

Rutherford County, Tennessee And The City of Murfreesboro



Request for Competitive Sealed Proposals (RFCSP)

For a

Solid Waste Disposal Feasibility Study

ISSUE DATE: 03/29/2016

RESPONSE DUE DATE: 05/05/2016

1. Introduction

Rutherford County, TN and the City of Murfreesboro, Tennessee (City), is issuing a Request for Competitive Sealed Proposals (RFCSP) from qualified professional services firms to plan and conduct a solid waste disposal feasibility study. This project requires the consultant to assist in identifying and evaluating available technologies to expand, supplement or replace the existing infrastructure to manage the community's solid waste management needs into the next 20-40 year horizon. The work may include Program Management for future project phases including the following: preliminary design, final design, permitting assistance, and construction administration services. This future phase work would be subject to a change order and subsequent negotiations for such services and required approvals.

2. Competitive Sealed Proposal Process and Schedule

The Competitive-Sealed-Proposal method is appropriate when qualifications and experience are of particular importance and price is one of several factors used to determine the best service provider. This method requires each participant to submit a proposal based on certain specified elements with knowledge of the factors used to evaluate the proposal and their relative weight. Those interested in participating in the selection process are afforded the opportunity to pose questions in writing about the RFCSP and services sought before submitting a proposal. After the sealed proposals have been submitted and reviewed, the County and City may obtain additional information or clarifications including additional "best and final offers" from participants, prior to making its final selection, provided that information from one proposer is not disclosed to another. The County and City will select a responsible and responsive proposer whose proposal is determined to be most advantageous taking into consideration the evaluation factors.

2.1 Schedule

The County and City intends to adhere to the schedule below for the selection process. Dates may be adjusted by the County and City as needed.

Activity	Target Date
RFCSP Issued	March 29, 2016
Submittal of questions	April 14, 2016
Answers to questions	April 21, 2016
Proposals submitted	May 5, 2016
Finalists notified	May 12, 2016
Finalist Presentations	May 19, 2016
Last Offer	May 26, 2016
Selection	June 3, 2016
Negotiation of contract	June 9, 2016
City Council action	June 16, 2016

2.2 Evaluation Criteria

Each proposal will be evaluated based on the criteria listed in Section 8.

2.3 Finalist Selection

The County and City intends to select two or more Proposers from the RFCSP responses to further evaluate as finalists through on-site presentations. Finalists then will be allowed to submit revisions to their proposal to make a last and best final offer. Additional discovery may be performed to assist in selecting the finalist.

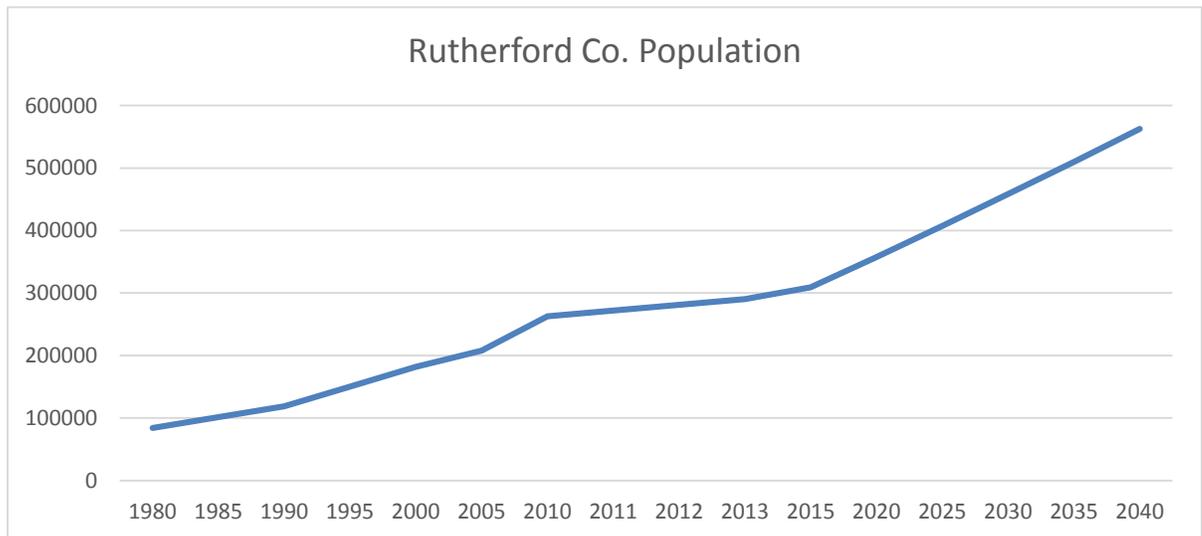
The finalist will be selected based on all of the evaluation criteria so that the County and City obtains the best professional services for it for an appropriate fee.

3. Contact Information

Please submit all questions and matters relating to this RFCSP in writing to Jim Crumley, Assistant City Manager, City of Murfreesboro. He may be reached at (615) 849-2629 or by email at: jcrumley@murfreesborotn.gov or by mail at City of Murfreesboro, 111 West Vine Street, Murfreesboro, TN 37130. Questions may be submitted either in writing or via email. Questions and answers, and any changes to this RFCSP or its Schedule will be posted on the City's and County's website.

4. Background

Only 15 miles southeast of Nashville and located at the geographic center of Tennessee, Rutherford County is the fifth largest and the fastest growing county in the state, and the 20th fastest growing county in the nation in terms of housing. Between 2000 and 2010 Rutherford County's population increased by an estimated 44.27 percent. In fact, Rutherford County has outpaced population projections for the last 20 years. The current estimated population for Rutherford County is over 290,000, with the rural population easily exceeding 80,000 (over 30 percent of total population). Current projections indicate that this trend will continue with Rutherford County's population potentially estimated to double again in approximately 30 years with a population of over 600,000 in the year 2045. This growth is visually depicted in the graph below.



Municipal solid waste is collected by a combination of County, City and private haulers. Unincorporated areas are served by recycling centers operated by the County, and private haulers. Other than small commercial businesses inside the City, all businesses procure solid waste services from private haulers.

Rutherford County's solid waste is disposed at the Middle Point Landfill which is privately owned and operated by Allied Waste Services, a Republic Services Company. Information on the County, City and private haulers is included below. A host agreement was negotiated in 1995 providing that both the City and the County receive free disposal, and the County receives an annual host fee of \$1.20 per ton of out of county solid waste disposed of at the Middle Point Landfill.

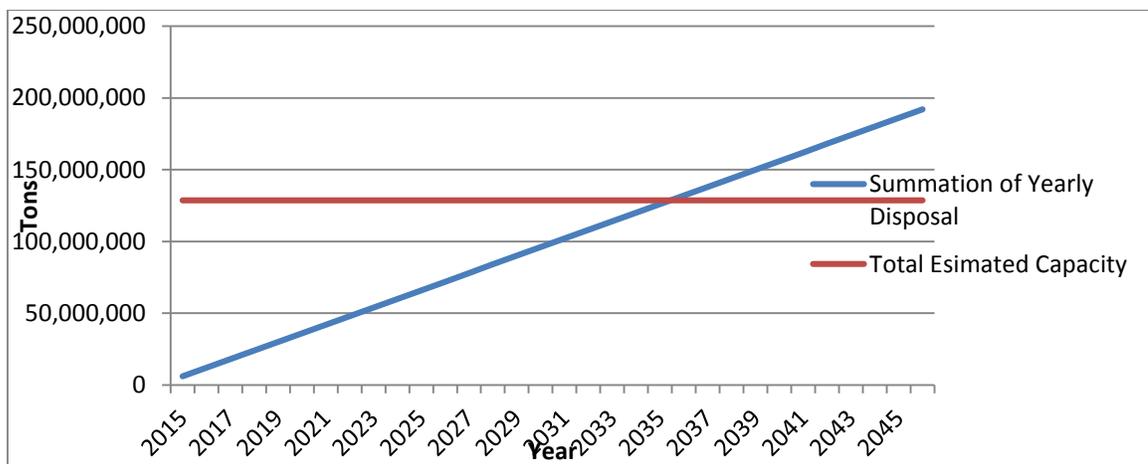
Middle Point Landfill opened in 1987 after it was permitted and constructed by Romac. In 1988 it was sold to BFI. In 1989, in order to operate at a profit, BFI asked and the County approved accepting solid waste from outside Rutherford County. Nineteen (19) counties currently using Middle Point Landfill for disposal of some or all of their solid waste.

In 2014, Middle Point received 909,125 tons of waste from all sources. Rutherford County, including all municipalities, contributed 257,970 tons or 28.38% of the stream. The other 18 counties contributed 655,155 tons or 71.62%.

Rutherford County's contribution breaks down as:

	TONS	PER CENT OF LANDFILL TOTAL (909,125)
City of Murfreesboro	33,944	3.73
Rutherford County	45,729	5.03
3 rd Party Haulers	178,297	19.62

The Middle Point Landfill is projected to reach capacity no later than 2025. With current population projections the landfill could potentially reach capacity sooner. Additionally, as depicted below, the majority of landfills currently permitted and operating within the state of Tennessee are expected to be at or near capacity within a similar timeframe.



Rutherford County currently operates a Construction and Demolition landfill which is projected to reach capacity in less than four years. Additionally, the County owns and monitors a Class I Landfill that was closed in 1994

5. Services Requested/Specifications

This is a request for proposals and qualifications from consultants to conduct an economic and strategic study to assist in identifying and evaluating available technologies to expand, supplement or replace the existing infrastructure to manage the community's solid waste management needs into the next 20-40 year horizon.. The City and County are interested in solutions that are sited inside Rutherford County and sized sufficiently for the estimated population of the entire County.

This may be accomplished in many altering scenarios based on the technologies evaluated. These may include, but are not limited to, advanced thermal conversion, mass burn, "dirty MRF", single stream MRF, alternate collection strategies, and/or traditional disposal methods. In any event, the selected technology should complement and enhance the current integrated solid waste management system. The City and County are interested in any or all waste diversion or disposal technologies that:

1. Are sustainable ensuring the long term disposal of solid waste in an environmentally friendly manner.
2. Control long-term costs to the maximum extent practicable thereby minimizing the impact on all tax or rate payers.
3. Comply with all Federal and state of Tennessee laws and regulations that govern solid waste disposal including hazardous waste and recycling.
4. Meet the service needs of all solid waste customers in a reliable and professional manner.

6. Terms and Conditions

It is important for each Proposer to become familiar with each paragraph within this section, as these paragraphs will prevail in the event of any discrepancies or differences between project related or contractual documents.

The Proposer must clearly and specifically detail all exceptions to the Terms and Conditions imposed in this section in the transmittal letter that will accompany its RFCSP response.

6.1 Standards

Proposer must affirm that under its employment policies, standards and practices, it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to the individual's race, creed, color, national origin, age or sex and that it is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.

It is the policy of the County and City not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, Proposer will be required to certify and warrant that it will comply with this policy.

Proposer understands that it shall be a breach of the County and City ethical standards policies for any person to offer, give, or agree to give to any County or City employee or former employee, or for any County or City employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, evaluation, recommendation, preparation of any part of a requirement or request, influencing the

content this RFCSP, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to this RFCSP or any contract or subcontract resulting therefrom.

A breach of these ethical standards may result in civil and/or criminal sanctions and/or debarment or suspension from being a contractor or subcontractor for any County and City contract.

6.2 Warranties

Proposer warrants it will perform the services in a professional manner according to the standards established in the industry for the type of work to be performed and as outlined in Section 5.

6.3 Indemnification

The Proposer shall indemnify the County and City and hold it harmless against all claims, liability, demands, liens, taxes, loss or damages of any character suffered by the County and City arising from any operations, acts or omissions of Proposer related to the work. Proposer's indemnification shall also encompass any and all financial damages to County and City resulting from the activities and responsibilities of the Proposer, Proposer's employees, and subcontractors.

6.4 Terms for Payment

Payment for services delivered will be thirty (30) days from the date of the invoice following delivery of the final report.

6.5 Assignment

The successful Proposer shall not assign, transfer, convey, sublet or otherwise dispose of any contract award or any or all of its rights, title or interest therein, without prior written consent of the County and City. Such consent by the County and City shall not relieve the assignor of liability in the event of default by the assignee.

6.6 Insurance

The successful Proposer shall maintain at least the following commercial insurance policies for the duration of the Contract in the amounts specified:

- Workers' compensation and employer's liability insurance – Workers' compensation in compliance with the applicable state and federal laws; employer's liability with a limit of \$1,000,000 per occurrence.
- Comprehensive general liability insurance – insurance including blanket contractual, broad form property damage, completed operations, and independent contractor's liability, all applicable to personal injury, bodily injury, and property damage to a limit of \$1,000,000 per occurrence and \$2,000,000 aggregate.

The selected Proposer must provide County and City with the required insurance certificates and endorsements and name the County and City as an additional insured on the liability coverages prior to contract execution.

6.7 Scope of Insurance and Special Hazards

The insurance required under the preceding paragraphs shall provide adequate protection for the successful Proposer and any sub-contractors against damage claims that may

arise from operations under this contract, whether such operations are by the insured or by anyone directly or indirectly employed by the successful Proposer.

6.8 Governing Law and Venue

The contract will be governed by the laws of the State of Tennessee. Venue for any action shall be in the applicable court for Rutherford County, Tennessee.

6.9 Compliance with Laws

The Proposer's contract shall comply with applicable Federal, State, and Local statutes, rules, and regulations. Proposers shall be approved by the appropriate regulatory authorities, if any, in the state of Tennessee to provide the services herein described.

7. Guidelines for this Request for Competitive Sealed Proposals Process

7.1 Basis for Proposals

Only information supplied by the County and City in writing should be used in the preparation of a proposal. Oral and other interpretations or clarifications shall not be binding. Proposers must acknowledge any subsequently issued addenda by signing and including such documents in the proposal.

7.2 Proposer Terms and Conditions

The Proposer must submit a complete set of any additional terms and conditions that it proposes to have included in contract negotiations with the County and City with its proposal. The County and City will not accept any contract term limiting Proposer's liability to the amount of the contract. Additionally, the Proposer must submit any and all documents/agreements the County and City must sign with its proposal.

7.3 Disclosure of Proposals

As a matter of state law, each Proposer's RFCSP response in its entirety will become a public record after completion of the selection process. The content of any proposal will not be disclosed to other Proposers during the selection process.

7.4 Late Proposals

Proposals must be received at the specified location on or before the published proposal due date and time. Any proposal received after the time and date set for receipt of proposals will be late and, at the discretion of County or City, may not be considered.

7.5 Signing of Proposals

The submission and signature of a proposal shall indicate the intention of the Proposer to adhere to the provisions described in this RFCSP and therefore must be signed by a representative with the authority to do so.

7.6 Cost of Proposal

This RFCSP does not commit the County and City to pay any costs incurred by any Proposer in preparation and/or submission of a proposal or for procuring or contracting for the items to be furnished under the RFCSP. All costs directly or indirectly related to responding to this RFCSP (including all costs incurred in supplementary documentation or on-site interviews) until contract execution shall be borne by the Proposer.

7.7 Conflict of Interest, Non-Collusion and Anti-Lobbying

The Proposer promises that its officers, employees or agents will not attempt to lobby or influence a vote or recommendation related to the firm's proposal, directly or indirectly, through any contact with County Commission or City Council members or any County and City employees between the release of this RFCSP and award of contract by County and City and that there will be no collusion and no conflict of interest.

7.8 Ownership of Proposals

All documents submitted in response to this RFCSP shall become the property of the County and City.

7.9 Disqualification or Rejection of Proposals

Proposers may be disqualified for any of the following reasons:

- There is reason to believe that collusion exists between or among two or more Proposers;
- The Proposer is in arrears on an existing County or City contract or has defaulted on a previous County or City contract;
- The Proposer lacks financial stability;
- The Proposer has failed to perform under a previous or current County or City contract;
- The Proposer has failed to adhere to one or more of the provisions established in this RFCSP;
- The Proposer has failed to submit its proposal in the format specified herein;
- The Proposer has failed to submit its proposal on or before the deadline established herein; or
- The Proposer has failed to adhere to generally accepted ethical and professional principles during the proposal process.

7.10 Right to Waive Irregularities

Proposals shall be considered irregular if they show any omissions, alterations of form, additions, conditions not called for, or irregularities of any kind.

The County and City reserves the right to waive irregularities. The County and City also reserves the right to waive any mandatory requirement provided that all proposals failed to meet the same mandatory requirement, and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the County and City.

7.11 Withdrawal of Proposals

Proposals may be withdrawn by written notice if received by the County and City prior to the exact hour and date specified for receipt of proposals. A proposal also may be withdrawn in person and the Proposer signs a receipt for the proposal, but only if the withdrawal is made by a person clearly authorized to do so prior to the exact hour and date set for the receipt of proposals.

7.12 Amendment of Proposals

A Proposer must submit any amended proposal before the deadline for receipt of proposals. Such amended proposal must be a complete replacement of a previously submitted response and must be clearly identified as such in the transmittal letter. The County and City will not merge, collate, or assemble proposal materials.

7.13 Proposal as Firm Offer

Responses to this RFCSP, including cost, will be considered firm for ninety (90) days after the due date for receipt of response or receipt of the last best and final offer submitted. All proposals must include a statement to that effect.

7.14 Exceptions to RFCSP Specifications

Although the specifications stated in the RFCSP represent the County and City's anticipated needs, there may be instances where it is the County and City's interest to permit exceptions to specifications and accept alternatives.

It is extremely important that the Proposer make very clear where exceptions are taken to the specifications and how the Proposer will provide alternatives. Therefore, exceptions, conditions, or qualifications to the provisions of County and City's specifications must be clearly identified as such together with reasons for taking exception, and inserted into the proposal response. If the Proposer does not make clear that an exception is being taken, The County and City will assume the proposal response is responding to and will meet the specification as written.

Where the Proposer does not agree with County and City's terms and conditions, the proposal must enumerate the specific clauses that the Proposer wishes to amend or delete and suggest alternative wording. Any minimum terms that the County and City will have to agree to in order to enter into a contract with the Proposer and any item the Proposer considers to be a mandatory term must be submitted with the RFCSP response.

7.15 Consideration of Proposals

Discussions may be conducted with responsible Proposers for the purpose of clarification to assure full understanding of the proposal. In conducting discussions, there will be no disclosure of any information derived from proposals submitted by competing Proposers. Until the County and City awards the contract, it reserves the right to reject any or all proposals and waive technicalities, to re-advertise for new proposals, or to proceed with the work in any manner as may be considered in the best interest of County and City.

7.16 Termination

The County and City reserves the right to cancel this RFCSP at any time. County and City reserves the right to reject any or all proposals submitted in response to this RFCSP.

7.17 Taxes

Proposer is responsible for the payment of any applicable tax on the services it will provide. At the time of this RFCSP, neither the state of Tennessee nor the County and City impose a sales tax on consultant services of this type. Proposers will include in its fee proposal all applicable local, state, and federal taxes.

7.18 Award of Contract

The County and City reserves the right to withhold final action on the RFCSP for a reasonable time, not to exceed one hundred and twenty (120) days after the date of submitting proposals, and in no event will an award be made until further investigations have been made as to the responsibility of the proposed Proposer. The award of the contract, if an award is made, will be to the most responsible and responsive Proposer whose proposal meets the requirements and criteria set forth in the Request for Competitive Sealed Proposal and whose contract terms are acceptable to County and City. County and City reserves the right to abandon, without obligation to the Proposer, any part of the project, or the entire project, at any time before the successful Proposer begins any work authorized by County and City.

The award of the contract shall not become effective until the contract has been executed by the successful Proposer and County and City.

7.19 Appeal Process

Each Proposer shall be notified of the Proposer selected for recommendation to the County Commission and City Council before the proposed action. A protest by an aggrieved Proposer who is not selected will be heard by the City Council if filed with the City Council, through the City Recorder, within seven (7) days after the intended award is announced. Any issue raised by the protesting party after the seven day period shall not be considered as part of the protest. The City Council may stay an award due to a pending protest without financial or other obligation to the Proposer recommended to the Council. The City Council may, by resolution, adopt rules and procedures applicable to protests.

7.20 Execution of Contract

The County and City shall authorize award of the contract to the successful Proposer. County and City will require the successful Proposer to sign the necessary documents entering into the required contract within 10 days of receipt and to provide the necessary evidence of insurance as required under the contract.

No contract for this project may be signed by County and City without the authorization of the County Commission and City Council. No contract shall be binding on County and City until it has been approved and executed by the Mayors or designees, and approved as to form by the County and City Attorney.

8. Criteria Used To Evaluate Proposals

8.10 Evaluation Criteria

The County and City has established the following Guidelines, Criteria, Goals, Objectives, Constraints, Schedule, Budget and/or Requirements which shall serve as a guide to the CONSULTANT in performing the professional services and work to be provided pursuant to this Agreement:

Those firms deemed to meet all minimum qualifications will be scored based upon established criteria, which have been weighted and will be assigned points that measured the responsiveness to each identified criterion. The total number of points earned will be tallied for each firm, and the firms will be rank ordered, based upon the firms submitted qualifications. Only the top three highest scoring firms will be short listed to move forward with interviews/presentations. The County and City reserves the right to invite firms outside the top three highest scoring to move forward should the selection committee see that doing so is in the best interest of the County and City.

The shortlisted firm(s) offering the best interview, in the opinion of the County and City, will be presented to the respective governmental bodies for consideration to enter into negotiations to enter into contract.

Firms may not exceed the 30 page maximum requirement stated above, under submission of letters of interest, to comply with the criterion listed herein.

In addition to the requested information listed under paragraph 10 RFCSP Requirements and Format, firms should address the following in their submittal:

CRITERION 1: Experience with Similar Projects (Maximum Points: 35)

Provide the firm's relevant experience in consulting services to governmental agencies for similar projects. Describe your firm's experience, expertise and qualifications in the following:

1. assessment and forecasting of solid waste management needs;
2. evaluation of available technologies for integrated solid waste management systems;
3. identification of financial impacts for proposed alternative system elements;
4. preparation of Basis of Design Reports; and
5. successful completion of projects expanding, supplementing or replacing solid waste management systems.

Highlight any particular benefits that clients realized as the result of the Consultant's efforts.

Provide a list of similar projects including locations, summary of scopes of services, dates when work was performed, client name, address and telephone number and name of contact person for reference. Only include services performed within the last seven (7) years.

CRITERION 2: Approach to Project (Maximum Points: 30)

Provide a summary narrative or list of information that explains how the Consultant can best provide Program Management for this type of project and assist the County and City in completing the project expeditiously while minimizing delays and cost overages. Explain how the Consultant will maintain time management and budget control for its own work (and its sub-consultants).

CRITERION 3: Key Personnel (Maximum Points: 35)

Provide a list of the personnel with organizational chart to be assigned on this project, their background, specific role, experience and workload. Concise resumes including education, experience, where the employee is based and any other pertinent information shall be included for each team member assigned to the project. Project resumes are to be no more than one (1) page in length. Describe in detail the proposer's policy on changing personnel assigned in the proposal to the project. Indicate if the firm intends to commit to a percentage of substitutions during the term of the project. Indicate proposed sub-consultants and their intended roles and office location.

The Criterion 3 response should include a discussion of how the Consultant's in-house staff has significant current experience with solid waste processing, recycling, construction and demolition, biosolids composting, and waste incinerator ash regulations and permitting.

8.20 Interview/Presentation

Upon short listing, the requirements for written materials and interview/presentation will be made known to the short listed firms.

Following Presentation the evaluation committee in their sole opinion will make a recommendation of award based upon the information provided from firm's presentations and evaluation committee discussion.

A recommendation of Award will be presented to the respective governmental bodies for approval, to enter into negotiations to provide Professional Consulting Services, which in the sole opinion of the County and City, would be in the best interest of the community.

9. RFCSP Requirements and Format

Please use the following format to structure your RFCSP response. Your response should include each section detailed below in the order presented. The detail represents the items that are to be covered in each section of your response. Failure to follow the directions or to address all items will impact the evaluation. Failure to address a significant portion of the items may classify the response as non-responsive and preclude it from further consideration. **The number of pages in the RFCSP response cannot exceed thirty (30) pages.** Appendices will not be counted as part of the 30 page limit. Resumes and marketing material may be included and will not be counted towards the 30 page limit; however this information must be in its own section at the back of the RFCSP response. All materials must fit into a single binder. Please supply eight hard copies of the proposal in binders, and two electronic copies.

9.10 Table of Contents

Responses shall include a table of contents properly indicating the section and page numbers of the information included.

9.20 Transmittal Letter

The transmittal letter will indicate the intention of the Proposer to adhere to the provisions described in the RFCSP without modification. The letter of transmittal should:

- 1) Identify the submitting organization;
- 2) Identify the person, by name and title, authorized to obligate the organization contractually;
- 3) Identify the contact person responsible for this response and specify phone, fax, and email address;
- 4) Explicitly state that Proposer has reviewed and accepted the County and City's Terms and Conditions;
- 5) State that it has included any additional terms or conditions or documents which it requires;
- 6) Identify any and all exceptions or "deal breakers" to the RFCSP requirements;
- 7) Acknowledge the proposal is considered firm for one hundred and twenty (120) days after the due date for receipt of proposals or receipt of the last best and final

- offer submitted. If partners are used, they must also guarantee their section of the proposal for 120 days;
- 8) Acknowledge completion of the Fee Proposal; and
 - 9) Signed by a person authorized to contractually obligate the organization.

9.30 Qualifications and Background

Provide firm biography and history of the firm's services in the solid waste management business.

Firm Name
Business Address
Names and Titles of Two Contact People
Type of Firm
Federal Employer Identification Number
Year Firm was Established
Payment and Performance Bonding limits
How many years has the firm been doing business under its present name?
What projects has the firm completed and what projects is the firm currently engaged?

9.40 Firm Experience and References

Provide the owner's name, address, telephone number, and contact person for each project. References for Projects where the responding firm was not the prime contractor are not acceptable. Please list any projects completed in the Rutherford County area, as well as the state of Tennessee.

9.50 Capability of the Firm

Please list projects completed in Murfreesboro and/or the Rutherford County area, as well as the state.

10. Submittal of Proposals

All Proposals should be delivered to the City Manager, City of Murfreesboro, 111 West Vine Street, Murfreesboro, TN 37130; Attn: Solid Waste Disposal Feasibility Study. Proposals must be delivered by 2:00p.m. local time on May 5, 2016.

The label provided below, with all appropriate information completed, should be used for the proper processing of the RFCSP submittal. The label will facilitate the City Manager's Office to properly handle the sealed envelope without revealing the contents until the solicitation is opened.



SEALED QUOTATIONS & PROPOSAL ENCLOSED

Company Name:

Company Address:

Company Telephone Number:

**City of Murfreesboro
Attn: City Managers' Office
111 West Vine Street
Murfreesboro, TN 37130**

Solicitation No: RFCSP-55-2016

Solicitation Title: Solid Waste Disposal Feasibility Study

Solicitation Due Date & Time (CST): May 5, 2016 by 2:00 pm

SIGNATURE SHEET

I, the undersigned, do hereby agree to all terms and conditions listed within this formal solicitation, and will supply all labor and materials as required with this specification.

COMPANY NAME:

ADDRESS:

TELEPHONE: _____ FAX: _____

EMAIL: _____

ADDENDUM ACKNOWLEDGEMENT

The proposer shall acknowledge obtaining all addenda issued to this formal solicitation by completing the blocks below. Failure to acknowledge all addenda may be cause for rejection of the response.

Addendum No. _____ Date Issued: _____

Addendum No. _____ Date Issued: _____

Addendum No. _____ Date Issued: _____

AUTHORIZED SIGNATURE: _____

TITLE:

(Print / type name as signed
above): _____

DATE:

**SAMPLE CONTRACT
BETWEEN
CITY OF MURFREESBORO
AND
(CONTRACTOR NAME)
FOR
SOLID WASTE DISPOSAL FEASABILITY STUDY**

This contract is entered into on this ____ day of _____, 2016, by and between **THE CITY OF MURFREESBORO**, a municipal corporation of the State of Tennessee ("City") and _____ ("Contractor"). This contract consists of the following documents:

- *This document,*
- *Request for Competitive Sealed Proposal (RCSP), issued Tuesday, March 29, 2016*
- *Contractor's Proposal, dated _____, and,*
- *Any properly executed amendments to this Contract.*

In the event of conflicting provisions, all documents shall be construed according to the following priorities:

- *any properly executed amendment or change order to this contract (most recent with first priority),*
- *this contract,*
- *RCSP, and,*
- *Contractor's Proposal.*

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide and City agrees to purchase collection services for delinquent accounts for which the Finance Director, City Court Clerk, Water and Sewer Director or other city departments are charged with collecting.
2. **Term.**
 - A. The term of this contract will begin on the date this contract is signed by all required parties. The initial contract term will end on (ending date).
 - B. This contract may be extended for four (4) additional term(s) of one (1) year each. The option to extend shall be exercised by and in the discretion of the City. To be effective, any extension must be approved by the City Attorney and City Council. In no event shall the term of this contract, including extensions, exceed five (5) years.
3. **Compensation.** Contractor shall retain a percentage from amounts collected on behalf of City as compensation for providing services pursuant to Contract.

There will be no other charges or fees for the performance of this contract.

4. Compensation; Method of Payment.

- A. Contractor shall be compensated based on monies actually collected on all accounts referred based on the schedule submitted for collection services in this proposal.
 - B. After a delinquent account has been referred to the Contractor and it is subsequently determined by the City that the account was not delinquent at the time it was referred or if no contact has been made or that it is in the best interest of the City to not refer the account over to the contractor, the Contractor shall return the account immediately and at no cost to City.
 - C. Other than court-awarded attorney's fees and costs, the Contractor shall neither add any charges or interest to the amount of the delinquent account nor collect more than the amount due to City from any delinquent account.
 - D. After the Contractor has made contact with a debtor, City may not recall that account from the Contractor (other than as allowed under the termination sections) unless City receives a direct payment from the debtor as a result of new charge or debt or a payment on an account where the Contractor has not collected any money in ninety (90) days, City may recall that account and Contractor shall not be entitled to any compensation on that account.
 - E. Contractor shall remit to City all monies collected on accounts during the preceding month, by the tenth (10th) day of the succeeding month.
 - F. The Contractor is not entitled to any compensation other than is expressly provided for in this contract.
5. **Taxes.** City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.

6. Copyright, Trademark, Service Mark, or Patent Infringement.

- A. Contractor shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor shall further indemnify and hold harmless City against any award of damages and costs made against City by a final judgment of a court of last resort in any such suit. City shall provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable Contractor to do so. No costs or expenses shall be incurred for the account of Contractor without its written consent. City reserves the right to participate in the defense of any such action. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon City unless approved by the City Attorney and, where required, the City Council.
- B. If the products or services furnished under this contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:

- i) Procure for City the right to continue using the products or services.
 - ii) Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to City, so that they become non-infringing.
 - iii) Remove the products or discontinue the services and cancel any future charges pertaining thereto.
 - iv) Provided, however, that Contractor will not exercise option B.iii. until Contractor and City have determined that options B.i. and B.ii. are impractical.
- C. Contractor shall have no liability to City, however, if any such infringement or claim thereof is based upon or arises out of:
- i) The use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor.
 - ii) The use of the products or services in a manner for which the products or services were neither designated nor contemplated.
 - iii) The claimed infringement in which City has any direct or indirect interest by license or otherwise, separate from that granted herein.

7. Termination of the Contractor's Services.

The Contractor's services may be terminated in whole or in part:

- A. By mutual consent of the parties.
- B. For the convenience of City, provided that City notifies the Contractor in writing of its intent to terminate under this paragraph at least thirty (30) days prior to the effective date of the termination.
- C. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least thirty (30) days prior to the effective date of the termination and surrenders all documentation relating to collection actions initiated. No fee will be due on collections received after the termination date regardless of when collection process is initiated and all collections received by the Contractor after the termination date will be turned over to the City by the tenth (10th) of the month following the month in which they are collected or were received.
- D. For cause, by either party where the other party fails in any material way to perform its obligations under this contract. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within fifteen (15) days after receiving the notice.
- E. For failure to remit monies due to the City by the dates specified within this contract.
- G. Failure to provide an adequate accounting for monies collected.
- H. Should Contractor fail to fulfill in a timely and proper manner its obligations under this contract or if it should violate any of the terms of this contract, City shall have the right to immediately terminate the contract. Such termination shall not relieve Contractor of any liability to City for damages sustained by virtue of any breach by Contractor.
- I. Should funding for this contract be discontinued, City shall have the right to terminate the contract immediately upon written notice to Contractor.

- J. City may terminate this contract at any time upon thirty (30) days written notice to Contractor.

8. Duties upon Termination or Expiration of Contract

- A. If City terminates the Contractor's services in whole or in part for convenience, City may, at its option, recall any or all delinquent accounts which are covered by such termination except those accounts currently involved in litigation, or that have been reduced to judgment, or those accounts where payment arrangements have been made and the Contractor shall deliver to City all such recalled delinquent accounts within ten (10) days of receipt of the recall notice. After the delinquent accounts are (or should have been) returned to City, the Contractor shall have no further right to any monies collected from, or on those accounts.
- B. The provisions of this contract will remain in full force and effect with respect to those accounts retained by the Contractor until those retained accounts are paid in full or satisfied.
- C. If the Contractor's services are terminated in whole or in part for cause, the Contractor shall, within ten (10) days of the receipt of the termination notice, return any terminated delinquent accounts to the Administrator, immediately cease all collection activities on the affected delinquent accounts and shall have no further right to any monies collected from, or on those accounts after the accounts have (or should have) been returned to City.
- D. If Contractor receives payment exceeding the amount to which it is entitled under subsection A or C of this section, he shall remit the excess to the Administrator within thirty (30) days.
- E. If the Contractor's services are terminated, for whatever reason, the Contractor shall receive no compensation under this contract, other than that explicitly allowed under this section.
- F. If after termination, a final certified audit has not been performed, City may, at its option, have one conducted at Contractor's sole expense.

9. Compliance with Laws. Contractor agrees to comply with any applicable federal, state and local laws and regulations.

10. Notices and Designation of Agent for Service of Process.

- A. Notice of assignment of any rights to money due to Contractor under this contract must be mailed or hand delivered to the attention of City Manager, City of Murfreesboro, P.O. Box 1139, Murfreesboro, TN 37133-1139.
- B. Notices to Contractor shall be mailed or hand delivered to:

Contractor:
Attn:
Address:

- C. Contractor designates the following as the Contractor's agent for service of process and will waive any objection to service of process if process is served upon this agent:

Designated Agent:

Attn:

Address:

11. Ownership, Publication, Reproduction and Use of Material.

Except as otherwise provided herein, all data, documents and materials produced by the Contractor under this contract shall be the property of City, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Upon termination, the Contractor shall, within 30 days, deliver to the City all delinquent accounts, documents, records, work product, and other materials relating to this contract.

12. City's Rights and Obligations.

- A. City does not guarantee the Contractor either a certain number or a certain total dollar value of collection referrals during the term of this contract. Also, City retains sole discretion in determining what delinquent accounts shall be "collection agency matters". City does agree that once it determines a delinquent account to be a "collection agency matter" that such delinquent account shall, for the life of this contract, be referred only to the Contractor. **Specifically excluded from this contract are delinquent property, business, and other taxes that may be administered and collected by the City.**
- B. Other than as is explicitly set forth in this contract, City shall not be obligated to provide the Contractor with any other monies, goods, or services.
- C. Prior to any contact being made with the debtor by the Contractor, the City of City may give notice to the Contractor recalling a delinquent account and such delinquent account shall be returned to City within seven (7) days of such notice being received. After receipt of a notice of recall, the Contractor shall have no right to any monies collected from, or on the delinquent account (s), nor shall Contractor receive any other compensation from City for the delinquent account recalled.
- D. In the event Contractor is involved in litigation in an attempt make a collection hereunder and a counterclaim or affirmative defense is raised concerning any municipal ordinance or regulation or any other reason, the Contractor shall within 24 hours of said counterclaim or affirmative defense notify the City Attorney in writing. City reserves the right to choose an attorney or to have the Municipal Attorney substitute or intervene in said litigation.
- E. Prior to any actions that would adversely affect the credit of the debtor, all claims for damages will be adjudicated in the appropriate courts and a legal right to be paid or the establishing of a legal right of the City to be repaid shall be established in the appropriate court.

13. Permits, Laws and Taxes.

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this contract. All actions taken by the Contractor under this contract shall comply with all applicable federal and state statutes (to include the Fair Debt Collection Practices Act, 15 U.S.C. 1692), ordinances,

rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this contract.

14. **Maintenance of Records.** Contractor shall maintain documentation for all charges against City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by City or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.
15. **Confidentiality of NCIC Driver License & Registration Information.** Contractor shall maintain the confidentiality of all driver license and registration information obtained from the City through NCIC and shall not disclose such information to any third party.
16. **Monitoring.** The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by City, or their duly appointed representatives.
17. **City Property.** Any City property, including but not limited to books, records and equipment, that is in Contractor's possession shall be maintained by Contractor in good condition and repair, and shall be returned to City by Contractor upon termination of the contract. All goods, documents, records, and other work product and property produced during the performance of this contract are deemed to be City property.
18. **Modification of Contract.** This contract may be modified only by written amendment executed by all parties and their signatories hereto.
19. **Partnership/Joint Venture.** Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.
20. **Waiver.** No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
21. **Employment.** Contractor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
22. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, Contractor certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law;

nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with City or in the employment practices of City's Contractors. Accordingly, all proposers entering into contracts with City shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

23. Insurance. During the term of this Contract, Contractor shall maintain comprehensive general liability insurance with limits of not less than one million dollars, as well as automotive and workers' compensation insurance policies. A certificate of insurance, in a form satisfactory to City, evidencing said coverage shall be provided to City prior to commencement of performance of this Contract. Throughout the term of this contract, Contractor shall provide an updated certificate of insurance upon expiration of the current certificate.

24. Gratuities and Kickbacks. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under City contracts.

25. Indemnification and Hold Harmless. Contractor shall indemnify and hold harmless City, its officers, agents and employees from:

A. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the contract, and,

B. Any claims, damages, penalties, costs and attorney fees arising from any failure of Contractor, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

C. Contractor shall pay City any expenses incurred as a result of Contractor's failure to fulfill any obligation in a professional and timely manner under this Contract.

26. Attorney General Opinion 93-01. Pursuant to Tennessee Attorney General Opinion 93-01, City will not indemnify, defend or hold harmless in any fashion the Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that the Contractor may provide.

- 27. **Attorney Fees.** Contractor agrees that, in the event either party deems it necessary to take legal action to enforce any provision of the contract, and in the event City prevails, Contractor shall pay all expenses of such action including City's attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.

- 28. **Assignment--Consent Required.** The provisions of this contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this contract, neither this contract nor any of the rights and obligations of Contractor hereunder shall be assigned or transferred in whole or in part without the prior written consent of City. Any such assignment or transfer shall not release Contractor from its obligations hereunder. NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF CITY MANAGER, CITY OF MURFREESBORO, P.O. BOX 1139, MURFREESBORO, TN 37133-1139.

- 29. **Entire Contract.** This contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

- 30. **Force Majeure.** No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

- 31. **Governing Law.** The validity, construction and effect of this contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the Contractor may provide.

- 32. **Venue.** Any action between the parties arising from this agreement shall be maintained in the courts of Rutherford County, Tennessee.

- 33. **Severability.** Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.

- 34. **Effective Date.** This contract shall not be binding upon the parties until it has been signed first by the Contractor and then by the authorized representatives of the City. When it has been so signed, this contract shall be effective as of the date first written above.

CITY OF MURFREESBORO

**CONTRACTOR NAME
[TYPE IN THE NAME OF THE COMPANY]**

By: _____
Shane McFarland, Mayor

SAMPLE CONTRACT DO NOT SIGN
By: _____
Owner [TYPE IN THE NAME OF THE PERSON SIGNING THE DOCUMENT AND THEIR TITLE]

APPROVED AS TO FORM:

STATE OF TENNESSEE)

COUNTY OF _____)

Craig Tindall, City Attorney

Kelley Blevins Baker, Assistant City Attorney

Before me, the undersigned notary public, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be the _____, or other officer authorized to execute the foregoing instrument for the purposes therein contained.

WITNESS MY HAND and seal this ____ day of _____, 20____.

Notary Public

My Commission Expires: _____