

1.1) Cover Page

Solicitation  
For Participation in  
**JEA St. Johns River Power Park (SJRPP) Unit 3 Combined Cycle – Generator Step-Up Transformers**  
Jacksonville, FL  
**Solicitation Number 1412156246**

**Optional Pre-Response Meeting via Microsoft Teams or Teleconference on April 29, 2026, at 1:00PM EST**

**Microsoft Teams meeting**

**Join:** <https://teams.microsoft.com/meet/225985847010231?p=prQbZEWsqLz3AT61KM>

Meeting ID: 225 985 847 010 231

Passcode: t6ph6AF9

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[Need help?](#) | [System reference](#)

**Dial in by phone**

[+1 469-208-1810,763150889#](tel:+14692081810763150889) United States, Carrollton

[Find a local number](#)

Phone conference ID: 763 150 889#

**Join on a video conferencing device**

Tenant key: [jea@m.webex.com](mailto:jea@m.webex.com)

Video ID: 118 111 255 2

[More info](#)

**Responses are due on Wednesday May 27, 2026, by 12:00 PM EST**

All Responses shall be submitted through JEA's E-Procurement and Contract Management Portal which is provided by Zycus Supplier Network which can be accessed at <https://zsn.zycus.com/guest>. Instructions on how to login to Zycus is provided below in this Solicitation. **LATE RESPONSES MAY BE REJECTED.**

JEA will publicly open all Responses received from qualified Respondents on the Due Date, via Microsoft Teams.

For more information please contact the JEA Buyer at:  
(Jason Behr, [behrjv@jea.com](mailto:behrjv@jea.com))

## 1.2) Scope of Work

The purpose of this solicitation for the purchase of Generator Step-up Transformers (GSU) (this "Solicitation") is to evaluate and select a vendor to provide qty two (2) Combustion Turbine Generator (CTG) GSU and Steam Turbine Generator (STG) GSU as described in this Solicitation (the "Work") and to determine the best method for JEA to procure the Work with regards to pricing, quality, design, and workmanship.

A more detailed description of the Work is provided in the Technical Specifications included as an Exhibit to this Solicitation.

Capitalized terms used in this Solicitation without definition shall have the definitions given to them in Section 2 of this Solicitation.

## 1.3) Background

JEA owns, operates and manages the electric system established by the City of Jacksonville, Florida since 1895. In June 1997, JEA also assumed operation of the water and sewer system previously managed by the City. JEA is located in Jacksonville, Florida, where we proudly serve an estimated 541,076 electric, 407,161, water and 30,460 reuse water customers. JEA is Florida's largest community owned utility and the eighth largest municipal in the United States.

## 1.4) Invitation - Submitting a Response

Respondents that meet the Minimum Qualification stated herein are invited to submit a Response to this Solicitation to perform the Work. A complete copy of this Solicitation, the Technical Specifications, forms and all other documents referenced in this Solicitation are on JEA's E-Procurement and Contract Management Portal which is provided by Zycus Supplier Network which can be accessed at <https://zsn.zycus.com/guest/genericRegister/JEA074>. Instructions on how to login to Zycus is provided below in this Solicitation.

All Responses are due at the time indicated on the title page of this Solicitation. Section 1 of this Solicitation are the instructions for submitting a Response for this Solicitation. Section 2 of this Solicitation contain the definitions and commercial contract terms associated with this procurement.

A Contract will be presented to the Respondent awarded this Work and the Contract will incorporate by reference this entire Solicitation and all associated Addenda. A sample of the JEA Contract can be found on [jea.com](http://jea.com).

All documentation submitted with a Response must reference the Solicitation Title and Number stated herein. All Responses must be made on the appropriate forms and formats as specified by this Solicitation and uploaded to JEA's procurement platform.

All Responses should be delivered electronically to JEA via the Zycus platform. An automated, detailed auditing system provides sealed Response integrity. Responses remain sealed on the platform until the Close Date & Time (Due Date & Time).

A Respondent shall be solely responsible for timely delivery of its Response to the Zycus Supplier Network. Respondents are strongly encouraged to acquire log in credentials early as possible. Additionally Respondents are encouraged to submit Responses early to ensure uploading process goes smoothly. **If Respondent is not able to submit its Response via Zycus, then please email the Response to the JEA Buyer identified in the Section below titled "Questions".**

Responses are due by the time and on the date stated on the cover page of this Solicitation. **LATE RESPONSES MAY BE REJECTED.**

## 1.5) Zycus Instructions

### I. How to Log Into Zycus

#### A. New Users – Zycus

1. New Users will need to register to login. Registration will require Company name, address, phone, contact, title, phone and email address. Also, it is recommended users use Google Chrome to access Zycus.

2. Note if the company is already doing business with JEA, you may find the company is already registered in Zycus. To find out if you are registered, try entering your email address in the New User Registration screen. If you receive a message stating “Email ID already registered”, log in as an Existing User Log-in”. If you don’t know your password, enter your email address and click on “Forgot Password”.

#### B. Existing Users or New Users with Previously Registered Emails

1. Once the user has a login on the sourcing platform select “Existing User Log-in”, the user may navigate to the solicitation by selecting the icon for the applicable solicitation.

#### II. How to Submit a Response Using Zycus

1. Once logged in, users will see all JEA Sourcing Events, then select the applicable event.

2. Once in the Sourcing Event. The Sourcing Event has prompts for actions required to respond to the solicitation.

3. For the user to proceed to submit a Response to JEA using Zycus, the user will be required to provide its acceptance of the of the Zycus iSource Terms & Conditions associated with the work. Such Terms and Conditions may cover non-disclosure, safety, cyber security, Invitation for Bid contract terms, etc.

4. Once all terms are accepted, additional Solicitation information will be available for viewing and submitting a Response by selecting “Confirm Participation”. JEA will then have a record indicating the company intends to submit a Response.

5. A user then can respond to each section of the Solicitation, once completed with each section, select “Save”. Note each section has a red, yellow, green light code. Items will turn green once completed. Yellow and red lights mean there is additional action required. Users may also note under each tab, there are multiple questions to respond to, scroll down the list to ensure all questions are answered.

6. In most Solicitations, JEA will provide Technical Specifications, pricing tables in Excel which the user will need to download. Additionally, Excel pricing tables may need to be uploaded once completed to as part of the Response. Users can download the required attachments by selecting the “Buyers Attachments” icon.

7. Once the required forms are uploaded and saved, the section light will turn green. Once all sections are completed and green lighted, the User may select “Submit Response”.

8. Once the user selects “Submit Response”, the user will receive a “Success” pop-up when submitted.

9. Once submitted users may recall and modify submitted documentation and submit information until the Response Due Date and Time.

10. Zycus does not automatically transfer a pricing submission from the qualifying round into live auction setting for award consideration. Each user shall manually re-submit its qualifying Response into the live auction environment for consideration of award.

#### 1.6) Questions

All Questions must be submitted in writing to the JEA Buyer listed herein at least five business days prior to the opening date. Questions received within five business days prior to the opening date may not be answered.

#### 1.7) Pre-Response Meeting

There may be an optional Pre-Response meeting associated with this Solicitation at the date and time listed on the cover page of this Solicitation. All interested Respondents are invited to attend the Pre-Response meeting. Those planning to attend the Microsoft Teams teleconference may email their name and contact information to the JEA

Buyer listed herein at least 48 hours prior to the Pre-Response meeting to facilitate roll call. A Respondent must only sign in representing one company, unless otherwise agreed to by JEA in writing.

### **1.8) Opening of Responses**

All Responses received shall be publicly announced and recorded via Microsoft Teams at the date and time indicated on the cover page of this Solicitation.

The details for the Microsoft Teams will be on [jea.com](https://www.jea.com) at the following website: <https://www.jea.com> approximately 48 hours before the Response opening.

At the opening of Responses, a JEA representative will publicly open each Response that was received prior to the Date and Time, except for those Responses that have been properly withdrawn. JEA has the right to waive irregularities or informalities in the Responses to the extent allowable under applicable laws.

### **1.9) Alternate Provisions and Conditions**

Terms and conditions found in Responses that are contrary to requirements found in this Solicitation, including, but not limited to, the Contract terms and conditions contained in Section 2 of this Solicitation and any requirements found in the Technical Specifications attached as an exhibit or attachment to this Solicitation, will be rejected and are of no force and effect. However, JEA reserves the right to negotiate different terms and conditions and requirements if JEA determines that such terms and conditions and requirements are in the best interest of JEA.

### **1.10) Minimum Qualifications**

Respondent must complete and submit the Minimum Qualification Form provided in this Solicitation. Respondents that are working or have worked for JEA in the past 2 years involving similar work must submit JEA as a reference. JEA reserves the right to ask for additional back up documentation or additional reference projects to confirm the Respondent meets the requirements stated above.

JEA may reject Responses from Respondents not meeting all of the following Minimum Qualifications:

- I. The Respondent must have successfully self-performed similar work preceding the Response Due Date.
- II. Any Respondent whose contract with JEA was terminated for default within the last two years shall have its Response rejected.
- III. To bid on the Approved Plant Tab, the Respondent must be the approved manufacturer or authorized distributor of the items listed in the Appendix B – Bid Response Workbook and be manufactured at the approved location. The list of approved manufacturers and locations are found below:
  - A. Prolec-GE / Waukesha, WI
  - B. Hitachi Energy / Varennes, Canada
  - C. Hitachi Energy / Guarulhos, Brazil
  - D. Hyundai / Montgomery, AL
  - E. Hyundai / Busan, South Korea
  - F. PTI Canada / Winnipeg, Canada
  - G. Royal SMIT / Nijmegen, Netherlands
  - H. Siemens / Zagreb, Croatia
- IV. To bid on the Alternative Plant Tab, the Respondent must be the approved manufacturer or authorized distributor of the items listed in the Appendix B – Bid Response Workbook. The list of approved manufacturers are found below:
  - A. Prolec-GE / Monterrey, Mexico
- V. The Respondent shall materially comply and continue to comply with the technical specifications for the full term

### **1.11) Number of Contracts to be Awarded**

JEA intends to award a primary supplier for each product group.

- Combustion Turbine Generator (CTG) GSU
- Steam Turbine Generator (STG) GSU

The type of transformer group is indicated within the workbook.

Should JEA determine that it is in its best interest to award a proposal from an Alternative Plant for a GSU type, JEA may elect to award a primary supplier for that Alternative Plant using the Basis of Award and Selection Criteria as found in this solicitation.

JEA reserves the right to Award more than one Contract based on certain groupings of the Work items, or JEA may exclude certain Work items or groupings, if JEA determines that it is in its best interest.

#### **1.12) Insurance Requirements**

Prior to JEA issuing a Purchase Order to the Company to begin the Work, the Company shall submit a certificate of insurance (COI) that is in compliance with amounts and requirements as indicated in this Solicitation. Note that the COI shall specifically indicate JEA as additional insured on all required insurance except Worker's Compensation and Professional Liability (if applicable). Furthermore, waiver of subrogation must be provided for all required insurance in favor of JEA, including its board members, officers, employees, agents, successors, and assigns.

#### **1.13) Liquidated Damages In Contract**

The Contract issued pursuant to this Solicitation contains liquidated damages tied to project completion deadlines. The Respondent should review the specific time frames and liquidated damage amounts found in Section 2 of this Solicitation prior to submitting its Response.

#### **1.14) Optional Use of Small and Emerging Business Program**

It is at the Respondent's option as to whether it chooses to subcontract with a JSEB firm. JEA encourages the use of JSEB firms; however, the Respondent is not required to utilize a JSEB to be awarded a Contract under this Solicitation.

For more information regarding the JSEB program, please contact Bill Hickey, JEA, Manager of Supplier Diversity Programs and Procurement Services, [hickwj@jea.com](mailto:hickwj@jea.com) or [jsebprogram@jea.com](mailto:jsebprogram@jea.com).

#### **1.15) Basis of Award - Highest Evaluated**

JEA will use the Selection Criteria listed below to evaluate the Responses. JEA may make its Award decision based solely upon the information submitted in the Responses. JEA may also choose to have one or more Respondent make presentations to representatives of JEA. It is always in the best interest of the Respondent to provide informative, concise, well-organized technical and business information relative to the Work, in both the initial submittal of its Response and in any subsequent submittals.

Please note, JEA may reject Responses that request material changes or take exceptions to JEA commercial terms and conditions.

Responses will be scored and ranked by a committee of evaluators. Each evaluator will individually score the Responses using the evaluation matrix attached to this Solicitation. Using these scores, each evaluator will rank the Responses using "1" for the Response receiving the highest number of points from the matrix. Responses with an equal number of points will receive the same numerical ranking. JEA will total the numerical rankings for each Response and consider the Response with the lowest total to be the most highly qualified Response. Any tie will be broken using the total of the matrix scores of all evaluators. If a tie persists, the tie will be broken in accordance with the JEA Procurement Operational Procedures.

#### **1.16) Evaluation Methodology**

JEA Procurement will distribute a copy of each Response to each member of the Selection Committee, and the members of the Selection Committee will separately and independently evaluate and rank the Responses using the "Selection Criteria" as stated below in this Solicitation.

Responses will be scored and ranked by a committee of evaluators. Each evaluator will individually score the Responses using an evaluation matrix. Using these scores, each evaluator will rank in order the Responses starting with "1" for the Response receiving the highest number of points from the matrix and increasing in point value respective to the order of rank. JEA will total the numerical rankings for each Response and consider the Response with the lowest total to be the most highly qualified Response.

The Respondent with the best overall rank for which JEA has determined to be in its best interest, will be submitted to the CPO for approval as the awardee for this work. Once approved, the CPO will then present an Award to the JEA Awards Committee for approval if applicable per JEA Procurement Code.

The rank and short-list, if applicable, will be announced in a public meeting. The date and time of the public meeting will be posted on jea.com.

#### Short-list Process (Optional)

JEA may select Respondents (the "Short-list") with which to commence presentations. A selection committee (hereinafter referred to as the "Selection Committee"), will be appointed by the Chief Procurement Officer (the "CPO"), or their designee, to review, evaluate, and rank each Response submitted.

JEA will use the ranking to develop the Short-list of companies in which to proceed with presentations if applicable. JEA reserves the right to recommend an Award based on the Selection Committee's initial evaluation of the Responses if JEA deems the Responses demonstrate adequate competition, compliance, and responsiveness to this Solicitation. If JEA determines the previously stated criteria have not been met, JEA will finalize the Short-list and proceed with presentations.

#### Presentations and Additional Clarifications (Optional)

A Respondent that is included on the Short-list may be required, at the sole option of JEA, to make an oral presentation, provide additional written clarifications to its Response, or JEA may require site visits to Respondent's facilities. Oral presentations, handouts, and written clarifications will be attached to the Respondent's Response and will become a part of the Response as if originally submitted. The CPO or their designee will initiate and schedule a time and location for any presentations that may be required.

While evaluating Responses, JEA may request clarification or additional information from the Respondent about any item in its Response. Such requests will be sent consistent with the protocols outlined in this Solicitation and the Respondent must provide a response back to JEA within five (5) business days unless otherwise specified by JEA, or JEA, at its sole discretion, may deem the Respondent to be non-responsive and either suspend or terminate further evaluation of its Responses.

The JEA Selection Committee will adjust and calculate the final rankings of the Short-list based on the addition of the Presentation.

The final rank will be announced in a public meeting. The date and time of the public meeting will be posted on jea.com.

The Award recommendation of the Selection Committee will be based upon the ranking of the Presentation and the Selection Criteria described below in this Solicitation. The Respondent(s) with the best overall rank will be submitted to the CPO for approval. Once approved, the CPO will then present an Award(s) to the JEA Awards Committee for approval if applicable per JEA Procurement Code.

#### References

As a part of the evaluation process, JEA may contact the references provided by the Respondent for independently verifying the information provided in the Response, and to assess the extent of success of the projects associated with those references. JEA also reserves the right to contact references not provided by Respondents. Respondents may be requested to provide additional references. The results of the reference checking may influence the final ranking, and Award recommendation. It is the sole responsibility of the Respondent to ensure availability of the Reference Contact should JEA elect to make contact.

#### **Reservation of Rights and Disclaimers**

Please note, JEA may, in its sole discretion, reject Responses that request material changes or take exceptions to JEA commercial terms and conditions.

In its sole discretion, JEA reserves the right to withdraw this Solicitation either before or after receiving Responses, to reject any and all Responses either in whole or in part, with or without cause, or to waive any Solicitation requirement informalities, minor irregularities, and deficiencies in any Response, and to determine such action is in the best interest of JEA. Issuance of this Solicitation in no way constitutes a commitment by JEA to make an Award or enter into a Contract(s).

All Responses submitted to JEA are subject to the JEA's terms and conditions contained in this Solicitation and JEA's Procurement Code. Any and all additional terms and conditions submitted by Respondents are rejected and shall have no force.

Presentations will not be open to the public but will be recorded. All recordings made, any records, documents, and other materials presented at public meetings in accordance with Florida Statutes 286, and can be released pursuant to a public records request under Florida Public Records Law, Florida Statutes, Chapter 119, subject to applicable records exemptions.

### 1.17) Selection Criteria

The following criteria will be used by JEA to evaluate and rank Responses from Respondents who meet the Minimum Qualifications specified in this Solicitation.

### 1.18) Quotation of Rates

**Maximum score: 40 Points**

Respondent shall provide a firm price quote for all Work in this Solicitation by completing the Response Form included in Appendix B. The prices quoted must include all profit, taxes, benefits, travel, percent mark-up, and all other overhead items.

The prices quoted by Respondent on the Response Form must be firm-fixed prices, not estimates. The low bid will receive the maximum 40 points and the amount of that bid will be the basis for awarding points to all other bids based on the following formula:

Other bidders' points =  $40 * (\text{Low Bidder}/\text{Bidder})$ .

For Example: Bid #1 = \$100, Bid #2 = \$125

Bid #1 is low bid and will receive 40 points. Bid #2 will receive 32 points ( $40 * (100/125)$ )

### 1.19) Lead-time

**Maximum score: 40 points**

Respondent shall include lead-time in Appendix B. The lead-times quoted by Respondent on the Response Form must be the Month and Year which JEA will receive the material, not the number of days to ship nor the date in which the item will be Manufactured. For the purpose of Liquidated Damages, this date shall be the date which calculations are made from. Do not quote a range. The basis for awarding points to all other bids based on the following formula:

- Delivery prior to November 30, 2029 shall be awarded 40 Points
- Delivery after November 30, 2029, but before February 28, 2030 shall be awarded 35 Points
- Delivery after February 28, 2030, but before June 30, 2030 shall be awarded 25 Points
- Delivery after June 30, 2030, but before November 30, 2030 shall be awarded 20 Points
- Delivery after November 30, 2030 shall be awarded 0 Points

### 1.20) Risk Profile, Past Performance, and Company Experience

**Maximum score: 20 Points**

JEA will evaluate Respondent's specific experience in undertaking similar professional engagements. Companies with similar projects with utility industry experience are preferred for this criterion. Qualities and indicators that will receive consideration generally include the number and types of the projects completed by the Respondent that are similar in nature to the Scope of Services being required in this Solicitation; the degree of similarity of the projects completed and the ability of the Respondent to bring about a successful completion of such similar projects; the number and quality of references furnished in conjunction with similar projects; and any outstanding accomplishments of the Respondent that relate to the specific Scope of Goods being sought.

Respondents shall provide reference projects and reference contact information that meet the following requirements:

- successful completion for three (3) projects that each include the design, fabrication, testing, documentation, delivery, and installation of a 400 – 800 MVA GSU Transformer, preferably within the last five (5) years.
- One (1) of the projects must include a 750MVA transformer or the highest MVA transformer built in the manufacturer facility listed in the bid documents.
- USA/North American references are preferred
- Utility references are preferred
- **if JEA had been previously supplied by supplier from the factory being proposed, it must be used as a reference**

The Response shall address the following issues and will be scored based on:

- Manufacturer's Experience and Capabilities
  - Manufacturer provided reference
  - Experience of the supplier building similar size models
    - Similar size for combustion
    - Similar size for steam
- Pricing and Transit Models
  - Transit Model
  - Tariff Model (redline to 2.4.10)
  - Milestone Payments (redline to 2.4.1)
  - Price Adjustment Model (evaluating criteria definition)
    - Currency Adjustment
    - Index Adjustments
    - All Price Adjustment Timeline

Example of Outstanding: Supplier commits to common 3<sup>rd</sup> party verifiable price indexing adjustments and response includes weight chart and corresponding website links for indices that is true up 90 days prior to shipping. Factory is domestic and utilizes Rail to the location and pricing is quoted DDP. Tariffs are included in the pricing, they have been identified and noted for how these costs are created, and Company agrees to JEA's tariff language regarding adjustments. References are exemplary. Pricing is based on the USD non-adjusting. Milestone payments are aligned well with the percentage of work completed and no less than 50% is upon final acceptance.

Example of Unsatisfactory: No information provided and references are unable to be reached.

JEA may contact the references provided by Respondent to determine the reference's satisfaction with the Respondent's performance with similar projects.

### **1.21) Tie**

In the event of a tie score, the tie shall be resolved in accordance with JEA's Procurement Code and Operational Procedures.

### **1.22) Subcontractors Use for the Performance of the Work**

The Respondent must list the names of the major Subcontractors that it intends to use for this Work, unless the Work will be self-performed by the Respondent. The Subcontractors must be listed on the Subcontractors Form which is available at [jea.com](http://jea.com). Failure to submit this form with the Response may result in rejection of Respondent's Response. The Respondent shall not use Subcontractors other than those shown on the Subcontractor Form unless it shows good cause and obtains the JEA Representative's prior written consent.

If the Respondent plans to use Subcontractors to perform over 50% of the Work, the Respondent shall obtain JEA's approval at least five days prior to the Response Due Date. Failure to obtain JEA approval may result in rejection of the Respondent's Response.

### **1.23) Required Forms to be Submitted**

The following forms must be completed and submitted to JEA at the timeframes stated below. The Respondent can obtain the required forms, other than the Minimum Qualification Form, Response Form and Response Workbook, by downloading them from [JEA.com](http://JEA.com).

A. The following forms are required to be submitted with the Response:

- I. Minimum Qualifications Form- This form can be found in Appendix B of this Solicitation
- II. Response Form- This can be found in Appendix B of this Solicitation
- III. Response Workbook - This can be found in Appendix B of this Solicitation
- IV. Subcontractor Form (if any). However, if the following Subcontractors are utilized to perform this Work, they shall be listed on the referenced Subcontractor Form: a. Electrical, b. Plumbing, c.

HVAC, d. Instrument and controls (I&C), e. Equipment Suppliers (i.e., pumps, fans, etc.), f. Material Suppliers, g. Roofing, h. Fuel, I. Mechanical Engineer, j. Fire Protection, h. etc.

If the above listed forms are not submitted with the Response by the Response Due Time and Date, JEA may reject the Response.

B. JEA also requests the following documents to be submitted prior to Contract execution. A Response will not be rejected if these forms are not submitted at the Response Due Date and Time. However, failure to submit these documents prior to Contract execution could result in Response rejection.

- I. Conflict of Interest Certificate Form - This form can be found at JEA.com
- II. Insurance certificate
- III. W-9
- IV. Evidence of active registration with the State of Florida Division of Corporations ([www.sunbiz.org](http://www.sunbiz.org))
- V. Any technical submittals as requires by the Technical Specifications

#### **1.24) Addenda Issuance**

JEA may issue Addenda prior to the opening of Responses to change or clarify the intent of this Solicitation. The Respondent is responsible for ensuring it has received all Addenda prior to submitting its Response and must acknowledge receipt of all Addenda by completing the Confirmation of Receipt of Addenda. JEA will post Addenda when issued online at JEA.com. Companies must obtain Addenda from the JEA.com website. It is the responsibility of each Respondent to ensure it has received and incorporated all Addenda into its Response. Failure to acknowledge receipt of Addenda may be grounds for rejection of a Response.

#### **1.25) Contract Execution and Start of Work**

Within 30 days from the date of Award, JEA will present the successful Respondent with the Contract. Unless expressly waived by JEA, the successful Respondent must execute a Contract for the Work within 10 days after receiving the Contract from JEA. If the Respondent fails to execute the Contract or associated documents as required, JEA may cancel the Award with no further liability to the Respondent and retain any bid security or bond. Upon JEA's receipt of the executed Contract, certificate of insurance, and recorded Payment and Performance bonds (if applicable), JEA will issue a PO, in writing and signed by an authorized JEA representative as acceptance of the Response and authorization for the company to proceed with the Work, unless otherwise stated in the Contract or PO. For Construction Services: In the event that JEA intends to authorize the successful Respondent to proceed with administrative work only, or with only a portion of the Work, then the PO shall state the specific limitations of such authorization and JEA will issue a separate written Notice to Proceed to authorize the Respondent to begin Field Work, when applicable, or to perform the remainder of the Work, or any portion thereof. The Respondent shall ensure that it is prepared to begin Field Work upon receipt of Notice to Proceed. Any Work performed outside of this partial authorization shall be at the Respondent's risk and JEA shall have no obligation to pay for such Work.

#### **1.26) Ex Parte Communication**

Ex Parte Communication is defined as any inappropriate communication concerning a Solicitation between any officers, employees or other representatives of Respondent and a JEA representative during the time in which the Solicitation is being advertised through the time of Award. Examples of inappropriate communications include: private communications concerning the details of the Solicitation in which a company becomes privy to information not available to the other Respondents. Social contact between companies and JEA Representatives should be kept to an absolute minimum during the Solicitation process.

**Ex Parte Communication is strictly prohibited.** Failure to adhere to this policy will disqualify the noncompliant Respondent. Any questions or clarifications concerning this Solicitation must be sent in writing via email to the JEA Buyer at least five business days prior to the opening date. If JEA determines that a question should be answered or a requirement should be clarified, JEA will issue an Addendum to the Solicitation.

#### **1.27) Conflict of Interest**

This conflict of interest policy applies to all JEA construction projects ("Project"). Any company bidding the construction phase of a Project cannot at the time of Response/bid submittal, be affiliated with or have any direct or indirect ownership interest in the architect/engineer ("Designer") of record. The company will also be prohibited from bidding if the Designer has any direct or indirect ownership interest in the Contractor. Should JEA erroneously award

a contract in violation of this policy, JEA may terminate the contract at any time with no liability to company, and company shall be liable to JEA for all damages, including but not limited to the costs to rebid the Project. The purpose of this policy is to encourage bidding and eliminate any actual or perceived advantage that one Respondent may have over another.

### **1.28) Certifications and Representations of the Company**

By signing and submitting its Response, the Respondent certifies and represents as follows:

A. That the individual signing the Response is duly authorized to contractually bind the Respondent to the terms and conditions of this Solicitation and the Contract. Respondent shall provide satisfactory evidence of such authority within three days of JEA's request.

B. That every aspect of the Response and the detailed schedule for the execution of the Work, are based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of JEA. JEA assumes no responsibility for any understanding or representation made by any of its representatives during or prior to execution of the Contract unless such understandings or representations are expressly stated in the Contract and the Contract expressly provides that JEA assumes the responsibility.

C. That, if successful, the Respondent will be registered to conduct business in the State of Florida and in active status with the Florida Division of Corporations at the time of execution of a Contract.

D. That the Respondent maintains in active status any and all licenses, permits, certifications, insurance, bonds and other credentials including, but not limited to, all licenses necessary to perform the Work. The Respondent also certifies that, upon the prospect of any change in the status of applicable licenses, permits, certifications, insurances, bonds or other credentials, the Respondent shall immediately notify JEA of status change.

### **1.29) Ethics**

By submitting a Response, the Respondent certifies that its Response is made without any previous understanding, agreement or connection with any other person, firm, or corporation submitting a Response for the same Work other than as a Subcontractor or supplier, and that the Response is made without outside control, collusion, fraud, or other illegal or unethical actions. The Respondent shall comply with all JEA and City of Jacksonville ordinances, policies and procedures regarding ethics.

The Respondent shall submit only one Response to this Solicitation. If JEA has reasonable cause to believe the Respondent has submitted more than one Response for the same Work, other than as a Subcontractor or sub-supplier, JEA shall disqualify the Response and may pursue debarment actions.

The Respondent shall disclose the name(s) of any public officials who have any financial position, directly or indirectly, in Respondent or its Response by completing and submitting the Conflict of Interest Certificate Form available at [jea.com](http://jea.com). Failure to fully complete and submit the Conflict of Interest Certificate will disqualify the Response. If JEA has reason to believe that collusion exists among the Respondents, JEA shall reject any and all Responses from such Respondents and will proceed to debar the Respondents from future JEA Awards in accordance with the JEA Procurement Code.

JEA is prohibited by its Charter from awarding contracts to JEA board members, officers or employees, and is prohibited from awarding contracts in which a JEA officer or employee has a financial interest. JEA shall reject all Responses from JEA board members, officers or employees, as well as, all Responses in which a JEA officer or employee has a financial interest.

In accordance with Florida Statutes Sec. 287.133, JEA shall reject Responses from any persons or affiliates convicted of a public entity crime as listed on the Convicted Vendor list maintained by the Florida Department of Management Services. JEA shall not make an Award to any officer, director, executive, partner, shareholder, employee, member, or agent active in management of the Respondent listed on the Convicted Vendor list for any transaction exceeding \$35,000 for a period of 36 months from the date of being placed on the Convicted Vendor list.

JEA shall also reject any Responses from any persons or affiliates that are listed on State of Florida's Suspended Vendor List, the City of Jacksonville's Disqualified Vendor List, JEA's Suspended Vendors list, or have had a contract with JEA terminated for default within the last two (2) years.

**1.30) JEA Publications**

Applicable JEA publications are available at [jea.com](http://jea.com).

**1.31) Mathematical Errors**

In the event of a mathematical error in calculation of the prices entered on the Response, the Unit Prices will prevail. The corrected price utilizing the Unit Prices quoted by Respondent will be used to determine if the Company is awarded a Contract for the Work and the corrected pricing will be used throughout the Term.

**1.32) Modification or Withdrawal of Responses**

The Respondent may modify or withdraw its Response at any time prior to the Response Due Date and Time by giving written notice to JEA's Chief Procurement Officer by submitting an updated Response. JEA will not accept modifications submitted by telephone, telegraph, email, or facsimile, or those submitted after the Response Due Date and Time. The Respondent may not modify or withdraw its Response for a period of 90 days following the opening of Responses.

**1.33) Notice of Prohibition Against Considering Social, Political, or Ideological Interests**

Pursuant to Section 287.0501, Florida Statutes, JEA may not:

- (i) Request documentation of or consider a vendor's social, political, or ideological interests when determining whether a vendor is a responsible vendor; or
- (ii) Give preference to a vendor based on the vendor's social, political, or ideological interests.

**1.34) Prohibition Against Contingent Fees**

The Respondent warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Respondent, or an independent sales representative under contract with the Respondent, to solicit or secure a contract with JEA, and that it has not paid or agreed to pay any person, company, corporation, or other individual, other than a bona fide employee working solely for the Respondent, or an independent sale representative under contract with the Respondent, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the Award or the Contract. If a breach or violation of the provisions occurs, JEA shall have the right to terminate the Contract without liability, and at its discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**1.35) Protest of Solicitation and Award Process**

Any protests regarding this Solicitation must be filed in writing and in accordance with the JEA Procurement Code, as amended from time to time. The JEA Procurement Code is available online at [www.jea.com](http://www.jea.com).

**1.36) Reservation of Rights of JEA**

This Solicitation provides potential Respondents with information to enable the submission of written offers. This Solicitation is not a contractual offer or commitment by JEA to purchase products or services.

JEA reserves the right to reject all Responses, and to waive informalities if JEA deems such action to be in its best interest. JEA may reject any Responses that it deems incomplete or irregular including, but not limited to, Responses that omit a price on any one or more items for which prices are required, Responses that omit Unit Prices if Unit Prices are required, Responses that offer equal items when the option to do so has not been stated, and Responses that fail to include a Bid Bond, where one is required.

JEA reserves the right to cancel, postpone, modify, reissue and amend this Solicitation at its discretion.

JEA reserves the right to cancel or change the date and time announced for opening of Responses at any time prior to the time announced for the opening of Responses. JEA may Award the Contract in whole or in part. JEA may award multiple or split Contracts if it is deemed to be in JEA's best interest.

### **1.37) Defined Terms**

Words and terms defined in the section entitled "Definitions" of this document are hereby incorporated by reference into the entire document.

## **2) Contract Terms and Conditions**

### **2.1) Contract Document Terms and Conditions**

Section 2 of this Solicitation contains JEA's general terms and conditions that will govern the Contract awarded under this Solicitation. The Contract Documents will incorporate by reference all of the terms and conditions of this Solicitation, including all Appendices, Exhibits, Schedules and Forms included with this Solicitation. An example of the Contract that the Company will be required to execute is available for review at [jea.com](http://jea.com).

### **2.2) Definitions**

Capitalized words and terms used in this Solicitation shall have the meaning given to them in this Section 2. The Technical Specifications to this Solicitation may define additional words and terms where necessary to clarify the Work. Unless otherwise stated in this Solicitation or the Contract Documents, definitions set forth in Technical Specifications shall apply only within the Technical Specifications.

#### **Acceptance**

JEA's written notice by the Project Manager to the Company that all Work as specified in the Contract, or a portion of the Work as specified in the Contract, or a Task or Work Order, has been completed to JEA's satisfaction. Approval or recognition of the Company meeting a Milestone or interim step does not constitute Acceptance of that portion of Work. Acceptance does not in any way limit JEA's rights under the Contract or applicable laws, rules and regulations.

#### **Addendum/Addenda**

An amendment to the Solicitation which is issued by JEA before the Response Due Date and Time.

#### **Anniversary Date**

The date which is twelve (12) months after the Effective Date of the Contract, and each date which is twelve (12) months after an Anniversary Date that occurs while the Contract is in effect.

#### **Award**

The written approval of the Contract by JEA's Awards Committee and Chief Executive Officer.

#### **Change Order**

A written order issued by JEA after execution of the Contract, authorizing an addition, deletion, or revision of the Work, or an adjustment in the Contract Price or the Contract Time. Change Orders do not authorize expenditures greater than the maximum indebtedness shown in the Contract. A Change Order that involves a material change to the Contract may require a Contract Amendment.

#### **Company**

The legal person, firm, corporation or any other entity with whom JEA executes the Contract.

#### **Company Representatives**

The individual assigned by the Company to have authority to administer the Contract on behalf of the Company. The Company shall provide JEA with the name and responsibilities of the Company Representative, in writing after Award of the Contract and before starting the Work under the Contract. Should the Company need to change the Company Representative, the Company shall promptly notify JEA in writing of the change.

#### **Contract**

The written agreement executed by JEA and the Company which describes the rights and obligations of JEA and the Company with respect to the Work and incorporates all of the Contract Documents.

#### **Contract Amendment**

A written document signed by JEA and the Company issued after the execution of the Contract which authorizes an addition, deletion or revision of the Scope of Work, or the Contract Price, the Term or any other provision of the Contract.

**Contract Documents**

Contract Documents means the executed Contract, this Solicitation, all documents required by or submitted in connection with this Solicitation or the Contract, and any written Change Orders, Contract Amendments and Purchase Orders executed by JEA and Company.

**Contract Price**

The total amount payable by JEA to the Company during the Term in accordance with the terms and conditions of the Contract.

**Contract Time**

The number of calendar days or the period of time from when the written Purchase Order is issued to the Company, to the date Company has agreed to complete the Work, as set forth in the Contract Documents.

**Defect**

Work that fails meet the requirements of the Contract Documents.

**Delivery Point**

The foundation at the Site upon which the Equipment will be Installed.

**Delivery Schedule.**

The lead time periods for the Equipment stated in the Response beginning on the Effective Date.

**Engineering Procurement and Construction Limited Notice to Proceed Date (EPC LNTP Date)**

The date which Schedule of Submittals is based off and is established by JEA, but not earlier than February 18, 2027.

**Equipment**

As Defined in the scope of the Technical Specifications

**Guaranteed Delivery Date**

The end of the lead time period for the Equipment stated in the Response beginning on the Effective Date.

**Holidays**

The following days: New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve Day, and Christmas Day. If a Holidays falls on a weekend, the Holiday is the day that JEA observes the Holiday.

**Installation**

The provision of all work necessary or required to install the Equipment on its foundation, permanently affix the Equipment thereto, complete the installation of all components and accessories in accordance with this Contract, including the provision of all labor, tools, materials, and equipment necessary to accomplish the foregoing.

**Invoice**

A document seeking payment to the Company from JEA for all or a portion of the Work, in accordance with the Contract Documents.

**JEA**

JEA, a body politic and corporate, which is authorized to own, manage and operate for the benefit of the City of Jacksonville a utilities system within and without the City of Jacksonville.

**JEA Project Manager**

The individual assigned by JEA to have authority to administer the Contract, including the authority to issue Change Orders.

**JSEB**

The City of Jacksonville Small and Emerging Business Enterprises as defined in Chapter 126, Part 6 of the City of Jacksonville, Ordinance Code, as may be amended from time to time.

**Milestone**

A point in time representing a key or important intermediate event in the Work. A Milestone is to be capable of validation by meeting all of the items prescribed in a defining checklist as agreed to in writing by JEA.

**Notice to Proceed**

A written notice issued by JEA to Company directing Company to begin performance of the Work (or a designated portion of the Work) in accordance with the terms of this Contract, effective as of the date specified in such notice.

**Performance - Meets Expectations**

The Company averages more than 2.9 and less than 4.0 across all performance scorecard evaluation metrics.

**Performance - Below Expectations or Far Below Expectations**

The Company averages less than 2.80 across all scorecard evaluation metrics or scores a 2 or less on an individual evaluation metric.

**Performance - Exceeds or Far Exceeds Expectations**

The Company averages 4.0 or more across all scorecard evaluation metrics.

**Point of Delivery**

The foundation upon which the Equipment will be installed at the Site.

**Purchase Order**

A commercial document issued by JEA, authorizing work, indicating types, quantities, and agreed prices for products or services the Company will provide to JEA. Sending a PO to a Company constitutes a legal offer to buy products or services. The words "Purchase Order" are clearly marked across the top, a PO number is used for reference and invoicing purposes, includes an authorized JEA signature, and states the dollar amount of the lawfully appropriated funds.

**Response**

The document describing the Company's offer submitted in response to this Solicitation.

**Respondent**

The respondent to this Solicitation.

**Solicitation**

All documents issued by JEA to solicit Responses from Respondents including, but not limited to, all documents required to be submitted by a Respondent in connection with this Solicitation, the Technical Specifications, and any Addenda to the Solicitation issued by JEA.

**Subcontractor**

A legal person, firm, corporation or any other entity that provides a portion of the Work to JEA on behalf of the Company, or provides supplies or materials in connection with the Work.

**Final Completion**

The condition when: (i) erection, Installation and commissioning of the Equipment has been completed by JEA or representative, (ii) all Site-required commissioning and performance testing of the Equipment has been completed and all test data properly evaluated and Accepted by JEA, and (iii) Company has delivered to JEA all operating instructions, maintenance manuals, and warranties and any other Documents required to be delivered as of Final Completion; (iv) all spare parts purchased in accordance with the Technical Specifications have been delivered; (v) all other Work has been completed, except for Work identified on an agreed upon punchlist; and (vi) JEA or representative has Accepted the Company's certificate of Final Completion.

**Technical Specifications**

The technical requirements, specifications, drawings, standards, and related documents for the Equipment and the Work, as attached to this Contract, as the same may be revised in accordance with this Contract.

**Term**

The period of time during which the Contract is in force.

**Unit Price**

The Company charges, rounded to the nearest cent, to JEA for the performance of each respective unit of Work or Services as defined on this Solicitation.

**Work**

Any and all actions, products, documentation, electronic programs, reports, testing, transport, administration, management, services, materials, tools, equipment, and other deliverables to be furnished or performed by the Company under the Contract, together with any and all additional such deliverables that are not specifically provided in the Contract, but can be reasonably inferred as necessary to complete the Company's obligations under the Contract.

**2.3) Order of Precedence**

The Contract shall consist of all of the following documents which, to the extent of any conflict, shall have priority in the order listed below:

- I. Executed Contract Amendments
- II. Executed Change Orders
- III. Exhibits to Contract Documents
- IV. Executed Contract Documents
- V. Purchase Order(s)
- VI. Addenda to JEA Solicitation
- VII. Drawings associated with this Solicitation
- VIII. Exhibits and Attachments to this Solicitation
- IX. Technical Specifications associated with this Solicitation
- X. This Solicitation
- XI. Response Documents
- XII. References

**2.4) Invoicing and Payment**

**2.4.1 Payment Method - Milestones**

Upon Company's completion of and JEA's Acceptance of the completion of each predetermined Milestone, the Company shall submit to JEA an Invoice for the amount/percentage of the Work or Services completed corresponding to that Milestone.

The Milestone payments that are associated with the Work or Services are as follows:

- 1. [●] ARO
- 2. [●] upon Approval of Design Documents
- 3. [●] upon Release to Manufacturing
- 4. [●] upon successful completion of Factory Acceptance Test
- 5. [●] upon Delivery
- 6. [●] upon Final Completion

Milestones which have been invoiced shall not be eligible for price adjustment.

**2.4.2 Invoicing and Payment Terms**

Within sixty (60) days from completion of each Milestone, the Company shall submit all Invoices or Applications for Payment in accordance with the payment method agreed upon in these Contract Documents. Invoices shall be submitted to the following email address: ACCTPAYCUSTSRV@JEA.COM.

JEA will pay the Company the amount requested within thirty (30) calendar days after receipt of an Invoice from the Company subject to the provisions stated below.

JEA may reject any Invoice or Application for Payment within twenty (20) calendar days after receipt. JEA will return the Invoice or Application for Payment to the Company stating the reasons for rejection. Upon receipt of an acceptable revised Invoice or Application for Payment, JEA will pay the Company the revised amount within ten (10) days.

In case the Company is JEA may withhold payment that may be due if the Company, and may offset existing balances with any JEA incurred costs against funds due to the Company under this Contract with JEA, as a result of the violation, or other damages as allowed by the Contract Documents and applicable law.

In the case of early termination of the Contract, all payments made by JEA against the Contract Price prior to notice of termination shall be credited to the amount, if any, due the Company. If the parties determine that the sum of all previous payments and credits exceeds the sum due the Company, the Company shall refund the excess amount to JEA within ten (10) days of determination or written notice.

### **2.4.3 JEA Contractor Travel Policy**

To the extent the Company's fees include reimbursement for travel and travel related expenses, only the authorized expenses described here in will be reimbursed. The Company must request approval in writing from the JEA Project Manager for all travel for a specific person on official JEA business prior to commencement of travel. JEA will only reimburse the Company for actual cost of travel expenses that are documented with receipts submitted with the expense statement (the "Traveler"). The Traveler shall choose the most economical means of transportation, considering the nature of the business, the Traveler's time, cost of transportation, meals, lodging and incidental expenses required. Reimbursement shall be made only for travel performed over usually regularly traveled routes to the destination. When travel is by indirect route for the Traveler's own convenience, reimbursement for expenses shall be based only on such charges as would have been incurred over the usually traveled route.

#### **Authorized Expenses:**

##### **Airplane**

Travel by common carrier will only be reimbursed at the coach/economy fare rate purchased.

A copy of the Traveler's air itinerary showing the cost of the coach/economy fare must be submitted along with the expense statements. The Traveler is encouraged to select the most economical published fare. A round-trip coach/economy fare greater than \$1,500 must be pre-approved by JEA.

##### **Private Automobiles**

If the total miles from point of origin to destination exceeds 400 miles one way, the mileage reimbursement for use of a private motor vehicle shall be limited to the lesser of:

- I. IRS rate per mile (current mileage rate can be found on the IRS website) or
- II. the lowest airline common carrier coach/economy fare to the nearest airport plus the cost of other means of transportation from the airport to the destination.

If travel is by private automobile, reimbursement shall be based on the IRS authorized mileage rate in existence at the time of travel. All mileage shall be completed from the constructive point of origin to the point of destination. Vicinity mileage incurred while driving on official business may also be reimbursed. No other reimbursement for expenses related to the operation, maintenance and ownership of a vehicle shall be allowed when a private motor vehicle is used on public business.

##### **Car Rental**

Rental cars may be used only if taxis or other means of transportation are less economical or otherwise impractical.

JEA has contracts with AVIS, Budget and Enterprise/National for car rentals and must be used where available. For reservations:

- I. AVIS

- A. <https://www.carrental.com/abgPartners/sof/>
  - B. 800-652-7900
  - C. Discount Code: B113410
- II. Budget
- A. <https://www.carrental.com/abgPartners/sof/>
  - B. 800-214-6094
  - C. Discount Code: B113410
- III. Enterprise/National
- A. <https://elink.enterprise.com/en/23/08/jea.html>
  - B. Account Number: XZ78612

Every effort shall be made to coordinate travel so that Travelers share a rental car and thereby eliminate multiple cars at the same location. Travelers must use the intermediate or standard class (or subordinate) of vehicles unless the number of passengers or the volume of equipment makes the intermediate/standard class impractical or if health or physical need requires a larger vehicle. A business justification for upgrades noting such must be included in the travel pre-approval. Personal accident insurance purchased by the traveler will not be reimbursed by JEA.

A receipt of itemized rental car charges must be obtained and submitted with the travel reimbursement claim.

### **Lodging**

Reimbursement will be made for the cost of reasonably required overnight lodging when a Traveler is required to be away from his/her place of residence on behalf of JEA business. Travelers shall select lodging that is the most economical available, consistent with the duties being performed. Travelers will be reimbursed for a single room rate; double occupancy rates may be obtained if two Travelers share a room.

Travelers must document all lodging expenses with itemized statement and paid receipt from lodging facility. A receipt of itemized lodging expenses must be obtained and submitted with your travel reimbursement claim. Personal expenses such as entertainment, in-room movies, in-room concessions (i.e., mini-bar charges) and other personal charges will not be reimbursed.

### **Meals**

Reimbursement is authorized for meals for all travelers while in a business travel status at the following fixed subsistence / per diem rates, or, at the traveler's option, at the amount submitted, not to exceed the following fixed maximum subsistence rates, but in any case, only when travel begins before and extends beyond the times specified:

- I. Breakfast - when Travel Time begins before 6:00 a.m. and extends beyond 8:00 a.m. The JEA breakfast per diem maximum is \$20.
- II. Lunch - when Travel Time begins before 12:00 noon and extends beyond 2:00 p.m. The JEA lunch per diem maximum is \$25.
- III. Dinner - when Travel Time begins before 6:00 p.m. and extends beyond 8:00 p.m. The JEA dinner per diem maximum is \$35.
- IV. International Travel - for travel outside of the United States, the per diem rate is doubled to \$100 per day.

### **Incidental Transportation Expenses**

The following expenses incidental to transportation of the Traveler may be reimbursed:

- I. Taxi fare
- II. Ferry fares, bridge, road and tunnel tolls
- III. Storage and parking fees
  - a). Valet parking may be selected when there is not a more economical means of parking or where less economical options present a safety concern. A business justification for the use of valet parking must be provided in the reimbursement claim.
  - b). One of the long-term (non-valet) airport parking options (vs. hourly parking) must be utilized for approved travel greater than 24 hours.
- IV. Communication expenses such as business telephone expenses and daily internet/wireless access to conduct JEA business or to inform family members or caretakers of travel delays.

V. Reasonable gratuities for services incurred at a cost (not to exceed 20% of the cost of the service or to exceed the total subsistence allowance in the case of meals).

VI. Reasonable gratuities for services incurred without a cost (limited to \$10 per day) (receipt not required, but service justification must be indicated).

#### **2.4.4 Prompt Payment to Subcontractors, Sub-Subcontractors and Suppliers**

When the Company receives payment from JEA for labor, services or materials furnished by Subcontractors and suppliers that are hired by the Company, the Company shall remit payment due (less proper retainage) to those Subcontractors and suppliers within ten (10) days after the Company's receipt of payment from JEA. Nothing herein shall prohibit the Company from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its Subcontractors and suppliers. In the event of such dispute, the Company may withhold the disputed portion of any such payment only after the Company has provided written notice to JEA and to the Subcontractor and supplier whose payment is in dispute, stating the amount in dispute and specifically describing the actions required to cure the dispute. The Company shall deliver such notice to JEA and to the said Subcontractor or supplier within ten (10) days following the Company's receipt of payment from JEA. The Company shall pay all undisputed amounts due within the time frames specified herein. JEA shall not be liable for fees incurred by the Company as a result of late payments made to a Subcontractor or supplier.

The prompt payment requirements herein shall, in no way, create any contractual relationship or obligation between JEA and any Subcontractor, supplier, JSEB, or any third-party, nor create any JEA liability for the Company's failure to make timely payments as required. The Company's failure to comply with the prompt payment requirements, however, shall constitute a material breach of its contractual obligations to JEA. As a result of such breach, JEA, without waiving any other available remedy it may have against the Company, may issue joint checks and charge the Company a 0.2% daily late payment interest charge or charges as specified within the Florida Statutes, whichever is greater.

#### **2.4.5 Cost Savings Plan**

During the Term, JEA and Company are encouraged to identify ways to reduce the total cost to JEA related to the Work provided by the Company. JEA and Company may negotiate Contract Amendments that allow such reductions in total costs including, but not limited to, the sharing of savings resulting from implementation of cost-reducing initiatives between JEA and Company. The decision to accept any cost savings initiative shall be in the sole discretion of JEA, and JEA shall not be liable to Company for any cost that may be alleged to be related to a refusal to accept a cost savings initiative proposed by Company.

#### **2.4.6 Price Adjustments [*Note to Bidders: Company to propose terms and conditions relating to any price adjustments proposed by Company for JEA review as part of its Bid evaluation.*]**

#### **2.4.7 Discount Pricing**

JEA offers any or all of the following optional payment terms, one of which may be elected at the request of the Company by sending an email to the JEA Buyer listed in this Solicitation:

I. -1% 20, net 30

II. -2% 10, net 30

The Company may request alternate payment terms for JEA's consideration, however, alternate payment terms are not effective until acceptance by JEA in writing. All payment dates are calculated from the date of receipt of a proper Invoice by JEA's Accounts Payable department.

#### **2.4.8 Taxes**

JEA is municipally owned utility and is exempt from paying Florida Sales and Use Tax, and is exempt from Manufacturer's Federal Excise Tax when purchasing tangible personal property for its direct consumption. Additionally, pursuant to Florida Statute 212.08(5) (c) 3, if Company or Subcontractor is buying materials for JEA's electric generating stations, other than Northside Unit 3, JEA can issue the Company or Subcontractor an affidavit that will allow Company or Subcontractor to purchase materials tax free on behalf of JEA.

#### 2.4.9 Tariffs and Duties

**Existing Tariffs:** The Company represents that the Contract Price includes an amount equal to \$[●], which is inclusive of all import/export duties, tariffs, and other similar taxes or levies ("Tariffs") applicable to the goods, materials, equipment, or services to be provided hereunder, which are known and in effect as of the Effective Date of this Contract. The Company shall be responsible for the payment of all such existing Tariffs.

**New or Changed Tariffs:** In the event that subsequent to the Effective Date of this Contract, any new Tariffs are imposed, or existing Tariffs are changed (including increases, decreases, or eliminations), by any governmental authority, which directly and demonstrably impacts the Company's costs for goods, materials, or equipment essential for the performance of this Contract, the following provisions shall apply:

(a) **Notification:** The Party seeking a price adjustment due to new or changed Tariffs (the "Requesting Party") shall promptly notify the other Party in writing (the "Responding Party") of such new or changed Tariff. Such notification shall be provided no later than thirty (30) days after the Requesting Party becomes aware of the new or changed Tariff.

(b) **Documentation and Verification:** If the Company is the Requesting Party, it shall provide JEA with verifiable documentation demonstrating the direct impact of the new or changed Tariff on its costs under this Contract. This may include, but is not limited to, supplier invoices, official government notices of Tariff changes, and calculations showing the cost differential. JEA shall have the right to reasonably audit such documentation.

(c) **Negotiation and Equitable Adjustment:** Upon receipt and verification of the documentation, if applicable, JEA and Company shall negotiate in good faith to reach a mutually agreeable equitable adjustment to the relevant prices, rates, or charges set forth in this Contract to account for the demonstrated direct impact of the new or changed Tariff. Any such adjustment shall be limited to the actual, direct, and unavoidable cost increase or decrease incurred by the Company.

(d) **Limitations:** Any price adjustment under this Section shall not exceed **the published tariff contained in the US Government's Harmonized Tariff Schedule (HTS) assigned to the affected item.** or a total Contract Price, unless otherwise mutually agreed in writing. Adjustments shall only apply to Tariffs directly impacting goods, materials, or equipment incorporated into the Work or services provided after the effective date of the new or changed Tariff.

(e) **Benefit of Reductions:** Should any Tariffs existing at the Effective Date, or imposed thereafter, be reduced, eliminated, or declared illegal, resulting in a demonstrable decrease in the Contractor's costs for goods, materials, or equipment essential for the performance of this Contract, the benefit of such reduction shall be passed through to JEA via an equitable downward adjustment to the Contract Price following a similar notification and verification process as outlined above.

(f) **Separate Line Item for Tariffs:** Notwithstanding the inclusion of existing Tariffs in the agreed-upon prices as per Section title "Existing Tariffs", any Tariffs applicable to an Invoice or Application for Payment shall be listed as a separate line item on that Invoice or Application for Payment. This separate listing will clearly indicate the amount of the Tariff, allowing for its easy identification and potential removal or adjustment as agreed upon by the Parties pursuant to the Section titled "New or Changed Tariffs". The cost of the goods, materials, equipment, or services shall be listed separately from the Tariff amount.

## 2.5) Delivery

### 2.5.1 Delivery Terms

Company shall deliver the Equipment DDP to the Delivery Point (INCOTERMS 2020). Company will cause all of the equipment and materials comprising the Equipment to be delivered to the Delivery Point in accordance with the Delivery Schedule. Unless otherwise consented to by JEA in writing in advance, Company will not deliver any component of the Equipment prior to the date that is five (5) days before the date for delivery as set forth in the Delivery Schedule. If at any time Company has reason to believe that deliveries will not be made as scheduled, it shall promptly give JEA written notice setting forth the cause or causes of the anticipated delay. All insurance necessary to protect the Equipment against loss or damage during transport or handling shall be maintained by Company at its

expense. JEA shall, at its own cost and expense, provide free and clear access to the Delivery Point for purposes of Company's ability to perform its delivery obligations under the Contract.

### **2.5.2 Shipping/Packing**

The Equipment shall be prepared (preserved, etc.) and packed per good practice for shipment in a manner to comply with carrier regulations and the requirements specified in the Technical Specifications. The Contract Price includes the cost of packing and package materials, all required permitting, or other protection required. A complete packing list shall be enclosed with all shipments. Company shall mark containers or packages with necessary lifting, loading, and shipping information, including the purchase order number, product number and dates of shipment.

### **2.5.3 Shipment to Storage**

If the Equipment cannot be delivered to JEA within the acceptable delivery window due to any cause attributable to JEA, or its other contractors, Company may ship the Equipment to a storage facility approved by JEA, including storage at the place of manufacture or repair, or to an agreed freight forwarder. If Company so places the Equipment into storage, the following shall apply: (i) title and risk of loss shall immediately pass to JEA, if they have not already passed, and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Company upon delivery or shipment shall be due; (iii) Company will be entitled to invoice JEA the actual and demonstrated costs of transportation to and rigging into the storage facilities, the costs of transportation from and rigging out of the storage facilities, (iv) the actual and demonstrated costs of the railcar or other materials required to store the Equipment, plus (v) actual and demonstrated costs of storage. Invoices shall be on a monthly basis starting the beginning at the end of the first month of storage until the delivery of the Equipment can be made to the Delivery Point; and (vi) when conditions permit and upon payment of all such amounts due, Company shall complete the delivery of the Equipment to the Delivery Point.

### **2.5.4 Right to Inspect**

Within five (5) Business Days after arrival of an item of the Equipment at the Delivery Point, JEA or its representative shall conduct an inspection and provide notice to Company of any visible damage or non-conformity with the packing list discovered. If such inspection reveals any nonconformity or damage, such item shall not be considered delivered. If such inspection reveals no such nonconformity or damage, then the date of arrival of the item at the Delivery Point will be considered the date of delivery. If such inspection does not occur within such fifteen (15) Day period, then the Equipment will be deemed delivered under this Contract. No such inspection or failure to inspect (timely or at all), nor any finding or lack thereof during such an inspection, shall be deemed to constitute acceptance of any defective or nonconforming items or waiver of any rights of JEA under this Contract or applicable laws, rules and regulations.

## **2.6) Installation**

JEA shall be responsible for unloading the Equipment at the Delivery Point upon delivery and installing it on its foundation.

## **2.7) Drawing Submittals**

Company shall furnish to JEA all necessary drawings, schematics, diagrams, plans, descriptive literature, illustrations, and other documentation relating to the Equipment (collectively, the "**Documents**"), including all details required for the design of supporting structures and for JEA to operate, maintain, and procure replacement parts for the Equipment, in accordance with the Technical Specifications. Company shall identify in such Documents the originator thereof if other than Company. JEA will not grant an extension of Contract Time or Equipment Delivery Schedule due to the Company's failure to submit Shop Drawings in ample time to allow for checking, revisions, reviews, and approval. Company shall deliver the Documents to JEA in accordance with Appendix A: Schedule of Submittals.

A letter of transmittal and four copies of each shop drawing shall accompany each submittal. Shop drawings shall be forwarded to the JEA Engineer. Each drawing shall be listed separately on the letter. The Company shall also note distinctively on the transmittal letter any deviations that the Shop Drawings may have from the requirements of the Contract Documents.

The JEA Engineer's approval of Shop Drawings shall not be construed as a complete check, nor shall it relieve the Company from responsibility for any deficiency that may exist, or from any departures or deviations from the

requirements of the Contract unless the Company has, in writing, called the JEA Engineer's attention to such deviations at the time of submission and obtained written approval for the deviation. The JEA Engineer's approval shall not relieve the Company from the responsibility for errors of any sort in Shop Drawings or schedules, nor from responsibility for proper fitting of the Work, nor from the necessity of furnishing any Work, materials, equipment or tools, required by the Contract Documents that may not be indicated on Shop Drawings when approved. The Company shall be solely responsible for all quantities and dimensions shown on the Shop Drawings. The Company shall not execute any Work until the JEA Engineer approves the Shop Drawings and a copy stamped "Approved" is at the Work Location. The Company shall, at no extra cost to JEA, make all changes and alterations whatsoever in Work performed or in subcontracts or orders placed prior to the approval of any and all Shop Drawings.

JEA and Company shall follow the design review process set forth in Section 5 (Design Review) of the Technical Specifications. To the extent any Documents are required to be submitted for JEA's or Company's approval, JEA or Company shall review and respond within fifteen (15) days after receipt of such submittal, either approving or disapproving the same with reasonable detail. If JEA or Company fails to respond within such period, the submittal shall be escalated to the Project Sponsor or other appropriate management; provided, however, that no such approval (whether express or deemed) shall relieve Company of its obligations to comply with the requirements of this Contract and the Technical Specifications or requirements of Liquidated Damages.

As used herein, the term "manufactured" applies to standard units usually mass produced, and "fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall establish the actual details of all manufactured or fabricated items; indicate proper relation to adjoining Work; amplify design details of mechanical and electrical equipment in proper relation to physical spaces in the structure; and incorporate minor changes of design or construction to suit actual conditions.

Shop drawings shall be complete in every detail, properly identified with the Contract name, Contract and subsection number for identification of each item, and state the qualifications, departures or deviations from the Contract, if any. Shop drawings for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. Each drawing shall have a clear space above the title block in the lower right-hand corner for the approval stamps of the Company and the JEA Engineer.

If the materials are not listed in JEA's Approved Materials Manual, then prior to purchase of material or fabrication, the Company shall forward to the JEA Engineer for review, five (5) sets of each shop drawing plus the number of prints it desires returned.

In checking the Shop Drawings, the Company shall verify all dimensions and field conditions and shall check and coordinate the Shop Drawings of any section or trade with the requirements of all other sections or trades whose Work is related thereto, as required for proper and complete installation of the Work. All rough-in and connections for utilities shall conform to approved equipment Shop Drawings.

The JEA Engineer will review the Shop Drawings and will return them to the Company stamped to indicate the action taken. The stamp will indicate that the shop drawing is "Approved", "Approved as Noted", "Returned for Correction", or "Disapproved". Only those Shop Drawings stamped "Returned for Correction" or "Disapproved" shall be resubmitted for subsequent review. Resubmittals shall be in the same form and number of copies as original submittals, with notation indicating a revised submittal. The Shop Drawings stamped "Approved" or "Approved as Noted" will be returned to the Company, who will be responsible for obtaining prints thereof and distributing them to the field and Subcontractors.

At the same time the JEA Engineer returns a reviewed submittal to the Company, it will forward two (2) copies of each item stamped "Approved" or "Approved as Noted" together with any conditions of approval, to JEA for field and office use. The JEA Engineer may revoke approval of Shop Drawings, should field conditions so dictate.

## **2.8) Quality Control and Inspection Rights**

### **2.8.1 Quality Control**

Seller shall be responsible for the performance of all activities affecting quality and schedule, including those of its Subcontractors and suppliers. Company's quality control system will provide for controlling its Subcontractors and for assuring that their quality control systems are appropriate for the scope of their supply and are in compliance with the requirements of this Contract.

### 2.8.2 **Factory Acceptance Testing**

Factory acceptance testing for the Equipment shall be conducted in accordance with the requirements set forth in Section 19 (*Factory Tests*) of the Technical Specifications. Company shall provide JEA with advance written notice of all factory acceptance testing activities in accordance with the notice periods specified in the Technical Specifications, and JEA shall have the right (but not the obligation) to attend and witness such factory tests. Company shall not proceed with any such test without providing the required notice to JEA. Company shall perform all factory acceptance testing in accordance with the applicable procedures, standards, and acceptance criteria set forth in the Technical Specifications, and shall provide JEA with complete test reports and results promptly following completion of such testing. Completion of factory acceptance testing, whether witnessed by JEA or not, and any review or acceptance of factory acceptance testing results by JEA, shall not relieve Company of its obligations to ensure that the Equipment complies with this Contract and the Technical Specifications.

## 2.9) **Delivery, Commissioning, Testing, and Final Completion**

### 2.9.1 **Customer Service Representative**

A Customer Service Representative must be present during delivery, field assembly, vacuum filling (if required) and inspection of the installation prior to energization. In the event that the Transformer is relocated, a Customer Service Representative must be present during field re-assembly, vacuum-filling (if required) and inspection of the reinstallation prior to re-energization.

### 2.9.2 **Commissioning and Testing**

Within [●] days after the Effective Date, Company shall provide to JEA a proposed commissioning and testing plan for the Equipment (the "**Commissioning and Testing Plan**"). The Commissioning and Testing Plan shall set forth the procedures, sequence, schedule, responsibilities, and acceptance criteria for commissioning and testing of the Equipment, consistent with the requirements of this Contract and the Technical Specifications. Upon receipt of the proposed plan, Company and JEA shall work together in good faith to finalize the Commissioning and Testing Plan. Upon completion of Installation by JEA (or its representative), JEA shall complete initial fills and perform commissioning and testing of the Equipment in accordance with the Commissioning and Testing Plan, as may be updated from time to time by mutual written agreement of the Parties. The Company shall provide technical advisors to oversee such commissioning and testing as further described in the Technical Specifications.

### 2.9.3 **Final Completion**

When Company believes that it has achieved the requirements of Final Completion, it will provide a certificate to JEA, along with supporting documentation and test data sufficient for JEA to verify that such requirements have been achieved. JEA shall review such certificate and supporting documentation and either Accept or reject Company's certificate. If JEA Accepts Company's certificate, the date that Company submitted the certificate Accepted by JEA will be the Final Completion Date. If JEA rejects such certificate, the Company will take such actions as may be required to correct the reasons for such rejection and resubmit its certificate. This process will be repeated until JEA Accepts the Company's certificate.

### 2.9.4 **Acceptance**

Following the achievement of Final Completion, Company will complete any punchlist items.

## 2.10) **JEA Changes.**

JEA shall have the right, at any time, to request Changes to this Contract that JEA may deem desirable. Any such change must be agreed by both JEA and Company and any resulting adjustments to any affected provisions, including price, schedule, and guarantees mutually agreed in writing through a Change Order prior to implementation of the change.

## **2.11) Warranty**

### **2.11.1 Work Warranty.**

The Company warrants the Work furnished under the Contract (referred to herein as "**Parts**" and/or "**Services**") to JEA as follows: (i) the Parts shall comply with the Contract Documents, including the Technical Specifications, and shall be free from defects in design, material, workmanship and title, and (ii) the Services shall be performed in a safe, competent, diligent manner, all in conformance with the Contract Documents.

The warranty period for Parts and Services shall be five (5) years from Final Completion or sixty-six (66) months from delivery, whichever occurs first; provided that any delay in achieving Final Completion beyond the Final Completion Date for reasons attributable to the Company will extend the delivery warranty period above on a day-for-day basis.

In addition, as part of the warranty, the Company warrants that the Parts and Services shall conform to all applicable standards and regulations promulgated by federal, state, local laws and regulations, standards boards, organizations of the Department of State, and adopted industry association standards. If the Parts or Services fail to conform to such laws, rules, standards and regulations, JEA may return the Parts for correction or replacement at the Company's expense, or return the Parts at the Company's expense and cancel the Contract.

### **2.11.2 Warranty Remedies**

If the Work does not meet the above warranties within the applicable warranty period, JEA shall promptly notify Company. Company shall thereupon (i) at Company's option, repair or replace the defective Parts or (ii) re-perform the defective Services. If in Company's reasonable judgment the Services cannot be re-performed, Company shall refund or credit monies paid by JEA for that portion of Services that do not meet the above warranties. Any repair, replacement or reperformance by Company hereunder shall carry warranties on the same terms as described herein, except that the warranty period shall be (a) the remaining balance of the original warranty period, or (b) a period of 12 months from the date of such repair, replacement or reperformance, whichever period ends later. In any event, the warranty period and Company's responsibilities set forth herein for such repair, replacement or reperformance shall end no later than 12 months after expiration of the applicable original warranty period. JEA shall bear the costs of access (including removal and replacement of systems, structures or other parts of JEA's facility), de-installation, decontamination, re-installation and transportation unless such access (including removal and replacement of systems, structures or other parts of JEA's facility), de-installation, decontamination, re-installation and transportation was included in the Work.

These warranties and remedies are conditioned upon: (a) proper storage, installation, operation, and maintenance of the Parts and conformance with the proper operation instruction manuals provided by Company; (b) JEA keeping reasonable records of operation and maintenance during the warranty period and providing Company access to those records, and (c) modification or repair of the Parts or Services only as authorized by Company. Company does not warrant the Parts or any repaired Parts against normal wear and tear or damage caused by misuse, accident, or use against the advice of Company. Any modification or repair of any of the Parts or Services not authorized by Company shall render the warranty null and void.

### **2.11.3 Exclusive Remedies**

This Section provides the exclusive remedies for all warranty claims based on failure of or defect in Parts or Services, whether the failure or defect arises before or during the applicable warranty period. The warranties provided in this Section are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.

## **2.12) Mutual Indemnification**

Company shall hold harmless, indemnify, and defend JEA against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, reasonable attorneys' fees and court costs) arising out of injury (whether mental or corporeal) to persons, including death, or damage to property, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Company and any person or entity used by Company in the performance of this Contract or Work performed thereunder. For purposes of this Indemnification, the term "JEA" shall mean JEA as a body politic and corporate and shall include its governing board, officers, employees, agents, successors and assigns. This indemnification shall survive the term of a Contract entered into pursuant to this solicitation, for events that occurred during the Contract term. This indemnification shall be separate and apart from, and in addition to, any other indemnification provisions set forth elsewhere in this Contract.

JEA shall likewise indemnify, hold harmless, and defend the Company against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, reasonable attorney's fees and court costs) arising out of injury (whether mental or corporeal) to persons, including death, or damage to property, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the JEA and any person or entity used by JEA while engaged in activities related to this Contract. Notwithstanding any other term or condition of this Contract, JEA's indemnification obligation shall be for tort claims only, subject to the provisions and limitations of returns Section 768.28, Florida Statutes.

In the event such damage or injury is caused by the joint or concurrent negligence of JEA and/or the Company, the loss or expense shall be borne by each party in proportion to its degree of negligence in accordance with Section 768.31 of the Florida Statutes, the Uniform Contribution Among Tortfeasors Act and subject to the Limitations of Liability defined within this section.

In the case of any claim for which a party is seeking indemnification hereunder, the party seeking indemnification will provide the other reasonable notice of any such claim.

### **2.13) Limitation of Liability**

Except as otherwise stated herein, in no event, whether as a result of breach of contract, indemnity, warranty, tort, strict liability or otherwise, shall either party's liability to the other for any loss or damage arising out of, or resulting from this Contract, or from its performance or breach, or from the products or services furnished hereunder: (i) exceed one and one-half (1.5) times the Contract Price, (ii) include any indirect, special, consequential, incidental or penal damages including, but not limited to, loss profit or revenues, loss of use of the products or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, downtime costs, or claims of either parties' customers for such damages, or (iii) extend beyond the expiration of the applicable statute of limitations pursuant to Florida Statutes.

The preceding limitations of liability shall not be applicable to: (i) to the claims for personal injury to third parties or (ii) claims for damage to third party property, (iii) claims for liquidated damages to the extent specified in this Contract; or (iv) other claims to the extent they are required to be covered under the insurance or bonding provisions of this Contract.

JEA's liability is for tort claims shall also be limited in accordance with Section 768.28, Florida Statutes, and Section 13, Article X of the Florida Constitution, and JEA in no way waives the protections granted to it therein.

All limitations of liability set forth in this subsection or elsewhere in this Contract shall apply to the full extent permitted by law and shall survive termination of this Contract or completion of any services or products furnished hereunder.

### **2.14) Insurance**

Before starting the Work, and without further limiting its liability under the Contract, Company shall procure and maintain throughout the Term at its sole expense, insurance of the types and in the minimum amounts stated below:

#### **2.14.1 Workers' Compensation**

Florida Statutory coverage and Employer's Liability (including appropriate Federal Acts); Insurance Limits: Statutory Limits (Workers' Compensation) \$500,000 each accident (Employer's Liability).

#### 2.14.2 Commercial General Liability

Premises-Operations, Products-Completed Operations, Contractual Liability, Independent Contractors, Broad Form Property Damage, Explosion, Collapse and Underground, Hazards (XCU Coverage) as appropriate; Insurance Limits: \$1,000,000 each occurrence, \$2,000,000 annual aggregate for bodily injury and property damage, combined single limit.

#### 2.14.3 Automobile Liability

All autos-owned, hired, or non-owned; Insurance Limits: \$1,000,000 each occurrence, combined single limit.

#### 2.14.4 Excess or Umbrella Liability

(This is additional coverage and limits above the following primary insurance: Employer's Liability, Commercial General Liability, and Automobile Liability); Insurance Limits: \$1,000,000 each occurrence and annual aggregate.

#### 2.14.5 Other Insurance Terms

Company's Commercial General Liability and Excess or Umbrella Liability policies shall be effective for two years after Work is complete. The Indemnification provision provided herein is separate and is not limited by the type of insurance or insurance amounts stated above.

Company shall specify JEA as an additional insured for all coverage except Workers' Compensation and Employer's Liability. Such insurance shall be primary to any and all other insurance or self-insurance maintained by JEA. Company shall include a Waiver of Subrogation on all required insurance in favor of JEA, its board members, officers, employees, agents, successors and assigns.

Such insurance shall be written by a company or companies licensed to do business in the State of Florida and satisfactory to JEA. Prior to commencing any Work under the Contract, certificates evidencing the maintenance of the insurance shall be uploaded to JEA's ISupplier Portal which can be found at [iSupplier Procurement and Accounts Payable Portal | JEA](#)

The insurance certificates shall provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until 30 days after receipt of written notice by JEA.

It shall be the sole responsibility of Company to ensure that any Subcontractors performing work for Company are properly insured against any claim, action, loss, damage, injury, liability, cost and expense (including, but not by way of limitation, reasonable attorney's fees and court costs) to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Subcontractors.

### 2.15) Title and Risk of Loss

Title and Risk of Loss to Equipment shall pass to JEA upon delivery to the Delivery Point. Notwithstanding anything to the contrary in the foregoing, Company will be responsible for any damage to the property of JEA at all times, including the Equipment after risk of loss thereto has passed to JEA, to the extent caused by the negligence or willful misconduct of Company or its Subcontractors.

### 2.16) Confidentiality and Ownership of Documentation

#### 2.16.1 Confidentiality and Public Records Laws

##### Access to Public Records

Article I, Section 24, Florida Constitution, guarantees every person access to all public records and Chapter 119, Florida Statutes, provides a broad definition of public records. JEA is subject to these laws and related statutes ("Florida's Public Records Laws"). All Responses to this Solicitation are public record and available for public inspection unless specifically exempt by law.

In accordance with the Florida Public Records Law, Florida Statutes, Chapter 119, all Documents, data and other records received by JEA in connection with the Response and Contract are public records and available for public inspection thirty (30) days after the opening of Responses or on the date of Award announcement, whichever is earlier unless specifically exempt by law. The Company shall allow public access to all documents, data and other records made or received by the Company in connection with the Contract unless the records are exempt from Section 249(a) of Article I of the Florida Constitution or subsection 119.07(1), Florida Statutes. JEA may unilaterally terminate the Contract if the Company refuses to allow public access as required under the Contract.

**Redacted copies of Confidential Information.**

If the Company believes that any portion of any documents, data or other records submitted to JEA are exempt from disclosure under Chapter 119, Florida Statutes, the Florida Constitution and related laws ("Florida's Public Records Laws"), Company must (1) clearly segregate and mark the specific sections of the document, data and records as "Confidential", (2) cite the specific Florida Statute or other legal authority for the asserted exemption, and (3) provide JEA with a separate redacted copy of the documents, data, or records (the "Redacted Copy"). The Redacted Copy shall contain JEA's contract name and number, and shall be clearly titled "Redacted Copy".

Company should only redact those portions of records that Company claims are specifically exempt from disclosure under Florida's Public Records Laws. If the Company fails to submit a redacted copy of documents, data, or other records it claims is confidential, JEA is authorized to produce all documents, data, and other records submitted to JEA in answer to a public records request for these records.

**Request for Redacted Information.**

In the event of a public records or other disclosure request under Florida's Public Records Laws or other authority to which the Company's documents, data or records are responsive, JEA will provide the Redacted Copy to the requestor. If a Requestor asserts a right to any redacted information, JEA will notify the Company that such an assertion has been made. It is the Company's responsibility to respond to the requestor to assert that the information in questions is exempt from disclosure under applicable law. If JEA becomes subject to a demand for discovery or disclosure of the redacted information under legal process, JEA shall give the Company prompt notice of the demand prior to releasing the redacted information (unless otherwise prohibited by applicable law). The Company shall be responsible for defending its determination that the redacted portions of the information are not subject to disclosure.

**Indemnification for Redacted Information.**

The Company shall protect, defend, and indemnify JEA from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, and expenses (including but not limited to reasonable attorney's fees and costs) arising from or relating to the Company's assertion that all or any portion of its information is not subject to disclosure.

**Public Records Clause for Service Contracts.**

If, under the Contract, the Company is providing services and is acting on behalf of JEA as contemplated by subsection 119.011(2), Florida Statutes, the Company shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by JEA in order to perform service;
2. Provide the public with access to public records on the same terms and conditions that JEA would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or otherwise prohibited by law;
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; and
4. Meet all requirements for retaining public records and transfer, at no cost, to JEA all public records in possession of the Company 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 shall be provided to JEA in a format that is compatible with the information technology systems of JEA.

**IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

## **JEA**

**Attn: Public Records 225**

**North Pearl Street**

**Jacksonville, Florida 32202**

**Ph: 904-665-8606**

**[publicrecords@jea.com](mailto:publicrecords@jea.com)**

### **2.16.2 Scrutinized Companies**

Pursuant to Section 287.135(2), Florida Statutes, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local government entity for goods or services of:

- (1) Any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, contractor is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or
- (2) One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, contractor:
  - i. Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes; or
  - ii. Is engaged in business operations in Cuba or Syria.

Pursuant to Section 287.135(3)(a)4, Florida Statutes, JEA may terminate this Contract at JEA's option if this Contract is for goods or services in an amount of one million dollars or more and the Company:

- (1) Is found to have submitted a false certification under Section 287.135(5), Florida Statutes;
- (2) Has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes;
- (3) Is engaged in business operations in Cuba or Syria.

Pursuant to Section 287.135(3)(b), Florida Statutes, JEA may terminate this Contract at JEA'S option if this Contract is for goods and services of any amount and Company:

- (1) Is found to have been placed on the Scrutinized Companies that Boycott Israel List; or Is engaged in a boycott of Israel.

### **2.16.3 JEA Confidential Information Protection**

JEA is a publicly owned utility and all official information sharing is governed by the Florida Sunshine Laws. However, certain information that could impact safe and secure operations may be exempt which includes information classified as confidential and protected under federal regulatory standards. Confidential information means any data or information that is propriety to the parties and not generally known to the public, whether in tangible or intangible form, whenever or however disclosed, including but not limited to:

- Critical Infrastructure Information (CII) or Bulk Electric System Information (BCSI) or Security Sensitive Information (SSI) classified by JEA;
- Protected Health Information in both physical and electronic form (PHI and ePHI); Personal Identifiable Information (PII);

- any protected, non-public information concerning the design or operation of present or future critical infrastructure; any information that could be used to compromise or expose the vulnerability of the Parties Cyber systems, processes, programs data, communications, energy and operations systems or structures; any Copyright application code, source code, technical design (not released for open use), trade secret, scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method;
- any computer software, source code, object code, flow charts or databases; and any other information that should reasonably be recognized as sensitive or confidential information of the Recipient or the disclosing party.

All Company employees, and subcontractors, whose scope of work requires access, logical or physical, that may expose them to confidential information may be required to complete a Non-Disclosure Agreement, criminal background check, and periodic reoccurring security training.

The Company shall bear all costs associated with the background check and security training.

#### 2.16.4 Indemnification - Release of JEA Customer Information and PII

The Company shall hold harmless and indemnify JEA against any and all claims actions, losses, damages, injuries, liability, costs and expenses of whatsoever kind or nature (including, but not by way of limitation, reasonable attorneys’ fees and court costs) arising out of the unwarranted disclosure of any JEA customer information and PII that is in the possession of Company or any of its employees, agents or Subcontractors either in paper or electronic format, including disclosure caused by theft, electronic system malfunction, negligence, or any other cause for the information to become public or otherwise used for any purpose whatsoever.

#### 2.17) Suspension of Work

JEA may suspend the performance of the Work, in whole or in part, by providing Company with five days’ prior written notice of such suspension. Schedules for performance of the Services shall be amended by mutual agreement to reflect such suspension. In the event of a suspension of Work, the Company shall resume performance of the Work when and to the extent directed in writing to do so by JEA. During any period of service suspension, the Company shall not take any action to intentionally erase any JEA data or its customers.

Suspension of Work shall not affect any other rights or remedies JEA may have under this Solicitation and the Contract.

#### 2.18) Liquidated Damages

**Drawings Delay Liquidated Damages:** If the Company fails to deliver the Documents that are subject to liquidated damages identified in Appendix A: Schedule of Submittals on or before the guaranteed date, the Company shall pay JEA the sum of the amounts indicated in the table below per day for each day of delay, starting on the first day of delay and continuing until the date the Documents are received by JEA.

<u>Amount of Delay</u>	<u>LD Amount</u>
1 – 7 Days	\$2,000
8 -14 Days	\$3,500
Greater than 14 Days	\$8,000

**Delivery Completion Delay Liquidated Damages:** If, for reasons attributable to the Company or its Subcontractor, the Company fails to achieve Delivery Completion of the Equipment on or before the Guaranteed Delivery Date found in the Response Workbook, the Company shall pay JEA the sum of the amounts indicated in the table below per day for each day of delay, starting on the first day of delay and continuing until the date the Company achieves Delivery Completion.

<u>Amount of Delay</u>	<u>LD Amount</u>
1 – 14 Days	\$15,000

15 – 30 Days	\$30,000
Greater than 30 Days	\$75,000

**Performance Guarantees Liquidated Damages:** If Company’s Work fails to meet the Performance Guarantees in the Response, then Company shall pay to JEA the liquidated damages indicated in the table below for any shortfall in performance as provided in the technical specifications Section 21, “Loss Guarantee.” Company shall be responsible for all costs incurred to retest the Work including, but not limited to, test equipment rental fees, instrument recalibration fees, JEA's personnel cost to coordinate, monitor and manage the corrections, and to implement the retest.

Guarantee	LD Amount
No Load Losses	\$5,000/KW
Load Losses	\$1,000/KW
Auxiliary Losses	\$500/KW

The aggregate liquidated damages payable are capped at a maximum of fifteen percent (15%) of the Contract Price.

The Company understands and agrees that said sums to be paid as Liquidated Damages hereunder are not a penalty, but are compensation to JEA as a fixed and reasonable amount for damages and losses that JEA will suffer because of such default, whether through increased administrative and engineering costs, interference with JEA's normal operations, other tangible and intangible costs, or otherwise, which costs will be impossible or impractical to measure or ascertain with any reasonable specificity.

Liquidated Damages may, at JEA's sole discretion, be deducted from any monies held by JEA that are otherwise payable to Company. The Company's responsibility for Liquidated Damages shall in no way relieve the Company of any other obligations under the Contract.

**2.19) Force Majeure**

Neither party shall be liable for any default or delay in the performance of its obligations under the Contract due to an event or circumstance to the extent that: (a) the non-performing party is without fault in causing such default or delay; (b) such default or delay could not have been prevented by reasonable precautions; and (c) such default or delay could not have been reasonably circumvented by the non-performing Party through the use of alternate sources, work-around plans or other means. Such causes include, but are not limited to: act of civil or military authority (including but not limited to courts or administrative agencies); acts of God; war; terrorist attacks; riot; insurrection; inability of JEA to secure approval, validation or sale of bonds; inability of JEA or the Company to obtain any required permits, licenses or zoning; blockades; embargoes; sabotage; epidemics; pandemics; outbreaks of communicable disease; quarantines; fires; hurricanes, tornados, floods; other natural disasters; or strikes that are not directed solely against the affected party or its subcontractors.

In the event of any delay resulting from such causes, the time for performance of each of the parties hereunder (including the payment of monies if such event actually prevents payment) shall be extended for a period of time reasonably necessary to overcome the effect of such delay, except as provided for elsewhere in the Contract Documents.

In the event of any delay or nonperformance resulting from such causes, the party affected shall promptly notify the other in writing of the nature, cause, date of commencement and the anticipated impact of such delay or nonperformance. Such written notice shall indicate the extent to which it is anticipated that any delivery or completion dates will be thereby affected within seven calendar days.

**2.20) Term of Contract**

The Contract shall commence on the effective date of the Contract and continue and remain in full force and effect as to all its terms, conditions and provisions as set forth herein for through the end of the warranty period.

The Contract shall be contingent upon the existence of lawfully appropriated funds for the Contract. Certain provisions of the Contract may extend past termination including, but not limited to, Warranty and Indemnification provisions.

## **2.21) Termination for Default**

JEA may terminate the Contract for default upon written notice to the Company if any of the following occurs (each, an "Event of Default"):

1. The Company assigns or subcontracts the Work without JEA's prior written consent;
2. Any petition is filed or any proceeding is commenced by or against the Company for relief under any bankruptcy or insolvency laws;
3. A receiver is appointed for the Company's properties or the Company commits any act of insolvency (however evidenced);
4. The Company makes an assignment for the benefit of creditors;
5. The Company suspends the operation of a substantial portion of its business;
6. The Company suspends the whole or any part of the Work to the extent that it impacts the Company's ability to meet the schedule for the Work, or the Company abandons the whole or any part of the Work;
7. The Company breaches or fails to comply with any of the conditions or provisions of the Contract Documents, and, if such breach or failure is capable of cure, Company does not cure the breach or failure within thirty (30) days after receipt of written notice from JEA;
8. The Company attempts to willfully impose upon JEA items or workmanship that are, in JEA's sole opinion, defective or of unacceptable quality;
9. The Company has been placed on the list maintained under Section 287.135, Florida Statutes, of companies with activities in Sudan or in Iran Petroleum Energy Sector;
10. The Company is determined, in JEA's sole opinion, to have misrepresented the utilization of funds or misappropriated property belonging to JEA; or
11. Any material adverse change in the financial or business condition of the Company.
12. The Company reaches the aggregate liquidated damages cap set forth in this Contract.

If, within thirty (30) days after service of such notice to discontinue or notice to cure upon the Company, an arrangement satisfactory to JEA has not been made by the Company for continuance of the Work or the material breach has not been remedied, JEA may declare the Company to be in default and terminate the Contract.

This Section shall in no way limit JEA's right to all remedies for nonperformance provided under law or in equity. Further, the rights and remedies available to JEA are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by a party, shall be deemed to be in exclusion of any other.

In the event of termination for nonperformance, the Company shall immediately surrender all Work records to JEA. In such a case, JEA may set off any money owed to the Company against any liabilities resulting from the Company's nonperformance.

JEA has no responsibility whatsoever to issue to the Company notices of any kind, including but not limited to deficient performance letters and scorecards, regarding its performance prior to declaring an event of Default for performance related issues.

If the Company is declared to be in default, JEA may charge the expenses of completing the Work to the Company and may deduct such expenses from monies due, or which at any time thereafter may become due, to the Company. If such expenses are more than the sum that would otherwise have been payable under the Contract, then the Company shall pay the amount of such excess to JEA upon receipt of notice of the expenses from JEA. JEA shall not be required to obtain the lowest price for completing the Work, but may make such expenditures that, in its sole judgment, shall best accomplish completion of the Work. JEA will, however, make reasonable efforts to mitigate the costs of completing the Work.

If, after an Event of Default, it is determined that an Event of Default did not occur, or that the default was excusable, the rights and obligations of the parties shall be the same as if JEA had terminated the Contract for convenience.

## **2.22) Termination for Convenience**

JEA shall have the absolute right to terminate the Contract, in whole or part, with or without cause, at any time upon written notification to the Company of such termination.

In the event of termination for convenience, JEA will pay the Company for all disbursements and expenses that the Company has incurred prior to the termination date.

Upon receipt of such notice of termination, the Company shall stop the performance of the Work except as may be necessary to carry out a termination and take any other action toward termination of the Work that JEA may reasonably request, including all reasonable efforts to provide for a prompt and efficient transition as directed by JEA.

JEA shall have no liability to the Company for any cause whatsoever arising out of, or in connection with, termination including, but not limited to, lost profits, lost opportunities, or any resulting change in business condition.

## **2.23) Actions Upon Termination**

Immediately upon termination or expiration of this Contracts, Company must return to JEA all materials, documents and things used by Company and belonging to JEA, including proposals, computer files, borrower files, building keys, and any other property or information regarding continued business compliance or goodwill, whether in electronic or hard-copy form, or upon JEA's request, the Company shall secure the disposal of all JEA data.

Furthermore, upon JEA's request, Company shall certify in writing that all of the foregoing documents or materials, including archival or backup copies, whether in electronic or hard-copy form, have been returned to JEA, deleted from any computer system, or otherwise destroyed.

## **2.24) Self Help**

Within five (5) business days after being notified by JEA in writing of defective work, unacceptable work or failure to perform any portion of the work required by this Contract, if the Company fails to correct such work or perform such work, JEA may cause the unacceptable or defective work to be corrected or perform the work. If JEA undertakes to correct the work or perform the services, JEA shall be entitled to set off against and deduct from any monies due, or which may become due to the Company, the reasonable cost incurred by JEA. If the corrective work or services cannot reasonably be completed within such five (5) business day period, and the Company immediately begins corrective work or services, and JEA reasonably determines that the Company is diligently pursuing completion of such corrective work or services, JEA agrees to allow the Company to complete correction of the defective or unacceptable work or perform services within a reasonable period of time.

If the Company fails to reimburse monies due to a Subcontractor in accordance with the timelines provided in the Florida Prompt Payment Act, after determining the Company's negligence, JEA reserves the right to reimburse the subcontractor and set off against and withhold such monies from payments due to the Company.

All costs and expenses incurred by JEA pursuant to this Section shall be deducted by JEA from monies due, or which may become due, to the Company for performance of the work or services and its obligations herein.

This provision is cumulative to all other provisions of the Contract and it is not intended that any deductions in payment taken pursuant to this Section shall diminish or waive JEA's right to declare the Company in default in accordance with applicable provisions of the Contract or to exercise any other right or remedy available to JEA.

## **2.25) Company Representative**

The individual responsible for representing the Company in all activities concerning the fulfillment and administration of the Contract.

## **2.26) Company Review of Project Requirements**

The Company shall review all requirements and specifications prior to commencing Work. The Company represents that its total Contract Price and the schedule for the execution of the Work are based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of JEA. JEA assumes no responsibility for any understanding or representation made by any of its representatives during or prior to execution

of the Contract unless such understandings or representations are expressly stated in the Contract and the Contract expressly provides that JEA assumes the responsibility.

The Company shall immediately notify the Project Manager in writing of any conflict with applicable law, or any error, inconsistency or omission it may discover. JEA will promptly review the alleged conflicts, errors, inconsistencies or omissions, and issue a Change Order or Contract Amendment as appropriate if JEA is in agreement with the alleged conflict, and issue revised specifications. Any Work the Company performs prior to receipt of approved Change Order will be at the Company's sole risk.

## **2.27) Coordination of Services Provided by JEA**

The JEA Project Manager, or other designated JEA Representative, will, on behalf of JEA, coordinate with the Company and administer the Contract. It shall be the responsibility of the Company to coordinate all assignment related activities with the designated JEA Representative. A JEA Representative will be assigned to perform day-to-day administration and liaison functions, and to make available to the Company appropriate personnel, to the extent practical, and to furnish records and available data necessary to conduct the Work. The JEA Representative will also authorize the Company to perform work under the Contract.

## **2.28) Vendor Performance Evaluations**

### **Use of Vendor Performance Evaluation Scorecards**

JEA may evaluate the Company's performance using the Vendor Performance Scorecard templates which are available online at [jea.com](http://jea.com). However, JEA is not required to use scorecards to terminate a contract.

When evaluating the Company's performance, JEA will consider the performance of the Company's Subcontractors and suppliers, as part of the Company's performance.

Vendors are scored on a scale from 1 to 5:

- 5 - Far Exceeds Expectations
- 4 - Exceeds Expectations
- 3 - Meets Expectations
- 2 - Below Expectations
- 1 - Far Below Expectations

The Scorecard averages all the scores for each criterion. If a Vendor scores a 3 or higher, they are considered to at least Meet Expectations.

### **Frequency of Evaluations**

JEA may conduct performance evaluations and prepare scorecards at any time during performance of the Work or soon after the completion of the Work. JEA may conduct one or more evaluations determined solely at the discretion of JEA.

### **Scoring -Meets Expectations**

JEA expects the Company's performance to be at a minimum evaluated as "Meets Expectations".

### **Scoring - Below Expectations**

If at any time, JEA determines, using the criteria described on the scorecard, that the performance of the Company is Below Expectations or Far Below Expectations, the Project Manager may first meet with the Company and issue a deadline for the Company to be back in compliance with the Contract.

If the Company fails to achieve Contract compliance, the Chief Procurement Officer or her designated alternate may meet with the Company to review the scorecard and/or send a Notice to Cure letter to the Company describing the deficient performance. The Company shall respond as requested and shall also include in its response a statement of the timeframes and specific actions that the Company will take to bring the Company's performance up to at least Meets Expectations.

The Company's performance may again be evaluated by the JEA Project Manager and if the Company is evaluated as at least Meets Expectations, no further remedial action is required by the Company, as long as Company's performance continues to be at Meets Expectations.

If the scorecard shows the Company's performance is Below Expectations or Far Below Expectations, JEA will take such actions as it deems appropriate including, but not limited to, terminating the Contract for breach, suspending the Company from bidding on any JEA related solicitations, invoking the Self Help clause, and other remedies available in the JEA Procurement Code and in law. Such action does not relieve the Company of its obligations under the Contract, nor does it preclude an earlier termination.

In the event that the Contract Term or the remaining Term of the Contract does not allow for the completion of the deficient performance notification cycles described above for those in danger of receiving a Below Expectations scorecard, JEA may choose to slow down or accelerate these cycles at its sole discretion.

If the Company receives five or more letters of performance deficiency within any 12-month period, then JEA will consider suspending the Company's JEA bidding privileges.

### **Disputes**

In the event that the Company wants to dispute the results of its scorecard performance evaluation, the Company must submit a letter to the Chief Procurement Officer supplying supplemental information that it believes JEA failed to take into account when preparing the scorecard. Such letter, along with supplemental information, must be submitted no later than 10 days following the Company's receipt of the scorecard. If the Chief Procurement Officer decides to change the scorecard, the Company will be notified and a revised scorecard will be prepared, with a copy issued to the Company. If the Chief Procurement Officer decides that no change is warranted, the decision of the Chief Procurement Officer is final.

### **Public Records**

There can be no expectation of confidentiality of performance-related data is subject to disclosure pursuant to Florida Public Records Laws. All scorecards are the property of JEA.

## **2.29) JEA Access Badges**

If the Work requires an individual to access JEA's facilities or properties, the Project Manager or other JEA Representative will determine whether or not such individual must have a JEA access badge prior to accessing JEA facilities or properties. This determination will be made based upon the business need and in accordance with JEA's applicable security policies and procedures. In no event shall individuals share JEA access badges.

Individuals issued an access badge must adhere to all of JEA's security badge usage policies and procedures. Violation of the provisions of this Section or any of JEA's security policies may result in immediate termination of the Contract.

In particular, JEA shall be notified within 24 hours of a lost or stolen JEA access badge or when an individual leaves the Company or any subcontractor. The Company will bear any costs associated with issuance, and production, of any lost or stolen JEA access badge. The Company is required to report all badge loss, or termination, notifications to the JEA Representative and JEA Security. JEA Security can be contacted at (904) 665-8200 and [security@jea.com](mailto:security@jea.com). Failure to make the reports required in this paragraph may result in significant regulatory fines and penalties. The Company shall be responsible for all such costs and JEA shall have the right to immediately terminate the Contract.

The provisions in this Section shall apply to Company's Subcontractors and agents performing any of the Work and shall be included in Company's contracts with its Subcontractors for any part of the Work.

## **2.30) Background Checks and Other Security Policies**

In the event Company personnel or contractors are required to perform work at a JEA facility, the Company, at its expense, shall conduct appropriate background checks and screen each individual who will provide services to JEA as a part of the Work or who will have access to JEA's computer systems, either through on-site or remote access. The minimum background screening process shall include, but not be limited to, the following checks:

- I. Social Security Number (SSN) Trace;
- II. Criminal Records (County and State Criminal Felony and Misdemeanor, National Criminal Database, Federal Criminal);
- III. Background checks undertaken by JEA for its own employees who have duties similar to the duties of the Company's employee(s); and

IV. Background checks which may be required pursuant to applicable background screening policies adopted by JEA from time to time.

The background screening must be conducted prior to the employee providing any services or performing any Work for JEA. JEA has the right to require more regular background checks and has the right to require that the Company provide background check results to JEA. JEA shall have the right to audit the Company's background check process to ensure compliance with JEA standards. If, at any time, the Company discovers that an individual providing services to JEA as a part of the Work has a criminal record that includes a felony or misdemeanor, the Company shall immediately inform JEA and JEA will assess the circumstances surrounding the conviction, time frame, nature, gravity and relevancy of the conviction to the job duties. JEA, in its sole discretion, shall determine whether the individual will be placed on, or terminated from, a JEA assignment. Additionally, all individuals providing services to JEA shall have the responsibility to self-disclose any misdemeanor or felony conviction that occurs while assigned to JEA within three business days of the conviction. If the Company learns of any such conviction, the Company shall notify JEA immediately. The Company shall comply with all applicable laws and regulations governing the conduct of background checks, including but not limited to the Fair Credit Reporting Act (FCRA). Failure of the Company to comply with the terms of this paragraph may result in immediate termination of its contract with JEA.

**2.31) JEA Critical Infrastructure Protection (CIP)**

Pursuant to federal regulations, JEA is required to implement Critical Infrastructure Protection (CIP) and comply with NERC/FERC reliability standards for identified assets (collectively the "Assets"). Assets include both physical and cyber Assets that are essential for JEA to maintain the integrity of the bulk electric system. Therefore, the Company must ensure that all individuals that have access to any Assets meet all requirements of JEA, including, but not limited to the background screenings required by this Contract, prior to the individual performing any services for JEA. The specific Assets an individual will access will determine the specific JEA training and criminal background check that will be required before an employee will be approved to perform services for JEA. The Company will be responsible for all labor costs associated with completion of the training. The provisions of this Section and the immediately preceding section shall apply to all of the Company's Subcontractors and agents, and shall be included in Company's contracts with its Subcontractors for any part of the Work. JEA reserves the right to modify these terms if the applicable regulations change or additional regulations become applicable. JEA will provide sufficient notice in advance for Company to comply with JEA's requirements related to the updated regulations.

If applicable for all or any part of the Work, Company must also be able to certify and demonstrate to JEA's satisfaction that Company is able to comply with JEA's supply chain cyber security risk management plan and the requirements of NERC Reliability Standard NERC CIP-013, including, but not limited to CIP-013 R1. Company must demonstrate that Company has, in JEA's sole discretion, appropriate cyber security processes, including, but not limited to, addressing the following:

1. Notification by Company to JEA, within 12 hours or sooner, of any Company personnel, who have been terminated, retired or ceased working on JEA projects.
2. Notification by the Company of Company-identified incidents related to the products or services provided to JEA that pose cyber security risk to JEA
3. Coordination of responses to Company-identified incidents related to the products or services provided to the JEA that pose cyber security risk to JEA
4. Notification by Company when remote or onsite access should no longer be granted to Company representatives
5. Disclosure by Company of known vulnerabilities related to the products or services provided to the JEA
6. Method for verification of software integrity and authenticity of all software and patches provided by the Company for use in JEA's Bulk Electric System's Cyber System
7. Coordination of controls for (i) Company-initiated Interactive Remote Access, and (ii) system-to-system remote access with Company
8. Compliance with JEA CIP Cyber Security Policy posted on [https://www.jea.com/About/Procurement/Bid\\_Forms/](https://www.jea.com/About/Procurement/Bid_Forms/).

**2.32) Licenses**

The Company shall comply with all licensing, registration and certification requirements pursuant to applicable laws, rules and regulations. The Company shall secure all licenses, registrations and certifications as required for the

performance of the Work and shall pay all fees associated with securing them. The Company shall produce written evidence of licenses and other certifications immediately upon request from JEA.

### **2.33) Legal Workforce**

For Work performed in the United States of America, the Company's employment of unauthorized aliens shall be a violation of section 274A(e) of the Immigration and Nationality Act and a breach of the provisions of the Contract. The Company and all Subcontractors performing Work in the United States of America must enroll and participate in the federal E-Verify Program prior to the performance of any part of such Work and appropriately screen all individuals performing any part of the Work. Proof of enrollment and participation must be provided to the JEA Representative upon request.

### **2.34) Intellectual Property**

The Company shall retain all right, title and interest in its patents, copyrights, trademarks, trade secrets and know-how and any other intellectual property rights ("Intellectual Property") in all materials and information, owned, created, and developed by Company even if embodied with the Work. With respect to written or documentary material provided to JEA as part of the Work, the Company grants to JEA an irrevocable, perpetual, royalty free and fully paid-up right to use (and such right includes, without limitation, a right to copy, modify and create derivative works from the subject matter of the grant of the right to sublicense all, or any portion of, the foregoing rights to an affiliate or a third party service provider) the Company's Intellectual Property that is contained or embedded in, required for the use of, that was used in the production of or is required for the operation, maintenance, installation, retirement, disposal or repair or continued operation of the Work. The license granted under this paragraph shall extend to JEA's affiliates' use.

If the Work contains, has embedded in, requires for the use of any third party Intellectual Property, or if the third party Intellectual Property is required for the operation, maintenance, installation, retirement, disposal or repair or continued operation of the Work, the Company shall secure the same rights for JEA as set forth above at no additional expense to JEA prior to incorporating any third party Intellectual Property into any Work.

The Company will, at its expense, hold harmless, indemnify and defend JEA from and against all liability or loss, including but not limited to any and all claims, actions, judgments, proceedings, based on any allegation that the Work, or any part of the Work, constitutes an infringement of any Intellectual Property right, and will pay to JEA all costs, damages, charges, and expenses, including court costs and attorneys' fees incurred, occasioned to JEA by reason thereof. JEA will give the Company written notice of any such claim, action or proceeding and, at the request and expense of the Company, JEA will provide the Company with available information, assistance and authority for the defense.

If a temporary restraining order or preliminary injunction is granted, or in any action or proceeding, the Work, or any part thereof, is held to constitute an infringement, the Company will, within thirty (30) days of notice, provide a satisfactory bond or otherwise, to secure the suspension of such restraining order or temporary injunction, and either secure for JEA the right to continue using the Work or will, at the Company's expense, replace the infringing items with non-infringing Work or make modifications as necessary so that the Work no longer infringes, but remains compliant with the requirements of this Contract.

The Company will obtain and pay for all Intellectual Property royalties and license fees required in respect of the Work.

### **2.35) Proprietary Information**

The Company shall not copy, reproduce, or disclose to third parties, except in connection with the Work, any information that JEA furnishes to the Company. The Company shall insert in any subcontract a restriction on the use of all information furnished by JEA. The Company shall not use this information on another project. The Company shall return all information furnished by JEA upon completion of the Work.

### **2.36) Meetings and Public Hearings**

The Company will, upon request from JEA, attend all meetings and public hearings as directed by JEA.

### **2.37) Publicity and Advertising**

The Company shall not take any photographs, make any announcements or release any information concerning the Contract or the Work to any member of the public, press or official body unless prior written consent is obtained from JEA.

### **2.38) Nondiscrimination**

The Company represents that it has adopted and shall maintain throughout the Term a policy of nondiscrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employee relations. The Company shall, on written request from JEA, allow JEA reasonable access to the Company's records of employment, employment advertisement, application forms and other pertinent data and records for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of the Contract; provided however, the Company shall not be required to produce, for inspection, records covering periods of time more than one year from the effective date of the Contract.

The Company shall comply with the following:

1. The provisions of Presidential Order 11246, as amended, and the portions of Executive Orders 11701 and 11758 as applicable to Equal Employment Opportunity;
2. The provisions of section 503 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act (ADA); and
3. The provisions of the Employment and Training of Veterans Act, 38 U.S.C. 4212 (formerly 2012).

The Company agrees that if any of the Work of the Contract will be performed by a Subcontractor, then the provisions of this subsection shall be incorporated into and become a part of the subcontract.

### **2.39) Prohibited Future Employment**

It shall be unlawful and a class C offense for any person, who was an officer or employee of JEA, after his or her employment has ceased, to be employed by or enter into any contract for personal services, with a person or company who contracted with, or had a contractual relationship with JEA, while the contract is active or being completed, or within two years of the cessation, completion, or termination of the person's or company's contractual relationship with JEA, where (1) the contract with JEA had a value that exceeded \$250,000, and (2) the officer or employee had a substantial and decision-making role in securing or negotiating the contract or contractual relationship, or in the approval of financial submissions or draws in accordance with the terms of the contract; except that this prohibition shall not apply to an employee whose role is merely as a review signatory, or to contracts entered into prior to January 1, 2008, or to contracts that have been competitively procured. With respect to this subsection a contract is competitively procured if it has been obtained through a sealed low bid award. A "substantial and decision-making role" shall include duties and responsibilities that are collectively associated with: (i) approving solicitation or payment documents; (ii) evaluating formal bids and responses; and (iii) approving or issuing award recommendations for JEA Awards Committee approval. The contract of any person or business entity who hires or contracts for services with any officer or employee prohibited from entering into said relationship shall be voidable at the pleasure of JEA. This prohibition shall not apply to any former officer or employee after two years from cessation from JEA employment.

### **2.40) Hiring of Other Parties Employees**

Each party recognizes that the other party has incurred or will incur significant expenses in training its own employees and agrees that it will not pursue or hire, without the other party's consent, the other party's employees or the employees of its subsidiaries for a period of two years from the termination date of this Contract. It shall not be considered a breach of this Section for either party to make employment solicitations to the general public or groups that may include employees of the other party. Nor shall it be considered a breach of this Section for either party to respond to, act upon, or accept inquiries and applications resulting from, or make offers of employment resulting from, (i) such solicitations to the general public or groups or (ii) unsolicited employment inquiries or applications.

### **2.41) Company's Labor Relations**

The Company shall negotiate and resolve any disputes between the Company and its employees, or anyone representing its employees. The Company shall immediately notify JEA of any actual or potential labor dispute that may affect the Work and shall inform JEA of all actions it is taking to resolve the dispute.

#### **2.42) Company Personnel**

Unless otherwise agreed in writing by the parties, all Services shall be rendered by employees: (a.) who are full time employees of Company or approved subcontractors; (b.) qualified to perform the Services, and (c.) fluent in the English language. The Company shall negotiate and resolve any disputes between the Company and its employees, or anyone representing its employees. The Company shall immediately notify JEA of any actual or potential labor dispute that may affect the Work and shall inform JEA of all actions it is taking to resolve the dispute.

#### **2.43) Ambiguous Contract Provisions**

The parties agree that this Contract has been the subject of meaningful analysis and discussions of the specifications, terms and conditions contained in this Contract. Therefore, doubtful or ambiguous provisions, if any, contained in the Contract shall not be construed against the party who physically prepared the Contract.

#### **2.44) Amendments**

The Contract shall not be altered or amended except in a written amendment executed by duly authorized representatives of JEA and the Company.

#### **2.45) Applicable State Law; Venue; Severability**

Company shall comply with all applicable federal, state and local laws, rules and regulations as the same exist or as may be amended from time to time in performing the Work. The rights, obligations and remedies of JEA and the Company as specified under the Contract will be interpreted and governed in all respects exclusively by the laws of the State of Florida without giving effect to the principles of conflicts of laws thereof. Should any provision of the Contract be determined by the courts to be illegal or in conflict with any law of the State of Florida, the validity of the remaining provisions will not be impaired. Litigation involving the Contract or any provision thereof shall take place in the State or Federal Courts located exclusively in Jacksonville, Duval County, Florida.

#### **2.46) Continuing Services**

The Company shall carry on the Work and maintain the progress schedules during disputes or disagreements with JEA. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as JEA and Company may otherwise agree in writing. Suspension of the Work or portion thereof by Company shall entitle JEA to terminate the Contract for Default

#### **2.47) Cumulative Remedies**

Except as otherwise expressly provided in the Contract, all remedies provided for in the Contract shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.

#### **2.48) Dispute**

Per the JEA Procurement Code, if a dispute occurs between JEA and the Company over a contractual issue that cannot be mediated by the JEA Representative the dispute may be taken to court for resolution in accordance with the Section above entitled "Applicable State Law; Venue; Severability."

#### **2.49) Entire Agreement**

The Contract constitutes the entire agreement between the parties. No statement, representation, writing, understanding, or agreement made by either party, or any representative of either party, which are not expressed herein shall be binding.

#### **2.50) Expanded Definitions**

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including without limitation", and the terms "include", "includes" and "included" have similar meanings. Any reference in the Contract to any other agreement is deemed to include a reference to that other agreement, as amended, supplemented or restated from time to time. Any reference in the Contract to "all applicable laws" or "all applicable laws, rules and regulations" means all federal, state and local laws, rules, regulations, ordinances, statutes, codes and practices.

#### **2.51) Headings**

Headings appearing herein are inserted for convenience or reference only and shall in no way be construed to be interpretations of text.

**2.52) Independent Contractor**

Company is performing the Contract as an independent contractor and nothing in the Contract will be deemed to constitute a partnership, joint venture, agency, or fiduciary relationship between JEA and Company. Neither Company nor JEA will be or become liable or bound by any representation, act, or omission of the other.

**2.53) Language and Measurements**

All communication between the Company and JEA, including all documents, notes on drawings, and submissions required under the Contract, will be in the English language. Unless otherwise specified in the Contract, the US System of Measurements shall be used for quantity measurement. All instrumentation and equipment will be calibrated in US System of Measures.

**2.54) Negotiated Contract**

Except as otherwise expressly provided, all provisions of the Contract shall be binding upon and shall inure to the benefit of the parties, their legal representatives, successors and assigns. The parties agree that they have had meaningful discussion and negotiation of the provisions, terms and conditions contained in the Contract. Therefore, doubtful or ambiguous provisions, if any, contained in the Contract shall not be construed against the party who physically prepared the Contract.

**2.55) Nonexclusive**

Notwithstanding anything contained herein that may appear to be the contrary, the Contract is "non-exclusive" and JEA reserves the right, in its sole discretion, to retain other companies to perform all or any portion of the Work, and JEA may self-perform all or any portion of the Work itself.

**2.56) References**

Unless otherwise specified, each reference to a statute, ordinance, law, policy, procedure, process, document, drawing, or other informational material is deemed to be a reference to that item, as amended or supplemented from time to time.

**2.57) Right to Audit and Financial Reporting**

As Applicable to the Purchase Order and/or Contract:

Accounting System

The Company shall establish and maintain a reasonable accounting system that enables JEA to readily identify the Company's assets, expenses, cost of goods, and use of funds as it relates to the performance of the Work.

Audited Financial Statements

The Company shall provide to JEA audited financial statements for its most recent fiscal year not later than seven (7) days after receipt of written request from JEA.

Content and Retention of Records

The Company's records shall include, but not be limited to, accounting records; written policies and procedures; subcontract files (including proposals of successful and unsuccessful Respondents, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; invoices as support for other reimbursement; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back-charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Company shall, at all times during the term of the Contract and for a period of five years after the completion of the Contract, maintain such records, together with such supporting or underlying documents and materials.

Inspection /Audit of Records

Upon JEA's request, the Company shall allow JEA to audit, to examine, and to make copies of or extracts from its financial and operating records (in whatever form they may be kept, whether written, electronic, or other) kept by the Company, its employees, agents, assigns, successors, and subcontractors, for the purpose of determining invoice accuracy, or otherwise assessing compliance with the Contract Documents.

The Company shall at any time requested by JEA, whether during or after completion of the Contract, and at Company's own expense make such records available for inspection and audit (including copies and extracts of records as required) by JEA. Such records shall be made available to JEA during normal business hours at the Company's office or place of business in a workspace suitable for the audit on three days' prior written notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for JEA. The Company shall have knowledgeable personnel available to answer questions for the auditors during the time they are performing the audit and for a period of two weeks thereafter. Company shall ensure JEA has these rights with Company's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Company and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Company's obligations to JEA.

#### Cost of Audits

If the audit identifies (i) overpricing or overcharges of any nature by the Company to JEA in excess of one-half of one percent (.5%) of the total billings under the Contract at the time of the audit or (ii) fraud, misrepresentation or non-performance, the Company shall reimburse JEA for the total costs of the audit.

#### Billing Adjustments and Recoveries

The Company shall pay JEA all amounts identified as owing to JEA as a result of any such audit or inspection of the Company's invoices and records no later than 90 days after the Company's receipt of JEA's findings.

#### City of Jacksonville Office of the City Council Auditor

A Company providing contractual services purchased by JEA agrees and be deemed to have agreed by virtue of doing business under contract with JEA to be subject to audit upon request by the Office of the City Council Auditor pursuant to Article 5 of the JEA Charter.

### **2.58) Safety and Protection Precautions**

The Company shall comply with all applicable federal, state and local laws, ordinances, all JEA procedures and policies including, but not limited to, JEA's Contractor Safety Management Process (available at JEA.com), and orders of any public body having jurisdiction for the safety of persons or protection of property. The Company understands and agrees that a violation of any provision of this Section e is grounds for a termination of the Contract for Company default, with no requirement for JEA to provide Company with advanced notice and opportunity to cure. Additionally, the Company shall be responsible for all JEA damages associated with such termination.

The Company shall only use those Subcontractors who have met JEA Safety Prequalification requirements in the JEA Contractor Safety Management Process. The Company shall ensure that Subcontractors and their personnel have all the necessary personal protective equipment and training needed to perform the Work safely.

The Company understands and agrees that JEA Representatives may stop Work at any time that JEA, at its sole discretion, considers the Company's Work to be unsafe or a risk to person or property, and to direct the Company to, at a minimum, perform as directed in such a way as to render the Work environment safe. The Company understands and agrees that it is responsible for paying all costs associated with providing a safe work environment including, but not limited to, any costs associated with any JEA directed safety improvements. The Company also understands and agrees that it is solely responsible for the safety of personnel and property associated with the Work, and that any actions taken by JEA to prevent harm to persons or damage to equipment does not, in any way, relieve the Company of this responsibility.

The Company Representative, or alternatively, the Company Supervisor, shall be designated as the Company's representative responsible for the prevention of accidents.

If the nature of the Work requires, the Company shall notify the police and fire departments as to its Work Location in order to ensure prompt response in an emergency.

The Company represents and warrants to JEA that it has the capacity to train and supervise its employees, Subcontractors and suppliers to ensure the Work complies with all safety requirements of the Contract Documents.

The Company shall be responsible for executing the necessary safety training and supervision of its employees and Subcontractors, and acknowledges that JEA is not responsible for training or supervising the Company's employees, except when noted for the purpose of enforcing compliance with these safety requirements.

### **2.59) Subcontracting and Assignment**

Except for JEA's representative, each party agrees that it shall not subcontract, assign, delegate, or otherwise dispose of the Contract, the duties to be performed under the Contract, or the monies to become due under the Contract without the other party's prior written consent.

The assignment of the Contract will not relieve the Company of any of its obligations until such obligations have been assumed in writing by the assignee. If the Contract is assigned by either of the parties, it will be binding upon and will inure to the benefit of the permitted assignee. The Company shall be liable for all acts and omissions of its assignees and its Subcontractors.

In the event the Company obtains JEA approval to use Subcontractors, the Company shall provide Subcontractors possessing the skills, certifications, registrations, licenses, training, tools, demeanor, motivation and attitude to successfully perform the Work for which they are subcontracted. The Company shall remove Subcontractors from performing Work under the Contract when the Company recognizes that a Subcontractor is failing to work in a manner consistent with the requirements of the Contract, or when JEA notifies the Company that JEA has determined a Subcontractor is failing to work in a manner consistent with the requirements of the Contract.

### **2.60) Survival**

The obligations of JEA and the Company under the Contract that are not, by the express terms of the Contract, to be performed fully during the Term, shall survive the termination of the Contract.

### **2.61) Time and Date**

Unless otherwise specified, references to time of day or date mean the local time or date in Jacksonville, FL. If under the Contract any payment or calculation is to be made, or any other action is to be taken, on or as of a day that is not a regular business day for JEA, that payment or calculation is to be made, and that other action is to be taken, as applicable, on or as of the next day that is a regular business day. Where reference is made to day or days, it means calendar days. Where reference is made to workday, workdays, business day, or business days, it means regular working days for JEA's Procurement department.

### **2.62) Time of Essence**

For every material requirement of the Contract for which Liquidated Damages do not apply, time is of the essence.

### **2.63) Waiver of Claims**

A delay or omission by either party to exercise any right or power under the Contract shall not be construed to be a waiver thereof. A waiver by a party under the Contract shall not be effective unless it is in writing and signed by the party granting the waiver. A waiver by a party of a right under or breach of, the Contract shall not be construed to operate as a waiver of any other or successive rights under, or breaches of, the Contract.

The Company's obligations to perform and complete the Work in accordance with the Contract shall be absolute. None of the following will constitute a waiver of any of JEA's rights under the Contract: approval of payments, including final payment; Certificate of Contract Completion; any use of the Work by JEA; nor any correction of faulty or defective work by JEA.

## **3) Additional Contract Terms**

### **3.1) Additional Contract Terms - Required Federal Contract Clauses**

In the event any portion of the Work is funded through a federal funding source, the following Required Federal Contract Clauses shall apply to Company's performance under this Contract.

### **3.2) Equal Employment Opportunity (FEMA & Grants)**

During the performance of this contract, the Company agrees as follows:

(1) The Company will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Company will take affirmative action to

ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Company agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Company will, in all solicitations or advertisements for employees placed by or on behalf of the Company, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Company will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Company's legal duty to furnish information.

(4) The Company will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Company's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Company will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Company will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Company's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Company may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Company will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Company will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Company becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Company may request the United States to enter into such litigation to protect the interests of the United States.

### **3.3) Compliance with the Davis-Bacon Act**

(1) To the extent required under applicable Federal program legislation, all transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29

C.F.R. pt. 5 as may be applicable. The Company shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

(2) The Company shall be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

(3) The Company shall be required to pay wages not less than once a week.

### **3.4) Compliance with the Copeland "Anti-Kickback" Act**

(1) Company. The Company shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.

(2) Subcontracts. The Company or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Company shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the Contract, and for debarment as a Company and subcontractor as provided in 29 C.F.R. § 5.12.

### **3.5) Compliance with the Contract Work Hours and Safety Standards Act**

(1) *Overtime requirements.* No Company or subcontractor contracting for any part of the Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Company and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Company and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* JEA or the federal agency providing funds under this Contract shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Company or subcontractor under any such contract or any other Federal contract with the same prime Company, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Company, such sums as may be determined to be necessary to satisfy any liabilities of such Company or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The Company or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Company shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

### **3.6) Clean Air Act**

(1) The Company agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Company agrees to report each violation to the JEA and understands and agrees that the JEA will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Company agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

### **3.7) Federal Water Pollution Control Act**

(1) The Company agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Company agrees to report each violation to JEA and understands and agrees that JEA will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Company agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

### **3.8) Suspension and Debarment**

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Company is required to verify that none of the Company's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Company must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by JEA. If it is later determined that the Company did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to JEA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **3.9) Domestic Preferences**

To the extent consistent with applicable law, and to the greatest extent practicable, the purchase, acquisition, or use by Company of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products) is preferred for materials being used in the performance of Work under this Contract.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### **3.10) Prohibition on Certain Telecom and Video Surveillance Services or Equipment**

No funds may be expended under this Contract to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. For the purposes of this section, "covered telecommunications equipment" is defined as:

(i) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(ii) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(iii) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(iv) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

### **3.11) License and Delivery of Works Subject to Copyright and Data Rights**

The Company grants to JEA, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Company will identify such data and grant to JEA or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Company will deliver to JEA data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by JEA.

**3.12) Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)**

By the execution of this agreement the Company certifies that for Contracts in the amount of one hundred thousand dollars (\$100,000.00) or more, as required under 31 U.S.C. § 1352 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. The Company shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures shall be forwarded to JEA, who in turn will forward the certification(s) to the Federal awarding agency. By execution of this Contract, the Company certifies the following:

**CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Company, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Company understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

**3.13) Procurement of Recovered Materials**

- (1) In the performance of this contract, the Company shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
- (a) Competitively within a timeframe providing for compliance with the contract performance schedule;
  - (b) Meeting contract performance requirements; or
  - (c) At a reasonable price.
- (2) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) The Company also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

### **3.14) Access to Records**

The following access to records requirements apply to this contract:

- (1) The Company agrees to provide JEA the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Company which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Company agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) For FEMA-funded contracts, the Company agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) For FEMA-funded contracts, in compliance with the Disaster Recovery Act of 2018, JEA and the Company acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

### **3.15) DHS SEAL, LOGO, AND FLAGS**

The Company shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

### **3.16) No Obligation By Federal Government**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Company, or any other party pertaining to any matter resulting from the contract.

### **3.17) Program Fraud and False Or Fraudulent Statements or Related Acts**

The Company acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Company's actions pertaining to this contract.

### **3.18) Compliance with Federal Law, Regulations, and Executive Orders**

This is an acknowledgement that FEMA financial assistance or federal grant money will be used to fund the contract only. The Company will comply will all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

## **4) Technical Specifications**