



The City of Palm Beach gardens  
10500 North Military Trail  
Palm Beach Gardens, FL 33410

## PURCHASING DEPARTMENT

# REQUEST FOR PROPOSALS

## GENERAL TERMS AND CONDITIONS

### 3.1 DEFINITIONS

- a. *Proposal: any offer(s) submitted in response to this Request for Proposal.*
- b. *Proposer: person or firm submitting a response to this Request for Proposal.*
- c. *Solicitation or Request for Proposal: this Solicitation documentation, including any and all addenda.*
- d. *Proposal Submittal forms: describes the goods or services to be purchased, and must be completed and submitted with the Proposal.*
- e. *City: shall refer to the City of Palm Beach Gardens, Florida.*
- f. *Contract or Agreement: the Request for Proposal, all addenda issued thereto, all affidavits, the signed agreement, and all related documents that comprise the totality of the contract or agreement between the City and the Proposer.*
- g. *Contractor: successful Proposer that is awarded a contract to provide the goods or services to the City.*
- h. *Purchasing Department: the Purchasing Department of the City of Palm Beach Gardens, Florida.*
- i. *Responsible Proposer: a Proposer that has the capability in all respects to perform in full the contract requirements, as stated in the Request for Proposals, and the integrity and reliability that will assure good-faith performance.*
- j. *Responsive Proposer: a Proposer whose proposal conforms in all material respects to the terms and conditions included in the Request for Proposals.*

### 3.2 CONE OF SILENCE

*Pursuant to Section 2-355 of the Palm Beach County Ordinance No. 2011-039, and the purchasing policies of the City of Palm Beach Gardens, all Solicitations, once advertised and until the appropriate authority has approved an award recommendation, are under the "Cone of Silence". This limits and requires documentation of communications between potential bidders and/or bidders on City Solicitations, the City's professional staff, and the City Council members.*

### 3.3 ADDENDUM

*The Purchasing Department may issue an addendum in response to any inquiry received, prior to the due date for proposals, which changes, adds, or clarifies the terms, provisions, or requirements of the Solicitation. The Proposer*

should not rely on any representation, statement, or explanation, whether written or verbal, other than those made in the Solicitation document or in the addenda issued. Where there appears to be a conflict between the Solicitation and any addenda, the last addendum issued shall prevail. It is the Proposer's responsibility to ensure receipt of all addenda and any accompanying documentation. The Proposer is required to submit with its proposal a signed "Acknowledgment of Addenda" form, when any addenda have been issued.

#### 3.4 LEGAL REQUIREMENTS

This Solicitation is subject to all legal requirements contained in the applicable City Ordinances and Resolutions, as well as all applicable City, State, and Federal Statutes. Where conflict exists between this Solicitation and these legal requirements, the authority shall prevail in the following order: Federal, State, and local.

#### 3.5 CHANGE OF PROPOSAL

Prior to the scheduled due date for proposals, a Proposer may change its proposal by submitting a new proposal (as indicated on the cover page) with a letter on the firm's letterhead, signed by an authorized agent stating that the new proposal replaces the original proposal. The new submittal shall contain the letter and all information as required for submitting the original proposal. No changes to a proposal will be accepted after proposals have been opened.

#### 3.6 WITHDRAWAL OF PROPOSAL

A proposal shall be irrevocable unless the proposal is withdrawn as provided herein. Only a written letter received by the Purchasing Department prior to the due date for proposals may withdraw a proposal.

#### 3.7 CONFLICTS WITHIN THE SOLICITATION

Where there appears to be a conflict between the General Terms and Conditions, Special Conditions, the Scope of Services, and/or Description of Items, the Proposal Submittal forms, or any addendum issued, the order of precedence shall be: the last addendum issued, the Proposal Submittal forms, the Scope of Services and/or Description of Items, the Special Conditions, and then the General Terms and Conditions.

#### 3.8 PROMPT PAYMENT TERMS

It is the policy of the City of Palm Beach Gardens that payment for all purchases by City departments shall be made in a timely manner. The City will pay the successful Proposer upon receipt and acceptance of the goods or services by a duly authorized representative of the City. In accordance with Florida Statutes, Section 218.74, the time at which payment shall be due from the City shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. Proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the City Manager or designee, not later than sixty (60) days after the date on which the proper invoice was received by the City.

#### 3.9 DISCOUNTS (PROMPT PAYMENTS)

The Proposer may offer cash discounts for prompt payments; however, such discounts will not be considered in determining the successful Proposer during the evaluation period. Proposers are requested to provide prompt payment terms in the space provided on the proposal submittal forms signature page of the Solicitation.

#### 3.10 PREPARATION OF PROPOSALS

- a. The proposal submittal forms define requirements of the services to be performed or the items to be purchased, and must be completed and submitted with the proposal. Use of any other forms will result in the rejection of the proposal. The proposal submittal forms must be legible. Proposers shall use typewriter, computer, or ink. All changes must be crossed out and initialed in ink. Failure to comply with these requirements may cause the proposal to be rejected.
- b. An authorized agent of the Proposer's firm must sign the proposal submittal forms where indicated. **Failure to sign the Signature Page of the Proposal shall render the proposal non-responsive.**
- c. The Proposer must identify any exceptions it takes to the terms and conditions of the Solicitation and contract. Exceptions will not automatically result in the Proposer being deemed non-responsive; however, such a determination is at the discretion of the City. Proposers are cautioned that they may be considered non-responsive if proposals are conditioned to modifications, changes, or revisions to the terms and conditions of this Solicitation.
- d. The Proposer may submit alternate proposal(s) for the same Solicitation provided that such offer is allowable under the terms and conditions. The alternate proposal must meet or exceed the minimum requirements and be submitted as a separate proposal marked "Alternate Proposal".

- e. *When there is a discrepancy between the unit prices and any extended prices, the unit prices will prevail.*
- f. *Late proposals will not be accepted and will be returned to the sender unopened. It is the proposer's responsibility to ensure timely delivery by the due date and time, and at the place stated in this Solicitation. No exceptions will be made due to weather, carrier, traffic, illness, or other issues.*

3.11 **CANCELLATION OF SOLICITATION**

*The City of Palm Beach Gardens reserves the right to cancel, in whole or in part, any Requests for Proposals when it is in the best interest of the City.*

3.12 **AWARD OF CONTRACT**

- a. *This contract may be awarded to the responsive and responsible Proposer meeting all requirements as set forth in the Solicitation. The City reserves the right to reject any and all proposals, to waive irregularities or technicalities, and to re-advertise for all or any part of this Solicitation as deemed in its best interest. The City shall be the sole judge of its best interest.*
- b. *The City reserves the right to reject any and all proposals if it is determined that prices are excessive, best offers are determined to be unreasonable, or it is otherwise determined to be in the City's best interest to do so.*
- c. *The Proposer's prior performance as a prime contractor or subcontractor on previous City contracts shall be taken into account in evaluating the proposal received for this Solicitation.*
- d. *The City will provide a copy of the ranking and scores to all Proposers responding to this Solicitation.*
- e. *Award of this proposal may be predicated on compliance with and submittal of all required documents as stipulated in the Solicitation.*
- f. *The City reserves the right to request and evaluate additional information from any Proposer after the due date for proposals, as the City deems necessary.*

3.13 **CONTRACT EXTENSION**

*The City reserves the right to automatically extend any agreement for a maximum period not to exceed ninety (90) calendar days in order to provide City departments with continual service and supplies while a new agreement is being solicited, evaluated, and/or successful.*

3.14 **WARRANTY**

*All warranties express and implied shall be made available to the City for goods and services covered by this Solicitation. All goods furnished shall be fully guaranteed by the successful Proposer against factory defects and workmanship. At no expense to the City, the successful Proposer shall correct any and all apparent and latent defects that may occur within the manufacturer's standard warranty.*

3.15 **ESTIMATED QUANTITIES**

*Estimated quantities or dollars are for Proposer's guidance only: (a) estimates are based on the City's anticipated needs and/or usage; and (b) the City may use these estimates to determine the successful Proposer. No guarantee is expressed or implied as to quantities or dollars that will be used during the contract period. The City is not obligated to place any order for the given amount subsequent to the award of this contract.*

3.16 **NON-EXCLUSIVITY**

*It is the intent of the City to enter into an agreement with the successful Proposer that will satisfy its needs as described herein. However, the City reserves the right as deemed in its best interest to perform, or cause to be performed, the work and services, or any portion thereof, herein described in any manner it sees fit, including but not limited to, award of other contracts, use of any contractor, or perform the work with its own employees.*

3.17 **CONTINUATION OF WORK**

*Any work that commences prior to and will extend beyond the expiration date of the current contract period shall, unless terminated by mutual written agreement between the City and the successful Proposer, continue until completion at the same prices, terms, and conditions.*

3.18 **PROTEST**

a. A recommendation for contract award or rejection of award may be protested by a Proposer. The Proposer may file a written protest with the City Clerk's office. The Proposer shall file its written protest with the City Clerk, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., excluding legal holidays. Protests shall contain the name, address, and phone number of the petitioner, name of the petitioner's representative (if any), and the title and proposal number of the Solicitation. The protest shall specifically describe the subject matter, facts giving rise to the protest, and the action requested from the City.

b. The written protest must be received no later than seventy-two (72) consecutive hours (excluding Saturdays, Sundays, and legal holidays) after the time of award posting. Failure to file a timely formal written protest within the time period specified shall constitute a waiver by the Proposer of all rights of protest under this procedure.

c. In the event of a timely protest, the City will not proceed further with award of the contract and agreement until all administrative remedies are exhausted, or until the City Manager determines the award of the contract is immediately necessary to protect the public health, welfare, or safety.

3.19 **LAWS AND REGULATIONS**

The successful Proposer shall comply with all laws and regulations applicable to provide the goods or services specified in this Solicitation. The Proposer shall be familiar with all federal, state, and local laws that may affect the goods and/or services offered.

3.20 **LICENSES, PERMITS AND FEES**

The successful Proposer shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations, and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the City or a successful Proposer for failure to obtain and maintain required licenses, certifications, permits, and/or inspections shall be borne by the successful Proposer.

3.21 **SUBCONTRACTING**

Unless otherwise specified in this Solicitation, the successful Proposer shall not subcontract any portion of the work without the prior written consent of the City. The ability to subcontract may be further limited by the Special Conditions. Subcontracting without the prior consent of the City shall constitute a material breach of the agreement and may result in termination of the contract for default.

3.22 **ASSIGNMENT**

The successful Proposer shall not assign, transfer, hypothecate, or otherwise dispose of this contract, including any rights, title, or interest therein, or its power to execute such contract to any person, company, or corporation without the prior written consent of the City. Assignment without the prior consent of the City may result in termination of the contract for default.

3.23 **SHIPPING TERMS**

Unless otherwise specified in the Solicitation, prices quoted shall be F.O.B. Destination. Freight shall be included in the proposed price.

3.24 **RESPONSIBILITIES AS EMPLOYER**

The employee(s) of the successful Proposer shall be considered to be at all times its employee(s), and not an employee(s) or agent(s) of the City or any of its departments. The successful Proposer shall provide physically competent employee(s) capable of performing the work as required. The City may require the successful Proposer to remove any employee it deems unacceptable. All employees of the successful Proposer shall wear proper identification.

It is the successful Proposer's responsibility to ensure that all its employees and subcontractors comply with the employment regulations required by the US Department of Homeland Security. The City shall have no responsibility to check or verify the legal immigration status of any employee of the successful Proposer.

3.25 **INDEMNIFICATION**

The successful Proposer shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses, or damages, including attorney's fees and costs of defense, which

*the City or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by the successful Proposer or its employees, agents, servants, partners, principals, or subcontractors. The successful Proposer shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The successful Proposer expressly understands and agrees that any insurance protection required by this contract agreement or otherwise provided by the successful Proposer shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City or its officers, employees, agents, and instrumentalities as herein provided.*

3.26 COLLUSION

*A Proposer recommended for award as the result of a competitive Solicitation for any City purchase of supplies, materials, and services (including professional services, other than professional architectural, engineering, and other services subject to Sec. 287.055 Florida Stats.), purchase, lease, permit, concession, or management agreement shall, within five (5) business days of the filing of such recommendation, submit an affidavit under the penalty of perjury, on a form provided by the City stating either that the contractor is not related to any of the other parties proposing in the competitive Solicitation or identifying all related parties; and attesting that the proposal is genuine and not a sham or collusive or made in the interest or on behalf of any person not therein named, and that the Proposer has not, directly or indirectly, induced or solicited any other Proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the Proposer has not in any manner sought by collusion to secure to the Proposer an advantage over any other Proposer. In the event a recommended Proposer identifies related parties in the competitive Solicitation, its proposal shall be presumed to be collusive and the recommended Proposer shall be ineligible for award unless that presumption is rebutted to the satisfaction of the City. Any person or entity that fails to submit the required affidavit shall be ineligible for contract award.*

3.27 MODIFICATION OF CONTRACT

*The contract may be modified by mutual consent, in writing, through the issuance of a modification to the contract, a supplemental agreement, purchase order, or change order, as appropriate.*

3.28 TERMINATION FOR CONVENIENCE

*The City, at its sole discretion, reserves the right to terminate this contract without cause upon thirty (30) days' written notice. Upon receipt of such notice, the selected Proposer shall not incur any additional costs under this contract. The City shall be liable only for reasonable costs incurred by the selected Proposer prior to the date of the notice of termination so long as the selected Proposer is not in default and/or breach. The City shall be the sole judge of "reasonable costs."*

3.29 TERMINATION FOR DEFAULT

*In the event that selected Proposer fails to comply with the terms of this Contract, then City shall provide to selected Proposer written notice of the default and selected Proposer shall have fifteen (15) days within which to initiate action to correct the default and fifteen (15) days within which to cure the default to the satisfaction of City (the "Cure Period"). The City reserves the right to terminate this contract, in part or in whole, or place the selected Proposer on probation in the event the selected Proposer fails to perform in accordance with the terms and conditions stated herein and/or cure the default. The City further reserves the right to suspend or debar the selected Proposer in accordance with the appropriate City ordinances or resolutions. The selected proposer will be notified by letter of the City's intent to terminate. In the event of termination for default, the City may procure the required goods and/or services from any source and use any method deemed in its best interest. All re-procurement costs shall be borne by the selected Proposer.*

3.30 FRAUD AND MISREPRESENTATION

*Any individual, corporation, or other entity that attempts to meet its contractual obligations with the City through fraud, misrepresentation, or material misstatement, may be debarred for up to five (5) years. The City, as a further sanction, may terminate or cancel any other contracts with such individual, corporation, or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.*

3.31 ACCESS AND AUDIT OF RECORDS

*The City reserves the right to require the successful Proposer to submit to an audit by an auditor of the City's choosing at the successful Proposer's expense. The successful Proposer shall provide access to all of its records, which relate*

directly or indirectly to this contract, at its place of business during regular business hours. The successful Proposer shall retain all records pertaining to this contract, and upon request, make them available to the City for three (3) years following expiration of the contract. The successful Proposer agrees to provide such assistance as may be necessary to facilitate the review or audit by the City to ensure compliance with applicable accounting and financial standards.

3.32 OFFICE OF THE INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present, and proposed County programs, contracts, transactions, accounts and records. The Inspector General (IG) has the power to subpoena witnesses, administer oaths, require the production of records, and monitor existing projects and programs. The Inspector General may, on a random basis, perform audits on all City contracts.

3.33 PRE-AWARD INSPECTION

The City may conduct a pre-award inspection of the Proposer's premises or hold a pre-award qualification hearing to determine if the Proposer is capable of performing the requirements of this Solicitation.

3.34 PROPRIETARY/CONFIDENTIAL INFORMATION

Proposers are hereby notified that all information submitted as part of, or in support of, proposal submittals will be available for public inspection after the opening of proposals in compliance with Chapter 119 of the Florida Statutes; popularly known as the "Public Record Law." The Proposer shall not submit any information in response to this Solicitation that Proposer considers a trade secret, proprietary, or confidential. The submission of any information to the City in connection with this Solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection that would otherwise be available to the Proposer. In the event that the Proposer submits information to the City in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the proposal as protected or confidential, the City may, in its sole discretion, either (a) communicate with the Proposer in writing in an effort to obtain the Proposer's withdrawal of the confidentiality restriction, or (b) endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the proposal. The redaction or return of information pursuant to this clause may render a proposal non-responsive.

3.35 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Any person or entity that performs or assists the City of Palm Beach Gardens with a function or activity involving the use or disclosure of "individually identifiable health information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996. HIPAA mandates for privacy, security, and electronic transfer standards include, but are not limited to:

- a. Use of information only for performing services required by the contract or as required by law;
- b. Use of appropriate safeguards to prevent non-permitted disclosures;
- c. Reporting to the City of Palm Beach Gardens any non-permitted use or disclosure;
- d. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Proposer and reasonable assurances that IIHI/PHI will be held confidential;
- e. Making Protected Health Information (PHI) available to the customer;
- f. Making PHI available to the customer for review and amendment, and incorporating any amendments requested by the customer;
- g. Making PHI available to the City of Palm Beach Gardens for an accounting of disclosures; and
- h. Making internal practices, books, and records related to PHI available to the City of Palm Beach Gardens for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records and/or electronic transfer of data). The successful Proposer must give its customers written notice of its privacy information practices, including specifically, a description of the types of uses and disclosures that would be made with protected health information.

- 3.36 **ADDITIONAL FEES AND SURCHARGES**  
*Unless provided for in the contract/agreement, the City will not make any additional payments such as fuel surcharges, demurrage fees, or delay-in-delivery charges.*
- 3.37 **COMPLIANCE WITH FEDERAL STANDARDS**  
*All items to be purchased under this contract shall be in accordance with all governmental standards, to include, but not be limited to, those issued by the Occupational Safety and Health Administration (OSHA), the National Institute of Occupational Safety Hazards (NIOSH), and the National Fire Protection Association (NFPA).*
- 3.38 **COMPLIANCE WITH FEDERAL REGULATIONS DUE TO USE OF FEDERAL FUNDING**  
*If the goods or services to be acquired under this Solicitation are to be purchased, in part or in whole, with Federal funding, it is hereby agreed and understood that Section 60-250.4, Section 60-250.5, and Section 60-741.4 of Title 41 of the United States Code, which addresses Affirmative Action requirements for disabled workers, is incorporated into this Solicitation and resultant contract by reference.*
- 3.39 **BINDING EFFECT**  
*All of the terms and provisions of this contract/agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and permitted assigns.*
- 3.40 **SEVERABILITY**  
*If any part of this contract is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.*
- 3.41 **GOVERNING LAW AND VENUE**  
*This contract and all transactions contemplated by this agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida without regard to any contrary conflicts of law principle. Venue of all proceedings in connection herewith shall lie exclusively in Palm Beach County, Florida, and each party hereby waives whatever its respective rights may have been in the selection of venue.*
- 3.42 **ATTORNEY'S FEES**  
*It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.*
- 3.43 **EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION**  
*The City of Palm Beach Gardens complies with all laws prohibiting discrimination on the basis of age, race, gender, religion, creed, political affiliation, sexual orientation, physical or mental disability, color or national origin, and therefore is committed to assuring equal opportunity in the award of contracts and encourages small, local, minority, and female-owned businesses to participate.*  
*During the performance of this contract, the successful Proposer agrees it will not discriminate or permit discrimination in its hiring practices or in its performance of the contract. The successful Proposer shall strictly adhere to the equal employment opportunity requirements and any applicable requirements established by the State of Florida, Palm Beach County, and the federal government.*  
*The successful Proposer further acknowledges and agrees to provide the City with all information and documentation that may be requested by the City from time to time regarding the Solicitation, selection, treatment, and payment of subcontractors, suppliers, and Proposers in connection with this contract.*
- 3.44 **AVAILABILITY OF CONTRACT TO OTHER CITY DEPARTMENTS**  
*It is agreed and understood that any City department or agency may access this contract and purchase the goods or services successful herein. Each City department will issue a separate purchase order to the successful Proposer for the department's specific purchases.*

- 3.45 **CRIMINAL HISTORY BACKGROUND CHECKS**  
*Prior to hiring a contract employee or contracting with a Proposer, the City may conduct a comprehensive criminal background check by accessing any Federal, State, or local law enforcement database available. The contract employee or Proposer will be required to sign an authorization for the City to access criminal background information. The costs for the background checks shall be borne by the City.*
- 3.46 **LABOR, MATERIALS, AND EQUIPMENT**  
*Unless specified elsewhere in the Solicitation or resultant contract, all labor, materials, and equipment required for the performance of the requirements of the contract shall be supplied by the successful Proposer.*
- 3.47 **MINIMUM WAGE REQUIREMENTS**  
*The successful Proposer shall comply with all minimum wage requirements, such as Living Wage requirements, minimum wages based on Federal Law, minimum wages based on the Davis-Bacon Act, and the provisions of any other employment laws, as may be applicable to this contract.*
- 3.48 **PACKING SLIP AND DELIVERY TICKET**  
*A packing slip and/or delivery ticket shall accompany all items delivered to the City. The documents shall include information on the contract number or purchase order, any back order items, and the number or quantity of items being delivered.*
- 3.49 **PURCHASE OF OTHER ITEMS**  
*The City reserves the right to purchase other related goods or services, not listed in the Solicitation, during the contract term. When such requirements are identified, the City may request a price quote from the successful Proposer on the contract. The City, at its sole discretion, will determine if the prices offered are reasonable, and may choose to purchase the goods or services from the successful Proposer, another contract Proposer, or a non-contract Proposer.*
- 3.50 **PUBLIC RECORDS**  
*Florida law provides that municipal records shall at all times be available to the public for inspection. Chapter 119, Florida Statutes, the Public Records Law, requires that all material submitted in connection with a proposal response shall be deemed to be public record subject to public inspection upon award, recommendation for award, or thirty (30) days after proposal opening, whichever occurs first. Certain exemptions to public disclosure are statutorily provided for in Section 119.07, Florida Statutes. If the Proposer believes any of the information contained in his/her/its proposal is considered confidential and/or proprietary, inclusive of trade secrets as defined in Section 812.081, Florida Statutes, and is exempt from the Public Records Law, then the Proposer must, in its response, specifically identify the material which is deemed to be exempt and state the legal authority for the exemption. All materials that qualify for exemption from Chapter 119, Florida Statutes or other applicable law must be submitted in a separate envelope, clearly identified as "EXEMPT FROM PUBLIC DISCLOSURE" with the firm's name and the proposal number clearly marked on the outside. The City will not accept proposals when the entire proposal is labeled as exempt from disclosure. The City's determination of whether an exemption applies shall be final, and the Proposer agrees to defend, indemnify, and hold harmless the City and the City's officers, employees, and agents against any loss or damages incurred by any person or entity as a result of the City's treatment of records as public records.*
- The selected proposer(s) shall keep and maintain public records and fully comply with the requirements set forth at Section 119.071, Florida Statutes; failure to do so shall constitute a material breach of any and all agreements awarded pursuant to this ITB/RFP.*
- 3.51 **CONFLICTS OF INTEREST**  
*All Proposers must disclose with their proposal the name of any officer, director, or agent who is also an employee of the City of Palm Beach Gardens. Further, all Proposers must disclose the name of any City employee who has any interest, financial or otherwise, direct or indirect, of five percent (5%) or more in the Proposers' firm or any of its branches. Failure to disclose any such affiliation will result in disqualification of the Proposer from this Solicitation and may be grounds for further disqualification from participating in any future Solicitations with the City.*
- 3.52 **PUBLIC ENTITY CRIMES**  
*As provided in Section 287.133(2) (a), Florida Statutes, a person or affiliate who has been placed on the convicted Proposers list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity; may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals on leases of real property to a public entity;*

may not be successful or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity.

**3.53 OTHER GOVERNMENTAL AGENCIES**

*If a Proposer is successfully awarded a contract as a result of this Solicitation, the Proposer shall allow other governmental agencies to access this contract and purchase the goods and services under the terms and conditions at the prices awarded.*

**3.54 COMPLETION OF WORK AND DELIVERY**

*All work shall be performed and all deliveries made in accordance with good commercial practice. The work schedule and completion dates shall be adhered to by the successful Proposer, except in such cases where the completion date will be delayed due to acts of nature, force majeure, strikes, or other causes beyond the control of the successful Proposer. In these cases, the successful Proposer shall notify the City of the delays in advance of the original completion so that a revised delivery schedule can be appropriately considered by the City.*

**3.55 FAILURE TO DELIVER OR COMPLETE WORK**

*Should the successful Proposer fail to deliver or complete the work within the time stated in the contract, it is hereby agreed and understood that the City reserves the authority to cancel the contract with the successful Proposer and secure the services of another Proposer to purchase the items or complete the work. If the City exercises this authority, the City shall be responsible for reimbursing the successful Proposer for work that was completed and items delivered and accepted by the City in accordance with the contract specifications. The City may, at its option, demand payment from the successful Proposer, through an invoice or credit memo, for any additional costs over and beyond the original contract price that were incurred by the City as a result of having to secure the services of another Proposer.*

**3.56 CORRECTING DEFECTS**

*The successful Proposer shall be responsible for promptly correcting any deficiency, at no cost to the City, within three (3) calendar days after the City notifies the successful Proposer of such deficiency in writing. If the successful Proposer fails to correct the defect, the City may (a) place the successful Proposer in default of its contract; and/or (b) procure the products or services from another source and charge the successful Proposer for any additional costs that are incurred by the City for this work or items, either through a credit memorandum or through invoicing.*

**3.57 ACCIDENT PREVENTION AND BARRICADES**

*Precautions shall be exercised at all times for the protection of persons and property. All successful Proposers performing services or delivering goods under this contract shall conform to all relevant OSHA, State, and County regulations during the course of such effort. Any fines levied by the above-mentioned authorities for failure to comply with these requirements shall be borne solely by the successful Proposer. Barricades shall be provided by the successful Proposer when work is performed in areas traversed by persons, or when deemed necessary by the City.*

**3.58 OMISSIONS IN SPECIFICATIONS**

*The scope of services or description of items contained within this Solicitation describes the various functions and classes of work required as necessary for the completion of the project. Any omissions of inherent technical functions or classes of work within the specifications and/or statement of work shall not relieve the Proposer from furnishing, installing, or performing such work where required to the satisfactory completion of the project.*

**3.59 MATERIALS SHALL BE NEW AND WARRANTED AGAINST DEFECTS**

*The successful Proposer hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the successful Proposer in conjunction with this Solicitation and resultant contract shall be new, warranted for their merchantability, and fit for a particular purpose. In the event any of the materials supplied to the City by the successful Proposer are found to be defective or do not conform to specifications, (1) the materials may be returned to the successful Proposer at the Proposer's expense and the contract cancelled; or (2) the City may require the successful Proposer to replace the materials at the successful Proposer's expense.*

**3.60 TOXIC SUBSTANCES/FEDERAL "RIGHT TO KNOW" REGULATIONS**

*The Federal "Right to Know" Regulation implemented by the Occupational Safety and Health Administration (OSHA) requires employers to inform their employees of any toxic substances to which they may be exposed in the workplace, and to provide training in safe handling practices and emergency procedures. It also requires notification to local fire departments of the location and characteristics of all toxic substances regularly present in the workplace.*

Accordingly, the successful Proposer performing under this contract is required to provide two (2) complete sets of Material Safety Data Sheets to each City department utilizing any products that are subject to these regulations. This information shall be provided at the time when the initial delivery is made, on a department-by-department basis.

3.61 TAXES

The City of Palm Beach Gardens is exempt from Federal and State taxes for tangible personal property.

3.62 PROPOSER'S COSTS

The City shall not be liable for any costs incurred by Proposers in responding to this Request for Proposals.

3.63 SUBSTITUTION OF PERSONNEL

It is the intention of the City that the successful Proposer's personnel proposed for the contract shall be available for the initial contract term. In the event the successful Proposer wishes to substitute personnel, the successful Proposer shall propose personnel of equal or higher qualifications, and all replacement personnel are subject to the City's approval. In the event the substitute personnel are not satisfactory to the City, and the matter cannot be resolved to the satisfaction of the City, the City reserves the right to cancel the contract for cause.

3.64 FORCE MAJEURE

The City and the successful Proposer are excused from the performance of their respective obligations under the contract when and to the extent that their performance is delayed or prevented by any circumstances beyond their control, including fire, flood, explosion, strikes or other labor disputes, natural disasters, public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance provided that:

- a. The non-performing party gives the other party prompt written notice describing the particulars of the force majeure, including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the force majeure.
- b. The excuse of performance is of no greater scope and of no longer duration than is required by the force majeure.
- c. No obligations of either party that arose before the force majeure causing the excuse of performance are excused as a result of the force majeure.
- d. The non-performing party uses its best efforts to remedy its inability to perform.

Notwithstanding the above, performance shall not be excused under this section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the successful Proposer shall not constitute a force majeure. The term of the contract shall be extended by a period equal to that during which either party's performance is suspended under this section.

3.65 NOTICES

Notices shall be effective when received at the addresses specified in the contract/agreement. Changes in respective addresses to which such notices are to be directed may be made from time to time by either party by written notice to the other party. Facsimile and email transmissions are acceptable notice effective when received; however, facsimile and email transmissions received after 5:00 p.m. or on weekends or holidays will be deemed received on the next business day. The original of the notice must also be mailed to the receiving party.

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the successful Proposer and the City of Palm Beach Gardens.

3.66 FISCAL FUNDING OUT

The City's obligation pursuant to any contract or agreement entered into in accordance with this Solicitation is specifically contingent upon the lawful appropriation of funds. Failure to lawfully appropriate funds for any contract or agreement awarded shall result in automatic termination of the contract or agreement.

Revised 02/2014