



Lake Worth Drainage District  
13081 S. Military Trail  
Delray Beach, FL 33484  
561.498.5363

**Request for Bid  
FECON Bull Hog Mulching Attachment**

**RFB No. 16-9928L.01**

**Submission Deadline:  
Tuesday, July 19, 2016 at 1:00 P.M.**

**Refer all inquiries and proposals to:**

Anthony LasCasas, Project Manager  
Lake Worth Drainage District  
13081 S. Military Trail  
Delray Beach, Florida 33484  
alascasas@lwdd.net

**Section I - General Information**

**Definitions**

“District” or “LWDD” denotes the Lake Worth Drainage District.

“RFB” denotes a Request for Bids, which is a written Solicitation for sealed competitive Bids in which price is the primary selection criteria.

“Bid” or “Response” denotes the Bidder’s written response to this RFB offering to provide the specified commodities and/or services. It shall be considered as a formal offer.

“Bidder” or “Respondent” denotes any qualified firms, contractors, consultants, organizations, persons and joint ventures, or other entities submitting a response to this RFB.

“Contract” denotes a binding written agreement, including purchase orders, containing terms and obligations governing the responsibility between the District and other party.

**District Overview**

The Lake Worth Drainage District (District) manages the water resources for much of southeastern Palm Beach County, providing comprehensive flood control, water conservation and water supply protection to an estimated 700,000 residents and more than 10,000 acres of agricultural land. The District monitors and controls a complex system of approximately 500 miles of canals and associated rights-of-way, 20 major water control structures and numerous minor structures. The District encompasses approximately 200 square miles in Palm Beach County. The District is bordered on the west by the Arthur R. Marshall Loxahatchee National Wildlife Refuge, on the east by I-95, on the north by Okeechobee Boulevard and on the south by the Hillsboro canal. The District’s main office is located at 13081 S. Military Trail in Delray Beach, Florida 33484.

**Invitation to Bid**

The Lake Worth Drainage District is soliciting a Request for Bids (RFB) for the purchase and installation of a FECON Bull Hog Mulching Attachment. This invitation is extended to all qualified vendors which can provide the requirement(s) specified herein. Responses should be prepared simply and economically, addressing the requirements in a straightforward and concise manner. The requirements presented in this Solicitation represent the District’s anticipated needs.

Bid Documents may be obtained at District Headquarters at 13081 S. Military Trail, Delray Beach, Florida 33484 or on the District’s website at [www.lwdd.net](http://www.lwdd.net) beginning Wednesday, June 29, 2016. All Bids must be received at District Headquarters no later than Tuesday, July 19, 2016 at 1:00 p.m. at which time all Bids will be publicly opened and tabulated. The Bid will be awarded to the lowest responsive and responsible Bidder as determined by the requirements stated herein. All Bids must be submitted in a sealed envelope, identified as “Sealed Bid RFB No. 16-9928L.01” and addressed to the Project Manager.

**Point of Contact**

All inquiries and proposals should be directed, in writing, to the following Project Manager. The District will not accept any verbal inquiries.

Anthony LasCasas  
Project Manager  
Lake Worth Drainage District  
13081 S. Military Trail  
Delray Beach, Florida 33484  
[alascasas@lwdd.net](mailto:alascasas@lwdd.net)

**Schedule**

I	Advertise for Bids .....	Wednesday, June 29, 2016
II	Bid Documents available.....	Wednesday, June 29, 2016
III	All inquiries, and requests for ..... clarifications and/or corrections due at LWDD by	Friday, July 8, 2016 @ 4:00 pm
IV	All responses and/or addenda issued by LWDD.....	Tuesday, July 12, 2016 @ 4:00 p.m.
V	Completed Bid packages accepted ..... at LWDD until	Tuesday, July 19, 2016 @ 1:00 pm
VI	Bid Opening .....	Tuesday, July 19, 2016 @ 1:00 pm
VII	Notice of Award.....	Wednesday, July 20, 2016

**Section II – Standard Terms and Conditions**

**Anti-Lobbying Provision**

All Respondents, their agents and proposed subconsultants or subcontractors, are hereby placed on notice that neither the District’s Board of Supervisors, employees of the District nor employees of any other Project sponsoring agencies shall be lobbied either individually or collectively regarding this Solicitation. Respondents, their agents and proposed subconsultants or subcontractors are hereby placed on notice that they are prohibited from contacting any of these individuals for any purpose relating to the Solicitation (e.g. general information, meetings of introduction, meals, etc.). Any proposal submitted by a Respondent, its agents and potential subconsultants or subcontractor who violate these guidelines will not be considered for review. The Project Manager shall be the only point of contact for questions and/or clarifications concerning the Solicitation, the selection process and the negotiation and award procedures.

A “Cone of Silence” shall be in effect as of the deadline to submit the Response to this Solicitation, and shall terminate at the time the District Board of Supervisors awards or approves a Bid, rejects all Bids, or otherwise takes action which ends the Solicitation process. “Cone of Silence” denotes that there shall be no communication between Respondent and any Board Member, employee, agent or representative of District during this time period, except contact with the Project Manager as provided herein.

**Public Entity Crimes/Discriminatory Vendor List**

Any Respondent, or any of its suppliers, subcontractors or consultants who shall perform work which is intended to benefit the District, shall not be a convicted vendor or included on the Discriminatory Vendor List. If the Respondent or any affiliate of the Respondent has been convicted of a public entity crime or has been placed on the Discriminatory Vendor List, a period longer than 36 months must have passed since that person was placed on the convicted vendor or Discriminatory Vendor List. The Respondent further understands and accepts that any Contract issued as a result of this Solicitation shall be either voidable or subject to immediate termination by the District, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133 or Section 287.134, respectively, Florida Statutes. The District, in the event of such termination, shall not incur any liability to the Respondent for any work or materials furnished.

**Certification of Good Standing with the Florida Secretary of State**

The District will review (for all corporations and partnerships) the Respondent’s corporate status and good standing with the Florida Secretary of State. If the Respondent is an out-of-state corporation, the Respondent must obtain authority to conduct business in the State of Florida. All corporations or partnership that are not in

good standing with the Florida Secretary of State at the time of Bid submission shall be deemed non-responsible by the District. If successful in obtaining a Contract award under this Solicitation, the corporation or partnership must remain in good standing throughout the contractual period of performance.

#### **Point of Contact and Timetable for Inquiries**

Respondents shall contact the Project Manager, identified on the cover page of this Solicitation, for all inquiries relating to this Solicitation. All Respondents' technical inquiries shall be confirmed in writing either through the mail, via facsimile transmission or electronic mail. The District will not accept any verbal inquiries. Technical questions will not be entertained beyond the cut-off date indicated in the RFB schedule so that answers to substantive questions, in the form of written addenda, can be distributed or posted on the District's website ([www.lwdd.net](http://www.lwdd.net)).

#### **Oral Representations**

No oral representations made by District staff shall be binding. The contents of this RFB and any subsequent addenda issued by the District shall govern all aspects of this Solicitation.

#### **Addenda (Interpretations, Clarifications and/or Corrections)**

No oral interpretations will be made to any Bidder as to the meaning of the Bid Documents. Any written inquiry or request for interpretation received prior to established deadline for inquiries will be given consideration. All such changes and interpretations will be made in writing in the form of an addendum and, if issued, will be posted to the District website at [www.lwdd.net](http://www.lwdd.net) within the "Doing Business with the District" section by the date indicated in the RFB schedule. Submission of a Bid constitutes acknowledgement by the Bidder of the receipt of all addenda. All addenda are a part of the Bid Documents and each Bidder will be bound by such addenda, whether or not received. It is the responsibility of each Bidder to verify that he or she has received all addenda issued before Bids are opened. No authorization is allowed by the Lake Worth Drainage District personnel, except the Project Manager, to interpret, or give information as to Bid requirements in addition to that which is contained in the written Bid Documents and addenda.

#### **Withdrawal of Response**

Respondents shall withdraw their submitted Response by notifying the District in writing through an authorized representative at any time prior to the submission deadline. Individuals making the withdrawal shall provide evidence of serving as an authorized representative of the Respondent. Responses, once received, become the property of the District, and will not be returned to Respondents even when they are withdrawn from consideration. Responses, once opened, shall not be withdrawn or modified except to the extent agreed to by the District during subsequent Contract negotiation.

#### **Postponement/Cancellation**

The Lake Worth Drainage District may, at its sole and absolute discretion, reject any and all, or parts of any and all Bids; re-advertise this Solicitation; postpone or cancel this Solicitation process; or waive any irregularities in this Solicitation or in the Bids received as a result of this Solicitation.

#### **Development Costs**

Neither the District nor its representatives shall be liable for any expense incurred in connection with the preparation, submission or presentation of a Response to this Solicitation. All information in the Response shall be provided at no cost to the District.

#### **Tax Exempt Status**

The District is exempt from Florida Sales and Federal Excise taxes on direct purchase of tangible property. The Project Manager will sign an exemption certificate submitted by the successful Bidder. Bidders doing business with the Lake Worth Drainage District shall not be authorized to use the District's Tax Exemption Number in securing such materials.

#### **Public Records and Exemptions**

Upon receipt, Responses become "public records" and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes. Respondents shall invoke the exemptions to disclosure provided by law, in the Response to the Solicitation, by providing the specific statutory authority for the claimed exemption, identifying

the data or other materials to be protected, and stating the reasons why such exclusion from public disclosure is necessary. Responses will be made available for public inspection at the time the District posts notice of its decision or intended decision concerning Contract awards, or ten (30) days after submission deadline, whichever is earlier.

### **Response Submission and Opening**

All Responses shall be hand-delivered or mailed via U.S. mail or overnight courier to the address and contact listed on the cover page of this RFB. Responses must be submitted in a sealed envelope by the deadline indicated in the RFB schedule. The Response shall identify the Solicitation number and title specified on the cover page of this Solicitation. This reference information shall also be marked on the outside of the sealed envelope, including the Respondent's return address. The District assumes no responsibility for Responses not properly marked. The District cautions Respondents to assure actual delivery of Responses prior to the deadline set for opening Responses. The District will not accept Responses delivered after the established deadline. If the Response is delivered after the established deadline, a Respondent shall be deemed non-responsive to the Solicitation requirements.

All Bids submitted by the deadline will be opened at the time specified in the RFB schedule. The public is welcome to attend the Bid Opening. All Bids received shall remain valid for sixty (60) days upon Bid Opening.

### **Rejection of Responses**

The District reserves the right to reject any and all Responses for reasons including, but not limited to, the following: (1) when such rejection is in the interests of the District; (2) if such Response is deemed non-responsive; (3) if the Respondent is deemed non-responsible; or (4) if the Response contains any material irregularities. Minor irregularities contained in the Response will be waived by the District. A minor irregularity is a variation from the Solicitation that does not affect the price of the Contract nor does it give a Respondent an advantage or benefit not enjoyed by other Respondents and does not adversely impact the District.

### **Assignment**

The successful Respondent will not transfer, assign, convey, sublet or otherwise cede the performance required by this Solicitation or consign any of its rights without the prior written consent of the District through its Board of Supervisors. Any award issued pursuant to this Solicitation and the monies, which may become due hereunder, are not assignable except with the prior written approval of the District through its Board of Supervisors.

### **Formal Notice of Intent to Award**

In compliance with Chapter 120, Florida Statutes, the final Notice of Intent to Award will be posted on the District website and at the District offices at 13081 S. Military Trail, Delray Beach, Florida 33484. The notice will remain posted for a period of 72 hours (excluding weekends and District observed holidays).

If a Respondent intends to protest the District's official notice, the Notice of Intent to Protest shall be filed in writing within 72 hours after the Notice to Intent to Award is posted, and a formal written protest shall be filed within 10 days after filing the Notice of Intent to Protest. Failure to file a protest within the time prescribed in Rule 40E-7.302 Florida Administrative Code and Section 120.54(5), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

### **Contract (Purchase Order) Award**

The Respondent understands that this Solicitation or the Response does not constitute a Contract with the District. No Contract is binding or official until Responses are reviewed and accepted by appointed District staff, approved by the appropriate level of authority within the District, and an official Contract is duly executed by the parties. A sample Contract is attached to this Solicitation. The District requires that the final official Contract will be in full conformance with the sample provided. The District will not consider any changes to Contract terms and conditions.

The Respondent to whom the award is made shall, within ten (10) calendar days after Notice of Award has been given, provide evidence of any required insurance and sign the necessary Contract. Failure to execute the Contract and/or to provide evidence of any required insurance coverage shall be just cause for the annulment of

the award. Award may then be made to the next most responsible and responsive Respondent or the bid may be re-advertised as the District may decide.

The District anticipates awarding a Contract to the responsible entity that submits the lowest responsive Bid. The District anticipates the award of a single Contract, but reserves the right to award multiple Contracts, or not to make any award whatsoever, if determined to be in the interest of the District.

The successful Bidder shall enter into a two-party Contract that shall be acceptable to the District in form and content. If the awarded Contract is terminated, the District reserves the right to go to the next responsive and responsible vendor with the balance of the Contract.

### **Discounts**

The District anticipates entering into a Contract with the Bidder who submits the most responsive and responsible Bid. Bid amounts are determined after reduction for early payment discounts offered by the Bidder. The District encourages the offer of early payment discounts as an enhancement to the Bidder's cash flow and a cost savings to the taxpayer. The District will consider and actively attempt to earn all discounts offered by the Bidder.

### **Non-Discrimination**

The District recognizes fair and open competition as a basic tenet of public procurement. Respondents doing business with the District will comply with all federal and state requirements concerning fair employment and will not discriminate by reason of race, color, creed, national origin, religion, age, sex or handicap.

### **Indemnification**

The Respondent agrees to defend, save and hold the District, its agents, assigns and employees, harmless from all claims or causes of action, including costs and attorney's fees, and all judgments whatsoever, involving personal injury, bodily injury, death, or property damage, arising out of the negligent or intentional act or omission, or the violation of any federal, state or local law or regulations by the contractor, its subcontractors, agents, assigns, invitees or employees in connection with this Solicitation and subsequent Contract.

### **Warranty**

The Respondent warrants that the goods offered for sale to the District are fit for the purposes for which such goods are typically used. If the District has informed the respondent of the particular purpose for which it intends to use the goods, the respondent recognizes that the District will rely upon the respondent's skill and judgment to select suitable goods in response to this solicitation. The respondent further warrants that the title of all items is good, that the goods can be transferred and that there are no liens or encumbrances against the title of any items at the time of bid submittal, unless so specified in the response. The respondent shall specify any express warranties applicable to the items included in the bid.

## **Section III – Bid Specifications**

The Lake Worth Drainage District is seeking bids for the purchase and installation of the following equipment on the District's existing 2004 Volvo EC240-B Excavator:

### **FECON Bull Hog Excavator**

- Type: Severe Duty
- Model: BH80EXC
- Overall Width: 71"
- Working Width: 56"
- Approx Weight: 4,000 lbs
- Common Exc Size (Metric Ton): 20-45 ton
- Unit rated for 40-ton carrier
- 107 cc variable displacement motor (max. flow 50 gpm @ 6000 psi) 4000 lbs. operating weight
- Other required options: Hydraulic Protection Kit, FGT (smooth drum rotor) with choice of Samurai Reversible Chipper tool and mounting bracket, Thumb Receiver

Proposal should include bid form and price, detailed list of specifications and any warranty information for attachment and installation.

Installation and delivery must be completed within 8 weeks from date of bid award.

## **Section IV – Response Requirements and Format**

### **Response Requirements**

#### **Statement of Business Organization**

All Respondents shall complete the attached Statement of Business Organization. This form provides the District with vital information concerning the responding organization.

#### **Bid Form**

Bids shall be submitted on the Bid Form furnished or upon an exact copy thereof, and must be signed by the Bidder's authorized representative.

#### **Detailed List of Specifications and Warranty Information**

In addition to the Bid Form, all responses should include a detailed specification list for the requested truck and crane, as well as any specific warranties.

### **Response Format**

For the Response to be considered complete and timely, Respondents must submit one (1) original bid organized in the following sequence:

1. Statement of Business Organization
2. Signed Bid Form
3. Detailed List of Specifications and Warranty Information

## **Section V – Bid Tabulation and Review**

All Bids must be received at the listed address (District Headquarters at 13081 S. Military Trail, Delray Beach, Florida 33484) no later than 1:00 p.m., Tuesday, July 19, 2016, at which time all Bids will be publicly opened and tabulated. The Bid will be awarded to the lowest responsive and responsible Bidder as determined by the requirements stated herein.

### **Responsiveness Conditions**

At the time of Bid Opening, the District shall determine whether the Bid is responsive and has met the requirements of the Solicitation. These requirements include timely receipt of the Bid and submission of all required documentation.

### **Responsibility Documentation and Review**

Subsequent to the Bid Opening and tabulation, the lowest bids will be reviewed for responsibility based on the requirements herein. The District may consider any evidence available regarding the financial, technical, and other qualifications and abilities of a Respondent, including past performance (experience) with the District or other Government entity in making the award in the best interest of the District.

## **Section VI – Attachments**

### **Attachments**

- Attachment A: Statement of Business Organization
- Attachment B: Bid Form
- Attachment C: Sample Contract (Purchase Order)

**Attachment A**

**STATEMENT OF BUSINESS ORGANIZATION**

**SOLICITATION NO. 16-9928L.01**

Business Organization

1. Business Name: \_\_\_\_\_

2. Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

3. Remittance Address: \_\_\_\_\_

4. State of Incorporation: \_\_\_\_\_

5. Federal Employer I.D. or Social Security No.: \_\_\_\_\_

6. Telephone: \_\_\_\_\_ Fax No.: \_\_\_\_\_

8. Type of Organization: Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Joint Venture \_\_\_\_\_ Individual \_\_\_\_\_

9. Contact Person(s): \_\_\_\_\_ Title: \_\_\_\_\_

10. Project Manager: \_\_\_\_\_ Title: \_\_\_\_\_

If the parties are certified, please indicate the certifying agency or agencies and attach letters/certificates of certification: \_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_



Attachment B

**BID FORM**

**SOLICITATION NO. 16-9928L.01  
FECON BULL HOG MULCHING ATTACHMENT**

<b>Item</b>	<b>Total Cost</b>
Fecon Attachment as Listed per specs	\$
Installation	\$
Add Options <i>(Itemize any added options on separate page)</i>	\$
Freight <i>(if applicable)</i>	\$
<b>Total Cost Proposal*</b>	<b>\$</b>

\_\_\_\_\_  
Printed Name of Authorized Agent

\_\_\_\_\_  
Signature of Authorized Agent

**\*Attached detailed specifications and warranty information.**

## Attachment C

### Sample Contract (Purchase Order)

#### PURCHASE ORDER TERMS AND CONDITIONS

This **PURCHASE ORDER** constitutes a binding contract between the LAKE WORTH DRAINAGE DISTRICT (DISTRICT) and the **VENDOR** as named on the PURCHASE ORDER when accepted by the **VENDOR** either by express acknowledgment or by commencement of work or shipment without reservations.

**INVOICES AND PAYMENTS.** **VENDOR** shall submit a separate invoice for each PURCHASE ORDER or purchase release after delivery. The **VENDOR**'s invoices shall reference the **DISTRICT**'S PURCHASE ORDER number and original invoices (clearly marked "Original") shall be mailed to ACCOUNTS PAYABLE, Lake Worth Drainage District, 13081 S. Military Trail, Delray Beach, Florida 33484. It is the policy of the **DISTRICT** that payment for all goods and services shall be made in a timely manner and that interest payments are made on late payments. In accordance with Florida Statutes, Section 218.70, Florida Prompt Payment Act, a "proper" invoice is defined as an invoice that conforms to all statutory requirements and all **DISTRICT** requirements as specified in the PURCHASE ORDER for invoice submission. The time at which payment shall be due from the **DISTRICT** shall be thirty (30) days from receipt of a proper invoice and acceptance of deliverables, based on compliance with the statutory requirements set forth in Section 218.70, F.S. and upon satisfaction of the **DISTRICT** conditions that are detailed herein. If all conditions are met and payment is not made by the **DISTRICT** in this timeframe, interest shall accrue after thirty (30) days at the rate of 1% per month on the unpaid balance. The **VENDOR** must invoice the **DISTRICT** for any accrued unpaid interest.

**INDEMNIFICATION.** For value received, the **VENDOR** shall indemnify and hold the **DISTRICT**, its officers, directors, board members, agents, assigns, and employees harmless from liabilities, damages, property defects, losses and costs, including, but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the **VENDOR** and other persons employed or utilized by the **VENDOR** in the performance of the PURCHASE ORDER. The **VENDOR** further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this PURCHASE ORDER. This paragraph shall survive the expiration or termination of this PURCHASE ORDER.

**TERMINATION FOR DEFAULT.** If the **VENDOR** materially fails to fulfill its obligations under this PURCHASE ORDER, the **DISTRICT** will provide written notice of the deficiency by forwarding a Cure Notice citing the specific nature of the material breach. The **VENDOR** shall have thirty (30) days to cure the breach. If the **VENDOR** fails to cure the breach within the thirty (30) day period, the **DISTRICT** shall issue a Termination for Default Notice. Once the **DISTRICT** has notified the **VENDOR** that it has materially breached its PURCHASE ORDER with the **DISTRICT**, the **DISTRICT**'S Governing Board shall determine whether the **VENDOR** should be suspended from doing future work with the **DISTRICT**, and if so, for what period of time. Should the **DISTRICT** terminate for default in accordance with this provision, the **DISTRICT** shall be entitled to recover procurement costs in addition to all other remedies under law and/or equity.

**TERMINATION FOR CONVENIENCE.** The **DISTRICT** may terminate this PURCHASE ORDER with or without cause at any time for convenience upon thirty (30) calendar day's prior written notice to the **VENDOR**. In the event of termination for convenience, the **DISTRICT** shall compensate the **VENDOR** for all authorized and accepted deliverables. The **DISTRICT** shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this PURCHASE ORDER. The **DISTRICT** may withhold all payments to the **VENDOR** for such work until such time as the **DISTRICT** determines the exact amount due to the **VENDOR**. In the event a dispute arises which the project managers cannot resolve between themselves, the parties shall have the option to submit to nonbinding mediation.

**RECORDS RETENTION/AUDIT.** The **VENDOR** shall maintain all records, books and documents pertinent to the performance of this PURCHASE ORDER in accordance with generally accepted accounting principles consistently applied. The **DISTRICT** shall have inspection and audit rights to such records for a period of 5 years from final payment

under this PURCHASE ORDER. Records relating to any legal disputes arising from performance under this PURCHASE ORDER shall be made available until final disposition.

**NONDISCRIMINATION.** The VENDOR hereby assures that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age or sex, from participation in, denied the benefits of, or otherwise be subjected to discrimination in any activity hereunder. The VENDOR shall take all measures necessary to effectuate these assurances.

**PUBLIC ENTITY CRIMES/SDN LIST.** The VENDOR, by its execution of this PURCHASE ORDER or by commencement of shipment with reservations, acknowledges and attests that neither it, nor any of its suppliers, subcontractors or consultants who shall perform work which is intended to benefit the DISTRICT is included on the U.S. Department of Treasury's List of Specially Designated Nationals and Blocked Persons, is a State of Florida convicted vendor or is included on State of Florida's discriminatory vendor list; and if the VENDOR or any affiliate of the VENDOR has been convicted of a public entity crime or has been placed on the discriminatory vendor list, a period longer than 36 months has passed since placement on one of either of these lists. The VENDOR further understands and accepts that this PURCHASE ORDER shall be either void or subject to immediate termination by the DISTRICT, in the event there is any misrepresentation or lack of compliance with the laws and regulations of the U.S. Department of Treasury and/or the mandates of Section 287.133 or Section 287.134, respectively, Florida Statutes. The DISTRICT, in the event of such termination, shall not incur any liability to the VENDOR for any work or materials furnished.

**PUBLIC ACCESS.** The VENDOR shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the VENDOR assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the VENDOR.

**DISTRICT'S TAX EXEMPTION.** The VENDOR shall not utilize the DISTRICT'S exemption certificate number issued pursuant to Sales and Use Tax Law, Chapter 212, Florida Statutes, when purchasing materials used to fulfill its contractual obligations with the DISTRICT. The VENDOR shall be responsible and liable for the payment of all applicable

FICA/Social Security and other taxes resulting from this PURCHASE ORDER.

**ASSIGNMENT/GUARANTOR.** The VENDOR shall not assign, delegate or otherwise transfer its rights and obligations as set forth in this PURCHASE ORDER without the prior written consent of the DISTRICT. Any attempted assignment in violation of this provision shall be null and void. The VENDOR shall not pledge the DISTRICT'S credit or make the DISTRICT a guarantor of payment of surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. Pledging the DISTRICT'S credit shall also be construed to include the use of "factoring agents" or the practice of selling business accounts receivables to a third party at a discount for the purpose of obtaining funding which is also expressly prohibited.

**FORCE MAJEURE.** Notwithstanding any provisions of this PURCHASE ORDER to the contrary, the parties shall not be held liable for any failure or delay in the performance of this PURCHASE ORDER that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but this PURCHASE ORDER shall otherwise remain in effect.

**AMENDMENTS.** This PURCHASE ORDER may be amended or rescinded only with the written approval of the parties hereto.

**ORDER OF PRECEDENCE.** Any inconsistency in this PURCHASE ORDER shall be resolved by giving precedence in the following order: (1) PURCHASE ORDER terms and conditions; (2) Specifications; (3) all other documents, including, but not limited to, drawings, descriptions, sample(s).

**ENTIRE AGREEMENT.** This PURCHASE ORDER states the entire understanding and agreement between the parties and no course or prior dealing, usage of the trade or extrinsic or parole evidence shall be relevant to supplement, vary or explain any term used with respect to this PURCHASE ORDER. The Florida Uniform Commercial Code (Chapters 671-679, Florida Statutes) shall control definitions. The acceptance or acquiescence of any course of performance rendered under this PURCHASE ORDER shall not be construed as a waiver nor shall it be relevant to define or vary any term stated herein. This PURCHASE ORDER shall inure to the benefit of and

shall be binding upon the parties, their respective assigns, and successors in interest.

**ADDITIONAL TERMS AND CONDITIONS FOR COMMODITIES:**

**COMPLIANCE.** The VENDOR, its employees, subcontractors or assigns shall comply with all applicable federal, state and local laws and regulations relating to the performance of the PURCHASE ORDER. The DISTRICT undertakes no duty to ensure such compliance but will attempt to advise the VENDOR, upon request, as to any such laws of which it has present knowledge.

**APPLICABLE LAW/VENUE.** The laws of the State of Florida shall govern all aspects of the PURCHASE ORDER, including but not limited to the provisions of the Florida Uniform Commercial Code, Chapters 671-679, Florida Statutes, for any terms and conditions not specifically stated in this PURCHASE ORDER. In the event it is necessary for either party to initiate legal action regarding the PURCHASE ORDER, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justifiable in federal court.

**DISTRICT'S TITLE TO MATERIALS, DOCUMENTS & PACKAGING.** All materials, drawings or other items provided by the DISTRICT to the VENDOR remain the property of the DISTRICT and will be returned to the DISTRICT upon demand. All containers, reels or pallets shipped with goods by the VENDOR are to remain the property of the DISTRICT unless otherwise agreed to in writing.

**SHIPMENT UNDER RESERVATION PROHIBITED.** VENDOR is not authorized to ship the goods with any reservations and no tender of a bill of lading will substitute as a tender of the goods.

**DELIVERY TERMS & TRANSPORTATION CHARGES.** Delivery is "F.O.B. Destination" unless delivery terms are otherwise specified in the PURCHASE ORDER. If the DISTRICT agrees in writing to reimburse the VENDOR for transportation costs, the DISTRICT shall have the right to designate the method of shipment. In either case, the title and all risk of loss of the goods shall remain with the VENDOR until the goods are received and accepted by the DISTRICT. Rejected materials will be returned to the VENDOR at the VENDOR's risk and expense.

**VENDOR TO PACKAGE GOODS.** VENDOR will package goods in accordance with good commercial practice. Each shipping container shall be clearly and

permanently marked as follows: (1) VENDOR's name and address; (2) consignee's name, address and Purchase Order or Purchase Release number; (3) container number and total number of containers, e.g. box 1 of 4 boxes; and (4) the number of the container bearing the packing slip. VENDOR shall bear the cost of packaging unless otherwise specified in the PURCHASE ORDER.

**DISTRICT'S RIGHT TO CANCEL.** The DISTRICT reserves the right to cancel all or part of this PURCHASE ORDER, without obligation, if acceptance is not expressed by the VENDOR either through written notice or by delivery of items ordered, within the specified time(s) and date(s).

**WARRANTY.** The VENDOR warrants that the goods offered for sale to the District are fit for the purposes for which such goods are typically used. The VENDOR further warrants that the title of all items is good, that the goods can be transferred and that there are no liens or encumbrances against the title of any items at the time of delivery. The VENDOR shall warrant all materials and workmanship provided pursuant to this PURCHASE ORDER and as described in bid specifications.

**VENDOR NOT TO LIMIT WARRANTY.** The VENDOR shall not limit or exclude any express or implied warranties and any attempt to do so shall render this PURCHASE ORDER void, at the option of the DISTRICT. The VENDOR warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the offering document or to the sample(s) furnished.

**TERMS/PROVISIONS.** Should any term or provision of this PURCHASE ORDER be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this PURCHASE ORDER, that the PURCHASE ORDER shall remain operable, enforceable and in full force and effect to the extent permitted by law.

**COMPENSATION/CONSIDERATION.** The total consideration for all work required by the DISTRICT pursuant to the PURCHASE ORDER shall not exceed the amount indicated on the PURCHASE ORDER. Such amount includes all expenses the VENDOR may incur and therefore no additional compensation shall be authorized. The VENDOR, by executing the PURCHASE ORDER or by commencement of work without reservations, certifies to truth-in-negotiation,

specifically, that wage rates and other factual unit costs supporting the consideration are accurate, complete and current at the time of contracting. If the total consideration for this PURCHASE ORDER is subject to multi-year funding allocations, funding for each applicable fiscal year of this PURCHASE ORDER will be subject to DISTRICT Governing Board budgetary appropriation. In the event the DISTRICT does not approve funding for any subsequent fiscal year, this PURCHASE ORDER shall terminate upon expenditure of the current funding, notwithstanding other provisions in this PURCHASE ORDER to the contrary. The DISTRICT will notify the VENDOR in writing after the adoption of the final DISTRICT budget for each subsequent fiscal year if funding is not approved for this PURCHASE ORDER.

**INSURANCE.** The VENDOR shall procure and maintain, through the term of this PURCHASE ORDER, insurance coverage reflecting, at a minimum, general liability and automobile liability, and all Florida statutory workers' compensation insurance. The coverage required shall extend to all employees and subcontractors of the VENDOR.

**OWNERSHIP.** The DISTRICT shall retain exclusive title, copyright and other proprietary rights in all work items, including, but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the VENDOR under this PURCHASE ORDER. The VENDOR shall grant to the DISTRICT a perpetual, non-transferable, non-exclusive right to use any proprietary software, if any. Any equipment purchased by the VENDOR with DISTRICT funding shall be returned and title transferred from the VENDOR to the DISTRICT upon expiration or termination of the PURCHASE ORDER.

**COMPLIANCE/LICENSES.** The VENDOR, its employees, subcontractors or assigns, shall obtain, at its own expense, all licenses, permits and other authorizations necessary to comply with all applicable federal, state and local laws and regulations relating to the performance of the PURCHASE ORDER. The DISTRICT undertakes no duty to ensure such compliance but will attempt to advise the VENDOR, upon request, as to any such laws of which it has present knowledge.

**APPLICABLE LAW/VENUE.** The laws of the State of Florida shall govern all aspects of the PURCHASE

ORDER. In the event it is necessary for either party to initiate legal action regarding the PURCHASE ORDER, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justifiable in federal court.

**INDEPENDENT CONTRACTOR.** The VENDOR shall be considered an independent contractor and nothing in this PURCHASE ORDER shall be interpreted to establish any relationship other than that of an independent contractor between the parties and their respective employees, agents, subcontractors or assigns, during or after the term of the PURCHASE ORDER. Both parties are free to enter into contracts with other parties for similar services. The DISTRICT assumes no duty with regard to the supervision of the VENDOR and the VENDOR shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property at the site of performance under the PURCHASE ORDER. In the event the VENDOR is a sole proprietor, the VENDOR is responsible for submitting legally required returns to the Federal Government.

**SEVERABILITY.** Should any term or provision of this PURCHASE ORDER be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this PURCHASE ORDER, to the extent that the PURCHASE ORDER shall remain operable, enforceable and in full force and effect to the extent permitted by law.

**DISPUTES.** In the event a dispute arises which the project managers cannot resolve between themselves, the parties shall have the option to submit to nonbinding mediation. The mediator or mediators shall be impartial, shall be selected by the parties and the cost of the mediation shall be borne equally by the parties. The mediation process shall be confidential to the extent permitted by law.

## Request for Bid - Response Checklist

*This Response Checklist is provided for the convenience of the respondent and shall not be relied upon in lieu of the instructions or requirements of this solicitation. To ensure that your bid package is complete, please review the following items to confirm that they have been addressed and are enclosed. Detailed information on each of the following requirements is provided in Section IV of the RFB. There is no requirement to return this checklist with your bid package.*

- Have you met the bid submission deadline established in the solicitation?
- Have you provided a Statement of Business Organization?
- Have you submitted a completed and signed bid form?
- Have you provided a list of detailed specifications and warranty information?