

PALM BEACH COUNTY
PURCHASE ORDER/TERM CONTRACT STANDARD TERMS AND CONDITIONS

The following Terms and Conditions are applicable to this purchase order/contract entered into by and between Palm Beach County (referred to as County) and Vendor.

VENDOR REGISTRATION

In order to do business with Palm Beach County, vendors are required to create a Vendor Registration Account OR activate an existing Vendor Registration Account through the Purchasing Department's Vendor Self Service (VSS) system which can be accessed at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>. **If vendor intends to use subcontractors, vendor must also ensure that all subcontractors are registered as vendors in the VSS system. All subcontractor agreements must include a contractual provision requiring that the subcontractor register in the VSS system. The County will not finalize a contract award until the County has verified that the contractor and all of its subcontractors are registered in the VSS system.** It is the vendor's sole responsibility to routinely check our VSS system for any amendments that may have been issued prior to the deadline for receipt of submissions. Palm Beach County shall not be responsible for the completeness of any solicitation that was not downloaded from the VSS system or obtained directly from the Purchasing Department.

MODIFICATIONS

No modifications of this order/contract, including but not limited to these terms and conditions, shall be binding upon County unless approved by an authorized representative of County's Purchasing Department.

ASSIGNMENTS

Assignments are prohibited unless prior written consent is given by the County and the Vendor.

EXCUSABLE DELAYS

The County may grant additional time for any delay if the delay will not adversely impact the best interest of the County and is due to causes beyond the control of the Vendor. Such grant must be in writing and made part of the order/contract.

DEFAULT

The County may, by written notice of default to the successful vendor, terminate the order/contract in whole or in part if the successful vendor fails to satisfactorily perform any provisions of this solicitation or resultant order/contract, or fails to make progress so as to endanger performance under the terms and conditions of this solicitation or resultant order/contract, or provides repeated non-performance, or does not remedy such failure within a period of ten (10) days (or such period as the Director of Purchasing may authorize in writing) after receipt of notice from the Director of Purchasing specifying such failure. In the event the County terminates this order/contract in whole or in part because of default of the successful vendor, the County may procure goods and/or services similar to those terminated, and the successful vendor shall be liable for any excess costs incurred due to this action.

If it is determined that the successful vendor was not in default or that the default was excusable (e.g., failure due to causes beyond the control of, or without the fault or negligence of, the successful vendor), the rights and obligations of the parties shall be those provided in the provision "Termination For Convenience".

TERMINATION FOR CONVENIENCE

The County may, whenever the interests of the County so require, terminate the order/contract, in whole or in part, for the convenience of the County upon five (5) days written notice to Vendor. Unless directed otherwise in the notice of termination, the Vendor shall incur no further obligations in connection with the order/contract.

REMEDIES

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law, or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

NO THIRD PARTY BENEFICIARY

No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the County and/or successful vendor.

FOB

The F.O.B. point shall be destination. If the County agrees, freight charges may be prepaid by the Vendor and listed on the invoice; however, Vendor retains title and assumes all responsibility, liability and risk in transit, and shall be responsible for the filing of claims for loss or damages.

PAYMENT TERMS

The Florida Prompt Payment Act is applicable to this solicitation. Interest penalties will only be paid in accordance with the Florida Prompt Payment Act, Florida Statute 218.70.

In order for Palm Beach County to make payment, the Vendor's Legal Name; Vendor's Address; and Vendor's TIN/FEIN Number on the Vendor's offer; must be exactly the same as it appears on the invoice and in Palm Beach County's VSS system which can be accessed at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>.

Note: Palm Beach County Vendors can now be paid by Credit Card via the County's voluntary Payment Manager Program. For vendors who don't have a merchant account, one is needed to utilize the Program. For vendors with a merchant account, you will need to enroll with the Palm Beach County Clerk & Comptroller's office. For information, contact the Palm Beach County Clerk & Comptroller at pbcpaymentmgr@mypalmbeachclerk.com.

INVOICING

Vendor **shall** send **ALL ORIGINAL** invoices to the following address and **may** send copies of invoices to the respective Palm Beach County Department requesting the goods/services. Invoices submitted on carbon paper shall **not** be accepted.

**PALM BEACH COUNTY
FINANCE DEPT.
P.O.BOX 4036
WEST PALM BEACH, FL 33402-4036**

TAXES

The County is exempt from Federal and State taxes.

PURCHASE ORDER

The County will not accept any goods delivered or services performed unless a duly authorized purchase order has been issued for said goods and/or services. The purchase order number must appear on all invoices, packing slips and all correspondence concerning the order.

ORDER/CONTRACT

Vendor agrees that by submitting an offer (i.e. Request for Quotation) which is accepted by the County (i.e. Purchase Order, Term Contract Notice) a binding contract is formed in accordance with the County's terms, conditions and specifications as set forth in the solicitation **and** this purchase order. Vendor certifies that the offer has been made by an officer or employee having the authority to bind the Vendor.

PRICING

- (1) Unless specifically requested in the specifications, any response containing modifying or escalation clauses shall be rejected.
- (2) The price offered must be in accordance with the unit of measure provided on the response page(s). One (1) space or line requires only one (1) single, fixed unit price. Anything other than a single, fixed unit price shall result in the rejection of your response.
- (3) Vendor warrants by virtue of submitting an offer that prices shall remain firm for a period of ninety (90) days from the date of opening to allow for evaluation and award.
- (4) Prices shall remain firm for the initial and any subsequent term unless modified by a special condition.
- (5) All unit prices offered should be within two (2) decimal points. If vendor's pricing offered exceeds two (2) decimal points, Purchasing reserves the right to round up or down accordingly.

DELIVERIES

Deliveries are to be made Monday through Friday, excluding holidays, unless otherwise stipulated.

INSPECTION/ACCEPTANCE

All goods and/or services provided on this Purchase Order are subject to inspection and acceptance upon receipt or completion by an authorized representative of the County. Payment shall not be authorized until the goods and/or services have been received, accepted and properly invoiced.

QUANTITIES

Quantities specified in the order/contract cannot be changed without County approval. Goods shipped in excess of quantity designated may be returned at Vendor's expense.

COMMERCIAL NON-DISCRIMINATION:

a. VENDOR'S REPRESENTATIONS AND AGREEMENT:

The Vendor represents and warrants that it will comply with the County's Commercial Nondiscrimination Policy as described in Resolution 2017-1770 as amended. As part of such compliance, the Vendor shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Bidder retaliate against any person for reporting instances of such discrimination. The Vendor shall provide equal opportunity for subcontractors, subconsultants vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace in Palm Beach County. The Vendor understands and agrees that a material violation of this clause shall be considered a material breach of contract and may result in termination of the contract, disqualification or debarment of the Vendor from participating in County contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

b. VENDOR'S AGREEMENT TO APPLY TO SUBCONTRACTS:

The vendor covenants and agrees to include the commercial non-discrimination clause in all subcontractor agreements.

DISCRIMINATION PROHIBITED

Palm Beach County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R-2017-1770, as may be amended, the successful vendor warrants and represents that throughout the term of the contract, including any renewals thereof, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered a default of contract.

LEGAL REQUIREMENTS

The Vendor must strictly comply with all Federal, State, County and local laws, ordinances, rules and regulations that in any manner affect the goods and/or services provided herein. The UCC shall prevail as the basis for contractual obligations between the Vendor and the County for any terms and conditions not addressed. The County shall not be liable to the Vendor for any legal fees, court costs, or other legal expenses arising from the interpretation or enforcement of this order/contract, or from any other matter generated by or relating to this order/contract.

CRIMINAL HISTORY RECORDS CHECK ORDINANCE

Pursuant to Palm Beach County Code Section 2-371 through 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), the County shall conduct fingerprint based criminal history record checks on all persons not employed by the County who repair, deliver, or provide goods or services for, to, or on behalf of the County. A fingerprint based criminal history record check shall be conducted on all employees and subcontractors of vendors, including repair persons and delivery persons, who are unescorted when entering a facility determined to be critical to the public safety and security of the County. County facilities that require this heightened level of security are identified in Resolution R-2003-1274, as may be amended. The vendor is solely responsible for understanding the financial, schedule, and staffing implications of this Ordinance. Further, the vendor acknowledges that its pricing offered includes any and all direct or indirect costs associated with compliance of this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the County.

PUBLIC ENTITY CRIMES

In accordance with the Florida Public Entity Crime Statute 287.132.133, persons and affiliates who are entering into a contract or performing any work in furtherance with Palm Beach County certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by Florida Statute 287.133 (3) (a).

SCRUTINIZED COMPANIES

a. **SCRUTINIZED COMPANIES:** As provided in F.S. 287.135, by entering into an order/contract or performing any work in furtherance of this order/contract, the Vendor 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, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.

If the County determines, using credible information available to the public, that a false certification has been submitted by Vendor, the resulting order/contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of the order/contract shall be imposed, pursuant to F.S. 287.135.

- b. **SCRUTINIZED COMPANIES (WHEN ORDER/CONTRACT VALUE IS GREATER THAN \$1 MILLION)**: As provided in F.S. 287.135, by entering into an order/contract or performing any work in furtherance of this order/contract, the Vendor certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, 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 is engaged in business operations in Cuba or Syria.

If the County determines, using credible information available to the public, that a false certification has been submitted by Vendor, the resulting order/contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of the order/contract shall be imposed, pursuant to F.S. 287.135.

S/M/WBE POLICY

It is the policy of the Board of County Commissioners ("Board") that all segments of its business population, including, but not limited to, small, local, minority and women owned businesses, have an equitable opportunity to participate in the County's procurement process, prime contract and subcontract opportunities. To that end, the Board adopted an Equal Business Opportunity Ordinance which is codified in Sections 2-80.20 through 2-80.30 (as may be amended) of the Palm Beach County Code, (EBO Ordinance) which sets forth the County's requirements for the Equal Business Opportunity Program, and which is incorporated herein. The provisions of the EBO Ordinance shall have precedence over the provisions of the solicitation in the event of a conflict.

All forms related to the Equal Business Opportunity Program, including waiver forms and good faith effort documentation can be found at: <http://discover.pbcgov.org/oebo/Pages/Documents.aspx>

LOCAL PREFERENCE

In accordance with the Local Preference Code, a preference may be given to (1) vendors or quoters having a permanent place of business in Palm Beach County or (2) vendors or quoters having a permanent place of business in the Glades that are able to provide the goods and/or services to be utilized within the Glades.

INDEMNIFICATION

To the extent authorized by law, Vendor shall indemnify, save and hold harmless the County, its employees and agents against any and all claims, damages, liability and court awards including costs, expenses and attorney fees incurred as a result of any act or omission by the Vendor, or its employees, agents, subcontractors or assignees pursuant to the terms and conditions of this order/contract.

INSURANCE REQUIREMENTS

If vendor is providing a service under this order/contract, then Vendor shall, at its sole expense, maintain in full force and effect at all times during the life of this order/contract, insurance coverages and limits (including endorsements), as required by the County. These requirements shall not in any manner limit or qualify the liabilities and obligations assumed by the vendor under this order/contract. All coverages shall be provided on a primary basis with the County endorsed as an Additional Insured with a CG 2026 additional Insured-Designated Person or Organization Endorsement, or its equivalent, as follows: "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, it's Officers, Employees and Agents." Vendor shall provide the County with a Certificate of Insurance evidencing such coverages prior to the commencement of any services and within a time frame specified by the County (normally within 2 working days of request). Failure to maintain the required insurance shall be considered a default of contract.

SAFETY DATA SHEETS (SDS)

Any toxic substance provided to the County as a result of this solicitation or resultant order/contract shall be accompanied by its SDS.

ENDORSEMENTS

No endorsements by the County of the goods and/or services will be used by the Vendor in any way, manner or form.

VENUE AND GOVERNING LAW

Any and all legal action necessary to enforce the award or the resultant order/contract will be held in Palm Beach County, Florida. Any legal action necessary to enforce the award or the resultant order/contract shall be governed by the laws of the State of Florida.

PUBLIC RECORDS, ACCESS AND AUDITS

The vendor agrees that copies of any and all property, work product, documentation, reports, computer systems and software, schedules, graphs, outlines, books, manuals, logs, files, deliverables, photographs, videos, tape recordings or data relating to the Contract which have been created as a part of the vendor's services or authorized by the County as a reimbursable expense, whether generated directly by the vendor, or by or in conjunction or consultation with any other party whether or not a party to the Contract, whether or not in privity of contract with the COUNTY or the bidder, and wherever located shall be the property of the COUNTY.

Any material submitted relating to this order/contract is considered a public document in accordance with Section 119.07, Florida Statutes. This includes material which the responding vendor might consider to be confidential. All submitted information that the responding vendor believes to be confidential and exempt from disclosure (i.e., a trade secret or as provided for in Section 119.07 and Section 812.081, F.S.) must be specifically identified as such. Upon receipt of a public records request for such information, a determination will be made as to whether the identified information is, in fact, confidential.

The County shall have the right to request and review vendor's books and records to verify vendor's compliance with the Contract, adherence to the Equal Business Opportunity Program and its response. The County shall have the right to interview subcontractors, and workers at the work site to determine Contract compliance. The bidder shall maintain records related to all charges, expenses, and costs incurred in estimating and performing the work for at least five (5) years after completion or termination of the Contract. Vendor shall retain all books and records pertaining to this Contract, including, but not limited to, subcontractor payment records, for five (5) years after project completion date. The County and the Palm Beach County Inspector General shall have access to such records as required in this Section for the purpose of inspection or audit during normal business hours, in Palm Beach County at any reasonable time during the five (5) years.

Notwithstanding anything contained herein, as provided under Section 119.0701, Florida Statutes, if the Vendor : **(i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2), Florida Statutes**, the Vendor shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Vendor is specifically required to:

- (1) Keep and maintain public records required by the County to perform services as provided under this order/contract.
- (2) Upon request from the County's Custodian of Public Records ("County's Custodian") or County's representative/liaison, on behalf of the County's Custodian, provide the County 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 in Chapter 119 Florida Statutes or as otherwise provided by law. The Vendor further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- (3) 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 order/contract term and following completion of the order/contract, if the Vendor does not transfer the records to the public agency. Nothing contained herein shall prevent the disclosure of or the provision of records to the County.
- (4) Upon completion of the order/contract, the Vendor shall transfer, at no cost to the County, all public records in possession of the Vendor unless notified by County's representative/liaison, on behalf of the County's Custodian, to keep and maintain public records required by the County to perform the service. If the Vendor transfers all public records to the County upon completion of the order/contract, the Vendor shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the order/contract, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically by the Vendor must be provided to the County, upon request of the County's Custodian or the County's representative/liaison, on behalf of the County's Custodian, in a format that is compatible with the information technology systems of County, at no cost to County.

Vendor acknowledges that it has familiarized itself with the requirements of Chapter 119, Florida Statutes, and other requirements of state law applicable to public records not specifically set forth herein. Failure of the Vendor to comply with the requirements of this Section, Chapter 119, Florida Statutes, and other applicable requirements of state law, shall be a material breach of this order/contract. County shall have the right to exercise any and all remedies available to it for breach of contract, including but not limited to, the right to terminate for cause.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS ORDER/CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

SALES PROMOTIONS / PRICE REDUCTIONS / MOST FAVORED CUSTOMER

Should sales promotions occur during the term of the order/contract that lower the price of the procured item, the successful vendor shall extend to the County the lower price offered by the manufacturer on any such promotional item. Further, any price decreases effectuated during the order/contract period by reason of market change or otherwise, shall be passed on to the County. Additionally, anytime after award, the vendor may offer a reduced price which shall remain in effect for the duration of the order/contract. The successful vendor warrants that the price(s) shall not exceed the successful vendor's price(s) extended to its most favored customer for the same or similar goods or services in similar quantities, or the current market price, whichever is lower. In the event the successful vendor offers more favorable pricing to one of its customer(s), the successful vendor shall extend to the County the same pricing or the then current market price, whichever is lower.

PERFORMANCE DURING EMERGENCY

By submitting an offer, vendor agrees and promises that, immediately preceding, during and after a public emergency, disaster, hurricane, flood, or act of God, Palm Beach County shall be given "first priority" for all goods and services under this order/contract. Vendor agrees to provide all goods and services to Palm Beach County immediately preceding, during and after a public emergency, disaster, hurricane, flood, or act of God, at the terms, conditions, and prices as provided in this solicitation on a "first priority" basis. Vendor shall furnish a 24-hour phone number to the County. Failure to provide the goods or services to the County on a first priority basis immediately preceding, during and after a public emergency, disaster, hurricane, flood, or act of God, shall constitute breach of contract and subject the vendor to sanctions from doing further business with the County.

PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL AUDIT REQUIREMENTS

Pursuant to Palm Beach County Code, Section 2-421-2-440, as amended, Palm Beach County's Office of Inspector General is authorized to review past, present and proposed County contracts, transactions, accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud.

BUSINESS INFORMATION

If vendor is a Joint Venture for the goods/services described herein, vendor shall, upon request of Palm Beach County, provide a copy of the Joint Venture Agreement signed by all parties.

ANNUAL APPROPRIATIONS

The County's performance and obligation to pay under this order/contract is contingent upon an annual appropriation by the Board of County Commissioners for subsequent fiscal years.

CONFLICT OF INTEREST

Vendor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required by this order/contract as provided for in Chapter 112, Part III, Florida Statutes and the Palm Beach County Code of Ethics. Vendor further represents that no person having any conflict of interest shall be employed for said performance or services. Vendors shall disclose the name of any officer, director, or agent who is also an employee or a relative of an employee of Palm Beach County. Further, vendor shall disclose the name of any County employee or relative of a County employee who owns, directly or indirectly, an interest of ten percent (10%) or more in the vendor's firm or any of its branches.

Effective from 12/30/2019