

ACS/City of Memphis

**Vendor Resource Pool for Equipment / Off the Shelf Software
Request for Proposal**

Prepared By: Information Services

Closing Date for Proposals: July 17, 2009

Proposals Accepted at: ATTN: ACS Business Office

Vendor Resource Pool for Equipment / Off the Shelf Software

5115 Covington Way, Suite 11

Memphis, TN 38134

E-Mail Inquiries: requests@memphistn.gov

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**AFFILIATED COMPUTER SERVICES (ACS), INC.
CITY OF MEMPHIS DIVISION OF INFORMATION SERVICES**

**Request for Proposal
Vendor Resource Pool for Equipment / Off the Shelf Software**

Affiliated Computer Services (ACS) and the City of Memphis (hereinafter referred to as “City”) are developing a “Procurement Vendor Pool” contract(s) to facilitate the procurement of Information Technology (IT) Equipment and Off the Shelf Software (Goods). The intent of this RFP is to develop a convenience contract with one of more Vendors who can provide a wide range of IT Goods.

Vendors must submit an acceptable and qualified response to this RFP in order to become eligible for this contract. Multiple Vendors will be selected for the eligible Vendor Pool.

The selected pool of Vendor(s) will be contractually responsible for all services denoted in the document. ACS will be accountable for the management of this contract.

Interested parties should carefully review this RFP, including all requirements, terms, conditions, performance standards, and financial penalties to ensure the most responsive proposals.

1.0 Introduction

The Information Services Division (IS) of the City provides services to satisfy the information needs of all Divisions. Subsequently these Divisions use this information to better serve the citizens of Memphis quickly and efficiently. By implementing the Vendor Resource Pool for Equipment / Off the Shelf Software the City would be better positioned to serve the Citizens need for information.

1.1 Overview of Work

ACS on behalf of the City of Memphis's Office of Information Services (IS) is developing the IS Procurement Vendor Pool Contract to facilitate the procurement of equipment and off the shelf software. The intent of this RFP is to develop a convenience contract with multiple vendors who meet the requirements of this RFP.

Vendors must submit an acceptable and qualified response to this RFP as determined by ACS and the City's IS Dept. ACS and the City may identify a need to procure equipment and/or software by issuing to the Pool of Vendors a Request for Quote (Exhibit B). After a Request for Quote is issued and the Pool of Vendors has responded an award will be made by issuance of an Order Letter/ Purchase order (Exhibit C). All awards will be based on availability of product, delivery time, product consistent with required standards for product and cost.

1.2 Schedule of Activities

ACTIVITY	DATE
Distribution of RFP	June 29, 2009
Deadline for Questions	July 9, 2009
Proposal Due (Mandatory) by 2:00 P.M.	July 17, 2009
Earliest Date to Open Sealed Proposals by RFP Committee	July 22, 2009
Oral Presentation by Vendor(s) (optional at City discretion)	TBD

1.3 Term of Contract

Term of Contract is for one (1) year with the option to renew for one (1) additional 12 month period.

1.4 Response

The Vendor(s) must submit a response with numbering corresponding to the sections 2.0 Contract Scope, 3.0 Requirements and 4.0 Vendor Qualification.

The following definitions are to be used when Vendor(s) is preparing responses.

Complies: means that the Vendor(s) accepts the statement/requirement provision in every respect. Vendor **must** also thoroughly explain in detail how their responses to each requirement in the RFP will be met. If Vendor does not thoroughly explain in detail how their response meets the requirements the Vendor may be subject to a lower score for insufficient information.

Does Not Comply: means that the Vendor(s) does not accept provision. If the Vendor(s) does not comply with a particular provision then the **Vendor(s) must:**

1. indicate that it does not comply;
2. give reasons for non-compliance; and
3. Provide detailed language that would render the provision acceptable to the Evaluation Committee made up of City and ACS Employees.

1.5 Sole Responsibility

The successful Vendor(s) shall assume full responsibility for meeting all requirements agreed to in the response to this RFP.

1.6 Sole Contact

Further, ACS will consider the selected Vendor(s) to be the sole point of contact with regard to contractual matters, including the performance of warranty services and the payment of any and all charges resulting from contract obligations. Upon contract award, the selected Vendor(s) will be directly responsible for all of its personnel and the selected Vendor(s) will designate an account manager who will serve as the point of contact for the City and ACS for billing, additions, moves, deletions, training, repairs, or any other requests or inquiries.

2.0 Contract Scope

2.1 Compliance with Proposed Contract

The Vendor(s) must submit a tabulated statement with numbering corresponding to the relevant clauses of Exhibit 1 (Proposed Contract), detailing its level of compliance with Exhibit 1 (Proposed Contract) as listed in Section 1.4. **An alternative contract will not be accepted and any modifications to the terms and conditions of the attached proposed contract of this RFP may result in disqualifications.**

Indefinite responses such as “noted” as a statement of compliance or “to be discussed” or “to be negotiated” are not acceptable.

2.2 Subcontracting

The Vendor(s) will not assign this contract. Nor shall the Vendor(s) subcontract or permit anyone, other than the Vendor’s personnel, to perform any of the services, except with the written consent of the City and ACS.

3.0 Requirements

Should the City elect to purchase any equipment or software under the contract resulting from the RFP, such equipment must meet the following requirements:

- a. Vendor shall strictly comply with the specifications, requirements, standards, and representations set forth in the Order Letter / Purchase Order (Exhibit “C”).
- b. Vendor shall provide a CD with the commodity list of hardware and off the shelf software available for purchase. *No pricing is required for this RFP.*
- c. All goods shall be shipped by Vendor or designated transportation Delivery Company at Vendor’s selection.
- d. Vendor must provide Estimated Time of Arrival (ETA) within three (3) business days to ACS Purchasing, upon receipt of an Order Letter / Purchase Order (Exhibit “C”).
- e. All goods provided by Vendor shall be complete, uniform in appearance and in accordance with generally applicable standards in the industry and shall perform according to the requirements as set forth in the Order Letter / Purchase Order (Exhibit “C”).
- f. In the event that warranty repairs on goods are necessary, Vendor shall respond to ACS within one (1) business day of notification by ACS, to provide assistance for problem resolution.

3.1 Standardized Products

The City has standardized on the following products:

- | | |
|----------------------------|--------------------------------|
| – Dell Desktops | Must be an Authorized Reseller |
| – Dell Laptops | Must be an authorized Reseller |
| – Hewlett Packard Printers | Must be an Authorized Reseller |

- a. **Indemnification:** Vendor shall indemnify, defend and save harmless ACS, their respective agents, officers, appointed and elected officials and employees from and against any and all claims, suits, actions, including workers' compensation suits and costs of any kind, including all defense costs, all attorney's fees, arising as a result of death, personal injury, or damage to real or personal property caused, in whole or in part, by the acts or omissions of Vendor in connection with this Agreement.
- b. **Insurance:** Vendor shall provide and maintain at its own expense during the term of this Agreement the following programs of insurance covering its operations hereunder. Such insurance shall be provided by insurer(s) satisfactory to ACS's Risk Manager and evidence of such programs satisfactory to ACS shall be delivered to ACS, on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall contain express conditions that ACS is to be given written notice at least thirty (30) days in advance of any material change or termination of any program of insurance. Such insurance shall be primary to and not contributing with any other insurance maintained by ACS and shall name ACS as additional insured on the Commercial General Liability Policy, Business Automobile liability, excess umbrella liability. Vendor shall include ACS as loss payees on the property and commercial crime insurance policies. All such insurance shall be issued by a company that is licensed to do business in the State where the work is being performed and has a rating equal to or exceeding A- from A.M. Best.

The following coverages are the minimum amounts required:

i. **Commercial General Liability Insurance:** including Premises & Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. The general aggregate should apply per location and/or per project. This coverage will also include a waiver of subrogation clause in favor of ACS.

If the above insurance is written on a Claims Made Form, such insurance shall be endorsed to provide an extended reporting period of not less than two years following the expiration or termination of this Agreement.

ii. **Business Automobile Liability Insurance:** endorsed for all owned, non-owned, borrowed, leased, and hired vehicles with a combined single limit of at least One Million Dollars (\$1,000,000) each accident. If Vendor's employees use personal vehicles in the performance of work under this Agreement, the State Financial Responsibility Law must be complied with by the employee, and an "Employees as Insured" endorsement shall be required to Vendor's Business Auto Policy. This coverage will also include a waiver of subrogation clause in favor of ACS. If any vehicles are used by subcontractor during this project, then business automobile with the following limits must be carried. If applicable.

iii. **Worker's Compensation:** Vendor shall maintain a program of workers' compensation insurance in an amount and form to meet all applicable requirements of the State where the work is being performed, including employer's liability with a One Hundred Thousand Dollar (\$100,000) limit, covering all persons performing work on behalf of Vendor and all risks to such persons under this Agreement.

- c. **Failure to Procure Insurance:** Failure on the part of Vendor to procure or maintain the required insurance shall constitute a material breach and default of this Agreement upon which ACS may terminate or suspend this Agreement. If coverage is canceled, terminates, or lapses and is not replaced with similar coverage, ACS has the right to go out and purchase insurance. The Vendor will be responsible for all costs and deductibles associated with the purchased insurance.

d. **Claims Procedure:** The Vendor agrees to notify ACS immediately of any claim that may involve ACS. Notification should be sent to the ACS Project Director.

4.3 Qualified Service

Vendor must have adequately qualified employees who are available to perform the services that are requested. Vendor may be requested to provide resumes for employees who will perform the services.

5.0 M/WBE (Minority/Women Business Enterprise) Program

The City has a Minority/Women Business Enterprise Program that is designed to increase the participation of minority and women-owned businesses in the City's purchasing activities.

5.1 M/WBE Definition

In accordance with the City of Memphis Ordinance No. 4388, minority-owned businesses are defined as those that are 51% owned and controlled by African Americans. Women-owned businesses are defined as those that are 51% owned and controlled by one or more women, but not African Americans. To qualify as an M/WBE Vendor, a firm must be included on the list of certified M/WBE's, available from:

**Office of Compliance
125 N. Main, Room 440
Memphis, TN 38103**

A list of certified M/WBE Vendor is available from the Office of Compliance, at the address listed above.

5.2 M/WBE Certification

Only those Vendors that have been certified by the Uniform Certification Agency (UCA) in Shelby County and its surrounding counties are eligible to qualify as M/WBE businesses. If the Contractor is a certified firm, enter the following information and submit a copy of your UCA certification:

Minority (MBE): _____ Women (WBE): _____
Certification Number: _____
COMPLY (Insert YES or NO): _____
EXCEPTION (Insert YES or NO & Specify): _____

For additional information regarding certification as an M/WBE Vendor, please contact:
Ms. Carlee McCullough at (901) 576-6545.

6.0 General Information

This section covers topics describing the obligations and expectations Vendor.

Advisory – Vendors are encouraged to review this RFP thoroughly, including all requirements, terms, conditions, deadlines and cost information to ensure submission of a timely and responsive proposal. Vendors must fully document all costs and thoroughly explain the anticipated benefits to the City.

6.1 Technology Development

The Vendor(s) must keep abreast of technological advances and make the City aware of new technology as it becomes available, within the scope of services provided under the requirements of this RFP.

6.2 Relevant Local and Corporate Experience

ACS requires that each Vendor provide verifiable, documented evidence of local government and corporate experience, preferable in an environment comparable in size and scope to the City, for all the services detailed in its proposal. It is the responsibility of the Vendor to explain how past experiences relate to its proposal, including appropriate quantifiable data. Only verifiable experience with references will be considered.

6.3 Disclosure of Information

Once the final contract is awarded, the selected Vendor(s) shall not disclose any details in connection with City or ACS information without the advance written approval of the City's Contract Administrator. The Vendor may identify its services to clients provided that during the performance period of the contract, the Vendor shall not publish or disseminate commercial advertisements, press releases or feature articles using the name of the City without written consent of the Contract Administrator.

6.4 Proprietary Considerations and Public Records

Responses to this RFP become the exclusive property of the City and are public record according to the City of Memphis Open Records Ordinance No. 5206.

6.5 Non-Responsive Proposals

The City reserves the right to deem proposals non-responsive if any of the documents required by the City are omitted; dates/times related to the RFP are missed, or if the basic required components of the solution and related services are not addressed.

6.6 Proposal Closing Date

Written responses to this RFP must be received by ACS no later than 2:00 PM CENTRAL TIME on the date listed in Section 1.2, Scheduled Activities as "Proposals Due (Mandatory)". Sealed responses must be addressed as it appears on the front page of this document titled "Proposal Accepted at".

6.7 Right to Reject

Notwithstanding any other provisions of this RFP, the City reserves the right to reject any or all proposals.

6.8 Inquiries

All questions pertaining to the RFP must be forwarded to ACS at the e-mail address listed on the front page of this document under "**E-Mail Inquiries**" (requests@memphistn.gov) ("Appropriate Contact") no later than 4:00 pm CENTRAL TIME on the date listed in Section 1.2, Scheduled Activities - "Deadline for Questions". All questions received by the stated time will be answered in a timely manner. Failure to address questions to the appropriate contact may disqualify a proposal from consideration. Written responses to all properly presented questions will be provided at least 24 hours prior to proposal closure via the City website at <http://www.memphistn.gov/>. **Responses will not be emailed, only posted to the website.**

6.9 Prohibitions of Amendments

Once a proposal has been submitted, the City will not accept any amendments or enhancements to the proposal.

6.10 Proposal Cost

The City will provide no reimbursement of any kind for any costs incurred in responding to this RFP.

7.0 Response Format and Mandatory Documents

This section provides an outline of the format and structure of the response to the document. Failure to submit a response that conforms to the format outlined in the section will be considered non-responsive and, as such, will disqualify the Vendor.

Vendors must submit **one (1) original and eight (8) copies** of the proposal, including **two (2) on CD** and must be able to be viewed using Microsoft Office Products or Adobe Acrobat software, supporting manuals, brochures and reports on or before, but no later than **2:00 p.m. CENTRAL TIME on the date listed in Section 1.2, Schedule of Activities as "Proposals Due (Mandatory)."** Proposals received after the closing time and date will be considered late and not entitled to participate in the process. Proposals, copies and related information should be sealed in a single package with the address of the Vendor in the upper left-hand corner and clearly marked with the project name listed on the cover page of this RFP. Sealed responses must be addressed as it appears on the front page of this document titled "Proposal Accepted at".

The following outline is required to be used for Vendor responses

(Including headings, sections and paragraphs)

1. Cover Letter, Corporate Introductions and Company Background
2. Table of Contents
3. Response
4. References
5. Completeness
6. Executive Summary

7.1 Response Preparation

In preparing a response to this RFP, the following should be considered:

- a. Proposals should be written clearly, unambiguously and to the extent possible in such a manner that evaluation committee members with little or no technical expertise will understand it.
- b. Proposals should be specific and complete in every detail. However, Vendors are welcome to outline alternative or additional services, provided the associated costs and benefits to the City are clearly presented. While the City and ACS encourage Vendor creativity in response to the RFP, the evaluation of proposals will be based primarily on responses to the required elements.
- c. Proposals may be deemed non-responsive if they are substantially an advertisement of past accomplishments and corporate history.
- d. Proposals must conform to the outline, including headings, sections and paragraphs. Vendors may further subdivide specific paragraphs or add relevant sections at the end of their proposals. However, the proposal must be clearly organized so the evaluating committee is able to easily locate responses to specific items.
- e. All specified information must be provided in accordance with the outline. Reference to other documents must only be used to supplement and/or substantiate information outlined in the body of the proposal.
- f. All pages must be sequentially numbered.
- g. All responses shall be firm offers and may not be withdrawn for a period of 120 calendar days following the date listed in Section 1.2, Schedule of Activities as "Proposal Due (Mandatory)".

1. **Cover Letter, Corporate Introductions and Company Background**

This section shall comprise no more than four (4) pages, including name and address of the firm or joint venture submitting the proposal and the name, address and telephone number of the person(s) authorized to represent the firm or joint venture. If the proposal is being submitted by or on behalf of more than one entity, all entities represented must be clearly identified.

Vendor must provide a brief company description, history and financial status. In addition, Vendor should submit the following information:

- a) **Name.** The name under which the bidder is licensed to do business.
- b) **Address.** The address of the bidder's headquarters office.
- c) **Local Address.** The address of the bidder's local office responsible for the proposed work, if different from the headquarters office.
- d) **Local Officers.** Names, titles and telephone numbers of local officers or representatives of the bidder.
- e) **Years of Local Service Experience.** The number of years the bidder has actively participated in work in Shelby County and its neighboring counties similar to that described in this RFP Section 1.1 Overview of Work.
- f) **Size of Staff.** The number of bidder employees: internationally, nationally and locally. Information must include the total number of employees in Shelby County and its neighboring counties; in particular, the number of technical and support staff presently supporting similar service, their qualifications and length of service.
- g) **Annual Report.** The bidder's most recent annual report or current audited financials. The financial stability of the Vendor and the Vendor's length of time in business will be closely evaluated.
- h) **Customer List.** Names, address and telephone numbers of customers to whom the bidder provides the same/similar services as quoted in this document. References may be contacted to describe their experience with the bidder, including the quality of the bidder's technical support and maintenance. Particular attention will be paid to the number of Shelby and neighboring county customers and the quality of service rendered to those customers.
- i) **Record with the City.** Description of past bidder experience in delivering products or services to The City similar to those required under the contract.
- j) **Warranties.** Description of warranties available from or through the bidder, including manufacturer's warranties on components.
- k) **Current Contract Obligations.** Existing Vendor contractual commitments of similar scope and priority and their estimated impact on the Vendor's ability to service this contract, if awarded.
- l) **Other.** Other general information, as determined by the Vendor to be of importance in evaluating the Vendor.

2. **Table of Contents**

The table of contents should provide a comprehensive listing of the material in the proposal arranged by section, with a listing of the subject(s) in each section and with pages numbered. The numbering of the proposal must conform to that specified in this RFP Section 7.0, 2. Table of Contents.

3. **Response**

The Vendor must thoroughly discuss and explain in detail how their response to each requirement in the RFP will be met as stated in section 1.4.

4. **References**

Vendor must provide references that are able to confirm the successful installation and support of other clients of equal size. The references must include the name, address and telephone number of top-level management contact person for each reference and must include the equipment and services supported within the scope of this RFP. ACS must be able to contact the reference without notification to the Vendor. A minimum of three (3) and a maximum of six (6) references must be provided. At least two (2) references should be for contracts of similar size or larger.

5. **Completeness**

Although the City and ACS have made every reasonable effort, there is no representation made regarding the completeness of the contract requirements. The Vendor is expected to review the requirements and make appropriate recommendations. Any required services, products, or equipment

not specified in the proposal will be the sole responsibility of the Vendor and should be listed in this section.

6. Executive Summary

Vendor shall describe in non-technical terms their approach to implementing the requested service, identifying any unique or distinctive services to which the Vendor wishes the evaluation committee to give particular attention. Do not include any pricing in this section.

8.0 Evaluation Process

The evaluation process involves a thorough review of the proposals and selection of a Vendor.

8.1 Evaluation Committee

All proposals will be reviewed by City of Memphis and ACS staff (“Evaluation Committee”) to determine if they contain the minimum essential requirements outlined in the RFP, including instructions governing submission, format and compliance with standard City requirements. Those proposals deemed non-responsive may be disqualified without further evaluation and the Vendor will be notified. The Evaluation Committee will examine each proposal that meets the mandatory requirements and recommend a Vendor to the City.

8.2 Evaluation Criteria

The following criteria and accompanying point system shall be used in the evaluation of the Proposals. The City of Memphis and ACS reserves the right to change or modify the criteria. Proposals will be evaluated on the compliance with City requests.

Evaluation Criteria	Weight
Is the respondent an M/WBE or did the Respondent include M/WBE participation in the proposal?	10.0%
Does the Respondent purpose to perform the work at a fair and reasonable cost?	10.0%
How well did the Respondent document the ability, capacity, and skill, to provide the product/service?	30.0%
Can the Respondent perform the scope of services as set forth in the RFP and produce the required outcomes?	10.0%
Did the Respondent include the requirement of a least 3 references?	5.0%
Did the Respondent turn in a concise and complete RFP?	10.0%
Past Experience with the City?	5.0%
Headquarters located in Memphis or Shelby County?	5.0%
How well did the respondent document plans to provide continuous improvement to the product/services being provided?	5.0%
Did the respondent provide the documentation to provide a measure of the financial stability of the company?	10.0%
Total Score	100.0%

8.3 Oral Presentations

After preliminary evaluations are completed, a short list of qualified Vendors may be invited to give an oral presentation. This presentation is optional at the discretion of the City. **However, no proposal may be altered or enhanced during an oral presentation.**

Exhibit 1 – Proposed Agreement HARDWARE / COMMERCIAL OFF THE SHELF SOFTWARE SERVICE AGREEMENT

THIS HARDWARE / COMMERCIAL OFF THE SHELF SOFTWARE AGREEMENT (hereinafter “Agreement”) is made and entered into as of this date, month and year (the “Effective Date”), by and between ACS GOVERNMENT SYSTEMS, INC., with offices located at 1800 M Street, NW, Washington, DC 20036 (hereafter “ACS”), acting on behalf of the City of Memphis, Tennessee, and Vendor with offices located at Vendor Address (hereinafter “Vendor”).

WHEREAS, ACS is operating under contract to perform systems integration services for the City of Memphis, Tennessee;

WHEREAS, ACS is empowered under its contract with the City of Memphis to act on behalf of the City of Memphis, including agencies, departments or representatives thereof for the purpose of procuring information technology products and services;

WHEREAS, ACS on behalf of the City of Memphis desires to engage Vendor for opportunities to supply information technology hardware and commercial off the shelf software;

WHEREAS Vendor agrees to provide hardware and commercial off the shelf software outlined in this Agreement, under the terms and conditions described herein, and

WHEREAS, this Agreement includes and incorporates the following exhibits:

- Exhibit “A”: Scope of Work
- Exhibit “B”: Sample Request for Quote Form
- Exhibit “C”: Sample Order Letter / Purchase Order

NOW, THEREFORE, in consideration of the promises and the mutual commitments contained herein, the parties agree as follows:

1. Order of Precedence
In the event of any inconsistency between this Agreement, the Order Letter / Purchase Order, and any other conditions of sale set forth by Vendor, the order of precedence shall be as follows: 1) this Agreement, 2) Order Letter / Purchase Order, 3) any other conditions of sale set forth by Vendor.
2. Third Party Beneficiary
ACS and Vendor understand and agree that this Agreement is entered into for the benefit of the City of Memphis, Tennessee and that the City of Memphis (“City” or “Client”) is hereby expressly made a third party beneficiary of this Agreement.
3. Services
Vendor shall fully provide, and complete all services and deliverables set forth in Exhibit “C” – Order Letter / Purchase Order. In addition, as a provider of information technology hardware and software products, all work will be performed in accordance with the general specifications set forth in this Agreement and any Order Letter or Purchase Order associated with this Agreement. There is no guaranteed minimum or maximum amount of information technology hardware and software products to be purchased under this Agreement, and the Agreement does not grant Vendor the exclusive right to provide any products or services. Receipt of a Request for Quote (Exhibit “B”) does not indicate that the Vendor has been chosen to provide the item(s) requested for quote. Vendor will not provide any supplemental information technology hardware or software products under this Agreement until such time that ACS awards an Order Letter / Purchase Order pursuant to the Agreement.

4. Taxes

It is understood that City is a tax-exempt municipal corporation, and is therefore exempt from state, or local excise, sales, service, or other taxes. For so long as City is exempt from said taxes, such taxes shall not be included in invoices submitted to ACS pursuant to this Agreement.

5. Shipping and Handling

Vendor shall deliver all hardware and software products to a City location designated by ACS. The risk of loss from any casualty to any hardware and/or software and any associated materials during shipping shall be upon Vendor, provided that ACS and the City shall reasonably assist Vendor in making claims for such casualty losses against the appropriate shipper. ACS shall, prior to delivery, provide Vendor with instructions on where delivery shall occur.

6. Warranties

For a period of one year from acceptance of services hereunder, Vendor shall promptly correct any and all defects, errors or omissions provided pursuant to this Agreement. The correction of all such defects, errors or omissions shall be at no cost to ACS or City.

Vendor warrants that:

- b. Vendor shall strictly comply with the specifications, requirements, standards, and representations set forth in this Agreement, Order Letter, Purchase Order, and the attachments thereto.
- c. All goods shall be delivered by Vendor in a timely manner by Vendor personnel or a designated transportation delivery company at Vendor's selection and expense.
- d. Vendor must provide ACS an Estimated Time of Arrival (ETA) within three (3) business days of receipt of an Order Letter / Purchase Order (Exhibit "C").
- e. All goods provided by Vendor shall be complete, uniform in appearance and in accordance with generally applicable standards in the industry and shall perform according to the requirements as set forth in this Agreement and any Order Letter / Purchase Order (Exhibit "C").
- f. In the event that warranty repairs on goods are necessary, Vendor shall respond to ACS within one (1) business day of notification by ACS, to provide assistance for problem resolution.
- g. Vendor will pass down to the City any and all third party manufacturer warranties for any and all hardware and/or software.

7. Compensation

All compensation to Vendor under this Agreement shall be paid by ACS and shall be as set forth in the Order Letter / Purchase Order annexed hereto as Exhibit "C".

Vendor will invoice ACS on a monthly basis in arrears for software and/or hardware ordered. Properly submitted invoices pursuant to this Agreement and the applicable Order Letter / Purchase Order shall be due and payable by ACS forty-five (45) days after receipt thereof, subject to receipt of an accurate and timely invoice received at the following address:

ACS State & Local Solutions, Inc.
PO Box 981245
El Paso, TX 79998-1245
ATTN: Memphis/SLS/30411030

8. Term of Contract

The term of this Agreement shall commence on the Effective Date and shall expire one year thereafter, unless sooner terminated, in whole or in part, as provided in this Agreement. ACS will have the option to extend the contract term for one (1) additional period of 12 months.

9. Indemnification and Insurance

- a. Indemnification: Vendor shall indemnify, defend, and hold harmless ACS and the City, its respective agents, officers, employees and elected and appointed officials from and against any and all losses, claims, suits, actions, and costs of any kind, including all reasonable costs of investigation or defense (including attorneys' fees), that arise or are alleged to have arisen out of, or in connection with, the (i) negligent or intentional acts or omissions of Vendor or Vendor personnel, or (ii) breach by Vendor of any term of this Agreement. In addition, Vendor shall indemnify, hold harmless and defend ACS and the City from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorney's fees, for or by reason of any actual or alleged infringement of any United State's patent, copyright, or any actual or alleged trade secret disclosure, arising from or related to the operation and utilization of Vendor's work under this Agreement.
- b. Insurance: Vendor shall provide and maintain at its own expense during the term of this Agreement the following programs of insurance covering its operations hereunder. Such insurance shall be provided by insurer(s) satisfactory to ACS' Risk Manager, and evidence of such programs satisfactory to ACS shall be delivered to ACS' Contract Administrator, on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall contain express conditions that the City and ACS are to be given written notice at least thirty (30) days in advance of any material change or termination of any program of insurance.

Such insurance shall be primary to and not contributing with any other insurance maintained by ACS, and shall name ACS as additional insured on the Commercial General Liability Policy, Business Automobile liability, excess umbrella liability. Vendor shall include ACS as loss payees on the property and commercial crime insurance policies.

All such insurance shall be issued by a company that is licensed to do business in the State where the work is being performed and has a rating equal to or exceeding **A-** from A.M. Best. ACS shall have the right to include additional requirements or modify the current requirements at anytime during the term of this Agreement as it becomes necessary. The following coverage's are the minimum amounts required but not limited to:

- i. **Commercial General Liability Insurance:** including Premises & Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. The general aggregate should apply per location and/or per project. This coverage will also include a waiver of subrogation clause in favor of ACS.

If the above insurance is written on a Claims Made Form, such insurance shall be endorsed to provide an extended reporting period of not less than two years following the expiration or termination of this Agreement.

- ii. **Business Automobile Liability Insurance:** endorsed for all owned, non-owned, borrowed, leased, and hired vehicles with a combined single limit of at least One Million Dollars (\$1,000,000) each accident. If Vendor's employees use personal vehicles in the performance of work under this Agreement, the State Financial Responsibility Law must be complied with by the employee, and an "Employees as Insured" endorsement shall be required to Vendor's Business Auto Policy. This coverage will also include a waiver of subrogation clause in favor of ACS. If any

vehicles are used by subcontractor during this project, then business automobile with the following limits must be carried. If applicable.

iii. **Worker's Compensation:** Vendor shall maintain a program of workers' compensation insurance in an amount and form to meet all applicable requirements of the State where the work is being performed, including employer's liability with a One Hundred Thousand Dollar (\$100,000) limit, covering all persons performing work on behalf of Vendor and all risks to such persons under this Agreement.

Failure to Procure Insurance: Failure on the part of Vendor to procure or maintain the required insurance shall constitute a material breach and default of this Agreement upon which ACS may terminate or suspend this Agreement. The insurances required under this agreement in no way limits your indemnity obligations found elsewhere in this agreement. If coverage is canceled, terminates, or lapses and is not replaced with similar coverage, ACS has the right to go out and purchase insurance. The Vendor will be responsible for all costs and deductibles associated with the purchased insurance.

Claims Procedure: The Vendor agrees to notify ACS immediately of any claim that may involve ACS. Notification should be sent to the ACS' Account Manager.

10. Compliance with Applicable Law

Vendor shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference.

Vendor shall indemnify and hold harmless ACS and the City from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorney's fees, arising from or related to any violation on the part of Vendor, its employees, agents, or subcontractors of any such law, rules, regulations, ordinances or directives.

All Vendor personnel providing services under this Agreement which require specific Federal, State, or local governmental licenses or credentials shall maintain such licenses or credentials current and valid throughout the period of Agreement performance.

11. Certifications

Vendor must present certifications/proof of authorization reseller letter and UCA certification prior to the execution of Agreement. If applicable.

12. Records and Audits

Vendor shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Vendor shall also maintain accurate records relating to its performance of this Agreement. Vendor agrees that ACS shall, upon reasonable notice and scheduling, have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement (i.e. invoicing/billing, work orders, incident log (s) and time card (s)). Vendor shall keep and maintain this documentation and it shall be made available to ACS during the term of this Agreement and for a period of 5 years thereafter unless written permission of ACS is given to dispose of any such material prior to such time. All such material shall be maintained by Vendor at a location in Memphis, Tennessee, provided that if any such material is located outside of Memphis, then, at ACS' option, Vendor shall, at its sole expense, have such material delivered to its location in Memphis, Tennessee for inspection by ACS and the City within five (5) days of ACS' request for such material.

Failure on the part of Vendor to comply with the provisions of this paragraph shall constitute a material breach of this Agreement upon which ACS may terminate or suspend this Agreement as provided in Section 17(a) of this Agreement.

13. Governing Law; Jurisdiction and Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

The Parties hereby submit and consent to the exclusive jurisdiction of any state or federal court located within Shelby County or the United States Western District of Federal Court within the State of Tennessee and irrevocably agree that all actions or proceedings relating to this Agreement, other than any action or proceeding required by this Agreement to be submitted to arbitration, will be litigated in such courts, and each of the Parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of any such action or proceeding in such court.

14. Severability

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

15. Suspended or Debarred Entities

By signing this Agreement, Vendor certifies that it is not presently listed by any federal agency as debarred, suspended, or proposed for debarment from any federal contract activity. If, during the term of this Agreement, this information changes, Vendor shall notify ACS without delay. Such notice shall contain all relevant particulars of any debarment, suspension, or proposed debarment.

16. Prohibition Against Assignment, Delegation and Subcontracting

This Agreement or any interest therein, including, but not limited to, any claim for monies due or to become due with respect thereto, shall not be assigned or delegated, or both, by Vendor, and any assignment or delegation shall be null and void. Except as may be approved in writing by ACS no performance of this Agreement, or any part thereof, shall be subcontracted by Vendor, and any such subcontract shall be null and void.

17. Termination and Suspension

(a) Termination for Cause: Either Party may terminate this Agreement for cause. Events constituting cause shall include, but not be limited to: (i) commencement of bankruptcy or insolvency proceedings by or against the other party; (ii) continued, flagrantly unsatisfactory performance by either party's personnel; (iii) continued failure to meet the performance standards described in this Agreement or Exhibit "C"; and (iv) breach of any other material condition of this Agreement. If termination is for reasons of cause, the terminating party shall issue a written cure notice to the other party. The terminated party shall have ten (10) days from the receipt of said notice to provide a written Corrective Action Plan (CAP) to the terminating party. If the CAP, as may be amended by the parties, is found to be acceptable to the terminating party, the terminated party shall proceed to cure the identified defects. Such additional time to cure defects shall not waive either party's rights to terminate the Agreement if the identified defects in the Cure Notice are not corrected to the satisfaction of the terminating party. If, at the terminating party's sole determination, the Agreement is terminated for cause, the terminated party shall be paid for those services provided and accepted by the terminating party up to the time of termination.

(b) Termination for Convenience: ACS may, in its sole discretion, terminate the Agreement for convenience. In the event of a termination for convenience, ACS shall pay the Vendor for the services performed and/or materials provided in accordance with the Agreement's provisions, up to the effective time of termination as specified in the Notice of Termination for Convenience. Termination for Convenience costs shall be subject to audit by ACS for determinations of reasonableness. If Default is later determined to be based on an event which did not constitute Cause, Termination shall be treated as if for Convenience.

Under any termination, ACS shall provide disposition instructions to Vendor for work product paid for or otherwise belonging to ACS or the City, which is in the custody of the Vendor. Vendor further agrees to comply with any

assistance reasonably requested by ACS to facilitate the orderly transfer of the services to ACS or its designee.

(c) Suspension: ACS may, at its sole option, issue to Vendor a total or partial Notice of Suspension of Work. In the event of a suspension of work, ACS shall pay Vendor for the services performed and/or materials provided and accepted in accordance with the Agreement's provisions, up to the effective time of suspension as specified in the Notice of Suspension. Vendor will also deliver all the completed and/or partially completed deliverables to and as directed by ACS. If Vendor does not receive written notice to continue the suspension, resume or terminate the Project within a 30 day period immediately following Vendor's receipt of ACS' Notice of Suspension, then this Agreement and any applicable Order Letter / Purchase Order will terminate automatically for the convenience of the ACS, in accordance with Section 17(b).

18. No Amendments

The terms of this Agreement may not be varied or modified in any manner, except in a subsequent writing executed by an authorized representative of each party.

19. Obligations Extended Beyond Period of Performance

Vendor, its employees, agents, and subcontractors shall not disclose any details in connection with this Agreement to any party, except as may be otherwise provided herein or required by law, for a period of no less than five (5) years from the termination of this Agreement and any subsequent amendments. In addition, the Indemnification, Records and Audits, Penalties, and Confidentiality provisions of the Agreement shall survive for a period of five (5) years following the expiration or earlier termination of this Agreement.

20. Confidentiality

Vendor agrees during the term of this Agreement and thereafter that it will take all steps reasonably necessary to hold ACS' and the City's proprietary, confidential and trade secret information in trust and confidence. Vendor shall not use or disclose to any person, firm or entity any proprietary, confidential or trade secret information of ACS or the City without the express, prior written permission of ACS or the City. In addition, Vendor agrees to keep the terms, conditions, and pricing contained herein confidential. The provisions of this Paragraph shall survive the expiration or other termination of this Agreement.

21. Termination of Prior Agreements

This Agreement, together with the exhibits thereto, constitute the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes any prior discussions, negotiations, proposals, agreements and understandings.

22. Conditional Agreement

This Agreement is conditioned upon: (1) the City approving the commitment of funds for this project and approving the contract through ACS; and (2) the issuance by ACS of an Order Letter / Purchase Order document(s) hereunder – Exhibit "C".

23. Notices

All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties at the following addresses. Addresses may be changed by either party giving ten days prior written notice thereof to the other party.

If to ACS:
ACS Government Systems, Inc.
1800 M Street, NW
Washington, DC 20036
Attn: GCS Director of Contracts

If to Vendor:
VENDOR INFORMATION

24. Authority

The undersigned represent that they are authorized to execute this Agreement on behalf of the parties hereto, and each party has relied upon the authority of the other in executing this Agreement. This Agreement terminates and supersedes all prior understandings, quotations or agreements on the subject matter hereof.

IN WITNESS WHEREOF, ACS and Vendor have caused this Agreement to be signed by their duly authorized agents on the day and year first set forth hereinabove.

ACS GOVERNMENT SYSTEMS, INC.

Signature

Printed Name

Title

Date

Vendor Information

Signature

Printed Name

Title

Date

EXHIBIT A
SCOPE OF WORK

Vendor is a part of a pool of vendors who will provide information technology equipment and/or commercial off the shelf software to ACS on behalf of the City.

ACS and the City may identify a need to procure information technology equipment and/or software by issuing to the Pool of Vendors a Request for Quote (Exhibit "B"). After a Request for Quote is issued and the Pool of Vendors has responded, an award will be made by issuance of an Order Letter/ Purchase Order (Exhibit "C") to the selected Vendor. Cost proposals must include shipping and handling.

EXHIBIT B
SAMPLE REQUEST FOR QUOTE

Request for Quote does not mean that the vendor has been chosen to provide the item(s) requested for quote. This form may change periodically.



REQUEST FOR QUOTE

Vendor: _____ DATE DUE: _____ QUOTE#: _____
 Contact: _____ TIME: _____
 Telephone: _____
 Fax: _____

Requested by: _____
 Date Requested: _____
 Telephone #: _____
 Fax #: _____


Bill to Address: _____ Ship to: _____
 Affiliated Computer Services
 ATTN: Memphis-ESG/394206
 P. O. Box 981245
 El Paso, TX 79998-1245

Item #	Part #	Description	Bid Price	Qty Requested	Total	Comments
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
****	*****		*****		0.00	

*All quotes should be for the "delivered" price.
 Quotes are due back in the time frame specified.*

**EXHIBIT C
SAMPLE ORDER LETTER / PURCHASE ORDER**

The Order Letter / Purchase Order will only be sent if the Vendor is chosen to supply the quoted hardware / software product.



Vendor: _____ Contact: _____ Telephone: _____ Fax: _____ ACS PO# _____	Release #: _____ RCE _____ Division # _____ Bureau # _____ Ordered By: _____ Date Released: _____ Telephone #: _____ Fax #: _____ Ship to: _____
Bill to Address:	Affiliated Computer Services ATTN: Memphis- ESG/394206 P. O. Box 981245 El Paso, TX 79998-1245

Item #	Part #	Description	Unit Price	Qty Ordered	Total	Received
1						
2						
3						
4						
5						
6						
7						
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EXHIBIT C (continued)
ORDER LETTER / PURCHASE ORDER

Terms & Conditions

1. **Supplier:** As used herein, shall in all cases be the Seller.
2. **Buyer:** As used herein, shall in all cases be ACS on behalf of the City of Memphis, Tennessee.
3. **Acceptance:** This order with any attachments constitutes the entire agreement of the Supplier and the Buyer. No waiver or modification or additions to the terms of this order shall be valid unless in writing and signed by the Supplier and the Buyer.
4. **Prices:** The Buyer shall not be billed at prices higher than those stated on the front of this order. Unless otherwise specified, the price stated includes all charges for packing, handling, storage and transportation to the point of delivery. No taxes shall be included in this price except those that the Supplier is required by law to collect from Buyer. Any such taxes shall be listed separately on the Supplier's invoice. Finance charges, interest and/or penalties for late payment will not be paid on this purchase order.
5. **Packaging:** Suppliers will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: a) Supplier's name and address; b) Buyer's name and address and purchase order number; c) container or package number and total number of containers or packages, i.e. box 1 of 4 boxes and d) the number of the container or package bearing the packing slip. Supplier must bear cost of packaging, unless otherwise provided. All furniture and/or equipment must be inside delivery, fully assembled, with removal of all packaging and cartons.
6. **Inspection:** Notwithstanding prior payment and or inspection by Buyer of specification goods, all shipments of goods and/or all services rendered hereunder shall be subject to inspection by and approval of Buyer within a reasonable time after receipt of such goods and/or after such services have been rendered.
7. **Rejected Shipments and Purchaser's Remedies:** If the goods shipped or to be shipped and/or services rendered or to be rendered hereunder are rejected, in whole or in part, by Buyer because of Supplier's failure to comply with any of the terms, conditions, and/or specifications contained herein, Buyer, after so notifying seller in writing, may either return the rejected portion of such goods and/or the rejected portion of such services to the Supplier at Supplier's expense, or hold the same for such disposal as Supplier shall indicate, without invalidating the remainder of this purchase order, or Buyer may reject the entire shipment of such goods and/or reject the entire services and cancel this purchase order, for any undelivered balances of goods and/or unrendered services. If goods shipped or to be shipped and/or services rendered or to be rendered hereunder are rejected, as hereinabove provided, Buyer may purchase like goods elsewhere and/or obtain like services elsewhere and charge Supplier with any loss or damage (either direct or indirect) sustained by Buyer (including but not limited to attorney's fees and court costs). Buyer shall not be obligated to pay for any goods shipped and/or services rendered which are rejected by it. All claims for monies or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any counterclaim arising out of this or any other transaction with Supplier.
8. **Title & Risk:** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.
9. **Transportation Charges:** F.O.B. destination unless delivery terms are specified otherwise in bid. Buyer agrees to reimburse Supplier for transportation costs in the amount specified in Supplier's bid, or actual costs, whichever is lower, provided that Buyer shall have the right to designate what method or transportation shall be used to ship the goods.
10. **Delivery:** Substitutions will not be accepted. Partial shipments shall be allowed unless otherwise stated by Buyer. However, full shipment of all items ordered hereunder must be completed by the date shown on this order or this order will be subject to cancellation by Buyer. Supplier shall not ship excess quantities without Buyer's prior approval.
11. **Invoicing:** The invoice shall describe the items, shall reflect any applicable terms of payments, and must show the purchase order number to which it relates. Unless the purchase order number is shown on the invoice, it may be returned to the Supplier. Only original invoices or copies of original invoices, certified as such by the Supplier, will be paid by the Buyer. The Supplier will invoice Buyer upon successful delivery and acceptance of the purchased item or service. Properly submitted invoices pursuant to this purchase order shall be due and payable by Buyer forty-five (45) days from date of invoice unless a contract stating other terms is in place and upon receipt of an accurate and timely invoice delivered to the following address:

ACS State & Local Solutions, Inc.
PO Box 981245
El Paso, TX 79998-1245
ATTN: Memphis/SLS/30411030

12. **Warranties:** Supplier warrants that the items and services covered hereunder will conform to applicable specifications, instructions, drawings, data and samples, and will be merchantable, of good material and workmanship, free from defects and will be fit and sufficient for the purpose intended. These warranties shall be in addition to all other warranties, expressed, implied or statutory. Payment for inspection of or receipt of articles or services shall not constitute a waiver of any breach of warranty.
13. **Authorization for Changes:** Only the Buyer's Purchasing Agent or his designee has the authority to change any description, price, or delivery date on this purchase order. If the items listed herein were purchased by the Buyer on a format bid form, then no change in the above will be made. Except as set forth in this section 13, this purchase order may not be varied or modified in any manner, except in a subsequent writing executed by an authorized representative of each party.
14. **Default Cancellation:** Buyer reserves the right by written notice of default, to cancel the order without liability to Buyer, in the event of the happening of any of the following: insolvency of Supplier, the filing by Supplier of a voluntary petition in bankruptcy, the filing of an involuntary petition to have Supplier declared bankrupt, the appointment of a receiver or trustee for Supplier, or the execution by Supplier of an assignment for the benefit of creditors. If Supplier fails to perform as specified herein, or if Supplier breaches any of the items hereof, Buyer reserves the right without any liability to Buyer, upon giving Supplier written notice, to: 1) cancel this order in whole or in part, by written notice to Supplier, and Supplier shall be liable to Buyer for all damages, losses and liability incurred by Buyer directly or indirectly as a result of Supplier's breach, or 2) obtain the goods ordered herein from another source with any excess cost resulting therefrom chargeable to Supplier, if such deficiencies are not remedied. The remedies herein provided shall be cumulative and in addition to any other remedies provided by law or in equity.
15. **Indemnification:** Supplier agrees to indemnify and hold harmless Buyer, its employees, agents, successors and assigns, from and against all loss, including without limitation loss of use liability, damages, claims, demands, actions and/or proceedings, and all costs and expenses connected therewith of whatsoever nature, including without limitation attorney and expert witness fees, arising out of death or injury to any person or damages to any property alleged to have resulted from the goods hereby ordered, and upon the tendering of any suit or claim to Supplier, to the same at Suppliers sole expense. The foregoing indemnification shall apply whether Supplier or Buyer defends such suit or claim and whether the death, injury or property damage is caused by the sole or concurrent negligence of Supplier or otherwise.
16. **Patent Indemnification:** Supplier warrants that the goods furnished hereunder do not infringe or violate any United States or Canadian patent, trademark, copyright, trade secret, or any other proprietary right of any third party, that it shall defend all suits that may arise with respect thereto; and it shall indemnify, and hold harmless Buyers, its employees, agents, successors and assigns, defend against all liability, loss, damage, claims, demands, actions and/or proceedings and all costs and expenses connected therewith of whatsoever nature, including without limitation attorney and expert witness fees by reason of the assertion of any patent or other intellectual property rights with respect to the goods furnished hereunder, whether by reason of Supplier's purchase, use or otherwise, and whether or not such claim or assertion is successful.
17. **Assignment:** Neither this purchase order, nor any rights or obligations herein, may be assigned by Supplier, nor may Supplier delegate the performance of any of its duties hereunder without, in either case, Buyer's prior written consent. Any assignment or attempted assignment of any nature to third parties, without consent of the Buyer, shall by cause for termination of this purchase order at the option of the Buyer.
18. **Equal Employment:** Supplier agrees to comply with the equal requirements of the Title VII of the Civil Rights Act of 1964, and with Title VI of the Civil Rights Act of 1964. No person will be excluded from participation in, or be denied benefits of, or otherwise subjected to discrimination in the performance of this purchase order, or in the employment practices of the Supplier. The Buyer encourages participation of small and minority businesses in the purchasing process.
19. **Conflict of Interest:** No part of the total purchase order amount shall be paid directly or indirectly to any official or employee of the Buyer as wages, compensation, or gifts in exchange for acting as official, agent, employee, subcontractor, or consultant to the Supplier in connection with any work contemplated or performed relative to this purchase order.
20. **Confidentiality:** Supplier acknowledges that Buyer is a Tennessee municipality and is subject to the terms and conditions of the Tennessee Open Records Act.
21. **Applicable Law and Venue:** The validity, interpretation and performance of these terms and conditions shall be governed, construed and enforced in accordance with laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation, and enforcement of this purchase order of the related bid, shall be instituted and litigated in the courts of the State of Tennessee located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this purchase order submit to the jurisdiction of the courts of the State of Tennessee, located in Shelby County, Tennessee.
22. **Limits on Liability:** Any attempt by Supplier to limit its liability for goods or services provided under this purchase order shall be void and of no effect.
23. **Severability:** If any provision of this purchase order or the application thereof to any person or circumstance is held invalid, the remainder of this purchase order and the application of such provision to other persons or circumstances shall not be affected thereby.
24. **Third Party Beneficiary:** Buyer and Supplier understand and agree that this Agreement is entered into for the benefit of the City of Memphis, Tennessee and that the City of Memphis ("City" or "Client") is hereby expressly made a third party beneficiary of this Agreement.