

Purchasing Guidelines

**City of Lakeland
Purchasing Division
Terms of Agreement**

1. No Deviations from the terms or provisions of this order may be made without written authority from purchaser. This order is not assignable without purchaser's consent.

2. All items are subject to purchaser's inspection and approval within a reasonable time after receipt at destination. Seller hereby warrants all items delivered hereunder to be in accordance with the specifications herein set forth, samples submitted and drawings attached or referred to, and to be free from all defects in materials and workmanship and agrees that this warranty shall survive acceptance.

3. Seller hereby warrants that the articles hereby ordered or any part and/or combination thereof do not infringe any existing patents and seller agrees to defend Purchaser against any suit for actual or alleged infringement of any such patents.

4. Seller agrees to indemnify and hold Purchaser harmless against all laborer's materialman's, and or mechanic's liens arising from Seller's work and shall keep the premises of Purchaser free from all such claims, liens and encumbrances.

5. Seller warrants that all materials and equipment purchased hereunder will conform will all applicable city, state and federal laws, ordinances and regulations. Further, Seller will defend and save Purchaser harmless from loss, cost or damage by reason of any actual or alleged violation thereof.

6. Unless otherwise specified or agreed by Purchaser, any transportation charges assessed against Purchaser must be at the lowest common carrier rate for the quantity ordered and invoice charges must be supported by a paid freight bill or equivalent.

7. Purchaser shall have the right to make changes in this order by issuance of a written Change Order, but no additional charge will be allowed unless authorized in writing by Purchaser. If such changes affect delivery or the amount to be paid by the Purchaser, Seller shall notify Purchaser promptly and negotiate an adjustment in writing.

8. Purchaser shall have the right to cancel this order without obligation to Seller if delivery is not made within the time specified herein, or, if no time is specified, within a reasonable time.

9. If Seller ceases to conduct its operation in the normal course of business including inability to meet its obligation as they mature or if any proceeding under the bankruptcy or insolvency laws is brought by or against the Seller, or a receiver for the Seller is appointed or applied for, or assignment for the benefit of creditors is made by the Seller, Purchaser may terminate the order without liability except for deliveries previously made or for goods covered by the order then completed and subsequently delivered in accordance with the terms of the order.

10. Governing Law and Assignment: The laws of the State of Florida shall govern the validity, interpretation and enforcement of this contract with the respective venue being in Polk County, Florida.

11. In keeping with Florida Statute 218.74, "Prompt Payment Act", the City of Lakeland, "Purchaser" shall have 45 days from invoice date in which to render payment.

12. Bidder's submittal information shall be subject to Chapter 119, Florida Statutes, generally known as the "Florida Public Records Law." This statute provides that all documents, papers, records and similar material produced or received by an agency or political subdivision of the State are subject to public inspection and review under reasonable conditions and at reasonable times. Accordingly, unless specifically exempted by law, all bids and materials received with bids, marketing information, quotations, proposals, specifications, correspondence, forms,

contracts, bonds, financial statements, prospectus, corporate resumes, product summaries, lab reports, inspection and test reports and any other such material will be considered a matter of public record. The City and its staff cannot regard any document, information or data as proprietary or confidential unless so advised by the City Attorney. Additionally, should a Contractor enter into an Agreement with the City, the Contractor shall comply with Florida Statute Chapter 119, the Florida Public Records Act as it relates to records kept and maintained by Contractor in performance of services pursuant to this Agreement. In accordance with Florida Statute §119.0701, the Contractor shall keep and maintain public records required by the City in performance of services pursuant to the contract. Upon request from the City's custodian of public records, Contractor shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City. Contractor shall, upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform services pursuant to the contract. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

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: KEVIN COOK - DIRECTOR OF COMMUNICATIONS AT: PHONE: 863-834-6264, E-MAIL: KEVIN.COOK@LAKELANDGOV.NET, ADDRESS: ATTN: COMMUNICATIONS DEPARTMENT, 228 S. MASSACHUSETTS AVE., LAKELAND, FLORIDA 33801.

13. 2 CFR § 200.326 and 2 CFR Part 200, Appendix II, Required Contract Clauses

The Vendor, Supplier or Contractor's performance under this Purchase Order shall be subject to the following FEMA Required Contract Clauses:

A. DEFAULT

Each of the following shall constitute a default under this Agreement: (a) Contractor is adjudged to be bankrupt; (b) Contractor makes a general assignment for the benefit of its creditors; or (c) Contractor fails to comply with any of the terms, conditions or provisions of this Agreement. If, during the term of this Agreement, Contractor shall be in default of this Agreement, City may suspend its performance hereunder until such delinquency or default has been corrected; provided, however that no suspension shall be effective unless and until City give written notice of default to Contractor with at least ten (10) days to cure such default. If Contractor fails to correct such delinquency or default, City may terminate this Agreement and pursue such remedies as may be available at law or in equity. Contractor shall be paid compensation for services satisfactorily performed and completed as of the date of termination. City shall not be liable for partially completed work. In addition to the remedies available hereunder, the City shall have the right of offset from sums or payments otherwise due the Contractor, any sums or amounts which the Contractor may owe to the City pursuant to the provisions of this Agreement, or otherwise.

B. TERMINATION FOR CAUSE AND CONVENIENCE *(applicable to all contracts in excess of \$10,000; 2 CFR pt.200 app. II (B))*

City may, by giving thirty (30) days prior written notice to the other, terminate this Agreement in whole or in part, at any time, with or without cause. Upon receipt of such notice, the Contractor shall immediately discontinue all services affected (unless the notice directs otherwise).

Upon termination of this Agreement for convenience, the Contractor shall be paid its compensation for services satisfactorily performed as the date of termination based on the percentage of work satisfactorily completed plus reasonable termination expenses. The City shall not be obligated to pay for any services performed by the Contractor after notice of termination has been given. In addition to other remedies available under this Agreement, the City shall have the right to deduct, offset against, or withhold from sums or payments otherwise due the Contractor any sums or amounts which the Contractor may owe to the City pursuant to provisions of this Agreement, or otherwise.

The City may terminate this contract for cause based upon the failure of the Contractor to comply with the terms and/or conditions of either this Agreement or any Work Authorization provided for herein; provided that the City shall give the Contractor written notice specifying the Contractor's failure. If within fifteen (15) days after receipt of such notice, the Contractor shall not have either corrected such failure and thereafter proceeded diligently to complete such correction, then the City may, at its option, place the Contractor in default and this Agreement and any Work Authorizations assigned to the Contractor shall terminate on the date specified in such notice and no fees for any work shall be due thereafter.

C. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE *(applicable to all construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees; 2 CFR pt.200 app. II(C))*

Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60).

D. ANTI-KICKBACK ACT COMPLIANCE *(applicable to all contracts and subgrants for construction or repair; 2 CFR pt.200 app. II(D))*

Contractor agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874; 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR Part 3).

E. CONTRACT WORK HOURS AND SAFETY STANDARDS *(applicable to all contracts awarded by grantees and subgrantees in excess of \$100,000 that involve the employment of mechanics or laborers; 2 CFR pt.200 app. II(E))*

Contractor agrees that it shall comply with Sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3702 and 3704) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

F. RIGHTS TO INVENTIONS (*applicable to contracts for experimental, research, or development projects financed by FEMA; 2 CFR pt.200 app. II(F)*)

- (1) **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to FEMA.
- (2) Unless the Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FEMA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR, Part 401.
- (3) The Contractor agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

G. CLEAN AIR AND WATER REQUIREMENTS (*applicable to all contracts and subcontracts in excess \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 in any year; 2 CFR pt.200 app. II (G)*)

- A.** Contractor agrees to comply with all applicable standards, orders, or regulations issued under section 306 of the Clean Air Act (42 U.S.C. 7401-7671q), the Federal Water Pollution Control Act (33 U.S.C. 1251-1387).
- B.** Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.
- C.** The Contractor agrees to include paragraph A and B above in each third party subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

H. BYRD ANTI-LOBBYING AMENDMENT (31 USC 1352)

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

I. GOOD STANDING REQUIREMENT (*2 CFR pt.200 app. II (H)*)

Contractor represents that it is not subject to a System for Award Management (SAM) exclusion and has not been debarred, suspended or otherwise excluded as a party declared eligible under statutory or regulatory authority to receive Federal grant funds.

J. PROCUREMENT OF RECOVERED MATERIALS (*2 CFR pt.200 app. II (J)*)

Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

K. ACCESS TO RECORDS

- (1) The Contractor agrees to provide the City, FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records

of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. 44 CFR§13.36(i)(10).

- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date City makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Contractor agrees to maintain same until the City, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.44 CFR§13.36(i)(11).

L. NOTICE OF REPORTING REQUIREMENTS

- (1) Contractor acknowledges that it has read and understands the reporting requirements of FEMA stated in 44 CFR§ 13.40 et seq., 13.50-13.52 and Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs Financial Guide, and agrees to comply with any such applicable requirements.
- (2) The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions

M. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- (1) Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:
 - a. The copyright in any work developed with the assistance of funds provided under this Agreement;
 - b. Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement. 44 CFR §13.34, 13.36(i)(8)-(9).
- (2) The Contractor agrees to include subsection (1) above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

N. ENERGY CONSERVATION REQUIREMENTS

- (1) The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. 44 CFR § 13.36(i)(13).
- (2) The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

A. SOCIOECONOMIC ENGAGEMENT

Contractor will take the following affirmative steps to engage small and minority firms, women's business enterprises, and labor surplus area firms.

- (1) Place qualified small and minority business and women's business enterprises on sub-contractor solicitation lists.
- (2) Assure that such firms are solicited whenever they are potential sources.
- (3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms.
- (4) Establish delivery schedules, where the requirement permits, which encourage participation by such firms.
- (5) Use the assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.