

**Invitation to Negotiate**

**99365 – Supply of two activated carbon injection systems and sorbent materials.**

**for**



**SOLICITATION NUMBER - 99365**

**Responses are due on May 27 2020, 12:00 PM (Noon)**

**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 after May 22, 2020 may not be answered.**

**Responses are due on May 27, 2020 by 12:00 PM EST**

**E-Mail Responses to: Rodney Lovgren at : [lovgrd@jea.com](mailto:lovgrd@jea.com)**

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## 1. INVITATION

JEA is soliciting Responses for the supply of the following;

- 1.) Manufacturing, delivery and installation support & commissioning for **two standalone activated carbon injection systems** to assist in mercury capture from the Northside Generating Station Unit 1 and Unit 2 Circulating Fluidized Bed boilers. (Described in Section 3.1.1. of this solicitation document)

And

- 2.) JEA is requesting a quote for the sustained purchase of powdered activated carbon (PAC) sorbent for use in the Northside Generating Station activated carbon injection systems. PAC will be used to enhance removal of vapor phase mercury emissions from power plant flue gas. (Described in Section 3.1.2 of this solicitation document)

Respondents may submit a Response for one or both of the items listed in the above scope of supply.

**A more detailed description of the Work is provided in Section 3.0 Appendix A - Technical Specifications.**

### 1.1.1. 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.

### 1.1.2. QUESTIONS

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 after May 22, 2020 may not be answered.

#### For Procurement Related Questions:

Buyer: Rodney D. Lovgren

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

#### For Technical Questions:

Contact: Jason Compton

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

### 1.1.3. OPENING OF RESPONSES

All Responses shall be opened and reviewed by at the opening time and stated herein. Respondents that submitted timely Responses will receive an email with the Response tabulation.

## 1.2. SPECIAL INSTRUCTIONS

### 1.2.1. MINIMUM QUALIFICATIONS FOR SUBMISSION

The Responder shall meet the following Minimum Qualifications to be considered eligible to submit a Response in response to this RFQ. **JEA reserves the right to ask for additional back up documentation to confirm the Responder meets the requirements stated below.** A Responder not meeting the following criteria may have their Response rejected:

- The Responder shall meet the technical specifications provided in section 3.0 of the solicitation. JEA reserves the right to accept or reject submitted substituted or equivalent products.

### **1.2.2. SAFETY QUALIFICATION REQUIREMENTS (For Companies that will Work on JEA site)**

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 highest ranked Respondent. If the Respondent fails to obtain JEA approval as a JEA Safety Qualified company by 4:00 PM Eastern Time on the 10th business day, JEA may reject the company's Response, and proceed to Award to the next highest ranked 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 JEA Safety Qualified vendors can be found on [jea.com](http://jea.com). For additional information, contact Jerry Fulop at (904) 665-5810.

### **1.2.3. REQUIRED FORMS TO SUBMIT WITH RESPONSE**

To submit a Response for this Solicitation, all of the forms listed below must be completed and submitted as part of the Response. The Responder must obtain the required forms, other than the forms provided in the Solicitation, by downloading them from [JEA.com](http://JEA.com). If the Responder fails to complete or fails to submit one or more of the required forms, the Response may be rejected.

The following forms are required to be submitted at the time of Response:

- **Response Form (including acknowledgements of all Addenda) - This form can be found in Appendix B – at the end of this solicitation.**
- **Product Data / Cut Sheets**
- **MSDS sheets (for sorbent material supply)**
- **Lead times for sorbent that meets the above specifications**
- **General Equipment drawings (for those responding on equipment supply)**
- **For Equipment (Carbon Injection Systems)**
  - List of recommended spare parts with pricing for those components
  - Include preventative maintenance requirements
  - Include power requirements
  - Include Warranty Information

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

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

- Insurance Certificate
- W-9
- Evidence of active registration with the State of Florida Division of Corporations ([www.sunbiz.org](http://www.sunbiz.org))
- Any technical submittals as required by the Technical Specifications.

## **1.3. 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.

## **1.4. EVALUATION METHODOLOGY**

### **1.4.1. NUMBER OF CONTRACTS TO BE AWARDED**

JEA intends to Award up to two (2) Purchase Orders 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.

### **1.5. COMPETITIVE - INVITATION TO NEGOTIATE**

JEA intends to select up to three (3) 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 Bid Price 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.

## **1.6. GENERAL INSTRUCTIONS**

### **1.6.1. SUBMITTING THE RESPONSE FORM**

The Responder shall submit one (1) electronic copy of all the Response documents to the JEA Buyer listed in this RFQ.

### **1.6.2. CERTIFICATION AND REPRESENTATIONS OF THE RESPONDER**

By signing and submitting a Response, the Responder certifies and represents as follows:

- A. That it has carefully examined all available records and conditions, including sites if applicable, and the requirements and specifications of this Invitation to Negotiate prior to submitting its Response. Where the Responder visits sites, no Work or other disturbance is to be performed while at the site without written permission by JEA in advance of the site visit. The Responder shall comply with all safety requirements described in the Invitation to Negotiate and shall be prepared to show proof of insurance
- B. That every aspect of its submitted Response, including the Response Price and the detailed schedule for the execution of the Work, are based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of JEA. JEA assumes no responsibility for any understanding or representation made by any of its representatives during or prior to execution of the Contract unless such understandings or representations are expressly stated in the Contract and the Contract expressly provides that JEA assumes the responsibility.
- C. That the individual signing the Response Documents is a duly authorized agent or officer of the firm. 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, satisfactory evidence of authority to sign may be requested by JEA. If the Response is submitted by a partnership, the Response must be signed by a partner whose title must appear under the signature. If an individual other than a partner signs the Response, satisfactory evidence of authority to sign may be requested by JEA. The corporation or partnership must be in active status at the Florida Division of Corporations at the time of contract execution.



D. That the firm maintains 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 Responder also certifies that, upon the prospect of any change in the status of applicable licenses, permits, certifications, insurances, bonds or other credentials, the Responder shall immediately notify JEA of status change.

E. That Responder has read, understands these instructions and will comply with the Section titled Ethics.

### **1.6.3. ETHICS (IFB)**

By signing the Response Form, the Responder 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 Responder shall comply with all JEA and City of Jacksonville ordinances, policies and procedures regarding business ethics.

The Responder shall submit only one (1) Response in response to this Solicitation. If JEA has reasonable cause to believe the Responder has submitted more than one (1) Response for the same Work, other than as a Subcontractor or subsupplier, JEA shall disqualify the Response and may pursue debarment actions.

The Responder 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 available at [jea.com](http://jea.com). Failure to fully complete and submit the Conflict of Interest Certificate will disqualify the Response. If JEA has reason to believe that collusion exists among the Respondents, JEA shall reject any and all Responses from the suspected Respondents and will proceed to debar Responder from future JEA Awards in accordance with the JEA Purchasing 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 Responder listed on the Convicted Vendor list for any transaction exceeding \$35,000 for a period of 36 months from the date of being placed on the Convicted Vendor list.

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

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

The Responder 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 the Response Due Date and Time. The Responder shall not modify or withdraw its Response from time of Response opening and for a period of ninety (90) days following the opening of Responses.

### **1.6.5. AVAILABILITY OF RESPONSES AFTER RESPONSE 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 Response results immediately after the Response opening.

#### **1.6.6. PROTEST OF RESPONSES AND AWARD PROCESS**

Companies shall file any protests regarding this Invitation to Negotiate in writing, in accordance with the JEA Procurement Code, as amended from time to time. The JEA Procurement Code is available online at [jea.com](http://jea.com).

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

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

Provided below are the Contract terms and conditions that will be incorporated by reference in the Contract Document executed by the Company and JEA. The Contract Document will incorporate by reference the terms contained in the Invitation to Negotiate portion of this document provided in Section 1, the Contract Terms provided in Section 2; and the Technical Specifications provided in Section 3. An example of the Contract that the Company will be required to execute is available for review at [jea.com](http://jea.com).

#### **2.2. DEFINITIONS**

##### **2.2.1. DEFINITIONS**

Words and terms defined in this section shall have the same meaning throughout all parts of this Invitation to Negotiate 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 Invitation to Negotiate may define additional words and terms where necessary to clarify the Work. Unless otherwise stated in this Invitation to Negotiate and/or Contract Documents, definitions set forth in the "Technical Specifications" shall apply only within the "Technical Specifications."

##### **2.2.2. ACCEPTANCE**

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

##### **2.2.3. ADDENDUM/ADDENDA**

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

##### **2.2.4. AWARD**

The written approval 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 Responder or proposer.

##### **2.2.5. RESPONSE DOCUMENTS**

The forms required to be submitted to JEA as the Company's offer to perform the Work or Services described herein. The Response Documents can include, but is not limited to, the Response Form, Response Workbook, Minimum Qualifications Form, certifications and/or other required submittals. The Response Documents may also be referred to as the "Response Form".

##### **2.2.6. RESPONSE**

The document describing the Responder's offer submitted in response to this Invitation to Negotiate.

##### **2.2.7. RESPONSE PRICE**

The total dollar amount of the Responder's offer to successfully perform the Work or Services in accordance with the Contract Documents.

#### **2.2.8. RESPONDER**

The Respondent to this Solicitation.

#### **2.2.9. CHANGE ORDER**

A written order issued after execution of the Contract to the Company signed by the Contract Administrator, or his designated representative, 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. A Change Order that involves a material change to the Contract may result in a Contract Amendment.

#### **2.2.10. 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.

#### **2.2.11. COMPANY REPRESENTATIVE**

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

#### **2.2.12. COMPANY SUPERVISOR**

The individual, employed or contracted by the Company, to manage the Work on a day-to-day basis and ensure the Work is performed according to the Contract. The Company Supervisor may be authorized by the Company Representative to act on Contract matters. Such authorization shall be in writing and delivered to the Contract Administrator and shall clearly state the limitations of any such authorization. In the event that the Company Supervisor and the Company Representative is the same person, the Company shall notify the Contract Administrator of such situation.

#### **2.2.13. 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 Company, or a JEA issued Change Order. The words Contract and Purchase Order shall be considered synonymous for this solicitation and any subsequent Contract or Purchase Order.

#### **2.2.14. 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.

#### **2.2.15. CONTRACT DOCUMENTS**

Contract Documents, also referred to as the "Contract" means the executed Contract, all Invitation to Negotiate documents and Response Documents as further described in the Section of the Invitation to Negotiate titled "Contract Documents", and any written Change Orders, amendments or Purchase Orders executed by JEA, and insurance and/or bonds as required by the Contract.

#### **2.2.16. 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.

#### **2.2.17. CONTRACTOR**

The legal person, firm, corporation or any other entity or business relationship with whom JEA has executed the Contract. Where the word "Contractor" is used it shall also include permitted assigns. Contractor and Company shall be considered synonymous for the purpose of the Contract.

#### **2.2.18. 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.

#### **2.2.19. ENVIRONMENTAL REGULATIONS**

All laws, ordinances, statutes, codes, rules, regulations, agreements, judgments, orders, and decrees, now or hereafter enacted, promulgated, or amended, of the United States, the states, the counties, the cities, or any other political subdivisions in which the Work Location is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over JEA, the Work Location, or the use of the Work Location, relating to pollution, the protection or regulation of human health, natural resources, or the environment, or the emission, discharge, release or threatened release of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or waste or Hazardous Materials (as defined in this Contract) into the environment (including, without limitation, ambient air, surface water, ground water or land or soil).

#### **2.2.20. 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.

#### **2.2.21. INVOICE**

A document seeking payment to Company 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 Company'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.

#### **2.2.22. JEA**

JEA on its own behalf.

#### **2.2.23. 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.

#### **2.2.24. 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.

#### **2.2.25. INVITATION TO NEGOTIATE**

The document (which may be electronic) issue by JEA's Procurement Department to solicit Responses.

#### **2.2.26. SOLICITATION**

See definition of Invitation to Negotiate ("RFQ").

#### **2.2.27. SUBCONTRACTOR**

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

#### **2.2.28. TERM**

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

#### **2.2.29. UNIT PRICES**

The Responder'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.

#### **2.2.30. 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 Invitation to Negotiate including, but not limited to, the executed Response 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:

- Executed Contract Amendments
- Exhibits to Contract Documents
- Executed Contract Documents
- Purchase Order(s)
- Addenda to JEA Solicitation
- Drawings associated with this Solicitation
- Exhibits and Attachments to this Solicitation
- Technical Specifications associated with this Solicitation
- This Solicitation
- Response Documents
- 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. PAYMENTS**

#### **2.4.1.1. PAYMENT METHOD - LUMP SUM UPON DELIVERY & ACCEPTANCE**

Upon delivery and Acceptance of all Work, the Company shall submit an Invoice for the full Contract Price as stated on the Company's Response Form.

#### **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 Company by sending an email to the JEA Buyer listed in this Solicitation:

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

Company 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. OFFSETS**

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

#### **2.4.4. 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 warrants that the goods furnished by the Company shall be free from defects in material and fabrication for a period of not less than thirty – six (36) months from the date of Delivery at the JEA site.

THE FOREGOING EXPRESSED WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES. COMPANY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. JEA'S REMEDY FOR BREACH OF ANY WARRANTY MADE BY COMPANY IN CONNECTION WITH THE PURCHASE OF ANY GOODS HEREUNDER shall be the right to require Company to repair or, at JEA's option, to replace, any defective goods. Company shall not be responsible for labor associated with disassembly, installation or replacement of goods unless the Company performed the original disassembly, installation or replacement of those goods.

JEA'S REMEDY FOR THE BREACH OF ANY WARRANTY MADE BY COMPANY IN CONNECTION WITH THE PURCHASE OF ANY SERVICES HEREUNDER shall be to require the Company to correct such Defect at Company's sole expense.

In the event that JEA determines the repair or replacement of the defective goods or the correction of the defective services is an ineffective remedy, JEA'S remedy is the right to recover the amount paid to Company for the defective goods or services. JEA must return the defective goods to Company, if so requested by Company. Written notice specifying the particular defect in the goods or services must be given promptly by JEA to the Company.

If the Work includes items covered under a manufacturer's or subcontractor's warranty that exceeds the requirements stated herein, Company shall transfer such warranty to JEA. Such warranties do not in any way limit the warranty provided by the Company to JEA.

## 2.5.2. 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:

<u>Schedule</u>	<u>Amount</u>
<u>Workers' Compensation</u>	
Florida Statutory coverage And Employer's Liability	Statutory Limits (Workers' Compensation) \$500,000 each accident (Employer's Liability)
<u>Commercial General Liability</u>	
Premises-Operations	\$1,000,000 each occurrence
Products-Completed Operations	\$2,000,000 annual aggregate for bodily injury and property damage, combined single limit
Contractual Liability	
Independent Contractors	
<u>Automobile Liability</u>	
All autos-owned, hired, or non-owned	\$1,000,000 each occurrence, combined single limit
<u>Excess or Umbrella Liability</u> <b>(This is additional coverage and limits Above the following primary insurance: Employer's Liability, Commercial General Liability and Automobile Liability)</b>	\$4,000,000 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 above Indemnification provision 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. Company shall submit subcontractors' Certificates of Insurance to JEA prior to

allowing subcontractors to perform Work on JEA's job sites.

### **2.5.3. INDEMNIFICATION & RISK OF LOSS**

#### **2.5.4. ENVIRONMENTAL INDEMNIFICATION**

The Company shall hold harmless and indemnify JEA and Florida Power and Light (FPL), including without limitation, its officers, directors, members, representatives, affiliates, agents and employees, successors and assigns (the "Indemnified Parties") and will reimburse the Indemnified Parties from and against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs of cleanup, containment or other remediation, and all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) arising from or in connection with (a) the Company's, including, but not limited to, its agents, affiliates or assigns ("Parties"), actions or activities that result in a violation of any environmental law, ordinance, rule, or regulation or that leads to an environmental claim or citation or to damages due to the Company's or other Parties' activities, (b) any environmental, health and safety liabilities arising out of or relating to the operation or other activities performed in connection with this Contract by the Company or any Party at any time on or after the effective date of the Contract, or (c) any bodily injury (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any person in any way arising from or allegedly arising from any hazardous activity conducted by the Company or any Party. JEA and FPL will be entitled to control any remedial action, any proceeding relating to an environmental claim. This indemnification agreement is separate and apart from, and is in no way limited by, any insurance provided pursuant to this Contract or otherwise. This section relating to indemnification shall survive the Term of this Contract, and any holdover and/or Contract extensions thereto, whether such Term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Contract.

#### **2.5.5. TITLE AND RISK OF LOSS**

Ownership, risks of damage to or loss of the Work shall pass to JEA upon Acceptance. The Company shall assume all risk of loss or damage to the Work while items are in transit and/or in the Company's custody until such time that JEA issues written notice of Acceptance.

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

For ten dollars (\$10.00) acknowledged to be included and paid for in the contract price and other good and valuable considerations, 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. TERM AND TERMINATION**

#### **2.6.1. TERM**

##### **2.6.1.1. TERM OF CONTRACT – THROUGH COMPLETION OF WORK (for Equipment Supply)**

The Contract shall be in force through completion of all Work, Acceptance and final payment, including resolution of all disputes, claims, or suits, if any. Certain provisions of this Contract may extend past termination including, but not limited to, Warranty and Indemnification provisions.



#### **2.6.1.2. TERM OF CONTRACT – DEFINED DATES (for recurring material supply)**

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 five (5) 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 two (2), 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.

#### **2.6.2. 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.

#### **2.6.3. 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.

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

### **2.7.1. 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.

### **2.7.2. 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.

### **2.7.3. 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". Responder should only redact those portions of records that Responder 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 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](mailto:publicrecords@jea.com)**

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

### **2.8.1. ENVIRONMENTAL COMPLIANCE**

The Company shall be familiar, and otherwise comply with Environmental Regulations as they apply to the performance of the Work associated with this Contract unless otherwise directed in writing by JEA. Company shall furthermore notify JEA of the need to obtain additional regulatory authorizations, including permits, prior to applying for such authorizations.

Company shall designate a qualified individual to serve as an environmental coordinator. This individual shall be responsible for; ensuring Company's conformance with Environmental Requirements, serve as JEA's point of contact with the Company on all matters related to Environmental Requirements applicable to the Work, be prepared for, and attend environmental compliance meetings scheduled by JEA, attend regulatory agency inspections of the Work Site, and notify JEA of noncompliance or other deviation from Environmental Requirements applicable to the Work. This individual shall also be a qualified Stormwater Management Inspector registered in the State of Florida.

### **2.8.2. 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.

### **2.8.3. 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.

### **2.8.4. 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.

### **2.8.5. 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.

#### **2.8.6. WORK LOCATION**

Work shall be performed at the following location:

Equipment shall be installed at Northside Generating Station, 4377 Heckscher Blvd, Jacksonville, FL.

Deliveries will be to the Northside Generating Station at, 4433 William Ostner Rd Jacksonville, FL 32226

#### **2.8.7. JEA ACCESS BADGES**

If the scope of work described in this Contract requires a Company to access JEA facilities, each Company employee shall apply for a JEA access badge through JEA's Security Department. An appointment to obtain a JEA access badge can be made by contacting JEA Security at [securitybadge@jea.com](mailto:securitybadge@jea.com). Finally, JEA does not allow Company employees to share JEA access badges. A Company whose employees are found to be sharing JEA access badges, will result in the Contract being terminated immediately for default. Additionally, JEA shall be notified within six (6) hours of a lost or stolen JEA security badge or when an employee leaves the Company. Report badge termination notifications to JEA Security at (904) 665-8200.

#### **2.8.8. JEA CHANGES TO ORDER**

JEA shall have the right to make changes to the Work at any time and the Company agrees to accept such changes. In the event such changes result in decreased or additional costs, JEA shall make an equitable adjustment in the purchase price provided the Company itemizes for JEA any additional costs.

#### **2.8.9. MISCELLANEOUS PROVISIONS**

##### **2.8.10. 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.

##### **2.8.11. AMENDMENTS**

This Contract may not be altered or amended except in writing, signed by JEA Chief Procurement Officer, or designee.

##### **2.8.12. 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.

### **2.8.13. 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.

### **2.8.14. 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.

### **2.8.15. 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.

### **2.8.16. HEADINGS**

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

### **2.8.17. 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.

### **2.8.18. 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.

### **2.8.19. 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.

### **2.8.20. 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.

### **2.8.21. RELATIONSHIP OF THE PARTIES**

The Company agrees that it shall perform the Work as an independent contractor and that it does not (a) have the power or authority to bind JEA or to assume or create any obligation or responsibility, express or implied, on JEA's

part or in JEA's name, except as may be authorized by JEA under a separate written document, or (b) represent to any person or entity that it has such power or authority except as may be authorized by JEA under a separate written document.

#### **2.8.22. 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.

#### **2.8.23. 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.

#### **2.8.24. 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.

#### **2.8.25. TIME OF ESSENCE**

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

#### **2.8.26. 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.

#### **2.8.27. MERGER**

During the term of this Contract and any extension thereof any invoice that may be issued by the Company to JEA shall be issued in accordance with and subject solely to the terms and conditions contained herein, notwithstanding any language to the contrary contained in such invoices. Any invoice issued during the Term and any extension thereof shall not modify or amend this Contract, unless such invoice is intended to modify or amend this Contract and does so in accordance with the terms of this Contract.

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

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

##### **3.1.1. Activated Carbon Injection System(s)**

###### **3.1.1.1. System Requirements**

The activated carbon injection system must meet the below requirements:

1. Ability to pneumatically inject powdered activated carbon accurately from the bulk bag system to the injection ports located at the 110' elevation of the spray dryer absorber inlet duct
2. Ability to feed powdered activated carbon with a continuous feed rate able to be set anywhere in the range of 2 to 40 pounds per hour range
3. All analog I/O signals shall be 4-20mA
4. Start, stop and automatic carbon dose rate adjustment based DCS signals
5. Active product weighing system with feedback capability to DCS
6. Low level product alarm
7. Shutdown interlock tied to loss of conveying system pressure
8. Include a powered hoist rated for 2000 pounds and trolley system for feed system
9. System shall safely lift and suspend 1000 pound bulk bags, as provided by the activated carbon supplier, to supply carbon to the injection system hopper
10. Adequate protection from water intrusion into injection system and bulk bag
11. System dimensions shall not exceed 8' wide x 12' long x 25' tall
12. System shall be designed to prevent/ limit fugitive dust emissions
13. One year warranty to cover unit defects related to defective materials or workmanship

##### **3.1.2. Activated Carbon Sorbent**

###### **3.1.2.1. Sorbent Requirements**

The activated carbon sorbent must meet the following requirements:

1. Sorbent shall be 100% lignite coal based carbon
2. Sorbent shall be a brominated PAC
  - Bromine content shall be between 1-4% by weight
  - No ammonium salts of bromine or ammonia based compounds
3. Sorbent shall have D90 less than 325 US mesh
4. Sorbent shall be 85-100% activated carbon by weight
5. Sorbent must permanently adsorb or bind Mercury without release back into the flue gas
6. Sorbent auto-ignition shall be no lower than 750F
7. Sorbent to be provided in 1000 pound bulk bags, configured for use in hanging feed systems
8. Bulk bags shall have top lifting straps or equivalent, bottom discharge spout, and sufficient structural integrity for continual suspension without impeding carbon feed to injection system
9. Sorbent may not contain any materials that contribute to increased opacity or otherwise adversely impact plant emissions or processes
10. Sorbent manufacturer shall have capability of providing up to 18 bulk bags per month with no more than two week lead time - delivery shall be via a single shipment

### **4. FORMS**

#### **4.1. FORMS (APPENDICES)**

- Appendix A – Technical Specifications
- Appendix B - Response Form



**APPENDIX B - RESPONSE FORM - Page 1 of 2**

Submit a scanned copy via e-mail to: Rodney D. Lovgren at: [lovgrd@jea.com](mailto:lovgrd@jea.com) along with other required forms.

Company Name: \_\_\_\_\_

Company's Address \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

**RESPONSE SECURITY REQUIREMENTS**

- ☒ None required  
☐ Certified Check or Bond Five Percent (5%)

**TERM OF CONTRACT**

- ☐ One Time Purchase  
☒ Annual Requirements  
☒ Other, Specify - Project Completion

**SAMPLE REQUIREMENTS**

- ☒ None required  
☐ Samples required prior to Response Opening  
☐ Samples may be required subsequent to Response Opening

**SECTION 255.05, FLORIDA STATUTES CONTRACT BOND**

- ☒ None required  
☐ Bond required 100% of Response Award

**QUANTITIES REQUIREMENTS**

- ☐ Quantities indicated are exacting  
☒ Quantities indicated reflect the approximate quantities to be purchased Throughout the Contract period and are subject to fluctuation in accordance with actual requirements.

**INSURANCE**

**Insurance required**

**PAYMENT DISCOUNTS**

- ☐ 1% 20, net 30  
☐ 2% 10, net 30  
☐ Other \_\_\_\_\_  
☐ None Offered

Item No.	ENTER YOUR RESPONSE FOR THE FOLLOWING DESCRIBED ARTICLES OR SERVICES	TOTAL RESPONSE PRICE
1	<b>Total Response Price – from Page 2 of the Bid Form</b>	\$

☐ **I have read and understood the Sunshine Law/Public Records clauses contained within this solicitation. I understand that in the absence of a redacted copy my proposal will be disclosed to the public “as-is”.**

**RESPONDER CERTIFICATION**

By submitting this Response, the Responder certifies that it has read and reviewed all of the documents pertaining to this Solicitation, that the person signing below is an authorized representative of the Responseding Company, that the Company is legally authorized to do business in the State of Florida, and that the Company maintains in active status an appropriate contractor's license for the work (if applicable). The Responder also certifies that it complies with all sections (including but not limited to Conflict Of Interest and Ethics) of this Solicitation.

We have received addenda

Date \_\_\_\_\_ through \_\_\_\_\_

\_\_\_\_\_  
Handwritten Signature of Authorized Officer of Company or Agent

\_\_\_\_\_  
Printed Name and Title

**APPENDIX B - RESPONSE FORM - Page 2 of 2**

<b>Item No.</b>	<b>Line Description</b>	<b>Unit Price</b>	<b>UOM</b>	<b>Quantity</b>	<b>Extended Price</b>
1	<b>Activated Carbon Injection System</b>	\$	Each	2	\$
2	<b>Activated Carbon Sorbent (delivered via Supersack)</b>	\$	Tons	70,000	\$
3	<b>Total Bid Price (sum of Lines 1 and 2 above – Enter this amount on the Response Form Page 1)</b>				\$