

City of Palm Beach Gardens

10500 N Military Trail, Palm Beach Gardens, FL 33410

PROCUREMENT MANAGEMENT OFFICE

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions apply to all vendors, contractors, and individuals providing goods and/or services to the City of Palm Beach Gardens, Florida. Depending on the nature of the purchase, some clauses may not reasonably apply. For additional information on the City's purchasing policy and procedures, please visit www.pbgfl.gov/purchasing or call 561.799.4197.

1. DEFINITIONS

a. Addendum

A written document issued to answer questions, provide additional information, or clarify a solicitation.

b. Bid or Proposal

A vendor's offer submitted in response to a solicitation.

c. Bidder or Proposer

An individual or company that submits a response to a solicitation.

d. City

Refers to the City of Palm Beach Gardens, Florida.

e. Contract

The complete collection of documents that memorializes the meeting of the minds between the City and the contractor, which includes the solicitation, all addenda, affidavits, required forms, best and final offers, final replies, the executed agreement, and these General Terms and Conditions.

f. Contractor or Vendor

The bidder or proposer contracted to provide goods or services to the City.

g. Invitation to Bid

A formal request for bids from qualified or interested bidders.

h. **Procurement Management Office**

The City of Palm Beach Gardens' purchasing and contracting department.

i. **Responsible Bidder or Proposer**

A vendor that possesses the resources, capability, and integrity to fully provide the goods or services described in the solicitation.

j. **Responsive Bidder or Proposer**

A vendor whose offer materially complies with the solicitation's terms and conditions, statement of work or scope of services, and response requirements.

k. **Solicitation**

An Invitation to Bid, Request for Proposals, Request for Qualifications, Invitation to Quote, Request for Letters of Interest, or other document used by the City to formally advertise a procurement opportunity and invite responses.

l. **Statement of Work or Scope of Services**

The description of the goods or services required by the City, as stated in the solicitation.

2. CONE OF SILENCE

As outlined in Section 2-355 of Palm Beach County Ordinance No. 2011-039 and the City's Purchasing Policy and Procedures Manual, a Cone of Silence is in effect from the time a solicitation is advertised until an award recommendation is posted. During this period, communication between vendors and City staff or elected officials is restricted and must be properly documented in writing. The City may reject any bid or proposal from a vendor who violates the Cone of Silence.

3. ADDENDUM

The City may issue a written addendum before the solicitation deadline to clarify, modify, or provide additional information. Except for an addendum, vendors must not rely on any other statements for changes to a solicitation. In the event of a conflict with the information provided, the latest addendum shall prevail. Vendors are responsible for obtaining and reviewing all addenda issued for a solicitation.

4. LEGAL REQUIREMENTS

All solicitations are governed by applicable City ordinances and resolutions, and by state and federal laws. In the case of conflict, the order of precedence shall be - federal, state, and then local laws.

5. CHANGE OF BID OR PROPOSAL

Before the submission deadline, a bidder may revise its offer by submitting a new or revised response. No changes to a bid or proposal are permitted after the due date and deadline for receipt of responses.

6. WITHDRAWAL OF BID OR PROPOSAL

Bids or proposals are binding for at least 90 days unless withdrawn before the submission deadline.

7. CONFLICTS WITHIN THE SOLICITATION

If conflicts arise among documents, the order of precedence shall be - the latest addendum, then the Pricing Schedule, Technical Specifications, Statement of Work, or Scope of Services, Special Terms and Conditions, and finally these General Terms and Conditions.

8. PAYMENT TERMS

The City will make timely payment after its acceptance of goods or services. In accordance with Florida's Prompt Payment Act (Section 218.74, F.S.), payment is due within 45 days of receiving a proper invoice, or 30 days for small businesses and for construction projects.

9. DISCOUNTS FOR PROMPT PAYMENTS

Vendors may offer cash discounts for early payment, but such discounts will not affect price evaluation unless stated otherwise in the solicitation.

10. PREPARATION OF BIDS OR PROPOSALS

- a. The solicitation specifies the items and format required. Altering the structure may lead to rejection. All documents must be legible, with changes clearly marked and initialed.
- b. An authorized company representative must sign the submission. Unsigned bids or proposals will be deemed non-responsive.
- c. Bids that propose changes to terms will be considered non-responsive. For RFPs, proposers must clearly state any exceptions. The City will determine responsiveness at its sole and absolute discretion.
- d. Alternate proposals may be submitted if permitted by the solicitation. They must meet or exceed the minimum requirements and be clearly labeled as alternate.
- e. If a discrepancy exists between unit and extended prices, the unit pricing shall prevail.

- f. Late submissions will not be accepted or considered. Vendors are solely responsible for on-time delivery of their submissions.

11. CANCELLATION OF SOLICITATION

The City may cancel any solicitation, in whole or in part, if deemed in its best interest. The City's determination in this regard is final.

12. AWARD OF CONTRACT

- a. The City will award the contract to the responsive and responsible bidder or proposer who best meets the requirements subject to the Method of Award in the solicitation. The City reserves the right to reject any or all offers, waive irregularities or technicalities, and reissue the solicitation in whole or in part if determined to be in the City's best interest.
- b. The City may reject all offers if prices are deemed excessive, exceed budget limits, or are otherwise determined to be unreasonable or not in the City's best interest.
- c. For Invitations to Bid, the City may negotiate prices with the lowest responsive and responsible bidder, provided the Statement of Work remains substantially unchanged.
- d. Vendor performance on previous City contracts, whether as a prime contractor or subcontractor, will be considered during evaluation to determine vendor responsibility.
- e. A bid tabulation or list of proposers will be provided to all participants who respond to the solicitation.
- f. Tied offers will be decided by the Chief Procurement Officer.
- g. Contract award is contingent upon compliance with all submission requirements. Incomplete or missing documents may result in rejection.
- h. The City reserves the right to request and review additional information from any bidder or proposer after the submission deadline, as the City deems necessary.

13. CONTRACT EXTENSION

The City may unilaterally extend any agreement for up to 90 calendar days to ensure continuity of services or supplies during the procurement of a replacement contract. No formal amendment is required for this automatic extension.

14. WARRANTY

Vendors shall provide all applicable express and implied warranties for goods and services. Goods and services must be fully guaranteed against factory defects and poor workmanship. At no cost to the City, vendors must correct any latent or apparent defects during the manufacturer's warranty period.

15. ESTIMATED QUANTITIES

Estimated quantities or dollar amounts are provided for guidance only and are not guaranteed or absolute. The City may purchase more or less than the estimates depending on actual needs and is not obligated to place any orders following contract award.

16. NON-EXCLUSIVITY

The City may obtain similar goods or services through other sources or perform the work in-house, even after awarding a contract under the solicitation.

17. CONTINUATION OF WORK

If work extends beyond the current contract period and is not otherwise terminated in writing, the contract terms, including pricing, will remain in effect until the work is completed.

18. BID PROTEST

- a. Any bidder or proposer may protest a Recommendation to Award by submitting a written protest to the City Clerk, Monday – Friday, 8:00 a.m. – 4:00 p.m., excluding holidays. The protest must include contact information, legal representative (if any), solicitation title and number, a description of the issue, supporting facts, and the relief sought.
- b. Protests must be received within 72 hours (excluding weekends and holidays) after the Recommendation to Award is posted. Late protests will not be considered.
- c. Upon receipt of a timely protest, the City will suspend award actions until administrative remedies are exhausted, unless the City Manager determines an award is necessary to protect public health, safety, or welfare.

Protest procedures are outlined in the City’s Purchasing Policy and Procedures Manual, available at www.pbgfl.gov/purchasing.

19. LAWS AND REGULATIONS

Vendors must comply with all applicable federal, state, and local laws and regulations related to the goods or services being provided under the contract.

20. LICENSES, PERMITS, AND FEES

Vendors are responsible for obtaining and paying for all required licenses, permits, certifications, and inspections. Any penalties incurred due to noncompliance are the vendor’s sole responsibility.

21. SUBCONTRACTING

Vendors may not subcontract any portion of the contract without prior written consent from the City. Unauthorized subcontracting may result in termination for default.

22. ASSIGNMENT

The vendor may not assign or transfer the contract, or any rights or obligations under it, without prior written City approval. Unauthorized assignments may lead to termination for default.

23. SHIPPING TERMS

Unless otherwise specified, prices are FOB Destination and include all shipping and delivery costs.

24. RESPONSIBILITIES AS EMPLOYER

- a. Vendor employees are not City employees and must be competent to perform the required work. The City may request the removal of any employee deemed unsuitable. All vendor personnel must wear proper identification and attire, including safety gear when necessary.
- b. Vendors are solely responsible for ensuring compliance with federal employment eligibility laws, including those enforced by the U.S. Department of Homeland Security.
- c. The utilization of illegal immigrant labor is strictly forbidden and shall constitute a material default subject contract to immediate termination for cause irrespective of any notice provisions otherwise set forth.

25. INDEMNIFICATION

The vendor shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by the vendor or its employees, agents, servants, partners, principals, or subcontractors. The vendor expressly understands and agrees that any insurance required by the contract or agreement, or otherwise provided by the vendor, shall in no way limit the scope of the foregoing indemnification.

26. COLLUSION

Bidders and proposers must submit a Non-Collusion Affidavit affirming their proposal is genuine and not collusive. Failure to submit this affidavit, or disclosure of related bidders, may disqualify the bidder or proposer unless the vendor rebuts the presumption of collusion to the City's satisfaction.

27. MODIFICATION OF CONTRACTS

Contracts may only be modified in writing through an authorized amendment, change order, change directive, supplemental agreement, or purchase order.

28. TERMINATION FOR CONVENIENCE

The City may terminate any contract at its sole discretion, with or without cause, by providing written notice. Vendors are entitled only to reasonable costs incurred prior to the termination date, as determined solely by the City.

29. TERMINATION FOR DEFAULT

The City may terminate the contract or place the vendor on probation for failure to meet contract terms. If a default is not cured within the time specified in the City's notice, the contract may be terminated, and the vendor may be debarred from future City contracts. Re-procurement costs shall be paid by the defaulting vendor.

30. FRAUD AND MISREPRESENTATION

Vendors engaging in fraud or misrepresentation may be debarred for up to five years, and existing contracts may be terminated. The vendor is liable for all related costs and attorney's fees.

31. ACCESS AND AUDIT OF RECORDS

The City may audit vendor records related to the contract. Vendors must retain all relevant records for the period required by law and make them available to the City upon request.

32. OFFICE OF INSPECTOR GENERAL

The Palm Beach County Office of Inspector General may audit, review, and investigate any City contract. Vendors must cooperate with all related inquiries or audits.

33. PRE-AWARD INSPECTION

The City may inspect a bidder's or proposer's facility or perform a qualifications review to determine the bidder's or proposer's ability to perform the contract if awarded.

34. PROPRIETARY OR CONFIDENTIAL INFORMATION

All documents submitted to the City are public records under Florida law. Vendors submissions should not include trade secrets or confidential information, as defined at Chapter 119, Fla. Stat. Submittals containing such information may be redacted, returned, or rejected at the City's discretion.

35. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Vendors handling Protected Health Information (PHI) must comply with HIPAA regulations, including safeguards, reporting requirements, and limitations on use and disclosure.

36. ADDITIONAL FEES AND SURCHARGES

The City will not pay additional fees or charges such as fuel surcharges, tariffs, custom duties, or demurrage fees unless expressly provided for in the contract.

37. COMPLIANCE WITH FEDERAL STANDARDS

All goods and services must comply with applicable federal safety and performance standards, including OSHA, NIOSH, and NFPA, as applicable.

38. COMPLIANCE WITH FEDERAL REGULATIONS

If federal funds are used, applicable federal regulations, including affirmative action requirements in 41 CFR §§ 60-250.4, 60-250.5, and 60-741.4, are incorporated by reference.

39. BINDING EFFECT

The contract shall be binding upon and enforceable by the parties and their successors, legal representatives, and permitted assigns.

40. SEVERABILITY AND NON-APPROPRIATION

The contract is contingent upon lawful appropriation of funds by the City Council. Failure to appropriate funds will result in automatic termination, which shall not be considered a breach by the City.

41. GOVERNING LAW AND VENUE

This contract is governed by the laws of the State of Florida, without regard to conflict of law principles. All legal and/or administrative proceedings related to this contract must be brought exclusively in Palm Beach County, Florida. Each party waives any objection to venue.

42. ATTORNEY’S FEES

It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with a contract between the City and a vendor, or to interpret same, or if any administrative proceeding is brought for such purposes, each party shall pay its own attorney’s fees and costs, including all appellate fees and costs.

43. EQUAL OPPORTUNITY AND NON-DISCRIMINATION

- a. The City complies with all applicable laws prohibiting discrimination and encourages participation from small, local, minority-owned, and woman-owned businesses in its procurement process.
- b. The vendor shall not discriminate in its hiring practices or service delivery and shall comply with all applicable federal, state, and local equal employment opportunity laws.
- c. Upon request, the vendor shall provide the City with documentation regarding its selection and treatment of subcontractors, suppliers, and vendors.

44. AVAILABILITY OF CONTRACT TO OTHER CITY DEPARTMENTS

Other City departments may purchase goods or services under a contract by issuing a separate purchase order directly to the vendor.

45. CRIMINAL BACKGROUND CHECKS

The City may conduct background checks before hiring vendors or contractors. The vendor must authorize the City to obtain this information. The City will pay for all related costs.

46. LABOR, MATERIALS, AND EQUIPMENT

Unless otherwise specified, the vendor shall provide all labor, materials, and equipment necessary to perform the work.

47. MINIMUM WAGE COMPLIANCE

The vendor shall comply with all applicable minimum wage laws, including local, state, federal, and Davis-Bacon Act requirements, as applicable.

48. PACKING SLIPS AND DELIVERY TICKETS

All deliveries must include a packing slip or delivery ticket referencing the contract or purchase order number, listing quantities and noting any back-ordered items.

49. PURCHASE OF ADDITIONAL ITEMS

The City may request price quotes for related goods or services not listed in the contract. The City reserves the right to accept or decline such quotes at its sole discretion.

50. PUBLIC RECORDS

- a. All materials submitted in response to a City solicitation are public records under Florida law (Chapter 119, F.S.) and may be disclosed upon award or 30 days after the due date, whichever occurs first, unless exempt by law.
- b. If a vendor believes its submission contains exempt information, it must clearly identify and justify the exemption in accordance with Florida law. Materials marked as exempt must be submitted separately and labeled "EXEMPT FROM PUBLIC DISCLOSURE." Entire submissions may not be marked as exempt.
- c. Vendors shall comply with Section 119.0701, Florida Statutes, regarding the maintenance and provision of public records. Noncompliance constitutes a material breach of contract.

51. CONFLICTS OF INTEREST

Vendors must disclose any City employee who is an officer, director, agent, or has a financial interest of 5% or more in the vendor's firm. Failure to disclose may result in disqualification or termination of the contract.

52. PUBLIC ENTITY CRIMES

Pursuant to Section 287.133, Florida Statutes, vendors convicted of a public entity crime and placed on the Convicted Vendor List may not contract with the City.

53. USE BY OTHER GOVERNMENTAL AGENCIES (PIGGYBACKING)

Contracts awarded by the City may be accessed by other governmental agencies under the same terms, conditions, and pricing, at the vendor's discretion.

54. COMPLETION OF WORK AND DELIVERY

The vendor shall complete work and make deliveries in accordance with the contract schedule. Delays caused by force majeure must be communicated to the City in a timely manner for consideration of a revised schedule.

55. FAILURE TO PERFORM

If the vendor fails to perform, the City may cancel the contract and procure the goods or services elsewhere. The vendor shall be paid for accepted work through the cancellation date and may be liable for additional costs incurred by the City.

56. CORRECTING DEFICIENCIES

Vendors must correct any deficiencies within the number of calendar days stated in the written notice from the City, and at no cost to the City. If not corrected, the City may declare the vendor in default and recover additional costs from the vendor.

57. ACCIDENT PREVENTION AND BARRICADES

Vendors must follow all applicable OSHA, state, and local safety regulations and provide barricades when necessary. Vendors are solely responsible for fines or penalties resulting from noncompliance.

58. OMISSIONS IN SPECIFICATIONS

Any omission in the specifications necessary for proper completion of the work shall not relieve the vendor from providing such functionality or performance.

59. NEW MATERIALS AND WARRANTY

All materials supplied must be new (unless recycled content is specified) and warranted to be merchantable and fit for their intended purpose. Defective or nonconforming items may be returned or replaced at the vendor's expense.

60. TOXIC SUBSTANCES AND RIGHT-TO-KNOW REGULATIONS

Vendors supplying hazardous materials must provide copies of the relevant Material Safety Data Sheets (MSDS) to each City department receiving the product, at the time of initial delivery.

61. TAXES

The City is exempt from federal and state sales taxes on tangible personal property. A copy of the tax exemption certificate is available at www.pbgfl.gov/purchasing.

62. BIDDING COSTS

The City is not responsible for any costs incurred by vendors in preparing or submitting responses to solicitations.

63. SUBSTITUTION OF PERSONNEL

Proposed personnel shall remain assigned throughout the contract unless approved by the City. Substitute personnel must have equal or greater qualifications. If the City does not approve the substitute, the contract may be canceled for cause.

64. FORCE MAJEURE

The City and the vendor are excused from the performance of their respective obligations under the contract when and to the extent that their performance is delayed or prevented by any circumstance beyond their control, including fire, flood, explosion, terrorist attacks, strikes or other labor disputes, natural disasters, public emergency, war, riot, civil commotion, pandemic, epidemic, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

- a. The non-performing party gives the other party prompt written notice describing the particulars of the force majeure, including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the force majeure.
- b. The excuse of performance is of no greater scope and of no longer duration than is required by the force majeure.
- c. No obligations of either party that arose before the force majeure causing the excuse of performance are excused as a result of the force majeure.
- d. The non-performing party uses its best efforts to remedy its inability to perform.

Notwithstanding the above, performance shall not be excused under this section for a period in excess of 2 months, provided that in extenuating circumstances, the City may excuse performance for a longer term. The economic hardship of the vendor shall not constitute a force majeure. The term of the contract shall be automatically extended by a period equal to that during which either party's performance was suspended under this section.

65. NOTICES

Notices are effective when received at the addresses specified in the contract. Electronic mail is an acceptable means of notice transmission if received during business hours. Routine communications between representatives of the City or the vendor are not affected by this clause.

66. VENDOR POOL CONTRACTS

The City may add new vendors to vendor pool contracts during the contract term, provided they meet the original eligibility requirements.

67. FISCAL FUNDING OUT

The City's obligation under any contract is contingent upon the lawful appropriation of funds. If funding is not lawfully appropriated, the contract will automatically terminate without penalty or default.

68. INDEPENDENT CONTRACTOR

The vendor is an independent contractor and not an employee or agent of the City. The vendor is responsible for all compensation, insurance, and employment-related obligations for its staff.

69. PERFORMANCE STANDARDS

The vendor shall perform services with the degree of care, skill, and professionalism expected of competent providers of similar services. The vendor affirms that its employees are qualified and capable of performing as required.

70. SCRUTINIZED COMPANIES AND CHANGES IN LAW

The vendor shall comply with Section 287.135, Florida Statutes, and any other applicable law regarding prohibited vendors. The City may terminate the contract if the vendor violates any such law.

71. SOCIAL PROHIBITIONS

In accordance with Section 287.05701, Florida Statutes, the City does not consider or request information about a vendor's social, political, or ideological beliefs when determining responsibility or awarding contracts.

72. SMALL BUSINESS AND LOCAL PREFERENCE PROGRAMS

The City does not operate formal socio-economic preference programs; however, it strongly encourages participation from all small businesses in its procurement opportunities. Additionally, the City partners with the Small Business Development Center at Florida Atlantic University to conduct outreach and provide workshops for its members and program participants.