



## REQUEST FOR QUALIFICATION GENERAL TERMS AND CONDITIONS

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## 1. **DEFINITIONS**

- a. **Request for Qualifications("RFQ")**: This solicitation document, including any addenda.
- b. **City**: Refers to the City of Sebastian.
- c. **Days**: Refers to calendar days, unless otherwise stated.
- d. **Contract or Agreement**: Request for Qualification, all addenda issued thereto, all affidavits, the signed agreement, and all related documents comprising the totality of the agreement between the City and the Contractor.
- e. **Contractor**: Selected proposer awarded a contract to provide the goods or services to the City.
- f. **Proposal**: Submission in response to this RFQ.
- g. **Proposer**: Contractor submitting a response to this RFQ, "pre-award".
- h. **Responsible Proposer**: Proposer with integrity, reliability, and capability to fulfill the contract requirement stated in the RFQ.
- i. **Responsive Proposer**: Proposer whose proposal fully conforms in all material respects to the RFQ and its entire requirement, including form and substance.
- j. **Shall, Must, and Will**: Interpreted as mandatory language.

## 2. **NOTICE**

- a. Whenever either Party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the Contractor designates the address set forth on the first page of this solicitation document as its place for receiving notice, and the City designates the following address for such notice:
- b. City of Sebastian  
Attention: Procurement/Contracts Manager  
1225 Main Street, Sebastian, FL 32958  
Telephone: 772-388-8231  
Email: [Procurement@cityofsebastian.org](mailto:Procurement@cityofsebastian.org)

## 3. **PUBLIC RECORDS**

- a. Section 119.01 Florida Statutes, et. seq., the Florida Public Records Law, provides that municipal records shall at all times be open for personal



inspection by any person. Information and materials received by the City in connection with all proposers' responses shall be deemed to be public records subject to public inspection upon award, recommendation for award, or thirty (30) days after the RFQ opening, whichever occurs first. However, certain exemptions to the public records law are statutorily provided for in Section 119.07, F.S. Therefore, if the proposer believes any of the information contained in his or her response is exempt from the Public Records Law, the proposer must in his or her response specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption, otherwise, the City will treat all materials received as public records.

- b. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT JEANETTE WILLIAMS, THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
1225 MIAN STREET  
SEBASTIAN, FL 32958  
TELEPHONE: 772-388-8215  
EMAIL:  
[CityHallPublicRecordsRequest@cityofsebastian.org](mailto:CityHallPublicRecordsRequest@cityofsebastian.org)**

#### **4. PROPOSER CERTIFICATIONS**

- a. **NON-COLLUSION:**
- i. By submitting a proposal, the proposer certifies, under oath, that:
1. Such proposal is genuine and is not collusive or a sham bid.
  2. Neither the said proposer nor any of its officers, partners, owners, agent representatives, employees or parties in interest including this affiant, has in any way, colluded, conspired, or agreed, directly or indirectly, with any other bidder, firm or person, to submit a collusive or sham bid in connection with the Agreement for which the attached bid has been submitted or to refrain from proposing in connection with such Agreement, or has in any manner, directly or indirectly, sought by Agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the attached bid or of any other bidder, or to fix



any overhead, profit or cost element of the bid price or the bid price of any other bidder, or to secure through an collusion, conspiracy, connivance or unlawful Agreement any advantage against the City of Sebastian, Florida, or any person interested in the proposed Agreement.

3. The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, or unlawful Agreement on the part of the bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.
4. Any violation of this provision will result in the cancellation or return of proposers' materials (as applicable) and the removal of the RFQ from the list(s).

**b. CONFLICT OF INTEREST:**

- i. The resulting agreement is subject to the provisions of Chapter 112.313, Florida Statutes. All proposers shall disclose within their RFQ to the City the name of any officer, director, or agent who is also an employee of the City. Please submit to the City all information on any potential conflict of interest related to the provision of the goods or services requested in this Solicitation.
- ii. The term "conflict of interest" refers to situations in which financial or other personal considerations may adversely affect, or have the appearance of adversely affecting, an employee's professional judgment in exercising any City duty or responsibility in administration, management, instruction, research, or other professional activities.
- iii. Should the successful proposer permanently or temporarily hire any City employee or Council member, who is, or has been, directly involved with the proposer prior to or during performance of the resulting contract, the Agreement shall be subject to immediate termination by the City.
- iv. Any violation of this provision will result in the cancellation or return of proposers' materials (as applicable) and the removal of the RFQ from the list(s).

**c. PUBLIC ENTITY CRIMES:**

- i. A "public entity crime," as defined in Paragraph 287.133 (1) (g), Florida Statutes, means a violation of any state or federal law by a person concerning and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, involving antitrust, fraud, theft,



bribery, collusion, racketeering, conspiracy, or material misrepresentation.

- ii. "Convicted" or "conviction," as defined in Paragraph 287.133 (1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
- iii. "Affiliate" as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:
  - 1. A predecessor or successor of a person or corporation convicted of a public entity crime; or
  - 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime; or
  - 3. Those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate; or
  - 4. A person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
- iv. Proposer certifies that neither the entity proposing nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989. Where the bidder is unable to certify all of the statements above, the bidder shall attach an explanation to this bid.

d. **SCRUTINIZED VENDOR CERTIFICATION:**

- i. Proposer certifies under penalties of perjury, as of the date of this solicitation to provide goods and/or services to the City, that it:
  - 1. Does not participate in a boycott of Israel; and
  - 2. Is not on the Scrutinized Companies that Boycott Israel List; and
  - 3. Is not on the Scrutinized Companies with Activities in Sudan List; and
  - 4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and



5. Has not engaged in business operations in Cuba or Syria.
- ii. Submitting a false certification shall be deemed a material breach of contract. The City of Sebastian shall provide notice, in writing, to the bidder of the City's determination concerning the false certification. The contractor shall have sixty-(60) days following the receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the bidder determines, using credible information available to the public, that a false certification has been submitted by bidder, this contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this contract shall be imposed, pursuant to F.S. 287.135 Said certification must also be submitted at the time of Contract renewal.
- iii. Section 287.135, Florida Statutes, generally prohibits state agencies and departments, and local government entities from: 1) contracting with companies for goods or services in any amount if at the time of proposing on, proposing a bid for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; and 2) contracting with companies, for goods or services over \$1,000,000.00 that are on either the Scrutinized Companies with activities in the Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statute, or have been engaged in business operations in Cuba or Syria.
- iv. As provided in F.S. 287.135, by entering into this contract or performing any work in furtherance hereof, the bidder certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that Boycott Israel List; engaged in a boycott of Israel, pursuant to F.S. 215.4725; have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473; or engaged in business operations in Cuba or Syria.

e. **IMMIGRATION LAWS:**

- i. The City will not intentionally award City contracts to any firm that knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a (e) (Section 274A (e) of the Immigration and Nationality Act ("INA")).



f. **DRUG-FREE WORKPLACE**

i. In accordance with Florida Statute Section 287.087, Proposer certifies the following:

1. A written statement is published notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace named above and specifying actions that will be taken against violations of such prohibition.
2. Employees are informed about the dangers of drug abuse in the work place, the proposers policy of maintaining a drug free working environment, and available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug use violations.
3. Employees are notified that as a condition of working on the commodities or contractual services being solicited, they will notify the employer of any conviction of, plea of guilty or nolo contendere to, any violation of Chapter 893, or of any controlled substance law of the State of Florida or the United States, for a violation occurring in the work place, no later than five (5) days after such conviction, and requires employees to sign copies of such written statement to acknowledge their receipt.
4. The proposer employer imposes a sanction, or requires the satisfactory participation in, a drug abuse assistance or rehabilitation program, if such is available in the employee's community, by any employee who is so convicted.
5. The proposer/employer makes a good faith effort to continue to maintain a drug free work place through the Implementation of the drug free workplace program.

g. **SUSPENSION AND DEBARMENT CERTIFICATION**

- i. The City of Sebastian will not make an award to parties listed on the government-wide exclusions in the System for Award Management (SAM).
- ii. This contract is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 3000. As such, the contractor is required to verify that none of the contractor's principles (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).



- iii. The contractor must comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- iv. This certification is a material representation of fact relied upon by the City of Sebastian. If it is later determined that the contractor did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, in addition to remedies available to the City of Sebastian, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- v. The bidder or proposer agrees to comply with the requirements of 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**h. FLORIDA CONVICTED, SUSPENDED, AND DISCRIMINATORY COMPLAINTS**

- i. By submission of a proposal, Respondent affirms that it is not currently listed in the Florida Department of Management Services Convicted, Suspended, or Discriminatory Complaint Vendor List.
- i. The City shall find non-responsible any Respondent, or any of their suppliers, subcontractors, or subconsultants who are currently debarred or suspended, or whose name appears in any of the lists above.

**5. CONE OF SILENCE**

Potential respondents and their agents shall not communicate with City Council Members, the City Manager, or any City staff other than Purchasing personnel regarding this solicitation. This restriction shall be effective from the time of solicitation advertisement until the City Council meets to authorize ranking and/or award. Such communication may result in disqualification.

**6. CANCELLATION**

The City reserves the right to cancel this RFQ, in whole or in part, when it is in its best interest. Notice of cancellation will be posted on VendorLink.

**7. PROPOSAL SUBMISSION**

- a. All proposals must be submitted via VendorLink electronically <https://www.myvendorlink.com/>.



- b. Proposals are due on the date and time indicated on the cover page or as amended by an addendum issued by procurement.
- c. The Contractor is responsible for ensuring their response is submitted through VendorLink by the time and date specified in the solicitation or subsequent addenda. The City shall not be responsible for delays caused by any occurrence.
- d. Electronic submissions may require the uploading of attachments. All documents should be attached as separate files. Attachments containing embedded documents or proprietary file extensions are prohibited. The proposer is responsible for ensuring that its proposal, including all attachments, is uploaded successfully.
- e. **Submittals sent by mail, facsimile, electronic mail, telephone, or any other means not specified herein will not be accepted.**
- f. Late proposals cannot be submitted and will not be accepted. Proposers are cautioned to allow sufficient time to submit proposals and upload attachments. Any technical issues must be submitted to VendorLink by emailing [support@evendorlink.com](mailto:support@evendorlink.com). The City cannot assist with technical issues regarding submittals and will not be responsible for delays caused by technical or other issues.

## **8. EXECUTION OF RFQ SUBMITTAL**

Each RFQ submittal must include the signature of an officer or employee having authority to bind the contractor in the space(s) provided. Only the terms and conditions of this RFQ, as released by the City or amended via addendum, are valid. Any modification to any term or condition by the contractor is not binding unless it is expressly agreed to in writing by the City in advance.

## **9. INTERPRETATIONS**

No oral interpretations will be made to any submitter as to the meaning of the Request for Qualification documents. Every request for such an interpretation shall be made in writing, addressed, and forwarded to the City of Sebastian Procurement Division ten (10) or more days before the date fixed for the opening of the proposals. The City shall not be responsible for oral interpretations given by any City employee. Every interpretation made to submitters will be in the form of an Addendum, which, if issued, will be sent promptly as is practical to all persons to whom RFQ documents have been issued. All such Addenda shall become part of the RFQ documents. Further, it shall be the responsibility of each submitter, prior to submitting their response, to contact the City of Sebastian Procurement Division at (772) 388-8231 to determine if addenda was issued and to make such addenda a part of their submittal.



## **10. CONFIDENTIAL OR TRADE SECRETS INFORMATION**

- a. Bids submitted in response to this request are public records.
- b. Pursuant to section 119.071, Florida Statutes, any financial statement that the City requires a contractor to submit in order to prequalify for bidding or for responding to a proposal for a public works project is exempt from the Public Records Law. Therefore, any financial statement that you submit that you wish to remain confidential shall be submitted in a sealed opaque envelope and marked "Confidential Financial Statement Enclosed."
- c. Trade secret information must be identified as instructed per section 812.081(1)(c), Florida Statutes. Bidders are requested to specifically identify any information contained in their bids that they consider confidential as a trade secret and that they believe to be exempt from disclosure. They must cite to the specific facts that demonstrate that such information is exempt as a trade secret under the applicable law. Any Bidder marking, labeling or declaring their entire proposal "Confidential and Proprietary" may be disqualified.
- d. By submission of a response to this solicitation the contractor agrees to indemnify and hold the City and its commissioners, officers, employees and agents harmless should any information marked as confidential and/or proprietary knowingly or unknowingly be released as the result of a public records request or if any information marked as confidential and/or proprietary is not released as a result of a public records request.

## **11. PROTEST PROCEDURE**

- a. Following Chapter 120, Florida Statutes, any person who is adversely affected by the terms, conditions, or specifications outlined in this RFQ or who is adversely affected by a decision of the City concerning the solicitation shall file a Notice of Intent to Protest, in writing within 72 hours after the solicitation document is posted or after the notice of decision is posted, respectively, excluding Saturdays, Sundays, and state holidays. A formal written protest shall be filed no later than 10 days after the Notice of Intent to Protest is filed, excluding Saturdays, Sundays, and state holidays. The formal written protest must be accompanied by a protest bond, cashier's check, or money order in the amount of one percent (1%) of the total estimated contract value. The Notice of Intent to Protest and formal written protest shall be filed at the following address: Procurement/Contracts Manager, 1225 Main Street, Sebastian, FL 32958. The formal written protest shall state, with particularity, the facts and law upon which the protest is based. Failure to file a Notice of Intent to Protest, formal written protest, or failure to post the bond, cashier's check, or money order within the time frames or in the manner described above shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.



- i. Decision - If the protest is not resolved by mutual agreement, the Procurement/Contracts Manager shall promptly investigate the basis of the protest and, after consultation with the originating department, the City Attorney or any other person or entity deemed necessary, the Procurement/Contracts Manager shall issue a decision in writing. A copy of the decision shall be furnished immediately to the protestor and any other party determined by the Procurement/Contracts Manager to be directly affected by the decision. The decision shall:
  - a) State the decision and the basis for the decision, and
  - b) Set forth the protestor's right to administrative review.
- ii. Administrative Review – If the protestor disagrees with the decision of the Procurement/Contracts Manager, the protestor may appeal the decision to the City Manager, provided written notice of such appeal shall be submitted by the protestor to the Procurement/Contracts Manager within seven (7) calendar days of receipt of the decision to award. Any appeal of the decision by the City Manager shall be heard by the City Council or other appropriate administrative or legal body.
- iii. Stay of Procurement – In the event of a timely and properly filed protest, the Procurement/Contracts Manager shall not proceed further with the solicitation or award until all administrative remedies have been exhausted, or until the City Manager or City Council, as appropriate, makes a determination on the record that the award of a contract is necessary to protect substantial interests of the City.

## **12. COMPLIANCE WITH LAWS AND CITY POLICIES AND PROCEDURES**

Contractors are required to be familiar with all federal, state, and local laws, ordinances, rules, and regulations that may affect their work in any manner. Failure on the part of the Contractor to be aware of any law, ordinance, rule or regulation will in no way relieve him from any responsibility or liability arising from the contract award. The Contractor assures and certifies that they will comply with all laws, ordinances, rules, regulations, and all other legal requirements. The Contractor shall abide by all OSHA, NFPA, and ADA regulations about the hazards associated with the project, such as fall protection, lockout/tag-out, PPE, safety barricades, portable fire suppression/extinguishers, job site first aid kits, and emergency communication. Any fines levied due to inadequacies or failure to comply with all requirements shall be the sole responsibility of the Contractor.

## **13. INDEPENDENT CONTRACTOR RELATIONSHIP**

The contractor is, and shall be, in the performance of all Services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of the City. All persons engaged in any of the work or services performed under this agreement shall at all times, and in all places, be subject to the



contractor's sole direction, supervision, and control. The contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects, the contractor's relationship and the relationship of its employees to the City shall be that of an independent contractor and not as employees or agents of the City. The contractor does not have the power or authority to bind the City in any promise, agreement, or representation. Nothing contained herein shall be deemed to create an association, partnership, joint venture, or relationship of principal and agent or master and servant among the parties or any affiliate thereof, or to provide any party hereto with the right, power, or authority whether expressed or implied, to create any such duty or obligation on behalf of any other party. The City, in its absolute discretion, retains the right to reject, bar, or require the replacement of any employee, subcontractor, or agent of the contractor. Such rejection shall not relieve the contractor of the obligation to perform all work in compliance with the RFQ.

#### **14. CONTRACTOR'S REPRESENTATIVE**

The contractor must provide a point of contact for the term of this RFQ to include the name, email address, office telephone, and cell phone numbers of the person(s) to be contacted for the placement of an order, coordination of services, and to address other issues. If the point of contact differs between regular work hours, after-hours, weekends, and holidays, this must be provided. The contractor shall ensure that all personnel assigned to work on this project on their behalf must be dressed appropriately and clean at all times. Any person who is present on the job site on behalf of the contractor must be provided and display on their clothing proper identification at all times. The contractor must also provide the procurement division with any updates to the primary point of contact. The City reserves the right to require a change in the contractor's point of contact at the City's sole discretion.

#### **15. RIGHT TO USE EXISTING CONTRACTS / NON-EXCLUSIVITY**

The City reserves the right to utilize any other contract, including, but not limited to, the following: any state of Florida contract, any contract awarded by any other city or county governmental agencies, other school boards, other community colleges/state university system, cooperative agreements, or to directly negotiate/purchase per City policy. The City also reserves the right to RFQ separately any item(s) and/or service(s) covered under this agreement, if deemed to be in the best interest of the City, at any time during this agreement term.

#### **16. BANKRUPTCY / INSOLVENCY**

At the time of RFQ submission, the contractor shall not be in the process of or engaged in any type of proceedings relating to insolvency or bankruptcy, either voluntary or involuntary or receivership proceedings. If the contractor is awarded a contract for six (6) months or longer, and files for bankruptcy, insolvency, or receivership thereafter, the City may, at its option, terminate and cancel the



agreement, in which event all rights hereunder shall immediately cease and terminate.

#### **17. TERMINATION FOR CONVENIENCE**

The City, at its sole discretion, reserves the right to terminate the Contract upon thirty (30) days' written notice. Upon receipt of such notice, the Contractor shall not incur any additional costs under the Contract. The City will be liable only for reasonable costs incurred by the Contractor prior to notice of termination. The City will be the sole judge of "reasonable costs."

#### **18. TERMINATION DUE TO UNAVAILABILITY OF CONTINUING FUNDING**

When funds are not appropriated or otherwise made available to support continuation of performance in a current or subsequent fiscal year, the Contract will be cancelled, and the Contractor will be reimbursed for the reasonable value of any non-recurring costs incurred, amortized in the price of the supplies or services/tasks delivered under the contract.

#### **19. TERMINATION FOR DEFAULT**

The City reserves the right to terminate any Contract arising from a solicitation, in part or in whole, or to affect other appropriate remedies in the event the Contractor fails to perform in accordance with the terms and conditions stated in the Contract. The City further reserves the right to suspend or debar the Contractor in accordance with the City's ordinances, resolutions, and administrative orders. The Contractor will be notified by letter of the City's intent to terminate and the Contractor will be given ten (10) calendar days to cure the breach. In the event of termination for default, the City may procure the required goods and services from any source and use any method deemed in its best interest. All re-procurement costs will be borne by the Contractor.

#### **20. RIGHT TO REJECT**

- a. The City reserves the right to reject any or all RFQ(s), to waive minor irregularities, and/or to accept the RFQ(s), which in its sole judgment best serve the interest of the City.
- b. Multiple proposals from an individual, bidder, or association under the same or different names will not be considered.

#### **21. INVOICING**

- a. Payments shall be made in accordance with Section 218, Part VII of the Florida Statutes. Unless otherwise noted, invoices shall be mailed directly to The City of Sebastian, Accounts Payable, 1225 Main Street, Sebastian, FL 32958. The Contractor shall provide fully documented invoices, which indicates the basic information listed below.



- i. Name of the business organization as specified on the Contract between City and Contractor
  - ii. Date of invoice
  - iii. Contractor's invoice number
  - iv. Contractor's federal identification number on file with the state
  - v. City purchase order number and solicitation number
  - vi. Unit price of the goods, services or property provided
  - vii. Extended total price of the goods, services or property
  - viii. Applicable discounts
  - ix. Description of provided goods or services
  - x. Quantity of provided goods or services
  - xi. Date(s) of delivery of provided goods or services
  - xii. Location goods or services were delivered
- b. Any invoice submitted as a result of the award of this RFQ shall be itemized matching the items on the purchase order. "Lump sum" invoices shall not be submitted and will not be accepted for multiple line purchase orders. An invoice can only reference one purchase order number. Invoices that do not reference valid purchase order number will be returned to the contractor for resolution of the discrepancies and resubmitted.
- c. It shall be understood that invoices shall not be authorized for payment until the work is inspected by the respective City representative and payment is approved. The City will pay the contract price minus any liquidated damages, back charges and/or other damages to the contractor upon final completion and acceptance. The City shall provide partial payments for Work completed by the contractor during various phases of the Work assignment in accordance with the unit pricing provided in their proposal subject to an agreement maximum or not to exceed amount. Failure to submit invoices in the prescribed manner will delay payment.

## **22. DIRECT PURCHASES**

As a holder of a current Consumer's Certificate of Exemption, the City reserves the right to make direct purchases of any materials and/or equipment included in the project to achieve sales tax savings. The City shall coordinate such purchases with the Contractor. To the extent requested by the City, the Contractor will be responsible for coordinating the delivery, safekeeping, protection, insuring (as to those items that the Contractor will install), inspection, installation, and testing of any materials purchased by the City, and for the management and administration of any warranty claims pertaining to such materials and equipment. Furthermore,



furnished and installed materials directly purchased by the City will be deducted from the Contractor's Guaranteed Maximum Price (GMP). The contractor shall provide a proposal that includes all costs to complete the project.

### **23. PAYMENT**

The City will only pay the dollar amounts as authorized on the purchase order. Payment will be made according to Chapter 218, F.S., Local Government Prompt Payment Act, after the commodities or contractual services provided by the contractor have been received, inspected, and found to comply with award specifications, free of damage or defect, and properly invoiced. Payment for partial shipments shall not be made unless specified in the purchase order. Failure to follow these instructions may result in delays in processing invoices for payment. The purchase order number must appear on invoices, bills of lading, packages, cases, delivery lists, and correspondence.

### **24. CHANGE ORDERS**

- a. Without invalidating the contract documents, and without notice to the surety, the City of Sebastian reserves the right to make increases, decreases or other changes in the character or quantity of the work under the proposal and contract documents as may be considered necessary or desirable to complete the work in a manner satisfactory to the City of Sebastian. The City reserves the right to order changes which may result in additions to or reductions from the amount, type or value of the work shown in the proposal or contract documents, provided that they are within the general scope of the proposal documents or contract documents.
- b. All changes will be authorized only by a written change order utilizing the City's standard form and approved in advance of the change by the designated project manager of the City. The contractor is required to provide the project manager with a detailed cost breakdown of material costs, labor costs, labor rates by trade, and work classification and overhead rates supporting the amount of the change, as well as an explanation of the cost and any revision to the Project completion time. If the contractor fails to notify the project manager of any schedule changes associated with the proposed change, it will be deemed to be an acknowledgement by contractor that the proposed work will not have any scheduling consequences. Any net increase to the pricing must also be approved and documented with a revised purchase order by City.

### **25. SUBCONTRACTORS AND SUPPLIERS**

The proposer is required to identify any and all subcontractors and/or suppliers that will be used in the performance of the proposed contract and to clearly identify in their submission the names, portions and percentages of work to be performed by their subcontractors or suppliers. Contractor shall be solely responsible for all



acts and omissions of its subcontractors or suppliers. Nothing in the RFQ and contract documents creates any contractual relationship between any subcontractor or suppliers and the City of Sebastian. Contractor shall be responsible for the timely payment of its subcontractors and suppliers as required by Florida Statute Chapter 218.735. Failure to comply with these payment requirements will place the contractor in default of the contract.

## **26. ASSIGNMENT**

The contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this agreement, or of any or all of its rights, title, or interest therein, or its power to execute such agreement to any person, firm, or corporation without prior written authorization by the City.

## **27. SILENCE OF SPECIFICATIONS**

Any omissions of detail in the specifications stated herein that would render the commodities from use, as specified herein, will not relieve the contractor from responsibility.

## **28. DISCRIMINATION**

The proposer shall not practice or condone personnel or supplier discrimination of any nature whatsoever, in any manner proscribed by federal or state of Florida laws and regulations. The City of Sebastian will not knowingly do business with vendors, proposers, or contractors who discriminate on those protected by state and federal law. Through the course of providing services to the City, contractors shall affirmatively comply with all applicable provisions of Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987 and the Florida Civil Rights Act of 1992, as well as all other applicable regulations, guidelines and standards. Any person who believes their rights have been violated should report such discrimination to the City.

## **29. AUDIT AND INSPECTION**

The City or their representative reserves the right to inspect and/or audit the contractor's documents and records as they pertain to the products and services delivered under this RFQ. Such rights will be exercised with notice to the contractor to determine compliance with and performance of the terms, conditions, and specifications on all matters, rights, duties, and obligations established by this RFQ. Documents or records in any form shall be open to the city's representative and may include but are not limited to all correspondence, ordering, payment, inspection, and receiving records, contracts or sub-contracts that directly or indirectly pertain to the transactions between the City and the contractor.



### **30. INDEMNIFICATION**

The contractor and its Subcontractor(s) shall indemnify, defend and hold harmless the City, and its officers and employees, from all third-party claims, demands, liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the contractor or its Sub-Contractor(s) and other persons employed or utilized by the Contractor or its subcontractor(s) in the performance of the agreement. Upon request of the City, the contractor or its subcontractor(s) shall, at no cost or expense to the City, indemnify and hold the City harmless of any suit asserting a claim for any loss, damage or liability specified above, and the contractor or its subcontractor(s) shall pay any cost and reasonable attorneys' fees that may be incurred by the City in connection with any such claim or suit or in enforcing the indemnity granted above. Nothing in this agreement shall be construed as the City waiving its sovereign immunity pursuant to 768.28, et seq., Florida Statutes, or any other sovereign or governmental immunity. This provision shall survive the termination of this RFQ.

### **31. CONTRACTS AND AMENDMENTS**

The contents of this RFQ and all provisions of the contractor's submittal shall be considered an agreement and become legally binding. Any changes to the provisions hereinafter award must be in writing and signed by both Parties.

### **32. LICENSING, CERTIFICATION, AND REGISTRATION**

Contractors must show their current Business Tax Receipt (if located in the City of Sebastian, City of Vero Beach, or Indian River County), as well as any licenses required by Chapter 489, F.S., Section 62C-20 (F.A.C.), and/or by the US EPA. All licenses shall be up to date. Contractors who are required to be registered with the Florida Department of State, Division of Corporations or who are incorporated within the state of Florida must furnish their Florida document number and a screenshot of their "active" status. All registered contractors must have an active status to be eligible to do business with the City. If the proposer is a State Certified General Contractor, or a State Registered General Contractor the proposer must be registered with the City of Sebastian. Contractors doing business under a fictitious name, on page 1, must submit their offer using the company's complete registered legal name; for example, ABC, Inc. d/b/a XYZ Company. If the contractor is not located in Florida, the contractor must provide their state's document number and a screenshot of their current, date-identified "active" status with their submittal.

### **33. TAXES**

Although the City of Sebastian is exempt from federal and state sales and use taxes, contractors or vendors doing business with the City are **not** exempted from paying said taxes to their supplier for goods or services purchased to fulfill the



contractual obligations with the City, nor shall any contractor or vendor be authorized to use the City's Tax Exemption Number in securing such materials.

### **34. FORCE MAJEURE**

Neither Party shall be liable for any failure or delay in performing any duty, requirement, or obligation under this agreement that is due to any of the following causes, to the extent beyond its reasonable control: fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, epidemic, pandemic, quarantine, riots, civil commotion, acts of government authorities, changes in laws or regulations strikes, or other labor disputes, or because of any other matter or condition beyond the control of either party and which cannot be overcome by reasonable diligence and without unusual expense.

### **35. REPORT OF UNSATISFACTORY PRODUCTS OR SERVICES**

A Vendor Performance Report form will be utilized to document unsatisfactory performance during the term of this RFQ. The report may become an important part of the contractor's history. The report and process will assist the City in determining whether there is a continuing pattern of problems that may need to be addressed through termination of contract and/or suspension of the contractor from future bidding.

### **36. E-VERIFY**

In accordance with State of Florida, Office of the Governor, Executive Order 11-116 (superseding Executive Order 11-02; Certification of Employment Status), in the event performance of this Agreement is or will be funded using state or federal funds, the contractor must comply with the Employment Eligibility Verification Program developed by the federal government to verify the eligibility of individuals to work in the United States and 48 CFR 52.222-54 (as amended) is incorporated herein by reference. The contractor shall (1) enroll in the U.S. Department of Homeland Security's E-Verify system, (2) utilize E-Verify to verify the employment eligibility of all new employees hired during the term of the contract (3) utilize E-Verify to verify the employment eligibility of all employees assigned to the contract; and (4) shall expressly require any subcontractors performing work or providing services pursuant to the contract to likewise utilize E-Verify to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. Information on registration for and use of the E-Verify system can be obtained at the U.S. Department of Homeland Security website: <http://www/dhs.gov/E-Verify>.

### **37. RIGHTS IN DATA**

The City of Sebastian is and will remain the owner of all data provided to the contractor by the City under this contract. The contractor will not use such data for any purpose other than providing services and support to the City under this RFQ,



nor will any part of such data be sold, assigned, leased, or otherwise disclosed to third parties (other than authorized subcontractors for purposes of performance of the Services) or commercially exploited by or on behalf of the contractor. The contractor will not possess or assert any lien or other right against such data.

**38. DATA TRANSMISSION**

The contractor agrees that any transmission or exchange of system application data with the City or any other parties shall take place via secure means using current industry approved encryption standards.

**39. DATA BREACH**

Contractor agrees to comply with the State of Florida Database Breach Notification Act outlined in Section 501.171, F.S. In the event of a breach described in Section 501.171, F.S. ("Notification Event"), Contractor will notify the City immediately and will comply with the requirements of Section 501.171, F.S. assume responsibility for all costs associated with complying with the breach notification and informing all such individuals by applicable law. The Contractor agrees to indemnify, hold harmless and defend the City and its trustees, officers, and employees from and against any claims, damages, or other harm related to such Notification Event.

**40. COPYRIGHTS**

The parties want to ensure that the City has the ability to obtain copyrights, trademarks, service marks, etc. on the items created as part of this contract. Consultant agrees that any work prepared for the City which is eligible for copyright protection in the United States or elsewhere shall be work made for hire as a commissioned work. If any such work is deemed for any reason not to be work made for hire, Consultant assigns all right, title and interest in the copyright in such work, included but not limited to copyrights in text, two-dimensional and three-dimensional representations or animations, and all extensions and renewals thereof, to the City, and agrees to provide all assistance reasonably requested by the City in the establishment, preservation and enforcement of its copyright in such work, such assistance to be provided at the City's expense but without additional compensation to Consultant. Consultant agrees to waive all artist's rights and moral rights under Federal, State or International law, relating to the work developed or produced, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use of subsequent modification.

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