

**SOLICITATION  
FOR PARTICIPATION IN AN INVITATION TO NEGOTIATE  
FOR  
INTERIOR WORKSPACE PROGRAM DEVELOPMENT SERVICES**



**JACKSONVILLE, FL  
SOLICITATION NUMBER 97543**

**RESPONSES ARE DUE ON JULY 1, 2019 BY 12:00 PM EST**

**RESPONSE EMAILED TO:  
CHRISSY NUNZIATO AT  
NUNZCT@JEA.COM  
JEA PROCUREMENT SERVICES**

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## **Solicitation**

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

#### **1.1. INVITATION**

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

JEA is seeking workplace planning services for Interior Workspace Program Development to provide JEA with a confirmed footprint, adjacencies and test fit of its new corporate headquarters.

JEA is in negotiations with Ryan Companies, US for a build to suit office building identified through a competitive Invitation to Negotiate (ITN) process. JEA may separately solicit architectural/interior design services for the Tenant Improvements (TI) or may contract those services with Ryan Companies. Companies responding to this solicitation may also propose on TI design services if JEA seeks those services in the future for the Corporate Headquarters project. Furniture products and/or office systems will be chosen at a later date and should not be included in response to this solicitation.

The scope of this ITN work is to provide more firm workspace planning for building efficiencies and interior programming only. The work is expected to be short in duration and concentrated to provide more firm programming needs before building design is finalized. Members of JEA staff, CBRE, and Ryan Companies will participate in various meetings and activities for this scope. CBRE previously provided Phase I initial programming for workspace through an earlier assignment. A Phase I summary report has been included as Appendix C - CBRE Workplace JEA Programming Oct 2018. The program planning work will be guided by JEA's corporate measures of Customer Value, Financial Value, Community Impact Value and Environmental Value.

The Scope of these services will include, but may not be limited to:

1. Interviews with key department heads and/or stakeholders
  - i. Initial interview w/project sponsor, executives & leaders to determine program goals
  - ii. Evaluation of critical aspects of JEA corporate requirements including security, transitional emergency operations center (TEOC), training, meeting rooms, board room, customer experience center and innovation lab
2. Rough program draft for JEA staff approval including recommended workstation sizes
3. Team charrette with shell design team for coordination and efficiency planning
4. Test fit draft including department and function adjacencies
5. Final draft of program/test fit
6. An important expectation of this process will be the study of opportunities for multiple uses per space (program overlap), efficient reductions in JEA's space needs for varied user groups while maintaining functional and forward thinking work environments.

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

### **1.1.2. 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 located in Jacksonville, Florida, where we proudly serve an estimated 470,000 electric, 351,000 water and 274,000 sewer customers. JEA is Florida's largest community owned utility and the eighth largest municipal in the United States.

### **1.1.3. INVITATION TO NEGOTIATE**

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

**JEA ITN Title: Interior Workplace Program Development Services**  
**JEA ITN Number: 97543**

**A complete copy of this ITN and any applicable documents can be downloaded from [jea.com](http://jea.com).**

**Response Due Time: 12:00 P.M. EST**  
**Response Due Date: July 1, 2019**

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 **emailed to Chrissy Nunziato at NUNZCT@JEA.COM.**

The Respondent shall be solely responsible for the email delivery of its Response. Please note Responses are due by the time and on the date listed above. Late responses may be returned unopened.

### **1.1.4. QUESTIONS (ITN)**

All Questions must be submitted in writing to the **JEA Buyer** listed below at least three (3) **business** days prior to the opening date. Questions received within three (3) **business** days prior to the opening date will not be answered.

For Procurement and Technical Questions:

Buyer: Elaine Selders and Chrissy Nunziato

E-mail:SELDEL@JEA.COM and NUNZCT@JEA.COM

## **1.2. SPECIAL INSTRUCTIONS**

### **1.2.1. MINIMUM QUALIFICATIONS**

The Respondent shall meet the following Minimum Qualifications to be considered eligible to submit a Response to this ITN. **JEA reserves the right to ask for additional back up documentation or additional reference projects to confirm the Respondent meets the requirements stated below.** A Respondent not meeting all of the following criteria will have their Response rejected:

- Any joint ventures or multiple firms responding to this ITN shall have worked on the example projects experience submittals as a team. At least one (1) of the referenced projects provided below shall include an example of past experience working as a team.
- Respondent must designate the Company's Project Executive /Lead Consultant who will serve as the primary representative for JEA. Respondent shall provide a description of four (4) projects of 100,000 SF or larger interior corporate workspace planning where respondent has provided programming services through the respondent firm. References should cover work within the last five (5) years ending May 31, 2019.
  - For two (2) of the four (4) project examples, the Respondent's Project Executive /Lead Consultant must have actively worked on or led the project.
  - For one (1) of the four (4) project examples, the referenced project shall include an example of past experience working as a team if the Respondent is submitting a Response as a joint venture.

At Minimum include the following information for the references provided:

- Reference Company Name
- Reference Contact Person Name
- Reference Contact Person Name Phone and Email Address
- Describe how the project/contract is similar to JEA's Technical Specifications
- Number of employees assigned for the work
- Brief description of the scope and services included in the contract (not to exceed ten (10) lines)
- Client business sector, e.g. public, private, transportation, utility, financial services, etc.

**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.**

#### **1.2.2. 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 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. 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 and Response Form, 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

**If the above listed forms are not submitted with the Response by the Response Due Time and Date, JEA may reject the Response. In its sole discretion, JEA reserves the right 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.**

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 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**

A selection committee of one (1) or more individuals (hereinafter referred to as the "Selection Committee"), will be appointed by the Chief Procurement Officer (the "CPO"), or her 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 member(s) 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. Other individuals deemed necessary by JEA shall serve as subject matter experts for the Selection Committee member(s), but shall not vote or otherwise act as a member of the Section Committee. The Selection Committee member(s) shall not have any financial interest and shall not have played any role whatsoever in any Responses being submitted for consideration to 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 intends to select up to four (4) Respondents (the "Short-list") with which to commence negotiations. JEA will finalize the Short-list and proceed with contract negotiations.

**Prior to developing the Short-list, JEA may request that the Respondents provide additional information or additional project references to clarify their Response and 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.

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

Once a Short-list is developed, the CPO, or her designee, will appoint a negotiating team of one (1) or more individuals (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.

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.

#### **1.4. SELECTION CRITERIA**

##### **1.4.1. QUOTATION OF RATES**

**Maximum score for criterion is: 25 Points**

Company shall provide hourly rates for the term of the Contract by completing the information below. The rates shall be all inclusive and shall include all work, profit, taxes, benefits, and all other overhead items, including photocopy and report preparation fees, if applicable. Travel and other related expenses must be approved in writing before any travel is booked or expensed. Travel will be paid in accordance with JEA's Travel Policy attached as **Appendix C**. There will be a "not to exceed" travel/expense budget added to the contract total specified by JEA.

The hourly rates provided below shall include up to five (5) of the primary team members that will work on this engagement. A weighted average will be used to tabulate the score for this section.

	Role, Assignment or Title	Hourly Rate
Project Executive/Lead Consultant		
Primary Project Manager		
Other Design/Planning professional		
Other Design/Planning professional *		
Other Design/Planning professional *		

\* If applicable

**Please note, the hourly rates quoted by Company must be firm, and not an estimate. Any modifications, exceptions, or objections contained within the Response Form may subject the response to disqualification.**

#### **1.4.2. CONSULTANT TEAM PROFESSIONAL EXPERIENCE**

**Maximum score for criterion is: 25 Points**

**There will be twenty (20) points awarded for the depth of team experience and five (5) points awarded for team project experience.**

##### **Team Resumes:**

Company shall provide the resume of the Project Executive /Lead Consultant and may provide up to four (4) additional resumes for personnel available to work on the JEA engagement. The Project Executive /Lead Consultant shall be the same consultant who is identified for the minimum qualification reference checks. The resumes provided will be scored together as a team depending on how many resumes the Company chooses to submit.

At minimum, the resume(s) shall present the consultant's name, title, work location, years of service with the Company, applicable professional registrations, education, and work experience. The resume must identify the experience of the professional in **interior workspace program development** consulting. Each resume shall be no more than two (2) pages in length, single sided, and on 8.5" by 11" sized paper. If the resumes contain more than two (2) pages each, only the information contained on the first two (2) pages will be evaluated by JEA.

##### **Similar Projects:**

In addition to the resumes, each team member shall provide the **quantity** (number) and brief narrative **description** of similar programming projects completed in the last five (5) years ending May 31, 2019.

##### **Experience as a Team:**

Provide narrative description on how the team proposed for this assignment have worked together on similar programming projects in the past. Describe for the example projects how two (2) or more members have worked together on similar assignments including their roles and responsibilities for the example projects.

##### **Organizational Chart**

Proposer should provide an organizational chart delineating the company's personnel responsibilities and functions associated with the Work. If applicable, this chart shall also delineate any responsibilities and functions of subcontractor(s) and/or JSEB firm(s).

#### **1.4.3. PAST PERFORMANCE/COMPANY EXPERIENCE**

**Maximum score for this criterion: 25 Points**

Company shall provide the following:

- o Describe Company's research efforts and experience over the past decade with specific reference to office interiors workability, flexibility and productivity. Discuss examples including types of

research, use of research data and outcomes. Describe how research assists in planning for multigenerational employee bases and assists in changing work environments.

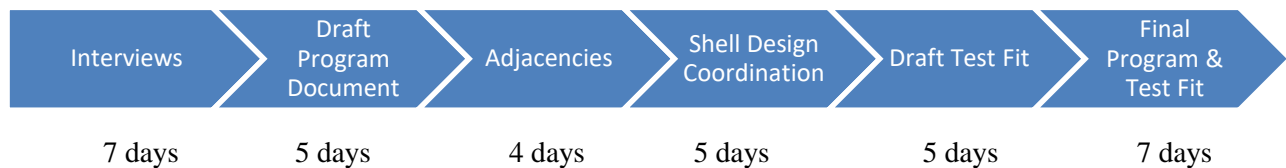
- o Describe Company's experience with specific teaming examples with shell/core design firms where company successfully teamed on interior program/workplace planning development with core/shell team. Note if company has provided programming services separately from Tenant Improvement design.

#### **1.4.4. ABILITY TO DESIGN AN APPROACH AND WORK PLAN TO MEET THE TECHNICAL REQUIREMENTS**

**Maximum score for this criterion: 25 Points**

Respondent shall describe in your own format the Company's or team's approach to provide the services described in the Scope of Work. Describe the approach to how your firm will manage the engagement. The description shall include a list of proposed meetings/activities to gain insight into the workplace programming and a general description of the data needed to accomplish design approach and proposed work plan.

Respondent shall provide an explanation of how it typically manages evaluation and recommendations for interior space programming. The Response should include a description of the process to be used including expected JEA staff participation. The following is included as a baseline expectation example only. Respondents are encouraged to customize, alter and add to this format:



Respondent shall provide a project schedule indicating:

- i) the activities envisioned to fulfill the requirements of the Work including intended steps, supporting activities, critical approval gates and key production milestones;
  - ii) the estimated duration for each activity;
  - iii) the estimated man-hours for each activity; and
  - iv) the total estimated man-hours that each primary Team Member, identified in the Section titled "Consultant Team Professional Experience", will devote to the Work through completion.
- Additionally, the project schedule must demonstrate the utilization of any Subcontractors.

The evaluation will consider the assignment of qualified staff with appropriate allocation by activities and alignment of the number of hours for each task in the schedule to perform the work in an effective and efficient manner on a timely basis.

**The approach to consulting services is limited to a maximum of ten (10) pages.**

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

It is at the Company's option as to whether it chooses to subcontract to a JSEB firm. JEA encourages the use of JSEB qualified firms; however, the Company 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 Company make changes to the JSEB firms listed in its Bid, revise the JSEB Scope of Work or amount of Work as stated in its Bid without prior written notice to the JEA Contract Administrator, and without subsequent receipt of written approval for the JEA Contract Administrator.

Any subcontractors of Company shall procure and maintain the insurance required of Company hereunder during the life of the subcontracts. Subcontractors' insurance may either be 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 in this Solicitation). Companies should show good faith efforts in providing assistance to JSEB firms in the securing of Subcontractors' insurance requirements stated in this section. Company 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:

JEA JSEB Manager  
Rita Scott  
[scotrl@jea.com](mailto:scotrl@jea.com)

## **1.6. TIE**

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

## **1.7. GENERAL INSTRUCTIONS**

### **1.7.1. SUBMITTING THE RESPONSE**

The Respondent shall submit their Response via email to Elaine Selders at [SELDEL@JEA.COM](mailto:SELDEL@JEA.COM). **IF RESPONDENT IS INTERESTED IN RECEIVING A RESPONSE FORM IN A WORD FORMAT, PLEASE EMAIL SELDEL@JEA.COM WITH THE REQUEST. REQUESTS MUST BE MADE NO LATER THAN FIVE (5) BUSINESS DAYS BEFORE RESPONSE OPENING.**

### **1.7.2. 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.

### **1.7.3. 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.

### **1.7.4. START OF WORK**

Within **five (5) days** from the date of Award, the successful Respondent shall submit its certificate of insurance to the JEA Buyer and JEA will then present the successful Respondent with a Purchase Order. If the Respondent fails to act on a JEA-issued Purchase Order (PO), JEA may cancel the Award with no further liability to the Respondent, and Award to the next-ranked company.

### **1.7.5. DEFINED TERMS**

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

### **1.7.6. 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.

### **1.7.7. AVAILABILITY OF RESPONSES AFTER BID OPENING**

In accordance with the Florida Public Records Law, Florida Statutes, Chapter 119, copies of all Responses are available for public inspection thirty (30) days after the opening of Responses or on the date of Award announcement, whichever is earlier. Respondents may review opened Responses once they are available for public inspection by contacting the designated Buyer or JEA's Public Records custodian whose contact

information can be found at [jea.com](http://jea.com). JEA will post a summary of the Bid results immediately after the Bid opening.

#### **1.7.8. CERTIFICATION AND REPRESENTATIONS OF THE COMPANY - ITN**

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, is based on the Respondent's 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, 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.

#### **1.7.9. CONFLICT OF INTEREST**

A person or company who receives a Contract which was not procured pursuant to public bidding procedures to perform a feasibility study, or who participated in the drafting of an invitation to bid or request for proposals, or who developed a program for future implementation shall not be eligible to contract with JEA for any other contracts dealing with that specific subject matter.

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

#### **1.7.10. 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 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.

#### **1.7.11. 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.

#### **1.7.12. MODIFICATION OR WITHDRAWAL OF RESPONSES**

The Respondent may modify or withdraw its Response at any time prior to the Response Due Date and Time via email to the buyer for this ITN. JEA will not accept modifications submitted by telephone, telegraph 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 90 days following the opening of Responses.



#### **1.7.13. 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.

#### **1.7.14. 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).

#### **1.7.15. 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.

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

**Public Records Request Coordinator  
21 West Church Street, T-8  
Jacksonville, FL 32202  
Ph: 904-665-8606  
publicrecords@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. AWARD**

The written approval of JEA Procurement 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 or proposer.

#### **2.2.4. 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. Prime Contractor, Contractor, Vendor, Supplier and Company shall be considered synonymous for the purpose of the Contract.

#### **2.2.5. CONTRACT**

An agreement between JEA and the Company, 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.

#### **2.2.6. 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.

#### **2.2.7. 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.

#### **2.2.8. 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.

#### **2.2.9. 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.

#### **2.2.10. 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.

#### **2.2.11. 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".

#### **2.2.12. INVOICE**

A document seeking payment to Respondent from JEA for all or a portion of the Work, in accordance with the Contract Documents, and including at a minimum the following items: the Respondent's name and address, a description of the product(s) or service(s) rendered, a valid JEA PO number, the amount payable, the Unit Price, the payee name and address, any associated JSEB forms and any other supporting documentation required by the Contract Documents.

#### **2.2.13. JEA**

JEA on its own behalf.

#### **2.2.14. JEA REPRESENTATIVES**

The Contract Administrator, Contract Administrator's Representative, 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.

#### **2.2.15. 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.

**2.2.16. 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.

**2.2.17. 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 sequential performance evaluations.

**2.2.18. PURCHASE ORDER (PO)**

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

**2.2.19. RESPONSE**

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

**2.2.20. RESPONDENT**

The respondent to this Solicitation.

**2.2.21. SUBCONTRACTOR**

A provider of services performing Work under contract for the Company.

**2.2.22. SOLICITATION**

The documents (which may be electronic) issued by JEA's Procurement Department to solicit Responses from Respondents 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.

**2.2.23. TASK ORDER**

A document that describes the Work or describes a series of tasks that the Company will perform in accordance with the Contract Documents. A Task Order may be issued as an attachment to a Purchase Order, but the Task Order is neither a Purchase Order, nor a Notice to Proceed.

**2.2.24. TERM**

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

**2.2.25. UNIT PRICES**

The Respondent's charges to JEA for the performance of each respective unit of Work as defined on the Response Documents, Response Workbook, Response Form or in the Contract Documents.

#### **2.2.26. WORK OR SCOPE OF SERVICES**

Work includes as defined in the Contract Documents all actions, products, documentation, electronic programs, reports, administration, management, services, materials, 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 Change Order to Purchase Order
- o Executed Purchase Order
- o Addenda to JEA ITN
- o Exhibits and Attachments to this ITN
- o Technical Specifications associated with this ITN
- o Response Documents
- o References

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. PAYMENT METHOD**

The Company shall submit to JEA an Invoice for the monthly fee in accordance in accordance with Company's Quotation of Rates.

JEA may elect to make a partial payment or no payment if JEA determines, at its sole discretion, and after due consideration of relevant factors, that either all, or part of the task being invoiced is not in accordance with the Contract Documents.

#### **2.4.2. DISCOUNT PRICING**

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

- o 1% 20, net 30
- o 2% 10, net 30

Respondent may request alternate payment terms for JEA's consideration, however, alternate payment terms are not effective until acceptance by JEA in writing. Please note, all payment dates are calculated from the date of the Invoice receipt by JEA's Accounts Payable.

#### **2.4.3. INVOICING AND PAYMENT TERMS**

The Company shall submit all Invoices in accordance with the payment method agreed upon in these Contract Documents. Invoices shall be submitted to the following email address:

**ACCTPAYCUSTSRV@JEA.COM**, or if the Company does not have email capability, it can mail hard copies to: JEA Accounts Payable, P.O. Box 4910, Jacksonville, FL 32201-4910.

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

JEA may reject any Invoice or Application for Payment within 20 calendar days after receipt. JEA will return the Invoice or Application for Payment to the Company stating the reasons for rejection.

Upon receipt of an acceptable revised Invoice or Application for Payment, JEA will pay the Respondent the revised amount within ten (10) days.

If an invoice is corrected or revised, the Company shall resubmit the invoice using the Company's original invoice number modified with an "R" for revised at the end or otherwise marked as revised.

JEA may withhold payment if the Company is in violation of any conditions or terms of the Contract Documents.

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

#### **2.4.4. OFFSETS**

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

#### **2.4.5. 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**

The Company represents and warrants that it has the full corporate right, power and authority to enter into the Contract and to perform the Work, and that the performance of its obligations and duties hereunder does not and will not violate any Contract to which the Company is a party or by which it is otherwise bound.

The Company represents and warrants that it will conduct the Work in a manner and with sufficient labor, materials and equipment necessary to affect a diligent pursuance of the Services.

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

The Company represents and warrants that its employees and Subcontractors shall exercise the degree of skill and care required by customarily accepted good practices and procedures.

The Company warrants that all items provided under the Contract shall be in accordance with the requirements of this Contract and services shall be performed in a professional manner and with professional diligence and skill, consistent with the prevailing standards of the industry. The Company warrants that the Work will meet the functional and performance requirements defined in the Contract.

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

##### **2.6.1. INSURANCE**

Before starting the Work, 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: \$2,000,000 each occurrence and annual aggregate.

#### Professional Liability

Errors & Omissions; Insurance Limits: \$3,000,000 each claim and \$6,000,000 annual aggregate

Company's Commercial General Liability, Excess Liability and Professional Liability policies shall remain in force throughout the duration of the project and until the Work is completed to JEA's satisfaction. 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 Services 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, 6th 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 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 Respondents 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 Services on JEA's job sites.

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

Company shall hold harmless, indemnify, and defend JEA and Florida Power & Light Company (hereinafter referred to as FPL), 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 Company and any person or entity used by the 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. For purposes of this Indemnification, FPL has been included with JEA, as co-owner for their St. Johns River Power Park facility (hereinafter referred to as SJRPP). The term "FPL" 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.

## **2.7. 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 one (1) year, or until the Contract's Maximum Indebtedness is reached, whichever occurs first.

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

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 the Contract in whole or part, with or without cause, at any time after the Award effective date upon written notification of such termination.

In the event of termination for convenience, JEA will pay the Company for all disbursements and expenses that the Company has incurred, or has become obligated prior to receiving JEA's notice of termination.

Upon receipt of such notice of 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**

JEA may give the Company written notice to discontinue all Work under the Contract 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
- Any material change in the financial or business condition of the Company.

If within fifteen (15) days after service of such notice upon the Company an arrangement satisfactory to JEA has not been made by the Company for continuance of the Work, then JEA may declare Company to be in default of the Contract.

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

The Contract Documents 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 has no responsibility whatsoever to issue notices of any kind, including but not limited to deficient performance letters and scorecards, to the Company regarding its performance prior to default by Company for performance related issues.

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.

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

#### **Request for Redacted Information**

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

#### **Indemnification for Redacted Information**

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

#### **Public Records Clause for Service Contracts**

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

- 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. 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.

#### **2.8.3. 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**

#### **2.9.1. NONDISCRIMINATION**

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 11246, 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.

### **2.9.2. LEGAL WORKFORCE**

JEA shall consider the Company's employment of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for termination of the Contract for default upon thirty (30) days' prior written notice of such termination, notwithstanding any other provisions to the contrary in the Contract Documents.

### **2.9.3. 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 years from cessation from JEA employment.

#### **2.9.4. 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.

### **2.10. 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. Based upon the type of work being performed, JEA may require the Company to provide a criminal background check on the employee prior to the issuance of the JEA access badge. JEA Security will provide all applicable standards and requirements for the background check. All costs associated with the criminal background check are the responsibility of the Company. JEA does not allow Company employees to share JEA access badges.

Company employees issued an access badge are required to adhere to all JEA Security badge usage policies and procedures. A Company whose employees are found to be violating these, or any other JEA Security policies, may result in the Contract being terminated immediately for default.

Additionally, JEA shall be notified within 24 hours of a lost or stolen JEA access badge or when an employee leaves the Company. The Company will bear any costs associated with issuance, and production, of any lost or stolen JEA access badge. The Company is required to report all badge loss, or termination, notifications to their respective JEA contract manager and JEA Security. JEA Security can be contacted at (904) 665-8200 or security@jea.com.

The language in the above paragraphs shall also apply to Company's Subcontractors, and shall be included in Company's contracts with its Subcontractors for Work or Services to be performed at JEA.

#### **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'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 a Participating Agency of any actual or potential labor dispute that may affect the Work and shall inform the Participating Agency of all actions it is

taking to resolve the dispute. The Company is required to conduct all employee disciplinary actions, including terminations, off JEA property unless specifically approved by the JEA contract manager.

## **2.11. CHANGES IN THE WORK OR TIMEFRAMES**

### **2.11.1. 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.

### **2.11.2. 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.

### **2.11.3. 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.



## **2.12. MISCELLANEOUS PROVISIONS**

### **2.12.1. 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.

### **2.12.2. 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.

### **2.12.3. 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.

### **2.12.4. 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.

### **2.12.5. 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.

### **2.12.6. 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.

### **2.12.7. 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.

#### **2.12.8. HEADINGS**

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

#### **2.12.9. 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.

#### **2.12.10. 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.

#### **2.12.11. 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.

#### **2.12.12. 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.

#### **2.12.13. 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.

#### **2.12.14. 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.

#### **2.12.15. 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.

#### **2.12.16. 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.

#### **2.12.17. 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.

#### **2.12.18. 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.

#### **2.12.19. TIME OF ESSENCE**

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

#### **2.12.20. 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.

**3. TECHNICAL SPECIFICATIONS (APPENDIX A)**

**4. FORMS (APPENDIX B)**

**5. ADDITIONAL INFORMATION (APPENDIX C)**

- JEA Travel Policy – Contractor Travel
- Phase 1 Summary Report