

**Solicitation**  
**For Participation in an Invitation to Negotiate**  
**Sale of Scrap Cable, Wire, and Metal**



**Jacksonville, FL**  
**Solicitation Number: 96025**

**OPTIONAL Pre-Response Meeting in Person on November 2, 2018 at 9:00 A.M. EST**  
**OPTIONAL Pre-Response Meeting Location: 6674 Commonwealth Avenue, Jacksonville, FL 32254**

**OPTIONAL Pre-Response Teleconference Line:**

**Toll Free #: 1.888.714.6484**

**Passcode: 992663**

**Responses are due on November 20, 2018 by 12:00 P.M. Eastern via email to [knoxsw@jea.com](mailto:knoxsw@jea.com)**

## TABLE OF CONTENTS

1.	INTENT TO NEGOTIATE .....	5
1.1.	INVITATION .....	5
1.1.1.	SCOPE OF WORK (ITN) .....	5
1.1.2.	QUESTIONS (ITN).....	5
1.1.3.	BACKGROUND .....	5
1.1.4.	INVITATION TO NEGOTIATE .....	5
1.1.5.	OPTIONAL PRE-RESPONSE MEETING IN PERSON.....	6
1.1.6.	OPENING OF RESPONSES.....	<b>Error! Bookmark not defined.</b>
1.2.	SPECIAL INSTRUCTIONS.....	6
1.2.1.	MINIMUM QUALIFICATIONS .....	6
1.2.2.	NUMBER OF CONTRACTS TO BE AWARDED .....	7
1.2.3.	INSURANCE REQUIREMENTS.....	7
1.2.4.	SAFETY QUALIFICATION REQUIREMENTS (ITN) .....	7
1.2.5.	TIME .....	7
1.2.6.	LETTER OF CREDIT .....	7
1.2.7.	REQUIRED FORMS TO BE SUBMITTED WITH RESPONSE .....	8
1.3.	EVALUATION METHODOLOGY .....	8
1.3.1.	EVALUATION AND NEGOTIATION PROCESS .....	8
1.3.2.	ALTERNATE PROVISIONS AND CONDITIONS.....	10
1.4.	SELECTION CRITERIA.....	10
1.4.1.	SELECTION CRITERIA .....	10
1.4.2.	QUOTATION OF RATES .....	10
1.4.3.	TIE .....	10
1.5.	GENERAL INSTRUCTIONS .....	10
1.5.1.	SUBMITTING THE RESPONSE .....	10
1.5.2.	ADDENDA.....	10
1.5.3.	CONTRACT EXECUTION AND START OF WORK.....	11
1.5.4.	DEFINED TERMS .....	11
1.5.5.	EX PARTE COMMUNICATION.....	11
1.5.6.	CERTIFICATION AND REPRESENTATIONS OF THE COMPANY .....	11
1.5.7.	ETHICS .....	12
1.5.8.	JEA PUBLICATIONS.....	12
1.5.9.	MATHEMATICAL ERRORS.....	13
1.5.10.	MODIFICATION OR WITHDRAWAL OF RESPONSES .....	13
1.5.11.	PROHIBITION AGAINST CONTINGENT FEES .....	13
1.5.12.	PROTEST OF ITN AND AWARD PROCESS .....	13
1.5.13.	RESERVATION OF RIGHTS TO JEA.....	13
1.5.14.	SUNSHINE LAW .....	14
1.5.15.	SUBCONTRACTORS.....	14
1.6.	JACKSONVILLE SMALL AND EMERGING BUSINESS (JSEB) PROGRAM REQUIREMENTS.....	15
1.6.1.	OPTIONAL USE OF JACKSONVILLE SMALL AND EMERGING BUSINESS (JSEB) PROGRAM	15
2.	CONTRACT TERMS AND CONDITIONS.....	15
2.1.	CONTRACT TERMS AND CONDITIONS .....	15
2.2.	DEFINITIONS.....	15
2.2.1.	DEFINITIONS .....	15
2.2.2.	ADDENDUM/ADDENDA .....	16
2.2.3.	ANNIVERSARY DATE .....	16

2.2.4.	AWARD .....	16
2.2.5.	CHANGE ORDER .....	16
2.2.6.	COMPANY .....	16
2.2.7.	CONTRACT .....	16
2.2.8.	CONTRACT ADMINISTRATOR .....	16
2.2.9.	CONTRACT AMENDMENT .....	16
2.2.10.	CONTRACT DOCUMENTS .....	16
2.2.11.	CONTRACT PRICE .....	17
2.2.12.	CONTRACT TIME .....	17
2.2.13.	DEFECT .....	17
2.2.14.	HOLIDAYS .....	17
2.2.15.	INVITATION TO NEGOTIATE .....	17
2.2.16.	INVOICE .....	17
2.2.17.	JEA .....	17
2.2.18.	JEA REPRESENTATIVES .....	17
2.2.19.	PERFORMANCE - ACCEPTABLE PERFORMANCE/PERFORMER .....	17
2.2.20.	PERFORMANCE - TOP PERFORMANCE/PERFORMER .....	17
2.2.21.	PERFORMANCE - UNACCEPTABLE PERFORMANCE/PERFORMER .....	18
2.2.22.	RESPONSE .....	18
2.2.23.	RESPONDENT .....	18
2.2.24.	SUBCONTRACTOR .....	18
2.2.25.	SOLICITATION .....	18
2.2.26.	TERM .....	18
2.2.27.	UNIT PRICES .....	18
2.2.28.	WORK OR SCOPE OF SERVICES .....	18
2.3.	CONTRACT DOCUMENTS .....	18
2.3.1.	ORDER OF PRECEDENCE .....	18
2.4.	PRICE AND PAYMENTS .....	19
2.4.1.	INVOICING AND PAYMENT TERMS .....	19
2.4.2.	PRICE ADJUSTMENT MONTHLY .....	19
2.4.3.	TAXES .....	20
2.5.	WARRANTIES AND REPRESENTATIONS .....	20
2.5.1.	WARRANTY - SERVICES .....	20
2.6.	INSURANCE, INDEMNITY AND RISK OF LOSS .....	20
2.6.1.	INSURANCE .....	20
2.6.2.	INDEMNIFICATION (JEA STANDARD) .....	22
2.6.3.	RISKS AND PROPERTY .....	22
2.6.4.	INSPECTION .....	22
2.6.5.	FREE AND CLEAR TITLE .....	22
2.7.	TERM AND TERMINATION .....	22
2.7.1.	TERM OF CONTRACT – DEFINED DATES .....	22
2.7.2.	TERMINATION FOR CONVENIENCE .....	23
2.7.3.	TERMINATION FOR DEFAULT (LETTER OF CREDIT) .....	23
2.7.4.	LETTER OF CREDIT .....	24
2.8.	CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTATION .....	24
2.8.1.	PUBLIC RECORDS LAWS .....	24
2.8.2.	INTELLECTUAL PROPERTY .....	26
2.8.3.	PROPRIETARY INFORMATION .....	26
2.8.4.	PUBLICITY AND ADVERTISING .....	26
2.9.	LABOR .....	26

2.9.1.	PROHIBITED FUTURE EMPLOYMENT .....	27
2.9.2.	HIRING OF OTHER PARTY'S EMPLOYEES .....	27
2.9.3.	COMPANY'S LABOR RELATIONS .....	27
2.10.	COMPANY'S RESPONSIBILITIES AND PERFORMANCE OF THE CONTRACT .....	27
2.10.1.	JEA ACCESS BADGES .....	27
2.10.2.	COMPANY REPRESENTATIVES .....	28
2.10.3.	COMPANY REVIEW OF PROJECT REQUIREMENTS .....	28
2.10.4.	LICENSES .....	28
2.10.5.	SAFETY AND PROTECTION PRECAUTIONS .....	28
2.11.	VENDOR PERFORMANCE EVALUATION .....	28
2.11.1.	VENDOR PERFORMANCE EVALUATION .....	28
2.12.	JEA RESPONSIBILITIES .....	30
2.12.1.	SUSPENSION OF SERVICES .....	30
2.12.2.	FORCE MAJEURE .....	30
2.12.3.	COORDINATION OF SERVICES PROVIDED BY JEA .....	30
2.13.	MISCELLANEOUS PROVISIONS .....	31
2.13.1.	AMBIGUOUS CONTRACT PROVISIONS .....	31
2.13.2.	AMENDMENTS .....	31
2.13.3.	APPLICABLE STATE LAW; VENUE; SEVERABILITY .....	31
2.13.4.	CUMULATIVE REMEDIES .....	31
2.13.5.	DELAYS .....	31
2.13.6.	DISPUTES .....	31
2.13.7.	ENTIRE AGREEMENT .....	31
2.13.8.	EXPANDED DEFINITIONS .....	31
2.13.9.	HEADINGS .....	32
2.13.10.	INDEPENDENT CONTRACTOR .....	32
2.13.11.	LANGUAGE AND MEASUREMENTS .....	32
2.13.12.	MEETINGS AND PUBLIC HEARINGS .....	32
2.13.13.	NEGOTIATED CONTRACT .....	32
2.13.14.	NONEXCLUSIVE .....	32
2.13.15.	REFERENCES .....	32
2.13.16.	RIGHT TO AUDIT .....	32
2.13.17.	SEVERABILITY .....	34
2.13.18.	SUBCONTRACTING OR ASSIGNING OF CONTRACT .....	34
2.13.19.	SURVIVAL .....	34
2.13.20.	TIME AND DATE .....	34
2.13.21.	TIME OF ESSENCE .....	34
2.13.22.	WAIVER OF CLAIMS .....	34
2.13.23.	CONTINUING THE WORK .....	35
3.	TECHNICAL SPECIFICATIONS/DETAILED SCOPE OF WORK .....	35
3.1.	TECHNICAL SPECIFICATIONS/DETAILED SCOPE OF WORK (APPENDIX A) .....	35
4.	FORMS (APPENDIX B) .....	35
4.1.	APPENDIX B FORMS .....	35

## **SOLICITATION**

### **1. INTENT TO NEGOTIATE**

#### **1.1. INVITATION**

##### **1.1.1. SCOPE OF WORK (ITN)**

The purpose of this Invitation to Negotiate (the "ITN") is for JEA to evaluate and select companies that can provide scrap cable, wire and metal services for payment (the "Surplus Items") at the best value to JEA (the "Work" or "Services").

JEA intends to award one (1) Contract, up to three (3) years, to a company that can provide the following services for electrical equipment:

- Purchase of scrap from JEA
- Removal of scrap cable, wire and metals from JEA facilities

JEA intends to separate scrap into ten (10) categories. The corresponding grades are priced in accordance with the American Metals Market (AMM), London Metal Exchange (LME), and the Commodity Exchange (COMEX).

A more detailed description of the Work is provided in the Technical Specifications included as Appendix A to this ITN.

##### **1.1.2. QUESTIONS (ITN)**

All Questions must be submitted in writing to the JEA Buyer listed below at least five (5) business days prior to the opening date. Questions received within five (5) business days prior to the opening date will not be answered.

##### **For Procurement Questions:**

Buyer: Sean Knox

E-mail: [knoxsw@jea.com](mailto:knoxsw@jea.com)

##### **For Technical Questions:**

Contact: Carl Ramsbuhag

E-mail: [ramscd@jea.com](mailto:ramscd@jea.com)

##### **1.1.3. BACKGROUND**

JEA owns, operates and manages the electric system established by the City of Jacksonville, Florida in 1895. In June 1997, JEA also assumed operation of the water and sewer system previously managed by the City. JEA is Florida's largest municipally owned utility and the seventh largest municipal in the United States.

##### **1.1.4. INVITATION TO NEGOTIATE**

You are invited to submit a Response to the Invitation To Negotiate noted below:

**JEA ITN Title:** Sale of Scrap Cable, Wire, and Metal

**JEA ITN Number:** 96205

To obtain more information about this Solicitation:

Download a copy of the Solicitation, PDF quality drawings (if applicable) and any required forms at [jea.com](http://jea.com).

**RESPONSE DUE TIME:** 12:00 P.M. EST - ALL LATE RESPONSES FOR WHATEVER REASON WILL BE RETURNED UNOPENED.

**RESPONSE DUE DATE:** November 20, 2018

All Responses must reference the JEA ITN Title and Number noted above. All Responses must be made on the appropriate forms as specified within this ITN, and submitted via email to [knoxsw@jea.com](mailto:knoxsw@jea.com)

**ALL LATE RESPONSES FOR WHATEVER REASON WILL BE RETURNED UNOPENED.**

#### **1.1.5. OPTIONAL PRE-RESPONSE MEETING IN PERSON**

There will be an optional Pre-Response meeting. All interested parties may attend or call into the Pre-Response meeting. Each Respondent attending or calling in will be required to sign in at the beginning of the meeting. A Respondent shall only sign in representing one company, unless otherwise specified by JEA. A roll call will begin for the teleconference attendees immediately at the beginning of the meeting.

**PRE-RESPONSE MEETING TIME: 9:00 A.M. EST**

**PRE-RESPONSE MEETING DATE: November 2, 2018**

**DIAL IN: 1.888.714.6484**

**PASSCODE: 992663**

**PRE-RESPONSE MEETING LOCATION:** 6674 Commonwealth Ave, Jacksonville, FL 32254 in the Main Conference Room (CWSC 116)

#### **1.2. SPECIAL INSTRUCTIONS**

##### **1.2.1. MINIMUM QUALIFICATIONS**

Respondent shall meet the following Minimum Qualifications to be considered eligible to submit a Response to this ITN. A Respondent not meeting all of the following criteria will have their Response rejected:

- Respondent shall have successfully self-performed two (2) similar scrap metal contracts in the last five (5) years, date ending the Response Due Date.
  - A similar scrap metal contract is defined as scrap material handling of at least 450,000 pounds of scrap metal a year for at least one (1) year. Additionally each contract shall have been valued at least \$500,000.00 or greater.

**A Minimum Qualification Form, which is required to be submitted with the Response Form, is provided in Appendix B of this ITN.**

**Please note, any Respondent whose contract with JEA was terminated for default within the last two (2) years shall have their Response rejected.**

**1.2.1.1. BASIS OF AWARD – HIGHEST PRICE**

JEA will Award this Contract to the responsive and responsible Bidder whose Response meets or exceeds the Minimum Qualifications set forth in this Solicitation, and the Respondent's Total Response Price for the as referenced on the Response Form, represents the highest price to be paid to JEA.

**1.2.2. NUMBER OF CONTRACTS TO BE AWARDED**

JEA intends to Award one (1) Contract(s) for the Work. JEA reserves the right to Award more than one (1) Contract based on certain groupings of the Work items, or JEA may exclude certain Work items, if JEA determines that it is in its best interest to do so.

**1.2.3. INSURANCE REQUIREMENTS**

Prior to JEA issuing a Purchase Order to the Respondent to begin the Work or Services, the Respondent shall submit a certificate of insurance (COI) that is in compliance with amounts and requirements as indicated in the Section herein entitled "Insurance Requirements". **Note that the COI shall specifically indicate JEA as additional insured(s) on all required insurance except Worker's Compensation and Professional Liability (if applicable). Furthermore, waiver of subrogation shall be provided for all required insurance in favor of JEA, FPL (if applicable), including their board members, officers, employees, agents, successors, and assigns.**

**1.2.4. SAFETY QUALIFICATION REQUIREMENTS (ITN)**

Respondent shall be approved as JEA Safety Qualified within ten (10) business days of receiving written notice from the JEA Bid Office that it is the responsive and responsible Respondent. If the Respondent fails to obtain JEA approval as a JEA Safety Qualified company by 4:00 p.m. Eastern Time on the 10th business day, JEA will reject the company's Response, and proceed to Award to the next responsive and responsible Respondent.

JEA Safety Qualification information is available online at [jea.com](http://jea.com). Please note that it may take up to five (5) business days for a company to be approved as JEA Safety Qualified. It is the Respondent's responsibility to ensure it is JEA Safety Qualified. A list of the JEA's Safety Qualified vendors can be found on [jea.com](http://jea.com). For additional information, contact Jerry Fulop at (904) 665-5810.

**1.2.5. TIME**

In computing any period of time prescribed or allowed by this solicitation, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or JEA holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or JEA holiday.

**1.2.6. LETTER OF CREDIT**

To ensure and guarantee the full and faithful payment and performance of the obligations of Company under this Contract, The Respondent awarded the primary contract shall provide JEA with a \$50,000.00 letter of credit within five (5) days of Contract execution. JEA's standard Letter of Credit template is attached hereto as Attachment A.

### **1.2.7. REQUIRED FORMS TO BE SUBMITTED WITH RESPONSE**

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.

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

- o Minimum Qualifications Form- This form can be found in Appendix B of this ITN
- o Response Form – This can be found in Appendix B of this ITN
- o Response Workbook – This can be found in Appendix B of this ITN
- o List of Subcontractors/Shop Fabricators (if applicable)

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

- o List of JSEB Certified Firms (if any)
- o Letter of Credit
- o Conflict of Interest Certificate Form - This form can be found at JEA.com
- o Insurance certificate
- o W-9
- o Evidence of active registration with the State of Florida Division of Corporations ([www.sunbiz.org](http://www.sunbiz.org))
- o Any technical submittals as requires by the Technical Specifications

### **1.3. EVALUATION METHODOLOGY**

#### **1.3.1. EVALUATION AND NEGOTIATION PROCESS**

JEA intends to select Respondents (the "Short-list") with which to commence negotiations. A selection committee (hereinafter referred to as the "Selection Committee"), will be appointed by the Chief Procurement Officer (the "CPO"), or his designee, to review and evaluate each Response submitted. The CPO's office 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 ITN. JEA will use this ranking to develop the Short-list of companies in which to proceed with contract negotiations.

Prior to developing the Short-list, JEA may request that the Respondents provide additional information to clarify their Response. JEA may request clarification of submitted documentation so that JEA may make an accurate assessment in developing the Short-list. JEA must be satisfied that the successful Respondent has the necessary technical expertise, experience, and resource capabilities to satisfactorily perform the Work described in this ITN.

JEA reserves the right to Award a Contract based on the Selection Committee's initial evaluation of the Responses if JEA deems the Responses demonstrate adequate competition, compliance, and responsiveness to this ITN. If JEA determines the previously stated criteria have not been met, JEA will finalize the Short-list and proceed with contract negotiations.



Respondents are cautioned to present the best possible pricing offer in their initial Responses. Failing to do so may result in a Respondent not making the Short-list, and will not be allowed to proceed with contract negotiations. **Additionally, the total price or total percentage submitted with the initial Response cannot be increased during the ITN process.**

Once a Short-list is developed, the CPO, or his designee, will appoint a negotiating team (the "Negotiating Team"). The Negotiation Team may be comprised of the same individuals as were members of the Selection Committee. JEA reserves the right to negotiate concurrently or separately with the Short-list Respondents. JEA reserves the right to seek clarifications, to request Response revisions, and to request any additional information deemed necessary for proper evaluation of the Responses. JEA reserves the right to incorporate value added services or industry standard innovations recommended by a Respondent into the Contract's scope of work.

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, hand-outs, 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 his designee will initiate and schedule a time and location for any presentations which may be required.

As a part of the negotiation process, JEA may contact the references provided by the Respondent for the purpose of 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 negotiation, ranking, and Award recommendation.

After written clarifications, oral presentations, site visits, and any other negotiations deemed by JEA to be in its best interest, the Short-list Respondents will be given a deadline to submit their best and final offer (the "Best and Final Offer" or "BAFO"). The negotiation process will stop upon submission of the BAFO. Respondents will not be allowed to make further adjustments to their BAFO or communicate further with JEA, except to respond to requests for clarification from the Negotiating Team.

The JEA Negotiating Team will adjust and calculate the final rankings of the Short-list based on the BAFO submissions. JEA does not anticipate reopening negotiations after receiving the BAFOs, but reserves the right to do so if it believes doing so will be in the best interests of JEA. In the event that JEA reopens negotiations, any final rankings will be revised accordingly.

Negotiations will not be open to the public, but will be recorded. All recordings of negotiations and any records, documents, and other materials presented at negotiation sessions are public records and can be released pursuant to a public records request after a notice of intended decision for this ITN is posted, or thirty (30) days after the opening of the Responses, whichever occurs earlier.

The Award recommendation of the Negotiating Team will be based upon the scoring of the BAFOs and the Selection Criteria described below in this ITN. The Respondent with the highest score will be submitted to the CPO for approval. Once approved, the CPO will then present an Award to the JEA Awards Committee for final approval.

In its sole discretion, JEA reserves the right to withdraw this ITN 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 ITN requirement informalities, minor irregularities, and deficiencies in any Response, and to determine such action is in the best interest of JEA. Issuance of this ITN in no way constitutes a commitment by JEA to make an Award or enter into a Contract.

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

### **1.3.2. ALTERNATE PROVISIONS AND CONDITIONS**

Responses that contain provisions that are contrary to requirements found on this ITN, including, but not limited to, the Contract terms and conditions contained in Section 2 of this ITN, and any requirements found in the Technical Specifications attached as Appendix A to this ITN, will be reviewed but may not be accepted by JEA. However, as this is an ITN, JEA reserves the right to negotiate the best terms and conditions if determined to be in the best interests of JEA, and negotiate different terms and related price adjustments if JEA determines that it provides the best value to JEA.

## **1.4. SELECTION CRITERIA**

### **1.4.1. SELECTION CRITERIA**

The following criteria will be used by JEA to evaluate and rank the qualified Respondents to determine which Respondents are selected for the Short-list who will then move on to the contract negotiation phase of this ITN. Details concerning how each Selection Criteria is calculated can be found in the Selection Criteria below.

### **1.4.2. QUOTATION OF RATES**

#### **Maximum score for criterion is: 100 POINTS**

Respondent shall provide a firm percentage of sales revenue for all Work in this ITN by completing the enclosed Appendix B Response Form. The percentage amount shall include all profit, taxes, benefits, travel, and all other overhead items including but not limited to the services defined within Appendix A Technical Specifications.

**Additionally, the total prices/percentages submitted with the initial Response cannot be increased during the ITN process.**

**Please note, the prices quoted by Respondent on the Response Form must be firm-fixed prices, not estimates.**

### **1.4.3. TIE**

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

## **1.5. GENERAL INSTRUCTIONS**

### **1.5.1. SUBMITTING THE RESPONSE**

The Respondent shall submit one (1) electronic response transmitted via email. **IF RESPONDENT IS INTERESTED IN RECEIVING A RESPONSE FORM IN A WORD FORMAT, PLEASE EMAIL [knoxsw@jea.com](mailto:knoxsw@jea.com) WITH THE REQUEST. REQUESTS MUST BE MADE NO LATER THAN FIVE (5) BUSINESS DAYS BEFORE RESPONSE OPENING.**

### **1.5.2. ADDENDA**

JEa may issue Addenda prior to the opening of Responses to change or clarify the intent of this Invitation to Negotiate (ITN). The Respondent shall be responsible for ensuring it has received all Addenda prior to submitting its Response and shall acknowledge receipt of all Addenda by completing the Confirmation of Receipt of ITN Addenda. JEa will post Addenda when issued online at JEa.com. Companies must obtain Addenda from the JEa.com website. All Addenda will become part of the ITN and any resulting Contract Documents. 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 at JEA's sole discretion.

### **1.5.3. CONTRACT EXECUTION AND START OF WORK**

Within thirty (30) days from the date of Award, JEA will present the successful Respondent with the Contract Documents. Unless expressly waived by JEA, the successful Respondent shall execute a Contract for the Work or Services within ten (10) days after receiving the Contract from JEA. If the Respondent fails to execute the Contract or associated documents as required, or if it fails to act on a JEA-issued Purchase Order (PO), JEA may cancel the Award with no further liability to the Respondent, retain the bid security or bond (if applicable), and Award to the next-ranked company.

Upon JEA's receipt of the executed Contract and certificate of insurance, JEA will issue a PO, in writing and signed by an authorized JEA representative as acceptance of the Proposal and authorization for the company to proceed with the Work, unless otherwise stated in the Contract or PO.

### **1.5.4. DEFINED TERMS**

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

### **1.5.5. EX PARTE COMMUNICATION**

Ex Parte Communication is defined as any inappropriate communication concerning an ITN between a company submitting a Response and a JEA representative during the time in which the ITN is being advertised through the time of Award. Examples of inappropriate communications include: private communications concerning the details of the ITN 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 ITN process.

**Ex Parte Communication is strictly prohibited.** Failure to adhere to this policy will disqualify the noncompliant company's Response. Any questions or clarifications concerning this ITN must be sent in writing via email to the JEA Buyer at least five (5) business days prior to the opening date. If determined by JEA, that a question should be answered or an issue clarified, JEA will issue an addendum to all Respondents.

### **1.5.6. CERTIFICATION AND REPRESENTATIONS OF THE COMPANY**

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

- A. That the individual signing the Response Form is a duly authorized agent or officer of the Respondent. Responses submitted by a corporation must be executed in the corporate name by the President or Vice President. If an individual other than the President or Vice President signs the Response Form, satisfactory evidence of authority to sign must be submitted upon request by JEA. If the Response is submitted by a partnership, the Response Form must be signed by a partner whose title must be listed under the signature. If an individual other than a partner signs the Response Form, satisfactory evidence of authority to sign must be submitted upon request by JEA.
- 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. The corporation or partnership must be in active status at the Florida Division of Corporations ([www.sunbiz.org](http://www.sunbiz.org)) prior to any subsequent Award of 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, contractor's license and occupational 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.
- E. That the Respondent has read, understands and will comply with the Section titled Ethics.

#### **1.5.7. ETHICS**

By submitting a Response, the Respondent certifies this 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 this 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 business ethics.

The Respondent shall submit only one Response in 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 subsupplier, JEA shall disqualify the Bid and may pursue debarment actions.

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

JEA is prohibited by its Charter from awarding contracts to JEA officers or employees, or in which a JEA officer or employee has a financial interest. JEA shall reject any and all Responses from JEA officers or employees, as well as, any and 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 \$35,000.00 for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor list.

If the Respondent violates any requirement of this clause, the Response may be rejected and JEA may debar offending companies and persons.

#### **1.5.8. JEA PUBLICATIONS**

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

#### **1.5.9. 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 Response Price utilizing the Unit Prices will be used to determine if the Company is Awarded the Work or the Services. Subsequently, the Unit Prices will be used throughout the term of the Contract.

#### **1.5.10. 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. JEA will not accept modifications submitted by telephone, telegraph, email, or facsimile, or those submitted after Response Due Date and Time. The Respondent shall not modify or withdraw its Response from time submitted and for a period of ninety (90) days following the opening of Responses.

#### **1.5.11. 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 to the Respondent, to solicit or secure a contract with JEA, and that it has not paid or agreed to pay any person, company, corporation, individual or Respondent, other than a bona fide employee working solely for the Respondent, or an independent sale representative under contract to the Respondent, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the Award or making of the Contract. For a breach or violation of these 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.

#### **1.5.12. PROTEST OF ITN AND AWARD PROCESS**

Respondents shall file any protests regarding this ITN in writing, in accordance with the JEA Purchasing Code, as amended. Copies of the JEA Purchasing Code are available online at [www.jea.com](http://www.jea.com).

#### **1.5.13. RESERVATION OF RIGHTS TO JEA**

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

Responses shall be good for a period of ninety (90) days following the opening of the Responses.

JEA reserves the right to reject any or all Responses, or any part thereof, and/or to waive informalities if such action is in its best interest. JEA may reject any Responses that it deems incomplete, obscure 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 for which JEA determines that the Response is unbalanced, Responses that offer equal items when the option to do so has not been stated, Responses that fail to include a Bid Bond, where one is required, and Responses from Companies who have previously failed to satisfactorily complete JEA contracts of any nature or who have been scored by JEA as "Unacceptable" and as a result, are temporarily barred from bidding additional work.

JEA reserves the right to cancel, postpone, modify, reissue and amend this ITN 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. In such cases whenever JEA exercises any of these reservations, JEA will make a commercially reasonable effort to notify, in

writing, all parties to whom ITNs were issued. JEA may award multiple or split Contracts if it is deemed to be in JEA's best interest.

#### **1.5.14. SUNSHINE LAW**

##### **General**

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 a body politic and corporate and subject to these laws and related statutes ("Florida's Public Records Laws"). All responses to this ITN are public record and available for public inspection unless specifically exempt by law.

##### **Redacted Submissions**

If a Respondent believe that any portion of the documents, data or records submitted in response to this ITN are exempt from Florida's Public Records Law, Respondent must (1) clearly segregate and mark the specific sections of the document, data or 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 its response (the "Redacted Copy"). The cover of the Redacted Copy shall contain JEA's title and number for this ITN and Respondent's name, and shall be clearly labeled "Redacted Copy." Respondent should only redact those portions of records that Respondent claims are specifically exempt from the Florida Public Records Laws. If Respondent fails to submit a redacted copy of information 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 such information.

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

By submitting a response to this ITN, Respondent agrees to protect, defend, and indemnify JEA from and against all claims, demands, actions, suits, damages, losses, settlements, costs and expenses (including but not limited to reasonable attorney fees and costs) arising from it relating to Respondent's determination that the redacted portions of its response to this Solicitation are not subject to disclosure.

**IF THE RESPONDENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RESPONDENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS SOLICITATION, CONTACT THE JEA CUSTODIAN OF PUBLIC RECORDS AT: Public Records Request Coordinator, JEA, 21 West Church Street, T-8, Jacksonville, FL 32202, Phone: 904-665-8606, [publicrecords@jea.com](mailto:publicrecords@jea.com)**

#### **1.5.15. SUBCONTRACTORS**

The Respondent shall 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 shall be listed on the Subcontractors Form which is

available at jea.com. □ Failure to submit this form with the Response shall result in rejection of company'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 fifty percent (50%) of the Work, the Respondent shall obtain JEA's approval at least five (5) days prior to the Response Due Date. Failure to obtain JEA approval shall result in rejection of the company's Response.

## **1.6. JACKSONVILLE SMALL AND EMERGING BUSINESS (JSEB) PROGRAM REQUIREMENTS**

### **1.6.1. OPTIONAL USE OF JACKSONVILLE SMALL AND EMERGING BUSINESS (JSEB) PROGRAM**

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

JSEB firms that qualify for this Contract are only those shown on the current City of Jacksonville JSEB directory appearing at [www.COJ.net](http://www.COJ.net). Certification of JSEB firms must come from the City of Jacksonville. No other agency or organization is recognized for purposes of this Contract.

In no case shall the Respondent make changes to the JSEB firms listed in its Response, revise the JSEB Scope of Work or amount of Work as stated in its Response without prior written notice to the JEA Contract Administrator, and without subsequent receipt of written approval for the JEA Contract Administrator.

Any subcontractors of Respondent shall procure and maintain the insurance required of Respondent hereunder during the life of the subcontracts. Subcontractors' insurance may either be by separate coverage or by endorsement under insurance provided by Respondent. Note: Any JSEB firms identified by Respondent for this Solicitation are considered "Subcontractors" under the direct supervision of the Prime or General Contractor (herein referred to as Respondent in this Solicitation). Respondents should show good faith efforts in providing assistance to JSEB firms in the securing of Subcontractors' insurance requirements stated in this section. Respondent shall submit subcontractors' Certificates of Insurance to JEA prior to allowing subcontractors to perform Work on JEA's job sites.

All question and correspondence concerning the JSEB program should be addressed to the following contact: Rita Scott, JSEB Manager, (904) 665-6257, [scotrl@jea.com](mailto:scotrl@jea.com).

## **2. CONTRACT TERMS AND CONDITIONS**

### **2.1. CONTRACT TERMS AND CONDITIONS**

### **2.2. DEFINITIONS**

#### **2.2.1. DEFINITIONS**

Words and terms defined in this section shall have the same meaning throughout all parts of this Solicitation and Contract Documents. Where intended to convey the meaning consistent with that set forth in its definition, a defined word or term is marked by initial capitalization. The "Technical Specifications" portion of this Solicitation may define additional words and terms where necessary to clarify the Work. Unless otherwise stated in this Solicitation and/or Contract Documents, definitions set forth in the "Technical Specifications" shall apply only within the "Technical Specifications."

#### **2.2.2. ADDENDUM/ADDENDA**

A written change or changes to the Solicitation which is issued by JEA Procurement Services and is incorporated into the Solicitation as a modification, revision and/or further clarification of the intent of the Solicitation.

#### **2.2.3. 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.

#### **2.2.4. AWARD**

The written approval of the JEA Awards Committee that the procurement process for the purchase of the Work was in accordance with the JEA Procurement Code and Florida Statutes. Once an Award is approved, JEA will either issue a Purchase Order or execute a Contract with the successful Respondent.

#### **2.2.5. CHANGE ORDER**

A written order issued by the JEA Procurement Department after execution of the Contract to the Company signed by the Contract Administrator or his designated representative and 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 monies encumbered by JEA, which is shown on the associated Purchase Order(s). An executed Change Order resolves all issues related to price and time for the work included in the Change Order.

#### **2.2.6. COMPANY**

The legal person, firm, corporation or any other entity or business relationship with whom JEA has executed the Contract. Where the word "Company" is used it shall also include permitted assigns. The term Company is also referred to as Contractor, Prime Contractor or Secondary Contractor.

#### **2.2.7. CONTRACT**

An agreement between JEA and the Respondent, signed by both parties, which incorporates all the Contract Documents. The Contract shall not be altered without an Amendment to the Contract and executed by JEA and the Respondent, or a JEA issued Change Order.

#### **2.2.8. CONTRACT ADMINISTRATOR**

The individual assigned by JEA to have authority to administer the Contract, including the authority to negotiate all elements of the Contract with the Company, authorize Change Orders within the maximum amount awarded, terminate the Contract, seek remedies for nonperformance including termination, and otherwise act on behalf of JEA in all matters regarding the Contract. The Contract Administrator may authorize JEA Representative in writing to make minor changes to the Work with the intent of preventing Work disruption.

#### **2.2.9. CONTRACT AMENDMENT**

A written document signed by JEA and the Company issued after the execution of the original Contract which authorizes an addition, deletion or revision of the Scope of Work, or an adjustment in the Contract Price or the Term of the Contract. Contract Amendments do not authorize expenditures greater than the monies encumbered by JEA, which is stated on the associated Purchase Order(s). An executed Contract Amendment resolves all issues related to the Contract Price and the Term of the Contract.

#### **2.2.10. CONTRACT DOCUMENTS**

Contract Documents means the Contract and any written Change Orders, amendments or Purchase Orders executed by JEA, and insurance and/or bonds as required by the Contract.



**2.2.11. CONTRACT PRICE**

The total amount payable to the Company during the initial Term of the Contract. However, this amount is not a guaranteed amount. Also referred to as the "Maximum Indebtedness" of JEA.

**2.2.12. 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.

**2.2.13. DEFECT**

Work that fails to reach Acceptance, or Work that fails meet the requirements of any required test, inspection or approval, and any Work that meets the requirements of any test or approval, but nevertheless does not meet the requirements of the Contract Documents.

**2.2.14. HOLIDAYS**

The following days: New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve Day, and Christmas Day.

**2.2.15. INVITATION TO NEGOTIATE**

The document (which may be electronic) issued by the JEA Procurement Department to solicit Responses from Companies that include, but not limited to, the Minimum Qualifications Form, samples of contract documents and addenda. Also referred to as "Solicitation".

**2.2.16. INVOICE**

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

**2.2.17. JEA**

JEA on its own behalf, and when the Work involves St. Johns River Power Park (SJRPP), as agent for Florida Power and Light Company (FPL). JEA and FPL are co-owners of SJRPP.

**2.2.18. JEA REPRESENTATIVES**

The Contract Administrator, Contract Inspector, Contract Administrator's Representative, JEA Engineer, Field Engineer, Project Manager, and other persons designated by the Contract Administrator as JEA Representatives acting in a capacity related to the Work or Contract under the authority of the Contract Administrator.

**2.2.19. PERFORMANCE - ACCEPTABLE PERFORMANCE/PERFORMER**

The Respondent averages more than 2.80 and less than 4.0 across all performance scorecard evaluation metrics, and does not receive a score of less than 2.0 on any metric.

**2.2.20. PERFORMANCE - TOP PERFORMANCE/PERFORMER**

The Respondent averages 4.0 or more across all scorecard evaluation metrics and does not receive a score of less than 4.0 on any one metric.

**2.2.21. PERFORMANCE - UNACCEPTABLE PERFORMANCE/PERFORMER**

The Company averages less than 2.80 across all scorecard evaluation metrics, or scores a 1.0 on any one metric regardless of average, or receives a score of 2.0 on the same metric on two (2) sequential performance evaluations.

**2.2.22. RESPONSE**

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

**2.2.23. RESPONDENT**

The respondent to this Solicitation.

**2.2.24. SUBCONTRACTOR**

The legal person, firm, corporation or any other entity or business relationship that provides a portion of the work, or provides supplies and materials, to the Company which has an executed Contract with JEA. JEA is not in privity of contract with the Subcontractor.

**2.2.25. SOLICITATION**

The documents (which may be electronic) issued by JEA's Procurement Department to solicit Bids from Bidders that includes, but is not limited to, the Bid Documents, Bid Workbook, samples of documents, contractual terms and conditions, the Technical Specifications, and associated Addenda.

**2.2.26. TERM**

The period of time during which the Contract is in force or until the Contract's Maximum Indebtedness is reached, whichever occurs first.

**2.2.27. UNIT PRICES**

The charges to JEA for the performance of each respective unit of Work as stated in the Response Workbook, Bid Form, or Proposal Form, and incorporated into the Contract Documents.

**2.2.28. WORK OR SCOPE OF SERVICES**

Work includes as defined in the Contract Documents all actions, products, documentation, electronic programs, reports, testing, transport, administration, management, services, materials, tools, equipment, and responsibilities to be furnished or performed by the Company under the Contract, together with all other additional necessities that are not specifically recited in the Contract, but can be reasonably inferred as necessary to complete all obligations and fully satisfy the intent of the Contract.

**2.3. CONTRACT DOCUMENTS****2.3.1. ORDER OF PRECEDENCE**

The Contract shall consist of JEA's Contract and/or Purchase Order together with the Solicitation including, but not limited to, the executed Bid Documents, which shall be collectively referred to as the Contract Documents. This Contract is the complete agreement between the parties. Parol or extrinsic evidence will not be used to vary or contradict the express terms of this Contract. The Contract Documents are complementary; what is called for by one is binding as if called for by all. The Company shall inform JEA in writing of any conflict, error or discrepancy in the Contract Documents upon discovery. Should the Company proceed with the Work prior to written resolution of the error or conflict by JEA, all Work performed is at the sole risk of the Company. JEA will generally consider this precedence of the Contract Documents in resolving any conflict, error, or discrepancy:

- o Executed Contract Amendments
- o Executed Contract Documents
- o Exhibits to Contract Documents
- o Addenda to JEA ITN
- o Drawings associated with this ITN
- o Exhibits and Attachments to this ITN
- o Technical Specifications associated with this ITN
- o Response Documents
- o References

The figure dimensions on drawings shall govern over scale dimensions. Contract and detailed drawings shall govern over general drawings. The Company shall perform any Work that may reasonably be inferred from the Contract as being required whether or not it is specifically called for. Work, materials or equipment described in words that, so applied, have a well-known technical or trade meaning shall be taken as referring to such recognized standards.

## **2.4. PRICE AND PAYMENTS**

### **2.4.1. INVOICING AND PAYMENT TERMS**

JEA shall invoice Company on a monthly basis. Company will pay JEA the amount requested fourteen (14) days from the receipt of invoice. JEA, at its sole discretion, may agree to provide invoices on a per pick-up basis.

All payment shall be in form of a cashier's check made payable to JEA. Payment will be mailed to JEA, attention Carl Ramsubhag, Manager, Investment Recovery Operations 6727 Broadway Avenue, Jacksonville, FL 32254.

In the case of early termination of the Contract, all payments made by Company prior to notice of termination shall be credited to the amount, if any, due JEA.

### **2.4.2. PRICE ADJUSTMENT MONTHLY**

Contract indices for calculating payment to be made to JEA will be based on the index per the schedule in the bid forms and updated based on the described pickup and weigh schedule in the technical specification. Indices are listed below.

LME indices, aluminum alloy, North American  
Aluminum Alloy Contract (NASAAC) Official  
**\$/Tonne Cash (Ask)**  
**Base Date October 17, 2018**

LME indices, aluminum alloy, North American  
Aluminum Alloy Contract (NASAAC) Official  
**\$/Tonne Cash (Ask)**  
Base Date October 17, 2018

LME indices, aluminum alloy, North American  
Aluminum Alloy Contract (NASAAC) Official  
**\$/Tonne Cash (Ask)**  
Base Date October 17, 2018

COMEX indices, copper high grade,  
4th Active cents/lb  
Base Date October 17, 2018

COMEX indices, copper high grade,  
4th Active cents/lb

Base Date October 17, 2018

COMEX indices, copper high grade,  
4th Active cents/lb

Base Date October 17, 2018

AMM Steel Alabama indices, Number 1 heavy melt  
scrap consumer buying price **\$/gross ton**

Base Date October 17, 2018

AMM Steel Alabama indices, Number 1 heavy melt  
scrap consumer buying price **\$/gross ton**

Base Date October 17, 2018

AMM Stainless Steel Pittsburg indices, 304 solids clips  
consumer buying (High) **\$/gross ton**

Base Date October 17, 2018

AMM Stainless Steel Pittsburg indices, 316 solids clips  
consumer buying (High) **\$/gross ton**

Base Date October 17, 2018

AMM Atlanta indices, Yellow brass solids dealer  
buying price delivered to yard (High) cents/lb

Base Date October 17, 2018

COMEX indices, copper high grade,  
4th Active cents/lb

Base Date October 17, 2018

AMM Atlanta indices, No.1 heavy copper & wire  
dealer buying price delivered to yard (High) cent/lb

Base Date October 17, 2018

#### 2.4.3. TAXES

JEA is authorized to self-accrue the Florida Sales and Use Tax and is exempt from Manufacturer's Federal Excise Tax when purchasing tangible personal property for its direct consumption.

#### 2.5. WARRANTIES AND REPRESENTATIONS

##### 2.5.1. WARRANTY - SERVICES

The Company understands and agrees that the sale is "**AS IS, WHERE IS.**" The description and condition of the surplus items are to the best knowledge of JEA correct, but do not constitute a representation or warranty that the surplus item shall conform to such description or condition. **JEA MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE SURPLUS ITEMS,** whether used alone or in combination with other substances, goods, or equipment.

#### 2.6. INSURANCE, INDEMNITY AND RISK OF LOSS

##### 2.6.1. INSURANCE

##### INSURANCE REQUIREMENTS

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

#### 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).

#### 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.

#### Automobile Liability

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

#### 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: \$3,000,000 each occurrence and annual aggregate.

Company's Commercial General Liability and Excess or Umbrella Liability policies shall be effective for two (2) 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 this Contract, certificates evidencing the maintenance of the insurance shall be furnished to JEA for approval. Company's and its subcontractors' Certificates of Insurance shall be mailed to JEA (Attn. Procurement Services), Customer Care Center, 6<sup>th</sup> Floor, 21 West Church Street, Jacksonville, FL 32202-3139.

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

Any subcontractors of Company shall procure and maintain the insurance required of Company hereunder during the life of the subcontracts. Subcontractors' insurance may be either by separate coverage or by endorsement under insurance provided by Company. Note: Any JSEB firms identified by Bidders for this Solicitation are considered "Subcontractors" under the direct supervision of the Prime or General Contractor (herein referred to as "Company"). Companies should show good faith efforts in providing assistance to JSEB firms in the securing of the

Subcontractors' insurance requirements stated herein. Company shall submit subcontractors' certificates of insurance to JEA prior to allowing Subcontractors to perform Work on JEA's job sites.

#### **2.6.2. INDEMNIFICATION (JEA STANDARD)**

The Company shall hold harmless and indemnify 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 attorney's fees and court costs) arising out of injury (whether mental or corporeal) to persons, including death, or damage to property, arising out of or incidental to 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.

#### **2.6.3. RISKS AND PROPERTY**

Risk of loss of the Work shall pass to Company upon loading of the Work onto Company's truck or vehicle, while the Work is in the Company's care, custody and control, and/or upon JEA's delivery of the Work to the Company's site. JEA shall retain title of the Work until the Work is sold and Company pay's JEA its percentage of sale.

Ownership, risks of damage to or loss of the Company's vehicles or equipment shall remain with Company. Company shall maintain the appropriate insurance coverage of its vehicles and equipment.

#### **2.6.4. INSPECTION**

Failure of the Company to inspect when given the opportunity to do so waives any objection of JEA to defects that an examination would reveal. In such case, the Company assumes all risks from such defects arising from the existences, removal, handling, storage, resale, or disposal, or from any other use of the Work.

#### **2.6.5. FREE AND CLEAR TITLE**

JEA warrants that it has title to all equipment and materials furnished under the Contract where title will pass to Company upon payment to JEA its percentage of the sale of the Work, and that the Work passed to Company are free and clear of all liens, claims, security interests and encumbrances.

#### **2.7. TERM AND TERMINATION**

##### **2.7.1. TERM OF CONTRACT – DEFINED DATES**

This 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 three (3) years, or until the Contract's Maximum Indebtedness is reached, whichever occurs first. It is at JEA's sole option to renew the Contract.

It is at JEA's sole option to renew the Contract for an additional one (1), one (1) year periods.

This Contract, after the initial year shall be contingent upon the existence of lawfully appropriated funds for each subsequent year of the Contract.

### **2.7.2. TERMINATION FOR CONVENIENCE**

JEA shall have the absolute right to terminate in whole or part the Contract, with or without cause, at any time after Award upon providing written notification to Company of such termination not less than sixty (60) days prior to such termination.

Upon termination, the Company shall stop the performance of the Work hereunder except as may be necessary to carry out such 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 will 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, resulting change in business condition, except as expressly stated within these Contract Documents.

### **2.7.3. TERMINATION FOR DEFAULT (LETTER OF CREDIT)**

JEA may give the Company written notice to discontinue all or part of the Work under the Contract or a Notice to Cure a material breach in the event that:

- The Company assigns or subcontracts the Work without prior written permission;
- Any petition is filed or any proceeding is commenced by or against the Company for relief under any bankruptcy or insolvency laws;
- A receiver is appointed for the Company's properties or the Company commits any act of insolvency (however evidenced);
- The Company makes an assignment for the benefit of creditors;
- The Company suspends the operation of a substantial portion of its business;
- The Company suspends the whole or any part of the Work to the extent that it impacts the Company's ability to meet the Work schedule, or the Company abandons the whole or any part of the Work;
- The Company, at any time, violates any of the conditions or provisions of the Contract Documents, or the Company fails to perform as specified in the Contract Documents, or the Company is not complying with the Contract Documents;
- The Company attempts to willfully impose upon JEA items or workmanship that are, in JEA's sole opinion, defective or of unacceptable quality;
- The Company breaches any of the representations or warranties;
- The Company is determined, in JEA's sole opinion, to have misrepresented the utilization of funds or misappropriate property belonging to JEA; or
- There is an adverse material change in the financial or business condition of the Company.

If within fifteen (15) 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.

Once Company is declared in Default and the Contract has been terminated, JEA will present the Letter of Credit to the bank from which it was issued and use the funds from the Letter of Credit to offset any losses JEA may have incurred from Company's Default.

The Contract shall in no way limit JEA's right to all remedies for nonperformance provided under law or in equity, except as specifically set forth herein. 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 shall have no liability to the Company for termination costs arising out of the Contract, or any of the Company's subcontracts, as a result of termination for default.

Immediately upon termination or expiration of this Contract, 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. 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.

#### **2.7.4. LETTER OF CREDIT**

The Company shall deliver to JEA and maintain and keep in full force and effect an Evergreen Letter of Credit ("LOC") in the amount of **\$50,000.00**. In the event the value of the Work increases then the amount of the LOC shall be promptly increased accordingly. The Company will have the LOC provided to JEA within five (5) days after the execution of this Contract. The term of the LOC shall be the same as the Term of this Contract. In the event any time extensions are granted to Company then the term of the LOC shall be promptly extended accordingly.

The LOC shall be in a form acceptable to the JEA and shall be in a form materially similar to the document set forth in Attachment A. The LOC shall be issued or confirmed by a bank located in Jacksonville, Florida.

The purpose of the foregoing LOC is to ensure and guarantee the full and faithful payment and performance of the obligations of Company under this Contract including but not limited to: (a.) the payment of all fees, liquidated damages, consequential damages and charges due hereunder; and (b.) without limiting Company's liability under other indemnification provisions in this Contract, to indemnify JEA against any damages sustained by JEA; and (c.) compensate JEA for any action, breach, default, or noncompliance of Company with the terms of this Contract, and is also provided in lieu of the bond required of Section 255.05, Florida Statutes. Any draw by JEA against the LOC shall be done without waiving any other rights and remedies that JEA may have under the Contract, in law, or in equity.

### **2.8. CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTATION**

#### **2.8.1. PUBLIC RECORDS LAWS**

##### **Access to Public Records**

All Documents, data and other records received by JEA in connection with the Contract are public records and available for public inspection 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". Bidder should only redact those portions of records that Bidder 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:

- Keep and maintain public records that ordinarily and necessarily would be required by JEA in order to perform service;
- 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;
- 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
- 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**  
**21 West Church Street**  
**Jacksonville, Florida 32202**  
**Ph: 904-665-8606**  
**publicrecords@jea.com**

#### **2.8.2. INTELLECTUAL PROPERTY**

Company shall hold harmless, indemnify, and defend JEA from and against losses, including any claims, arising out of or in connection with the infringement of US patents, copyrighted or uncopyrighted works, secret processes, trade secrets, articles or appliances, or allegations thereof, arising out of or related to the Work under this Contract or any part thereof, combinations thereof, processes therein or the use of any tools or implements used by Company.

#### **2.8.3. 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. All information furnished by JEA will be returned to JEA upon completion of the Work.

#### **2.8.4. 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.

#### **2.9. LABOR**

The Company represents that it has adopted and will maintain 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, throughout the Term of this Contract. The Company agrees that on written request, it will 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 this 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 this Contract.

- The Company shall comply with the following executive orders, acts, and all rules and regulations implementing said orders or acts, which are by this reference incorporated herein as if set out in their entirety:
- The provisions of Presidential Order 11426, as amended, and the portions of Executive Orders 11701 and 11758 as applicable to Equal Employment Opportunity;
- The provisions of section 503 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act (ADA); and
- 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 this Contract will be performed by a Subcontractor, then the provisions of this subsection shall be incorporated into and become a part of the subcontract.

All persons performing work on the Jobsite must be United States Citizens or legally authorized to reside and work in the United States. Owner may request at any time during the Contract period the following, which shall be furnished to Owner within twenty-four (24) hours of request:

- Proof of U.S. citizenship or other legal authorization to reside in U.S. for all persons performing work at the Jobsite; and
- Proof that the salaries for all persons performing work on the Jobsite are at or above state and federal minimum wage requirements; and
- Proof of eligibility of all persons performing work on the Jobsite to legally work in the United States.

#### **2.9.1. 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/or responsibilities that are collectively associated with: (i) approving solicitation or payment documents; (ii) evaluating formal bids and proposals; and (iii) approving and/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 (2) years from cessation from JEA employment.

#### **2.9.2. HIRING OF OTHER PARTY'S 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 (2) years from the termination date of this Contract.

#### **2.9.3. 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.

### **2.10. COMPANY'S RESPONSIBILITIES AND PERFORMANCE OF THE CONTRACT**

#### **2.10.1. JEA ACCESS BADGES**

If the scope of work described in this Contract requires a Company to access JEA facilities over a period of time, each Company employee shall apply for a JEA access badge through JEA's Security Department. JEA will run a seven (7) year background check on all Company employee's that apply for a JEA access badge.

An appointment to obtain a JEA access badge can be made by contacting JEA Security at [securitybadge@jea.com](mailto:securitybadge@jea.com).

#### **2.10.2. COMPANY REPRESENTATIVES**

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.

#### **2.10.3. COMPANY REVIEW OF PROJECT REQUIREMENTS**

The Company shall review the Work requirements and specifications prior to commencing Work. The Company shall immediately notify the Contract Administrator 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 Purchase Order 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.

#### **2.10.4. LICENSES**

The Company shall comply with all licensing, registration and/or 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.

#### **2.10.5. SAFETY AND PROTECTION PRECAUTIONS**

The Company shall comply with all applicable federal, state and local laws, ordinances, all JEA procedures and policies including any 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 clause is grounds for a Termination for Default, with no requirement to provide Company with a notice to cure. Additionally, the Company shall be responsible for all JEA damages associated with such termination.

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 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 further 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 individual responsible for the prevention of accidents.

### **2.11. VENDOR PERFORMANCE EVALUATION**

#### **2.11.1. VENDOR PERFORMANCE EVALUATION**

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

JEA may evaluate the Company's performance using the evaluation criteria shown on the vendor scorecard available online at JEA.com.

Scores for all metrics shown on the evaluation range from a low of 1, meaning significantly deficient performance, to a high of 5, meaning exceptionally good performance. The Company's performance shall be classified as Top Performance, Acceptable Performance, or Unacceptable Performance, as defined herein. The evaluator will be a

designated JEA employee. The evaluator's supervisor and the Chief Purchasing Officer will review deficient performance letters and Unacceptable Performance scorecards, as described below, prior to issuance. 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.

### **Frequency of Evaluations**

JEA may conduct performance evaluations and prepare scorecards in accordance with the procedures described herein at any time during performance of the Work or soon after the completion of the Work. JEA may conduct one (1) or more evaluations determined solely at the discretion of JEA.

### **Unacceptable Performance**

- If at any time, JEA determines, using the criteria described on the scorecard, that the performance of the Company is Unacceptable, the Contract Administrator and Chief Procurement Officer or his designated alternate will notify the Company of such in a letter. The Company shall have ten (10) days to respond to the Contract Administrator. Such response shall include, and preferably be delivered in-person by an officer of the Company, the specific actions that the Company will take to bring the Company's performance up to at least Acceptable Performance.
- Within thirty (30) days from date of the first Unacceptable Performance letter, the Contract Administrator and Chief Purchasing Officer or his designated alternate will notify the Company by letter as to whether its performance, as determined solely by JEA, is meeting expectations, or is continuing to be Unacceptable. If the Company's performance is described in the letter as meeting expectations, no further remedial action is required by the Company, as long as Company's performance continues to be Acceptable.
- If the Company's performance as described in the letter continues to be Unacceptable, or is inconsistently Acceptable, then the Company shall have fifteen (15) days from date of second letter to demonstrate solely through its performance of the Work, that it has achieved Acceptable Performance. At the end of the fifteen (15) day period, JEA will prepare a scorecard documenting the Company's performance from the start of Work, or date of most recent scorecard, whichever is latest, and giving due consideration to improvements the Company has made in its performance, or has failed to make. If the scorecard shows Company's performance is Acceptable, then no further remedial action is required by Company as long as Company's performance remains Acceptable. If the scorecard shows the Company's performance is Unacceptable, 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, and other remedies available in the JEA Purchasing 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 an Unacceptable Performance scorecard, JEA may choose to accelerate these cycles at its sole discretion.
- If the Company receives five (5) or more letters of deficiency within any twelve (12) month period, then JEA will prepare a scorecard describing the deficiencies and the Company's performance will be scored as Unacceptable.

### **Acceptable Performance**

JEA expects the Company's performance to be at a minimum Acceptable.

### **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 ten (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. If the Company is to be suspended from consideration for future Award of any contracts, the Company may appeal to the Procurement Appeals Board as per JEA Procurement Code.

#### **Public Records**

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

### **2.12. JEA RESPONSIBILITIES**

#### **2.12.1. SUSPENSION OF SERVICES**

JEA may suspend the performance of the Services by providing Company with five (5) days' 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 suspension of Services, the Company shall resume the full performance of the Services when directed in writing to do so by JEA. Suspension of Services for reasons other than the Company's negligence or failure to perform, shall not affect the Company's compensation as outlined in the Contract Documents.

#### **2.12.2. FORCE MAJEURE**

No party shall be liable for any default or delay in the performance of its obligations under this Contract due to an act of God or other event 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; fires; hurricanes, tornados, floods; or strikes.

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, including Change Orders, shall indicate the extent, if any, to which it is anticipated that any delivery or completion dates will be thereby affected within seven (7) calendar days.

#### **2.12.3. COORDINATION OF SERVICES PROVIDED BY JEA**

The JEA Representative for the Work will, on behalf of JEA, coordinate with the Company and administer this Contract. It shall be the responsibility of the Company to coordinate all assignment related activities with the designated JEA Representative. The 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 this Contract.

## **2.13. MISCELLANEOUS PROVISIONS**

### **2.13.1. AMBIGUOUS CONTRACT PROVISIONS**

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

### **2.13.2. AMENDMENTS**

This Contract may not be altered or amended except in writing, signed by JEA Chief Procurement Officer, or designee, and the Company Representative, or each of their duly authorized representatives.

### **2.13.3. APPLICABLE STATE LAW; VENUE; SEVERABILITY**

The rights, obligations and remedies of the parties 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 this Contract or any provision thereof shall take place in the State or Federal Courts located exclusively in Jacksonville, Duval County, Florida.

### **2.13.4. CUMULATIVE REMEDIES**

Except as otherwise expressly provided in this Contract, all remedies provided for in this 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.

### **2.13.5. DELAYS**

Neither party shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such obligation is prevented or delayed by any cause beyond the reasonable control of the affected party, and the time for performance of either party hereunder shall be extended for a period of equal to any time lost due to such prevention or delay.

### **2.13.6. DISPUTES**

If a dispute occurs between JEA and the Company over a contractual issue that cannot be mediated by the JEA Representative, the dispute shall be handled in accordance with Article 5 of the JEA Procurement Code.

### **2.13.7. ENTIRE AGREEMENT**

This 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. All changes to, additions to, modifications of, or amendment to this Contract, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

### **2.13.8. 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 this 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, rules and regulations" means all federal, state and local laws, rules, regulations, ordinances, statutes, codes and practices.

#### **2.13.9. HEADINGS**

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

#### **2.13.10. INDEPENDENT CONTRACTOR**

Company is performing this Contract as an independent contractor and nothing in this 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.

#### **2.13.11. 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.

#### **2.13.12. MEETINGS AND PUBLIC HEARINGS**

The Company will, upon request by JEA, attend all meetings and public hearings as required, in any capacity, as directed by JEA.

#### **2.13.13. NEGOTIATED CONTRACT**

Except as otherwise expressly provided, all provisions of this 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 this Contract. Therefore, doubtful or ambiguous provisions, if any, contained in the Contract shall not be construed against the party who physically prepared this Contract.

#### **2.13.14. NONEXCLUSIVE**

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

#### **2.13.15. 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. All referenced items shall have the enforcement ability as if they are fully incorporated herein.

#### **2.13.16. RIGHT TO AUDIT**

##### 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.

##### Audited Financial Statements



The Company shall provide to JEA audited financial statements for the most recent fiscal year upon JEA's request, not later than five days after receipt of written request.

#### Content and Retention of Records

Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; 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 this Contract and for a period of five years after the completion of this Contract, maintain such records, together with such supporting or underlying documents and materials.

#### Inspection /Audit of Records

Upon JEA's request, the Company agrees to 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 this 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 and [subject to a three day written notice/without prior 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 agrees to 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

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by JEA unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Company to JEA in excess of one-half of one percent (.5%) of the total contract billings, the Company shall reimburse JEA for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or nonperformance, JEA may recoup the costs of the audit work from the Company.

#### Billing Adjustments and Recoveries

Any billing payment recoveries to JEA that must be made as a result of any such audit or inspection of the Company's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of findings from JEA to the Company.

#### Failure to Comply

If Company fails to comply with the requirements contained in this clause, the Company may be found to be in breach of the Contract, be subject to debarment or suspension of bidding privileges with JEA, and/or JEA may exercise any other remedies available by law.

#### **2.13.17. SEVERABILITY**

In the event that any provision of this Contract is found to be unenforceable under applicable law, the parties agree to replace such provision with a substitute provision that most nearly reflects the original intentions of the parties and is enforceable under applicable law, and the remainder of this Contract shall continue in full force and effect. With regard to any provision in this agreement pertaining to damages, equitable or otherwise, it is the intent of the Parties that under no circumstances shall there be recovery for home office overhead. Any damages claimed shall be proven by discreet accounting of direct project costs and no theoretical formula or industry estimating reference manuals shall be permissible.

#### **2.13.18. SUBCONTRACTING OR ASSIGNING OF CONTRACT**

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 either of the parties 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 assignee or its Subcontractor.

In the event the Company obtains JEA approval to use Subcontractors, the Company is obligated to 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 is obligated to remove Subcontractors from performing Work under this Contract when the Company recognizes that a Subcontractor is failing to work in a manner consistent with the requirements of this 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 this Contract.

#### **2.13.19. SURVIVAL**

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

#### **2.13.20. TIME AND DATE**

Unless otherwise specified, references to time of day or date mean the local time or date in Jacksonville, FL. If under this 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 Procurement.

#### **2.13.21. TIME OF ESSENCE**

For every material requirement of this Contract, time is of the essence.

#### **2.13.22. WAIVER OF CLAIMS**

A delay or omission by JEA to exercise any right or power under this Contract shall not be construed to be a waiver thereof. A waiver by JEA under this 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, this Contract shall not be construed to operate as a waiver of any other or successive rights under, or breaches of, this 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.

### **2.13.23. CONTINUING THE WORK**

The Company shall carry on the Work and maintain the progress schedule 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.

## **3. TECHNICAL SPECIFICATIONS/DETAILED SCOPE OF WORK**

### **3.1. TECHNICAL SPECIFICATIONS/DETAILED SCOPE OF WORK (APPENDIX A)**

Technical Specifications and a Detailed Scope of Work are located in Appendix A of this document.

127-18 Appendix A Technical Specifications are attached to this solicitation.

## **4. FORMS (APPENDIX B)**

### **4.1. APPENDIX B FORMS**

Forms required to be submitted with this solicitation are provided in Appendix B or can be obtained on the JEA website at [www.jea.com](http://www.jea.com).

**Attachment A**

**Evergreen Irrevocable Standby Letter of Credit**

**Number:** \_\_\_\_\_

**In Lieu of Bond Under Section 255.05, Florida Statutes.**

**Date:** \_\_\_\_\_

**Beneficiary:**

**JEA**

**23 West Church Street**

**Jacksonville, Florida 32202**

**Principal:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Amount: Not Exceeding: \$50,000.00**

**Not Exceeding: Fifty Thousand and 00/100 Dollars**

**Date and Place of Expiry:**

**The later of (INSERT EXPIRY DATE), or thirty (30) days after written notice of expiry to the Beneficiary, at (INSERT PROPER CITY ADDRESS), in person or by facsimile only.**

We, (INSERT NAME OF BANK), hereby establish our Evergreen Irrevocable Standby Letter of Credit Number \_\_\_\_\_ for \_\_\_\_\_ which is available with us by sight payment(s) against presentation to us of the original or facsimile only of the following documents:

1. This Letter of Credit and all amendment(s) thereto, if any.
2. Draft(s) "At Sight" drawn on us, bearing the clause: "Drawn under (INSERT NAME OF BANK) Standby letter of Credit Number \_\_\_\_\_."
3. Beneficiary's Signed Statement reading: "We hereby certify that (INSERT NAME OF PRINCIPAL) (the "Principal") is in default or non-conformance of some or all of its obligations, pursuant to contract issued under JEA RFP or Bid Number \_\_\_\_\_:
  - A. Failure to complete agreed upon work and/or services as set forth in specifications entitled "DESCRIBE THE WORK OR SERVICES TO BE PERFORMED BY THE PRINCIPAL" (the "Project"), and/or

B. Failure to make payment to all claimants, as defined in Section 255.05(1), Florida Statutes, which claimants have supplied the Principal with labor, materials, equipment or supplies, used directly or indirectly by the Principal in the performance of work or services for the Project, and the City of Jacksonville will be required to pay for the same; and/or

C. To renew this Evergreen Irrevocable Standby Letter of Credit Number\_\_\_\_\_, prior to our drawing hereunder.

Notwithstanding the above expiration date, the expiration date of this Evergreen Irrevocable Standby Letter of Credit shall be automatically extended without written amendment for additional one (1) year periods unless at least thirty (30) days prior to any such expiration date, **(INSERT NAME OF BANK)** shall give written notice to Beneficiary, by Certified Mail or Courier, at the address set forth above or at such other amended address as may be provided to **(INSERT NAME OF BANK)** in writing prior to such notice, that we elect not to renew this Evergreen Irrevocable Standby Letter of Credit for any such additional period.

In the event that we present you with our Notice of Non-Renewal, you may draw hereunder on or prior to the then relevant expiration date up to the full amount then available hereunder against presentation of the above documents.

Any reference to ITN Number\_\_\_\_\_ or Contract Number\_\_\_\_\_is for information purposes only and does not, in any way, incorporate the terms and conditions of said RFP or contract into this Evergreen Irrevocable Standby Letter of Credit.

We hereby engage with the Beneficiary hereof that draft(s) drawn under and in compliance with the terms and conditions of this Evergreen Irrevocable Standby Letter of Credit shall be duly honored upon presentation at our office at \_\_\_\_\_, mail code:\_\_\_\_\_, **(INSERT CITY, STATE ZIPCODE)**; or via facsimile only presentation at **(INSERT FACSIMILE (FAX) NUMBER)** on or before the expiration date or any automatically extended expiration date. If drawing via facsimile, then original documents are not required for presentation and no original documents should then be sent to our street address. If sent, they will not be re-examined by us.

Except as far as otherwise expressly stated herein, this Evergreen Irrevocable Standby Letter of Credit is subject to the International Standby Practices 1998, International Chamber of Commerce Publication Number 590 ("ISP98").

If you require any assistance or have any questions regarding this Transaction, please call

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