's sole discretion.

\*\*\*\*\* END OF INSTRUCTIONS TO BIDDER \*\*\*\*\*

**APPENDIX A**

**NO RESPONSE**

**TO**

**INVITATION TO BIDS**

If your company is unable to submit a Bid at this time, please provide the information requested in the space provided below and return to:

Purchasing Department  
City of Brookhaven  
4263 Peachtree Road  
Brookhaven, GA 30319

Our company's reason for not submitting a Bid is:

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\_\_\_\_\_  
Company Name

By: \_\_\_\_\_

Its: \_\_\_\_\_  
Name & Title, Typed or Printed

**APPENDIX B**

Solicitation No. \_\_\_\_\_

**CONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Brookhaven has registered with and is participating in a federal work authorization program\* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract, contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Brookhaven at the time the subcontractor(s) is retained to perform such service.

\_\_\_\_\_  
E-Verify \* User Identification Number

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
BY: Authorized Officer or Agent Date  
(Contractor Signature)

\_\_\_\_\_  
Title of Authorized Officer or Agent of Contractor

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN  
BEFORE ME ON THIS THE

\_\_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

\* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is "E-Verify" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

**Affidavit Verifying Status  
for City Public Benefit Application**

By executing this affidavit under oath, as an applicant for a City of Brookhaven, Georgia Business License or Occupation Tax Certificate, Alcohol License, Taxi Permit or other public benefit as referenced in O.C.G.A. Section 50-36-1, I am stating the following with respect to my application for a City of Brookhaven, Business License or Georgia Occupational Tax Certificate, Alcohol License, Taxi Permit or other public benefit (circle one) for \_\_\_\_\_.

[Name of natural person applying on behalf of individual, business, corporation, partnership, or other private entity]

1) \_\_\_\_\_ I am a United States citizen

OR

2) \_\_\_\_\_ I am a legal permanent resident 18 years of age or older or I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act 18 years of age or older and lawfully present in the United States.\*

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of Code Section 16-10-20 of the Official Code of Georgia.

Signature of Applicant:            Date

\_\_\_\_\_

Printed Name:

\_\_\_\_\_

SUBSCRIBED AND SWORN  
BEFORE ME ON THIS THE  
\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

\* \_\_\_\_\_  
Alien Registration number for non-citizens

Notary Public  
My Commission Expires:

\*Note: O.C.G.A. § 50-36-1(e)(2) requires that aliens under the federal Immigration and Nationality Act, Title 8 U.S.C., as amended, provide their alien registration number. Because legal permanent residents are included in the federal definition of “alien”, legal permanent residents must also provide their alien registration number. Qualified aliens that do not have an alien registration number may supply another identifying number below:

\_\_\_\_\_