

Solicitation Addendum

Addendum No.: 1
Solicitation No.: 2016-093L
Solicitation Title: Time and Attendance Solution
Addendum Date: May 27, 2016
Purchasing Contact: Ryan Lingholm; lingholm@mydelraybeach.com

THE FOLLOWING ITEMS ARE MADE AND HEREBY BECOME A PART OF THIS SOLICITATION:

Change to:

SECTION 1, ITEM 2, RFP SCHEDULE

| ACTIVITY | DATE |
|--|---|
| Issue RFP | May 23, 2016 |
| Deadline for Delivery of Questions | <u>June 1, 2016</u> |
| Due Date and Time (for delivery of Proposals) | 2:00 P.M. ET on June 14, 2016 |
| Institute Cone of Silence | June 14, 2016 |
| Phase 1 Evaluation (Responsive and Responsible) | June 16, 2016 |
| Selection Committee Meeting - Phase 2 Evaluation | <u>June 28, 2016</u> |
| Selection Committee Meeting - Interviews | <u>July 6, 2016</u> <u>July 7, 2016</u> (if necessary) |
| Selection Committee Meeting – Final Ranking | July 8, 2016 |

Add:

TABLE OF CONTENTS, ATTACHMENTS

ATTACHMENTS:

Exhibit A – Schedule of Pricing
Exhibit B – Sample Agreement
Exhibit C – General Terms and Conditions

[Remainder of page intentionally left blank]

Add:

SECTION 2, ITEM B, MINIMUM QUALIFICATIONS

iv. Must be headquarters and have support operations housed within the United States.

Provide a statement on company letterhead and signed by an authorized representative of Proposer indicating Proposer is headquartered and has support operations housed within the United States. The City will verify.

Add:

SECTION 2, ITEM A, BACKGROUND

The City of Delray Beach has approximately 860 total employees. Within the City, there are 14 departments, and it is estimated that two clocks per department will be necessary.

Add:

SECTION 4, SCOPE OF WORK, SCOPE

SCOPE: Successful Proposer will provide a comprehensive Solution with integrated biometrics to fulfill the time accounting, reporting and controlling needs of the City. The Solution with clocks shall support two-factor verification, biometrics, ODBC connectivity and SQL Server 2012 (or greater) databases. For security and support purposes, all support services and employee information must be housed within United States.

Add:

EXHIBIT C, CITY OF DELRAY BEACH GENERAL TERMS AND CONDITIONS

Add the attached Exhibit C, City of Delray Beach General Terms and Conditions added per Addendum 1.

NOTE: Items that are ~~struck through~~ are deleted. Items that are underlined have been added. All other terms and conditions remain as stated in the RFP.

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QUESTIONS AND RESPONSES:

Q1. Please let me know how many employees will need to be tracked on this system (including full time, part time and seasonal staff).

R1. The City has approximately 860 total employees. See add to Background per this Addendum 1.

Q2. Whether companies from outside USA can apply for this? (like from India or Canada)

R2. No. For security and support reasons, the City does not allow employee information to be housed outside of North America. See add to Minimum Qualifications per this Addendum 1.

Q3. Whether we need to come over there for meetings?

R3. Yes. The City has the option to conduct interviews/presentations, as well as negotiate agreement terms prior to award of an Agreement. Refer to the RFP, Section 1 Special Terms and Conditions, item B.2 Evaluation of Proposals, and Section 1 Special Terms and Conditions, item B.3 Award, for additional information.

Q4. Can we perform the tasks (related to RFP) outside USA? (like, from India or Canada)

R4. Many of the tasks related to the RFP must be performed onsite and therefore cannot be performed outside of the United States.

Q5. Can we submit the proposals via email?

R5. No, proposals may not be submitted via email. Refer to the RFP, Electronic Proposal Submission, for electronic submission instructions.

Q6. Please confirm a Cloud Based (SaaS) solution is desired by the City?

R6. The City desires a Time and Attendance solution. On-premise and/or cloud-based solutions will be considered.

Q7. How many employees will need Advanced Scheduling Features (Public Safety Scheduling)?

R7. Of the 860 total employees, approximately 145 employees are fire personnel, 151 are police officers, and 59 are civilians in the Police Department.

[Remainder of page intentionally left blank]

Q8. Is it desired for the time clocks to be Biometric or Proximity card?

R8. The City desires Biometric and Proximity card. Refer to the RFP, Section 3 Forms and Instructions, item A.iii.

Q9. How many time clocks should we quote on?

R9. Proposers should quote an estimated quantity of 28 Biometric Clocks. Refer to the RFP, Exhibit A, Schedule of Pricing.

Q10. When will the Proposers know which ERP system the City has selected?

R10. The selection date for the City's new ERP system has not yet been determined.

Q11. How many supervisors/managers/administrators will need access to the system to make approvals and edits, or to run reports?

R11. Of the 860 total employees, approximately 200 are supervisors, managers, and/or administrators. However, this is a very rough estimate; proposed solution must be flexible to accommodate changes in staffing.

Q12. Can a conference line be set up so out of state vendors can participate in the pre-proposal meeting?

R12. Yes; refer to dial-in information below.
Dial-in by phone: United States: (712) 832-8330
Access Code: 7793119

Q13. For advanced multi-shift scheduling functionality, is the City's goal to replace TeleStaff or to interface with it?

R13. The City's goal is to acquire a complete Time and Attendance Solution. The proposed solution should have similar functionality as Kronos® TeleStaff.

End of Addendum

INSTRUCTIONS:

Receipt of this addendum must be acknowledged as instructed in the solicitation document. Failure to acknowledge receipt of this Addendum may result in the disqualification of Respondent's response.

**CITY OF DELRAY BEACH
GENERAL TERMS AND CONDITIONS**

PART I CONDITIONS

- A. PUBLIC ENTITY CRIMES:** Pursuant to Florida Statutes 287.133, as amended, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on a Agreement to provide any goods or services to a public entity, may not submit a proposal on a Agreement with a public entity for the construction or repair of a public building or public work, may not submit a proposal on leases of real property to a public entity, may not be awarded or perform work as a Agreement or, supplier, subcontractor or consultant under a Agreement with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statutes 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. Each Proposer must certify that the Proposer is not subject to these prohibitions regarding public entity crimes.
- B. SCRUTINIZED COMPANIES:** This Section applies to any Agreement for goods or services of \$1 million or more. The Proposer certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in Florida Statutes 287.135,. The City may terminate a Agreement at the City' s option if the Proposer is found to have submitted a false certification as provided under subsection (5) of Florida Statutes 287.135 or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has engaged in business operations in Cuba or Syria, as defined in Florida Statutes 287.135.
- C. DEBARRED OR SUSPENDED PROPOSERS:** The Proposer certifies, by submission of a response to this solicitation, that neither it nor its principals or subcontractors are presently debarred or suspended by any Federal, State or City department or agency.
- D. LOBBYING ACTIVITIES:** All Proposers are advised that the Palm Beach County Lobbyist Registration Ordinance (Section 2 - 351 of the Palm Beach County Code of Ordinances) applies to the City and this solicitation. Any violation of this requirement may cause the Proposer to be disqualified and prohibited from participating further in the RFP process.
- E. COMPLIANCE WITH LAWS:** Proposer shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant any order.
- F. NON- DISCRIMINATION:** The Proposer shall not discriminate against employees or applicants for employment because of race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. The Proposer will endeavor to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Proposer agrees to post in conspicuous places, available to employees and

applicants for employment, notices setting forth the provisions of this nondiscrimination clause. These provisions apply to all subcontractors and it is the responsibility of the subcontractor to be in compliance.

- G. CONFLICT OF INTEREST:** Proposer declares and certifies that no officer, employee or person whose salary is payable in whole or part from the City of Delray Beach is directly or indirectly interested in this Proposal or in the supplies, materials, equipment or services to which it relates or in any portion of the profits thereof; or

The award is subject to provisions of State Statutes and City Ordinances. All Proposers must disclose with their Proposal the name of any officer, director or agent who is also an employee of the City of Delray Beach. Further, all Proposers must disclose the name of any City employee who owns, directly or indirectly, any interest in the Proposer's firm or any of its' branches.

H. ANTI - COLLUSION:

Proposer certifies that this Proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a Proposal for the same materials, services, supplies, or equipment and is in all respects fair and without collusion or fraud.

No premiums, rebates or gratuities permitted; either with, prior to, or after any delivery of material or provision of services. Any such violation may result in Agreement cancellation, return of materials or discontinuation of services and the possible removal from the vendor Proposal list(s).

- I. CITY POLICIES:** Successful Proposer shall comply with the City Equal Employment Opportunity Policy, Violence in the Workplace Policy, Drug and Alcohol Free Workplace Policy, General Complaint Policy and Sexual Harassment Policy. Copies of these policies may be obtained from the City Human Resources Division. Violations of these policies may result in cancellation/termination of the Agreement.

- J. PUBLIC RECORDS:** Proposer shall comply with all public records laws in accordance with Florida Statutes, Chapter 119. In accordance with state law, Proposer agrees to:

- i. Keep and maintain all records that ordinarily and necessarily would be required by the City.
- ii. Provide the public with access to public records on the same terms and conditions that the City would provide for the records and at a cost that does not exceed the costs provided in Florida Statutes, Chapter 119. or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- iv. Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the Proposer at the termination of the Agreement and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City. All records shall be transferred to the City prior to final payment being made to the Proposer.
- v. If Proposer does not comply with this section, the City shall enforce the Agreement provisions in accordance with the Agreement and may unilaterally cancel this Agreement in accordance with state law.

Any language contained in the Proposer's Proposal purporting to require confidentiality of any portion of the Proposer's Proposal, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 ("Public Records Laws"), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's Proposal constitutes a Trade Secret. The City's determination of whether an exemption applies shall be final, and the Proposer agrees to defend, indemnify, and hold harmless the City its officers, employees, and agents, against any loss or damages incurred by any person or entity as a result of the City's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR PROPOSAL AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR PROPOSAL OR ANY PART THEREOF AS COPYRIGHTED.

- K. INSPECTOR GENERAL:** Proposer is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of purchases and Agreements, and may demand and obtain records and testimony from Proposer and its sub licensees and lower tier sub licensees. Proposer understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Proposer or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of any order.

L. NON - DISCRIMINATION:

- i. **CONE OF SILENCE:** Proposers are advised that a Cone of Silence will be in effect during this Bid. The Cone of Silence prohibits any communications, except written correspondence, regarding this Bid, between the Proposers or any Person representing the Proposers, and any member of the City Commission, the Commission's staff, any City employee authorized to act on behalf of the City to award the Agreement under this Bid, or any member of the Selection Committee. Failure to adhere to the Cone of Silence provisions is cause for rejection of a bid. The Cone of Silence will commence and take effect at the deadline for submitting proposals, as indicated in Section 1.7, above. All written correspondence with the City must be directed to the Chief Purchasing Officer, who is the only Person authorized to receive such documents.

Section 36.13 of the City Code provides "any person participating in a competitive solicitation issued by the City shall comply with Section 2 -355 of the Palm Beach County Code of Ordinances." The County Code provides as follows:

- (a) 'Cone of Silence' means a prohibition on any communication, except for written correspondence, regarding a particular request for proposal, request for qualification, bid, or any other competitive solicitation between:
- (1) Any person or person's representative seeking an award from such competitive solicitation; and
 - (2) Any county commissioner or commissioner's staff, any member of a local governing body or the member's staff, a mayor or chief executive officer that is not a member of a local governing body or the mayor or chief executive officer's

staff, or any employee authorized to act on behalf of the commission or local governing body to award a particular Agreement.

- (b) For the purposes of this section, a person's representative shall include but not be limited to the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subProposer or consultant of the person.
- (c) The cone of silence shall be in effect as of the deadline to submit the proposal, bid, or other response to a competitive solicitation. The cone of silence applies to any person or person's representative who responds to a particular request for proposal, request for qualification, bid, or any other competitive solicitation, and shall remain in effect until such response is either rejected by the county or municipality as applicable or withdrawn by the person or person's representative. Each request for proposal, request for qualification, Proposal or any other competitive solicitation shall provide notice of cone of silence requirements and refer to this article.
- (d) The provisions of this article shall not apply to oral communications at any public proceeding, including pre-Proposal conferences, oral presentations before selection committees, Agreement negotiations during any public meeting, presentations made to the board or local municipal governing body as applicable, and protest hearings. Further, the cone of silence shall not apply to Agreement negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence at any time with any employee, county commissioner, member of a local municipal governing body, mayor or chief executive officer that is not a member of the local municipal governing body, or advisory board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.
- (e) The cone of silence shall not apply to any purchases made in an amount less than the competitive Proposal threshold set forth in the county purchasing ordinance (County Code, chapter 2, article III, division 2, part A, section 2 -51 et seq.) or municipal ordinance as applicable.
- (f) The cone of silence shall terminate at the time the board, local municipal governing body, or a county or municipal department authorized to act on behalf of the board or local municipal governing body as applicable, awards or approves a Agreement, rejects all proposal or responses, or otherwise takes action which ends the solicitation process.
- (g) Any Agreement entered into in violation of the cone of silence provisions in this section shall render the transaction voidable."

- 1.1 LOCAL PREFERENCE:** In accordance with the City of Delray Beach Code of Ordinances Sec. 36.14, the City shall give preference to a Local Business if the Local Business' Proposal is determined to be within five percent (5%) or five thousand dollars (\$5,000.00), whichever is less, of the lowest responsible and responsive proposer.
- 1.2 LITIGATION VENUE:** The Proposers waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Palm Beach County, Florida and that all litigation between them in the federal courts shall take place in the Southern District in and for the State of Florida.
- 1.3 INDEMNITY/HOLD HARMLESS AGREEMENT:** Proposer shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents,

servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Proposer, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of any order including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Proposer shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by the City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of any order. To the extent considered necessary by the Chief Purchasing Officer and the City Attorney, any sums due Proposer under any order may be retained by City until all of City's claims for indemnification pursuant to any order have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by the City.

Part II DEFINITIONS/ORDER OF PRECEDENCE:

2.1 DEFINITIONS The City will use the following definitions in its general conditions, special conditions, technical specifications, instructions, addenda and any other document used in the solicitation process:

- i. REQUEST FOR PROPOSALS (RFP) when the City is requesting proposals from qualified Proposers.
- ii. PROPOSER – Person or firm submitting a Proposal.
- iii. PROPOSAL – Proposers response to this RFP.
- iv. RESPONSIVE PROPOSER – A Proposer whose Proposal conforms in all material respects.
- v. RESPONSIBLE PROPOSER – A Proposer who has the capability to perform in full the Agreement requirements.
- vi. FIRST RANKED PROPOSER – The Proposer whose Proposal is deemed by the City, the most advantageous to the City after applying the evaluation criteria contained in this RFP.
- vii. SUCCESSFUL PROPOSER – Proposer who is awarded an Agreement for the provision of services detailed in this RFP.

AGREEMENT – The Agreement between the City and the Successful Proposer to perform the services described herein.

2.2 SPECIAL CONDITIONS: Any and all Special Conditions contained in this solicitation that may be in variance or conflict with these General Terms and Conditions shall have precedence over these General Terms and Conditions. If no changes or deletions to General Terms and Conditions are made in the Special Conditions, then the General Terms and Conditions shall prevail in their entirety,

PART III BIDDING AND AWARD PROCEDURES:

- 3.1 SUBMISSION AND RECEIPT OF PROPOSAL:** To receive consideration, proposals must be received prior to the Due Date and Time. Unless otherwise specified, Proposers should use the proposal forms provided by the City. These forms may be duplicated, but failure to use the forms may cause the Proposal to be rejected. Proposals will be publicly opened in the first floor conference room, City Hall, 100 N.W. 1st Avenue, Delray Beach, Florida, or other designated area. Proposers and the public are invited to attend Proposal openings. Only the Proposers name will be read aloud at the Proposal opening.
- 3.2 MINIMUM AND MANDATORY TECHNICAL SPECIFICATIONS:** The technical specifications may include items that are considered minimum, mandatory, or required. If any Proposer is unable to meet or exceed these items, and feels that the technical specifications are overly restrictive, the Proposer must notify the Purchasing Department prior to the Deadline for Delivery of Written Questions and Objections. If no such notification is received prior to that deadline, the City will consider the technical specifications to be acceptable to all Proposers.
- 3.3 MISTAKES:** Proposers are cautioned to examine all terms, conditions, specifications, drawings, exhibits, addenda, delivery instructions and special conditions pertaining to the RFP. Failure of the Proposer to examine all pertinent documents shall not entitle the Proposer to any relief from the conditions imposed in the Agreement.
- 3.4 PROPOSAL PROTEST: PROTEST OF AWARD / PROTEST BOND:** Parties that are not actual Proposers, proposers or responders, including, but not limited to, subcontractors, material and labor suppliers, manufacturers and their representatives, shall not have standing to protest or appeal any determination made.

After the notice of intent to award and agreement is posted, any actual Proposer, proposer or responder who is aggrieved in connection with the pending award of the agreement or any element of the process leading to the award of the agreement may file a protest with the Chief Purchasing Officer by close of business on the third business day after posting (excluding the day of notification) or any right to protest is forfeited. It shall be the sole responsibility of such Proposer, proposer or responder to verify the operating hours of City Hall. Notice of Intent to Reject all Proposal, Proposals or Responses is subject to the protest procedure.

Proposal protests will follow the procedures set forth in City Code Ordinance 36.04.

Note: Any Proposer, proposers or responders filing a protest shall simultaneously provide a Protest Bond (cashier's check) to the City in the amount of fifteen thousand dollars (\$15,000.). If the protest is decided, in the protester's favor the entire protest bond is returned. If the protest is not decided in the protester's favor the protest shall be forfeited to the City. The protest bond shall be in the form of a cashier's check. Ord.No.29-13, Section 36.04

Protest shall be addressed to: City of Delray Beach
Chief Purchasing Officer 100 NW 1st Ave
Delray Beach, FL 33444

- 3.5 SAMPLES AND DEMONSTRATIONS:** Samples or inspection of product may be requested to determine suitability. Unless otherwise specified in Special Conditions,

samples shall be requested after the date of Proposal opening, and if requested should be received by the City within seven (7) working days of request. Samples, when requested, must be furnished free of expense to the City and if not used in testing or destroyed, will upon request of the Proposer, be returned within thirty (30) days of Proposal award at Proposer's expense. When required, the City may request full demonstrations of units prior to award. When such demonstrations are requested, the Proposer shall respond promptly and arrange a demonstration at a convenient location. Failure to provide samples or demonstrations as specified by the City may result in rejection of a bid.

- 3.6 LIFE CYCLE COSTING:** If so specified in the RFP, the City may elect to evaluate equipment proposed on the basis of total cost of ownership. In using Life Cycle Costing, factors such as the following may be considered: estimated useful life, maintenance costs, cost of supplies, labor intensity, energy usage, environmental impact, and residual value. The City reserves the right to use those or other applicable criteria, in its sole opinion that will most accurately estimate total cost of use and ownership.
- 3.7 BIDDING ITEMS WITH RECYCLED CONTENT:** In addressing environmental concerns, the City of Delray Beach encourages Proposers to submit proposal or alternate proposal containing items with recycled content. When submitting proposal containing items with recycled content, Proposer 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 RFP, the City may give preference to proposal containing items manufactured with recycled material or packaging that is able to be recycled.
- 3.8 USE OF OTHER GOVERNMENTAL AGREEMENTS:** The City reserves the right to reject any part or all of any proposal received and utilize other available governmental Agreements, if such action is in its best interest.
- 3.9 QUALIFICATIONS/INSPECTION:** Proposal will only be considered from firms normally engaged in providing the types of commodities/services specified herein. The City reserves the right to inspect the Proposer's facilities, equipment, personnel, and organization at any time, or to take any other action necessary to determine Proposer's ability to perform. The Purchasing Officer reserves the right to reject proposal where evidence or evaluation is determined to indicate inability to perform.
- 3.10 PROPOSAL SURETY:** If Special Conditions require a Proposal security, it shall be submitted in the amount stated. A Proposal security can be in the form of a Proposal bond or cashier's check. Proposal security will be returned to the unsuccessful Proposers as soon as practicable after opening of proposal. Proposal security will be returned to the successful Proposer after acceptance of the performance bond, if required; acceptance of insurance coverage, if required; and full execution of Agreement documents, if required; or conditions as stated in Special Conditions.
- 3.11 PROHIBITION OF INTEREST:** No Agreement will be awarded to a bidding firm who has City elected officials, officers or employees affiliated with it, unless the bidding firm has fully complied with current Florida State Statutes, City Ordinances, the Palm Beach County Code of Ethics and all other applicable rules and regulations relating to this issue. Proposers must disclose any such affiliation. Failure to disclose any such affiliation will result in disqualification of the Proposer and removal of the Proposer from the City's Proposer lists and prohibition from engaging in any business with the City.

3.12 RESERVATIONS FOR AWARD AND REJECTION OF PROPOSAL: The City reserves the right to accept or reject any or all proposal, part of proposal, and to waive minor irregularities or variations to specifications contained in proposal, and minor irregularities in the bidding process. The City also reserves the right to award the Agreement on a split order basis, lump sum basis, individual item basis, or such combination as shall best serve the interest of the City. The City reserves the right to make an award to the responsive and responsible Proposer whose product or service meets the terms, conditions, and specifications of the RFP and whose Proposal is considered to best serve the City ' s interest. In determining the responsiveness of the offer and the responsibility of the Proposer, the following shall be considered when applicable : the ability, capacity and skill of the Proposer to perform as required; whether the Proposer can perform promptly, or within the time specified, without delay or interference; the character, integrity, reputation, judgment, experience and efficiency of the Proposer; the quality of past performance by the Proposer; the previous and existing compliance by the Proposer with related laws and ordinances; the sufficiency of the Proposer' s financial resources; the availability, quality and adaptability of the Proposer ' s supplies or services to the required use; the ability of the Proposer to provide future maintenance, service or parts; the number and scope of conditions attached to the bid.

If the RFP provides for a Agreement trial period, the City reserves the right, in the event the selected Proposer does not perform satisfactorily, to award a trial period to the next ranked Proposer or to award a Agreement to the next ranked Proposer, if that Proposer has successfully provided services to the City in the past. This procedure to continue until a Proposer is selected or the Agreement is re- bid, at the sole option of the City.

3.13 LEGAL REQUIREMENTS: Applicable provisions of all federal, state, county laws, and local ordinances, rules and regulations shall govern development, submittal and evaluation of all proposal received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a Proposal response hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any Proposer shall not constitute a cognizable defense against the legal effect thereof .

PART IV BONDS AND INSURANCE

4.1 PERFORMANCE BOND: If a performance bond is required in Special Conditions, the Proposer shall within fifteen (15) working days after notification of award, furnish to the City a Performance Bond, payable to the City of Delray Beach, Florida, in the face amount specified in Special Conditions as surety for faithful performance under the terms and conditions of the Agreement. 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 Performance Bond. The Performance Bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida and having a resident agent.

Acknowledgement and agreement is given by both parties that the amount herein set for the Performance Bond is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Proposer to the City in the event of a material breach of an Agreement by the Agreementor.

- 4.2 INSURANCE:** If the Proposer is required to go on to City property to perform work or services as a result of RFP award, the Proposer shall assume full responsibility and expense to obtain all necessary insurance as required by City or specified in Special Conditions.

The Proposer shall provide to the Purchasing Department original certificates of coverage and receive notification of approval of those certificates by the City ' s Risk Manager prior to engaging in any activities under this Agreement. The Agreement's insurance is subject to the approval of the City's Risk Manager. The certificates must list the City as an ADDITIONAL INSURED for General Liability Insurance, and shall have no less than thirty (30) days written notice of cancellation or material change. Further modification of the insurance requirements may be made at the sole discretion of the City's Risk Manager if circumstances change or adequate protection of the City is not presented. Proposer, by submitting the bid, agrees to abide by such modifications.

PART V PURCHASE ORDER AND AGREEMENT TERMS:

- 5.1 COMPLIANCE TO SPECIFICATIONS, LATE DELIVERIES/PENALTIES:** Items offered may be tested for compliance to Proposal specifications. Items delivered which do not conform to Proposal specifications may be rejected and returned at Agreement's expense. Any violation resulting in Agreement termination for cause or delivery of items not conforming to specifications, or late delivery may also result in:
Proposers name being removed from the City's Proposer' s mailing list for a specified period and Proposer will not be recommended for any award during that period; all City Departments being advised to refrain from doing business with the Proposer; and all other remedies in law or equity.
- 5.2 DELIVERY:** Time will be of the essence for any orders placed as a result of this RFP. The City reserves the right to cancel any orders, or part thereof, without obligation if delivery is not made in accordance with the schedule specified by the Proposer and accepted by the City.
- 5.3 PACKING SLIPS:** It will be the responsibility of the Successful Proposer to attach all packing slips to the OUTSIDE of each shipment. Packing slips must provide a detailed description of what is to be received and reference the City of Delray Beach purchase order number that is associated with the shipment. Failure to provide a detailed packing slip attached to the outside of shipment may result in refusal of shipment at Agreement's expense.
- 5.4 PAYMENT TERMS AND CASH DISCOUNTS:** Payment terms, unless otherwise stated in this RFP, will be considered to be net 45 days after the date of satisfactory delivery at the place of acceptance and receipt of correct invoice at the office specified, whichever occurs last. Proposer may offer cash discounts for prompt payment but they will not be considered in determination of award. If a Proposer 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, whichever occurs last.

- 5.5 TAX EXEMPTION:** The City of Delray Beach is exempt from State Sales Tax and Federal Excise Taxes. Where tax applies, the invoice must show gross, price, amount of tax, and net price. Exception certificate will be provided upon request.
- 5.6 PAYABLE INTEREST:** *Payment of Interest.* The City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Proposer waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to the bid. *Rate of Interest.* In any instance where the prohibition or limitations herein are determined to be invalid or unenforceable, the annual rate of interest payable by the City, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).
- 5.7 TOTAL PROPOSAL DISCOUNT:** If Proposer offers a discount for award of all items listed in the bid, such discount shall be deducted from the total of the firm net unit prices Proposal and shall be considered in tabulation and award of bid.
- 5.8 PROPOSAL FIRM FOR ACCEPTANCE:** Proposer warrants, by virtue of bidding, that the Proposal and the prices quoted in the Proposal will be firm for acceptance by the City for a period of one hundred twenty (120) days from the date of Proposal opening unless otherwise stated in the RFP.
- 5.9 VARIANCES:** For purposes of Proposal evaluation, Proposer's must indicate any variances, no matter how slight, from RFP General Conditions, Special Conditions, Specifications or Addenda in the space provided in the RFP. No variations or exceptions by a Proposer will be considered or deemed a part of the Proposal submitted unless such variances or exceptions are listed in the Proposal and referenced in the space provided on the Proposer proposal pages. If variances are not stated, or referenced as required, it will be assumed that the product or service fully complies with the City's terms, conditions, and specifications.
- By receiving a bid, City does not necessarily accept any variances contained in the bid. All variances submitted are subject to review and approval by the City. If any Proposal contains material variances that, in the City's sole opinion, make that Proposal conditional in nature, the City reserves the right to reject the Proposal or part of the Proposal that is declared by the City as conditional.
- 5.10 ACCEPTANCE, CONDITION, AND PACKAGING:** The material delivered in response to RFP award shall remain the property of the Proposer until a physical inspection is made and the material accepted to the satisfaction of the City. The material must comply fully with the terms of the RFP, be of the required quality, new, and the latest model. All containers shall be suitable for storage and shipment by common carrier, and all prices shall include standard commercial packaging. The City will not accept substitutes of any kind. Any substitutes or material not meeting specifications will be returned at the Proposer's expense. Payment will be made only after City receipt and acceptance of materials or services.
- 5.11 SAFETY STANDARDS:** All manufactured items and fabricated assemblies shall comply with applicable requirements of the Occupational Safety and Health Act of 1970 as amended, and be in compliance with Florida Statutes, Chapter 442. Any toxic substance listed in Section 38F- 41.03 of the Florida Administrative Code

delivered as a result of any order must be accompanied by a completed Safety Data Sheet (SDS).

- 5.12 ASBESTOS STATEMENT:** All material supplied must be 100% asbestos free. Proposer, by virtue of bidding, certifies that if awarded any portion of the RFP the Proposer will supply only material or equipment that is 100% asbestos free.
- 5.13 OTHER GOVERNMENTAL ENTITIES:** If the Proposer is awarded a Agreement as a result of this RFP, the Proposer may, if the Proposer has sufficient capacity or quantities available, provide to other governmental agencies, so requesting, the products or services awarded in accordance with the terms and conditions of the RFP and resulting Agreement. Prices shall be F.O.B. delivered to the requesting agency.
- 5.14 VERBAL INSTRUCTIONS PROCEDURE:** No negotiations, decisions, or actions shall be initiated or executed by the Proposer as a result of any discussions with any City employee. Only those communications which are in writing from an authorized City representative may be considered. Only written communications from Agreementors, which are assigned by a person designated as authorized to bind the Agreementor, will be recognized by the City as duly authorized expressions on behalf of Agreementors.
- 5.15 INDEPENDENT AGREEMENTOR:** The Proposer is an independent Proposer under this Agreement. Personal services provided by the Proposer shall be by employees of the Proposer and subject to supervision by the Agreementor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, procurement policies unless otherwise stated in this RFP, and other similar administrative procedures applicable to services rendered under this Agreement shall be those of the Agreementor.
- 5.16 TERMINATION FOR CAUSE:** If, through any cause, the Proposer shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Proposer shall violate any of the provisions of this Agreement, the City may upon fifteen days written notice to the Proposer terminate the right of the Proposer to proceed under this Agreement, or with such part or parts of the Agreement as to which there has been default, and may hold the Proposer liable for any damages caused to the City by reason of such default and termination. In the event of such termination, any completed services performed by the Proposer under this Agreement shall, at the option of the City, become the City's property and the Proposer shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Agreementor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Agreementor, and the City may withhold any payments to the Proposer for the purpose of setoff until such time as the amount of damages due to the City from the Proposer can be determined.
- 5.17 TERMINATION FOR CONVENIENCE:** The City reserves the right, in its best interest as determined by the City, to cancel this agreement by giving written notice to the Proposer thirty (30) days prior to the effective date of such cancellation.
- 5.18 CANCELLATION FOR UNAPPROPRIATED FUNDS:** The obligation of the City for payment to a Proposer is limited to the availability of funds appropriated in a

current fiscal period, and continuation of the Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

5.19 RECORDS/AUDIT: The Proposer shall maintain during the term of the Agreement all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this Agreement for the duration of the Agreement and for three years after the final payment, or until all pending audits, investigations or litigation matters relating to the Agreement are closed, whichever is later. The Proposer agrees to make available to the City or designee, during normal business hours all books of account, reports and records relating to any agreement as a result of this bid.

5.20 PERMITS, TAXES, LICENSES: The successful Proposer shall, at their own expense, obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried out under this Agreement.

5.21 LAWS/ORDINANCES: The Proposer shall observe and comply with all Federal, state, local and municipal laws, ordinances rules and regulations that would apply to this Agreement.

5.22 UNUSUAL CIRCUMSTANCES: If during a Agreement term where costs to the City are to remain firm or adjustments are restricted by a percentage or CPI cap, unusual circumstances that could not have been foreseen by either party of the Agreement occur, and those circumstances significantly affect the Agreementor's cost in providing the required prior items or services, then the Proposer may request adjustments to the costs to the City to reflect the changed circumstances. The circumstances must be beyond the control of the Agreementor, and the requested adjustments must be fully documented. The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the City will reserve the following options:

1. The Agreement can be canceled by the City upon giving thirty (30) days written notice to the Proposer with no penalty to the City or Agreementor. The Proposer shall fill all City requirements submitted to the Proposer until the termination date contained in the notice.
2. The City requires the Proposer to continue to provide the items and services at the firm fixed (non- adjusted) cost until the termination of the Agreement term then in effect.
3. If the City, in its interest and in its sole opinion, determines that the Proposer in a capricious manner attempted to use this section of the Agreement to relieve them of a legitimate obligation under the Agreement, and no unusual circumstances had occurred, the City reserves the right to take any and all action under law or equity. Such action shall include, but not be limited to, declaring the Proposer in default and disqualifying him for receiving any business from the City for a stated period of time.

If the City does agree to adjusted costs, these adjusted costs shall not be invoiced to the City until the Proposer receives notice in writing signed by a person authorized to bind the City in such matters.

- 5.23 ELIGIBILITY:** If applicable, the Proposer must first register with the Department of State of the State of Florida, in accordance with Florida State Statutes, prior to entering into a Agreement with the City.
- 5.24 PATENTS AND ROYALTIES:** The Agreementor, without exception, shall indemnify and save harmless the City and its employees from liability of any nature and kind, including cost and expenses for or on account of any copyrighted, patented or un - patented invention, process, or article manufactured or used in the performance of the Agreement, including its use by the City. If the Proposer uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the Proposal prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.
- 5.25 ASSIGNMENT:** Proposer shall not transfer or assign the performance required by this RFP without the prior written consent of the City which consent may be withheld for any reason. Any award issued pursuant to this RFP, and the monies, which may become due hereunder, are not assignable except with the prior written approval of the City Commission or the City Manager or City Manager ' s designee, depending on original award approval.