

# INVITATION TO BID (ITB)



North Lauderdale

**ITB # 24-PR-009**

## **CITY OF NORTH LAUDERDALE TEEN CENTER GENERATOR**

**Publish Date:**

**April 1, 2024 by Noon**

**Pre-Bid Conference:**

**April 17, 2024 at 10:00 AM**

**Location:**

**City of North Lauderdale  
Commission Chamber  
701 SW 71st Avenue  
North Lauderdale, FL 33068**

**All Questions Due:**

**April 29, 2024 by 5:00 PM**

**Bid Due and Bid Opening Date:**

**May 16, 2024 at 3:00 PM**

**Where to Deliver Bid**

**<https://www.demandstar.com/app/agencies/florida/city-of-north-lauderdale/procurement-opportunities/bdc82a5c-70af-4f87-b128-29e0b13ac980/>**

**City of North Lauderdale, Florida  
701 SW 71st Avenue  
North Lauderdale, FL 33068  
954-597-4776**

**TEEN CENTER GENERATOR**

**DIRECT FEDERAL ARPA GRANT PROJECT**

**REQUIRED: Bid Bond (5%), Performance Bond, and Payment Bond (100%)**

**Advertisement Date: March 31, 2024 and April 7, 2024**

## SUMMARY OF EVENTS

*Bid documents and Addenda are available on the City of North Lauderdale website at [www.nlauderdale.org](http://www.nlauderdale.org) and DemandStar at [www.demandstar.com](http://www.demandstar.com)*

|  |   |
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| <b>ITB NUMBER:</b>   | <b>ITB # 24-PR-009</b>  |
| <b>ITB TITLE:</b>  | <b>CITY OF NORTH LAUDERDALE TEEN CENTER GENERATOR</b>   |
| <b>DATE PUBLISHED IN SUN-SENTINEL</b>                                  | <b>SUNDAY, March 31, 2024 and<br/>SUNDAY, April 7, 2024</b>   |
| <b>RELEASE DATES/TIME:</b>   | <b>MONDAY, April 1, 2024 by 12:00 PM</b>  |
| <b>NON-MANDATORY PRE-BID CONFERENCE AND SITE VISIT:</b>                | <b>WEDNESDAY, April 17, 2024, at 10:00 AM</b>   |
| <b>WRITTEN QUESTIONS AND INQUIRIES ARE DUE ON OR BEFORE:</b>           | <b>MONDAY, April 29, 2024 by 5:00 PM</b>  |
| <b>ADDENDA AS RESPONSES TO QUESTIONS SHALL BE ISSUED ON OR BEFORE:</b> | <b>THURSDAY, May 9, 2024 by Close of Business</b>   |
| <b>ITB REPOSE DUE DATE/TIME:</b>                                       | <b>THURSDAY, May 16, 2024 at 3:00 PM</b>  |
| <b>RECOMMENDATION FOR AWARD:</b>                                       | <b>SUMMER 2024</b>  |
| <b>DIRECT ALL INQUIRIES TO:</b>  | <b>Kim Smiley<br/>Accounting &amp; Purchasing Coordinator<br/>Phone: (954) 597-4776<br/>Email: <a href="mailto:Procurement@nlauderdale.org">Procurement@nlauderdale.org</a></b> |
| <b>E-BID ONLY DELIVERY:</b>  | <b>DemandStar E-Bidding</b>   |
| <b>BID OPENING LOCATION:</b>   | <b>City of North Lauderdale<br/>Purchasing Division<br/>701 SW 71<sup>st</sup> Avenue, 2<sup>nd</sup> Floor<br/>North Lauderdale, FL 33068</b>                                  |

**\*Dates in this schedule may be amended by the City in its sole discretion and no rights shall accrue to any Bidder due to such amendment. Bidders may not rely on dates after the Due Date and Time until confirmed by the City. All times listed are Local South Florida Time Eastern Time (ET)**

**LOCAL VENDORS:** The City of North Lauderdale encourages the active participation of local vendors. This procurement **WILL NOT** qualify for Local Vendor Preference in accordance with Section 3-12 of the City's Code of Ordinances.

**MINORITY / WOMEN'S / LABOR SURPLUS FIRMS PARTICIPATION:** The City of North Lauderdale, encourages the active participation of minority businesses, women's business enterprises and labor surplus area firms as a part of any subsequent agreement whenever possible either as prime Consultants or subcontractors. If subcontracts are to be let, through a prime Consultant, that Consultant is required to take the affirmative steps listed in items (1) through (6) below:

- 1 Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- 2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- 3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- 4 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- 5 Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- 6 Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in [paragraphs \(1\)](#) through [\(5\)](#) of this section.

The City of North Lauderdale reserves the right to reject any or all bids, to waive any informalities or irregularities in any bid received, to re-advertise for bids, or to take any other such actions that may be deemed to be in the best interest of the City. The City reserves the right to accept or reject any or all bids and to waive any informality concerning the Request for Qualification when such rejection or waiver is deemed to be in the best interest of the City.

The City of North Lauderdale reserves the right to reject any or all bids, to waive any informalities or irregularities in any bid received, to re-advertise for bids, or to take any other such actions that may be deemed to be in the best interest of the City. It is the intent of the City to award this bid to the lowest responsible and responsive responding firm. The City reserves the right to accept or reject any or all bids and to waive any informality concerning the Invitation to Bid when such rejection or waiver is deemed to be in the best interest of the City. The City reserves the right to award the ITB on a split order basis, lump sum, or individual item basis unless otherwise stated, whichever is in the City's best interest.

Late bids will not be considered. **The DemandStar time stamp shall be conclusive as to the timeliness of filing.** Facsimile submissions will not be accepted. The City of North Lauderdale is not liable for any costs incurred by a Bidder in responding to this solicitation.

**CONE OF SILENCE NOTICE:** Bidders are hereby notified that this Solicitation is subject to a "Cone of Silence" pursuant to Section 3-7 of the City Code of Ordinances.

A Cone of Silence means a prohibition on any communication regarding a particular Request for Proposals (RFP), Request for Qualifications (RFQ), Request for Letters of Interest (RLI), proposal or other competitive solicitation governed by Chapter 3 of the Code of Ordinances for a purchase governed by Chapter 3 of the Code of Ordinances between:



1. Any person who seeks an award therefrom, including a potential vendor or vendor's representative, and
2. Any member of the City Commission, all other city employees, and any non-employee appointed to evaluate or recommend selection in such procurement process. For purposes of this section, Vendor's Representative means an employee, partner, officer, or director of a potential vendor, or consultant, lobbyist, or actual or potential subcontractor or sub-consultant of a vendor.

The cone of silence shall terminate at the time the City awards or approves a contract, votes to reject all bids or responses, or otherwise takes action which ends the solicitation or other procurement process. If the City Commission refers the item back to the City Manager and staff for further review, the cone of silence shall remain in effect until an award is made, a contract is approved, or the City Commission takes any other action which ends the solicitation or other procurement process. If a cone of silence is imposed for a competitive solicitation but the solicitation is not issued, the cone of silence shall terminate upon a final determination by the Purchasing Division that the solicitation will not be issued. When a cone of silence is terminated, public notice of the termination shall be posted.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

## **ADVERTISEMENT**

### **INVITATION TO BID (ITB)**

#### **ALL PROSPECTIVE BIDDERS:**

The City of North Lauderdale requests sealed bids for our **TEEN CENTER GENERATOR**. The City of North Lauderdale will participate in mandatory E-Bidding through DemandStar at [www.demandstar.com](http://www.demandstar.com). **Only bids submitted on DemandStar for the bid listed below will be accepted.** Registration and/or account creation is required to submit a bid. A complete instructional guide on how to submit your response and supplier pricing will be included with this solicitation. Bid packages must be submitted before **3:00 PM EDT, Thursday, May 16, 2024**, for consideration of **ITB # 24-PR-009 – THE CITY OF NORTH LAUDERDALE TEEN CENTER GENERATOR.**

The City of North Lauderdale Parks and Recreation Department is seeking to procure the services of a qualified Contractor to provide all labor, material and necessary equipment for the removal and replacement of the City's Teen Center existing emergency generator, transfer switchgear along with any required wiring and associated electrical components. Awarded contractor will be required to coordinate any shutdowns with the City's I.T. Department, FPL, and provide a temporary portable backup generator during the replacement process. All permitting is the responsibility of the awarded contractor.

Contractor must comply with all state and local water quality and electrical standards. The awarded Bidder will be governed by the City's terms, conditions and agreement and all work must be done in accordance with all exhibits and/or attachments.

The Contractor shall furnish all labor, vehicles, materials, tools, and equipment necessary to complete this project, as indicated in the Special Conditions, Special Provisions, Scope of Work, Drawings, and Specifications located within the solicitation.

#### **Please note there will be a Non-Mandatory Pre-Bid Meeting/Site Visit:**

**Date:** WEDNESDAY, April 17, 2024, At 10:00 AM

**Location:** The City of North Lauderdale, 701 SW 71st Avenue; North Lauderdale, FL 33068  
Commission Chambers

A site visit will follow the pre-bid meeting, which is highly recommended that all Contractors attend. **Please note this is a Non-Mandatory pre-proposal meeting, but it is highly encouraged that all parties interested in submitting a proposal for this ITB attend the meeting.**

This project is federally funded through a direct American Rescue Plan Act (ARPA) grant; therefore, Contractors must complete this project in accordance with applicable regulations contained in Title 2 Code of Federal Regulations (CFR) Part 200, as well as regulations promulgated by applicable Federal Agencies, including OMB, FEMA, and FHWA, as well as Florida State Agencies FDOT, FDH, NRCS, SFWMD, and FDEP in conjunction with any grant requirements and the City's needs.

**MINORITY / WOMEN'S / LABOR SURPLUS FIRMS PARTICIPATION:** The City of North Lauderdale encourages the active participation of minority businesses, women's business enterprises, and labor surplus area firms as a part of any subsequent agreement whenever possible either as prime contractors or subcontractors. If subcontracts are to be let, through a prime contractor, that contractor is required to take the affirmative steps listed in items (1) through (6) below:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

**CONE OF SILENCE NOTICE:** Bidders are hereby notified that this solicitation is subject to a "Cone of Silence" pursuant to Section 3-7 of the City Code of Ordinances.

The City of North Lauderdale reserves the right to reject any or all bids, waive any informalities or irregularities in any bid received, re-advertise for bids, or take any other such actions that may be deemed to be in the best interest of the City. The City intends to award this bid to the lowest responsible and responsive responding firm who meets all the qualifications outlined within the ITB.

**Mailed bids shall not be considered. Bids transmitted by email or fax to any City of North Lauderdale personnel, including the City Clerk, will not be accepted or considered. Late bids will not be accepted.** The City of North Lauderdale is not liable for any costs incurred by a bidder in responding to this Invitation to Bid.

Solicitation documents may be obtained from the City of North Lauderdale website at DemandStar at [www.demandstar.com](http://www.demandstar.com). All communication regarding this ITB shall be directed to [Procurement@nlauderdale.org](mailto:Procurement@nlauderdale.org). There are no charges for the documents. Late bids cannot be submitted on DemandStar and will not be considered. The DemandStar electronic time stamp shall be conclusive as to the timeliness of filing. Faxed, emailed, and or mailed submissions addressed to any City of North Lauderdale personnel, inclusive of the City Clerk (s), will not be accepted. The City of North Lauderdale is not liable for any costs incurred by a Proposer in responding to this solicitation.

**Publish Sun-Sentinel: Advertisement Dates: March 31, 2024 and April 7, 2024**

---ONLY BID PACKAGES SUBMITTED VIA DEMANDSTAR'S E-BIDDING PORTAL WILL BE ACCEPTED---



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# **SECTION I - INSTRUCTIONS TO BIDDERS**

## **ITB # 24-PR-009**

### **CITY OF NORTH LAUDERDALE TEEN CENTER GENERATOR**

The City intends to award this bid to the lowest responsible and responsive responding firm. The City reserves the right to accept or reject any or all bids and waive any informality concerning the Invitation to Bid when such rejection or waiver is deemed to be in the City's best interest. The City reserves the right to award the ITB on a split order basis, lump sum, or individual item basis unless otherwise stated, whichever is in the City's best interest.

#### **1.1 CONE OF SILENCE**

"Cone of Silence" means a prohibition on any communication regarding a particular Request for Proposals (RFP), Request for Qualifications (RFQ), Invitation for Bid (IFB), or other competitive solicitation between: Any person who seeks an award therefrom, including a potential vendor or vendor's representative, and the City Commission, City Attorney, and all City employees, and any non-employee appointed to evaluate or recommend selection in such procurement process.

The Cone of Silence shall not apply to communications with the Procurement Official to obtain clarification or information concerning the subject solicitation. Any such contact other than to the Procurement Official may be considered grounds for disqualification. The City shall not be responsible for oral interpretations given by any City employee or its representative. For purposes of this section, "vendor's representative" means an employee, partner, director, or officer of a potential vendor, or consultant, lobbyist, or actual or potential subcontractor or sub-consultant of a vendor, or any other individual acting through or on behalf of any person seeking an award.

#### **1.2 PRE-BID MEETING**

The City may hold a pre-bid conference for this project. The information regarding such meeting will be noted on the cover page, second or advertisement page of this document.

#### **1.3 SUBMISSION OF THE BID**

The Responding firm is directed to submit all bids online at the webpage: [NORTH LAUDERDALE](#) no later than the date and time specified on the 2<sup>nd</sup> page of this solicitation document. Bids will not be considered and cannot be entered online after the above-referenced closing date. The City will not be responsible for a late bid due to the vendor's inability to respond and upload their bid response in a timely manner.

It is the Responding firm's responsibility to read and understand the requirements of this bid request. Unless otherwise specified, the Responding firm must use the bid form located online for Invitation for Bid document. All bids shall be submitted in the English language. All prices, terms and conditions bid in the submitted response shall be expressed in U.S. Dollars, and will be firm for acceptance for ninety (90) calendar days from the date of the bid opening unless otherwise stated by the City.

The Responding firm preparing a bid in response to this solicitation shall bear all expenses associated with its preparation. The Responding firm shall prepare a bid with the understanding that no claim for reimbursement shall be submitted to the City for expenses related to its preparation.

#### 1.4 PERSONAL INVESTIGATION

Bidders shall satisfy themselves by personal investigation and by such other means as they may deem necessary or desirable as to the conditions affecting the proposed work and the cost. No information derived from maps, plans, specifications, or from the Engineer, City Manager, or their assistants or any other department of the City shall relieve the contractor from any risk or from fulfilling all terms of the contract. The contractor is required to conduct a full and thorough investigation of the premises prior to submitting a bid. It is the Contractor's sole responsibility to determine the amount of labor and materials needed to complete all aspects of the project. If the pre-bid meeting is deemed mandatory and a bidder does not attend the mandatory pre-bid meeting, the bid will not be considered.

#### 1.5 INCONSISTENCIES

Any seeming inconsistency between different provisions of the plans, specifications, Invitation to Bid or agreement, or any point requiring explanation must be inquired into by the Bidder, in writing to the Purchasing Division, at least five (5) days prior to the time set for the opening bids but no later than the date specified in this Invitation to Bid for acceptance of questions. After bids are opened, the bidders shall abide by the decision of the City as to such interpretation.

#### 1.6 QUESTIONS REGARDING INVITATION TO BID

It is the bidder's responsibility to submit written questions or request clarification for items included in this solicitation via email to the Procurement contact person listed on page 2 of this ITB. Any questions should include in the subject line **"ITB # 24-PR-009 – CITY OF NORTH LAUDERDALE TEEN CENTER GENERATOR"** and emailed to [Procurement@nlauderdale.org](mailto:Procurement@nlauderdale.org)

It is the bidder's responsibility to submit written questions or request clarification for items included in this solicitation, via email to the contact person listed and date listed on Page #2. All questions and/or request for clarification will be reviewed by the City, and answered in the form of an addendum, which will be released through DemandStar. Acknowledgement of Addenda is required with submission of bid. Any addenda or answers to written questions supplied by the City to participating firms become part of this solicitation and the resulting Contract. Failure to complete the "Addenda Acknowledgement" form herein may result in your bid submission being deemed non-responsive.

#### 1.7 ADDENDA AND INTERPRETATIONS

No interpretations of the meaning of the plans, specifications or other contract documents will be made orally to any Bidder. Prospective Bidders must request from the Purchasing Division such interpretation in writing. To be considered, such request must be received at least five (5) days prior to the date fixed for the opening of the Invitation to Bid but no later than the date specified in this Invitation to Bid for acceptance of questions. Any and all interpretations and any supplemental instructions will be in the form of a written addenda which, if issued, will be sent by electronic mail and posted on the City website and DemandStar.com not later than (3) days prior to the date fixed for the opening of solicitations. Failure of any Bidder to receive any such addenda or interpretation shall not relieve any Bidder from any obligation under his bid as submitted. All addenda so issued shall become a part of the contract document. Contractor shall verify that he has all addenda and completed the "Addendum Acknowledgment Form" before submitting Bid.

**1.8 FORM OF BIDS**

Each e-bid and its accompanying statements must be made on the blanks provided. The forms must be submitted in good order and with all of the blanks completed. Incomplete forms will be deemed as non-responsive. All forms must be submitted on the DemandStar E-Bidding submission system. The e-bid submission must be signed by one duly authorized to do so, and in case signed by a deputy or subordinate, the principal's properly written authority to such deputy or subordinate must accompany the e-bid submission.

**1.9 COMPLETION OF BID DOCUMENTS**

All prices must be written on the specific form(s) provided in this Invitation to Bid. All submissions must fully cover all items for which are requested in this Invitation to Bid and no other. Bidders are required to state the names and places of residence of all persons interested, and if no other person is interested, the Bidder shall state that the submission is, in all respects, fair and without collusion or fraud. Where more than one person is interested, it is required that all persons interested or their legal representative make all verification and subscribe to the solicitation.

**1.10 CONFLICT OF INTEREST – FEDERAL GRANT REQUIREMENT**

The award hereunder is subject to the provisions of Chapter 112 of the State of Florida Statutes. Responding firms shall disclose the name of any officer, director, partner, proprietor, associate or agent who is also a public officer or employee of the City or any of its agencies.

**1.11 NON-COLLUSIVE AFFIDAVIT**

A Bidder shall not collude, conspire, connive or agree, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham response in connection with the work for which the response has been submitted; or to refrain from responding in connection with such work or have in any manner, directly or indirectly, sought by person to fix the price or prices in the bid or of any other Bidder, or to fix any overhead profit, or cost elements of the bid price or the bid price of any other responder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against any other Bidder, or any person interested in the proposed work. The Bidder certifies there has been no collusion with any other firm or employees from any other firm who will be submitting a bid on the same project. Each Bidder shall complete the Non-Collusive Affidavit Form and shall submit this form with the bid. The City considers the failure of the Bidder to submit this document to be a major irregularity and may be cause for rejection of the bid.

**1.12 CAUSES FOR REJECTION**

No bid will be canvassed, considered, or accepted which, in the opinion of the City is incomplete, informal or unbalanced, or contains inadequate documentation as required herein. Any alteration, erasure, interlineations, or failure to specify bids for all items called for in the schedule shall render the bid invalid.

**1.13 REJECTION OF BIDS**

The City reserves the right to reject any bid if the evidence submitted by the Bidder, or if the investigation of such Bidder, fails to satisfy the City that such Bidder is properly qualified to carry out the obligations and to complete the work contemplated. Any or all bids will be rejected if there is reason to believe that collusion exists among Bidders. A bid shall be considered irregular and may be rejected, if it indicates serious omissions, alterations in form, additions not called for,

conditions or unauthorized alternates, or irregularities of any kind. The City reserves the right to reject any or all bids, to waive such technical errors; to waive informalities or irregularities in any bid received; to re-advertise; or to take any other actions as may be deemed best for the interests of the City.

#### 1.14 **WITHDRAWALS**

Any Firm may, without prejudice to themselves may withdraw their bid at any time prior to the expiration of the time during which bids may be submitted. Such request for withdrawal must be initiated and completed on DemandStar. If you need assistance with a DemandStar e-bid withdrawal, please call (206)940-0305 or email support@demandstar.com. After the expiration of the period for receiving bids, no bid can be withdrawn, modified, or explained.

#### 1.15 **REQUIREMENTS FOR BID SUBMITTAL**

To facilitate the completeness of responses to this ITB, Responders are required to prepare their bid in accordance with the instructions outlined in this Section. Responders must respond in full to all ITB sections and follow the indicated ITB format (section numbering, and similar matters) in their bid. Failure to follow these instructions may result in rejection of the bid.

##### **TAB A: FIRM QUALIFICATIONS**

1. Provide a general statement describing the types of services offered by the firm, location of main and branch offices, number of years in business, number of employees, and attach evidence of licenses and certification to perform the required services.
2. Provide the location of the office from which this work will be performed.
3. Outline the firm's experience with the specific work being requested by City. The firm should provide at least three (3) verifiable examples of similar size and scope projects they have completed, including the client's name, client contact information, description of project, project value, and date project completed.
4. Provide names and experience of sub-contractors to be used by the firm (include names, contact information, and services the individuals will provide to the City).
5. Include any required licenses listed within the SCOPE OF WORK.
  - Proof of Required Insurances
  - Proof of Required Licenses and/or Certifications outlined in the SECTION II

##### **TAB B: FORMS**

The responder must attach all fully completed and executed ITB Forms for Submittal as identified in the BID SUBMITTAL CHECKLIST of this solicitation. Bidder should include any other attachments that may have been referenced in the solicitation.

##### **TAB C: BID SCHEDULE SUBMISSION**

The responder must attach the completed Excel bid schedule.

#### 1.16 **ELECTRONIC SUBMISSIONS**

**Bidders will submit one (1) complete bid package electronically through DemandStar.** Each alternative or substitute bid must be submitted separately with a complete bid package. Submit the Bid with all of the required documents before the Bid due date and time outlined on page #2 of this solicitation. Bid packages that are mailed, emailed, or faxed to North Lauderdale City Hall will not be accepted. The Bid must be submitted by e-bid on DemandStar.com. Bidder should allow ample time to set up your necessary account. The bid is under Broward County and the

agency name is City of North Lauderdale. Bidders shall prepare documents in Adobe Acrobat (\*.PDF) format and the Excel spreadsheet bid schedule should be completed and uploaded with submission.

Submissions will not be accepted after the bid's due date and time listed on page #2 has expired. The City of North Lauderdale is not liable for any cost incurred by a Bidder in responding to this solicitation. Although methods and means are always the responsibility of a contractor, bidders shall describe their techniques, equipment and sequencing of their operations with their bids. Experience of providing similar services will be used in the evaluation of bids by the City. Failure to submit the requested information may be cause for rejection of your bid.

**1.17 CONTRACT/AGREEMENT**

The Contractor to whom award is made shall execute a written contract to provide the service and maintain the same in good repair until final acceptance by the proper authorities within ten (10) days after receiving such Contract for execution. If the Contractor to whom the first award is made fails to enter into a contract as provided, the award may be annulled and the Contract let to the next lowest Bidder who is reliable and responsible in the opinion of the City. Such Bidder shall fulfill every stipulation as if it were the original party to whom award was made. The Contract shall provide that the Contractor agrees to correct any defective or faulty work or material which may appear within one (1) year after completion of the work and receipt of the final payment.

**1.18 PROTESTS**

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Purchasing Division with attention to the Purchasing and Contracts Manager. The protest shall be submitted in writing within two (2) business days after such aggrieved person knows or should have known of the facts giving rise thereto and shall be submitted with the procedures outlined in Section 3-15 Bid Protest Procedures of Chapter 3 – PROCUREMENT PROCEDURES

**1.19 OTHER GOVERNMENTAL ENTITIES (PIGGY-BACK)**

If a Responding firm is awarded a contract because of this Invitation to Bid, responding firm will, if Responding firm has sufficient capacity or quantities available, provide to other governmental agencies, so requesting, the products or services awarded in accordance with the terms and conditions of the Request for Quotation and resulting contract. Prices shall be F.O.B. Destination to the requesting agency.

**1.20 BID SECURITY BOND**

A Bid security bond is required for this project. An acceptable Bid Bond, Cashier's Check, Money Order, Irrevocable Letter of Credit, or Certified Check payable to the City of North Lauderdale in the amount of five-percent (5%) of the total price proposed MUST be submitted in order to participate in this ITB.

Bidders should submit a copy of the Bid bond with the electronic submittal. **The original Bid bond with the raised seal must be submitted and received within three (3) business days of the ITB closing. Ideally the City would like to receive the proposal bond BEFORE the bid closing date listed in page # 2.**

**The Bid security bond must be original with the company's embossed seals. This document must be enclosed in a sealed envelope when submitted to:**



**City of North Lauderdale City Hall  
Purchasing Division – 2nd Floor  
Room 219  
Reference ITB # 24-PR-009  
701 SW 71st Ave  
North Lauderdale FL, 33068**

Any other submittal documents included with the proposal bond document(s) will not be accepted. The name of the Bidder and the ITB number must clearly show on the outside of the sealed envelope and a statement as to its contents.

The City of North Lauderdale is not liable for any cost incurred by a Bidder in responding to this solicitation. The Bid security bond must be executed by a surety company authorized to do business in the State of Florida or secured in a manner satisfactory to the City of North Lauderdale.

**1.21 PAYMENT AND PERFORMANCE BOND**

Upon award of the Contract, Payment and Performance Bonds in the total amount submitted for this ITB will be required within (15) calendar days of award and shall continue in effect until contract expiration. Such bonds shall continue for the full term of the Agreement.

Pursuant to the requirements of Chapter 255.05 (1) (b), Florida Statutes, the Contractor shall ensure that the Performance and Payment Bond or Bonds referenced above shall be recorded in the Public Records of Broward County at the Bidder's expense. Proof of recording must be submitted to the City prior to issuance of any purchase order or payment by the City. One (1) set of original Performance and Payment Bond documents is required to be provided to the City prior to the issuance of any Notice to Proceed by the City.

NOTE: Each Bond shall consist of anywhere from 10-12 pages totaling 22 pages for both the Payment and Performance Bond. This may cost up to \$200.00 depending on the project. For more information regarding the process of recording the bid with Broward County follow the link below: <https://officialrecords.broward.org/OncoreCalculator/default.aspx>

Payment and Performance Bonds must be submitted on City forms, that will be provided to the Contractor.

All bonds – Performance, Payment and Warranty Bonds, shall meet the City's ratings.

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## **SECTION II – SPECIAL CONDITIONS**

### **SCOPE OF WORK**

#### **ITB # 24-PR-009**

#### **CITY OF NORTH LAUDERDALE TEEN CENTER GENERATOR**

##### **2.1 PURPOSE**

The purpose of this Invitation to Bid (“ITB”) is to solicit and obtain bids from firms experienced and qualified to provide the CITY OF NORTH LAUDERDALE TEEN CENTER GENERATOR as described.

##### **2.2 DESCRIPTION OF WORK**

Currently the existing emergency 30kW generator has become under-rated for use at the Teen Center Location, and is in need of replacement. In addition to the generator replacement, the existing transfer switchgear is outdated and will be undersized for the new 200 AMP requirements.

The City of North Lauderdale is seeking sealed Bids from a qualified Contractor with experience in the demolition, removal and installation of a new generator, as well as the demolition of existing concrete where new concrete is to be placed. The Project consists of furnishing and installing a 60kW diesel powered standby generator, 120 / 208V, 3-Phase, Level 2, Class 72 & Type 10 EPSS, together with any associated components and accessories. The awarded Bidder will be governed by the City’s terms, conditions and agreement, and all work must be done in accordance with all exhibits and/or attachments. This shall be a turnkey project.

Bidder is required to propose the brand and type of generator in the Excel document with the bid response and attach a specification sheet with the bid response.

##### **2.3 INSTALLATION**

- 2.3.1 The scope of work is based on preliminary design drawings and dimensions of the new proposed generator and Automatic Transfer Switch.
- 2.3.2 Relocate existing Automatic Transfer Switch temporarily to make space for new Automatic Transfer Switch. Relocated Automatic Transfer Switch will need to be connected to a standby portable generator while the existing generator is being replaced.
- 2.3.3 Relocate the existing Generator to the old City garage, for later use. This location address is: 881 SW 71<sup>st</sup> Ave, North Lauderdale, FL 33068.
- 2.3.4 Demo existing concrete where the new generator is to be placed.
- 2.3.5 Provide and install one new generator pad, and generator as per plans provided by the City.
- 2.3.6 Schedule shutdowns with City to disconnect existing Automatic Transfer Switch and relocate to new area. Shutdown to demo the temporary Automatic Transfer Switch and connect the new Automatic Transfer Switch.

##### **2.4 SCOPE OF PROPOSED WORK ALSO INCLUDES**

- Permitting and Permitting Fees shall be included.
- Payment/Performance bond.
- Relocation of existing generator
- Fuel for start up of new generator



- Patching/painting of any kind.
- Provision and installation of any temporary lighting.
- Provisions for an accelerated schedule.
- Additional work due to unforeseen conditions, whether identified by the City, contractor, engineer, etc.

**2.5 GENERAL REQUIREMENTS**

Contractor shall furnish all of the labor, material, equipment, services, and incidentals necessary to perform all of the work described and shown on the Construction Design Plans related to the project. The Contractor shall demonstrate good project management practices while working on this Project. These include communication with the CITY and others as necessary, management of time and resources, and documentation. The contractor is also required to coordinate with the City staff if it is required to adjust the design plans.

**2.6 GENERAL NOTES**

- 2.6.1 The awarded contractor will be responsible for verifying existing circuits associated with these circuits and or panels.
- 2.6.2 Diesel fuel is to be provided by the City after passing start up and test.
- 2.6.3 Permits and/or fees that may be applied to this project by any office that might have jurisdiction over this project, including but not limited to local, state or federal agencies. Permitting and Permitting Fees shall be included.
- 2.6.4 Temporary generator set and cabling costs shall be included in this proposal.
- 2.6.5 A remote annunciator panel shall be provided with the generator set as part of this ITB and will be required to be installed and wired by an electrical contractor. Location TBD inside Teen Center
- 2.6.6 An Emergency Power Off E-Stop Button and wiring is required within this proposal.
- 2.6.7 Factory Inspection and Tests. The engine generator set shall be tested and verified for proper operation of all safety and shutdown devices before leaving Vendor’s testing facilities.
- 2.6.8 Prototype documentation shall be provided at the time of submittals showing testing that has been done on the engine and generator set for verification of acceptable values. On –site start up and testing of generator set shall be included in this proposal.
- 2.6.9 Engines will comply with United States EPA Tier 3 exhaust emissions standards.

**2.7 EQUIPMENT**

- 2.7.1 Generator:  
Generator set shall be as shown in the illustration or an approved equal that meet the following specifications below:
  - Stationary pad mounted unit
  - Fuel type diesel
  - EPA TIER 3 exhaust emission requirements
  - Frequency 60 Hz
  - 60 kW standby power
  - 120 / 208 volt/ 3-phase
  - 200 AMP breaker



Contractor shall provide the City with the standard warranty on all parts and labor for the generator that they are bidding. They can also provide an extended warranty.

## 2.8 LICENSES

To be eligible for award of this project, the Bidder must possess at the time of bid opening one of the following listed license(s) that can meet, exceed, or legally perform the scope of work to be acceptable, as determined by state or county licensing agency.

**State:** **Certified General Contractor License**, defined by F.S. 489.105 (3)(a), plus a minimum of having performed three (3) verifiable projects of similar size and scope under the same Bidding Contractor Company name for at least three (3) years.

### **PAIRED WITH AS A SUB-CONTRACTOR**

**State:** **Master Electrician License**, defined by F.S. 489.105 (3)(a), plus a minimum of having performed three (3) verifiable projects of similar size and scope under the same Bidding Contractor Company name for at least three (3) years.

Occupational license must be in effect as required by Florida Statute §205.065.

When the successful Contractor is performing work in other locations outside of Broward County or the State of Florida, Contractor shall be subject to the requirements for all appropriate local jurisdictions.

## 2.9 PROJECT TIMELINE

Project substantial completion shall be within **ONE HUNDRED EIGHTY (180)** calendar days from Contractor's receipt of City's Notice to Proceed. Final Completion shall be **THIRTY (30)** calendar days from the date of substantial completion totaling **TWO HUNDRED TEN (210)** calendar days. The Notice to Proceed (NTP) will be issued upon full contract execution and payment and performance bonds are received.

## 2.10 LIQUIDATED DAMAGES

Upon failure of the Contractor to complete each individual requirement within the specified and mutually agreed upon time frame (plus approved extensions, if any), the Contractor shall pay to the City the sum of **TWO HUNDRED FIFTY DOLLARS (\$250.00)** for each calendar day after the time specified for substantial completion until Contract is substantially complete. After substantial completion the liquidated damages will be assessed at **ONE HUNDRED DOLLARS (\$100.00)** for each calendar day until final completion. Liquidated damages will be accumulated.

This amount is not a penalty but liquidated damages to the City. Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by the City because of such delay, and both parties desiring to obviate any question or dispute concerning the amount of said damages and the cost and effect of the failure of the Contractor to complete the Contract on time.

City shall have the right to deduct from and retain moneys which may be due, or may become due and payable to Contractor. The amount of such liquidated damages and if the amount retained by City is insufficient to pay in full such liquidated damages, Contractor shall pay in full such liquidated damages. Contractor shall also be responsible for reimbursing City the total of all monies paid by the City to the engineer for additional engineering, inspection and administrative services until the work is complete.



**2.11 FUNDING SOURCE**

This project is federally funded through a direct American Rescue Plan Act (ARPA) grant; therefore, Contractors must complete this project in accordance with applicable regulations contained in Title 2 Code of Federal Regulations (CFR) Part 200 Appendix II, as well as regulations promulgated by applicable Federal Agencies, including OMB, FEMA, and FHWA, as well as Florida State Agencies FDOT, FDH, NRCS, SFWMD, and FDEP in conjunction with any grant requirements and the City’s needs.

**2.12 BUDGET FOR PROJECT**

The project estimate is \$156K not including permitting. Contractor shall be responsible for all permitting and inspections and MUST include this in the bid price.

**2.13 INSURANCE**

Certificates of Insurance reflecting evidence of the required insurance shall be submitted with the response to the Invitation to Bid. These Certificates shall contain a provision that all coverage afforded under these policies will not be cancelled until at least thirty days (30) prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial Ratings must be not less than A- Credit Rating and Class VII Financial Size Category per A.M. Best Credit Rating Guide.

Contractor agrees to maintain, on a primary non-contributory basis and at its sole expense, at all times during the life of this Agreement, the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as City’s review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Agreement. Any coverage maintained by the City shall apply excess of, or contingent upon the absence of, other insurance required or maintained by Contractor.

2.13.1 Commercial General Liability & Employers Liability: Consultant agrees to maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** each occurrence, **\$2,000,000** annual aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Separation of Insureds

2.13.2 Worker’s Compensation Insurance: Consultant agrees to maintain Worker’s Compensation Insurance & Employers Liability in accordance with Florida Statute, Chapter 440.

2.13.3 Comprehensive Auto Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the performance of work under the Agreement with a combined single limit liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)  
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)  
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)  
Combined Single Limit (Each Accident) - \$1,000,000



- 2.13.4 Additional Insured: The Consultant agrees to endorse the City as an Additional Insured on the Commercial General Liability with the following, or similar endorsement providing equal or broader Additional Insured coverage, the CG 20 26 07 04 or GC 20 26 04 13 Additional Insured – Designated Person or Organization endorsements; or the CG 20 10 07 04 or GC 20 10 04 13 Additional Insured – Owners, Lessees, or Consultants endorsements in combination with the additional endorsement GC 20 37 07 04 or GC 20 04 13 Additional Insured – Owners, Lessees, or Consultants – Completed Operations shall be required to provide back coverage for the Consultant’s “your work” as defined in the policy and liability arising out of the products-completed operations hazard. The Additional Insured shall read “City of North Lauderdale.”
  
- 2.13.5 Waiver of Subrogation: Consultant agrees to provide a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Consultant to enter into a pre-loss agreement to waive subrogation without an endorsement, then Consultant agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Consultant enter into such an agreement on a pre-loss basis.
  
- 2.13.6 Certificate(s) of Insurance: Consultant agrees to provide City a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify City of a non-renewal or cancellation notice, when available by Consultant’s insurer. If the Consultant receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Consultant agrees to notify the City by fax and email as set forth in this Section within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance.

The certificate holder address shall read:

City of North Lauderdale  
 Attn: Risk  
 701 SW 71st Ave  
 North Lauderdale, FL 33068

Right to Revise or Reject: City reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverages and endorsements, or to reject any insurance policies that fail to meet the criteria stated herein. Additionally, City reserves the right, but not the obligation, to review and reject any insurer providing coverage due of its poor financial condition or failure to operating legally.

**2.14 OWNER MAY STOP THE WORK/REFUSE THE PRODUCT**

If the work performed by the contractor or product delivered by the contractor is deficient, contrary to the bid documents or Contract, or the Contractor fails to perform work in such a way that the completed work will conform to the Contract Documents, the Owner may order the Contractor to



stop the Work or return the product, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other party.

**2.15 CUSTOMER RELATIONS**

The Contractor, all its employees, and subcontractors under the supervision and control of the Contractor shall at all times at a site, office, or yard be required to conduct themselves in a professional and courteous manner and do all things necessary to ensure good and harmonious customer relations. Continuous failure to abide by this requirement shall constitute a basis for termination of this agreement.

**2.16 LICENSES AND PERMITS**

The Contractor must fully comply with all federal and state laws, county and municipal ordinances, and regulations in any manner affecting the prosecution of the work. Any fines or penalties to the Contractor shall be paid at the Bidder's expense.

**2.17 LICENSE FOR TRADES**

Bidder(s) must be licensed in accordance with the provisions of the Code of Broward County and Florida State Statute (Occupational/Business and Contractor). The Bidder will be required to provide proof of licensing prior to being pre-qualified under the Contract. All employees supplied by the Contractor must carry their certification cards, if certification is required for the type of work being performed.

**2.18 CONTRACTOR PERFORMANCE**

The Contractor shall be fully responsible for performing all the work necessary to meet City standards in a safe, neat, and good workmanlike manner, using only generally accepted methods in carrying out the work and complying with all federal and state laws and all ordinances and codes of the City relating to such work.

**2.19 WORK BY THE CITY OR CITY'S CONTRACTORS**

The City reserves the right to perform work related to, but not part of, the Project and to award separate contracts in connection with other work at the site. Costs caused by defective or ill-timed work shall be borne by the party responsible.

**2.20 ENFORCEMENT OF SPECIFICATIONS**

Copies of the specifications shall be placed in the hands of the Director of Public Works & Utilities, who shall enforce every requirement of the Contract. There will be no varying from the specifications.

**2.21 INCORPORATION BY REFERENCE**

Exhibits: A and the Sample Agreement attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

## SECTION III: GENERAL TERMS AND CONDITIONS

### ITB #: 24-PR-009

## CITY OF NORTH LAUDERDALE TEEN CENTER GENERATOR

These general terms and conditions apply to all offers made to the City of North Lauderdale by all prospective responding firms including but not limited to Invitations for Bid, Requests for Quotation, and Requests for Proposal. As such, the words "quotation," "bid," and "proposal" may be used interchangeably in reference to all offers submitted by prospective responding firms. Any and all special conditions in this Invitation to Bid or any sample agreement document that may be in variance or conflict with these General Terms and Conditions shall have precedence over these General Terms and Conditions. If no changes or deletions to General Conditions are made in the Special Conditions, then the General Terms and Conditions shall prevail in their entirety.

### 3.1 BASIC DEFINITIONS

Wherever used in this solicitation or the final Agreement resultant from an award made for this solicitation, or in other Contract Documents, the following terms have the meanings indicated, which are applicable to both the singular and plural of each:

**Addenda** – Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the bidding requirements or the contract document.

**Agreement** – The written agreement between the City and the Contractor covering the Work to be performed including other Contract Documents that are attached to the Agreement and made a part thereof.

**City** – The City of North Lauderdale, Florida. Also referred to as Owner.

**Contract Documents** – Upon final award of this solicitation, the contract documents consist of the final Agreement, conditions of the solicitation, the solicitation document contained herein (including General, Supplementary and other Conditions and Provisions), Scope of Work, all addenda issued prior to, all modifications issued after execution of this Agreement, Notice of Award, Notice to Proceed, Certificate(s) of Insurance, and any additional modifications and supplements, Change Orders and Work directive changes issued on or after the effective date of the Contract. These contract documents form the Agreement, and all are as fully a part of the Agreement if attached to this Agreement or repeated therein.

**Contractor** – the individual or firm who successfully receives the award for work to be completed as defined by this solicitation.

**Defective** – An adjective which when modifying the Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents.

**Effective Date of the Agreement** – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement

is signed and delivered by the last of the two parties to sign and deliver.

**End User (EU)** – Internal Member of the City Staff who has requested a procurement service. Also known as a Stakeholder (SH)

**Project Manager** – The City's authorized project representative.

**Subcontractor** – An individual, firm or corporation having a direct Contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

**Supplier** – A manufacturer, fabricator, supplier, distributor, materialman or vendor.

**Unit Price Work** – Work to be paid for on the basis of unit prices.

**Written Amendment** – A written amendment of the Contract Documents, signed by the CITY and the Contractor on or after the Effective Date of the Agreement and normally dealing with the non-Engineering, or non-technical aspects rather than strictly Work-related aspects of the Contract Documents.



### 3.2 QUALIFICATIONS OF BIDDERS

No e-bid will be accepted from, nor will any contract be awarded to, any person who is in arrears to the City of North Lauderdale, upon any debt or contract, or who has defaulted, as surety or otherwise, upon any obligations to the City, or who has been deemed irresponsible or unreliable to the City. The City is not required to award any jobs to a Contractor based solely on their e-bid being the lowest. Awards will be based on past performance and quality of work in addition to the Contractor's RFQ response.

If selected for a project, all Bidders must perform to the satisfaction of the City prior to being considered for award of additional contracts. Bidders whose performance is unsatisfactory shall be subject to debarment or suspension.

### 3.3 EXAMINATION OF CONTRACT DOCUMENTS

Before submitting a Bid, each Bidder should (a) consider federal, state, and local laws, ordinances, rules, and regulations that may in any manner affect cost or performance of the work, (b) study and carefully correlate the Bidders' observations with the Proposal Documents; and (c) notify the Procurement Representative of all conflicts, errors, and discrepancies, if any, in the Proposal Documents.

The Bidder, by and through the submission of agrees that Bidder shall be held responsible for having familiarized themselves with the nature and extent of the work and any local conditions that may affect the work to be done and the services, equipment, materials, parts and labor required.

### 3.4 INCONSISTENCIES / INQUIRIES

Any seeming inconsistency between different provisions of the plans, specifications, solicitation, proposal or agreement, or any point requiring explanation must be inquired into by the responder, in writing to the City Procurement Official listed in the solicitation, no later than the date specified in this solicitation for acceptance of questions. After proposals are opened, the responder shall abide by the decision of the City as to such interpretation.

### 3.5 NON-COLLUSION

Bidder shall not collude, conspire, connive or agree, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham response in connection with the work for which the response has been submitted; or to refrain from responding in connection with such work or have in any manner, directly or indirectly, sought by person to fix the price or prices in the proposal submission form or of any other Bidder, or to fix any overhead profit, or cost elements of the proposal price or the bid price of any other responder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against any other Bidder, or any person interested in the proposed work. The Bidder certifies there has been no collusion with any other firm or employees from any other firm who will be submitting a proposal on the same project.

### 3.6 LEGAL CONDITIONS

Bidders are notified to familiarize themselves with the provisions of the law of the State of Florida relating to the hours of labor on municipal work, and with the provisions of the laws of the State of Florida and the Charter and the ordinances of the City of North Lauderdale.

### 3.7 ASSIGNMENT

The Responding firm shall not transfer or assign the performance required by this proposal without the prior written consent of the City. Any award issued pursuant to this proposal and monies that may become due hereunder are not assignable except with prior written approval of the City. No such approval will be construed as making the City a part of or to such assignment, or subjecting the City to liability of any kind to any assignee. No subcontract or assignment shall, under any circumstances, relieve the Contractor of its liability and obligation under this contract, and despite any such assignment, the City shall deal through the Contractor only. However, if the company is sold during the life of the contract, the buying agent must provide the City with a letter signed by an officer of the new owner who can legally bind the company, stating that they will continue to perform the requirements of the contract in compliance with all the terms, conditions, and specifications so stated in the contract.

### 3.8 EMPLOYEES

Employees of the Responding firm shall always be under its sole direction and not an employee or agent of the City. The Responding firm shall supply competent and physically capable employees. The City may require the Responding firm to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable. Responding firm shall be responsible to the City for all acts and omissions of all employees working under its directions.

### 3.9 INDEPENDENT CONTRACTOR

An Agreement resulting from this solicitation does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the successful Contractor is an independent contractor under this Agreement and not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law.

The Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under any potential Agreement shall be those of Contractor, which policies of Contractor shall not conflict with City, State, or United States policies, rules or regulations relating to the use of Contractor's funds provided for herein. The Contractor agrees that it is a separate and independent enterprise

from the City, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. Any potential Agreement shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

In accordance with the status of an independent contractor, the Contractor covenants and agrees that the Contractor will conduct itself consistent with such status, that the Contractor will neither hold the City out as, nor claim to be an officer or employee of the City for any right or privilege applicable to an officer or employee of the City, including, but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

The Contractor's Staff Personnel shall not be employees of the City, and the Contractor alone shall be responsible for their work, the direction thereof, and their compensation and benefits of any kind. Nothing in this Contract shall impose any liability or duty on the City on account of its acts, omissions, liabilities or obligations or any person, firm, company, agency association, corporation, or organizations engaged by the Contractor as a(n) expert, consultant, independent contractor, specialist, trainee, employee, servant or agent or for taxes on any nature, including, but not limited to unemployment insurance, worker's compensation and anti-discrimination or work place legislation of any kind and the Contractor hereby agrees to indemnify and hold harmless the City against any such liabilities, even if they arise from actions directed or taken by the City.

### 3.10 **NON-DISCRIMINATION & EQUAL OPPORTUNITY EMPLOYMENT**

During the performance of this ITB, the successful Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity and expression, or disability if qualified. The Contractor will take affirmative action to ensure that employees and those of its subcontractors are treated during employment, without regard to their race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity, genetic information or expression, or disability if qualified. Such actions must include, but not belimited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor and its subcontractors shall agree to post in conspicuous places, available to its employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor further agrees that he/she will ensure that all subcontractors, if any, will

be made aware of and will comply with this nondiscrimination clause.

### 3.11 **OMISSION OF DETAILS**

Omission of any essential details from the terms or specifications contained herein will not relieve the responding firm of supplying such product(s) or service as specified.

### 3.12 **VENUE**

Any Agreement resulting from this solicitation shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement is fixed in Broward County, Florida.

### 3.13 **TAX EXEMPTION**

All proposals must be submitted including all local, state and federal taxes, if applicable. Please contact the Finance Department for a copy of the Consumer's Certificate of Exemption. The City of North Lauderdale is exempt from all Federal, State, and local taxes.

### 3.14 **TERMINATION**

**a. DEFAULT:** In addition to all other remedies available to the City, any Agreement resulting from this ITB shall be subject to cancellation by the City for cause, should the Contractor neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by Contractor of written notice of such neglect or failure.

**b. TERMINATION FOR CONVENIENCE OF CITY:** Notwithstanding any additional requirements for performance-based contracting contained in the special conditions herein, the final Agreement may be terminated by the City for convenience, upon seven (7) days of written notice by the City to the Contractor for such termination in which event the Contractor shall be paid its compensation for services performed to termination date, including services reasonably related to termination. If the Contractor abandons this Agreement or causes it to be terminated, Contractor shall indemnify the city against loss pertaining to this termination.

### 3.15 **FUNDING OUT**

This Agreement shall remain in full force and effect only if the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of North Lauderdale in the annual budget for each fiscal year of this Contract, and is subject to termination based on lack of funding.

### 3.16 **PERFORMANCE**

The Bidder shall be fully responsible for performing all the work necessary to meet City standards in a safe, neat, and good workmanlike manner, using only generally accepted methods in carrying out the work and complying with all federal and state laws and all ordinances and codes of the City relating to such work.

Failure on the part of the submitting firm to comply with the conditions, terms, specifications, and requirements of the ITB shall be just cause for cancellation of the ITB award, notwithstanding any additional requirements enumerated in the Special conditions herein relating to performance-based contracting. The City may, by written notice to the Responding firm, terminate the Contract for failure to perform. The date of termination shall be stated in the notice. The City shall be the sole judge of nonperformance.

### 3.17 **INSURANCE**

Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as outlined in the Special Conditions before beginning work under this ITB and Agreement. Responding firm shall maintain such insurance in full force and effect during the life of this Agreement. Responding firm shall provide a certificate of insurance outlined within this solicitation prior to beginning any work under this Agreement. Responding firm shall indemnify and hold the City harmless from any damage resulting to it for failure of either Responding firm or any subcontractor to obtain or maintain such insurance.

**The City reserves the right to require higher limits depending upon the scope of work under this Solicitation and Agreement that may be outlined below.**

Neither Responding firm nor any subcontractor shall commence work under this contract until they have obtained all insurance required under this section and have supplied the City with evidence of such coverage in the form of an insurance certificate and endorsement. The Responding firm will ensure that all subcontractors will comply with the above guidelines and will maintain the necessary coverage throughout the term of this Agreement.

Financial Ratings must be not less than A- Credit Rating and Class VII Financial Size Category per A.M. Best Credit Rating Guide. Policies shall be "Occurrence" form. Each carrier will give the City sixty (60) days' notice prior to cancellation.

### 3.18 **DEBARMENT AND SUSPENSION**

The City shall have the authority to debar or suspend vendors. Causes for debarment or suspension include the following:

1. Conviction of a criminal offense incident to obtaining or attempting to obtain a public or private Contract or subcontract, or incident to the performance of such Contract or subcontract;
2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;
3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
4. Violation of City's contract provisions, which is regarded by the City Manager to be indicative of non-responsibility.

Such violation may include failure without good cause to perform in accordance with the terms and conditions of a City contract or to perform within the time limits provided in the City contract, provided that failure to perform caused by acts beyond the control of a party shall not be considered a basis for debarment or suspension;

5. Debarment or suspension of the person or entity by any federal, state, or other governmental entity;
6. False certification pursuant to debarment and suspension decisions; and/or any other cause judged by the City Manager to be so serious and compelling as to affect the responsibility of the person or entity performing city contracts.

### 3.19 **CONVICTED / SUSPENDED / DISCRIMINATORY VENDORS**

Those Contractors who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid or proposal on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids 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 a public entity, and may not transact business with any public entity in excess of \$25,000 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

[https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_information/convicted\\_suspended\\_discriminatory\\_complaints\\_vendor\\_lists](https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists)

### 3.20 **MEASUREMENT AND PAYMENT**

Payment will be made monthly for all completed work, inspected, and properly invoiced in accordance with the Prompt Payment Act of Florida.

### 3.21 **BUDGETARY CONSTRAINTS**

In the event the City is required to reduce contract costs due to budgetary constraints, all services specified in this document may be subject to a permanent or temporary reduction in budget. In such an event, the total cost for the affected service shall be reduced as required.

### 3.22 **CONTINGENT FEES PROHIBITED**

The Offeror must warrant that it has not employed or retained a company or person, other than a bona fide employee, contractor or subcontractor, working in its employ, to solicit or secure a contract with the City, and that it has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee, contractor or sub-consultant, working in its employ, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of a contract with the City.

### 3.23 **GRANT FUNDED PROJECTS**

The City of North Lauderdale may use Federal Procurement Standards include Title 2 CFR Part 200, which requires the non-Federal entity (City of North Lauderdale) to conduct procurements in a manner that prohibit the use of statutorily or administratively imposed in-State or local geographic preferences in the evaluation of bids or proposals. Therefore, consistent with Title 2 CFR Section 200.319(b), the Office of Economic and Small Business Development (OESBD) may establish a County Business Enterprise (CBE) goal on this project.

Title 2 CFR Part 200 requires the City of North Lauderdale take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Section 200.321 requires the non-Federal entity (City of North Lauderdale) to take the following necessary affirmative steps in its procurement process:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

### 3.24 **SCRUTINIZED COMPANIES - 287.135 AND 215.473**

By submission of this solicitation, CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a bid for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:

Any amount of, at the time bidding on, submitting a bid for, or entering into or renewing such Contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

One million dollars or more if, at the time of bidding on, submitting a bid for, or entering into or renewing such Contract, the company:

Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Terrorism Sector List, created pursuant to Section 215.473, Florida Statutes; or is engaged in business operations in Cuba or Syria.

### 3.25 **INELIGIBLE CONTRACTORS**

A Contractor may be considered ineligible to submit a proposal for this project if the contractor has been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past five (5) years.

### 3.26 **PROPOSAL PREPARATION EXPENSE**

The Bidder preparing a submission in response to this ITB shall bear all expenses associated with its preparation. The Bidder shall prepare a proposal with the understanding that no claim for reimbursement shall be submitted to the City for the expense of proposal preparation and/or presentation.

### 3.27 **LICENSES**

Services performed for the City will require licenses. The Bidder shall secure all necessary licenses at his/her expense. All licenses shall fully comply with all applicable laws, regulations and codes as required by the State of Florida, county, or local ordinances. The Bidder must fully comply with all federal and state laws, county and municipal ordinances, and regulations in any manner affecting the prosecution of the work. Any fines or penalties to the Bidder shall be paid at the Bidder's expense.

All responders must hold and submit with their response (and maintain same throughout the duration of the contract) current valid licenses as specified in the solicitation for the types of work covered by the Contract.

### 3.28 **SUB-CONTRACTORS**

If the Bidder proposes to use subcontractors in the course of providing these services to the City, this information shall be a part of the solicitation response. Such information shall be subject to review, acceptance and approval of the City, prior to any contract award. The City reserves the right to approve or disapprove of any subcontractor candidate in its best interest.

### 3.29 **LABOR, SUPERVISION, MATERIALS AND EQUIPMENT**

The Bidder shall furnish, at his/her own expense, all labor, supervision, equipment, materials, supplies, paper products, and other equipment necessary for satisfactory completion of all the services as specified in this solicitation, unless otherwise specified.

### 3.30 ENFORCEMENT OF SPECIFICATIONS

Copies of the specifications shall be placed in the hands of the City Representative, who shall enforce every requirement of the contract. There will be no varying from the specifications.

### 3.31 CUSTOMER RELATIONS

The Bidder, all its employees and subcontractors under the supervision and control of the Contractor shall at all times at a site, office, or yard be required to conduct themselves in a professional and courteous manner and do all things necessary to insure good and harmonious customer relations. Continuous failure to abide by this requirement shall constitute a basis for termination of this agreement.

### 3.32 LEGAL REQUIREMENTS

Each Bidder must comply with all federal, state, and local laws, ordinances, rules and regulations that are applicable to this ITB and the work to be performed under the Agreement, including the City's Procurement Code. The Bidder's lack of knowledge about the Applicable Law shall not be grounds for relief from such laws, or constitute a defense against the enforcement of such laws, or justify an increase in the Rates paid to the Contractor under the Agreement. By submitting a Proposal in response to this ITB, the Bidder represents that the Bidder is familiar with all federal, state, and local laws, ordinances, rules and regulations that are applicable to the services required under this ITB. If a Bidder discovers any provision in this ITB that is contrary to or inconsistent with any Applicable Law, the Bidder shall promptly report it to the City's Purchasing and Contracts Division in writing.

### 3.33 CITY'S PROCUREMENT CODE

This Invitation to Bid (ITB) is governed by the City's Procurement Code.

### 3.34 E-VERIFY

By submission of this proposal, CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

#### Definitions for this Section:

**"Contractor"** means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.

**"Subcontractor"** means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

**"E-Verify system"** means an Internet-based system operated by the United States Department of

Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

**Registration Requirement; Termination:** Pursuant to Section 448.095, Florida Statutes,

effective January 1, 2021, Contractors shall register with and use the E-Verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

All persons employed by a Contractor to perform employment duties within Florida during the term of the Contract; and

All persons (including subvendors/ subconsultants/ subcontractors) assigned by Contractor to perform work pursuant to the Contract with the City of North Lauderdale. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the Contract is a condition of the Contract with the City of North Lauderdale; and

The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the Contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of Contract and may not be considered as such. If this Contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

### 3.35 PUBLIC RECORDS/CUSTODIAN

The CITY is a public agency subject to Chapter 119, Florida Statutes. The CONTRACTOR shall comply with Florida's Public Records Law. Specifically, CONTRACTOR shall:

Keep and maintain public records required by the CITY in order to perform the service;

Upon request from the CITY, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at no cost to the CITY.

Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law

for the duration of the contract term and following completion of the Agreement and any renewals thereof if CONTRACTOR does not transfer the records to the CITY.

Upon completion of the Agreement, transfer, at no cost to the CITY, all public records in possession of CONTRACTOR, or keep and maintain public records required by the CITY to perform the service. If CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of the Agreement, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records in a format that is compatible with the information technology systems of the CITY.

During the term of this Agreement and any renewals, CONTRACTOR shall maintain all books, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK**

**701 SOUTHWEST 71<sup>ST</sup> AVENUE**

**NORTH LAUDERDALE, FL 33068**

**(954) 724-7056**

**[CITYCLERK@NLAUDERDALE.ORG](mailto:CITYCLERK@NLAUDERDALE.ORG)**

## **SECTION IV - FEDERAL GRANT REQUIREMENTS**

**ITB # 24-PR-009**

### **CITY OF NORTH LAUDERDALE TEEN CENTER GENERATOR**

This project will be partially or fully funded through a federal grant that was awarded to the City of North Lauderdale (“City”). Therefore, Contractors must comply with all provisions listed within the grant requirements. Contractors should familiarize themselves with all regulations and requirements contained below and in 2 C.F.R. Part 200, along with Appendix II, before submitting a response.

All references to a “Non-Federal Entity” herein shall be construed to mean the City of North Lauderdale (CITY), it’s officers, employees, and elected officials.

By submitting a proposal for this project Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State, County and City orders, statutes, ordinances, rules, and regulations which may pertain to the Services required under the Agreement, including but not limited to the following:

Data is current as of March 04, 2024

Included herein:

Title 2 → Subtitle A → Chapter II → Part 200

Title 2: Grants and Agreements

#### **Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards 200.318 (a-b) GENERAL PROCUREMENT STANDARDS**

The CITY has documented procurement procedures and will conform to the procurement standards identified in §§ 200.317 through 200.327. In accordance with the requirements of this grant/s, the CITY shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Procurement Standards

#### **§ 200.317 Procurements by states.**

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

#### **§ 200.318 General procurement standards.**

(a) The Non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration

of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)

(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:



- (i) The actual cost of materials; and
- (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

### **§ 200.319 Competition.**

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements,

contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

### **§ 200.320 Methods of procurement to be followed.**

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) Informal procurement methods. When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) Micro-purchases -

(i) Distribution. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) Micro-purchase thresholds. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) Non-Federal entity increase to the micro-purchase threshold up to \$50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold

identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

- (A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;
- (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
- (C) For public institutions, a higher threshold consistent with State law.

(v) Non-Federal entity increase to the micro-purchase threshold over \$50,000. Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) Small purchases -

(i) Small purchase procedures. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) Simplified acquisition thresholds. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) Formal procurement methods. When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) Sealed bids. A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

- (A) A complete, adequate, and realistic specification or purchase description is available;
- (B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) Proposals. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.

(c) Noncompetitive procurement. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

### § 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### § 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

#### **§ 200.324 Contract cost and price.**

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

#### **§ 200.325 Federal awarding agency or pass-through entity review.**

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
- (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;
- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

#### **§ 200.326 Bonding requirements.**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

#### **§ 200.327 Contract provisions.**

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

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## APPENDIX II TO PART 200 - CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable. All references to a "Non-Federal Entity" herein shall be construed to mean the City of North Lauderdale (CITY), its officers, employees, and elected officials.

All Provisions shall be included and made a part of the final contract between the CITY and the CONTRACTOR whether specifically included in the final contract document, or referenced within the contract document, in which case these provisions shall be included as a part of the Agreement as if specifically enumerated therein.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the CITY under the Federal award must contain provisions covering the following, as applicable:

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of "federally assisted construction contract" in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, "Equal Employment Opportunity" ([30 FR 12319, 12935, 3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at [41 CFR part 60](#), "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor



regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act ([42 U.S.C. 7401-7671q.](#)) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any

Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See [§ 200.323](#). A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(K) See [§ 200.216](#): Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and

organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

- (c) See Public Law 115–232, section 889 for additional information.
- (d) See also § 200.47
- (L) See [§ 200.322](#). Domestic preferences for procurements.
  - (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
  - (b) For purposes of this section:
    - (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
    - (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

[[78 FR 78608](#), Dec. 26, 2013, as amended at [79 FR 75888](#), Dec. 19, 2014; [85 FR 49577](#), Aug. 13, 2020]

## **SECTION V – CONSTRUCTION SPECIAL PROVISIONS**

### **ITB # 24-PR-009**

#### **CITY OF NORTH LAUDERDALE TEEN CENTER GENERATOR**

NOTE: Upon final award of any Agreement as a result of this solicitation, the successful firm or individual receiving the award shall become the Contractor and shall be responsible for complying with the requirements enumerated in these Construction Special Provisions.

##### **5.1 BASIC DEFINITIONS**

Wherever used in this solicitation or the final Agreement resultant from an award made for this solicitation, or in other Contract Documents, the following terms have the meanings indicated, which are applicable to both the singular and plural of each:

**Addenda** – Written or graphic instruments issued prior to the opening of Bids that clarify, correct, or change the bidding requirements or the contract document.

**Agreement** – The written agreement between the City and the Contractor covering the work to be performed, including other Contract Documents that are attached to the Agreement and made a part thereof.

**Application for Payment** – the form acceptable to the Engineer/Project Manager used by the Contractor during the course of the work in requesting progress or final payments and accompanied by such supporting documentation as is required by the Contract Documents.

**Change Order** – A document that is signed by the Contractor and the City and authorizes an addition, deletion, or revision in the work within the general scope of this Agreement, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement. **ONLY THE CITY MANAGER CAN APPROVE CHANGE ORDERS FOR THE CITY.**

**City** – The City of North Lauderdale, Florida. Also referred to as Owner.

**Contract Documents** – Upon final award of this solicitation, the contract documents consist of the final Agreement, conditions of the solicitation, the solicitation document contained herein (including General, Supplementary and other Conditions and Provisions), drawings, specifications of this solicitation, all addenda issued prior to, all modifications issued after execution of this Agreement, Notice of Award, Notice to Proceed, Certificate(s) of Insurance, Bonds and any additional modifications and supplements, Change Orders and work directive changes issued on or after the effective date of the Contract. These contract

documents form the Agreement, and all are as fully a part of the Agreement if attached to this Agreement or repeated therein.

**Contract Times** – the number of consecutive calendar days stated in the Contract Documents to achieve substantial completion and/or complete the work so that it is ready for final payment as evidenced by the Engineer/Project Managers written recommendation of final payment.

**Contractor** – the individual or firm who successfully receives the award for work to be completed as defined by this solicitation.

**Defective** – An adjective which when modifying the work refers to work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to final payment.

**Drawings** – The drawings that show the character and scope of the work to be performed and which are referred to in the Contract Documents.

**Effective Date of the Agreement** – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

**Engineer/Project Manager** – The City's authorized, project representative. The words "Engineer" and "Engineer/Project Manager" are used interchangeably.

**End User (EU)** – Internal Member of the City Staff who has requested a procurement service. Also known as a Stakeholder (SH)

**FDOT** – The State of Florida Department of Transportation

**Field Order** – A written order issued by the Engineer/Project Manager that requires minor changes in the work but does not involve a change in Contract Price or Contract Time.

**Milestone** – A principal event specified in the Contract Documents relating to an intermediate complete date or time prior to Substantial Completion of all the work.

**Notice to Proceed (NTP)** – A written notice given by the City to the Contractor fixing the date on which the Contract Time will commence to run and on which the Contractor shall start to perform the Contractor's obligations under the Contract Documents.

**Project** – the total construction for which the Contractor is responsible under this agreement, including all labor, materials, equipment and transportation used or incorporated in such construction.

**Specifications** – Those portions of the Contract Documents consisting of written technical descriptions and requirements of materials, equipment, construction systems, standards and Workmanship as applied to the work and certain administrative details applicable thereto.

**Subcontractor** – An individual, firm or corporation having a direct Contract with the Contractor or with any other Subcontractor for the performance of a part of the work at the site.

**Substantial Completion** – “Substantial Completion” means the finishing or accomplishing of substantial performance of the work as proscribed in the Contract Documents. “Substantial Performance” means that there has been no willful departure from the terms of the Contract Documents and the work has been honestly and faithfully performed in its material and substantial particulars. The term “Final Completion” means the City's acceptance of **the job and issuance of final payment.**

**Supplier** – A manufacturer, fabricator, supplier, distributor, materialman or vendor.

**Unit Price Work** – Work to be paid for on the basis of unit prices.

**Work** – The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work is the result of performing services, specifically, including but not limited to construction, furnishing labor, testing, documentation, equipment and materials used or incorporated in the construction of the entire Contract Documents. The words “Project” and “Work” are used interchangeably.

**Work Change Directive** – A written directive to the Contractor issued on or after the effective date of the Agreement and signed by the City Manager and recommended by the Engineer/Project Manager ordering an addition, deletion or revision in the work. A Work Change Directive shall not change the Contract price or time, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time.

**Written Amendment** – A written amendment of the Contract Documents, signed by the CITY and the Contractor on or after the Effective Date of the Agreement and normally dealing with the non-Engineering, or non-technical aspects rather than strictly Work-related aspects of the Contract Documents.

## 5.2 FAMILIARITY WITH THE TOTAL SCOPE OF THE PROJECT

- 5.2.1 The Contractor shall be familiar with the total scope of the project prior to commencement of any work. In case of any questions or conflict, they must be brought to the attention of the Engineer/Project Manager prior to any work. If further assistance is needed, the Contractor may contact the Public Works/Utilizes Director. The City shall not be responsible for the Contractor's failure to comply with this requirement.
- 5.2.2 The Contractor shall be responsible for repair and restoration of all utilities or any other items damaged during the work.
- 5.2.3 By execution of the final Agreement, the Contractor acknowledges that all requirements and conditions necessary to fulfill this Contract have been met. No contract adjustments shall be allowed for concealed site conditions.
- 5.2.4 As for conflicts between schedules and information provided on Drawings, the schedules shall govern; as for conflicts between figures given on Drawings and the scale measurements, the figures shall govern; as for conflicts between large-scale drawings and small-scale drawings, the larger scale drawings shall govern.

## 5.3 INTENT

It is the intent of the Contract Documents to describe a functionally complete Project in accordance with the Plans and Specifications. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words that have a well-known technical or trade meaning are used to describe work, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implications, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of contract award, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the City, the Contractor, or any of their consultants, agents or employees from those set forth in the Contract Documents.

## 5.4 SUPPLEMENTS, MINOR VARIATIONS, OR DEVIATIONS

In addition, upon award of this solicitation, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the work may be authorized in one or more of the following ways:

- The Engineer/Project Manager's approval of a shop drawing or sample;
- or
- The Engineer/Project Manager's written interpretation or clarification.

## 5.5 OWNER MAY STOP THE WORK/REFUSE THE PRODUCT

If the work performed by the contractor or product delivered by the contractor is deficient, contrary to the bid documents or Contract, or the Contractor fails to perform work in such a way that the

completed work will conform to the Contract Documents, the Owner may order the Contractor to stop the work or return the product, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other party.

## 5.6 CUSTOMER RELATIONS

The Contractor, all its employees, and subcontractors under the supervision and control of the Contractor shall at all times be required to conduct themselves professionally and courteously and do all things necessary to ensure good and harmonious customer relations. Continuous failure to abide by this requirement shall constitute a basis for termination of this agreement.

## 5.7 LICENSES AND PERMITS

5.7.1 Services performed for the City will require licenses and permits in the same manner as private construction projects within the City. Contractor shall secure, at his/her expense, all licenses and permits and shall fully comply with all applicable laws, regulations, and codes as required by the State of Florida, county, or local ordinances.

5.7.2 The Contractor must fully comply with all federal and state laws, county and municipal ordinances, and regulations in any manner affecting the prosecution of the work. Any fines or penalties to the Contractor shall be paid at the Bidder's expense.

## 5.8 LICENSE OF BIDDERS

All Bidders must hold and submit with their bid response (and maintain same throughout the duration of the Contract) a current valid Certificate for General Building/Engineering or Specialty Trade Contracting, etc., for the types of work covered by the Contract, where applicable. If there is a special/specific license required for this project, the license will be listed in the Scope of Work outlined above.

## 5.9 LICENSE FOR TRADES

Bidder(s) must be licensed in accordance with the provisions of the Code of Broward County and Florida State Statute (Occupational/Business and Contractor). The Bidder may be required to provide proof of licensing prior to being pre-qualified under the Contract. All employees supplied by the Contractor must carry their certification cards if certification is required for the type of work being performed.

## 5.10 WORKMANSHIP AND MATERIALS

All parts installed and materials used in performance of this Contract shall be new and unused (of current design or manufacture). Salvage materials will not be allowed without the express consent of the City. All materials and workmanship shall be of the highest quality and shall conform to all applicable Building Codes, so as to ensure safe and functional operation. The City shall be the sole judge as to parts and workmanship.

**5.11 CONTRACTOR'S RESPONSIBILITY**

- 5.11.1 Contractor shall provide sufficient manpower so as to perform work safely and expeditiously with all equipment plainly marked with the company name. All equipment provided pursuant to this agreement shall be in good and proper working order.
- 5.11.2 The Contractor shall provide a qualified, English speaking, superintendent present on the site at all times. The superintendent shall be a fully authorized agent of the Contractor and have full authority to make on-site decisions and commitments regarding the Contractors work.
- 5.11.3 No work shall be performed between 7:00 PM and 7:00 AM, Monday through Friday. No work will be performed on Saturday unless approved by the City's Project Manager or authorized individual. Under no circumstance will work be performed on a Sunday and/or the City's observed Holiday(s). Exceptions to this schedule may only be made with the prior approval of the City in writing. The Contractor shall provide a qualified superintendent present on the site always, as a fully authorized agent of the Contractor, and capable of making on-site decisions.
- 5.11.4 It shall be the responsibility of the Contractor to remove from the job site and properly dispose of all residues at the end of each workday. Any materials or equipment left on site shall be secured by the Contractor, who is fully and totally responsible for security.
- 5.11.5 The superintendent appointed shall be satisfactory to the City and shall not be changed except with consent of the Public Works/Utilities Director.
- 5.11.6 The Contractor shall assign to the work site at least one (1) supervisor at all time capable of making field decisions, interpreting plans, etc. The Contractor shall also provide suitable personnel who shall be available for after work hour emergencies and capable of making appropriate decisions. The Contractor shall supply competent and physically capable employees having the requisite skill and experience to perform the work in a workmanlike manner. The City may require the Contractor to remove any employee working for or under the Contractor that the City deems careless, incompetent, insubordinate or otherwise objectionable. The Contractor shall be responsible to the City for the acts and omissions of all subcontractors and personnel working under the Contractor.
- 5.11.7 The Contractor shall be aware that the job may be subject to vehicular and pedestrian traffic at all times of the day and night.
- 5.11.8 Loss of materials or equipment due to theft, vandalism, etc. shall be the responsibility of the Contractor. Any material left on site overnight shall be properly marked and identified in order to ensure public safety.
- 5.11.9 The Contractor is responsible for familiarizing itself with the nature and extent of the Contract Documents, the work, the locality, and with all local conditions, verifying all pertinent figures and applicable field measurements, and federal, state, and local laws, ordinances, rules and regulations that in any manner may affect cost, progress, or performance of the work. The Contractor is responsible for making or causing to be made any examinations, investigations, tests and studies as it deems necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with other terms and conditions of the Contract Document.



- 5.11.10 Before beginning the Work or undertaking each component part of the Work, the Contractor shall carefully study the Contract Documents, Special Conditions, Technical Specifications all pertinent figures and site conditions. The Contractor shall promptly report in writing to the Engineer/Project Manager and the City any conflict, error or discrepancy which the Contractor may discover and shall obtain a written interpretation or clarification from the Engineer/Project Manager before proceeding with any Work affected thereby.
- 5.11.11 Unless otherwise provided in the Contract Documents, the Contractor shall provide or cause to be provided and shall pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 5.11.12 The Contractor shall be responsible for and shall coordinate all construction means, methods, techniques, sequences and procedures.
- 5.11.13 The Contractor shall keep the City and the Engineer/Project Manager informed of the progress and quality of the Work.
- 5.11.14 If requested in writing by the Contractor, the City, with reasonable promptness and in accordance with time limits agreed upon, shall interpret the requirements of the Contract Documents and shall decide (subject to other provisions in the Contract Documents governing claims, disputes and other matters in question) matters relating to performance. Such interpretations and decisions shall be in writing.
- 5.11.15 The Contractor shall correct all Work, which does not conform to the Contract Documents.
- 5.11.16 The Contractor shall warrant to the City that materials and equipment incorporated in the work will be new unless otherwise specified, and that the Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents.
- 5.11.17 The Contractor shall pay all applicable sales, consumer, use and similar taxes, and shall secure and pay for permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work. The Contractor shall identify all governmental authorities and agencies having jurisdiction to approve the construction, and obtain all permits and approvals with such governmental authorities as have jurisdiction, and assist the City in consultations with appropriate governmental authorities and agencies in obtaining all permits and approvals.
- 5.11.18 Without limiting the foregoing, the Contractor shall pay all fees, costs, and expenses in connection with the applications, processing, and securing of approvals for permits, not previously obtained by the owner or its agent, from all governmental authorities which have jurisdiction over all aspects of this Work.
- 5.11.19 The Contractor shall give notices and comply with laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.
- 5.11.20 The Contractor shall be responsible to the City for acts, errors and omissions of the Contractor's employees and parties in privity of contract with the Contractor to perform any portion of the Work, including their agents and employees.
- 5.11.21 All Change Orders must be approved in accordance with Sec. 3-10 Change Orders of the City's Procurement Code. Any work, which is commenced without a Change Order or

Work Directive being approved, by the Public Works/Utilities Director or City Manager shall constitute a waiver of any claim of compensation for such work.

- 5.11.22 Contractor must repair any pavement, concrete, brick pavers, sod etc., disturbed as a result of any work within the scope of this contract to all applicable codes and City standards.

## 5.12 **CONTRACTOR PERFORMANCE**

The Contractor shall be fully responsible for performing all the work necessary to meet City standards in a safe, neat, and good workmanlike manner, using only generally accepted methods in carrying out the work and complying with all federal and state laws and all ordinances and codes of the City relating to such work.

## 5.13 **CITY'S RESPONSIBILITIES**

Upon final award of this solicitation, the City shall bear the following responsibilities:

- 5.13.1 The City shall designate a representative authorized to act on the City's behalf with respect to the Project. The City or such authorized representative shall examine documents submitted by the Contractor and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the Work.
- 5.13.2 The City may appoint an on-site Project representative to observe the Work and to have such other responsibilities as the City and the Contractor agree in writing prior to execution of this Agreement.
- 5.13.3 The City shall cooperate with the Contractor in securing building and other permits, licenses and inspections.
- 5.13.4 If the City observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Contract Documents, the City shall give prompt written notice thereof to the Contractor.
- 5.13.5 The City shall furnish required information and services and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the design and construction.
- 5.13.6 The City shall communicate with subcontractors only through the Contractor.
- 5.13.7 The City shall furnish data required of the City under the Contract Documents promptly.
- 5.13.8 If the Work is defective, or the Contractor fails to supply sufficient skilled Workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will not conform to the Contract Documents, the City may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the City to stop the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Contractor or any other party.

## 5.14 **ENGINEER/PROJECT MANAGER'S RESPONSIBILITIES**

- 5.14.1 The Engineer/Project Manager, appointed by the Public Works Utilities Director will be the City's representative during the construction period and until final payment is made.

- 5.14.2 The Engineer/Project Manager will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Engineer/Project Manager's efforts will be directed toward providing for the City a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site inspections, the Engineer/Project Manager shall keep the Public Works/Utilities Director informed of the progress of the Work and shall endeavor to guard the City against defects and deficiencies in the Work.
- 5.14.3 The Engineer/Project Manager will issue technical clarifications and interpretations, with reasonable promptness. Should the Contractor fail to request interpretation of items the Contractor determines to be questionable in the Contract Documents neither the City nor the Engineer/Project Manager would thereafter entertain any excuse for failure to execute the Work in a satisfactory manner based upon such a reason or claim.
- 5.14.4 With the approval of the Public Works/Utilities Director, the Engineer/Project Manager may authorize minor variations in the Work from the technical requirements of the Contract Documents, which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These shall be accomplished by a Field Order and will be binding on the City, and also on the Contractor who shall perform the Work involved promptly.
- 5.14.5 The Engineer/Project Manager, with the approval of the Public Works/Utilities Director, will have the authority to disapprove or reject Work that the Engineer/Project Manager believes to be defective and will also have authority to require special inspections or testing of the Work whether or not the Work is fabricated, installed or completed.

#### 5.15 **AVAILABILITY OF AREA TO STORE EQUIPMENT AND MATERIAL**

City will make every effort to provide suitable areas within or near the project site for staging and storage. The Contractor shall be ultimately responsible for obtaining suitable areas for storage of Contractor's equipment and material. Restoration of all storage areas shall be Contractor's responsibility. The City is not responsible for any damages and/or thefts that may occur at staging/storage sites.

#### 5.16 **CLEANUP AND RESTORATION**

- 5.16.1 During and after completion of all work, the Contractor shall be responsible on a daily basis, for all cleanup including but not limited to sweeping, cleaning and removal of loose material. Leftover or excessive material, debris, etc. must be completely removed from the work area and other affected areas at no expense to the City at the end of work. It shall be the Contractor's responsibility to protect any debris from obstructing or getting into any wastewater, water or storm water conveyance system. If any grassed area is disturbed, it shall be promptly restored at the Contractor's expense.
- 5.16.2 Cleanup shall be performed on a routine basis in order to facilitate the maintenance of all work areas. Any damage to public or private property resulting from improper or incomplete cleanup shall be the sole responsibility of the Contractor.

- 5.16.3 The Contractor shall be responsible for the proper and legal removal and disposal of all construction debris.
- 5.16.4 Burying or burning of waste materials containing-chemicals, oil or unfiltered construction debris down sewers or into waterways shall not be permitted.
- 5.16.5 The Contractor shall provide, as necessary, rodent proof containers for disposing of garbage and similar wastes generated by the Contractor.
- 5.16.6 The project site shall be maintained in a neat and clean manner, and upon final cleanup, the project site shall be left clear of all surplus material and debris. Paved areas shall be swept clean.
- 5.16.7 If the Contractor fails to properly maintain the site or perform required clean-ups and debris removal the City shall place the Contractor on written notice to perform required clean up. Contractor shall perform required clean up within twenty-four (24) hours of receipt of the City's written notice.
- 5.16.8 In the event that the Contractor does not comply, the City may correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor costs of correcting such deficiencies. If the payments then or thereafter due the Contractor are not sufficient to cover the amount of the deduction, the Contractor shall pay the difference to the City.

#### 5.17 **DAMAGE TO PUBLIC AND/OR PRIVATE PROPERTY**

- 5.17.1 Extreme care shall be taken to safeguard all existing facilities, site amenities, utilities, irrigation systems, windows, and vehicles on or around the job site. Damage to public and/or private property shall be the responsibility of the Contractor and shall be repaired and/or replaced in equal or better condition at no additional cost to the City.
- 5.17.2 The Contractor shall use all means to protect surrounding areas, existing objects, structures and vegetation designated to remain that may be impacted by Work described herein.
- 5.17.3 In the event of damage, Contractor shall immediately make all repairs, replacements and dressings to damaged materials, to the approval of the City, at no additional cost to the City.
- 5.17.4 In the event of damage to public and/or private property, the Contractor shall immediately contact the Public Works/Utilities Department and inform the appropriate staff member about the location and extent of the damages.
- 5.17.5 In the event that the Contractor does not immediately repair to the satisfaction of the City damage to public and/or private property, the City may correct such damage. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor, costs of correcting such damage. If the payments then or thereafter due the Contractor are not sufficient to cover the amount of the deduction, the Contractor shall pay the difference to the City.

#### 5.18 **CONNECTION TO CITY WATER**

The Contractor is responsible for payment of all water usage for the project regardless of the type of meter used.

#### 5.19 **BASIS OF PAYMENT, UNIT PRICES AND RIGHT TO CHANGE QUANTITIES**

Payment at the contract unit price shall be inclusive of all labor, materials, equipment and incidental items.

**5.20 ACCEPTANCE OF WORK**

Acceptance shall be based upon satisfactory completion, material test results, performance and appearance of the Work after the materials have established, been placed or found to be in good operating order. Prior to final acceptance, the Contractor shall remove and replace, satisfactory to the City, all defective areas. Any adjusted area that is found to be of an unsatisfactory condition shall be rejected and shall be removed and restored by the Contractor at no expense to the City.

**5.21 TESTS AND INSPECTIONS**

5.21.1 The Contractor shall give the City timely notice of readiness of the Work for all required inspections, tests or approvals. The Contractor shall assume full responsibility, pay all costs in connection therewith and furnish the City the required certificates of inspection, testing or approval for all materials, equipment for the Work and any part thereof unless otherwise specified herein.

5.21.2 If the Work or any part thereof shall be found defective, the Contractor shall, without cost to the City, forthwith remedy such defect in a manner to comply with the Contract as outlined below.

5.21.3 The Contractor shall at all times provide the Project Manager and his designated representatives all facilities necessary, convenient or desirable for inspecting the Work. The Project Manager and any designated representative shall be permitted to inspect materials at any place or stage of their manufacture, preparation, shipment or delivery.

5.21.4 The City inspectors shall have no authority to permit deviations from or to relax any of the provisions of the Contract Documents, or to delay the Agreement by failure to inspect the materials and Work with reasonable promptness.

5.21.5 The payment of any compensation in any form, or the giving of any gratuity or the granting of any favor by the Contractor to any inspectors, directly or indirectly is strictly prohibited and any such action on the part of the Contractor will constitute a breach of this Agreement.

**5.22 CORRECTION OR REMOVAL OF DEFECTIVE WORK**

5.22.1 The Contractor shall correct Work rejected by the City or known by the Contractor to be defective or failing to conform to the Construction Documents, whether observed before or after Final Completion and whether or not fabricated, installed or completed, and all work found to be defective in the one-year period from the date of Substantial Completion (the Warranty Period) shall be the responsibility of the Contractor, or within such longer period provided by any applicable special warranty in the Contract Documents.

5.22.2 The City shall provide the Contractor with written notice regarding defective or rejected work. Within seven days after receipt of such written notice from the City, the Contractor shall commence with corrective action to remove and replace it with Work that is not defective or rejected.

5.22.3 If the Contractor fails to correct defective Work as required or persistently fails to carry out the Work in accordance with the Contract Documents, the City, by written order may stop

the Work, or any portion thereof, until the cause for such order has been eliminated; however, the City's right to stop the Work shall not give rise to a duty on the part of the City to exercise the right for benefit of the Contractor or other persons or entities.

- 5.22.4 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents within seven (7) days after receipt of written notice from the City to commence and continue correction of such default or neglect, the City may give a second written notice to the Contractor. If within seven days following receipt of the second notice, the Contractor fails to correct such default or neglect with diligence and promptness, the City may correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor costs of correcting such deficiencies. If the payments then or thereafter due the Contractor are not sufficient to cover the amount of the deduction, the Contractor shall pay the difference to the City.

### 5.23 PROGRESS PAYMENTS

- 5.23.1 The Contractor shall deliver to the City an itemized Application for Payment. The Contractor may requisition payments for Work completed during the Project at intervals of not more than once a month. The Contractor's payment request should show a complete breakdown of the Project components, the quantities completed and the amount due, together with a certification by the Contractor that the Contractor has disbursed to all Subcontractors and Suppliers their pro-rata shares of the payment out of previous progress payments received by the Contractor for all Work completed and materials furnished in the previous period and that properly executed releases of liens by all Subcontractors, Suppliers and materialmen were provided and included in the Contractor's previous applications for payment, and any other supporting documentation as may be required by the Project Manager or Contract Documents. Each payment request should be submitted in duplicate to the Engineer/Project Manager for approval. Reference Local Government Prompt Payment Act [Section 218.735](#)
- 5.23.2 The Application for Payment shall constitute a representation by the Contractor to the City that, to the best of the Contractor's knowledge, information and belief, the design and construction have progressed to the point indicated, the quality of the Work covered by the application is in accordance with the Contract Documents and the Contractor is entitled to payment in the amount requested.
- 5.23.3 The Contractor shall pay each Subcontractor, upon receipt of payment from the City, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled in accordance with the terms of the Contractor's contract with such Subcontractor. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-Subcontractors in similar manner.
- 5.23.4 The City shall have no obligation to pay or to be responsible in any way for payment to a Subcontractor of the Contractor except as may otherwise be required by law.
- 5.23.5 No progress payment or partial or entire use or occupancy of the Project by the City shall constitute an acceptance of Work not in accordance with the Contract Documents.
- 5.23.6 The Contractor warrants that: (1) title to Work, materials and equipment covered by an Application for Payment will pass to the City either by incorporation in construction or upon

receipt of payment by the Contractor, whichever occurs first; (2) Work, materials and equipment covered by previous Applications for Payment are free and clear of liens, claims, security interests or encumbrances, hereinafter referred to as "liens"; and (3) no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or any other person performing Work at the site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

5.23.7 The Contractor may apply for the return of the retainage held, if the Contractor has satisfied the requirements of the Contract relating to retainage. The City shall pay the Contractor the amount retained for the Work, less the reasonable value of incorrect or incomplete Work, liquidated damages or both. Final payment of such withheld sum shall be made upon correction or completion of such Work and resolution of all issues regarding liquidated damages. The release of retainage shall not become due until all Work is 100% completed as identified on the final punch list. The requirements of retainage include the following:

- Repair and/or replacement of faulty or defective Work.
- As-built drawings are submitted to and accepted by the City.
- All Code requirements, inspections, testing and certificates of approval are conformed with, submitted and accepted by the City.
- The City is satisfied all payrolls, bills for materials and equipment and other indebtedness connected with the Work for which the City might in any way be responsible have been paid or otherwise satisfied to the extent and in such form as may be designated by the City.
- Release of Lien is submitted and accepted by the City.
- The Contractor's completion of Punch List.
- Warranties are submitted to and accepted by the City.
- Additional items may be required by the City.

#### 5.24 **CHANGE QUANTITIES / CHANGE ORDERS**

5.24.1 The City, without invalidating this Agreement, may order additions, deletions or revisions to the Work. A written Amendment, Change Order or Work Change Directive shall authorize such additions, deletions or revisions.

5.24.2 All Change Orders which, individually or when cumulatively added to amounts authorized pursuant to prior Change Orders for this Project, increase the cost of the Work to the City or which extend the time for completion, must be formally authorized and approved by the appropriate City authority prior to their issuance and before Work may begin.

5.24.3 No claim against the City for extra Work in furtherance of a Change Order shall be allowed unless prior written City approval pursuant to this section has been obtained.

5.24.4 The Contract Price and Contract Time shall be changed only by Change Order or written Amendment.

5.24.5 The Project Manager shall prepare Proposed Change Orders on forms provided by the City. When submitted for approval, they shall carry the applicable signatures.

- 5.24.6 If the City and the Contractor are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract times that should be allowed as a result of a Work Change Directive, a claim may be made therefore.
- 5.24.7 The Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented.
- 5.24.8 If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents is required by the provisions of any bond to be given to a surety, the giving of any such notice will be the Contractor's responsibility and the amount of each applicable bond shall be adjusted accordingly.
- 5.24.9 Any claim for adjustment in the Contract Price or time shall be based upon written notice delivered by the party making the claim to the other parties and to the Engineer/Project Manager not later than fifteen (15) calendar days after the occurrence or event giving rise to the claims and stating the general nature of the claim. No claim for an adjustment in the Contract Price or an extension of the contract time will be valid if not submitted in accordance with this Paragraph.
- 5.24.10 The cost or credit to the City from a change in the Work shall be determined by one or more of the following ways:
- By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation where unit prices do not exist in the contract documents;
  - By unit prices stated in the Contract Documents or subsequently agreed upon;
- or
- By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

## 5.25 **REGULATORY CHANGES**

The Contractor shall be compensated for changes in the Work necessitated by the enactment or revision of codes, laws, or regulations subsequent to the submission of the Contractor's proposal, prior to execution of any agreement.

## 5.26 **FINAL INSPECTION**

Upon written notice from the Contractor that the Work is or an agreed portion thereof is complete, the City and the Engineer/Project Manager will make a final inspection and will notify the Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. The Contractor shall address such deficiencies in accordance with "Correction or Removal of Defective Work" of this document.

## 5.27 **FINAL APPLICATION FOR PAYMENT**

- 5.27.1 After the Contractor has completed all such corrections to the satisfaction of the City and the Project Manager and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked up record documents, certified as-builts and other documents required by the Contract Documents, and after the Project



Manager has indicated that the Work is acceptable, the Contractor may make application for final payment. The final application for payment shall be accompanied by:

- (1) complete and legally effective releases or waivers of all liens arising out of or filed in connection with the Work and a final affidavit; or
- (2) the Contractor's receipts in full covering all labor, materials and equipment for which a lien could be filed; or
- (3) a final affidavit stating that all laborers, materialmen, Suppliers and Subcontractors who Worked for the Contractor under this Contract have been paid in full or if the fact be otherwise, identifying the name of each lienor who has not been paid in full and the amount due or to become due each for labor, services or materials furnished and the reason(s) why the same remains unpaid. If any Subcontractor or Supplier fails to furnish a release or receipt in full, the Contractor may furnish a bond satisfactory to the City to indemnify the City against any such lien.

- 5.27.2 The Contractor shall also submit with the final application for payment, the completed set of "As-Built" drawings for review and approval. The "As-Built" drawings shall be prepared, sealed and certified by a professional registered land surveyor licensed by the State of Florida. The Contractor shall deliver 24" x 36" Mylar sepias and Bond Paper of the as-built project, signed, sealed and dated by the responsible professional. In addition, "As-Built" plans are to be submitted in a digital format in AutoCAD latest version. The Digital File is to be compatible with the City's GIS system. **Final payment to the Contractor shall not be made until said drawings have been reviewed and approved by the Project Manager. Prior to approval, if necessary, the drawings may be returned to the Contractor for changes or modifications if in the opinion of the Project Manager they do not represent correct or accurate "As-built" drawings.**

## 5.28 FINAL PAYMENT AND ACCEPTANCE

- 5.28.1 If, on the basis of the Project Manager's observation of the Work during construction and final inspection, and the Project Manager's review of the final Application for Payment and accompanying documentation, the Project Manager is satisfied that the Work has been completed and the Contractor's other obligations under the Contract Documents have been fulfilled, the Project Manager will, within thirty (30) days after receipt of the final Application for Payment, indicate in writing the Project Manager's recommendation of payment and present the Application to the City for payment. Thereupon the Project Manager will give written notice to the City and the Contractor that the Work is acceptable. Otherwise, the Project Manager will return the Application to the Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case the Contractor shall make the necessary corrections and resubmit the Application. After presentation to the City of the Application and accompanying documentation, in appropriate form and substance, and with the Project Manager's recommendation and notice of acceptability, the amount recommended by the Project Manager will become due and will be paid by the City to the Contractor within the required time frame under Florida Statute regarding such payments.
- 5.28.2 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the City to the Contractor when the Work has been completed, the Contract fully

performed, and a final certificate for payment has been approved by the Project Manager. The making of final payment shall constitute a waiver of claims by the City except those arising from:

- Liens, claims, security interests or encumbrances arising out of this Agreement and unsettled.
- Faulty or defective Work and latent defects discovered after acceptance.
- Failure of the Work to comply with the requirements of the contract documents.
- Terms of special warranties required by the contract documents.
- Any of the Contractor's continuing obligations under this Agreement.

5.28.3 The acceptance of final payment by the Contractor shall constitute a waiver of claims by that payee except those previously made in writing and identified as unsettled at the time of final application for payment.

## 5.29 CITY'S RIGHT TO WITHHOLD PAYMENT

5.29.1 The City may withhold in part, final payment or any progress payment to such extent as allowed under Florida statute, necessary to protect itself from loss on account of:

- Defective Work not remedied.
- Claims filed or reasonable evidence indicating the probable filing of claims by other parties against the Contractor.
- Failure of the Contractor to make payments to Subcontractors or Suppliers for materials or labor.
- Damage to another Contractor not remedied.
- The Contractor has incurred liability for liquidated damages.
- Reasonable evidence that the Work cannot be completed for the unpaid balance of the contract sum.
- Reasonable evidence that the Work will not be completed within the Contract time.
- Failure to carry out the Work in accordance with the Contract Documents.

5.29.2 When 5.29.1 is completed or resolved, or the Contractor provides a Surety Bond or Consent of Surety satisfactory to the City, which will protect the City in the amount withheld, payment may be made in whole or in part.

## 5.30 WARRANTY PERIOD

The specified warranty period for a specific Project does not begin until final completion of the project under that project's individual Notice to Proceed.

## 5.31 WARRANTIES

5.31.1 The Contractor warrants that all equipment, materials and Workmanship furnished, whether furnished by the Contractor or its subcontractors and Suppliers, will comply with the Technical Specifications, drawings and other descriptions supplied or adopted and that all services will be performed in a Workmanlike manner.

- 5.31.2 The Contractor warrants to the City that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under the Contract.
- 5.31.3 The Contractor warrants to the City that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Contract.

## 5.32 CORRECTION PERIOD

- 5.32.1 The Contractor warrants all material and Workmanship as noted in the Technical Specifications and Contract Documents from date of final acceptance by the City. If within the period of warranty from the date of final completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, whether observed before or after acceptance by the City, the Contractor shall commence with corrective action within seven (7) days after written notice of such defect, without cost to the City and in accordance with the City's written instructions, either correct such defective Work, or, if it has been rejected by the City, remove it from the site and replace it with Work that is not defective and satisfactorily correct and remove and replace any damage to other Work or the Work of others resulting therefrom. If the Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the City may have the defective Workmanship corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of the Project Manager, attorneys and other professionals) will be paid by the Contractor.
- 5.32.2 Where defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period as noted in the Technical Specifications and Contract Documents after such correction or removal and replacement has been satisfactorily completed.
- 5.32.3 Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations that the Contractor might have under the Contract Documents. Establishment of the time period, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligation other than specifically to correct the Work.

## 5.33 CONSTRUCTION SCHEDULE

- 5.33.1 The Construction Schedule shall be in the form of a tabulation, chart or graph (MS Project latest edition) and shall be in sufficient detail to show the critical path and the chronological relationship of all activities contained in the project. These include, but are not limited to: estimated starting and completion dates of various activities, submittals required to the Project Manager for approval, procurement of material and scheduling of equipment.

- 5.33.2 The Construction Schedule shall allow for a maximum turnaround time by the Project Manager of fourteen calendar days on all submittals, shop drawings and all requests for information.
- 5.33.3 The Construction Schedule shall reflect the completion of all Work to be performed within the specified time and in accordance with the Contract Documents.
- 5.33.4 The Construction Schedule shall be thoroughly reviewed and updated on a monthly basis. The revised schedule shall be submitted to the City at least every 30 days during the term of this Agreement and shall reflect a current schedule of activities, percent complete and remaining durations for all tasks.
- 5.33.5 Float, slack or contingency time derived from the early completion of tasks on the critical path is not for the exclusive use or benefit of the Contractor. The Contractor shall not utilize such time without the prior written consent of the City.
- 5.33.6 If the Contractor desires to make changes in the method of operation after the construction approval of the construction schedule, or if the Engineer/Project Manager determines that the schedule fails to reflect the actual progress, the Contractor shall submit to the Engineer/Project Manager a revised construction schedule for approval.

#### 5.34 PROTECTION OF PERSONS AND PROPERTY

- 5.34.1 The Contractor shall be solely responsible for initiating, maintaining and providing supervision for compliance with Occupational Safety and Health Act (OSHA) standards for safety precautions and programs in connection with the Work.
- 5.34.2 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein; and (3) other property at or adjacent to the site.
- 5.34.3 The Contractor shall comply with applicable laws, ordinances, rules, regulations and orders of public authorities bearing on the safety of persons and property and their protection from damage, injury or loss.
- 5.34.4 The Contractor shall be liable for damage or loss (other than damage or loss to property insured under the property insurance provided or required by the Contract Documents to be provided by the City) to property at the site caused in whole or in part by the Contractor, a Sub-Contractor of the Contractor or anyone directly or indirectly employed by either of them, or by anyone for whose acts they may be liable.
- 5.34.5 All unit prices provided by the Contractor as a part of this Bid shall include the cost of all safety equipment necessary for the performance of the Work.
- 5.34.6 The Contractor shall comply with the requirements of the Florida Trench Safety Act and all applicable OSHA Regulations pertaining to excavation.
- 5.34.7 The Contractor shall comply with Florida Statutes, Chapter 556, Underground Facility Damage Prevention and Safety Act and secure the underground locations and obtain a Sunshine State One Call Certification number prior to beginning any excavation.

#### 5.35 SAFETY MEASURES

- 5.35.1 Contractor shall take all necessary precautions for the safety of employees, and shall erect and properly maintain at all times all necessary safeguards for the protection of the

employees and the public. Danger signs warning against hazards created by his/her operation and work in progress must be posted.

5.35.2 All employees of Contractor shall be expected to wear safety glasses or goggles, appropriate clothing, and hearing protection when and wherever applicable. The Contractor shall use only equipment that is fully operational and in safe operating order. Contractor shall be especially careful when servicing property when pedestrians and/or vehicles are in close proximity – work shall cease until it is safe to proceed.

5.35.3 The Contractor warrants that any product(s) supplied to the City conform with all respects to the standards set forth in the Occupational Safety and Health Act of 1970 as amended, and shall follow Chapter 442, Florida Statutes as well as any industry standards, if applicable. Any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code (F.A.C.) delivered because of this order must be accompanied by a completed Material Safety Data Sheet (MSDS).

### 5.36 SAFETY, TRAFFIC CONTROL AND ROADWAY HOURS

5.36.1 The Contractor shall be responsible for maintaining all traffic controls during the entire period of the project. All traffic controls shall conform to the Manual of Uniform Traffic Control Device (MUTCD) and Florida Department of Transportation Roadway and Traffic Design Standards, latest edition and must be approved by the City in advance. At all times, at least one lane shall be kept open with adequate and legal traffic controls. Work shall be avoided during peak traffic hours. Working hours for this Maintenance of Traffic (MOT) are set between 7 AM to 4 PM. Any deviation shall be approved in advance by City.

5.36.2 The Contractor shall be responsible for obtaining any and all required Maintenance of Traffic Permits from the appropriate regulatory authorities.

5.36.3 Road closure will not be permitted without written approval of the Engineer/Project Manager.

5.36.4 All unit prices provided by Contractor as a part of this Bid, shall include all costs relating to the Maintenance of Traffic including any and all safety equipment necessary, including but not limited to barricades, signage, traffic markings, arrow boards, etc.

5.36.5 No extra payment shall be made for providing the necessary traffic control. This necessary traffic control should be included in the bid. Any questions regarding the requirements for traffic control shall be referred to the Public Works Utilities Director.

### 5.37 HURRICANE AND SEVERE WEATHER PRECAUTIONS

The Contractor shall immediately take all protective actions necessary to secure the construction site, materials, debris and equipment to the satisfaction of Project Manager. Project Manager shall not be held liable for the construction site, materials, debris, and equipment. All construction materials or equipment will be secured against displacement by wind forces.

### 5.38 EXCUSABLE INCLEMENT WEATHER DELAYS

5.38.1 The Contract Time will be extended for as many calendar days in excess of the average number of days of excusable inclement weather as defined in Paragraph entitled, "Excusable Inclement Weather Delays", as the Contractor is specifically required under the provisions of the Technical Specifications to suspend construction operations, or as

many calendar days as the Contractor is prevented by excusable inclement weather , or conditions resulting immediately from proceeding with at least seventy-five percent (75%) of the normal labor and equipment force engaged on the work.

- 5.38.2 Excusable inclement weather is any weather condition, the duration of which varies in excess of the average conditions expected, which is unusual for the particular time and place where the work is to be performed, or which could not have been reasonably anticipated by the Contractor, as determined from U.S. Weather Bureau records for the preceding 3-year period. No extensions of Contract Time will be allowed for any inclement weather that could reasonably have been predicted from such weather records.
- 5.38.3 Should the Contractor prepare to begin work at the regular starting time at the beginning of any regular work shift on any day on which excusable inclement weather, or the conditions resulting from the weather, or the condition of the work prevents work from beginning at the usual starting time, and the crew is dismissed as a result thereof, the Contractor will not be charged for a working day whether or not conditions change thereafter during said day, and the major portion of the day could be considered to be suitable for such construction operations
- 5.38.4 The Contractor shall base its construction schedule upon the inclusion of the number of days of excusable inclement. No extension of the Contract Time due to excusable inclement weather will be considered until after the said number of days of excusable inclement weather has been reached. However, no reduction in Contract Time would be made if said number of days of excusable inclement weather is not reached.

### 5.39 LOCATION OF EXISTING UTILITIES

- 5.39.1 Existing utilities may be shown on the drawings. Such information is shown for design purposes and the existing and detail given is information that is obtained during the design period and is not necessarily complete, correct or current. Prior to commencement of construction, the Contractor is responsible for locating existing city utilities affected by the construction in the field. Such utilities include but are not limited to water mains, force mains, gravity sewers, pump stations, storm sewers and drain systems. The City will provide to the Contractor available construction drawings for locating existing city utilities. However, the City cannot guarantee the accuracy of drawings or any information related to existing utilities and the City will not assume responsibility or liability for damage resulting from the Contractor incorrectly locating existing utilities.
- 5.39.2 Damage to any of the City's utilities incorrectly located by the Contractor or his agents shall be the responsibility of the Contractor and shall be repaired and or replaced to equal or better condition at the Contractor's expense.
- 5.39.3 The Contractor shall also be liable for all damages and claims against or by the City arising in any way from damage or interference with such utilities.
- 5.39.4 No additional compensation shall be allowed to the Contractor for any delays, inconvenience or damage sustained by him due to interference and/or incorrectly locating such utilities or appurtenances.
- 5.39.5 Numerous utilities not owned by the City exist within the project area that may or may not have been depicted on the drawings. The Contractor shall exercise care in digging and other work so as to not damage existing utilities including overhead utilities and

underground cables and pipes. The Contractor is also responsible for contacting the Sunshine State One Call Center of Florida (Sunshine) at 1-800-432-4770 to determine location of underground utilities. Calls to Sunshine must be made at least 48 hours before digging but not more than five (5) days prior. Contractor is responsible for renewing locates if job extends beyond marking period established by Sunshine. Any utility in the vicinity that is not a member of the Sunshine Service must be notified directly. Please note that Broward County Highway and Bridge Maintenance Division is not a member of Sunshine One-Call, This Division is responsible for storm drain systems on all County owned roads.

5.39.6 Should any underground obstructions be encountered which interfere with the work, the City shall be notified at once. The Contractor shall be responsible for the immediate repair of any damage caused by the work and shall be responsible for any disruption of service caused by this damage.

#### 5.40 **CONFLICT WITH EXISTING UTILITIES**

Upon completion of locating existing utilities affected by the proposed construction by the Contractor, and prior to commencement of construction, the Contractor shall examine the alignment of proposed work to be constructed and identify any conflicts with existing utilities. If such conflicts exist, the Contractor shall undertake accurate surveys to determine elevations of utilities and shall notify the Project Manager in writing seven (7) working days prior to the scheduled construction. The Project Manager may revise the proposed design or recommend ways and means to avoid such conflicts. The Contractor may re-schedule his work so that the construction can be completed on time. No claim for down times by the Contractor shall be allowed.

#### 5.41 **ENFORCEMENT OF SPECIFICATIONS**

Copies of the specifications shall be placed in the hands of the Project Manager/Director of requesting department, who shall enforce every requirement of the Contract. There will be no varying from the specifications.

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## **SECTION VI TAB A: FIRM QUALIFICATIONS**

### **ITB # 24-PR-009**

#### **CITY OF NORTH LAUDERDALE TEEN CENTER GENERATOR**

##### **TAB A: FIRM QUALIFICATIONS**

1. Provide a general statement describing the types of services offered by the firm, location of main and branch offices, number of years in business, number of employees, and attach evidence of licenses and certification to perform the required services.
2. Provide the location of the office from which this work will be performed.
3. Outline the firm's experience with the specific work being requested by City. The firm should provide at least five (5) verifiable examples of similar size and scope projects they have completed, including the client's name, client contact information, description of project, project value, and date project completed.
4. Provide names and experience of sub-contractors to be used by the firm (include names, contact information, and services the individuals will provide to the City)
5. Include any required licenses listed within the SCOPE OF WORK.
  - Proof of Required Insurances
  - Proof of Required Licenses and/or Certifications outlined in the SECTION II



## **SECTION VII TAB B: BID SUBMITTAL CHECKLIST**

**ITB # 24-PR-009**

### **CITY OF NORTH LAUDERDALE TEEN CENTER GENERATOR**

In order to assure that your e-bid complies with bid requirements, the following items (forms and documentation) are required. Please verify that the following items are included in your solicitation submission. Additional or supporting forms/items may be required under the terms of this solicitation specifically for each Consultant. It is the Consultant's responsibility to read and understand all provisions. Include this completed checklist to verify that the referenced content is included in the submission.

**Failure to complete and return the required forms/documentation in submission may result in e-bid being non-responsive and not considered for award.**

- Vendor Contact Summary Form
- Addenda Acknowledgment Form
- Client References Form
- Reference Check Surveys
- Qualification Statement – 4 Pages
- Public Entity Crimes Form – 3 Pages
- Non-Collusive Affidavit – 2 Pages
- Offeror's Certification
- Scrutinized Vendor Certification – 2 Pages
- Vendor Drug-Free Workplace Form
- E-Verify – 2 Pages
- Byrd Anti-Lobbying Certification – **FEDERAL GRANT REQUIREMENT**
- Disclosure of Lobbying Activities – **FEDERAL GRANT REQUIREMENT**
- Minority / Women's / Labor Surplus Firms Participation Certification – **FEDERAL GRANT REQUIREMENT**

\*Please check [www.demandstar.com](http://www.demandstar.com) or City website for addenda and changes before submitting final e-bid\*

## **SECTION VIII TAB C: BID SCHEDULE AND PRICING FORM INFORMATION**

**ITB # 24-PR-009**

### **CITY OF NORTH LAUDERDALE TEEN CENTER GENERATOR**

Through submission of this bid, Bidder hereby declares that they have carefully examined the site of the proposed work, the plans and specifications contained herein, and does hereby agree to furnish all labor, materials, tools, equipment and incidentals and to sustain all the expenses incurred in performing the work in strict accordance with the plans & specification, which are made a part thereof at the following prices offered. The City intends to award this bid based on the Total Base Bid for all bid items; however, the City reserves the right to award the bid by low total per item, by low total per groups of items, whichever appears to be in the best interest of the City.

#### **Excel Form Instructions**

This solicitation uses an Electronic Price Form in the Microsoft Excel spreadsheet format as an attachment via DemandStar and on the City website.

Complete the Electronic Bid Schedule and Pricing Form by inserting **Vendor's Name, Address, and Contact Information** in the appropriate fields. The Purchasing Division has designed this form to allow only the entry of requested information in the unlocked fields. For accuracy and convenience, the excel form will auto calculate the total automatically. Bidder shall recheck all entries prior to submission to ensure correct calculations. The City of North Lauderdale shall not be responsible for inaccurate calculations.

Once complete, save the file and include in your electronic submission of your bid on DemandStar as part of your bid submittal.

If you need assistance in obtaining or completing the Electronic Proposal Price Form, you may contact the Purchasing Division at (954) 597-4776.

1. The undersigned Bidder proposes and agrees, if this bid is accepted, to enter into a contract with the City to perform and furnish all Work as specified herein for the Contract Price and within the Contract Period indicated in this bid.
2. This bid will remain subject to acceptance for ninety (90) calendar days after the day of bid opening. Bidder will sign and submit the necessary documents required by the City within fifteen (15) calendar days prior to the date of the City's Award.
  - a. Bidder has familiarized themselves with the nature and extent of the contract documents, locality, and all local conditions and laws and regulations that in any manner may affect the cost, progress, performance, or furnishing of the Work.
  - b. Bidder has given the City written notice of all conflicts, errors, or discrepancies that it has discovered in the contract documents, and the written resolution thereof by the City is acceptable to Bidder.
  - c. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over the City.

3. Bidder will complete the Work for the prices shown in the "Bid Form."
4. Bidder agrees that the Work will be substantially performed and complete in accordance with the schedules established herein.

**THIS PROJECT SHALL MEET THE REQUIREMENTS FOR CONSTRUCTION PROJECTS SET FORTH IN 2 CFR PART 200.**



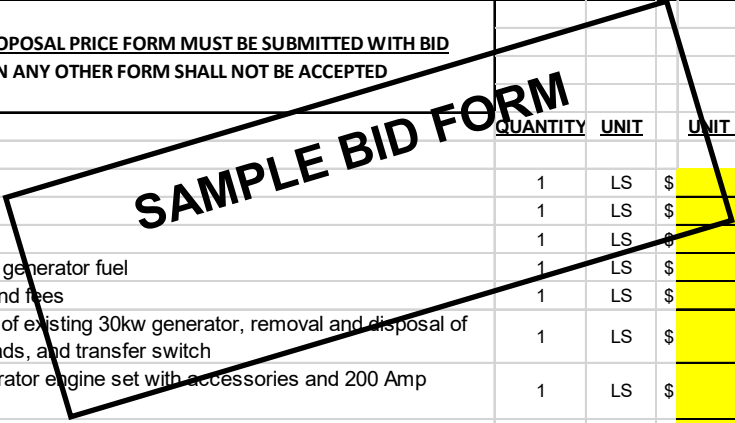
**CITY OF NORTH LAUDERDALE  
ITB # 24-PR-009  
TEEN CENTER GENERATOR PROJECT**

**BID SCHEDULE**

**Enter information in the yellow, unlocked cells.**

|                        |  |
|------------------------|--|
| <b>VENDOR'S NAME:</b>  |  |
| <b>VENDOR ADDRESS:</b> |  |
| <b>CONTACT PERSON:</b> |  |
| <b>PHONE:</b>          |  |
| <b>EMAIL:</b>          |  |

**THIS ELECTRONIC PROPOSAL PRICE FORM MUST BE SUBMITTED WITH BID PRICES SUBMITTED IN ANY OTHER FORM SHALL NOT BE ACCEPTED**



| ITEM #         | ITEM DESCRIPTION   | QUANTITY | UNIT | UNIT PRICE | AMOUNT  |
|----------------|--|----------|------|------------|---------|
| <b>GENERAL</b> |  |          |      |            |         |
| 1              | Bonds & Insurance  | 1        | LS   | \$ 0.00    | \$ 0.00 |
| 2              | Mobilization   | 1        | LS   | \$ 0.00    | \$ 0.00 |
| 3              | Permitting Fees  | 1        | LS   | \$ 0.00    | \$ 0.00 |
| 4              | Cleaning of existing generator fuel  | 1        | LS   | \$ 0.00    | \$ 0.00 |
| 5              | FPL coordination and fees  | 1        | LS   | \$ 0.00    | \$ 0.00 |
| 6              | Labor for relocation of existing 30kw generator, removal and disposal of existing concrete pads, and transfer switch | 1        | LS   | \$ 0.00    | \$ 0.00 |
| 7              | 60 kW Diesel Generator engine set with accessories and 200 Amp breaker   | 1        | LS   | \$ 0.00    | \$ 0.00 |
| 8              | Remote annunciator   | 1        | LS   | \$ 0.00    | \$ 0.00 |
| 9              | Weather resistant level 2 enclosure  | 1        | EA   | \$ 0.00    | \$ 0.00 |
| 10             | ASCO 300 series 200 AMP automatic transfer switch or equivalent with quick connect. Connected during construction    | 1        | EA   | \$ 0.00    | \$ 0.00 |
| 11             | Materials  | 1        | EA   | \$ 0.00    | \$ 0.00 |
| 12             | Installation   | 1        | EA   | \$ 0.00    | \$ 0.00 |
| 13             | Start up/ Load bank test   | 1        | LS   | \$ 0.00    | \$ 0.00 |
| 14             | Temporary 60kW portable generator and associated wiring, with Temporary Auto Transfer Switch                         | 1        | LS   | \$ 0.00    | \$ 0.00 |
| 15             | Emergency Power off Button for Generator Shut Off  | 1        | LS   | \$ 0.00    | \$ 0.00 |
| 16             | Crane for Removal and Relocation of Existing Generator   | 1        | LS   | \$ 0.00    | \$ 0.00 |
| 17             | Crane for Installation of New Generator  | 1        | LS   | \$ 0.00    | \$ 0.00 |
| 18             | Contingency  | 1        | LS   | \$ 0.00    | \$ 0.00 |

|                                      |  |
|--------------------------------------|--|
| Brand and Type of Generator Proposed |  |
|--------------------------------------|--|

**GRAND TOTAL COST FOR TURN-KEY PROJECT \$ 0.00**



**ITB # 24-PR-009**

**CITY OF NORTH LAUDERDALE TEEN CENTER GENERATOR**

**SAMPLE AGREEMENT WITH FEDERAL PROVISIONS**  
**BETWEEN THE CITY OF NORTH LAUDERDALE**

**AND \_\_\_\_\_**

**THIS AGREEMENT ("Agreement")**, dated this \_\_\_\_\_ day of \_\_\_\_\_, **2024**, and is entered into by and between:

**CITY OF NORTH LAUDERDALE**, a municipal corporation of the State of Florida with a business address of **701 SW 71<sup>st</sup> AVENUE, NORTH LAUDERDALE, FLORIDA 33068** hereinafter referred to as "CITY,"

and

\_\_\_\_\_ a \_\_\_\_\_ corporation authorized to do business in the State of Florida, with a principal address of \_\_\_\_\_ (hereinafter referred to as the "CONTRACTOR"). CITY and CONTRACTOR may hereinafter be referred to collectively as the "Parties."

**WITNESSETH:**

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONTRACTOR agree as follows:

**ARTICLE 1- PREAMBLE**

In order to establish the background, context and form of reference for this Agreement, and to generally express the objectives and intentions of the respective parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow, and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 1.1 On \_\_\_\_\_, the CITY advertised its notice to bidders of the CITY's desire to hire a firm to provide \_\_\_\_\_, as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof, for the said **Invitation to Bid (ITB) # \_\_\_\_\_**.
- 1.2 On \_\_\_\_\_, the bids were opened at City Hall by the Purchasing and Contracts Division.
- 1.3 On \_\_\_\_\_, the CITY awarded the bid to CONTRACTOR and authorized the proper CITY officials to negotiate and enter into an agreement with CONTRACTOR to render the services more particularly described hereinbelow.
- 1.4 Negotiations pertaining to the services to be performed by the CONTRACTOR were undertaken and this Agreement incorporates the results of such negotiation.

## ARTICLE 2 - SERVICES AND RESPONSIBILITIES

- 2.1 CONTRACTOR hereby agrees to \_\_\_\_\_, as more particularly described and in accordance with the scope of work and special conditions outlined in the specifications \_\_\_\_\_, attached hereto as **Exhibit "A"** and by this reference made a part hereof and CONTRACTOR proposal attached hereto as **Exhibit "B"** and by this reference made a part hereof. CONTRACTOR agrees to perform all services required pursuant to this Agreement.
- 2.2 CONTRACTOR shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.
- 2.3 CONTRACTOR shall supervise the workforce to ensure that all workers conduct themselves and perform their work in a safe and professional manner. CONTRACTOR shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. CONTRACTOR shall at all times have a competent field supervisor available to enforce these policies and procedures at the CONTRACTOR's expense.
- 2.4 CONTRACTOR shall provide CITY with seventy-two (72) hours written notice prior to the commencement of work under this Agreement and prior to any schedule change with the exception of changes caused by inclement weather.
- 2.5 CONTRACTOR hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONTRACTOR, that CONTRACTOR has the professional expertise, experience and manpower to perform the services to be provided by CONTRACTOR pursuant to the terms of this Agreement.
- 2.6 CONTRACTOR hereby represents to CITY that CONTRACTOR is properly licensed by the applicable federal, state, and local agencies to provide the services under this Agreement. Furthermore, CONTRACTOR agrees to maintain such licenses during the term of this Agreement. If CONTRACTOR's license is revoked, suspended, or terminated for any reason by any governmental agency, CONTRACTOR shall notify the CITY immediately.
- 2.7 CONTRACTOR shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to CONTRACTOR, its employees, agents or subcontractors, if any, with respect to the work and services described herein. A violation of any federal, state, or local law or regulation may be cause for breach, allowing the CITY to terminate this Agreement.
- 2.8 CONTRACTOR agrees that all meetings relating to the services herein required shall take place at a CITY facility or via conference call, where practicable. Work performed pursuant to this Agreement shall take place with a CITY representative present, if CITY so desires.

## ARTICLE 3 - TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 3.1 The work to be performed under this Agreement shall be commenced immediately upon CONTRACTOR's receipt of CITY's Notice to Proceed. The work shall be completed

- within \_\_\_\_\_ (\_\_\_\_\_) days from issuance of CITY's Notice to Proceed, subject to any permitted extensions of time pursuant to this Agreement and any amendments, change orders, and/or addenda thereto. For the purposes of this Agreement, completion shall mean the issuance of final permit.
- 3.2 During the pre-service portion of the work hereunder, the Parties agree to work diligently and in good faith in performing their obligations hereunder, so that all required permits for the service portion of the work may be obtained. In the event that any delays in the pre-service or service portion of the work occur, despite the diligent efforts of the Parties hereto, and such delays are the result of force majeure or are otherwise outside of the control of either party hereto, then the Parties shall agree on an equitable extension of the time for substantial completion hereunder and any resulting increase in general condition costs.
- 3.3 In the event that CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify CITY against any loss pertaining to this termination up to a maximum of the full contracted fee amount. All finished or unfinished documents, data, studies, surveys, and reports prepared by CONTRACTOR shall become the property of CITY and shall be delivered by CONTRACTOR to CITY.
- 3.4 **Time is of the essence for this Agreement.** In the event, the CONTRACTOR shall fail to timely commence the services herein required following the Notice to Proceed or fail in the performance of the work specified and required to be performed within the time limit set forth in this Agreement after due allowance for any extension or extensions of time, the CITY may immediately terminate this Agreement as set forth below.
- 3.5 CONTRACTOR shall notify the CITY's \_\_\_\_\_, in writing, of any change in the names and addresses of each subcontractor proposed for principal parts of the Project, and any changes in subcontractors from those proposed in CONTRACTOR's bid proposal, and for such others as the CITY's \_\_\_\_\_ may direct, and shall not employ any that CITY may, within a reasonable time, object to.

#### ARTICLE 4 - COMPENSATION AND METHOD OF PAYMENT

- 4.1 The CITY agrees to compensate CONTRACTOR monthly for all equipment provided and for work that has been completed, inspected, and properly invoiced in accordance with the price terms set forth in **Exhibit "B"** attached hereto and made a part hereof by this reference. The total compensation for all services herein required shall NOT EXCEED \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$\_\_\_\_\_).
- 4.2 The total compensation amount may not be exceeded without a written amendment to this Agreement. A retainage not to exceed five percent (5%) will be deducted from monthly payments until the project is complete. Retainage monies will be released upon satisfactory completion and final inspection of the work. Invoices must bear the project name, project number, bid number, and purchase order number. The CITY has up to twenty-five (25) business days to review, approve and pay all invoices after receipt. CONTRACTOR shall invoice CITY and provide a written request to CITY to commence the one (1) year warranty period. All necessary Releases and Affidavits and approval of final payments shall be processed before the warranty period begins. All payments shall be governed by the Florida Prompt Payment Act, F.S., Part VII, Chapter 218.

- 4.3 To the extent that CONTRACTOR engages subcontractors to perform pursuant to this Agreement, CONTRACTOR shall be solely responsible for making payment to its subcontractors. CITY shall not have any obligation to pay or to see the payment of any monies to any subcontractor.

#### **ARTICLE 5 - WAIVER OF LIENS**

Prior to final payment of the amount due under the terms of this Agreement, a final waiver of lien shall be submitted by the CONTRACTOR, as well as all suppliers and subcontractors who worked on the project that is the subject of this Agreement. Payment of the invoice and acceptance of such payment by CONTRACTOR shall release CITY from all claims of liability by CONTRACTOR in connection with this Agreement.

#### **ARTICLE 6 - WARRANTY**

- 6.1 CONTRACTOR warrants its work against defect for a period of \_\_\_\_\_ year from the date of completion of the services herein required. In the event that defect occurs during this time, CONTRACTOR shall perform such steps as required to remedy the defects.
- 6.2 CONTRACTOR shall be responsible for any damages caused by defect to affected area or to interior structure. The \_\_\_\_\_ year warranty period does not begin until substantial completion of the entire project, and the subsequent release of any performance or payment bonds, which may be required by the original bid document.

#### **ARTICLE 7 - CHANGES IN SCOPE OF WORK**

- 7.1 CITY or CONTRACTOR may request changes that would increase, decrease, or otherwise modify the Scope of Services, as described in **Exhibits "A" and "B"**, attached hereto and by this reference made a part hereof, as more particularly described in Article 2 of this Agreement. These changes may affect the monthly compensation accordingly. Such changes or additional services must be in accordance with the provisions of the CITY's Code of Ordinances, and must be contained in a written amendment or change order, executed by the Parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.
- 7.2 In no event will the CONTRACTOR be compensated for any work which has not been described either herein or in a separate written agreement or change order executed by the Parties hereto.

#### **ARTICLE 8 - INDEMNIFICATION**

- 8.1 The CONTRACTOR shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from liability, losses or damages, including attorneys' 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 negligence, recklessness, or intentional wrongful misconduct of CONTRACTOR or its employees, agents, servants, partners, principals or subcontractors. The



- CONTRACTOR 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 attorneys' fees which may issue thereon.
- 8.2 CONTRACTOR's aggregate liability resulting from this Agreement shall not exceed the proceeds of insurance required to be placed pursuant to this Agreement plus the compensation received by CONTRACTOR.
- 8.3 Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.
- 8.4 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR.
- 8.5 Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or §768.28, Florida Statutes, as may be amended from time to time.

#### **ARTICLE 9 - INSURANCE**

- 9.1 The CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR 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.
- 9.2 CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONTRACTOR allow any subcontractor to commence work on any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.
- 9.3 Contractor agrees to maintain, on a primary non-contributory basis and at its sole expense, at all times during the life of this Agreement, the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Agreement. Any coverage maintained by the City shall apply excess of, or contingent upon the absence of, other insurance required or maintained by Contractor.
- 9.4 Commercial General Liability & Employers Liability: Consultant agrees to maintain Commercial General Liability at a limit of liability not less than \$1,000,000 each occurrence, \$2,000,000 annual aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Separation of Insured.
- 9.5 Worker's Compensation Insurance: Consultant agrees to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute, Chapter 440.
- 9.6 Comprehensive Auto Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the performance of work under the Agreement with a

combined single limit liability for bodily injury and property damage no less than: Any Auto (Symbol 1)

Combined Single Limit (Each Accident) - \$1,000,000

Hired Autos (Symbol 8)

Combined Single Limit (Each Accident) - \$1,000,000

Non-Owned Autos (Symbol 9)

Combined Single Limit (Each Accident) - \$1,000,000

9.7 Additional Insured: The Consultant agrees to endorse the City as an Additional Insured on the Commercial General Liability with the following, or similar endorsement providing equal or broader Additional Insured coverage, the CG 20 26 07 04 or GC 20 26 04 13 Additional Insured – Designated Person or Organization endorsements; or the CG 20 10 07 04 or GC 20 10 04 13 Additional Insured – Owners, Lessees, or Consultants endorsements in combination with the additional endorsement GC 20 37 07 04 or GC 20 04 13 Additional Insured – Owners, Lessees, or Consultants – Completed Operations shall be required to provide back coverage for the Consultant’s “your work” as defined in the policy and liability arising out of the products-completed operations hazard. The Additional Insured shall read “City of North Lauderdale.”

9.8 Waiver of Subrogation: Consultant agrees to provide a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Consultant to enter into a pre-loss agreement to waive subrogation without an endorsement, then Consultant agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Consultant enter into such an agreement on a pre-loss basis.

9.9 Certificate(s) of Insurance: Consultant agrees to provide City a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify City of a non-renewal or cancellation notice, when available by Consultant’s insurer. If the Consultant receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Consultant agrees to notify the City by fax and email as set forth in this Section within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance.

The certificate holder address shall read:

City of North Lauderdale

Attn: Risk

701 SW 71st Ave

North Lauderdale, FL 33068

9.10 Right to Revise or Reject: City reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverages and endorsements, or to reject

any insurance policies that fail to meet the criteria stated herein. Additionally, City reserves the right, but not the obligation, to review and reject any insurer providing coverage due of its poor financial condition or failure to operating legally.

## **ARTICLE 10 - NON-DISCRIMINATION & EQUAL OPPORTUNITY EMPLOYMENT**

During the performance of the Agreement, the CONTRACTOR shall not discriminate against any person in its operations, activities or delivery of services. The CONTRACTOR shall affirmatively comply with all applicable provisions of federal, state and local equal opportunity employment laws and shall not engage in or commit any discriminatory practices against any person based on race, age, religion, color, gender, pregnancy, sexual orientation, gender identity and expression, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

## **ARTICLE 11 - INDEPENDENT CONTRACTOR**

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the CONTRACTOR is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, State, Federal or United States policies, rules or regulations relating to the use of CONTRACTOR's funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

## **ARTICLE 12 - TERMINATION**

- 12.1 **Termination for Convenience.** This Agreement may be terminated by CITY for convenience, upon providing **THIRTY (30)** business days written notice to the CONTRACTOR for such termination in which event CONTRACTOR shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify CITY against loss pertaining to this termination.
- 12.2 **Default by CONTRACTOR.** In addition to all other remedies available to CITY, this Agreement shall be subject to cancellation by CITY for cause, should CONTRACTOR neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of **THIRTY (30)** days after receipt by CONTRACTOR of written notice of such neglect or failure.

- 12.3 This Agreement may be terminated by the CITY at any time before issuance of a Notice to Proceed. If this Agreement is cancelled in such manner, the CONTRACTOR shall not be entitled to compensation under this Agreement.

### **ARTICLE 13 - UNCONTROLLABLE FORCES**

- 13.1 Neither CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, pandemic, act of God, war, riot, civil disturbance, sabotage, and governmental actions.
- 13.2 Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

### **ARTICLE 14 - AGREEMENT SUBJECT TO FUNDING**

This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of North Lauderdale in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

### **ARTICLE 15 - GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all actions or claims arising out of or related to this Agreement shall be in Broward County, Florida.

### **ARTICLE 16 - SIGNATORY AUTHORITY**

CONTRACTOR shall provide CITY with copies of requisite documentation evidencing that the signatory for CONTRACTOR has the authority to enter into this Agreement.

### **ARTICLE 17 - MERGER; AMENDMENT**

This Agreement constitutes the entire Agreement between CONTRACTOR and CITY, and negotiations and oral understandings between the Parties are merged herein. This Agreement can be supplemented or amended only by a written document executed by both CONTRACTOR and CITY with the same formality and equal dignity herewith.

**ARTICLE 18 - DEFAULT OF CONTRACT & REMEDIES**

- 18.1 **Liquidated Damages.** As a breach of this Agreement would cause serious and substantial damage to CITY property, and the nature of this Agreement would render it impracticable or extremely difficult to fix the actual damage sustained by CITY by such breach, it is agreed that, in case of breach of service wherein CONTRACTOR fails to maintain the property, leaving the said property in disrepair, CITY may elect to collect liquidated damages for each such breach, and CONTRACTOR will pay CITY as liquidated damages, and not as penalty, \_\_\_\_\_ **DOLLARS AND ZERO CENTS (\$\_\_\_\_\_)** for every day of such malfunction. This sum is the agreed upon amount by which CITY will be damaged by the breach of such service. An election to seek such remedies shall not be construed as a waiver of any legal remedies CITY may have as to any subsequent breach of service under this Agreement.
- 18.2 **Correction of Work.** If, in the judgment of CITY, work provided by CONTRACTOR does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, CITY reserves the right to require that CONTRACTOR correct all deficiencies in the work to bring the work into conformance without additional cost to CITY, and replace any personnel who fail to perform in accordance with the requirements of this Agreement. CITY shall be the sole judge of non-conformance and the quality of workmanship.
- 18.3 **Default of Contract.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by CONTRACTOR:
- 18.3.1 The abandonment of the project that is the subject of this Agreement by CONTRACTOR for a period of more than seven (7) business days.
  - 18.3.2 The abandonment, unnecessary delay, refusal of, or failure to comply with any of the terms of this Agreement or neglect, or refusal to comply with the instructions of the CITY's \_\_\_\_\_ relative thereto.
  - 18.3.3 The failure by CONTRACTOR to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by CONTRACTOR, where such failure shall continue for a period of seven (7) days after written notice thereof by CITY to CONTRACTOR; provided, however, that if the nature of CONTRACTOR's default is such that more than seven (7) days are reasonably required for its cure, then CONTRACTOR shall not be deemed to be in default if CONTRACTOR commences such cure within said seven (7) day period and thereafter diligently prosecutes such cure to completion.
  - 18.3.4 The assignment and/or transfer of this Agreement or execution or attachment thereon by CONTRACTOR or any other party in a manner not expressly permitted hereunder.
  - 18.3.5 The making by CONTRACTOR of any general assignment or general arrangement for the benefit of creditors, or the filing by or against CONTRACTOR of a petition to have CONTRACTOR adjudged a bankruptcy, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CONTRACTOR, the same is dismissed within sixty (60) days); or the

appointment of a trustee or a receiver to take possession of substantially all of CONTRACTOR's assets, or for CONTRACTOR's interest in this Agreement, where possession is not restored to CONTRACTOR within thirty (30) days; for attachment, execution or other judicial seizure of substantially all of CONTRACTOR's assets, or for CONTRACTOR's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

- 18.4 **Remedies in Default.** In case of default by CONTRACTOR, CITY shall notify CONTRACTOR, in writing, of such abandonment, delay, refusal, failure, neglect, or default and direct CONTRACTOR to comply with all provisions of this Agreement. A copy of such written notice shall be mailed to the Surety on the Performance Bond. If the abandonment, delay, refusal, failure, neglect or default is not cured within seven (7) days of when notice was sent by CITY, CITY may declare a default of the Agreement and notify CONTRACTOR of such declaration of default and terminate the Agreement. The Surety on the Performance Bond shall within ten (10) days of such declaration of default, rectify or cause to be rectified any mismanagement or breach of service in the Agreement and assume the work of CONTRACTOR and proceed to perform services under the Agreement, at its own cost and expense.
- 18.4.1 Upon such declaration of default, all payments remaining due CONTRACTOR at the time of default, less all sums due CITY for damages suffered, or expenses incurred by reason of default, shall be due and payable to Surety. Thereafter the Surety shall receive monthly payments equal to those that would have been paid by the CONTRACTOR had the CONTRACTOR continued to perform the services under the Agreement.
- 18.4.2 CITY may complete the Agreement, or any part thereof, either by day labor or re-letting a contract for the same, and procure the equipment and the facilities necessary for the completion of the Agreement, and charge the cost of same to CONTRACTOR and/or the Surety together with the cost's incident thereto to such default.
- 18.4.3 In the event CITY completes the Agreement at a lesser cost than would have been payable to CONTRACTOR under this Agreement, if the same had been fulfilled by CONTRACTOR, CITY shall retain such differences. Should such cost to CITY be greater, CONTRACTOR shall pay the amount of such excess to the CITY.
- 18.4.4 Notwithstanding the other provisions in this Section, CITY reserves the right to terminate the Agreement at any time, whenever the service provided by CONTRACTOR fails to meet reasonable standards of the trade after CITY gives written notice to the CONTRACTOR of the deficiencies as set forth in the written notice within fourteen calendar (14) days of the receipt by CONTRACTOR of such notice from CITY.

## **ARTICLE 19 - BANKRUPTCY**

It is agreed that if CONTRACTOR is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective on the date and at the time the bankruptcy petition is filed.

## **ARTICLE 20 - DISPUTE RESOLUTION**

In the event that a dispute, if any, arises between CITY and CONTRACTOR relating to this Agreement, performance or compensation hereunder, CONTRACTOR shall continue to render service in full compliance with all terms and conditions of this Agreement as interpreted by CITY regardless of such dispute. CONTRACTOR expressly agrees that in the event of such a dispute, if any, it will not seek injunctive relief in any court, but will negotiate with CITY for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute, may present the matter to a court of competent jurisdiction in an appropriate suit therefore instituted by it or by CITY.

## **ARTICLE 21 - PUBLIC RECORDS**

21.1 The City of North Lauderdale is a public agency subject to Chapter 119, Florida Statutes. The CONTRACTOR shall comply with Florida's Public Records Laws. Specifically, the CONTRACTOR shall:

- 21.1.1 Keep and maintain public records required by the CITY to perform the service;
- 21.1.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- 21.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after the CONTRACTOR transfers the records in its possession to the CITY; and
- 21.1.4 Upon completion of the Agreement, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by the CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

21.2 The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the CITY shall enforce the Default in accordance with the provisions set forth herein.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE**

**PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
701 SOUTHWEST 71<sup>ST</sup> AVENUE  
NORTH LAUDERDALE, FL 33068  
(954) 724-7056  
[CITYCLERK@NLAUDERDALE.ORG](mailto:CITYCLERK@NLAUDERDALE.ORG)**

**ARTICLE 22 – FEDERAL REQUIREMENTS**

Notwithstanding anything to the contrary set forth herein, CONTRACTOR shall comply with the applicable federal required standard provisions, as set forth in 2 C.F.R. Sec. 200.326 and 2 C.F.R. Part 200. In the event of any conflicts, the provisions of 2 C.F.R. Sec. 200.326 and 2 C.F.R. Part 200 shall prevail. Any reference made to CONTRACTOR in this section shall also apply to any subcontractor under the terms of this Agreement. The prime contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with all of these contract clauses:

- 22.1 Equal Employment Opportunity.** During the performance of this contract, CONTRACTOR agrees as follows:
- 22.1.1 Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
  - 22.1.2 CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - 22.1.3 CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.
  - 22.1.4 CONTRACTOR will send to each labor union or representative of workers with



- which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 22.1.5 CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 22.1.6 CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 22.1.7 In the event of CONTRACTOR's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 22.1.8 CONTRACTOR will include the provisions of paragraphs (22.1.1 through 22.1.7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- 22.2 **Davis-Bacon Act**. CONTRACTOR shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor Regulations (29 CFR Part 5). In accordance with the statute, CONTRACTOR must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, CONTRACTOR must be required to pay wages not less than once a week.
- 22.3 **Copeland "Anti-Kickback" Act**. CONTRACTOR shall comply with the Copeland "Anti-Kickback" Act, (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). CONTRACTOR must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. City must report all suspected or reported violations to the Federal awarding agency.

- 22.4 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, pursuant to 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) CONTRACTOR must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.
- 22.4.1 **Overtime requirements.** No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 22.4.2 **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in this section, paragraph (i), the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (i) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (i) of this section.
- 22.4.3 **Withholding for unpaid wages and liquidated damages.** City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (ii) of this section.
- 22.4.4 **Subcontracts.** CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (22.4.1) through (24.4.4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (22.4.4) through (22.4.4) of this section.
- 22.5** CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the

Federal Water Pollution Control Act, as amended (33 U.S.C. 1251- 1387). City will report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

22.5.1 **Clean Air Act.** CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. CONTRACTOR agrees to report each violation to City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

22.5.2 **Federal Water Pollution Control Act.** CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONTRACTOR agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

22.6 **Suspension and Debarment.** This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000, as such CONTRACTOR is required to verify that none of the CONTRACTOR's agents, principals (defined at 2 C.F.R. § 180.995), or affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by City. If it is later determined that CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to State and City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

22.7 **Byrd Anti-Lobbying Amendment, as amended (31 U.S.C. § 1352).** CONTRACTOR shall file the required certification pursuant to 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

- 22.8 Compliance with State Energy Policy and Conservation Act.** CONTRACTOR shall comply with all mandatory standards and policies relating to energy efficiency contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- 22.9 Procurement of Recovered Materials.** The City and CONTRACTOR must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 22.10 Reporting.** Pursuant to 44 CFR 13.36(i)(7), ~~CONTRACTOR shall comply with federal requirements and regulations pertaining to reporting, including but not limited to those set forth at 44 CFR 40 and 41, if applicable. Furthermore, both parties shall provide the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative access to any books, documents, papers, and records of CONTRACTOR which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts, and transcriptions. Also, both Parties agree to provide FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the Agreement.~~
- 22.11 No Obligation by the Federal Government.**
- 22.11.1 Absent the express written consent by the Federal Government, the Federal Government is not a party to the Agreement and shall not be subject to any obligations or liabilities to the City, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Agreement.
- 22.11.2 CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- 22.12 Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that federal financial assistance will be used to fund the Agreement only. CONTRACTOR will comply with all applicable federal law, regulations, executive orders, policies, procedures, and directives.
- 22.13 Fraudulent Statements.** CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 applies to CONTRACTOR's actions pertaining to this Agreement.
- 22.14 Rights to Inventions.** CONTRACTOR agrees that if this Agreement results in any copyrightable materials or inventions, the Federal Government reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use the copyright of said materials or inventions for Federal Government purposes.
- 22.15 DHS Seal, Logo, and Flags.** CONTRACTOR shall not use DHS(s), logos,

crests, or reproductions of flags or likenesses of DHS agency officials without specific federal pre-approval.

- 22.16 Prohibition on Contracting for Covered Telecommunications Equipment or Services.** As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause.

**22.16.1 Prohibitions.** Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons. Unless an exception described below applies, the CONTRACTOR and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- 22.16.1.1** (Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- 22.16.1.2** Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- 22.16.1.3** Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- 22.16.1.4** Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

**22.16.2 Exceptions.**

- 22.16.2.1** This clause does not prohibit CONTRACTOR from providing: (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- 22.16.2.2** By necessary implication and regulation, the prohibitions also do not apply to: (i) Covered telecommunications equipment or services that: a. Are not used as a substantial or essential

component of any system; and b. Are not used as critical technology of any system. (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

- 22.16.3 **Reporting Requirement.** In the event CONTRACTOR identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the CONTRACTOR is notified of such by a subcontractor at any tier or by any other source, the CONTRACTOR shall report the following information to City: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within ten (10) business days of submitting the information to City CONTRACTOR shall report: Any further available information about mitigation actions undertaken or recommended. In addition, the CONTRACTOR shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services. The CONTRACTOR shall insert the substance of this clause, including this in all subcontracts and other contractual instruments.
- 22.17 **Domestic Preference for Procurements.** As appropriate, and to the extent consistent with law, the CONTRACTOR should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- 22.18 **Affirmative Socioeconomic Steps.** If subcontracts are to be let, CONTRACTOR is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses.
- 22.19 **License and Delivery of Works Subject to Copyright and Data Rights.** If applicable, the CONTRACTOR grants to City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, CONTRACTOR will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data

first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, CONTRACTOR will deliver to the CONTRACTOR data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by CONTRACTOR.

## ARTICLE 23 - MISCELLANEOUS

- 23.1 **Ownership of Documents:** Reports, surveys, studies, and other data provided in connection with this Agreement are and shall remain the property of CITY, whether or not the project for which they are made is completed.
- 23.2 **Legal Representation:** It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both Parties.
- 23.3 **Records:** CONTRACTOR shall keep such records and accounts and require any and all subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONTRACTOR expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of ten (10) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries.
- 23.4 **Assignments; Amendments:** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns.
- 23.5 **No Contingent Fees:** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- 23.6 **Notice:** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been



changed by written notice in compliance with the provisions of this section. For the present, CONTRACTOR and CITY designate the following as the respective places for giving of notice:

**CITY:** Michael Sargis, City Manager  
 City of North Lauderdale  
 701 SW 71<sup>st</sup> Avenue  
 North Lauderdale, FL 33068  
 Telephone No.: (954) 722-0900

**COPY TO:** Samuel S. Goren, City Attorney  
 Goren, Cherof, Doody & Ezrol, P.A.  
 3099 East Commercial Boulevard, Suite 200  
 Fort Lauderdale, Florida 33308  
 Telephone No. (954) 771-4500  
 Facsimile No. (954) 771-4923

**CONTRACTOR:** \_\_\_\_\_

FIN/EIN:  
 Contact:  
 Telephone No.:

- 23.7 **Binding Authority:** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- 23.8 **Headings:** Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.
- 23.9 **Exhibits:** Each exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits, if not physically attached, should be treated as part of this Agreement and are incorporated herein by reference.
- 23.10 **Severability:** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.
- 23.11 **Extent of Agreement:** This Agreement represents the entire and integrated Agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral.



- 23.12 **Conflict:** In the event of any conflict or ambiguity by and between the requirements of this Agreement, and Exhibit “A”, and Exhibit “B”, the terms of this Agreement shall prevail, followed by Exhibit “A” and Exhibit “B”.
- 23.13 **Waiver:** Failure of CITY to insist upon strict performance of any provision or condition of this Agreement, or to execute any right there in contained, shall not be construed as a waiver or relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.
- 23.14 **Attorneys' Fees:** In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.
- 23.15 **Protection of City Property:** At all times during the performance of this Agreement, CONTRACTOR shall protect CITY's Property from all damage whatsoever on account of the work being carried on under this Agreement.
- 23.16 **Counterparts and Execution:** This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same Agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.
- 23.17 **Compliance with Statutes:** It shall be the CONTRACTOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, CITY, state, and federal agencies as applicable.
- 23.18 **Scrutinized Companies:** By execution of this Agreement, CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:
- 23.18.1 Any amount of, at the time bidding on, submitting a proposal for, or entering into or renewing such Contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or
- 23.18.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such Contract, the company:
- 22.18.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Terrorism Sector List, created pursuant to Section 215.473, Florida Statutes; or
- 22.18.2.2 Is engaged in business operations in Syria.
- 23.19 **E-Verify:** CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

22.19.1 **Definitions for this Section:**

- 22.19.1.1 "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.
- 22.19.1.2 "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.
- 22.19.1.3 "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

22.19.2 **Registration Requirement; Termination:** Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors shall register with and use the E-Verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security' s E-Verify System to verify the employment eligibility of:

- 22.19.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the Contract; and
- 22.19.2.2 All persons (including subvendors/ subconsultants/ subcontractors) assigned by Contractor to perform work pursuant to the Contract with the City of North Lauderdale. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security' s E-Verify System during the term of the Contract is a condition of the Contract with the City of North Lauderdale; and
- 22.19.2.3 The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the Contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of Contract and may not be considered as such. If this Contract is terminated for a violation of the statute by the Contractor, the



Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

**SIGNATURE PAGE FOLLOWS**

SAMPLE



**IN WITNESS OF THE FOREGOING**, the Parties have set their hands and seals the day and year first written above.

**ATTEST:**

**CITY OF NORTH LAUDERDALE:**

\_\_\_\_\_  
ELIZABETH GARCIA-BECKFORD  
CITY CLERK

Signed by: \_\_\_\_\_  
MICHAEL SARGIS, CITY MANAGER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

\_\_\_\_\_  
OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_  
DATE

**ATTEST:**

**CONTRACTOR:**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
COMPANY NAME

Signed By: \_\_\_\_\_  
SIGNATURE OF PRESIDENT

\_\_\_\_\_  
NAME

\_\_\_\_\_  
NAME OF PRESIDENT

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

(CORPORATE SEAL)



## CORPORATE ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ on behalf of \_\_\_\_\_, a \_\_\_\_\_. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
(Name of Notary Typed, Printed or Stamped)

\_\_\_\_\_  
Title or Rank

\_\_\_\_\_  
Serial number, if any

SAMPLE