

**EMERALD COAST UTILITIES AUTHORITY****GENERAL PROVISIONS****PURCHASE ORDER/CONTRACT**

1. Supplies are of domestic origin unless indicated by quoter. If you are unable to quote, please advise. This request does not commit Emerald Coast Utilities Authority (ECUA) to pay any cost incurred in the preparation or submission of this quotation or to procure or contract for supplies or services.

2. **DELIVERY, INSPECTION AND ACCEPTANCE** Delivery, inspection and acceptance will be at destination unless otherwise provided. Until delivery and acceptance and after any rejections, risk of loss will be on the Contractor unless loss results from negligence of ECUA. Notwithstanding the requirements for any ECUA inspection and test contained in specifications applicable to this contract, except where specialized inspections or tests are specified for performance solely by ECUA, the Contractor shall perform or have performed the inspections and tests required to substantiate that the supplies and services provided under the contract conform to the drawings, specifications, and contract requirement, listed herein, including if applicable, the technical requirements for the manufacturer's part numbers specified herein.

3. **ENTIRE AGREEMENT** The terms, specifications, and drawings included in this order when duly executed constitute the entire agreement between the parties unless otherwise stated on the face of the order. No modification or waiver of terms of this agreement shall be binding unless in writing signed by a duly authorized representative of ECUA and confirmed by such a representative of the Vendor. This agreement shall be interpreted in accordance with the laws of the State of Florida.

4. **DELIVERY OF EXCESS QUANTITIES OF \$100 OR LESS** The Contractor is responsible for the delivery of each item quantity; within allowable variations, if any. If the Contractor delivers and ECUA receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity) such excess quantities will be treated as being delivered for the convenience of the Contractor. ECUA may retain such excess quantities up to \$100 in value without compensating the interests therein. Quantities in excess of \$100 will, at the option of ECUA, either be returned at the Contractor's expense or retained and paid for by ECUA at the contract unit price. **DELIVERIES** In the event of failure to deliver material of the quality or within the time specified, ECUA may cancel order and buy elsewhere. Failure of ECUA to exercise this option with respect to any installment shall not be deemed a waiver with respect to future installments, if any.

5. **DELIVERY TICKETS** All shipments under this agreement shall be accompanied with delivery tickets, or sales slips, in triplicate, which shall contain the following minimum information:  
a) Name of supplier; b) Blanket Purchase Order/Contract number; c) Date of call; d) Call number; e) Itemized list of supplies or services furnished; f) Quantity, unit price and extension of each item, less applicable discounts (unit price and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information); and g) Date of delivery or shipment.

Upon delivery, the receiving office will retain one copy of the related delivery ticket and will sign the other two copies and return them to the supplier or his/her agent. One of these copies may subsequently be required to support the invoice.

6. **PAYMENTS** Invoices shall be submitted in triplicate (one copy shall be marked "Original") unless otherwise specified and shall contain the following information: a) Contract or Order number b) Item number c) contract description of supplies or services d) sizes e) quantities f) unit prices and g) extended totals. Bill of Lading number and weight of shipment will be shown for shipments of Bills of Lading. Unless otherwise specified, payment will be made on partial deliveries accepted by ECUA when the amount due on such deliveries so warrants.

7. **DISCOUNTS** In connection with any discount offered, time will be computed from date of delivery suppliers to carrier when acceptance is at the point of origin or from date of delivery at destination when delivery and acceptance are at these points or from the date the correct invoice or voucher is received in the office specified by ECUA, if the latter is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the ECUA check.

8. **CONVICT LABOR** In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89.176, September 10, 1965 (18 U.S.C. 40821 ch21) Executive Order 11755, December 29, 1973.

9. **COVENANT AGAINST CONTINGENT FEES** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty ECUA shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

10. **CONTINGENCIES** Neither party shall be liable for delays or defaults due to acts of God, government authority or public enemy, war, fires, floods, epidemics, strikes, labor troubles, freight embargoes, or contingencies reasonably beyond its control. The party so affected, upon prompt written notice to the other party, shall be excused from making or taking deliveries hereunder to the extent of such prevention or restriction. At ECUA's option, deliveries so omitted shall be made on notice thereof to the Vendor, upon cessation of such contingency even though such might have been operative at the date of this order.

11. **GRATUITIES** (a) ECUA may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found after notice and hearing by the Executive Director or his/her duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of ECUA with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract, provided, that the existence of the facts upon which the Executive Director or his/her duly authorized representative make such findings shall be in issue and may be reviewed in any competent court, (b) In the event this contract is terminated as provided in paragraph (a) hereof, ECUA shall be entitled 1) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor and 2) as a penalty and in addition to any other damages to which it may be entitled by law to exemplary damages in an amount (as determined by the Executive Director or his/her duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee, (c) The rights and remedies of ECUA provided in this clause shall not be exclusive or in addition to any other rights and remedies provided by law or under the contract.

12. **CONDITION FOR ASSIGNMENT** This Purchase Order/Contract shall not be assigned in full or in part without the written consent of ECUA. Such consent shall not relieve the Contractor from its obligations and liabilities.

13. **GOVERNMENT REGULATIONS** Vendor warrants that all applicable laws and regulations of governmental authority, covering the production, sale and delivery of the materials specified herein, have complied with, and shall indemnify and save ECUA harmless from and against any liability or loss resulting from Vendor's failure to do so.

14. **TAXES** ECUA is exempt from Federal Taxes on transportation charges and any Federal Excise Tax, if you prepaid transportation do not pay tax as ECUA will not reimburse you for the taxes paid. ECUA is exempt from State Sales Tax.

15. **CHANGES** The Purchasing and Stores Manager may at any time, by written order, and without notice to the sureties, make changes, within the general scope of this contract, in 1) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for ECUA in accordance therewith; 2) method of shipment or packing and 3) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for the performance of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made by written modification of this contract. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change provided that the Purchasing and Stores Manager, if he/she decides that the facts justify such action, may receive and act upon any such claim asserted prior to final payment, under the contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with this contract as changed.

16. **TERMINATION FOR DEFAULT** The Purchasing and Stores Manager, by written notice, may terminate this contract, in whole or in part, for failure of the Contractor to perform any of the provisions hereof, in such event, the Contractor shall be liable for damages; including the excess cost of reprocurring similar supplies or services; provided that if 1) it is determined for any reason that the Contractor was not in default or 2) the Contractor's failure to perform is without his/her and his/her subcontractors control, fault or negligence, the termination shall be deemed to be a termination for convenience under paragraph 17. As used in this provision the term "subcontractor" and "subcontractors" means subcontractors at any tier.

17. **TERMINATION FOR CONVENIENCE** The Purchasing and Stores Manager by written notice, may terminate this contract, in whole or in part, when it is in the best interest of ECUA. If this contract is for supplies and is so terminated, the Contractor shall be compensated for goods delivered and accepted up to the date of termination at the discretion of the Executive Director. To the extent that this contract is for services and is so terminated, ECUA shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

18. **ASSIGNMENT OF CLAIMS** Claims for monies due or to become due under this Contract shall be assigned only pursuant to the Assignment of Claims Act of 1940, as amended (31 U.S.C 203, 41 U.S.C. 15). However, payments to an assignee of monies under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off (see Clause 12).

19. **EXTENT OF OBLIGATION** ECUA is obligated under a call-type Purchase Order/Contract only to the extent of authorized calls actually placed against this agreement.

20. **PRICING** The prices to ECUA for all purchases made under this Purchase Order/Contract shall be as low as or lower than those charged the suppliers most favored customer, in addition to any discounts for prompt payment.

21. **WARRANTIES** In addition to all warranties, established by statute or common law or set forth elsewhere in this order, the Vendor expressly warrants that all material or services covered herein shall conform to all specifications, drawings, samples, and descriptions furnished or adopted by ECUA and shall be of the best quality and fit, and sufficient for the purpose for which purchased, if specified hereon, merchantable of good material and workmanship, and free from all latent and patent defects. ECUA's failure to give notice to Vendor of any breach of warranty shall not discharge Vendor's liability. Without limiting the generality of the foregoing, Vendor agrees to be responsible for all defects in design, workmanship, and materials, which may become apparent within twenty four (24) months of receipt by ECUA.

22. **PATENTS** Vendor shall protect and indemnify ECUA against all claims, judgments, and expenses arising from infringement of any patent by any of the goods delivered hereunder. Vendor shall defend or settle at its own expense any proceeding brought against ECUA for such infringement provided Vendor is notified promptly of the commencement of such proceeding and is given authority, information, and assistance by ECUA for the defense or settlement thereof.

23. **INSTALLATION** If this order required the services of ECUA experts or employees of ECUA safety rules and fire regulations, Vendor assumes full responsibility for their acts and omissions and agrees to save ECUA harmless from any claims arising therefrom and to accept exclusive liability for payroll and other taxes imposed upon the employer by law. Vendor will undertake to keep the materials and premises involved free from any lien whatever for materials and labor incident to the performance of Vendor's obligations hereunder. If Vendor furnishes materials and services for construction and improvement of realty and the installation of personality for a lump sum amount, Vendor agrees to furnish an analysis thereof as ECUA may reasonably require for accounting purposes. Vendor shall be solely responsible for materials furnished by ECUA on other than a charge basis in connection with this order.

24. **NON-DISCLOSURE** Without prior written consent of ECUA in each instance, Vendor shall not reveal to a third party the details, characteristics, or any information on materials made to the special order for ECUA or use reproductions thereof and any promotional media or reveal that ECUA is purchasing the materials hereunder.

25. **Attorneys' Fees.** In the event of any dispute between the parties concerning the terms and provisions of this Purchase Order/Contract, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorney's fees.

26. **Merger Clause.** This Purchase Order/Contract contains the entire understanding among the parties and supersedes any prior understandings and/or written or oral agreements among them respecting the within subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, between or among the parties hereto relating to the subject matter hereof that are not fully expressed herein.

27. **DEVIATION FROM SPECIFICATIONS** ECUA has the sole authority to determine if any deviation from the specifications cited is acceptable.

28. **E-VERIFY COMPLIANCE** Pursuant to § 448.095(2) Florida Statutes (2020), Contractor shall register with and use the E-Verify system operated by the United States Department of Homeland Security to verify the work authorization status of all new employees hired by Contractor while performing work or providing services for Emerald Coast Utilities Authority (ECUA). Contractor shall also include in any related subcontracts a requirement that subcontractors performing work or providing services for ECUA on its behalf register with and use the E-Verify system to verify the work authorization status of all new employees hired by the subcontractor while performing work or providing services for ECUA. Additionally, Contractor shall include in any related subcontracts a requirement that subcontractors performing work or providing services for ECUA on its behalf provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with any unauthorized alien as defined in 8 U.S.C. § 1324a(h)(3). Contractor shall maintain a copy of such affidavit for the duration of its contract with ECUA.

*Revised 11/02/21*