



BID DOCUMENTS for ITB #21-03 Replacement of City Hall Windows

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CITY OF AVON PARK, FLORIDA
REPLACEMENT OF CITY HALL WINDOWS
CITY OF AVON PARK, FLORIDA
INVITATION TO BID #21-03

Sealed bids will be received by the City Clerk, City Hall, City of Avon Park, 110 East Main Street, Avon Park, FL 33825 until Thursday, March 11, 2021 no later than 4:00 p.m., at which time and place, bids received will be publicly opened in the 1st floor conference room at City Hall and read aloud for the following: Replacement of City Hall Windows. The City of Avon Park will not accept bids from bidders which arrive after 4:00 P.M. A MANDATORY Pre-Bid meeting will be held at the project site at 110 East Main Street, Avon Park, Florida 33825 on Friday, February 19, 2021 at 1:30 PM.

BID DOCUMENTS Bid Documents may be requested by visiting the City of Avon Park website at: <http://www.avonpark.cc/services/bids.php> or by contacting Rick Whalen, P.E. (contact information above). Bid Documents are required for bid submittal.

ADDENDA It is the Bidders responsibility to check the Website at <http://www.avonpark.cc/services/bids.php> or by contacting Rick Whalen, P.E. (contact information above) prior to submitting a bid to ascertain if any addenda have been issued, to obtain all such addenda and acknowledge the addenda with the submitted bid. All questions shall be directed to Rick Whalen, P.E. in writing and will be accepted for addenda until , Thursday, March 4, 2021 at 2:00 PM in order to provide sufficient time for City to respond appropriately to addenda. The failure of a Bidder to submit acknowledgement of any addenda that affects the bid price(s) may be considered an irregularity and may be cause for rejection of the bid.

INSURANCE & SAFETY REQUIREMENTS The insurance requirements shall be found in these Bid Documents

BONDS A (5%) five percent bid bond or security will be required as well as a (100%) one hundred percent payment and performance bond(s).

CITY OF AVON PARK, FLORIDA
INVITATION TO BID #21-03
TERMS AND CONDITIONS

1. SUBJECT TO THESE TERMS

All bids provided to the City of Avon Park (hereinafter “City”) are subject to the terms and conditions specified herein. Bids which do not comply with these conditions are subject to rejection. These Terms and Conditions are subject to the order of precedents in section 2 of this document.

2. ORDER OF PRECEDENTS

2.1 If a conflict arises between these Terms and Conditions, the following Order of Precedents will apply:

- 2.1.1 Laws of Florida as applied to municipal purchasing including without limitation, Florida Statutes Title XIX, Public Business”, sections 255.0518 Public bids; bid opening; and 255.20 Local bids and contracts for public construction works; specification of state-produced lumber.
- 2.1.2 City Purchasing Manual adopted by section 2-330 Code of Ordinances of the City of Avon Park, hereinafter “Purchasing Manual”, and other applicable ordinances and resolutions
- 2.1.3 Special Conditions, Supplemental Instructions, and Addendums
- 2.1.4 Written and fully executed Formal Contract between City and Contractor
- 2.1.5 Detailed Scope of and Specifications for Work on Project (Exhibit in Formal Agreement)
- 2.1.6 These Terms and Conditions

3. CONTRACT FORMS

Any agreement, contract or purchase order resulting from the acceptance of a bid shall be in a form as approved by the City. All formal contracts shall be approved by the City Attorney.

4. BID DELIVERY AND SUBMISSION REQUIREMENTS

- 4.1 Bid documents shall be submitted in triplicate (one original and 2 photocopies) on the bid forms provided by the City. All blank spaces in the bid forms shall be filled in legibly and correctly in ink. The bidder shall specify the price per unit of measure and the extended total, or the lump sum bid price if such is called for, for each scheduled item of work as well as the total price for the entire work under the contract. If an individual or company makes the bid, they shall sign their name therein and state their name and address as principal. If a corporation makes the bid, an authorized officer or agent shall sign it, subscribing the name and address of the corporation along with their own name and affixing the corporate seal. The company name and F.E.I.N. number shall appear on the bid form.
- 4.2 Any bids received after the stated time and date will not be considered. It shall be the sole responsibility of the bidder to have their bids delivered to the City Manager prior to the stated time and date. If a bid is sent by U.S. Mail or delivery service, the bidder shall be responsible for its timely delivery to the City's City Manager. Bids delayed by mail or delivery service shall not be considered, shall not be opened at the public opening, and arrangements shall be made for their (unopened) return at the bidder's request and expense.
- 4.3 Confidential Bid Information- If information is submitted with the bid documents that are deemed "Confidential" then the bidder must stamp those pages of the bid that are considered confidential. Bidder must provide documentation as to why these documents should be declared confidential in accordance with Chapter 119, "Public Records", exemptions. In the event of a public records request for said “Confidential” documents, it shall be the sole responsibility for the bidder to immediately file

appropriate court pleadings at its own expense to prevent the City from disclosing the documents, thereby relieving the City from that legal obligation. Bidder shall indemnify and hold harmless the City, its officers, agents and employees from any damages, sanctions, expenses and attorney fees and expenses, through appeals, because the City holding such "confidential" documents while bidder seeks legal remedies.

4.4 Bid Opening

- 4.4.1 Bid opening shall be public on the date and at the time specified on the published Invitation to Bid. It is the bidder's responsibility to assure that their bid is delivered at the proper time and place for the bid opening. Bids, which for any reason are not so delivered, will not be considered. Offers by fax or telephone are not acceptable. A bid may not be altered after the opening of the bids.
 - 4.4.2 All bid documents shall be submitted in writing, signed by the bidder's duly authorized officer and shall be mailed or delivered to the office of the City Manager prior to the time scheduled for the opening of bids.
 - 4.4.3 Bid documents shall be sealed in an envelope and shall be clearly marked with the words "Bid Documents" and show the project name and number, name and address of the bidder, and date and time of the scheduled bid opening.
 - 4.4.4 The City Manager, or designee, in the presence of a witness designated by the City Manager shall publicly open all bid documents at the time and place specified in the invitation to bid and publicly advertised.
- 4.5 A bidder may withdraw a bid any time prior to the opening of the bid. After bids are opened, but prior to award of the contract by the City Council, the City Council may allow the withdrawal of a bid because of the mistake of the bidder in the preparation of the bid document. In such circumstance, the decision of the City Council to allow the bid withdrawal, although discretionary, shall be based upon a finding that the bidder, by clear and convincing evidence, has met each of the following four tests:
- 4.5.1 The bidder acted in good faith in submitting the bid;
 - 4.5.2 The mistake in bid preparation that was of such magnitude that to enforce compliance by the bidder would cause a severe hardship on the bidder;
 - 4.5.3 The mistake was not the result of gross negligence or willful inattention by the bidder; and
 - 4.5.4 The mistake was discovered and was communicated to the City prior to the City Council having formally awarded the contract.
- 4.6 Any contractor/vendor or subcontractor that will have access to City facilities or property may be required to be screened to a level that may include but is not limited to; fingerprints, statewide criminal and juvenile records check. There may be fees associated with these procedures. These costs are the responsibility of the contractor/vendor or subcontractor.
- 4.7 Bidders may be declared "non-responsive" due to omissions in any required forms, including without limitation, Form #6, "Negligence or Breach of Contract Disclosure Form". Additionally, bidders may be declared "not responsible" due to past or pending lawsuits that are relevant to the subject procurement such that they call into question the ability of the bidder to assure good faith performance. This determination may be made by the City Manager after consultation with the City Attorney.

5. CLARIFICATION & ADDENDA

- 5.1 For information or questions concerning this bid, contact the City Staff Bid Representative stated on the cover page of this Bid Package, unless otherwise noted in the specifications. After the issuance of the ITB, prospective bidders or any agent, representative or person acting at the request of such bidder or proposer shall not have any contact, communicate with or discuss any matter relating in any way to the bid with any Councilperson, agent or employee of the City other than the Staff Bid Representative, City Manager or their designee. This prohibition begins with the issuance of any ITB and ends upon execution of the final contract or when the

invitation or request has been canceled. If it is determined that improper communications were conducted, the Contractor or Vendor may be declared not responsible.

- 5.2 Detailed specifications describe the commodities, services or construction services to be acquired by the City. To be considered for award a bid must comply in all material respects with the specifications. No alternate bids or deviations from the specifications will be accepted unless requested in the specifications or bid form and as approved through written addendum.
- 5.3 Each bidder shall examine all ITB documents and shall judge all matters relating to the adequacy and accuracy of such documents. Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the ITB shall be made in writing, submitted and received at least eight (8) calendar days prior to the date when bids are due to the City Manager.
- 5.4 The CITY shall not be responsible for oral interpretations given by any City employee, representative, or others. Except at the pre-bid conference, every request for interpretation of the meaning of the plans, specifications or any contract documents, or for correction of any apparent ambiguity, inconsistency or error therein, shall be in writing, addressed to the City Manager. The issuance of a written addendum by the City Manager is the only official method whereby interpretation, clarification or additional information can be given. If any addenda are issued to this ITB, the City will attempt to notify all prospective bidders who have secured same; however, it shall be the responsibility of each bidder, prior to submitting their bid, to determine if addenda were issued and to make such addenda a part of their bid. Acknowledgement to addenda receipt will be noted by each bidder in the space provide on Form #1.
 - 5.4.1. Should the bidder find discrepancies in or omissions from the drawings and specifications, scope of work, or other documents attached hereto or should they be in doubt as to the meaning, they should at once contact the City Manager and obtain clarification prior to submitting a bid.

5.5 Governmental Restrictions

- 5.5.1 In the event any governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship or performance of the items offered on this bid prior to their delivery, it shall be the responsibility of the supplier to notify the City Manager at once, indicating in their letter or email the specific regulation which required an alteration. The City reserves the right to accept any such alteration, including any price adjustments occasioned thereby, or to cancel the contract at no further expense to the City.

6. **BID EXPENSES**

Bidders shall bear all costs and expenses incurred in developing, preparing, and submitting bids.

7. **IRREVOCABLE OFFER**

Any bid may be withdrawn until the date and time set for opening of the bid. All withdrawals must be requested in writing via email, letter, or FAX. Any bid not so withdrawn shall, upon opening, constitute an irrevocable offer for a period of one-hundred and twenty (120) days to sell to the City the goods or services set forth in these attached Bid Documents.

8. **RESERVED RIGHTS**

- 8.1 The City reserves the right to accept or reject any or all bids, in whole or in part, for any reason whatsoever, to waive minor irregularities and technicalities, and to request resubmission. Also, the City reserves the right to accept all or any part of the bid and to increase or decrease quantities to meet additional or reduced requirements of the City. Any sole response received by the submission date may or may not be rejected by the City depending on available competition and current needs of the City.
- 8.2 To be **responsive**, a bidder shall submit a bid which conforms in *all material respects* to the requirements set forth in the ITB. To be a **responsible** bidder, the bidder shall have the *capability* in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance. Also, the City reserves the right to make such investigation as it deems necessary to determine the ability of any bidder to deliver the goods or service

requested. Information the City deems necessary to make this determination shall be provided by the bidder. Such information may include but shall not be limited to:

- 8.2.1 current financial statements;
- 8.2.2 verification of availability of equipment and personnel; and,
- 8.2.3 past performance records.

- 8.3 Bidders are required to bid their prices on the bid forms supplied by the City in the Bid Documents. Bids, at the sole discretion of the City, may be deemed non-responsive if these bid forms are not used and duly signed by an authorized representative of the bidder.
- 8.4 Unless otherwise stated in this bid specification, any contracts resulting from this bid are nonexclusive. The City reserves the right, in its sole opinion, to purchase items listed in this bid through the State of Florida Contracts, cooperatives, other current government contracts, and nonprofit contracts as provided in the Purchasing Manual. The CITY reserves the rights to solicit separate bids for requirements that are a portion of a larger contract bid as a whole. Additionally, at the City's sole option, additional contracts may be entered into as a result of such situations as complex business relationships, unusual volumes, time/delivery requirements, special requirements, other brands, lease, project specific requirements, or similar situations.
- 8.5 After award of this bid, the City reserves the right to add or delete items/services at prices to be negotiated at the time of addition or deletion. At contract renewal time(s) or in the event of significant industry wide market changes, the City may negotiate justified adjustments such as price, terms, etc., to this contract when the City, in its sole judgment, considers such adjustments to be in the best interest of the City.
- 8.6 If the contract awarded as a result of this bid is terminated, the City reserves the right to go to the next lowest **responsive** bidder with the balance of the contract, unless otherwise stated in the bid specification.
- 8.7 The City reserves the right to refuse to award to any bidder based upon prior contractual relationships between that bidder, or a substantially related person or entity, and the City. This shall include, but is not limited to, situations in which the bidder or, a substantially related person or entity, has had its contractual relationship with the City terminated or issued a notice of default within three (3) years of the date of the issuance of this ITB.

9. APPLICABLE LAWS

9.1 Bidders must be authorized to transact business in the State of Florida. Copy of Registration Certificate and information should be submitted with bid. Bidders shall comply with all applicable provisions of all federal, state, county and local laws and of all ordinances, rules and regulations (hereinafter "Laws") and such Laws shall govern development submittal and evaluation of all bids received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a bid response hereto and the City, by and through its officers, employees and authorized representatives, or any other person, natural or otherwise and lack of knowledge by any bidder shall not constitute a cognizable defense against the legal effect thereof. This includes and revisions or as amended thereof. Any involvement with the City shall be in accordance with but not limited to:

9.1.1 City Ordinances, Resolutions and Regulations.

9.1.1.1 City Purchasing Manual.

9.1.2 Florida State Statutes

9.1.2.1 Florida State Statute 287.055: Consultants Competitive Negotiation Act (CCNA), when applicable.

9.1.2.2 Pursuant to Florida Statutes Section 119.071, Public Records, General exemptions from inspection or copying of public records, sealed bids or proposals received by the City. **Sealed bids or proposals submitted pursuant to this competitive solicitation for same are exempt from s. 119.07(1) and s. 24(a), Art. I, of the Florida Constitution, until such time as the agency provides notice of a decision or intended decision pursuant to s. 119.071(2) or within 30 days after bid or proposal opening, whichever is earlier.**

9.1.2.3 It shall be the responsibility of the bidder to assure compliance with all other federal, state, county, or City codes, rules, regulations or other requirements, as each may apply.

10. TAXES

The City does not pay Federal Excise and State Taxes on direct purchases of tangible personal property. The exemption number will be provided on the "contractor/vendors" copy of the purchase order. This exemption does not apply to tangible personal property purchased by contractor/vendors for their use in the performance of this contract. Nothing herein shall affect the bidder's normal tax liability. The City reserves the right, at the City's sole unfettered option, to issue Direct Purchase Orders for applicable supplies and equipment to be utilized in this project.

11. MATHEMATICAL ERRORS

In the event of multiplication/addition error(s) the unit price shall prevail. Written prices shall prevail over figures where applicable. All bids shall be reviewed mathematically and corrected, if necessary, using these standards, prior to additional evaluation.

12. QUALITY GUARANTEE/WARRANTY

- 12.1 Unless otherwise specifically provided in the specifications, all equipment, materials and articles incorporated in the work covered by this contract shall be new, unused, and of the most suitable grade for the purpose intended. Refurbished parts or equipment are not acceptable unless otherwise specified in the specifications and clearly identified as such in the bid. All warranties will begin from the date of final completion.
- 12.2 Unless otherwise specifically provided in the specifications, reference to any equipment, material, article or patented process by trade name, brand name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. If a bidder wishes to make a substitution in the specifications, the bidder shall furnish to the City, no later than ten (10) business days prior to the bid opening date, the name of the manufacturer, the model number, and other identifying data and information necessary to aid the City in evaluating the substitution. Such information is submitted through the City Manager. Any such substitution shall be subject to City approval through the issuance of a written addendum by the City Manager. Substitutions shall be approved only if determined by the City to be an **Approved Alternate** to the prescribed specifications.
- 12.3 A bid containing a substitution is subject to disqualification if the substitution is not *pre-approved* by the City. Items bid must be identified by brand name number, manufacturer and model, and shall include full descriptive information, brochures, and appropriate attachments. Brand names are used for descriptive purposes only. An **Approved Alternate** product or service may be used as provided above.
- 12.4 The equipment must be warranted for no less than twelve (12) months, parts and labor. Should the equipment be taken out of service for more than forty-eight (48) hours to have warranty work performed, a loaner machine of equal capability or better shall be provided for use until the repaired equipment is returned to service.
- 12.5 If any product does not meet performance representations or other quality assurance representations as published by manufacturers, producers or distributors of such products or the specifications listed in this bid, the vendor shall pick up the product from the City at no expense to the City. The City reserves the right to reject any or all materials if, in its judgment, the item reflects unsatisfactory workmanship or manufacturing or shipping damage. Also, the vendor shall refund to City any money which has been paid for same.

13. PUBLIC ENTITY CRIMES

In accordance with Chapter 287, Florida Statutes, Procurement of Personal Property and Services, Section 287.133, Public entity crime; denial or revocation of the right to transact business with public entities. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid or contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to a public entity, may be awarded or perform work as a contractor/vendor, supplier,

subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

14. DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

14.1 In accordance with Florida State Civil Rights Act of 1992.

14.2 An entity or affiliate which has been placed on the **State of Florida's Discriminatory Vendor List (This list may be viewed by going to the Department of Management Services website at <http://www.dms.myflorida.com>)** may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor/vendor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

14.3 The general purposes of the Florida Civil Rights Act of 1992 are to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.

14.4 It is the policy of the City to assure that applicants are employed, and that employees are treated during employment, without regard to their age, race, religion, color, national origin, sex, or disability. Such action must include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation" and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.

15. ROYALTIES AND PATENTS

15.1 The bidder, without exception, shall indemnify and save harmless the City and its officers, agents and employees from liability of any nature or kind, including costs and expenses for or on account of any copyrighted patented, or unpatented invention process, or article manufactured by the bidder. The bidder has no liability when such claim is solely and exclusively due to the combination, operation or use of any article supplied hereunder with equipment or data not supplied by the contractor/vendor is based solely and exclusively upon the City alteration of the article. The bidder or City will provide prompt written notification of a claim of copyright or patent infringement.

15.2 Further, if such a claim is made or is pending, the contractor/vendor may at its option and expense procure for the City the right to continue use or replace or modify the article to render it non-infringing. If none of the alternatives are reasonably available, the City agrees to return the article on request to the contractor/vendor and receive reimbursement if any as may be determined by a court of competent jurisdiction. If the bidder uses any design, device or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or cost arising from the use of such design, device or materials in any way involved in the work.

16. DELIVERY

Unless otherwise specified in writing by the City Manager, all prices are to be **FOB-Destination.**

17. PRE-BID CONFERENCE

17.1 Failure to attend a mandatory or non-mandatory pre-bid conference will relieve the City for any responsibility to notify a bidder of an additional requirements unless those questions or requirements are identified by the bidder in writing. This project has a **MANDATORY** pre-bid conference.

17.2 Failure to attend a mandatory pre-bid conference will result in the bid being considered **nonresponsive.**

18. FUNDING

- 18.1 This bid is subject to the appropriation of funds in an amount sufficient to allow continuation of the City's performance in accordance with the terms and conditions of this bid. The City shall provide prompt written notice to the vendor that sufficient funds have not been appropriated to continue its full and faithful performance under the terms of this bid, and shall, effective thirty (30) days after giving such notice or upon the expiration of the time for which funds were appropriated, whichever occurs first, be thereafter released of all further obligations in any way related to the bid.
- 18.2 The City ***will not reveal engineering estimates or budget amounts for a project*** unless required by grant funding or unless it is in the best interest of the CITY. According to section 337.168 Florida Statutes, “[a] document or electronic file revealing the official cost estimate of the department of a project is confidential and exempt from the provisions of s. 119.07(1) until the contract for the project has been executed or until the project is no longer under active consideration.”

19. SUBCONTRACTING

- 19.1 Contractor/vendors shall obtain prior written approval of subcontractors and the work they will perform as stated in the scope of work. A subcontractor is defined as any entity performing work within the scope of the project who is not an employee of the Contractor/vendor.
- 19.2 Contractor/vendor shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor/vendor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. All Work performed for Contractor/vendor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor/vendor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of City and Engineer. Contractor/vendor shall be fully responsible to City and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor/vendor is responsible for Contractor's/vendor's own acts and omissions.

20. PUBLIC RECORDS

- 20.1 Bidder acknowledges that all information contained within its bid is a public record, as defined in Chapter 119 "Public Records" of the Florida Statutes. No information should be labeled confidential unless exempted under said laws, and such exemption defended *solely by* the bidder solely at the bidder's expense, in a manner provided by Florida law.
- 20.2 Bidder acknowledges that if Bidder meets the definition of “contractor” found in Section 119.0701(1)(a), F.S. as detailed hereinafter in these Bid Documents, it may be required to comply with Chapter 119 FS as does the City.

21. INVOICING

All invoices must contain the Purchase Order number, required identification information, and reflect the Contract prices, terms, and conditions. Invoices containing deviations or omissions will be returned to the vendor for correction and resubmission. Vendors shall not perform any service or provide products until they have been issued an approved Purchase Order.

22. TIME EXTENSION

- 22.1 **Time Extension.** The City may extend this Contract up to one hundred eighty (180) days beyond the expiration date of the existing contract. The price in effect on the last day of the contract shall remain in effect for the contract extension period. Additional extensions shall be subject to agreement of both parties.
- 22.2 **Continuation of Work.** Any work that commences prior to and will extend beyond the expiration date of the current contract period shall, unless terminated by mutual written agreement between the City and the successful bidder, continue until completion at the same prices, terms and conditions. This must be approved in advance by the City Manager or designated representative.

23. RIGHT TO AUDIT

The contractor/vendor shall maintain such financial records and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations. The contractor/vendor shall retain these records for a period of five years after final payment, or until they are audited by the City, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent five-year period for examination, transcription, and audit by the City, its designees or other authorized bodies.

24. E-VERIFY

24.1 The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system (<https://www.e-verify.gov/>) to verify the employment eligibility of all new employees the Contractor hired during the term of this Agreement. The Contractor shall include in all subcontracts under this Agreement, the requirement that subcontractors performing work or providing services pursuant to this Agreement utilize the E-Verify system to verify the employment eligibility of all new employees subcontractor hired during the term of the subcontract.

24.2 The Contractor agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this solicitation. The City shall consider the employment or utilization of unauthorized aliens a violation of Section 274 A (e) of the Immigration and Naturalization Act (8U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the City. As part of the response to this solicitation (bid), the successful contractor will complete and submit the attached Form #9 "E-Verify Affidavit".

24.3 Employers may avail themselves of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet based system operated by the U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automatic link to Federal databases to help employers verify employment eligibility of new hires, existing employees and the validity of their Social Security numbers. If your company wishes to avail itself of this program, you can register online for E-Verify at <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES> which provides instructions for completing the registration process. At the end of the registration process you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you as employer, the SSA and the DHS. An employee who has signatory authority for the employer can sign the MOU. Employers can use their discretion in identifying the best methods by which to sign up their locations for E-Verify. To find out more about E-Verify, please visit www.dhs.gov/e-verify or contact the USCIS at 1-888-464-4218

25. PROTEST PROCEDURES

Protest procedures will be conducted in accordance with procedures provided in City Code, or otherwise providing at a minimum, due process of law appropriate in the circumstances.

26. CHANGE ORDERS

26.1 The City may, by field directive of the Staff Bid Representative, authorize minor variations from the requirements of the contract documents which do not involve an adjustment in the contract price or the contract time and are consistent with the overall intent of the contract documents. Supplemental agreements, in the form of "change orders" shall be used to clarify the plans and specifications, to provide for unforeseen work or alterations in plans, to change the limits of construction to meet field conditions, to provide a safe and functional connection to an existing facility, adjust the contract price or the contract time requirements. The City will not pay more than a total of 10% on markup and overhead. Any supplemental agreement shall be approved by the City Manager (if amount is within spending authority below), contractor and the architect/engineer, if applicable, prior to the commencement of the modified work. The City Manager may only approve an adjustment to the contract price that does not exceed \$10,000.00.

26.2 The City reserves the right to make, at any time prior to or during the progress of the work, increases or decreases in the quantities of work as may be found necessary or desirable by the City. Compensation for changes in quantities shall be at the bid unit price for the specific item of work with no additional charges allowed for the change in quantity. All unit prices for items of work in the original contract shall be considered

all-inclusive of expenses necessary to accomplish the work regardless of the unit of measure (e.g. LS, LF, CY, SY, TN, etc.) including but not limited to:

- 26.2.1 Material
- 26.2.2 Delivery
- 26.2.3 Direct Labor
- 26.2.4 Taxes
- 26.2.5 Rental rates
- 26.2.6 Fringe Benefits
- 26.2.7 Overhead
- 26.2.8 Profit
- 26.2.9 Markup

26.3 A change in quantities whether greater than or lower than the original bid quantity shall be treated as if the new quantity was part of the original quantity of work with respect to unit value. Upon approval of changed quantities the quantities shall be adjusted on the schedule of values to reflect the new total quantity of each item of work. Each proposal for change order shall list both the reduction in quantity of deleted work and increased quantity of added work. The City will not pay more than a total of 10% on markup and overhead when establishing a negotiated fee for items not listed by unit price.

26.4 Surety and other bonds, when required, are premiums applied to the total contract amount. Adjustments and allowances for increased bond costs will only be considered on the net increase to the total contract amount after consideration of both quantity reductions, quantity increase and other work price adjustments.

26.5 Changes in contract time will only be considered for documented weather impacts, additional work directed by the City, reductions in work directed by the City, stoppage of work when directed by the City or other causes of delay not attributable to the contractor. Delays by others, such as utility companies, may not necessarily be compensated by the City and the contractor may need to seek compensation from the third party for the delay.

27. SPECIFICATIONS FOR WORK

Two separate cost estimates are required, one for standard picture windows and one for hurricane impact windows:

27.1 Standard Windows. Provide all necessary product, equipment, supplies and labor onsite to remove, dispose of, and replace twenty-two (22) existing windows with standard picture windows:

- 27.1.1 Site preparation to protect building facades and interior, and site cleanup and debris removal;
- 27.1.2 Aluminum-framed and double-hung;
- 27.1.3 SolarZone Elite or approved equivalent, low-E, insulated Argon-filled windows;
- 27.1.4 Match Colonial grids to existing windows;
- 27.1.5 Caulk and seal interior and exterior as necessary to obtain a water-tight seal;
- 27.1.6 Install aluminum flashing trim around exterior as necessary to obtain a water-tight seal;
- 27.1.7 Install white composite trim around each window on the exterior, and caulk new trim to ensure water-tight seal;
- 27.1.8 Paint to match
- 27.1.9 Permitting and inspection costs must be included in the bid.
- 27.1.10 Provide product warranty and labor warranty.
- 27.1.11 Provide amount of time in days needed from Notice to Proceed to completion.

27.2 Hurricane Impact Windows. Provide all necessary product, equipment, supplies and labor onsite to remove, dispose of, and replace twenty-two (22) existing windows with hurricane impact windows:

27.2.1 Specifications for standard windows above, except/plus;

27.2.2 PGT 7700A single-hung aluminum, insulated & laminated windows or approved equivalent.

28. INSURANCE

28.1 The contractor/vendor, prior to the signing an Agreement and before starting any work on the Agreement, shall procure and maintain, during the life of the Agreement, the insurance coverage listed below. The policies of insurance shall be primary and written on forms acceptable to the City. The policies shall be placed with an insurance carrier approved and licensed by the Insurance Department of the State of Florida and that meets a minimum financial **A. M. Best & Company** or approved alternate rating of no less than "**A**", **Excellent**. The City will accept a minimum rating for Worker's Compensation Insurance of "**B+**", **Good**". The NAIC number for all Insurers will be noted to the right of the insurer's name in the section provided on the certificate of insurance. The City will not accept any indication or evidence of self-insurance made by the contractor/vendor, as it applies to any of the required insurance coverage. The City reserves the right to waive, downgrade or upgrade, or suspend requirements as determined to be in the best interest of the City. Any and all fully-executed contracts will require that the contractor/vendor be fully insured per the terms and conditions as follows herein:

28.2 Mandatory Insurance Requirements:

28.2.1 Worker's Compensation

Worker's Compensation Insurance on behalf of all employees who are to provide a service for this Agreement, as required by Florida Statutes Chapter 440 and Employers Liability with limits of not less than \$100,000 per employee accident; \$500,000 disease aggregate; and \$100,000 employee per disease.

28.2.2 Commercial General Liability

Including but not limited to bodily injury, property damage, and personal injury, with limits of not less than One Million Dollars combined single unit per occurrence, Two Million Dollars per location aggregate plus property damage insurance in the minimum amount of Five Hundred Thousand Dollars covering all work performed.

28.3 Additional Insured

The City, its elected and appointed officials, employees and agents shall be listed by endorsement as additional insured, except for worker's compensation and professional liability. Further, other designated persons or entities may be required to be listed as additional insured.

28.4 Certification of Insurance

Contractor/vendor, prior to providing any services pursuant to this Agreement, shall furnish to the City proof of insurance, including, but not limited to a Certificate of Insurance referencing the City its elected and appointed officials, employees and agents as "**additional insured**", except for worker's compensation and professional liability, and the effectiveness of all required insurance for contractor/vendor, and each of its subcontractors. The certificates of insurance shall state that the City will be notified in writing at least thirty (30) days prior to cancellation, non-renewal or any other modification of any policies required of Contractor/vendor. No work shall commence under this Agreement until the City's authorized representative has given written approval of the insurance certificates. Additionally, Contractor/vendor has an affirmative obligation throughout the entire term of this Agreement to provide the City Manager evidence of the continuation of all policies required of Contractor/vendor by this Agreement. As such, as each policy of insurance is renewed, proof thereof must be provided in writing to the City Manager, City of Avon Park, 110 E. Main Street, Avon Park, FL 33825. **All insurance documents must show the Bid Number, prohibit subrogation against City's insurance, and indicate that the bidder's insurance is the prime insurance.** Contractor/vendor shall obtain all policies on an occurrence form basis.

28.4.1 Additional insurance requirements may be noted in the scope of work or specifications. These insurance requirements will be in addition to those stated in these Terms and Conditions and not a replacement.

29. INTERPRETATION OF ESTIMATED QUANTITIES

The estimated quantities of work to be done and materials to be furnished under this contract, given in the bid forms, are to be considered as approximate only and are to be used solely for the comparison of bids received. The City does not expressly or by implication represent that the actual quantities involved will correspond exactly therewith; nor shall the bidder plead misunderstanding or deception because of such estimate of quantities or of the character, location or other conditions pertaining to the work. Payment to the contractor/vendor will be made only for the actual quantities of work performed or materials furnished in accordance with the contract documents, and it is mutually understood that the quantities may be increased or diminished as provided in the specification without in any way invalidating any of the unit or lump sum price bid.

30. CONTRACT ADMINISTRATION AND SITE REVIEW

30.1 The bidder shall carefully examine the site of the work and the contract documents for the work contemplated, and it will be assumed that the bidder has investigated and is fully informed of the conditions and obstructions to be encountered, of the character, quality and quantities of work to be performed and materials to be furnished and of the requirements of the contract documents. The bidder shall inform themselves fully of the conditions under which the work is to be performed in relation to construction, services, commodities and labor conditions. Failure to do so will not relieve a successful bidder of their obligations to furnish all materials, equipment and labor necessary to carry out the provisions of the contract documents and to complete the contemplated work or deliver the requested product or service for the consideration set forth in their bid. Contracts may have more than one department or entity participating. Each participant will issue its individual purchase order contracts and will be billed separately.

30.2 Ownership of Documents

It is understood and agreed that all documents, including detail reports, plans, original tracings, specifications and all data prepared or obtained by the successful proposer in connection with its services hereunder, including all documents bearing the professional seal of the successful proposer, there under shall be delivered to and become the property of the City, prior to final payment to the successful proposer at the termination of the agreement.

30.3 Notice to Proceed (NTP) and Pre-Construction/Kickoff Meetings

30.3.1 Single Project

All single (one time bid or RFP) projects will have a notice to proceed (NTP) issued by the City Manager before a purchase order can be issued. The notice to proceed (NTP) letter will be dated the same date as the pre-construction or kickoff meeting. The date of the NTP Letter and the Date in which work is to start can be no more than 30, unless otherwise approved by the City Manager, or designee.

30.3.2 Continuing Services

A continuing service contract with a task order \$50,000.00 or less will use the purchase order as the notice to proceed. The date of the purchase order will be the project start date. The number of days to complete the project or the project final completion date must be annotated on the purchase order. For a task order over \$50,000.00 a formal notice to proceed (NTP) must be issued by the City Manager in accordance with paragraph 32.3. 1.

30.4 Work Progress and Delays

The City Manager shall be entitled at all times to be advised in writing, at his request, as to the status of work being done by the successful proposer and the details thereof. In the event the successful proposer cannot satisfy the deadline specified in the project schedule, then it shall notify the City Manager in writing at least seven (7) days prior to such deadline of the reason for the delay. In the event that the cause of the delay is due to delay by City or regulatory agencies as to the approval of any plans or permits submitted by the successful

proposer, when such delay will result in an overall delay of the project completion date, the City Manager shall grant to the successful proposer, in writing, an extension of the agreement time equal to the as aforementioned delays. The City Manager shall be solely responsible for determining whether any extension of time should be awarded to the successful proposer.

31. TERMINATION OF CONTRACT

The City reserves the right to terminate any contract, at any time, with or without cause.

31.1 Termination for Default

Contractor/vendor acknowledges that the conditions, covenants and requirements on its part to be kept, as set forth in the contract, are material inducements to City entering into an agreement. Should Contractor/vendor fail to perform any of the conditions, covenants and requirements of its part to be kept, the City Manager shall give written notice thereof to contractor/vendor specifying those acts to things which must occur in order to cure said default. Provided, however, if Contractor/vendor makes a good faith effort by taking steps to substantially cure the default, the City Manager may grant Contractor/vendor additional time to cure such default as he deems warranted in his sole discretion. Should the default remain, upon expiration of the time granted to cure the same, the City Manager may terminate the agreement, by written notice of termination, said notice specifying the time and date of termination.

31.2 Termination for Convenience

The performance of work under the contract may be terminated by the City Manager in whole or in part whenever the City Manager determines that termination is in the City's best interest. Any such termination shall be effected by the delivery to the contractor/vendor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under the contract is terminated and the date upon which such termination becomes effective. After receipt of a notice of termination, except as otherwise directed, the contractor/vendor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for material, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.

31.3 Payment and Ownership of Documents upon Termination

In the event of termination of the agreement, the vendor shall cease work and shall deliver to the City all documents including reports and all other data, materials prepared or obtained, by the vendor in connection with the project, including all documents bearing the professional certification. The vendor shall reimburse the City for any stored items that the City has previously purchased. City shall upon delivery of the aforesaid documents, pay the contractor/vendor as full payment for its services hereunder, a sum of money equal to the percentage of the work done by contractor/vendor and accepted as satisfactory by the City.

31.4 No Waiver

Failure of the City to take any action with respect to any breach of any term, covenant or condition contained in the Agreement or these Bid Documents, or any instance of default hereunder by the successful proposer, should not be deemed to be a waiver of any default or breach by the City.

32. BONDS (IF REQUIRED) CONSTRUCTION ONLY (NOT APPLICABLE TO THIS PROJECT)

33. INDEMNIFICATION

33.1 Non-Design Professional

The City shall not be liable for any loss, injury, death or damage to persons or property, which at any time may be suffered or sustained by any person whatsoever arising from the negligent performance by contractor and its employees and agents of its obligations under the provisions of this agreement. The contractor shall indemnify and hold harmless the City, and agents and employees against all claims, liabilities, loss, injury, death or damage whatsoever, including but not limited to attorney fees, on account/or arising out of or resulting from any negligent act or omission of the contractor/vendor in the performance of the work. The City and contractor/vendor acknowledge that the first ten dollars (\$10.00) of the compensation paid contractor/vendor for its work hereunder shall be deemed specific consideration

for this indemnification. Contractor shall fund the foregoing indemnification by providing the insurance coverage's set forth below.

33.2 Design Professional

Contractor shall indemnify and hold harmless the City, its elected and appointed officials, officers, employees and agents, from liabilities, damages, losses and costs, including but not limited to reasonable attorney's fee, to the extent caused by the negligence, recklessness or intentional wrongful conduct of the consultant or any person employed or utilized by the consultant in the performance of the contract. City and the Contractor acknowledge that the first ten dollars (\$10.00) of compensation paid Contractor for its services hereunder shall be deemed specific consideration for the indemnification. Contractor shall fund the foregoing indemnification by providing the insurance coverage's set forth below.

33.3 Survival of Indemnification Covenants

The covenant of indemnification by the Contractor to the City in this Agreement shall survive the Agreement and termination of the Work associated with these Bid Documents.

34. PRICES. TERMS. AND PAYMENTS

34.1 Discounts

Cash discounts for prompt payment shall not be considered in determining the lowest net cost for bid evaluation purposes.

34.2 Mistakes

Bidders are expected to examine the specifications, delivery schedule, bid prices, extensions and all instructions pertaining to supplies and services. Failure to do so will be at bidder's risk in case of mistake in extension; the unit price will govern.

34.3 Condition and Packaging

It is understood and agreed that any item offered or shipped as a result of this bid shall be a new, current standard production model available at the time of the bid. All containers shall be suitable for storage or shipment, and all prices shall include standard commercial packaging.

34.4 Safety Standards

Unless otherwise stipulated in the bid, all manufactured items and fabricated assemblies shall comply with applicable requirements of Occupational Safety and Health Act and any standard there under, and any digging or excavation shall comply with Florida's Trench Safety Act, section 553.60 *et seq.*, Florida Statutes.

34.5 Underwriter's Laboratories

Unless otherwise stipulated in the bid, all manufactured items and fabricated assemblies shall carry UL re-examination listing where such has been established.

34.6 Payments Based on Percentage Markup

Bids that are awarded and which include or provide for a percentage markup on goods purchased will require the vendor/contractor to submit the wholesale invoice with the vendors/contractors invoice and which include or provide a list of goods purchased in order to verify the correct markup percentage was applied.

34.7 Additional Quantities

For a period not exceeding one (1) year, unless otherwise stated in the scope of work, from the date of acceptance of this offer by the buyer, the right is reserved to acquire additional quantities at the same unit price. If additional quantities are not acceptable, the bid sheets must be noted "Bid is for specified quantity only".

34.7.1 Additional Quantities-Lump Sum and Unit Pricing Contracts

The City and contractor/vendor may add additional work items to the contract at any time, provided a fair and reasonable not to exceed, lump sum or unit cost can be agreed upon by both

parties unless otherwise specified in the specifications or scope of work.

34.7.2 **Additional Scope of Work**

The City may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The City may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the City may solicit separate solicitations to satisfy them.

34.8 **Advertising**

In submitting a bid, bidder agrees not to use the results therefrom as a part of any commercial advertising.

34.9 **Assignment**

Any purchase order issued pursuant to this bid invitation and the monies, which may become due hereunder, are not assignable except with the prior written approval of the ordering agency.

34.10 **Contract Term**

Unless otherwise stated in the scope of work, specifications, or special conditions the default contract term shall be one (1) year with two (2) one (1) year renewals for a total of three (3) years.

35. PERMITS, FEES, LICENSING, AND MOBILIZATION

35.1 The contractor/vendor shall obtain all necessary permits and pay for same prior to commencement of work. The cost of such permits shall be included within the base bid, unless otherwise provided for in the bid forms or specifications. The contractor/vendor must have all license and certifications as required by Federal, State, City, County, or special agencies (i.e. FAA, FTA, EPA, DOT, etc. ...).

35.2 **Mobilization Fees (Construction Only)**

35.2.1 Mobilization shall consist of preparatory work and operations including, but not limited to those necessary for the movement of personnel, equipment, supplies and incidentals to the project site; for the establishment of the Contractor's field office and other facilities necessary for work on the project; fees for bonds and insurance; and for all other work and operations including submittals and obtaining construction permits, which must be performed prior to beginning work on the various items.

35.2.2 Payment for mobilization, demobilization, and survey shall not exceed 10 percent (10%) of the total Contract cost unless the Contractor can prove to the City that his actual mobilization, demobilization, and survey costs exceeds 10 percent (10%).

35.2.3 **Continuing Services Contracts.** Measurement: The lump sum price for mobilization shall be based on **each task order** and shall not exceed five percent (5%) of the total of all other items bid (excluding this item). The Contractor shall provide a breakdown of the lump sum bid for mobilization. The schedule of values shall identify items of preparatory work and operations with the corresponding cost per item.

36. CONFLICT OF INTEREST

36.1 The award hereunder is subject to the provisions of Chapter 112, Public Officers and Employees: General Provisions, Florida Statutes. All bidders must disclose with their bid the name of any officer, director or agent who is also an employee of the City or any of its departments. Further, all bidders must disclose the name of any City employee who owns directly or indirectly, an interest of five percent (5%) or more in the bidder's firm or any of its branches or subsidiaries.

36.2 Non-government Conflicts

- 36.2.1 A proposer shall not submit a response or enter into a contract with the City if the contract would result in the proposer having a conflict of interest. As used herein, the term conflict of interest shall mean:
- 36.2.1.1 The proposer's contract with another customer or entity will be averse to the interest of the City; or
 - 36.2.1.2 There is a significant risk that the interest of the City will be materially impacted by the proposer's responsibilities to a current customer or entity, a former customer or entity or any other third party.
 - 36.2.1.3 When a proposal is submitted pursuant to the CCNA, the conflict of interest standards set forth in the National Society of Professional Engineers Code Part II, Rules of Practices related to engineering services; the Code of Ethics - The American Institute of Architects and the NCARB - National Council of Architectural Registration Boards Code of Ethics related to architectural services shall each be applicable in determining whether a conflict of interest exists.
- 36.2.2 Notwithstanding the existence of a conflict of interest under paragraph (a), a proposer may submit a proposal and enter into a contract with the City if:
- 36.2.2.1 The proposer reasonably believes that they will be able to provide competent and diligent representation to each affected customer or entity and;
 - 36.2.2.2 The conflict of interest is not prohibited by law and;
 - 36.2.2.3 The proposal or contract does not involve the assertion of a claim by one customer or entity against another represented by the proposer in the same project or other proceeding involving State or Federal agencies; and
 - 36.2.2.4 Each affected customer or entity gives informed consent, confirmed in writing by the City Manager.
- 36.2.3 It shall be the sole responsibility of the City Manager to determine if the criteria applicable to a conflict of interest or exception from same have been met.

37. INSPECTION, ACCEPTANCE AND TITLE (VENDORS) (NOT APPLICABLE TO THIS PROJECT)

38. LIQUIDATED DAMAGES, PENALTIES, AND NON-CONFORMANCE TO CONTRACT (NOT APPLICABLE TO THIS PROJECT)

39. Attorney's Fees

Should it become necessary for the City to bring any action against the successful proposer to enforce any of the covenants, provisions or conditions of the agreement, the successful proposer will pay all costs attendant thereto, including reasonable attorney's fees and paralegal fees to the attorney, including through any appeals.

40. COMPLETION OF WORK OR PROJECT

The contractor/vendor will complete all work or services for the contract price and within the contract time of number of calendar days specified per approved Bid for all work (except warranty items) in accordance with the contract documents. The number of completion days may be specified in the scope of work, specifications or the bid form.

41. AWARDS

41.1 The City reserves the right to make award(s) by individual item, group of items, all or none, or a combination thereof. The City reserves the right to reject any and all bids or to waive any minor irregularity

or technicality in the bids received. Award will be made to the lowest responsible and responsive bidder(s) within the category chosen for basis of award, pursuant to the Purchasing Manual.

41.2 The City reserves the right to award to one or multiple bidders at the discretion of the requesting authority and approval of the City Manager.

41.3 Award of Contract, if made; will be to the lowest responsible and responsive bidder(s) except as may be provided by the Purchasing Manual.

41.4 In respect to the bids, the City shall make such recommendations to the City Council, if applicable, as they shall deem proper, at the earliest practicable meeting of the City Council. The City Council shall elect to reject all bids, accept the bid of the lowest responsible and responsive bidder, or re advertise the project for new bids. In the event the lowest responsible and responsive bid for a project exceeds the available funds, the City may negotiate an adjustment of the bid price with the lowest responsible and responsive bidder, in order to bring the total cost of the project within the amount of available funds.

41.5 If alternates are included in the bid sheets, bid will be awarded based on unit pricing of the base bid.

42. PAYMENTS, RETAINAGE, SUB-CONTRACTORS.

42.1 Partial payments for each calendar month may be made to the contractor/vendor by the City upon basis of a duly certified approved estimate (construction) or invoice of the work performed, and materials furnished by the contractor/vendor during the preceding calendar month.

42.2 Retainage (Construction only)

42.2.1 The City will retain no less than ten percent (10%) of the amount of each partial payment until 50-percent completion and acceptance of all work covered by this contract. Upon request, the City will reduce the retainage after fifty percent (50%) of the work has been completed to five percent (5%), as approved by the City Manager. No partial payment shall be construed to be accepted by the City of any portion of the work under this contract. Requests for payment shall be submitted on the forms supplied by the City or standard AIA forms. They will approve or deny the request for payment within fifteen (15) days of receipt. If denied, they shall state the reasons thereof and indicate what corrective action is needed. Payment shall be due thirty (30) days from the date of the pay application, provided it is correct. The City will endeavor to have all required signatures within those 30 days.

42.3 Certification of Payment to Sub-Contractors (Construction Only)

42.3.1 Prior to receipt of any partial payment, the prime contractor/vendor shall certify that all subcontractors having an interest in the contract have received their pro rata share of previous partial payments to the prime contractor/vendor for all work completed, and materials furnished in the previous period. This certification shall be in the form designated by the CITY. The term "subcontractor", as used herein shall also include persons or firms furnishing materials or equipment for the project, for which partial payment has been made by the CITY and work done under equipment-rental agreements.

42.3.2 The CITY shall not make any partial payments after the initial partial payment until the contractor/vendor provides said certification, unless the contractor/vendor demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both the CITY and the affected sub-contractors and suppliers

42.3.3 Within ten (10) days of any payment by contractor/vendor to any M.B.E. sub-contractor, the contractor/vendor shall obtain from the M.B.E., an executed sworn M.B.E. payment certification form and submit the form with relevant invoices from the M.B.E. to the City Manager.

- 42.3.4 46.3.4. Failure on the part of the M.B.E. sub-contractor to sign the M.B.E. payment certification form and forward the form to the contractor/vendor immediately upon receipt of payment shall be grounds to suspend the M.B.E. 's certification.
- 42.3.5 Within 30 days of receipt of the initial partial payment or any other payments received thereafter except the final payment, the contractor/vendor shall pay all sub-contractors and suppliers having an interest in the contract their pro rata shares of the payment for all work completed and materials furnished, unless the contractor/vendor demonstrates good cause for not making any said required payment and furnishes written notification of any such good cause to both the City and the affected sub-contractors or suppliers within said 30-day period.
- 42.3.6 Failure on the part of the contractor/vendor to furnish M.B.E. payment forms covering all payments made to M.B.E. sub-contractors, within thirty (30) days after contractor/vendor receives final partial payment, will be considered a sufficient grounds for the City Manager to terminate the contract under the provisions of the contract relating to a breach of contract by the contractor/vendor.
- 42.3.7 The successful bidder shall submit prior to contract executions, the name and address of each subcontractor to whom the bidder proposes to subcontract a portion of the work, and shall list each subcontractor, licensed by the State of Florida, proposed by the bidder, to specially fabricate and install any portion of the work. Said list shall include a description of the portion of the work, which will be done by each subcontractor. A form (Form# 13) for listing the subcontractors as required is attached and is required to be returned with the bid.

42.4 Final Estimate and Payment

When the work has been completely performed by the contractor/vendor and approved by the City Manager, the unpaid balance for completed work of the contract, less any sums that may be deducted or retained (construction only) under the provisions of the contract, will be paid to the contractor/vendor within thirty (30) days of the said date of approval.

42.5 Affidavit of Claims (construction only)

The contractor/vendor shall have furnished to the City a sworn affidavit to the effect that all claims of whatever nature incurred on the work have been paid and that no suits are pending in connection with the work done under this contract, and also providing that the contractor/vendor shall include a certificate from the Department Director stating that the work performed is satisfactory.

42.6 As-built (Record) Drawings (construction only)

Contractor/vendor is responsible for providing completed as-built drawings for specified projects in a City specified form and format whether it is a fixed project, or a project completed under a continuing services contract task order. This task shall be completed at no additional cost to the City. Failure to provide such drawings within ninety (90) calendar days of the project's substantial completion may result in final payments, in an amount not less than ten (10) percent of the final total contract amount, being withheld until such drawings are provided to and approved by the City.

43. SAMPLES

Samples of items when called for must be furnished free of expense on or before bid opening time and date, and, if not destroyed, may, upon request, be returned at the bidder's expense. Each individual sample must be labeled with bidder's name, manufacturer's brand name and number, bid number and item reference. Request for return of samples shall be accompanied by instructions, which include shipping authorization and name of carrier, and must be received within ninety (90) days after bid opening date. If instructions are not received within this time, the City shall dispose of the commodities.

44. PREFERABLE PRODUCTS

Buy America. The City is committed to the procurement of products and services that are produced or manufactured in America. We encourage all contractor/vendors to buy American made materials and products.

45. WORKING HOURS

Work hours will be in accordance with City Noise and Nuisance Ordinances and Code unless otherwise stated in the scope of work or technical specifications and shall otherwise be performed in manner reasonably calculated to not create a nuisance to neighboring homes or businesses. Non-emergency construction, drilling, and repairs, and all alteration, demolition, land clearing or landfilling operations shall be between the hours of 7:00 a.m. and 7:00 p.m. on weekdays or between 9:00 a.m. and 9:00 p.m. on weekends or holidays for which all required permits have been issued, provided that the equipment involved is operated in accord with the manufacturer's specifications and with all manufacturer's sound-reducing equipment in use and in proper operating condition.

46. CONTRACTS FOR SERVICES (SECTION 119.0701, FLORIDA STATUTES)

46.1 This statute requires any public agency (which includes municipalities) to; in addition to other contract requirements provided by law, include a provision in each contract for services that requires the Contractor to comply with the public records laws. Specifically, the contractor shall be required to:

46.1.1 Contractor shall comply with Florida Public Records law under Chapter 119, F.S. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in Section 119.011(12), F.S. Contractor shall keep and maintain public records required to perform the services under this Agreement.

46.1.2 This Agreement may be unilaterally canceled by the City for refusal by Contractor to either provide public records to the City upon request, or to allow inspection and copying of all public records made or received by the Contractor in conjunction with this Agreement and subject to disclosure under Chapter 119, F.S., and Section 24(a), Article I, Florida Constitution.

46.1.3 If Contractor meets the definition of “contractor” found in Section 119.0701(1)(a), F.S.; [i.e., an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency], then the following requirements apply:

46.1.3.1 Pursuant to Section 119.0701, F.S., a request to inspect or copy public records relating to this Agreement for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify Contractor of the request, and Contractor must provide the records to the City or allow the records to be inspected or copied within a reasonable time. If Contractor fails to provide the public records to the City within a reasonable time, Contractor may be subject to penalties under s. 119.10, F.S.

46.1.3.2 Upon request from the City’s custodian of public records, Contractor shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

46.1.3.3 Contractor shall identify and ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.

46.1.3.4 Upon completion of the Agreement, Contractor shall transfer, at no cost to City, all public records in possession of Contractor or keep and maintain public records required by the City to perform the services under this Agreement. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records that are stored electronically must be provided to City, upon request from the City’s custodian of

public records, in a format that is accessible by and compatible with the information technology systems of City.

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 AGREEMENT, CONTACT THE CITY CLERK by telephone at (863) 452-4405, by email at kgay@avonpark.cc, or at the mailing address below:

City Clerk
City of Avon Park, Florida
110 E. Main Street
Avon Park, FL 33825

47. USE OF CITY PROPERTY AS STAGING AREA

City property may be used during a project for a staging area. The vendor will be required to negotiate a separate agreement for use of this property. The staging agreement will be considered part of the project contract for the purpose of default. If the vendor fails to restore the property to its original status or meet other conditions as required by the staging contract, then the project retainage and/or balances due the contractor may be withheld until the terms of the staging contract are met. In addition, the contractor will provide a separate certificate of insurance naming the City as an additional insured. The project name and number that the staging contract is associated with must be listed in the remarks section of the certificate of insurance.

48. EMERGENCY SERVICES

Contractor/vendor shall have contingency plans to ensure that Services continue during emergency periods such as, but not limited to, major equipment breakdown, severe weather conditions, power outages and traffic disruptions. Indicate your continuity of operation plan for ensuring services during emergencies. Contractor/vendor shall acknowledge this on Form #1. If the contractor/vendor is unable to provide emergency services, this may be waived at the sole discretion of the City Manager. Emergency Services may be negotiated as separate pricing.

The remainder of this page is intentionally left blank

FORMS

These forms are required and should be submitted with all bids. If it is determined that forms in this section are not applicable to your company then you should return the form with your bid and mark N/A across the form in large letters. There is no need to return the Terms and Conditions with your bid package.

Form# 1 - Bid Form (2 pages)

This is a mandatory form that must be returned with your bid package. All information on Page 1 must match the company information as it is listed on the Florida Department of State Division of Corporations - <http://www.sunbiz.org>. All signatures shall be by an authorized company representative. Page 2 through XX should contain bid details, which information depends on the project.

Form# 1A - Statement of No Response Form (1 page)

This is an optional form. Vendors and contractors may submit this if they have decided not to submit a response to the bid or proposal. Failure to respond, either by submitting a bid or proposal, or by submitting this "Statement of No Response" form eliminates your from for being able to participate in the protest of this bid or proposal.

Form #2 – Formal Agreement – *Post-Bid* Form (7 pages) (if Applicable) (SAMPLE ONLY! NOT FOR SIGNING)

If a formal agreement is required for this bid or proposal, a sample of a similar agreement will be inserted here for your preliminary review. It contains terms and conditions and other information in addition to that provided herein, and the final Agreement will be provided for review and signatures prior to Notice to Proceed.

Form #3 – Florida Commission on Ethics Form 3A Interest in Competitive Bid for Business Purpose (1 page).

Sections 112.313(3) and 112.313(7), Florida Statutes, prohibit certain business relationships on the part of public officers and employees, spouses, and their children. See Part III, Chapter 112, Florida Statutes and/or the brochure entitled “A Guide to the Sunshine Amendment and Code of Ethics for Public Officers, Candidates and Employees” for more details on these prohibitions. However, Section 112.313(12), Florida Statutes, provides certain limited exemptions to the afore-referenced prohibitions. The Commission on Ethics has promulgated this form for such disclosure, if and when applicable to a public officer or employee.

Form# 4 – Non-Collusive Form (1 page)

Each bidder shall execute an affidavit, in the form provided by the City, to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted. Such affidavit shall be attached to the bid form.

Form# 5- Public Entity Crimes (2 pages)

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant wider a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

Form# 6- Negligence or Breach of Contract Disclosure Form (1 page)

ITB #21-03: Replacement of City Hall Windows

Required Form. The form may be used to disclose any litigation that your company may be a part of involving negligence or breach of contract over the past ten years. You may need to duplicate this form to list all history. This should include at a minimum, litigation for similar projects completed in the State of Florida. Under part 6 of the form, the final action needs to include in whose favor the litigation was settled and if there was a monetary amount awarded. Please do not write N/A on this form. If you have no litigation write "None" on the form. If you have too many lawsuits, you may narrow them to litigation of the company or subsidiary submitting the solicitation response. See the form for further instruction and what to do if you have no litigation history in the past ten years. You may also submit the information in a table format if you have a large number of litigations to list. Simply put "See Attached Listing" in the blocks where you would normally have put "none".

Form #7 – Drug Free Workplace Certification (1 page)

Self-explanatory. Required Form. The form may be use as part of a tiebreaker for identical bids. If your company does not have a Drug Free Workplace Program, you must mark this form N/ A and return it with your bid package. If your company has a Program sign and return the form.

Form# 8 - Scrutinized Companies Certification (1 page) (If Applicable) (NOT APPLICABLE TO THIS PROJECT)

Section 287.135, Florida Statutes, prohibits agencies from contracting with companies, *for goods or services over \$1,000,000*, that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Both lists are created pursuant to section 215.473, Florida Statutes. At the time a company submits a bid or proposal for a contract or before the company enters into or renews a contract with an agency or governmental entity for goods or services of \$1 million or more, the company must certify that the company is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

Form # 9 – E-Verify Affidavit (1 page)

The City requires that bidders doing work for the City utilize the U.S. Department of Homeland Security’s E-Verify system (<https://www.e-verify.gov/>) to verify the employment eligibility of all new employees the Contractor hired during the term of this Agreement.

Form# 10 - Contractor/vendor References (1 page)

Provide no less than four (4) references of firms and companies for which you have already performed similar work in the past ten (10) years. The references should be placed in the order of the most recent similar work to least similar work, and not on the basis of anticipated favorable response by reference. If no similar work has been done within ten years, then list the cities or companies for which you have provided any services in chronological order for the previous five (5) years.

Form# 11 – Bid Bond (1 page) (NOT APPLICABLE TO THIS PROJECT)

Required for all construction projects over \$150,000.00.

Form# 12 - Performance and Payment Bond (1 page) - *Post Bid* Form. (NOT APPLICABLE TO THIS PROJECT)

Required for all construction projects over \$150,000.00. This form only needs to be submitted after award of the bid by the awarded contractor/vendor prior to notice to proceed.

Form #13 – Subcontractor List (1 page)

Required for construction projects. Please ensure that this form is completed in all columns. If a subcontractor qualifies as an MBE Contractor, you must attach the current MBE Certification Certificate.

Form #14 – Trench Safety (Construction) (1 page) (NOT APPLICABLE TO THIS PROJECT)

Contractor acknowledges that included in the appropriate solicitation items of the solicitation and in the Total solicitation price are costs or complying with the Florida Trench Safety Act (section 553.60 *et seq.*). That statute states:

In §553.63 FS, “On all specific contracts for trench excavation in which such excavation will exceed a depth of 5 feet:

- (1) The contract bid submitted by the contractor who will perform such excavation shall include:
 - (a) A reference to the trench safety standards that will be in effect during the period of construction of the project.
 - (b) Written assurance by the contractor performing the trench excavation that such contractor will comply with the applicable trench safety standards.
 - (c) A separate item identifying the cost of compliance with the applicable trench safety standards.
- (2) A contractor performing trench excavation shall:
 - (a) As a minimum, comply with the excavation safety standards which are applicable to a project.
 - (b) Adhere to any special shoring requirements, if any, of the state or other political subdivisions which may be applicable to such a project.
 - (c) If any geotechnical information is available from the owner, the contractor, or otherwise, the contractor performing trench excavation shall consider this information in the contractor’s design of the trench safety system which it will employ on the project. This paragraph shall not require the owner to obtain geotechnical information.”

§553.64 FS States that “The separate item identifying the cost of compliance with trench safety standards shall be based on the linear feet of trench to be excavated. The separate item for special shoring requirements, if any, shall be based on the square feet of shoring used. Every separate item shall indicate the specific method of compliance as well as the cost of that method.”

CITY OF AVON PARK, FLORIDA

Bid Cover Sheet

Page 1 of 2

Bidder/Company Name (Capitalize): _____
Date Submitted: _____ Bid Opening Date: _____

Project Identification: BID # _____
Formal Bid Name: _____

As per sunbiz.org:

Entity Name: _____
Business Address: _____
Authorized Signor: _____ Title: _____
Phone Number: _____ E-Mail Address: _____

Bidder's rep: _____ Business phone: _____ Cell phone: _____

In submitting this Bid, Bidder makes all representations required by the Bid Documents and further warrants and represents that Bidder has examined copies of all the Bid Documents and of the following addenda:

No. _____ Dated: _____ No. _____ Dated: _____
No. _____ Dated: _____ No. _____ Dated: _____
No. _____ Dated: _____ No. _____ Dated: _____

WILL PROVIDE CONTINUITY OF OPERATION DURING EMERGENCY? Yes No

The undersigned, as Bidder, hereby declares that no person or persons other than the undersigned are interested in this Invitation To Bid as Principal, and that this bid is made without collusion with others; and that we have carefully read and examined all the Bid Documents and with full knowledge of all conditions under which the goods or services herein are contemplated must be furnished, hereby propose and agree to furnish the goods or services according to the requirements set out in the Bid Documents for said goods or services for the prices as listed on the subsequent pages.

Taxpayer Identification Number: _____

(1) Employer Identification Number -or- (2) Social Security Number*

* The City of Avon Park collects your social security number/or tax reporting purposes

ALL BIDS MUST BE SIGNED. SEALED AND EXECUTED BY AN AUTHORIZED CORPORATE AUTHORITY. If that person is not the President, CEO, or Partner, this form shall be accompanied by the Company's **CORPORATE RESOLUTION** authorizing the signor.

Signed this _____ day of _____, 20____:

Witnesses:

Signed: _____
Print name: _____

Corporate Name Printed

Signed: _____
Print name: _____

By: _____

Printed name and title: _____

Company Submitting Bid: _____

Bid # _____ Bid Name: _____

CITY OF AVON PARK, FLORIDA

Bid Cover Sheet

Page 2 of 2

For providing the construction services stated in the Bid Documents, the bid is: *XXXXX dollars and 00/100 (\$XXXX.00).*

Details, caveats and limitations (reference separate sheet if necessary):

1. _____

2. _____

3. _____

FORM 1A STATEMENT OF NO RESPONSE

If you do not intend to submit a bid or proposal on this requirement, please complete and return this form by the bid or proposal opening deadline to:

Mark Schrader, City Manager
Avon Park City Hall, second floor
110 E. Main St., Avon Park, FL
33825 Phone (863) 452-4405
Fax (863) 452-4413
E-mail: mschrader@avonpark.cc

Re: ITB #21-03: Replacement of City Hall Windows

Failure to respond, either by submitting a bid or proposal, or by submitting this "Statement of No Response" form eliminates your company from being able to participate in the protest of this bid or proposal.

WE, the undersigned, have declined to bid on this solicitation for the following reasons:

- _____ We do not offer this product or and equivalent
- _____ Our workload would not permit us to perform
- _____ Insufficient time to respond to the Invitation for Bid or Request for Proposal
- _____ Unable to meet scope and specifications (Explain below)
- _____ Cannot agree with contract terms (Explain below)
- _____ Other (Explain below)

Remarks: _____

COMPANY NAME _____
ADDRESS _____
TELEPHONE _____
E-MAIL _____
SIGNATURE/TITLE _____
DATE _____

FORM #2

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between _____, a Florida corporation whose business address is _____, (hereinafter referred to as "Contractor"), and The **CITY OF AVON PARK, FLORIDA**, a Florida municipal corporation whose business address is 110 East Main Street, Avon Park, FL 33825, and its successors and assigns (hereinafter referred to as "City").

WITNESS:

City and Contractor, in consideration of the mutual covenants set forth below, agree as follows:

1. SCOPE OF WORK

1.1. The "Bid Documents" include all of the city's documents provided to bidders in the request for bids, and all of the Contractor's documents submitted in response to the request for bids, and such documents are attached as Exhibit "A". This Agreement along with all Exhibits are referred to in Sections 2 & 3 of the Bid Documents as the "Formal Contract", and the Bid Documents and this Formal Contract shall collectively be hereinafter referred to as the "Contract Documents."

1.2. 2.1.5 **Detailed Scope of Work and Specifications for Project.** The Contractor's work progressing to completion of each Project, as to quality, progress and compliance with the Contract Documents on such Project, shall be defined as the Contractor's "Work." The Specifications for the Work are as provided in Section 27 of the Bid Documents attached hereto and made a part of the terms of this Agreement.

1.3. Contractor shall comply with all laws.

2. CONTRACT TIMES

Unless this Agreement is otherwise terminated as provided herein, the Work will be Substantially Completed within the time frame provided in the Approved Bid. The terms "Substantial Completion" or "Substantially Complete" are defined as the date when the construction is sufficiently completed, in accordance with the Contract Documents, so that the Project can be utilized for the purpose for which it was intended, including without limitation, permits for use from any applicable governmental agencies. After receipt of the Notice to Proceed Contractor shall commence performance of the Work on the agreed date and thereafter diligently proceed with the performance thereof to Final Completion, not to exceed the agreed Substantial Completion date and Final Completion date.

3. CONTRACT PRICE

The City shall pay Contractor for performance of the Work in accordance with the Contract Documents in current funds at the lump sum or unit prices ("Bid Prices") as presented in the Bid Documents, which are incorporated and made a part of this Agreement as attached or by reference as provided in Exhibit "A".

4. INDEMNIFICATION

4.1 Contractor shall indemnify and hold harmless the City as required in the Bid Documents.

4.2 Nothing herein or the remainder of the Agreement shall be construed to extend the City's liability beyond that provided in section 768.28, Florida Statutes.

5. INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain throughout the term of this Agreement, Comprehensive General Liability and Worker's Compensation insurance as provided in the Bid Documents.

6. CORRECTION OF WORK; WARRANTY

Contractor shall at its own expense: (i) correct or re-execute any parts of the Work that fail to conform with the requirements of the Contract Documents and appear during the progress of the Work, (ii) correct any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Completion of the Work, and (iii) replace, repair, or restore any parts

of the improvements, fixtures, equipment, or other items constituting a part of the Project as City's existing facilities placed therein (whether by City or any third party) that are injured or damaged as a consequence of any such failure or defect, or as a consequence of corrective action taken pursuant hereto. Should Contractor fail to make corrections required by this Article, City may do so at the expense and for the account of Contractor.

7. TITLE OF WORK

Immediately upon the performance of any of the Work, as between Contractor and City, title thereto shall vest in City; provided, however, the vesting of such title shall not impose any obligations on City or relieve Contractor of any of its obligations hereunder.

8. COMPLIANCE WITH LAWS

Contractor shall observe and abide by and perform all of its obligations hereunder in accordance with all applicable laws, rules, and regulations of all governmental authorities having jurisdiction, including the federal Occupational Safety and Health Act and all state and federal laws prohibiting and/or related to discrimination by reason of race, sex, or national origin.

9. TIME IS OF THE ESSENCE; SUSPENSION; TERMINATION

- 9.1 In all matters under this Agreement, time is of the essence. The City reserves the right to suspend the Contractor's prosecution of the Work to: 1) consider a change order request by Contractor or Engineer; 2) modify plans due to unforeseen conditions; 3) inspect Contractor's Work in the event that Engineer has a good faith concern over the quality or progress of the Work. The Contractor shall, upon receipt of the City's written notice ("Notice of Suspension") and within the time stated therein, suspend shipment and delivery of material and stop any part or all of the Work and operations hereunder for such period or periods of times as the City may deem advisable and designate in said Notice of Suspension. Upon receipt of such Notice of Suspension, the Contractor shall immediately confer with the City relative to the probable duration of such suspension and stopping, concerning delays and extensions of time resulting therefrom, the reduction and possible elimination of the Contractor's field costs, and with respect to such other prospective costs and expenses as may result directly from such work stoppage. The City shall have the right to suspend Work for up to fifteen (15) days without Contractor's right or claim to any form of damages, including without limitation, damages for delays. Upon the date provided in the Notice of Suspension, or by further written notice from the City, the Contractor shall promptly resume all or any part of the Work required by said resumption Notice of Suspension.
- 9.2 The City reserves the right to terminate this Contract, with notice to Contractor ("Notice of Termination"), at any time the City determines it does not wish to proceed with Contractor's construction of the Project, **with or without cause**. In such event the Contractor shall immediately cease all Work not specifically identified and authorized in the Notice of Termination, and be paid for such portions of the Work as he and/or his subcontractors may have completed, and for materials which have been provided, fabricated, or delivered, up to the date of termination. No allowance shall be made for any anticipated profit on that portion of the Work not completed. The above shall be in addition to all rights and remedies granted the City under this Agreement.
- 9.3 The rights and remedies of City and Contractor under this Article shall be non-exclusive and shall be in addition to all other remedies available to such parties at law or in equity.

10. WAIVER

No provision, requirement, default, or breach of this Agreement may be waived by either party except in writing, except that Contractor's claims for extra compensation, arising from changes in the Work or other causes, shall be waived unless written claim is made therefor within twenty (20) days of the event on which such claim is based.

11. LAWS APPLICABLE; VENUE; WAIVER OF JURY; ASSIGNMENT

This Agreement shall be governed by the law of the State of Florida. Venue for any dispute before a court of law shall be in state court, in Highlands County, Florida. The parties agree to waive any right to trial by jury. Neither party to the Agreement shall assign this Agreement without the written consent of the other; nor shall Contractor assign any monies due or to become due to it under the Agreement without the prior written consent of City. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on all the parties and their respective successors and assigns.

12. CAPTIONS; EXHIBITS

All exhibits hereto are incorporated herein as part of this Agreement. The captions appearing with the article or section number designations of this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

13. DOCUMENT IS THE RESULT OF MUTUAL DRAFTSMANSHIP

The terms and conditions of this Agreement are the product of mutual draftsmanship by both parties, each being represented by counsel if so desired, and any ambiguities in this Agreement or any documentation prepared pursuant to it shall not be construed against either of the parties because of authorship. The parties acknowledge that all the terms of this Agreement were negotiated at arms' length, and that each party, being represented by counsel if so desired, is acting to protect its own interests.

14. NOTICE

Notices required herein shall be sent by hand delivery or by major U.S. courier service (FedEx, UPS, Express Mail, DHS) to the following persons from each party:

14.1 **To the City:** Mark Schrader, City Manager, 110 East Main Street, Avon Park, FL 33825

14.2 **To the Contractor:** _____

15. ATTORNEYS' FEES AND COSTS

If either party takes legal action to enforce the terms or conditions of this Agreement, whether through court or by arbitration, the prevailing party shall receive all costs of the action, including reasonable attorneys' and paralegals' fees, including appeals.

16. CONTRACT DOCUMENTS

The Contract Documents that comprise the entire agreement between City and Contractor are attached to this agreement, are made a part of this agreement, and consist of the following:

16.1 This Agreement.

16.2 Bid Documents (Composite Exhibit "A")

CONTRACTOR

Witnesses:

Printed name: _____

Printed name: _____

By: **DO NOT SIGN** _____
_____, President

CITY

ATTESTED:

CITY OF AVON PARK, FLORIDA

Kim Gay, City Clerk

By: _____
Garrett Anderson, Mayor

APPROVED AS TO FORM:

Gerald T. Buhr, City Attorney

Exhibit "F"
CONTRACTOR'S FINAL AFFIDAVIT AND RELEASE OF LIEN

STATE OF FLORIDA
 COUNTY OF _____

BEFORE ME the undersigned authority personally appeared _____, who after being by me first sworn, deposes and says that:

1. He/she is _____ of _____, doing business in the State of Florida, hereinafter called "Contractor".
2. Contractor pursuant to Contract dated _____ with the City of Avon Park for **ITB #21-03: Replacement of City Hall Windows**, hereinafter referred to as "Contract", has heretofore furnished or caused to be furnished labor, material and services for the construction of certain improvements as more particularly set forth in said Contract.
3. Contractor represents that all work to be performed under the aforesaid Contract has been fully completed and that all persons, companies, subcontractors and firms which furnished material, labor, and/or services incident to the completion of said work have been paid in full except to the following:

(Write "None" if all persons companies, subcontractors and firms have been paid in full)

NAME	ADDRESS	AMOUNT DUE

4. The undersigned affiant for and in consideration of final payment to Contractor in the amount of \$ _____, and all other previous payments paid by City to Contractor, does hereby for and in behalf of the Contractor, waive, release, remise and relinquish the Contractor's right to claim, demand or impose a lien or liens for work done or materials and/or services furnished or any other class of lien whatsoever, on any of the premises owned by City on which improvements have been completed in connection with the aforementioned Contract.
5. The affiant herein does hereby represent that he/she has authority to execute a full and final Release of Lien for and in behalf of the Contractor as set forth above.
6. The affiant herein makes this Affidavit and Release of Lien for the express purpose of inducing City to make final disbursement and payment to the Contractor in the amount of \$ _____.
7. This Affidavit and Release of Lien is made by affiant with full knowledge of the applicable laws of the State of Florida. In addition to such rights as may be afforded to City under said applicable laws, affiant expressly agrees to indemnify and save City harmless from any and all actual costs and expenses, including reasonable attorney's fees, arising out of claims by laborers, subcontractors or material men who might claim that they have not been paid for services or material furnished by or through the Contractor in connection with the work performed under the aforementioned Contract.

_____ Dated this ____ Day of _____, 20____
 "Company"

By: _____
 Name & Title: _____

STATE OF _____
 COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 20____, by _____ as _____ for _____.

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

_____ Personally Known OR _____ Produced Identification

Type of Identification Produced: _____

My commission expires _____.
(Printed typed or stamped commissioned name of notary public)

Instructions:

1. Submit this document to the City Manager with the request or invoice for final payment.
2. A separate document is required **for each contract**.
3. In case of a corporation, the certification should be signed by a President or Vice President or if signed by any other individual, the Contractor shall also submit a corporate resolution authorizing that individual to bind the corporation or some other acceptable document certifying that individuals delegated authority.
4. The certification must be attested to by a notary public.

FORM 3

FORM 3A INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS

LAST NAME - FIRST NAME - MIDDLE INITIAL			OFFICE / POSITION HELD
MAILING ADDRESS			AGENCY
CITY	ZIP	COUNTY	ADDRESS OF AGENCY

WHO MUST FILE THIS STATEMENT

Sections 112.313(3) and 112.313(7), Florida Statutes, prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. See Part III, Chapter 112, Florida Statutes, and/or the brochure entitled "A Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees" for more details on these prohibitions. However, Section 112.313(12), Florida Statutes, provides certain limited exemptions to the above-referenced prohibitions, including one where the business is awarded under a system of sealed, competitive bidding; the public official has exerted no influence on bid negotiations or specifications; AND where disclosure is made, prior to or at the time of the submission of the bid, of the official's or his spouse's or child's interest and the nature of the intended business. This form has been promulgated by the Commission on Ethics for such disclosure, *if and when applicable* to a public officer or employee.

INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS (Required by Section 112.313(12)(b), Fla. Stat.)

1. The competitive bid to which this statement applies has been / will be (strike one) submitted to the following government agency:		
2. The person submitting the bid is:	NAME ▼	POSITION ▼
3. The business entity with which the person submitting the bid is associated is:		
4. My relationship to the person or business entity submitting the bid is as follows:		
5. The nature of the business intended to be transacted in the event that this bid is awarded is as follows:		
a. The realty, goods, and / or services to be supplied specifically include: _____		
b. The realty, goods, and / or services will be supplied for the following period of time: _____		
c. Will the contract be subject to renewal without further competitive bidding? <input type="checkbox"/> Yes <input type="checkbox"/> No. If so, how often?		
6. Additional comments:		
7. SIGNATURE	DATE SIGNED	DATE FILED

FILING INSTRUCTIONS

If you are a state officer or employee required to disclose the information above, please file this form with the Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317-5709; physical address: 325 John Knox Road, Building E, Suite 200, Tallahassee, FL 32303. If you are an officer or employee of a political subdivision of this state and are subject to this disclosure, please file the statement with the Supervisor of Elections of the county in which the agency in which you are serving has its principal office.

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES SECTION 112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

CE FORM 3A - REV. 1/07 (Refer to Rule 34-7.010(1)(c), F.A.C.) (Rev. 9/2013)

FORM 4 NON-COLLUSION AFFIDAVIT

The undersigned Affiant, being duly sworn, deposes and says that:

1. Affiant is _____ of _____, the Contractor that has submitted the attached proposal;
2. Affiant is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
3. Such proposal is genuine and is not a collusive or sham proposal;
4. Neither said Contractor nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, connived, or agreed, directly or indirectly, with any other Proposer, firm or person to submit a collusive or sham proposal in connection with the Contract for which the attached proposal has been submitted or to refrain from proposing in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Proposer, firm, or person to fix the price or prices in the attached RFP, or of any other Proposer, or to fix any overhead, profit or cost element of the proposal or the response of any other Proposer, or to secure through any collusion, connivance, or unlawful agreement any advantage against the City of Avon Park, Florida or any person interested in the proposed Contract; and
5. The cost proposals in the attached proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Contractor or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.
6. Further, the Affiant sayeth not.

Signature

Title

Print Name

Date

STATE OF FLORIDA
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this _____ day of _____, 20____, by _____ .

(Seal)

Signature of Notary Public

Print, Type/Stamp Name of Notary

Personally known: _____

OR Produced Identification: _____

Type of Identification Produced: _____

FORM 5
SWORN STATEMENT ON
PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to: __CITY OF AVON PARK, FLORIDA__;
[Print name of the public entity]

By: _____
[Print individual's name and title]

For: _____
[Print name of entity submitting sworn statement]

Whose business address is _____

_____ and (if applicable) its Federal Employer Identification Number (FEIN) is _____. (If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement):

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

a) A predecessor or successor of a person convicted of a public entity crime; or,

b) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. [*Indicate which statement applies.*]:

_____ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. [Attach a copy of the final order]

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[Company Name]

[Signature & Title]

STATE OF FLORIDA
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this _____ day of _____, 20____, by _____ .

(Seal)

Signature of Notary Public

Print, Type/Stamp Name of Notary

Personally known: _____

OR Produced Identification: _____

Type of Identification Produced: _____

FORM #7

DRUG-FREE WORKPLACE

The undersigned vendor (firm) in accordance with Chapter 287.087, Florida Statutes, hereby certifies that _____ does:

(Name of Company)

1. Publish a statement notifying employees that the unlawful manufacturing, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the contractual services that are under Proposal a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employee that, as a condition of working on the contractual services that are under Proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Signature

Title

Print Name

Date

Form #9

EMPLOYMENT ELIGIBILITY VERIFICATION -- E-VERIFY

The Contractor shall utilize the U.S. Department of Homeland Security’s E-Verify system (<https://www.e-verify.gov/>) to verify the employment eligibility of all new employees the Contractor hired during the term of this Agreement. The Contractor shall include in all subcontracts under this Agreement, the requirement that subcontractors performing work or providing services pursuant to this Agreement utilize the E-Verify system to verify the employment eligibility of all new employees subcontractor hired during the term of the subcontract.

The Contractor agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this solicitation. The City shall consider the employment or utilization of unauthorized aliens a violation of Section 274 A (e) of the Immigration and Naturalization Act (8U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the City. As part of the response to this solicitation (bid), the successful contractor will complete and submit the attached form “Affidavit Certification Immigration laws”.

Employers may avail themselves of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet based system operated by the U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automatic link to Federal databases to help employers verify employment eligibility of new hires, existing employees and the validity of their Social Security numbers.

If your company wishes to avail itself of this program, you can register online for E-Verify at <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>

Which provides instructions for completing the registration process. At the end of the registration process you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you as employer, the SSA and the DHS. An employee who has signatory authority for the employer can sign the MOU. Employers can use their discretion in identifying the best methods by which to sign up their locations for E-Verify. To find out more about E-Verify, please visit www.dhs.gov/e-verify or contact the USCIS at 1-888-464-4218

AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

ITB #21-03: Replacement of City Hall Windows

The CITY OF AVON PARK will not intentionally award city contracts to any contractor who knowingly employs unauthorized alien workers constituting a violation of the employment provisions contained in Section 274A (e) of the Immigration and Naturalization Act (INA) (8 U.S.C. 1324a).

The City of Avon Park may consider the employment by any Contractor of Unauthorized Aliens a violation of section 274A(e) of the INA. Such violation by the recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for the unilateral cancellation of the contract by the City of Avon Park.

The bidder attests that they are fully compliant with all applicable immigration laws (Specifically to the 1986 Immigration Act and subsequent amendments).

[Company Name]	[Signature & Title]
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STATE OF FLORIDA
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this _____ day of _____, 20____, by _____ . Personally known: _____ OR
Produced Identification: _____ Type of Identification Produced: _____
(Seal)

Signature of Notary Public

Print, Type/Stamp Name of Notary

FORM #10
CONTRACTOR/VENDOR REFERENCES

Name of company submitting bid: _____
Name of Company Contact Person: _____

References

<p>Contact Person: _____ Title: _____ Phone Number: _____ E-Mail: _____ Company Name: _____ Address: _____</p>
<p>Contact Person: _____ Title: _____ Phone Number: _____ E-Mail: _____ Company Name: _____ Address: _____</p>
<p>Contact Person: _____ Title: _____ Phone Number: _____ E-Mail: _____ Company Name: _____ Address: _____</p>
<p>Contact Person: _____ Title: _____ Phone Number: _____ E-Mail: _____ Company Name: _____ Address: _____</p>
<p>Contact Person: _____ Title: _____ Phone Number: _____ E-Mail: _____ Company Name: _____ Address: _____</p>
<p>Contact Person: _____ Title: _____ Phone Number: _____ E-Mail: _____ Company Name: _____ Address: _____</p>
<p>Contact Person: _____ Title: _____ Phone Number: _____ E-Mail: _____ Company Name: _____ Address: _____</p>

SUBCONTRACTORS LIST

Subcontractor Name	Area of Work	Contact Person	Phone Number & E-mail	Cert. MBE Y/N	Amount or Percentage of Total Bid
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					