



General Terms and Conditions

1. **GENERAL CONDITIONS:** The Bidders/Vendors hereby declare they have carefully read the solicitation and its provisions, terms and conditions covering the equipment, materials, supplies or services as called for, and fully understand the requirements and conditions. We certify the solicitation is made without prior understanding, agreement, or connection with any corporation, firm, entity, or person submitting a bid for the same goods/services (unless otherwise specifically noted), and is in all respects fair and without collusion or fraud. We agree to be bound by all of the terms and conditions of this solicitation and certify we are authorized to sign this bid for the Bidder.

It is the Bidder's responsibility to assure your bid is submitted by the proper day and time. Any/all bids received after the date and time specified will not be accepted.

2. **SIGNED BID CONSIDERED AN OFFER AND ACCEPTANCE:** The contents of the submitted bid/response of the successful Bidder will become their contractual obligation when said offer is accepted with approval by the City of Ocala (City). Failure of the successful Bidder to accept these obligations may result in cancellation of the award, along with such Bidder being removed from future participation. The City reserves the right to request the Bidder modify their bid/response to more fully meet the needs of the City. In case of default on the part of the Bidder after such acceptance, the City may take such action, as it deems appropriate including legal action for damages or specific performance. A signed bid response includes electronic signatures and initials.
3. **SOLICITATION DOCUMENTS:** The City of Ocala (City) has no responsibility for the accuracy, completeness or sufficiency of any bid documents obtained from any source other than the official City links below:

Bid Ocala: <http://www.bidocala.com/>

ProRFx: <http://prorfx.com/>

Obtaining these documents from any other source(s) may result in obtaining incomplete and inaccurate information. Obtaining these documents from any source other than directly from the source listed herein may also result in failure to receive any addenda, corrections, or other revisions to these documents that may be issued.

4. **SUBMISSION OF MULTIPLE BIDS/RESPONSES:** No Bidder may submit multiple bids/responses. Only one (1) submittal will be accepted per individual owner(s)/partners.
5. **BID EVALUATION:** The evaluation of bids and the determination as to equality of products offered shall be the responsibility of the City, and will be based on information furnished by the Bidder.
6. **MISTAKES:** Bidders are expected to examine the specifications, delivery schedule, bid prices, extensions and all instructions pertaining to supplies and services. Failure to do so will be at Bidder's risk. In case of mistake in extension, the unit price will govern.
7. **ADDITION/DELETION:** The City of Ocala reserves the right to add to or delete any item from a bid or resulting award when deemed to be in the best interest of the City.
8. **COST INCURRED IN RESPONDING:** All costs directly or indirectly related to bid response preparation, representation or clarification shall be the sole responsibility of, and be borne by, the Bidder.
9. **GENERAL INDEMNITY:** Bidder/Vendor shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the activities contemplated by an Agreement including, without limitation, harm or personal injury to third persons during the term of an Agreement to the extent attributable to the actions of Vendor, its agents, and employees.
10. **PATENT AND ROYALTY INDEMNITY:** The Vendor, without exception, shall indemnify and save harmless the City, its officers, agents and employees from liability of any nature of kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the City. If

the Vendor uses any design, device, or materials covered by letters of patent or copyright, it is mutually agreed and understood without prices shall include all royalties or cost arising from the use of such design, device, or materials in any way used in performance of the Vendor's work.

11. **NO WAIVER OF SOVEREIGN IMMUNITY:** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under an Agreement and shall be fully binding until any proceeding brought under an Agreement is barred by any applicable statute of limitations.
12. **INDEPENDENT CONTRACTOR STATUS:** City expressly acknowledges Vendor is an independent contractor, and nothing in these term and conditions or resulting contract is intended nor shall be construed to create an agency relationship, an employer/employee relationship, a joint venture relationship, or any other relationship allowing the City to exercise control or discretion over the manner or method by which Vendor performs hereunder.
13. **ATTORNEYS' FEES:** If any civil action, arbitration or other legal proceeding is brought for the enforcement of an Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of an Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.
14. **JURY WAIVER:** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO AN AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
15. **GOVERNING LAW:** Any resulting Agreement shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
16. **JURISDICTION AND VENUE:** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of an Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to an Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in an Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
17. **RIGHTS OF THIRD PARTIES:** Nothing in an Agreement, whether express or implied, is intended to confer any rights or remedies under or because of an Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in an Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to an Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to an Agreement.
18. **RFP/ITN/LOI SELECTION PROCESS (if applicable):** In general, the City wishes to avoid the expense (to the City and to proposing firms) of unnecessary presentations. Therefore, the City will make every reasonable effort to achieve the ranking/selection using written submittals alone. If no single top-ranked firm can be clearly identified by review of the written submittals alone, the City may shortlist proposals and require those Proposers to make oral presentations, participate in interviews, or answer questions.

These presentations, interviews, and questions would provide an opportunity for the Proposer to demonstrate their qualifications, approach to the project, and ability to furnish the required services. If required, presentations would be to an evaluation committee and/or City Council members and Mayor.

The City reserves the right to conduct personal interviews or require presentations of any or all Proposers prior to selection. The City will not be liable for any costs incurred by the Proposer in connection with such interviews/presentations (i.e., travel, accommodations).

19. **RFP/ITN/LOI SELECTION COMMITTEE (if applicable):** The committee may consist of representatives from the City of Ocala, and other appropriate representatives. The City reserves the right to adjust the makeup of the selection committee. The evaluation and selection schedule will be announced either within the solicitation document, or with the posting of a Public Notice.
20. **RFP/ITN/LOI AWARD (if applicable):** The City anticipates award to the firm who submits a proposal judged by the City to be the most advantageous. The City reserves the right to make award(s) by individual service/item, aggregate or none, or a combination thereof; to cancel the solicitation, reject any and all proposals, or waive any minor irregularity or technicality in proposals received. The Proposer understands a solicitation does not constitute an agreement or a contract with the Proposer.
21. **BID AWARDS:** The City reserves the right to make award(s) by individual item, aggregate or none, or a combination thereof; with one or more suppliers; to cancel the bid, reject any and all bids, or waive any minor irregularity or technicality in bids received. When it is determined there is no competition to the lowest responsive Bidder, evaluation of other bids is not required. Bidders are cautioned to make no assumptions unless his/her bid has been evaluated as being responsive. The City reserves the right to make an award to more than one Bidder.
22. **BID AWARDS CRITERIA:** Award(s) of bid will be made based upon the lowest bid meeting specifications, after taking into account all other considerations and mandatory requirements:
 - A. Compliance to the specifications.
 - B. Cost.
 - C. Warranty (if applicable).
 - D. Delivery.
 - E. Past Experience.
 - F. Drug Free Workplace Affidavit.
 - G. Certified DBE Vendor/subcontractors.
23. **AWARD OF TIE BIDS:** A thorough review of all tie bids shall be conducted by the Buyer. Award recommendations shall be based upon the following:
 - A. Delivery dates.
 - B. Location of the Vendor.
 - C. Certified DBE Vendor/subcontractors.

In case of a tie, the Vendor who is a certified DBE/WBE/MBE or veteran owned business; or has the highest percentage of DBE participation will be awarded the bid. In the cases where the tie bid cannot be awarded as explained above, a coin toss will be conducted. The coin toss will be conducted by the Buyer with one witness.
24. **AWARD TO NEXT RATED BIDDER:** In the event of default by the awarded Vendor, the City reserves the right to utilize the next rated Bidder meeting specifications as the new awarded Vendor. In the event of this occurrence, the next rated Bidder meeting specifications shall be required to provide the bid items at the prices as contained on their proposal or bid for this specification.
25. **AMENDMENTS TO BID:** If it becomes necessary to revise or amend any part of a Bid, the Buyer will furnish the revision by written Addendum, Comment, and/or Questions and Answers. Any addenda, comment, and questions and answers will be posted on the City's e-Procurement System, ProRFx at <http://prorfx.com/> or <http://www.bidocala.com/> under the appropriate solicitation. Addenda, Comments, and Questions and Answers, should be reviewed and accepted by the Bidder however; lack of review does not excuse the Bidder from adherence to any amendments to the bid.
26. **BID REJECTION:** City reserves the right to reject any or all Bids, including without limitation the rights to reject any or all non-conforming, non-responsive, unbalanced, or conditional Bids. City further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsive.

27. **POSTPONEMENT OF BIDS:** If there is a discrepancy with the scope of work or unit of measure that would be unfair to the Bidders, the City of Ocala may postpone the bid opening at any time in order to make corrections. City further reserves the right to extend the bid opening at any time during the bid process.
28. **BID PROTESTS:** Any Bidder who disputes the reasonableness, necessity or competitiveness of the terms and conditions of a solicitation, bid selection, contract award or intended contract award shall file such protest in compliance with the City of Ocala Procurement Policy found at www.bidocala.com.
29. **QUOTE DISPUTE:** Any Bidder who disputes the reasonableness, necessity or competitiveness of the terms and conditions of the Request for Quote, specifications, selections, award or intended award shall file such dispute with the Buyer. If the Buyer cannot provide resolution or satisfaction to the Bidder, then the dispute will be forwarded to the Procurement Director, who has final authority to resolve quote disputes.
30. **CONTRACT CHANGES:** No changes, over the contract/award period, shall be permitted unless prior written approval is given by the Procurement and Contracting Department and, where applicable, confirmed through formal acceptance by the City Council.
31. **VENDOR CONTRACTS:** Vendor contracts/agreements will generally not be accepted. Vendors will be required to sign a City of Ocala Agreement. The requirement of a vendor contract/agreement may result in bid rejection.
32. **MINIMUM ORDER:** If Bidder wishes to set a minimum order amount, he/she must indicate so within the bid response and will be considered only if determined to be in the best interest of the City.
33. **DELIVERY:** Bidder agrees to furnish and deliver as indicated, FOB CITY OF OCALA FACILITY LOCATION, with all transportation charges prepaid, and for the prices quoted/bid. Delivery date and warranties must be written out and submitted with bids. We insist delivery dates, as specified, be met.
34. **CONDITION AND PACKAGING:** It is understood and agreed any item offered or shipped as a result of any bid shall be new (current model at the time of the bid). All containers shall be suitable for storage or shipment, and all prices shall include standard commercial packaging.
35. **INVOICING AND PAYMENT:** Typical City payment terms are thirty (30) days net from receipt of invoice unless an appropriate prompt payment law or discount is provided and accepted. Florida Law requires timely payment for both construction and non-construction services.
- Monthly actual payment reporting requirements for prime contractors and consultants are based on prompt payment rules and laws. The same holds true for return of retainage after the sub-contractor has completed its work, not when the overall project is finished.
- Generally, invoices for construction contracts must be paid within 25 days of receipt; and shall be made no later than the time periods established by Section 218.735, Florida Statutes.
- Invoices for consultant contracts are payable per the contract terms, but shall not exceed federal regulations in **49 CFR 26.29** that requires payment of all subcontractors for satisfactory performance within thirty (30) days of payment to the Prime.
- All invoices shall bear the purchase order number or City of Ocala contract number. Payment for partial shipments may not be made unless specified in the bid. In addition to the purchase order or contract number, the invoice shall bear the Vendor FEID number (Federal Employer Identification Number). An original invoice shall be submitted to address listed on purchase order or contract.
- Failure to follow these instructions may result in delay in processing invoices for payment. In addition, the purchase order or contract number must appear on bills of lading, packages, cases, delivery list and correspondence.
36. **NON-FUNDING CLAUSE:** In the event sufficient budgeted funds are not available or depleted, the City shall notify the Vendor of such occurrence, and contract shall terminate without penalty or expense to the City.
37. **PAYMENT; ELECTRONIC PAYMENT:** Payment will be made by the City after all work has been performed and inspected and found to be in complete compliance with the specifications. The City of Ocala now requires awarded firms to accept payments as

electronic EFT credits into a designated company bank account. The City will compensate the Vendor using an EFT payment or VISA payment, see section below.

38. **VISA ACCEPTANCE:** The City of Ocala has implemented a Procurement card program, using the Visa platform. Vendors may receive payment from the City by the Procurement card in the same manner as other Visa purchases. Visa acceptance is preferred but is not the exclusive method of payment.
39. **PRICES, TERMS, AND PAYMENT:** Firm prices shall be bid and include all services rendered to the purchaser.
 - A. **TAXES:** The City of Ocala does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The following exemption number appears on the face of the purchase order: Florida Sales Tax Exemption Number: 85-8012621655C-9, Federal Tax Number 59-6000392.
 - B. **DISCOUNTS:** Cash discount for prompt payment shall not be considered in determining the lowest net cost for bid evaluation purposes.
40. **EXCESS FUNDS:** Any party receiving funds paid by City shall promptly notify City of any funds erroneously received upon the discovery of such erroneous funds receipt. Any such excess funds shall be refunded to City with interest calculated from the date of the erroneous payment or overpayment at the interest rate for judgments at the highest rate as allowed by law.
41. **QUANTITIES:** The quantities as specified in solicitations are estimates only and are not to be construed as guaranteed minimums.
42. **DISPUTES:** In case of any doubt or difference of opinion as to the items to be furnished hereunder; the decision of the City shall be final and binding on both parties.
43. **AUDIT:** Vendor shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
44. **EXTENSION:** In addition to any extension options contained herein, the City of Ocala is granted the right to extend any award resulting from this bid for the period of time necessary for the City to release, award and implement a replacement bid for the goods, products and/or services provided through this bid. Such extension shall be based upon the same prices, terms and conditions as existing at the time the City of Ocala exercises this extension right.
45. **ASSIGNMENT:** The rights, obligations, and duties of the Vendor and City pursuant to a Solicitation/Agreement are restricted solely to the terms contained within and shall not be assigned or transferred without the express, written authorization of the other party. Any attempted assignment will be void and of no effect.
46. **CITY'S RIGHT TO WITHHOLD PAYMENT:** In the event City becomes informed that any representations of Vendor provided in its monthly billing, are wholly or partially inaccurate, City may withhold payment of sums then or in the future otherwise due to Vendor until the inaccuracy and the cause thereof, is corrected to City's reasonable satisfaction. In the event City questions some element of an invoice, that fact shall be made known to Vendor immediately in writing. Vendor will help effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by City shall be paid to the Vendor.
47. **GRATUITIES:** Vendor shall not, either directly or indirectly: (1) offer, give or provide any tangible item of value to anyone as consideration for any City employees' decision, opinion, recommendation, vote or other exercise of discretion or violation of a known legal duty, or (2) offer, give, or agree to give to anyone a tangible item of value for the benefit of, or at the direction or request of any City employee.
48. **USE OF OTHER CONTRACTS:** The City of Ocala reserves the right to utilize any City of Ocala contract, State of Florida Contract, city or county governmental agencies, school board, community college/state university system cooperative bid agreement. The City of Ocala reserves the right to separately bid any single order or to purchase any item on the bid if it is in the best interest of the City of Ocala.
49. **CANCELLATION FOR DEFAULT:** Any resulting contract is critical to the City of Ocala and the City reserves the right to immediately cancel or annul whole or any part of a contract due to failure of the Vendor to carry out any obligation, term, or condition of the contract. The City will issue a written notice of default effective at once and not deferred by any interval of time. Default shall be for acting or failing to act as in any of the following:

- A. The Vendor provides material that does not meet the specifications of the contract;
- B. The Vendor fails to adequately perform the services set forth in the specifications of the contract;
- C. The Vendor fails to complete the work required or furnish the materials required within the time stipulated in the contract;
- D. The Vendor fails to make progress in the performance of the contract and/or gives the City reason to believe the Vendor will not, or cannot, perform to the requirements of the contracts.

The City may resort to any single or combination of the following remedies:

- A. Cancel any contract;
- B. Reserve all rights or claims to damage for breach of any covenants of the contract;
- C. Perform any test or analysis on materials for compliance with the specifications of the contract. If the results of any test or analysis find a material non-compliance with the specifications the actual expense of testing will be borne by the Vendor;
- D. In case of default, the City reserves the right to purchase materials, or to complete the required work in accordance with the needs of the City. The City may recover any actual excess costs from the Vendor by:
 - 1. Deduction from an unpaid balance;
 - 2. Collection against the bid and/or performance bond, or;
 - 3. Any combination of the above or any other remedies as provided by law.

50. **SUSPENSION OF PAYMENT AND/OR TERMINATION:** Payment of the amounts due under any resulting contract will be made on a monthly basis. Payments will be made by the City at the end of each satisfactory month of service. Should Vendor fail to perform the service required under a contract then the City may, at its option, retain any, or all, of the monthly payment otherwise due until any service discrepancies are corrected. Repeated service discrepancies on behalf of the Vendor shall entitle the City to terminate this contract without notice, and retain any past due payments otherwise owing under this contract as liquidated damages.

51. **FORCE MAJEURE:** Neither party shall be responsible for damages or delays caused by Force Majeure or other events beyond the reasonable control of the party and which could not reasonably have been anticipated or prevented.

Force Majeure includes, but is not limited to, war, terrorism, riots, epidemics, fire, acts of nature, strikes, lockouts, court orders, and acts, orders, laws, or regulations of the government of the United States or the several states, prohibiting or impeding any party from performing its respective obligations under any contract.

If Force Majeure occurs, the parties shall mutually agree on the terms and conditions upon which services may continue. Should Vendor be delayed in the commencement, performance, or completion of the Work due to any of the conditions under this section, Vendor shall be entitled to an extension of time only, provided however, that in no event shall Vendor be entitled to any increased costs, additional compensation, or damages of any type resulting from such Force Majeure delays.

52. **SAFETY STANDARDS:** Unless otherwise stipulated in the bid, all manufactured items and fabricated assemblies shall comply with applicable requirements of the Federal Occupational Safety and Health Act (OSHA), American National Standards Institute Safety Standards, and any Florida standards thereunder.

53. **SAFETY DATA SHEETS:** Vendor, delivering any toxic substance item defined in §1013.49, Florida Statute, shall furnish a Safety Data Sheet (SDS) to the Procurement Department. SDS's shall be provided with the first available shipment of each hazardous material as they become available in addition to file copies to the Procurement Department.

SDS must include the following information:

- A. The chemical name and the common name of the toxic substance.
- B. The hazards or other risks in the use of the toxic substance, including:
 - 1. The potential for fire, explosion, corrosion and reactivity.
 - 2. The known acute and chronic health effects of risks from exposure, including the medical conditions, which are generally recognized as being aggravated by exposure to the toxic substance,
 - 3. The primary route of entry and symptoms of overexposure.
- C. The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substance; including appropriate emergency treatment in case of overexposure.
- D. The emergency procedure for spills, fire, disposal, and first aid.
- E. A description in lay mans terms of known specific potential health risks posed by the toxic substance intended to alert any person reading the information.
- F. The year and month, if available, that the information was compiled and the name, address and emergency telephone number of the manufacturer responsible for preparing the information.

Vendors must comply with this procedure along with the Florida Right-to-Know law (F.S. 442) and the Federal Hazard Communications Standards (29 CFR 1910.1200) all other applicable laws.

54. **SAFETY AND ENVIRONMENTAL:** Vendor is responsible at all times for precautions to achieve the protection of all persons including employees and property. The Vendor shall make special effort to detect hazardous conditions and shall take prompt action where necessary to avoid accident, or injury to their employees, or property damage. EPA, DEP, OSHA, and all other applicable safety laws and ordinances shall be followed as well as American National Standards Institute Safety Standards. All hazardous spills, accidents, injuries or claims or potential claims shall be reported promptly to the City Risk Management Department.
55. **WORKSITE AND PROTECTION:** The Vendor shall keep the premises free from accumulation of waste materials, rubbish and other debris resulting from the work. At the completion of the work, they shall remove all waste materials, rubbish and debris from and about the premises, as well as tools, equipment and shall leave the site clean. The Vendor shall restore to their original conditions those portions of the site not designated for alteration by the work.
56. **MANUFACTURER'S NAME AND APPROVED EQUIVALENTS:** Any manufacturer's names, trade names, brand names, information and/or catalog numbers listed in a specification are for information, and not intended to limit competition unless otherwise indicated. The Bidder may offer any brand for which he/she is an authorized representative, which meets or exceeds the bid specification for any item(s). If bids are based on equivalent products, indicate on the bid form the manufacturer's product name and reference number. Bidder shall submit with their bid/proposal: cuts, sketches, and descriptive literature, and/or complete specifications. Reference to literature submitted with a previous bid will not satisfy this provision. The Bidder shall explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids which do not comply with these requirements are subject to rejection. Bids lacking any written intent to quote an alternate brand will be considered in compliance with the exact specifications as listed on the bid form. The City's Buyer is to be notified of any proposed changes in (a) materials used, (b) manufacturing process, or (c) construction. The City is under no obligation to accept alternate brands that don't clearly conform to the City's requested specifications.
57. **NON-CONFORMANCE TO CONTRACT CONDITIONS:** Items may be tested/inspected for compliance with specifications by appropriate testing laboratories. The data derived from any tests for compliance with specifications are public records and open to examination thereto in accordance with Chapter 119, Florida Statutes. Items delivered not conforming to specifications may be rejected and returned at Vendor's expense. These items and items not delivered as per delivery date in bid and/or purchase order may result in the Vendor being found in default in which event any and all re-procurement costs may be charged against the defaulting Vendor.
58. **DELAYS AND DAMAGES:** The Vendor agrees to make no claim for extra or additional costs attributable to any delays, inefficiencies, or interference in the performance of this contract occasioned by any act or omission to act by the City except as provided in the agreement. The Vendor also agrees that any such delay, inefficiencies, or interference shall be compensated for solely by an extension of time to complete the performance of the work in accordance with the provision in the standard specification.
59. **SERVICE AND WARRANTY:** Unless otherwise specified, the Vendor shall define all warranty service and replacements that will be provided during and subsequent to the award of the contract. Vendor must provide complete written manufacturers' warranties to the City of Ocala Project Manager before final payment will be authorized.
60. **SAMPLES:** Samples of items, when called for, shall be furnished free of expense, and if not destroyed, may, upon request, be returned at the Bidder's expense. Each individual sample shall be labeled with Bidder's name, manufacturer's brand name and number, bid number and item reference. Samples of successful Bidder's items may remain on file for the term of the contract. Request for return of samples shall be accompanied by instructions, which include shipping authorization and name of carrier, and must be received at time of bid opening. If instructions are not received at this time, the samples shall be disposed of by the City within a reasonable time as determined appropriate by the City.
61. **INSPECTION, ACCEPTANCE AND TITLE:** Title and risk of loss or damage to all items shall be the responsibility of the Vendor until received and accepted by the City. All goods and/or services provided under this Agreement are subject to inspection and acceptance upon receipt or completion by an authorized representative of City. Payment shall not be authorized until the goods and/or services have been received, accepted, and properly invoiced. City reserves the right to have rejected goods replaced by Vendor at the purchase price stipulated in this Agreement; or to return the rejected goods for full credit at the price charged.

Transportation costs and any additional costs will be borne by Vendor in each instance. City's rights with respect to rejection of material are not waived by failure to notify Vendor promptly upon receipt of delivery.

62. **CERTIFICATION FOR INSTALLERS:** All Bidders submitting bids on installation must supply WRITTEN FACTORY CERTIFICATION that they are an authorized/certified installer for the product. Failure to supply this documentation with the bid proposal may result in bid rejection at the City's will.
63. **UNDERWRITERS' LABORATORIES:** Unless otherwise stipulated in the solicitation, all manufactured items and fabricated assemblies shall be UL-listed; or have passed the examination testing, where such has been established by UL for the items offered and furnished.
64. **PRODUCT RECALL:** Vendor assumes full responsibility of prompt notification to the City's Procurement and Contracting Department of any product recall in accordance with the applicable State and Federal regulations. Vendor shall, at the option of the City, either reimburse the purchase price or provide the equivalent replacement product at no additional cost. Vendor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the using department.
65. **GOVERNMENTAL RESTRICTIONS:** In the event any governmental restrictions may be imposed which would necessitate alteration of the material quality, workmanship, or performance of the items or services offered to the City prior to their delivery, it shall be the responsibility of the supplier to notify the Procurement and Contracting Department at once, indicating the specific regulation which required an alteration. The City reserves the right to accept any such alteration, including any price adjustments occasioned thereby, or to cancel the contract at no expense to the City.
66. **COMPLIANCE WITH OTHER LAWS:** Applicable provisions of all federal, state and local laws and ordinances, and all City rules and regulations shall govern the quality and warranty of commodities covered by all bids received and shall govern any and all claims and disputes between person(s) submitting a bid response to the City, by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any Bidder shall not constitute a cognizable defense against the legal effect thereof.
67. **RULES, REGULATIONS, LAWS, ORDINANCES, AND LICENSES:** The Vendor agrees it shall observe and obey all the laws, ordinances, regulations and rules of the federal, state, county and City, which may be applicable to its services. Likewise, Vendor shall obtain and maintain all permits, certifications, and licenses necessary for its performance of any resulting contract.
68. **PUBLIC RECORD LAW:** Correspondence, materials and documents received pursuant to a solicitation become public records subject to the provisions of Chapter 119, Florida Statutes.
69. **ADVERTISING/PUBLICITY:** In submitting a bid/proposal, Bidder agrees not to use the City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
70. **BANKRUPTCY:** In the event of bankruptcy, either voluntary or involuntary of the Vendor, or in the event of the Vendor's insolvency, or upon assignment for the benefit of creditors, then, in any such event, the City shall have the right to terminate the contract and any purchase orders immediately as if the contract and purchase orders had not been made, and no assignment for the benefit or creditors, nor any receiver, nor any trustee of bankruptcy, shall ever have any right or claim under the terms hereof.
71. **PUBLIC ENTITY CRIMES:** Vendor on its behalf and its affiliates agrees and affirms that it has not been placed on the convicted vendor list following a conviction of a public entity crime as provided for in Section 287.133(2)(a), Florida Statutes, which states that a person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid 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 or real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO, for a period of 36 months from the date of being placed on the convicted vendor list.
72. **IMMIGRATION LAWS:** City of Ocala will not intentionally award City Contracts to any Vendor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 a(e), Section 274A(e) of the Immigration and Nationality Act ("INA"). City of Ocala shall consider the employment by any Vendor of unauthorized

aliens a violation of Section 274A(e) of the INA. Such violation by the recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of the Contract by the City of Ocala.

73. **E-VERIFY:** In accordance with Executive Order 11-116, Vendor shall utilize the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of an Agreement. Vendor shall also require all subcontractors performing work under an Agreement to utilize the E-Verify system for any employees they may hire during the term of an Agreement.
74. **DRUG FREE WORKPLACE:** Pursuant to Florida Statutes 287.087, each Vendor shall agree to comply with the requirements of a Drug Free Workplace.
75. **CONFLICT OF INTEREST/OFFICER AND EMPLOYEE DISCLOSURE REQUIREMENT:** The award hereunder is subject to the provisions of Chapter 112, Florida Statutes, as amended, governing conflict of interest. All Bidders must disclose with each bid the name of any officer, director or agent who is also a public employee. Further, all Bidders must disclose the name of any public employee who owns directly or indirectly an interest of five percent (5%) or more in the Bidder's firm or any of its branches. City of Ocala municipal employees, appointed persons, and elected officials (herein referred to as "employees") may engage in outside activities and hold financial interests subject to the requirements of City of Ocala Employee Handbook regulations, state law, and federal regulations and law, if applicable. Every employee who is an officer, director, agent, employee, or owner of a substantial interest in any business entity which does or anticipates doing business with the City of Ocala ("City") must complete an "Officer and Employee Disclosure Statement" and file the statement with the required procurement documents submitted to the respective Buyer. A statement must be submitted with every procurement response.
76. **COLLUSION:** The Bidder, by submitting a bid response, agrees to the following: "Bidder certifies their bid is made without previous understanding, agreement, or connection with any person, firm, or corporation making a bid for the same items and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action".
77. **USE OF PREMISES:** The Vendor shall confine their equipment, the storage of materials and equipment and the operations of their workers to areas permitted by law, ordinances, permits or at the direction of assigned City staff, and shall not unreasonably encumber the premises with materials or equipment.
- The Vendor shall not load nor permit any part of any structure to be loaded with weights that will endanger the structure, nor shall they subject any part of the work area to stress or pressures that will endanger or damage City property.
78. **CARE OF WORK:** The Vendor shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the scope of work and shall be responsible for the proper care and protection of all work performed until completion and final acceptance, whether or not the same has been covered in whole or in part by payments made by the City of Ocala.
- The Vendor shall avoid damaging sidewalks, streets, curbs, pavements, utilities, structures or any other property (except that which is to be replaced or removed) either on or adjacent to the site. Vendor shall repair, at its' own expense and in manner satisfactory to the City of Ocala, any damage thereto caused by his operations.
79. **VENDOR'S EMPLOYEES:** All employees of the Vendor shall be considered to be at all times the sole responsibility of the Vendor, under their sole direction and supervision and not an employee or agent of the City of Ocala, the Vendor shall supply competent and physically capable employees. The City of Ocala reserves the right to require the Vendor to remove any employee it deems careless, incompetent, abusive, obstructive, insubordinate, or otherwise objectionable and whose continued employment on City of Ocala property is not in the best interest of the City. In doing any work as a result of this solicitation, eight (8) hours shall constitute a legal day's work by any laborer or workman employed by Vendor.
80. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES:** During the performance of the contract, the Vendor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation or veteran status and will take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.

81. **ANTI-LOBBYING/COMMUNICATION WITH CITY STAFF AND OFFICIALS:** To ensure fair consideration for all Bidders/Proposers, the City strictly prohibits any communication, whether or not written, verbal, or through a third party, relative to this solicitation with any department, City official, City Council member, or employee during the submission process, except inquiries directly made to the Procurement Department, or as provided in the protest policy. Additionally, the City prohibits communications initiated by a Proposer/Bidder, or agent, or third party of Proposer/Bidder to any City official(s), City Council member(s), or employee(s) evaluating or considering the proposals/bids prior to, and up to the time an award decision is made at a scheduled City Council meeting. Any communication between Proposer/Bidder and the City can only be initiated directly by a City Official(s), City Council member(s), or employee(s) to obtain information or clarification of the proposal/bid. **Any prohibited communications initiated by a Proposer/Bidder, or a third party on behalf of Proposer/Bidder, will be grounds for disqualifying the offending Proposer/Bidder from consideration for award of the solicitation.**
82. **ELECTRONIC SIGNATURE(S):** Vendor, if and by offering, an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of any agreement. Further a duplicate or copy of an agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of any original agreement for all purposes.
83. **INTELLECTUAL PROPERTY RIGHTS:** The Vendor will indemnify and hold harmless, the City from liability of any nature or kind, including costs and expenses for or on account of any copyrighted, service marked, trademarked, patented or un-patented invention, process, article or work manufactured or used in the performance of the contract, including its use by the City. If the Vendor uses any design, device, materials or works covered by letters, service mark, trademark, patent, copyright or any other intellectual property right, it is mutually agreed and understood without exception that the proposal prices will include all royalties of costs arising from the use of such design, device, or materials in any way involved in the work.
- This article will survive the termination of any contract with the City.
84. **FEDERAL DEBARMENT:** By submitting a bid response, the Vendor certifies that no principal (which includes officers, directors, or executives) is presently suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation on this transaction by any Federal Department or Agency.
85. **DISADVANTAGED BUSINESS ENTERPRISE (DBE):** The City of Ocala adopts FDOT's goal of 10.65% as a race-neutral DBE goal. This means the City's goal is to spend at least 10.65% of contract expenditures with certified DBE's as prime firms, or as sub-consultants/subcontractors. Race-neutrality means the City hopes the overall goal can be achieved through the normal competitive procurement process without using DBE required goals. F-DOT funded projects have an overall DBE goal of 10.65%. The Ocala International Airport's DBE goal is 12%. Although not a contract requirement, the City believes this DBE percentage can realistically be achieved on this project through utilization of DBE prime and sub-consultant firms performing services anticipated to be required for this project, including use of DBE sub-consultants in areas of work that are under-utilized. Prime consultants are requested to submit the DBE Utilization form indicating your firm's proposed use of DBE sub-consultants. The signed DBE Utilization form shall be submitted with your bid response.
86. **ACCOMMODATIONS:** In order to comply with ADA requirements, please call forty-eight (48) hours in advance so arrangements can be made if reasonable accommodations are needed for you to participate in any meeting.
87. **CONFIDENTIAL, PROPRIETARY, OR TRADE SECRET MATERIAL:** The City of Ocala (City) follows public records responsibilities as provided under Chapter 119, Florida Statutes and Article 1, Section 24 of the Florida Constitution. If Bidder considers any portion of the documents, data or records submitted in response to a solicitation to be confidential, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, Bidder must provide the City with a separate redacted copy of its response. The Redacted Copy shall be provided to the City at the same time Bidder submits its response to the solicitation and must only exclude or obliterate those exact portions that are claimed confidential, proprietary, or trade secret. In compliance with Section 119.07(1)(e), Florida Statutes, Bidder must "state the basis for the exemption" that he/she "contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute." Bidder/Proposer must submit a Confidential, Proprietary, or Trade Secret Material Statement and a redacted proposal if their proposal contains information that is confidential, proprietary, or trade secret per FL Statutes.
88. **PERFORMANCE EVALUATION:** At the end of a contract, the City may evaluate the Vendor's performance. This evaluation will become public record.

89. **CONTRACT FULFILLMENT:** Vendors who enter into an Agreement with the City of Ocala and fail to complete the contract term, for any reason, will be subject to future bidding suspension for one (1) year, and up to a possible three (3) year bid debarment for serious contract failures.
90. **AUDIT RIGHT AND RETENTION OF RECORDS:** Vendor agrees to maintain such financial records and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations. City shall have the right to audit the books, records, and accounts of Vendor that are directly related to any resulting contract. Vendor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries. Vendor shall preserve and make available, at reasonable times for examination and audit by City or applicable governmental agency, all financial records, supporting documents, statistical records, and any other documents pertinent to any contract for the required retention period of the Public Records Act (if applicable, or, if the Public Records Act is not applicable, for a minimum period of three (3) years after termination of any contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings.) If the Public Records Act is determined by City to be applicable to Vendor's records, Vendor shall comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law shall be violated by Vendor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.
91. **PUBLIC RECORDS:** The Vendor shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, the Vendor shall:
- A. Keep and maintain public records required by the public agency to perform the service.
 - B. Upon request from the public agency's custodian of public records, 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 a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - C. 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 contract if the Vendor does not transfer the records to the public agency.
 - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Vendor or keep and maintain public records required by the public agency to perform the service. If the Vendor transfers all public records to the public agency upon completion of the contract, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the contract, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

92. **SPECIAL CONDITIONS:** Any and all Special Conditions and solicitation provisions that may vary from these General Terms and Conditions shall have precedence.