

MIAMI BEACH
FORMAL SOLICITATIONS
TERMS AND CONDITIONS – GOODS & SERVICES
(October 27, 2022)

1. GENERAL DISCLAIMERS.

- a. The solicitation referenced herein is being furnished to the Bidders by the City of Miami Beach (the "City") for the Bidder's convenience. It is the responsibility of the recipient to assure itself that information contained herein is accurate and complete. The City does not provide any assurances as to the accuracy of any information in this solicitation. Any reliance on these contents, or on any permitted communications with City officials, shall be at the recipient's own risk. Bidders should rely exclusively on their own investigations, interpretations, and analyses. Bidders are expected to examine the terms, conditions, specifications, delivery schedules, proposed pricing, and other all instructions pertaining to the goods relative to this solicitation. Failure to do so will be at the Bidder's risk and may result in the Bid being non-responsive. All expenses involved with the preparation and submission of bid, or any work performed in connection therewith, shall be the sole responsibility (and shall be at the sole cost and expense) of the Bidders, and shall not be reimbursed by the City.
- b. The solicitation is being provided by the City without any warranty or representation, express or implied, as to its content, its accuracy, or its completeness. No warranty or representation is made by the City or its agents that any Bid conforming to these requirements will be selected for consideration, negotiation, or approval. Any individual that submits a bid in response to this solicitation agrees that any action taken by the City in response to bids made pursuant to this solicitation, or in making any award, or in failing or refusing to make any award pursuant to such bid, or in cancelling awards, or in withdrawing or cancelling this solicitation, either before or after issuance of an award, shall be without any liability or obligation on the part of the City.
- c. It is the responsibility of each Bidders, before submitting a Bid, to: examine the solicitation thoroughly; visit the site or structure, as applicable, to become familiar with conditions that may affect costs, progress, performance or furnishing of the Work; take into account federal, state and local (City and Miami-Dade County) laws, regulations, permits, and ordinances that may affect costs, progress, performance, furnishing of the Work, or award; study and carefully correlate Bidder's observations with the solicitation. The Bidders shall notify the Chief Procurement Officer of all conflicts, errors, or discrepancies in the solicitation of which Bidders knows or reasonably should have known. The submission of a Bid shall constitute an incontrovertible representation by Bidders that Bidders has complied with the above requirements and that without exception, the Bid is premised upon performing and furnishing the Work required by the solicitation and that the solicitation documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- d. Any action taken by the City in response to bids received pursuant to this solicitation, or in making any award, or in failing or refusing to make any award pursuant to such bid, or in cancelling awards, or in withdrawing or cancelling this solicitation, either before or after issuance of an award, shall be without any liability or obligation on the part of the City. In its sole discretion, the City may withdraw the solicitation either before or after receiving bids, may accept or reject bids, and may accept bids which deviate from the solicitation, as it deems appropriate and in its best interest. The City may postpone the deadline for submittal of bids and may, but is not required to, make a reasonable effort to give at least three (3) calendar days electronic notice of any such postponement.
- e. In its sole discretion, the City may determine the qualifications and acceptability of any party or parties submitting bid in response to this solicitation.
- f. Bidders are hereby advised that this solicitation is subject to the following ordinances/resolutions (as applicable), which may be found on the City Of Miami Beach Procurement Department website at <https://www.miamibeachfl.gov/City-hall/procurement/procurement-related-ordinance-and-procedures/>.

Requirement	Code Section or Resolution
Cone of Silence	2-486
Protest Procedures	2-371
Debarment Proceedings	2-481 through 2-406
Lobbyist Registration and Disclosure of Fees	2-397 through 2-485.3
Campaign Contributions by Vendors	2-487
Campaign Contributions by Lobbyists	2-488
Equal Benefits for Domestic Partners	2-373
Living Wage Requirement	2-407 through 2-410
False Claims Ordinance	70-300
Acceptance of Gifts, Favors & Services	2-449
Purchase of Goods and Services Sourced in Mississippi	Resolution 2016-29375
Non-discrimination (boycotts)	2016-3990

- 2. **ACCEPTANCE OF GIFTS, FAVORS, SERVICES.** Bidders shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or agent of the City, for the purpose of influencing consideration of this Bid. Pursuant to Sec. 2-449 of the City Code, no officer or employee of the City shall accept any gift, favor or service that might reasonably tend improperly to influence him in the discharge of his official duties.
- 3. **ASSIGNMENT.** No contract shall be assigned, transferred, conveyed, sublet or otherwise disposed, including any or all right,

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title or interest therein, or power to execute such contract, to any person, company or corporation, without the prior written consent of the City.

4. **CANCELLATION.** In the event any of the provisions of this Bid are violated by the Bidders, the City shall give written notice to the Bidders stating such deficiencies and, unless such deficiencies are corrected within ten (10) calendar days from the date of the City's notice, the City, through its City Manager, may declare the contract in default and terminate same, without further notice required to the Bidders. Notwithstanding the preceding, the City, through its City Manager, also reserves the right to terminate the contract at any time and for any reason, without cause and for convenience, and without any monetary liability to the City, upon the giving of thirty (30) days prior written notice to the Bidders.
5. **COMPLIANCE WITH THE CITY'S LOBBYIST LAWS.** This solicitation is subject to, and all Bidders are expected to be or become familiar with, all City lobbyist laws. Bidders shall be solely responsible for ensuring that all City lobbyist laws are complied with, and shall be subject to any and all sanctions, as prescribed therein, including, without limitation, disqualification of their responses, in the event of such non-compliance.
6. **DEFAULT.** Failure or refusal of the successful Bidders to execute a contract following approval of such contract by the City Commission, or untimely withdrawal of a bid response before such award is made and approved, may result in a claim for damages by the City, and may be grounds for removing the Bidders from the City's vendor list.
7. **DEMONSTRATION OF COMPETENCY.** Pursuant to Section 2-369 of the City Code, when determining the lowest and best Bidders, in addition to price, there shall be a consideration of the following: (1) the ability, capacity and skill of the Bidders to perform the contract; (2) whether the Bidders can perform the contract within the time specified, without delay or interference; (3) the character, integrity, reputation, judgment, experience and efficiency of the Bidders; (4) the quality of performance of previous contracts; and (5) the previous and existing compliance by the Bidders with laws and ordinances relating to the contract. In doing so, the City may take any and all actions in deems necessary, including consideration of any legal, financial, operational (facilities, staffing and equipment) factor that may impact the Bidder's ability to successfully perform the contract, and the City may contact any prior or current client, employee or agent of the Bidders.
 - a. The City reserves the right to request supplemental information from Bidders at any time during the solicitation process, unless otherwise noted.
8. **DISPUTES.** In the event of a conflict between the documents, the order of priority of the documents shall be as follows:
 - a. Any contract or agreement resulting from the award of this solicitation; then
 - b. Addendum issued for this solicitation, with the latest Addendum taking precedence; then
 - c. The solicitation; then
 - d. The Bidder's bid in response to the solicitation.In case of any doubt or difference of opinion as to the items and/or goods (as the case may be) to be furnished hereunder, the decision of the City shall be final and binding on all parties.
9. **ELIMINATION FROM CONSIDERATION.** This bid shall not be awarded to any person or firm who is in arrears to the City upon any debt, taxes, or contracts which are defaulted as surety or otherwise upon any obligation to the City.
10. **EMERGENCY RESPONSE PRIORITY.** It is hereby made a part of this solicitation that before, during, and after a public emergency, disaster, hurricane, tornado, flood, or other acts of force majeure that the City of Miami Beach, Florida shall receive a "First Priority" for any goods and services covered under any award resulting from this solicitation, including balance of line items as applicable. It is vital and imperative that the majority of citizens are protected from any emergency situation that threatens public health and safety, as determined by the City. By virtue of submitting a response to this solicitation, vendor agrees to provide all award-related goods and services to the City on a "first priority" under the emergency conditions noted above.
11. **ESTIMATED QUANTITIES.** Estimated quantities or estimated dollars, if provided, are for City guidance only. No guarantee is expressed or implied as to quantities or dollars that will be used during the contract period. The City is not obligated to place any order for a given amount subsequent to the award of this Bid. Estimates are based upon the City's actual needs and/or usage during a previous contract period. The City may use said estimates for purposes of determining whether the low Bidders meets specifications.
12. **ENVIRONMENTAL REGULATIONS.** The City reserves the right to consider a Bidder's history of citations and/or violations of environmental regulations in investigating a Bidder's responsibility, and further reserves the right to declare a Bidders not responsible if the history of violations warrants such determination in the opinion of the City. Bidder shall submit with its proposal, a complete history of all citations and/or violations, notices, and dispositions thereof. The non-submission of any such documentation shall be deemed to be an affirmation by the Bidders that there are no citations or violations. Bidders shall notify the City immediately of notice of any citation or violation which Bidders may receive after the proposal opening date and during the time of performance of any contract awarded to it.
13. **EXCEPTIONS TO SOLICITATION.** Bidders must clearly indicate any exceptions they wish to take to any of the terms in the solicitation, and outline what, if any, alternative is being offered. All exceptions and alternatives shall be included and clearly

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delineated, in writing, in the bid submittal. The City, at its sole and absolute discretion, may accept or reject any or all exceptions and alternatives. In cases in which exceptions and alternatives are rejected, the City shall require the Bidders to comply with the particular term and/or condition of the solicitation to which Bidders took exception to (as said term and/or condition was originally set forth in the solicitation and any exhibits or Addenda thereto).

14. **FLORIDA PUBLIC RECORDS LAW.** Bidders are hereby notified that all bids including, without limitation, any and all information and documentation submitted therewith, are exempt from public records requirements under Section 119.07(1), Florida Statutes, and s. 24(a), Art. 1 of the State Constitution until such time as the City provides notice of an intended decision or until thirty (30) days after opening of the bids, whichever is earlier. Additionally, Bidders agrees to be in full compliance with Florida Statute 119.0701 including, but not limited to, agreement to (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the goods; (b) provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter 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; (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Bidders upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.
15. **JOINT VENTURES / SINGLE PURPOSE ENTITY.** Joint Ventures are not allowed. bid shall be submitted only by the prime contractor. Bidders may, however, identify sub-contractors or sub-consultants to the prime Bidders who may serve as team members.
16. **FORCE MAJEURE.**
 - a. A “Force Majeure” event is an event that (i) in fact causes a delay in the performance of the Contractor or the City’s obligations under the Agreement, and (ii) is beyond the reasonable control of such party unable to perform the obligation, and (iii) is not due to an intentional act, error, omission, or negligence of such party, and (iv) could not have reasonably been foreseen and prepared for by such party at any time prior to the occurrence of the event. Subject to the foregoing criteria, Force Majeure may include events such as war, civil insurrection, riot, fires, epidemics, pandemics, terrorism, sabotage, explosions, embargo restrictions, quarantine restrictions, transportation accidents, strikes, strong hurricanes or tornadoes, earthquakes, or other acts of God which prevent performance. Force Majeure shall not include technological impossibility, inclement weather, or failure to secure any of the required permits pursuant to the Agreement.
 - b. If the City or Contractor’s performance of its contractual obligations is prevented or delayed by an event believed by to be Force Majeure, such party shall immediately, upon learning of the occurrence of the event or of the commencement of any such delay, but in any case within fifteen (15) business days thereof, provide notice: (i) of the occurrence of event of Force Majeure, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure, and the burden of proof of the occurrence of a Force Majeure event shall be on the requesting party.
 - c. The City may, through its City manager, in its sole and absolute discretion, make amendment or equitable adjustment in the contract terms and conditions and/or pricing to address very limited unforeseen circumstances outside of the successful Bidder’s control relating to certain supply chain issues and extreme market volatility. The City may, through its City Manager, but shall have no obligation to consider or otherwise approve an adjustment, where pricing or availability of supply is affected by extreme or unforeseen volatility in the marketplace satisfying, at a minimum, all of the following criteria: 1) the volatility is due to causes wholly beyond the successful Bidder’s control; 2) the volatility affects the entire marketplace or industry, not just the particular successful Bidder’s source of supply; 3) the effect on pricing or availability of supply is substantial; and 4) the volatility so affects the successful Bidders that continued performance of the Contract would result in an excessive or unreasonable substantial loss or financial hardship to the Bidders, such as, for example, an event implicating insolvency or bankruptcy. Any adjustment would require irrefutable evidence and written approval by the Chief Procurement Officer. For the avoidance of doubt, this section does not in any way alter or affect the allocation of risk between the City and the Bidders pursuant to the Contract, or Bidder’s assumption of all risks relating to its performance in accordance with the Contract terms.
 - d. No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations. The suspension of any of the obligations under this Agreement due to a Force Majeure event shall be of no greater scope and no longer duration than is required. The party shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing performance and otherwise to remedy its inability to perform to the extent its inability to perform is the direct result of the Force Majeure event with all reasonable dispatch.

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- e. Obligations pursuant to the Agreement that arose before the occurrence of a Force Majeure event, causing the suspension of performance, shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.
 - f. Notwithstanding any other provision to the contrary herein, in the event of a Force Majeure occurrence, the City may, at the sole discretion of the City Manager, suspend the City's payment obligations under the Agreement, and may take such action without regard to the notice requirements herein. Additionally, in the event that an event of Force Majeure delays a party's performance under the Agreement for a time period greater than thirty (30) days, the City may, at the sole discretion of the City Manager, terminate the Agreement on a given date, by giving written notice to Contractor of such termination. If the Agreement is terminated pursuant to this section, Contractor shall be paid for any Services satisfactorily performed up to the date of termination; following which the City shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement. In no event will any condition of Force Majeure extend this Agreement beyond its stated term.
17. **INDEMNIFICATION.** The bidder shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the agreement by the bidder or its employees, agents, servants, partners, principals or subcontractors. The bidder shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The bidder expressly understands and agrees that any insurance protection required by any agreement with the City or otherwise provided by the bidder 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. The above indemnification provisions shall survive the expiration or termination of this Agreement.
18. **INSPECTION, ACCEPTANCE & TITLE.** Inspection and acceptance will be at destination, unless otherwise provided. Title to (or risk of loss or damage to) all items shall be the responsibility of the successful Bidders until acceptance by the City unless loss or damage results from the gross negligence or willful misconduct of the City.

If any equipment or supplies supplied to the City are found to be defective, or do not conform to the specifications, the City reserves the right to cancel the order upon written notice to the seller, and return the product, at the Bidder's expense.

19. **INSPECTOR GENERAL AUDIT RIGHTS.**
- a. Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.
 - b. The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present, and proposed City programs, accounts, records, contracts, and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Contractor, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the Contract Documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
 - c. Upon ten (10) days written notice to the Contractor, the Contractor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Contractor, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
 - d. The Inspector General shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

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- e. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this contract, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:
 - i. If this contract is completely or partially terminated, the Contractor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - ii. The Contractor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
 - f. The provisions in this section shall apply to the Contractor, its officers, agents, employees, subcontractors, and suppliers. The Contractor shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Contractor in connection with the performance of this contract.
 - g. Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Contractor or third parties.
20. **LAWS, PERMITS AND REGULATIONS.** The Bidders shall obtain and pay for all licenses, permits, and inspection fees required to complete the work and shall comply with all applicable laws.
21. **LIABILITY, INSURANCE, LICENSES AND PERMITS.** Where Bidders are required to enter or go on to City of Miami Beach property to deliver materials or perform work or services as a result of the Bid, the Bidders will assume the full duty, obligation and expense of obtaining all necessary licenses, permits, and insurance, and assure all work complies with all Applicable Laws. The Bidders shall be liable for any damages or loss to the City occasioned by negligence of the Bidders, or his/her officers, employees, contractors, and/or agents, for failure to comply with Applicable Laws.
22. **MANNER OF PERFORMANCE.** Bidders agrees to perform its duties and obligations in a professional manner and in accordance with all applicable Local, State, County, and Federal laws, rules, regulations, and codes. Lack of knowledge or ignorance by the Bidders with/of applicable laws will in no way be a cause for relief from responsibility. Bidders agrees that the work and goods provided shall be provided by employees that are educated, trained, experienced, certified, and licensed in all areas encompassed within their designated duties. Bidders agrees to furnish to the City any and all documentation, certification, authorization, license, permit, or registration currently required by applicable laws, rules, and regulations. Bidders further certifies that it and its employees will keep all licenses, permits, registrations, authorizations, or certifications required by applicable laws or regulations in full force and effect during the term of this contract. Failure of Bidders to comply with this paragraph shall constitute a material breach of this contract.
23. **MODIFICATION/WITHDRAWALS OF BIDS.** A Bidders may submit a modified bid to replace all or any portion of a previously submitted Bid up until the Bid due date and time. Modifications received after the bid due date and time will not be considered. bid shall be irrevocable until contract award unless withdrawn in writing prior to the bid due date, or after expiration of **180** calendar days from the opening of bid without a contract award. Letters of withdrawal received after the Bid due date and before said expiration date, and letters of withdrawal received after contract award will not be considered.
24. **MULTIPLE AWARD.** The City may award two or more vendors (primary, secondary, tertiary, or higher), as available, by line item, by group or in its entirety, beginning with lowest, responsive, responsible Bidders (primary), followed by the second lowest, responsive, responsible Bidders (secondary), and continuing with other responsive, responsible Bidders in order of next best cost. The City will endeavor to utilize vendors in order of award. However, the City may utilize other vendors in the event that: 1) a contract vendor is not or is unable to be in compliance with any contract or delivery requirement; 2) it is in the best interest of the City to do so regardless of reason.
25. **NON-CONFORMANCE TO CONTRACT CONDITIONS.** Items may be tested for compliance with specifications. Items delivered, not conforming to specifications, may be rejected, and returned at the Bidder's expense. These items, as well as items not delivered as per delivery date in bid and/or purchase order, may be purchased by the City, at its discretion, on the open market. Any increase in cost may be charged against the Bidders. Any violation of these stipulations may also result in the Bidder's name being removed from the City's vendor list.
26. **NON-DISCRIMINATION.** The Bidders certifies and affirms that it is in compliance with and will be bound by the Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin.
27. **NON-EXCLUSIVITY.** To the extent applicable, it is the intent of the City to purchase the goods or services specifically listed in the solicitation. However, the City reserves the right to purchase any goods or services awarded from any other governmental or cooperative contract, or on the open market.
28. **OCCUPATIONAL HEALTH AND SAFETY.** The Bidders warrants to the City that any work, goods, supplies, materials or equipment supplied pursuant to this bid shall conform in all respects to the standards set forth in the Occupational Safety and

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Health Act of 1970, as amended, and the failure to comply with this condition will be deemed breach of contract. Any fines levied because of inadequacies to comply with this condition shall be borne solely by the Bidders.

29. **OBSERVANCE OF LAWS.** Bidders are expected to be familiar with, and comply with, all Federal, State, County, and City laws, ordinances, codes, rules and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which, in any manner, may affect the scope of goods and/or project contemplated by this solicitation (including, without limitation, the Americans with Disabilities Act, Title VII of the Civil Rights Act, the EEOC Uniform Guidelines, and all EEO regulations and guidelines). Ignorance of the law(s) on the part of the Bidders will in no way relieve it from responsibility for compliance.
30. **OPTIONAL CONTRACT USAGE.** When the successful Bidders agrees, other units of government or non-profit agencies may participate in purchases pursuant to the award of this contract at the option of the unit of government or non-profit agency.
31. **OSHA.** The Bidders warrants to the City that any work, services, supplies, materials or equipment supplied pursuant to this Bid shall conform in all respects to the standards set forth in the Occupational Safety and Health Act of 1970, as amended, and the failure to comply with this condition will be deemed breach of contract. Any fines levied because of inadequacies to comply with this condition shall be borne solely by the Bidders.
32. **OTHER TERMS AND CONDITIONS.** Any order pursuant to the contract that includes terms and conditions other than those expressly approved in this solicitation or contract shall be null and void and rejected by the City.
33. **PAYMENT.** Payment will be made by the City after the goods have been received, inspected, and found to comply with contract specifications, free of damage or defect, and are properly invoiced.
34. **PATENTS & ROYALTIES.** Bidder shall indemnify and save harmless the City of Miami Beach, Florida, and its officers, employees, contractors, and/or agents, from liability of any nature or 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 of Miami Beach, Florida. If the Bidders uses any design, device or materials covered by letters, patent, or copyright, it is mutually understood and agreed, without exception, that the Bid prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.
35. **PRICES QUOTED.** Prices quoted shall remain firm and fixed during the duration of the contract. In completing the bid form, state both unit price and extended total, when requested. Prices must be stated in units of quantity specified in the bidding specifications. In case of discrepancy in computing the amount of the bid, the UNIT PRICE quoted will govern. All prices must be F.O.B. destination, freight prepaid (unless otherwise stated in Special Conditions). The Bidders may offer cash discounts for prompt payments; however, such discounts will not be considered in determining the lowest price during bid evaluation. Bidders are requested to provide prompt payment terms in the space provided on the Bid submittal signature page of the solicitation. Award, if made, will be in accordance with terms and conditions stated herein. Each item must be bid separately, and no attempt is to be made to tie any item or items in with any other item or items. Cash or quantity discounts offered will not be a consideration in determination of award of bid(s).
36. **PROTESTS.** Any protest concerning the specifications or award of this solicitation shall be in accordance with City Code Section 2-371. Protests not submitted in a timely manner pursuant to the requirements of City Code Section 2-371 shall be barred.
37. **PUBLIC ENTITY CRIME.** 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 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 a bid 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, for Category Two, for a period of 36 months from the date of being placed on the convicted vendor list.
38. **RELATIONSHIP TO THE CITY.** It is the intent of the City, and Bidder's hereby acknowledge and agree, that the successful Bidders is considered to be an independent contractor, and that neither the Bidders, nor the Bidder's employees, agents, and/or contractors, shall, under any circumstances, be considered employees or agents of the City.
39. **SPECIAL CONDITIONS.** Any and all Special Conditions that may vary from these General Terms and Conditions shall have precedence.
40. **TAXES.** The City of Miami Beach is exempt from all Federal Excise and State taxes.
41. **TERMINATION FOR DEFAULT.** If the successful Bidders shall fail to fulfill in a timely manner, or otherwise violate, any of the covenants, agreements, or stipulations material to the Bid and/or the contract entered into with the City pursuant thereto, the City shall thereupon have the right to terminate the work and/or services then remaining to be performed by giving written notice to the Bidders of such termination, which shall become effective upon receipt by the Bidders of the written termination notice.

In that event, the City shall compensate the successful Bidders in accordance with the term of the contract for all work and/or services satisfactorily performed by the Bidders prior to termination, net of any costs incurred by the City as a consequence of

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the default.

Notwithstanding the above, the successful Bidders shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the contract by the Bidders, and the City may reasonably withhold payments to the successful Bidders for the purposes of set off until such time as the exact amount of damages due the City from the successful Bidders is determined.

The City may, at its discretion, provide reasonable "cure period" for any contractual violation prior to termination of the contract; should the successful Bidders fail to take the corrective action specified in the City's notice of default within the allotted cure period, then the City may proceed to terminate the contract for cause in accordance with this subsection 1.57.

42. **TERMINATION FOR CONVENIENCE OF CITY.** The City may, for its convenience, terminate the work and/or services then remaining to be performed, at any time, by giving written notice to the successful Bidders of such termination, which shall become effective thirty (30) days following receipt by Bidders of such notice. In that event, all finished or unfinished documents and other materials shall be properly delivered to the City. If the contract is terminated by the City as provided in this subsection, the City shall compensate the successful Bidders in accordance with the terms of the contract for all and without cause and/or any resulting liability to the City, work and/or services actually performed by the successful Bidders, and shall also compensate the Bidders for its reasonable direct costs in assembling and delivering to City all documents. No compensation shall be due to the successful Bidders for any profits that the successful Bidders expected to earn on the balanced of the contract. Such payments shall be the total extent of the City's liability to the successful Bidders upon a termination as provided for in this subsection.
43. **TIE BIDS.** In accordance with Florida Statutes Section 287.087, regarding identical tie bids, preference will be given to Bidders certifying that they have implemented a drug free workplace program. A certification form will be required. In the event of a continued tie between two or more Bidders after consideration of the drug free workplace program, the City's Local Preference and Veteran Preference ordinances will dictate the manner by which a tie is to be resolved. In the event of a continued tie after the Local and Veteran Preference ordinances have been applied or the tie exists between Bidders that are not Local or Veteran, the breaking of the tie shall be at the City Manager's discretion, which will make a recommendation for award to the City Commission.
44. **VENUE.** Any legal challenges to this Solicitation shall be brought in Miami-Dade County, Florida, and if legal action is necessary, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. The Bidder and the City expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Solicitation.
45. **CONTRACT EXTENSION.** The City, through its City Manager, reserves the right to require the Contractor to extend contract past the stated termination date for a period of up to 120 days in the event that a subsequent contract has not yet been awarded. Additional extensions past the 120 days may occur as needed by the City and as mutually agreed upon by the City and the contractor.
46. **AMERICANS WITH DISABILITIES ACT (ADA).** Call 305-673-7490 to request material in accessible format; sign language interpreters (five (5) days in advance when possible), or information on access for persons with disabilities. For more information on ADA compliance, please call the Public Works Department, at 305-673- 7000, Extension 2984.
47. **TRUTH IN NEGOTIATION CERTIFICATE.** Any resulting contract, is issued and governed by section 287.055, Florida statutes shall require a truth in negotiation certificate. Execution of the contract by the consultant shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in the contract are accurate, complete, and current as of the date of the contract. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of the contract.