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1 – MODIFICATIONS / WITHDRAWALS OF SUBMITTALS

Prior to the solicitation due date, a respondent may change its response by submitting a new response with a modification letter replacing the original response. The modification letter must be on the company's letter head and signed by an authorized agent of the company. Modifications received after the response due date and time will not be considered. A solicitation may be withdrawn at any time prior to the solicitation due date by issuing a written notice. The written notice must be addressed to and received by the Purchasing Manager, prior to the solicitation due date. A solicitation may also be withdrawn after the solicitation due date but before recommendation of award, by submitting a withdrawal letter to the Purchasing Manager. The withdrawal letter must be on a company letterhead, signed by an authorized agent of the company, and address the reason(s) for the withdrawal after the solicitation due date. The City may, at its sole discretion, accept or deny any modification or withdrawal request.

2 – RESPONSE POSTPONEMENT / CANCELLATION / REJECTION

The City may, at its sole discretion, reject any and all, or parts of any and all, responses; re-advertise this solicitation; postpone or cancel, at any time, this response process; or waive any irregularities in the solicitation or in any responses received as a result of this solicitation.

3 – CHANGE ORDERS

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders to the contract will be made on writing by the City of Clermont.

4 – ADDENDA

Any interpretations, corrections, or changes to this solicitation will be made by addenda. Sole issuing authority shall be vested in the City of Clermont Purchasing Division. Addenda will be sent to all who are known to have received a copy of this solicitation. If the addenda contain changes to the specification or solicitation form, prospective respondents shall acknowledge receipt of all addenda or they will be declared non-responsive.

5 – CONFLICTS WITHIN THE SOLICITATION

Where there appears to be a conflict between documents, the order of precedence shall be as follows:

1. Any agreement or contract resulting from the award of this solicitation (if applicable).
2. Addenda released for this solicitation, with the latest addendum taking precedence.
3. The solicitation.
4. The awardees' response.

It is incumbent upon the vendor to identify such conflicts to the designated purchasing representative prior to the response due date.

6 – MISTAKES

Respondents are cautioned to examine all specifications, drawings, delivery instructions, unit prices, extensions, and all other special conditions pertaining to the solicitation. Failure of the respondent to examine all pertinent documents shall not entitle them to any relief from the conditions imposed in the contract. In case of mistakes in extension, the unit price shall govern. Multiplication or addition errors are deemed clerical errors and shall be corrected by the City.

7 – TIE RESPONSES

The award on tie responses will be decided by the Purchasing Manager in accordance with the provisions of the Purchasing Procedures. Please be advised that in accordance with Chapter 287.087, Florida Statutes, regarding tie responses, preference will be given to respondents certifying that they have implemented a drug-free workplace program.

8 – PAYMENT TERMS AND DISCOUNT

Payment will be made by the City after commodities/services have been received, accepted and properly invoiced as indicated in contract and/or purchase order. Invoices must bear the purchase order, contract number, or both when available, and shall be submitted to the ordering department. Payment terms will be considered to be Net-30 days

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after the date of satisfactory delivery at the place of acceptance and receipt of correct invoice at the office specified. If a contractor offers a discount, it is understood that the discount time will be computed from the date of satisfactory delivery, at the place of acceptance, and receipt of correct invoice at the office specified.

9 – DELIVERY

Delivery time shall be calculated in calendar days from the issuance date of purchase order. Unless otherwise stipulated in the contract, delivery time shall be between 9:00 a.m. and 4:00 p.m. Eastern Standard Time, Monday through Friday except City Holidays. However, goods' required for daily consumption, or where the delivery is an emergency, or is overdue, the convenience of the City shall govern. If, in calculating the number of calendar days from the purchase order date, the delivery falls on a Saturday, Sunday, or City Holiday, delivery shall be made no later than the next business day. Unless otherwise specified in the solicitation, all prices shall be F.O.B. Destination. Freight shall be included in the price. Substitution of shipments of any kind will not be accepted. Respondents are expected to furnish the brand quoted in their response once awarded. Any substitute shipment will be returned at the respondent's expense.

10 – INSPECTION & ACCEPTANCE OF TITLE

Inspection and acceptance will be at destination unless otherwise provided in this solicitation. Title to/or risk of loss, or damage to all items, shall be the responsibility of the successful respondent until acceptance by the buyer/department.

11 – PACKAGING

Unless otherwise stated in the Special Provisions, Pricing Section or Addenda, deliveries must consist only of new and unused goods and shall be the current standard production model available at the time of the response due date. The goods must be suitably packaged for shipment by common carrier. Each container or multiple units or items shall bear a label, imprint, or other legible markings stating the name of the manufacturer or supplier, purchase order number, and any other markings required by the specifications.

12 – SAMPLES

Samples or inspection of product, may be requested to determine suitability after the solicitation due date and should be received within seven (7) working days of request. Samples of items, when required, must be furnished free of expense to the City. Samples, if not destroyed, will be returned upon request at the respondent's expense. Respondents will be responsible for the removal of all samples furnished within thirty (30) days after solicitation due date. All samples will be disposed of after thirty (30) days.

13 – QUALITY

All materials used for the manufacture or construction of any supplies, materials or equipment covered by this solicitation shall be new. The items must be new, latest model, of the best quality, and highest grade workmanship.

14 – NON-CONFORMANCE

Items may be tested for compliance with specifications. Item delivered, not conforming to specifications may be rejected and returned at respondent's expense. These items and items not delivered, as per delivery date in response or purchase order, may be purchased on the open market. Any increase in cost may be charged against the respondent. Any violation may result in respondent's name being removed from the vendor registration list and/or departments being advised not to do business with the respondent.

15 – TAXES

The City of Clermont is exempt from Federal Excise and Florida Sales taxes on direct purchase of tangible property. Successful respondent shall pay all applicable sales, consumer, land use, or other similar taxes required by law. The respondent is responsible for reviewing the pertinent Florida Statutes involving the sales tax and complying with all requirements.

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16 – CONTINGENCY FEES

By submitting a response to this solicitation, the respondent certifies that no contingency fees (sometimes known as finder's fee) has been paid to any person or organization other than bona-fide employee working solely for the respondent to secure a contract pursuant to this solicitation. Violation of this policy may result in termination of any resultant contract and/or possible debarment.

17 – OTHER GOVERNMENTAL ENTITIES

With the consent of the respondent, other governmental entities may make purchases in accordance with the contract. Such purchases shall be governed by the same terms and conditions as stated herein. Prices shall be F.O.B. delivered to the requesting government entity.

18 – PUBLIC RECORDS

Florida law provides that municipal records shall at all times be open for personal inspection by any person. Respondents are hereby notified that all information submitted as part of a response to this solicitation will be subject for public inspection upon award in compliance with Chapter 119.01, Florida Statutes. The respondent should not submit any information in response to this solicitation which the respondent considers proprietary or confidential. The submission of any information to the City, in connection with this solicitation, shall be deemed conclusively to be a waiver of any protection from release of the submitted information unless such information is exempt, or confidential, under Chapter 119.01, Florida Statutes.

19 – APPEALS PROCEDURES

Any prospective respondent may only appeal any determination, decision or recommendation of the Purchasing Manager, in accordance herewith. All appeals must be in writing and sent via certified mail or delivered in person to the City Manager within three (3) business days of issuance of such determination, decision or recommendation. The City Manager shall administer the appeal and shall render a decision within seven (7) business days of receiving the appeal. All appeals must set forth the specific reason and facts concerning the dispute. Any appeal based exclusively on disagreement with the technical judgment of evaluators is subject to summary rejection unless there is clear and convincing evidence of arbitrary or capricious action in that regard. In the event of a timely appeal, the City shall not proceed further with the solicitation or with the award of bid/contract unless the City Manager, after consultation with the Director of the using department(s) or division(s), forwards to the City Council a written request to award the bid/contract without delay in order to protect the public health, safety or general welfare and City Council approves said request.

20 – RULES, REGULATION, LICENSING REQUIREMENTS

Respondents are expected to be familiar with and comply with all Federal, State and local laws, ordinances, codes, and regulations that may in any way affect the services offered. Ignorance on the part of the respondent will in no way relieve it from responsibility for compliance.

21 – DEFAULT

Failure or refusal of a respondent to execute a contract upon award by the City Council, or untimely withdrawal of a response before such award is made and approved, may result in forfeiture of that portion of any surety required as liquidated damages to the City; where surety is not required, such failure may result in a claim for damages by the City and may be grounds for removing the respondent from the City's vendor list.

22 – CONFLICT OF INTEREST

No contract will be awarded to a respondent who has City officials, officers or employees affiliated with it, unless the respondent has fully complied with current Florida Statutes and City Ordinances related to this issue. All respondents must disclose with their response the name(s) of any officer, director, agent, or immediate family member (spouse, parent, sibling, child) who is also an employee of the City. Further, all respondents must disclose the name of any City employee who owns, either directly or indirectly, an interest of ten (10%) percent or more in the respondent or any of its affiliates. Failure to disclose any such affiliation will result in disqualification of the response and prohibition of engaging in any future business with the City.

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23 – RESPONSIBILITY

Before submitting responses, each prospective respondent shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract. Ignorance of such conditions and requirements resulting from failure to make such investigations and examinations will not relieve the successful respondent from any obligation to comply with every detail, provisions, and requirements of the solicitation and resulting contract documents. In addition, failure to make such investigations and examinations will not be accepted as a basis for any claims whatsoever, or any monetary consideration on the part of the respondent.

24 – RELATION OF CITY

It is the intent of the parties hereto that the successful respondent be legally considered to be an independent respondent and that neither the respondent nor the respondent's employees and agents shall, under any circumstances, be considered employees or agents of the City.

25 – PRIME CONTRACTOR

The respondent awarded a contract shall act as the prime contractor for all required items and services and shall assume all responsibility for the procurement of such items or services. The contractor shall be considered the sole point of charges and meeting all requirements of this solicitation. All subcontractors will be subject to advance review by the City in regards to competency and security concerns. After the award of the contract, no change in subcontractors will be made without the consent of the City. The contractor shall be responsible for all insurance, permits, licenses, and related matters for any and all subcontractors. Even if the subcontractor is self-insured, the City may require the contractor to provide any insurance certificates required by the work to be performed.

26 – COLLUSION

Where two (2) or more related parties each submit a response for the same solicitation, such response shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation and submittal of such responses. Related parties shall mean respondents or the principals thereof which have a direct or indirect ownership interest in another respondent for the same contract or in which a parent company or the principals thereof of one (1) respondent have a direct or indirect ownership interest in another respondent for the same solicitation. Furthermore, any prior understanding, agreement, or connection between two (2) or more corporations, firms, or persons submitting a response for the same materials, supplies, services, or equipment, shall also be presumed to be collusive. Responses found to be collusive shall be rejected. Respondents which have been found to have engaged in collusion may be considered non-responsible, and may be suspended or debarred, and any contract resulting from collusion may be terminated for default.

27 – PUBLIC ENTITY CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crimes 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 of real property to public entity, may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Sec. 287.017 of the Florida Statutes, for CATEGORY TWO (\$25,000.00) for a period of 36 months from the date of being placed on the convicted vendor list. By submitting a response to this solicitation, the respondent is certifying that it is eligible for award under this solicitation pursuant to Chapter 287.132 and 287.133 Florida Statutes.

28 – ASSIGNMENT

Successful respondent shall not enter into any sub contract, retain consultants, or assign, transfer, convey, sublet, or otherwise dispose of this contract, or of any or all of its right, title, or interest therein, or its power to execute such contract to any person, firm, or corporation without prior written consent of the City. Any unauthorized assignment may constitute a default by the successful respondent.

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29 – INDEMNIFICATION

The successful respondent shall be required to agree to indemnify and hold harmless the City and its council, employees, and agents, from and against any and all actions, claims, liabilities, losses and expenses, including but not limited to attorneys fees, for personal, economic or bodily injury, wrongful death, loss of or damage to property, in law or in equity, which may arise or be alleged to have arisen from the negligent acts or omissions or other wrongful conduct of the successful consultant, its employees, or agents in connection with the performance of service pursuant to the resultant contract. The successful respondent shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs expended by the City in the defense of such claims and losses, including appeals.

30 – TERMINATION FOR DEFAULT

If through any cause, the successful respondent fails to fulfill in a timely manner or otherwise violate any of the covenants, agreements, or stipulations material to the contract, the City shall have the right to terminate the services remaining to be performed by giving written notice to the successful respondent of such termination. Termination for default shall become effective upon the date specified in the written notice. In that event, the City shall compensate the successful respondent in accordance with the contract for all services performed by the respondent prior to the termination date, net of any costs incurred by the City as a consequence of the default. The successful respondent shall not be relieved of liability to the City for damages sustained by the City by breach of contract by the respondent. The City may reasonably withhold payments to the successful respondent for the purposes of set off until such time as the exact amount of damages due the City from the successful respondent is determined.

31 – TERMINATION FOR CONVENIENCE

The City may, for its convenience, terminate the services then remaining to be performed at any time without cause by giving written notice to successful respondent of such termination, which shall become effective thirty (30) days following receipt by respondent of such notice. In that event, all finished or unfinished documents and other materials shall be properly delivered to the City. If the agreement is terminated by the City as provided in this section, the City shall compensate the successful respondent in accordance with the agreement for all services actually performed by the successful respondent and reasonable direct costs of successful respondent for assembling and delivering to City all documents. No compensation shall be due to the successful respondent for any profits that the successful respondent expected to earn on the balance of the agreement. Such payments shall be the total extent of the City's liability to the successful respondent upon a termination as provided for in this section.

32 – TERMINATION FOR UNAPPROPRIATED FUNDS

The obligation of the City for payment to a contractor is limited to the availability of funds appropriated in a current fiscal period. Continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

33 – FORCE MAJEURE

The parties will exercise every reasonable effort to meet their respective obligations hereunder, but shall not be liable for delays resulting from force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any Government law or regulation, acts of nature, acts or omissions of the other party, Government acts or omissions, fires, strikes, national disasters, wars, riots, transportation problems, and/or any other cause whatsoever beyond the reasonable control of the parties. Any such cause will extend the performance of the delayed obligation to the extent of the delay so incurred.

34 – PAYMENT & PERFORMANCE BONDS

If a Payment & Performance Bond is required in Section A, the contractor shall, within ten (10) calendar days from Notice of Award, furnish to the City a Payment & Performance Bond payable to the City of Clermont, Florida, in the face amount specified herein as surety for faithful performance under the terms and conditions of the contract. If the bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing bond. The Payment and Performance Bond must be executed by a surety company of recognized standing, licensed to do business in the State of Florida and having a resident agent.

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35 – LIABILITY, INSURANCE, LICENSES, AND PERMITS

Where the successful respondent is required to enter or go into City of Clermont property to deliver materials, perform work or services as a result of an award, the respondent will assume the duty, obligation, and expense of obtaining all necessary licenses, permits, and insurance. Successful respondent shall obtain, provide, and maintain during the term of the contract the types and amounts of insurance indicated in Section A “Insurance Requirements”. Insurance shall be maintained with insurers licensed to sell insurance in the State of Florida and have a B+, VI, or higher rating in the latest edition of A.M. Best's insurance guide. Successful respondent(s) shall name the City of Clermont as an additional insured on all liability policies required as a result of an award. When naming the City of Clermont as an additional insured, the insurance company hereby agrees and endorses the policies, to state that the City will not be liable for the payment of any premiums or assessments. Successful respondent failure to procure or maintain required insurance program shall constitute a material breach of agreement under which City may immediately terminate the award or contract.

All work performed shall comply with applicable County and municipal code requirements, as well as the Florida Building Code. The successful respondent shall be liable for any damages or loss to the City, occasioned by negligence of the respondent, agent, or any person the respondent has designated in the completion of the contract as a result of this solicitation.

36 – LAWS / ORDINANCES

Respondents are expected to be familiar with and comply with all Federal, State, local and municipal laws, ordinances rules and regulations that may, in any way affect the services offered. Ignorance on the part of the respondent will in no way relieve it from responsibility for compliance.

37 – LITIGATION VENUE

The contractual parties waive the privilege of venue and agree that all litigation between them in the State courts shall take place in Lake County, Florida and that all litigation between them in the federal courts shall take place in Central Florida.

38 – PATENTS AND ROYALTIES

The contractor, without exception, shall indemnify, save harmless, and defend the City and its employees from liability of any nature and kind, including cost and expenses for or on account of any copyrighted or un-patented invention, process, or article manufactured or used in the performance of the contract. If the contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood, without exception, that the response prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

39 – RECYCLE CONTENT

In addressing environmental concerns, the City of Clermont encourages responses containing items with recycled content. When submitting a response containing items with recycled content, the respondent shall provide documentation adequate for the City to verify the recycled content. The city prefers packaging consisting of materials that are degradable or able to be recycled. When specifically stated in the solicitation, the City may give preference to responses containing items manufactured with recycled material or packaging that is able to be recycled.

40 – OSHA

The respondent warrants that the product supplied to the City of Clermont shall conform in all aspects to the standards set forth in the Occupational Safety and Health Act of 1970, as amended. The failure to comply with this condition will be considered as a breach of contract. Any fines levied because of inadequacies to comply with these requirements shall be borne solely by the respondent.

END OF SECTION E