



CITY OF PALM BEACH GARDENS
10500 N MILITARY TRAIL, PALM BEACH GARDENS, FL 33410

PURCHASING DEPARTMENT

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions are applicable to all vendors, contractors, or individuals, who provide goods and/or services to the City of Palm Beach Gardens, Florida. Depending on the goods or services being provided, it is understood that certain clauses and provisions may not be applicable to every project.

A copy of the City's Purchasing Policy and Procedures Manual can be downloaded at www.pbgfl.com/purchasing.

1. DEFINITIONS

- a. Addendum: a written document that provides responses to questions, additional information and/or clarification to a Solicitation.
- b. Bid or Proposal: an offer submitted in response to a Solicitation.
- c. Bidder or Proposer: a person or firm submitting a response to a Solicitation.
- c. Bid Submittal Form: describes the goods or services to be purchased and must be completed and submitted with the Bid.
- d. City: refers to the City of Palm Beach Gardens, Florida.
- e. Contract: the Solicitation, all Addendums issued thereto, all Affidavits and Forms, Best and Final Offers, the executed Agreement, and all related documents including these General Terms and Conditions, which comprise the totality of the understanding between the City and the Contractor.
- f. Contractor or Vendor: awarded Bidder or selected Proposer who is awarded a contract to provide goods or services to the City.
- g. Invitation to Bid: formal request for Bids from qualified Bidders.
- h. Purchasing Department: Purchasing Department of the City of Palm Beach Gardens, Florida.
- i. Responsible Bidder or Proposer: a vendor who has the capability and capacity, in all respects, to perform in full the contract requirements, as stated in the Solicitation, and the integrity and reliability that will assure good-faith performance.
- j. Responsive Bidder or Proposer: a vendor whose offer conforms in all material respects to the terms and conditions, and the Scope of Work requested in the Solicitation.
- k. Solicitation: an Invitation to Bid, Request for Proposals, Request for Qualifications, Invitation to Quote, Request for Letters of Interest, or other document used by the City to advertise a procurement opportunity.
- l. Solicitation Summary: summarizes the information in the Bid or Proposal and is read into the record by the City Clerk on the Opening or Due Date.

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m. Scope of Work: the description of the goods or services required by the City that is included in the Solicitation.

2. CONE OF SILENCE

Pursuant to Section 2-355 of 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 or Proposers on City Solicitations, with the City's professional staff, and the City Council members. The City reserves the right to reject an offer from any vendor who violates the Cone of Silence.

3. ADDENDUM

The Purchasing Department may issue an addendum in response to any inquiry received, prior to the close of the Solicitation period, which changes, adds, or clarifies the terms, provisions, or requirements of the Solicitation. The vendor 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 vendor's responsibility to ensure receipt of all addenda, and any accompanying documentation. The vendor is required to submit with its response a signed "Acknowledgment of Addenda" form when any addenda have been issued.

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.

5. CHANGE OF BID OR PROPOSAL

Prior to the scheduled Opening or Due Date, a Bidder or Proposer may change its offer by submitting a new offer (as indicated on the cover page) with a letter on the firm's letterhead, signed by an authorized agent stating that the new submittal replaces the original submittal. The new submittal shall contain the letter and all information as required for submitting the original Bid or Proposal. No changes will be accepted after the Opening or Due Date.

6. WITHDRAWAL OF BID OR PROPOSAL

A Bid or Proposal shall be irrevocable unless the submittal is withdrawn as provided herein. Only a written letter received by the Purchasing Department prior to the Opening or Due date may withdraw the submittal. A Bid or Proposal may also be withdrawn ninety (90) days after the Opening or Due Date, and prior to award, by submitting a letter to the Purchasing and Contracts Director. The withdrawal letter must be on company letterhead and signed by an authorized agent of the Bidder or Proposer.

7. CONFLICTS WITHIN THE SOLICITATION

Where there appears to be a conflict between these General Terms and Conditions, any Special Terms and Conditions, the Technical Specifications, the Bid Submittal Form, or any Addendum issued, the order of precedence shall be: the last Addendum issued, the Bid Submittal Form, the Technical Specifications, the Special Terms and Conditions, and then these General Terms and Conditions.

8. 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 vendor upon receipt and acceptance of the goods or services by a duly authorized representative of the City. In accordance with Section 218.74, Florida Statutes, 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.

9. DISCOUNTS FOR PROMPT PAYMENTS

The Bidder or Proposer may offer cash discounts for prompt payments; however, such discounts will not be considered in determining the lowest price offered, unless specifically stated in the Solicitation.

10. PREPARATION OF BIDS OR PROPOSALS

- a. The Solicitation defines the requirements of items to be purchased and must be completed and submitted with the Bidder's or Proposer's response. Use of any other forms may result in the rejection of the offer. The submittal forms must be legible and clearly written. All changes must be crossed out and initialed. Failure to comply with these requirements may cause the submittal to be rejected.
- b. An authorized agent of the company must sign the submittal form. Failure to sign the Signature Page shall render the submittal non-responsive.
- c. A Bidder will be considered non-responsive if Bids are conditioned upon modifications, changes, or revisions to the terms and conditions of the Solicitation. For Request for Proposals, the Proposer must identify and clearly state any exceptions it takes to the terms of the Solicitation. Exceptions taken to Request for Proposals will not automatically result in the Proposer being deemed non-responsive; however, such determination is at the sole discretion of the City.
- d. A Bidder or Proposer may submit an alternate Bid or Proposal for the same Solicitation provided that such offer is allowable under the terms and conditions in the Solicitation. The alternate submittal must meet or exceed the minimum requirements and be submitted as a separate submittal marked "Alternate Bid" or "Alternate Proposal".
- e. When there is a discrepancy between the unit prices and any extended prices, the unit prices will prevail.
- f. Late Bids or Proposals will not be accepted and will be returned to the sender unopened. It is the Bidder's or Proposer's responsibility to ensure timely delivery by the Due Date and time, and at the place stated in the Solicitation. No exceptions will be made due to weather, carrier, traffic, illness, or other issues.

11. CANCELLATION OF SOLICITATION

The City reserves the right to cancel, in whole or in part, any advertised Solicitation when it is in the best interest of the City. The City shall be the sole judge of its best interest.

12. AWARD OF CONTRACT

- a. The contract will be awarded to the responsive and responsible Bidder or Proposer meeting all requirements set forth in the Solicitation. The City reserves the right to reject any and all offers, to waive irregularities or technicalities, and to re-advertise for all or any part of the Solicitation as deemed in its best interest.
- b. The City reserves the right to reject any and all offers 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. For Invitation to Bids, the City reserves the right to negotiate prices with the responsive and responsible low Bidder, provided that the Scope of Work of the Solicitation remains the same.
- d. The vendor's performance as a prime contractor or subcontractor on previous City contracts shall be considered in evaluating the offer received.
- e. The City will provide a copy of the Bid Tabulation or List of Proposers to all Bidders or Proposers responding to the Solicitation.
- f. The Solicitation, all Addendums issued thereto, all Affidavits and Forms, Best and Final Offers, the executed Agreement, and all related documents including these General Terms and Conditions which comprise the totality of the understanding between the City and the vendor.
- g. The Purchasing and Contracts Director will decide all tied offers.
- h. Award of the Contract may be predicated on compliance with and submittal of all required documents as stipulated in the Solicitation. The City may reject any submittal because of incomplete Affidavits or Forms.
- i. The City reserves the right to request and evaluate additional information from any Bidder or Proposer after the submission deadline, as the City deems necessary.

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 continued service and supplies while a new Agreement is being solicited, evaluated, and/or awarded. This extension shall require no formal modification of the contract or Agreement.

14. WARRANTY

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

15. ESTIMATED QUANTITIES

Estimated quantities or dollars are for the Bidder's or Proposer's guidance only: (a) estimates are based on the City's anticipated needs and/or usage; and (b) the City will use these estimates to determine the lowest price offered. 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 specific amount subsequent to the award of the Solicitation.

16. NON-EXCLUSIVITY

It is the intent of the City to enter into an agreement with the awarded Bidder or selected Proposer for the goods and/or services described in the Solicitation. 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, in any manner it sees fit, including but not limited to, award of other contracts, use of any other contractor, or perform the work with its own employees.

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 vendor, continue until completion at the same prices, terms, and conditions.

18. BID PROTEST

- a. A Recommendation to Award may be protested by any Bidder or Proposer who submitted a response to the Solicitation. The Bidder or Proposer must file a written protest with the City Clerk's office. The Bidder or 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 Bidder or Proposer, name of the Bidder's or Proposer's legal representative (if any), and the title and 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) hours (excluding Saturdays, Sundays, and legal holidays) after the date and time of posting the Recommendation to Award. Failure to file a timely formal written protest within the time period specified shall constitute a waiver by the Bidder or Proposer of all rights of protest.
- 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 health, welfare, or safety of the public.

Additional details on the City's protest procedures is available in the Purchasing Policy and Procedures Manual, which can be downloaded at www.pbgfl.com/purchasing.

19. LAWS AND REGULATIONS

Vendors doing business with the City shall comply with all laws and regulations applicable to provision of the goods or services specified in the Solicitation. The vendor shall be familiar and cognizant of all federal, state, and local laws that may affect the goods and/or services to be provided.

20. LICENSES, PERMITS AND FEES

The vendor 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 goods or services in the Solicitation. Damages, penalties, and/or fines imposed on the City or the vendor for failure to obtain and maintain required licenses, certifications, permits, and/or inspections shall be borne entirely by the vendor.

21. SUBCONTRACTING

Unless otherwise specified in the Solicitation, the vendor 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 Terms and Conditions. Subcontracting without the prior consent of the City may result in termination of the Contract for default.

22. ASSIGNMENT

The vendor shall not assign, transfer, hypothecate, or otherwise dispose of the 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.

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.

24. RESPONSIBILITIES AS EMPLOYER

- a. The employees of the vendor shall be considered to be at all times its employees, and not employees or agents of the City or any of its departments. The vendor shall provide physically and intellectually competent employees capable of performing the work required. The City may require the vendor to remove any employee it deems unacceptable. All employees of the vendor shall wear proper identification and attire, including any necessary safety gear and equipment.
- b. It is the vendor'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 vendor.

25. INDEMNIFICATION

The vendor 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 awarded Bidder or its employees, agents, servants, partners, principals, or subcontractors. The vendor 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 vendor expressly understands and agrees that any insurance protection required by the Contract or Agreement, or otherwise provided by the vendor, 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.

26. COLLUSION

A Bidder or Proposer responding to a Solicitation for any City purchase of supplies, materials, services, lease, permit, concession, or a management agreement shall submit a duly notarized Non-Collusion Affidavit, under the penalty of perjury, on the form provided by the City, stating that the Bidder or Proposer is not related to any of the other parties bidding in the competitive Solicitation or identifying all related parties, as defined in this Section, which are bidding on the Solicitation; and attesting that the Bidder's or Proposer's submittal 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 Bidder or Proposer has not, directly or indirectly, induced or solicited any other Bidder or Proposer to put in a sham Bid, or any other person, firm, or corporation to refrain from proposing, and that the Bidder or Proposer has not in any manner sought by collusion to secure for itself an advantage over any other Bidder or Proposer on the project. In the event a Bidder or Proposer identifies related parties in the competitive Solicitation, its submittal shall be presumed to be collusive and the Bidder's or Proposer's submittal shall be ineligible for further evaluation or award unless that presumption is rebutted to the satisfaction of the City. Any person or entity that fails to submit the required Non-Collusion Affidavit shall be ineligible for contract award.

27. MODIFICATION OF CONTRACTS

The Contract may be modified by mutual consent, in writing, through the issuance of an Amendment, a supplemental Agreement, Purchase Order, or Change Order, as appropriate.

28. TERMINATION FOR CONVENIENCE

The City, at its sole discretion, reserves the right to terminate any contract with or without cause immediately upon providing written notice to the vendor. Upon receipt of such notice, the vendor shall not incur any additional costs under

the Contract. The City shall be liable only for reasonable costs incurred by the vendor prior to the date of the notice of termination. The City shall be the sole judge of “reasonable costs.”

29. TERMINATION FOR DEFAULT

The City reserves the right to terminate this Contract, in part or in whole, or place the vendor on probation in the event the vendor fails to perform in accordance with the terms and conditions, by providing written notice of such failure or default and by specifying a reasonable time period within which the vendor must cure any such failure to perform or default. If the vendor fails to cure the default within the time specified, the City may then terminate the Contract by providing written notice to the vendor. The City further reserves the right to suspend or debar the vendor from future participation on City projects. The vendor 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 other source and use any reasonable method deemed in its best interest. All re-procurement costs shall be borne by the terminated vendor.

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, shall be debarred from doing business with the City 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 the termination or cancellation, including attorney’s fees.

31. ACCESS AND AUDIT OF RECORDS

The City reserves the right to require the vendor to submit to an audit by an auditor of the City’s choosing. The vendor shall provide access to all of its records, which relate directly or indirectly to the goods or services provided to the City, at its place of business during regular business hours. The vendor shall retain all records pertaining to provision of the goods or services, for no less than the statutory period provided by law, and upon request, make them available to the City. The vendor 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.

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 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 any City contract.

33. PRE-AWARD INSPECTION

The City may conduct a pre-award inspection of the Bidder’s or Proposer’s premises or hold a Pre-Award Qualification Inspection to determine if the Bidder or Proposer can perform the requirements of the Solicitation.

34. PROPRIETARY AND/OR CONFIDENTIAL INFORMATION

Bidders or Proposers are hereby notified that all information provided to the City as part of, or in support of submittals are considered public records in compliance with Chapter 119 of the Florida Statutes, popularly known as the “Public Record Law.” The Bidder or Proposer should not submit any information in response to this Solicitation which the Bidder or Proposer considers to be a trade secret, proprietary, or confidential. The submission of any information to the City shall be deemed conclusively to be a waiver of any trade secret or other protection which would otherwise be available to the Bidder or Proposer, except where the disclosure of the information is specifically protected by the law. In the event that the Bidder or Proposer submits information to the City, either inadvertently or intentionally, and clearly identifies that information as protected or confidential, the City may, in its sole discretion, either (a) communicate with the Bidder or Proposer in writing in an effort to obtain the Bidder’s or Proposer’s withdrawal of the confidentiality restriction, or (b) redact portions of the information and return it to the Bidder or Proposer as quickly as possible, or (c) reject the submittal outright for consideration for evaluation or award. The redaction or return of information pursuant to this clause may render a submittal non-responsive.

35. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Any person or entity that performs or assists the City 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 Bidder or Proposer and reasonable assurances that IIHI/PHI will be held confidential;
- e. Making 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 Bidder or 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.

36. ADDITIONAL FEES AND SURCHARGES

Unless provided for in the Contract, the City will not make any additional payments to the vendor for such items as fuel surcharges, demurrage fees, or delay-in-delivery charges that are not specifically covered in the Contract.

37. COMPLIANCE WITH FEDERAL STANDARDS

All items to be purchased or services performed under the 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).

38. COMPLIANCE WITH FEDERAL REGULATIONS DUE TO USE OF FEDERAL FUNDING

If the goods or services to be acquired 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 the Solicitation and resultant Agreement by reference.

39. BINDING EFFECT

All the terms and provisions of the Contract, 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.

40. SEVERABILITY

The City's obligation pursuant to any Contract or Agreement is specifically contingent upon the lawful appropriation of funds by the City Council. Failure by the City Council to lawfully appropriate funds for any Contract or Agreement shall result in automatic termination of the Contract or Agreement. A non-appropriation event shall not constitute a default or breach of the Contract or Agreement by the City.

41. GOVERNING LAW AND VENUE

The Contract and all transactions contemplated in the 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.

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 a Contract between the City and a vendor, or to 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.

43. EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION

- a. The City 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.
- b. During the performance of a contract, the vendor agrees it will not discriminate or permit discrimination in its hiring practices or in its provision of the goods or services. The vendor 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.
- c. The vendor further acknowledges and agrees to provide the City with any 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 vendors in connection with the provision of goods or services to the City.

44. AVAILABILITY OF CONTRACT TO OTHER CITY DEPARTMENTS

It is agreed and understood that any City department or agency may access any City contract and purchase the goods or services awarded therein. Each City department will issue a separate Purchase Order to the vendor for the department's specific purchases.

45. CRIMINAL HISTORY BACKGROUND CHECKS

Prior to hiring a contract employee or vendor, the City may conduct a comprehensive criminal background check by accessing any Federal, State, or local law enforcement database available. The contract employee or vendor will be required to sign an authorization for the City to access the criminal background information. The costs for the background checks will be borne by the City.

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 work shall be supplied by the vendor.

47. MINIMUM WAGE REQUIREMENTS

The vendor shall comply with all minimum wage and living 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 wages laws, as may be applicable to the Contract.

48. PACKING SLIP AND DELIVERY TICKET

A packing slip and/or delivery ticket shall accompany all items delivered to the City. The packing slip/delivery ticket shall include information on the contract number or purchase order, any back-order items, and the number or quantity of items being delivered.

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 price quotes from the vendor. 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 vendor or a non-contract vendor.

50. PUBLIC RECORDS

- a. 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 Solicitation shall be deemed to be public record subject to public inspection upon award, recommendation for award, or thirty (30) days after the Opening or Due Date, whichever occurs first. Certain exemptions to public disclosure are statutorily provided for in Section 119.07, Florida Statutes.
- b. If a Bidder or Proposer believes any of the information contained in its submittal 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 Bidder or 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 Solicitation number clearly marked on the outside. The City will not accept submittals when the entire response is labeled as exempt from disclosure. The City's determination of whether an exemption applies shall be final, and the Bidder or 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.

- c. The Bidder or Proposer shall keep and maintain public records and fully comply with the requirements set forth at Section 119.0701, Florida Statutes, as applicable; failure to do so shall constitute a material breach of any and all agreements awarded pursuant to the Solicitation.

51. CONFLICTS OF INTEREST

All Bidders or Proposers must disclose with their submittal the name of any officer, director, or agent who is also an employee of the City of Palm Beach Gardens. Further, all Bidders or 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 Bidder's or Proposer's firm or any of its branches. Failure to disclose any such affiliation will result in disqualification of the Bidder or Proposer from the Solicitation and may be grounds for further disqualification from participating in any future business opportunities with the City.

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 Vendors List following a conviction for a public entity crime may not submit an offer on a contract to provide any goods or services to a public entity; may not submit an offer on a contract with a public entity for the construction or repair of a public building or public work; may not submit offers on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity.

53. OTHER GOVERNMENTAL AGENCIES

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

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 vendor, 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 vendor. In these cases, the vendor 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.

55. FAILURE TO PERFORM

Should the vendor fail to perform its contractual obligations, the City reserves the right to cancel the contract with the vendor and secure the services of another vendor to purchase the goods or services. If the City exercises this right, the City shall pay the terminated vendor for goods or services that were provided by the vendor and accepted by the City up and until the date of cancellation of the contract by the City. The City may, at its option, demand payment from the terminated vendor for any additional costs over and beyond the original contract price, which were incurred by the City, as a result of having to secure the services of another vendor to provide the goods or services.

56. CORRECTING DEFECTS

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

57. ACCIDENT PREVENTION AND BARRICADES

Precautions shall be exercised at all times for the protection of persons and property. All vendors 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 vendor. Barricades shall be provided by the vendor when work is performed in areas traversed by persons, or when deemed necessary by the City.

58. OMISSIONS IN SPECIFICATIONS

The Specifications and/or Statement of Work contained within the Solicitation describe 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 vendor from furnishing, installing, or performing such work, where required, to the satisfactory completion of the project.

59. MATERIALS SHALL BE NEW AND WARRANTED AGAINST DEFECTS

The vendor hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the vendor in conjunction with the 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 vendor are found to be defective or do not conform to specifications, (1) the materials may be returned to the vendor at the vendor's expense and the Contract cancelled; or (2) the City may require the vendor to replace the materials at the vendor's expense.

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, a vendor providing goods or services to the City shall provide two (2) complete sets of Material Safety Data Sheets to each City department utilizing the any awarded product that is subject to these regulations. This information shall be provided at the time when the initial delivery is made, on a department-by-department basis.

61. TAXES

The City of Palm Beach Gardens is exempt from Federal and State taxes for tangible personal property. A copy of the City's current Consumer's Certificate of Exemption is available at <http://www.pbgfl.com/153/Finance>.

62. BIDDING COSTS

The City shall not be liable for any costs incurred by Bidders or Proposers in responding to City Solicitations.

63. SUBSTITUTION OF PERSONNEL

It is the intention of the City that the vendor's personnel proposed for a contract be available for the contract term. In the event the vendor wishes to substitute personnel, the vendor 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.

64. FORCE MAJEURE

The City and the vendor 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 circumstance beyond their control, including fire, flood, explosion, terrorist attacks, strikes or other labor disputes, natural disasters, public emergency, war, riot, civil commotion, pandemic, epidemic, 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 vendor 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.

65. NOTICES

Notices shall be effective when received at the addresses specified in the Contract or 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 vendor and the City of Palm Beach Gardens.

66. VENDOR POOL CONTRACTS

During the term of contracts and agreements that are executed as vendor pools, awarding goods or services in prequalified pools of vendors, either as a general pool or by categories, sub-categories, or groups, the City reserves the right to add new vendors to these contracts for goods or services not awarded for the original Solicitation or as part of the general pool category, sub-category or group. To be eligible to be added to these pool contracts, a vendor must meet the same eligibility requirements established in the original Solicitation.

67. FISCAL FUNDING OUT

The City's obligation pursuant to any Contract or Agreement is specifically contingent upon the lawful appropriation of funds. Failure to lawfully appropriate funds for any Contract or Agreement shall result in automatic termination of that Contract or Agreement. Such termination shall not be construed as an event of default against the City.

68. INDEPENDENT CONTRACTOR

The vendor is an independent contractor, and, except as provided otherwise in the agreement, neither the vendor, nor any employee or agent thereof, shall be deemed for any reason to be an employee or agent of City. The City shall have no liability or responsibility for any direct payment of any salaries, wages, payroll taxes, or any and all other forms or types of compensation or benefits to any personnel providing goods or services for City under this Agreement. The vendor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing goods or services under the agreement during the course of or arising or accruing as a result of any employment, whether past or present, with the vendor.

69. PERFORMANCE STANDARDS

The vendor shall perform the work using that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing or performing the substantially same or similar services. The vendor represents to City that the vendor retains employees that possess the skills, knowledge, and abilities to competently, timely, and professionally perform the work in accordance with the agreement.

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