

INSTRUCTIONS TO SUPPLIERS & GENERAL CONDITIONS - RFQ

IS-1 ADDENDUM: The Town may record its response to inquiries and any supplemental instructions in the form of a written addendum. The Town may provide written addendum up to **seven (7) calendar days** before the deadline for receiving the proposals. Suppliers may contact the Town to ascertain whether any addenda have been issued. Failure to do so could result in your proposal being deemed unresponsive proposal. Any verbal explanations provided prior to RFQ opening will not be binding on the Town. All addenda shall be posted in the E-Bidding Platform, Negometrix.

IS-2 ADDITION OR DELETION OF SERVICES: The Town reserves the right to add to the services specified or to delete any portion of the scope of services at any time.

IS-3 AVAILABILITY OF PLATFORM: All responses to this solicitation must be submitted electronically through the e-Bid/RFQ Platform. Should there be any technical issues with the Platform (not user/Supplier issues) that prevents any Supplier from submitting a response within the two (2) hours immediately before the due time, the solicitation Platform provider (Negometrix) and affect all participating Suppliers. The Town shall verify the technical issue or unavailability of the Platform with Negometrix, the system provider. Technical issues localized to a single supplier will not be considered cause for an extension.

IS-4 CANCELLATION OF THE SOLICITATION: The Town reserves the right to cancel, in whole or in part, any solicitation when it is in the best interest of the Town, in the Town's sole and absolute discretion. Availability of all information related to a cancelled solicitation is subject to Chapter 119, Florida Statutes.

IS-5 CHANGING OF FORMS: If the Town discovers any Town provided forms submitted by a supplier in response to this solicitation have been altered the Town may, at its sole and absolute discretion, disqualify the supplier and not consider their response for award.

IS-6 CLARIFICATIONS: The Purchasing Division will receive written requests for clarification concerning the meaning or interpretations of the RFQ, **until ten (10) days** prior to the submittal deadline. Inquiries must be directed to the Town's Purchasing Division, through the E-Bidding Platform, Negometrix. Town personnel are authorized only to direct the attention of prospective Suppliers to various portions of the RFQ so that they may read and interpret such for themselves. No employee of the Town is authorized to interpret any portion of this RFQ or provide information regarding the requirements of the RFQ beyond what is set forth in the written RFQ document.

During the RFQ process, related contact with Town Staff by Supplier, or its agent, other than as part of the evaluation process or for clarification purposes, will be grounds for automatic disqualification of that Applicant Firm. The Applicant Firm may only contact the Purchasing Division for the clarification of the selection process and regarding any aspects of the projects to be used for the presentation as set forth above.

IS-7 CODE OF ETHICS: If any Supplier violates or is a party to a violation of the code of ethics of the Town of Palm Beach, Palm Beach County or the State of Florida with respect to this proposal, such Supplier may be disqualified from performing the work described in this proposal or from furnishing the goods or services for which the proposal is submitted and may be further disqualified from submitting any future proposals for work, goods or services for the Town of Palm Beach. The link for additional information regarding the Palm Beach County Commission on Ethics may be found at: <http://www.palmbeachcountyethics.com/ordinances-codes.htm>

IS-8 COLLUSION AMONG SUPPLIERS: Where two (2) or more related parties, as defined herein, each submit a response for the same Solicitation, such responses shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation of such responses. Related parties shall mean an interested party or the principals thereof which have a direct or indirect ownership interest in another interested party for the same contract or in which a parent company or the principals thereof of one interested party have a direct or indirect ownership interest in another interested party for the same contract. Furthermore, any prior understanding, agreement, or connection between two (2) or more corporations, firms, or persons submitting a response for the same materials, supplies, services, or equipment shall also be presumed to be collusive. The relationship of manufacturer or their representative(s) providing pricing to distributors while each party submits a response for the same materials, supplies, services, or equipment shall be presumed to be collusive. Responses found to be collusive shall be rejected. Respondents which have been found to have engaged in collusion may be considered non-responsible, and may be suspended or debarred, and any contract resulting from collusive actions may be terminated for default.

IS-9 CONE OF SILENCE: The Cone of Silence is 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 contract.

For the purposes of this section, a person's representative shall include, but not be limited to, the person's employee, partner, officer, director, proposer, lobbyist, or any actual or potential subcontractor or proposer of the person.

The cone of silence shall be in effect as of the issuance of this request for qualification and will remain in the effect until award is made by Town Council. 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 rejected by the Town or withdrawn by the person or person's representative. Each request for proposal, request for qualification, bid or any other competitive solicitation shall provide notice of cone of silence requirements and refer to this article.

The provisions of this article shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection committees, contract negotiations, presentations made to the town council, and protest hearings. Further, the cone of silence shall not apply to contract 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, town councilmember, mayor, advisory board member, or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.

The cone of silence shall terminate at the time the town council or town department authorized to act on behalf of the town council, awards or approves a contract, rejects all bids or responses, or otherwise takes action which ends the solicitation process.

For additional information refer to <http://www.palmbeachcountyethics.com/ordinances-codes.htm> - Palm Beach County Registration Ordinance – Effective April 2, 2012

IS-10 CONFLICT OF INTEREST: The award hereunder is subject to provisions of State Statutes, Palm Beach County and Town Ordinances. All Suppliers must disclose with their Proposal the name of any officer, director, or agent who is also an employee of the Town of Palm Beach. Further, all Suppliers must disclose the name of any Town employee who owns, directly or indirectly, an interest in the Supplier's firm, parent companies, subsidiaries, or any of its branches.

IS-11 CONFLICTS WITHIN SOLICITATION: Where there appears to be a conflict between information provided in the Solicitation Package the order of precedence shall be the last addendum issued, the Pricing Sheet(s), the Scope of Work/Specifications, the Special Terms & Conditions, the Supplemental Terms & Conditions and then the Instructions & General Conditions.

IS-12 CONTRACT AWARDS: The Town anticipates entering into an Agreement with the Supplier who submits the proposal judged by the Town to be most advantageous to the Town.

The Town reserves the right to accept or reject any or all proposals, with or without cause, to waive technicalities and irregularities, or to accept the proposal which, in its sole and absolute discretion, best serves the interest of the Town, or to award a contract to the next most qualified proposal if the successful Supplier does not execute a contract within ten (10) days after the award of the proposal.

The Supplier understands that this RFQ does not constitute an offer or an agreement with the Supplier. An offer or agreement shall not be deemed to exist and is not binding until proposals are reviewed, accepted by appointed staff, the best proposal has been identified, approved by the appropriate level of authority within the Town, and executed by all parties.

Any proposal may be withdrawn until the date and time set above for the submission of the proposals. Any proposal not so withdrawn shall constitute an irrevocable offer for a period of six (6) months to provide to the Town the services set forth in this Request for Qualifications.

The Town reserves the right to reject all proposals, to abandon the project, and/or to solicit and re-advertise for other proposals.

IS-13 CONTENTS OF THE SOLICITATION PACKAGE AND SUPPLIERS RESPONSIBILITIES: It is

the responsibility of the Supplier to become thoroughly familiar with the requirements, terms, and conditions of this solicitation. Pleas of ignorance of these matters by the Supplier will not be accepted as a basis for varying the requirements of the Solicitation Package or any resulting Contract.

IS-14 CONTRACTUAL AGREEMENT: This RFQ shall be included and incorporated in the final award. The order of contractual precedence will be the Contract or Agreement document, original Terms and Conditions, and Supplier response. Any and all legal action necessary to enforce the award will be held in Palm Beach County and the contractual obligations will be interpreted according to the laws of the State of Florida. Any additional contract or agreement requested for consideration by the Supplier must be attached and enclosed as part of the proposal.

IS-15 COST OF PREPARING SUBMITTAL: All costs incurred by the Supplier for preparation and submittal of a response to the solicitation will be the sole responsibility of the Supplier. The Town of Palm Beach shall not reimburse any Supplier for any such costs.

IS-16 DRUG-FREE WORKPLACE: The Town mandates that all Suppliers to comply with Drug Free Workplace (DFW).

IS-17 E-VERIFY: The Town of Palm Beach is an E-Verify employer for the purposes of verifying work authorization. Work authorization for those contracted to provide services and/or goods to the Town of Palm Beach is the sole responsibility of the contracted vendor and/or service provider.

IS-18 FAMILIARITY WITH LAWS: The Supplier is assumed to be familiar with all federal, state and local laws, ordinances, rules and regulations that may in any manner affect the work. The failure to familiarize itself with applicable laws will in no way relieve Supplier from responsibility.

IS-19 INDEMNIFICATION: To the fullest extent allowed by law the Supplier shall protect, defend, reimburse, indemnify and hold the Town of Palm Beach, its officers, agents, and employees free and harmless from and against any and all claims, losses, penalties, damages, settlements, costs, charges, attorneys or other professional fees, and/or other expenses and/or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, cause or causes of action of very kind and character in connection with, or arising directly or indirectly out of or related to this Contract and the Work performed hereunder. Without limiting the generality of the foregoing, Supplier's Indemnity shall include all claims, damages, losses, or expense arising out of or related to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright, proprietary information, or applications of any thereof, or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or order of any court. Supplier agrees to investigate, respond, adjust, and provide a defense for, all and any such claims, demands and actions at Supplier's sole expense and agrees to bear and remain liable for all such other costs and expenses relating thereto, even if such claim is groundless, false, or fraudulent. Notwithstanding the foregoing, Supplier's Indemnity shall not extend to liability for damages to persons or property to the extent such damage was caused by any negligent act or omission by the Town, or by the Town's officers, agents, and employees.

Supplier acknowledges and agrees that Town would not enter into a contract without this indemnification of Town by Supplier and that such indemnification constitutes a material inducement for the Town's entering into a contract and shall additionally constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of the Contract. Nothing in this Contract shall be construed to affect in any way the Town's rights, privileges, and immunities as set forth in Florida Statute 768.28.

IS-20 INDEPENDENT CONTRACTOR: The successful Supplier shall be considered an independent contractor. Professional services provided by the Supplier shall be by employees of the Supplier and subject to supervision by the Supplier, and not as officers, employees, or agents of the Town. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered shall be those of the Supplier.

IS-21 INVOICES: The Supplier may submit invoices at the completion and approval of each task or for partial completion of each task on a pro rata basis. However, requests for payment shall not be made more frequently than once per month. Each invoice shall designate the nature of work performed and be accompanied by records fully detailing the amounts stated on the invoice. Invoice payment shall be subject to the satisfactory completion and acceptance of the work following verification by Town personnel. Invoices shall be paid by the Town within forty-five (45) days of receipt of the invoice, except for items questioned.

The Town shall notify the Supplier of any items questioned. The Supplier shall prepare verification data for the amount claimed and provide complete cooperation during such investigation of any areas in the invoice subject to question. The Town of Palm Beach shall issue direct payments (ACH) or purchasing card for payment of all invoices to minimize printed checks with the goal of a greener footprint.

Supplier shall email invoices to following email address: Invoices@TownofPalmBeach.com

IS-22 LOBBYING PROHIBITED: Suppliers are not to contact or lobby any Town personnel related or involved with this Request for Qualifications. All oral or written inquiries are to be directed to the Purchasing Division as instructed herein. Any violation of this condition may result in rejection and/or disqualification of the Supplier.

Refer to Palm Beach County Registration Ordinance – Effective April 2, 2012 for further information: <http://www.palmbeachcountyethics.com/ordinances-codes.htm>.

IS-23 NON-COLLUSION: Supplier certifies that their 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.

IS-24 PALM BEACH COUNTY INSPECTOR GENERAL: The Supplier 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 any contracts resulting from this solicitation, and in furtherance thereof may demand and obtain records and testimony from the Supplier and its subcontractors and lower tier subcontractors. The Supplier understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the Supplier or its subcontractors or lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the Town to be a material breach of this contract justifying its termination.

IS-25 PRESS RELEASES: The Supplier shall obtain the prior approval of the Town Manager's Office of all news releases or other publicity pertaining to this RFQ, the service, or project to which it relates.

IS-26 PROPOSAL CONTENTS: All material submitted becomes the property of the Town of Palm Beach. The Town has the right to use any or all ideas presented in any reply to this RFQ. Selection or rejection of the proposal does not affect this right.

IS-27 PUBLIC ENTITY CRIMES: In accordance with Section 287.133, Fla. Stat. no award will be made to any person or affiliate identified on the Department of Management Services' "Convicted Vendor List". This list is defined as consisting of persons and affiliates who are disqualified from public contracting and the purchasing process because they have been found guilty of a public entity crime. A "person" or "affiliate" includes any natural person or any entity, including predecessor or successor entities or an entity under the control of any natural person who is active in its management and who has been convicted of a public entity crime. 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 bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or proposer under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. By signing and submitting the Bid documents, the submitting firm, i.e. "person" or "affiliate", attests that they have not been placed on the "Convicted Vendor List" or have been found guilty of a public entity crime.

IS-28 PUBLIC RECORDS: Upon award recommendation or thirty (30) days after opening, whichever occurs first, proposals become "public records" and shall be subject to disclosure consistent with Chapter 119, Fla. Stat. Suppliers must invoke the exemptions to disclosure provided by law in the response to the RFQ, and must identify the data or other materials to be protected, and must state the reasons why such exclusion from public disclosure is necessary. Document files may be examined, during normal working hours.

IS-29 PUBLIC RECORDS LAW: In accordance with Section 119.0701, Fla. Stat. the Supplier shall comply with public records laws, specifically to:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as

otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Supplier upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

A copy of Section 119.0701, Florida Statutes, has been provided to the Supplier (attached).

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 THE CUSTODIAN OF PUBLIC RECORDS AT: THE OFFICE OF THE TOWN CLERK LOCATED AT 360 S. COUNTY ROAD, PALM BEACH, FLORIDA 33480, PHONE NUMBER (561) 838-5416, EMAIL ADDRESS: QNIEVES@TOWNOFPALMBEACH.COM .

IS-30 SCRUTINIZED COMPANIES: The Town can terminate any contract for goods or services of \$1 million or more, entered into or renewed on or after July 1, 2011 at the option of the Town if the firm awarded the contract is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

IS-31 SELLING, TRANSFERRING OR ASSIGNING CONTRACT: No contract awarded for the services in this proposal shall be sold, transferred, or assigned without the prior written approval of the Town.

IS-32 TERMINATION FOR CONVENIENCE: The Town reserves the right, in the best interest as determined by the Town, to cancel any contract by providing the Supplier a fifteen (15) day written notice.

IS-33 TERMINATION FOR CAUSE: The Town reserves the right to terminate the contract, in part or in whole, or place the Supplier on probation in the event the Supplier fails to perform in accordance with the terms and conditions, by providing written notice of such failure or default and by specifying a reasonable time period within which the Supplier must cure any such failure to perform or default. If the Supplier fails to cure the default within the time specified, the Town may then terminate the contract by providing written notice to the Supplier. The Town further reserves the right to suspend or debar the Supplier from future participation on Town projects. The Supplier will be notified by letter of the Town's intent to terminate. In the event of termination for default, the Town may procure the required goods and/or services from any other source and use any reasonable method deemed in its best interest. All re-procurement costs shall be borne by the terminated Supplier. The Supplier, however, shall not thereby be relieved of liability to the Town for damages sustained by the Town by reason of any breach of the contract by the Supplier, and the Town may withhold any payments to the Supplier for the purpose of setoff until such time as the amount of damages due the Town from the Supplier is determined. The Supplier shall not be held liable for damages solely for reasons of delay if the delay is due to causes beyond its control and without its fault or negligence, but this shall not prevent the Town from terminating the contract because of such delay.