

**REQUEST FOR PROPOSALS**  
**TRANSIT BUS ADVERTISING**  
**City of Key West RFP # 23-001**

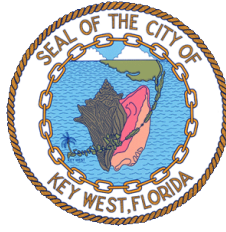


**MAYOR: TERI JOHNSTON**

**COMMISSIONERS:**

**MARY LOU HOOVER**  
**CLAYTON LOPEZ**  
**JIMMY WEEKLEY**

**SAM KAUFMAN**  
**BILLY WARDLOW**  
**LISSETTE CAREY**



**SUBJECT:** CITY OF KEY WEST  
REQUEST FOR PROPOSALS # 23-001  
TRANSIT BUS ADVERTISING

**ISSUE DATE:** March 17, 2023

**MAIL OR DELIVER RESPONSES  
TO:**

City Clerk  
City of Key West  
1300 White Street  
Key West, Florida 33040

**CLARIFICATION SUBMITTAL  
DEADLINE:**

April 12, 2023, 3 p.m. LOCAL TIME

**RESPONSES DEADLINE DATE:**

April 26, 2023, 3 p.m. LOCAL TIME

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# **CITY OF KEY WEST RFP # 23-001**

## **TRANSIT BUS ADVERTISING**

### **A. GENERAL**

#### A.1 Purpose

The City of Key West (the “City”) is soliciting competitive sealed proposals from qualified and experienced advertising individuals or firms (“Proposer” or “Respondent”) for a Contract for Exterior and Interior Advertising Services on Buses owned and operated by the City of Key West. It is the intent of the City of Key West and the City of Key West Transit Department that the successful proposer will market advertising to the general public with the idea that their advertising will be seen throughout the community through the use of directly applied vinyl advertising copy to the exterior of the buses, interior styrene or laminated signs, multi-media on the on-board bus installed screen(s), and on-board Wi-Fi services and pay revenue to the City of Key West. The term of the advertising agreement is expected to be three (3) years with the option of a two (2) year renewal.

#### A.2 Background

Incorporated as a city since January 8, 1828, the City of Key West occupies a 7.243 square mile area encompassing the island of Key West, a portion of Stock Island north of U.S. 1, Sigsbee Park (north, originally known as Dredgers Key), Fleming Key (north), and Sunset Key (west). Both Fleming Key and Sigsbee Park are part of Naval Air Station Key West. Key West is the southernmost city in the continental U.S. and is the County seat of Monroe County. Land access is provided by U.S. 1, air access is provided by the Key West International Airport, and sea access by the Port of Key West. The island’s natural perimeter restricts the expansion of its boundaries. The city’s 2021 permanent population is 23,342 with over 3 million visitors annually. The City of Key West is governed by a six-member City Commission and a Mayor. The City Manager is responsible for the complete administrative management and delivery of city services and programs. There are 15 City Departments (including Police and Fire) responsible for 2 marinas, 44 parks and beaches, 1 community pool, 65 miles of city road, 1 assisted living facility, 3 fire stations, 1 pedestrian bridge and 3 boat ramps.

The City of Key West Transit Department has a fleet of twenty-four (24) buses that operates in Key West, Stock Island, and areas of Monroe County and the city of Marathon, Florida which is located approximately forty-five (45) miles away. Key West Transit uses a mix of 30-foot, 35-foot, and 25-foot (14 passenger) transit style buses. The average annual ridership over the past four years is over 433,000 passenger trips. On a typical operating day, there are approximately five (5) buses on route with the addition of one (1) to two (2) other buses at various times of the day. The entire system operates from 05:30 a.m. to 10:00 p.m. with certain exceptions for City-sanctioned holidays or events.

A.3 Small and Minority Business, Women’s Business Enterprises, and Labor Surplus Area Firms

The City of Key West is wholly committed to developing, establishing, maintaining, and enhancing minority business involvement in the total procurement process. The City, its contractors, their suppliers and subcontractors, vendors of goods, equipment, services, and professional services, shall not discriminate on the basis of race, color, religion, national origin, age, handicap, or sex in the award and/or performance of contracts. However, competition and quality of work remain the ultimate standards in contractor, subcontractor, vendor service, professional service, and supplier utilization. Small and minority businesses, and women’s business enterprises, and labor surplus area firms, referenced in general as MBE’s/WBE’s in this RFP, are encouraged to participate in this RFP.

A.4 Proposed Schedule for RFP 23-001

This is a proposed schedule. The City of Key West reserves the right to change or extend the dates listed below at any time:

- **RFP Advertised** **March 22, 2023**
- **Deadline for written questions** **April 12, 2023, 3:00 p.m.**
- **RFP Submittal Due Date** **April 26, 2023, 3:00 p.m.**
- **Selection Committee Ranking** **May 3, 2023, 10 a.m.**  
**(in person and by Zoom)**

Transit Facility – Conference Room 207  
5701 College Road, Key West, FL 33040

Link:

<https://cityofkeywest-fl-gov.zoom.us/j/87322986055?pwd=SGV1aTIKU1VyWVBmUFdPL3J6M05lQT09>

Meeting ID: 873 2298 6055

Passcode: 613883

One tap mobile

+13052241968,,87322986055#,,,,\*613883# US

+13017158592,,87322986055#,,,,\*613883# US (Washington DC)

- **City Commission approval** **May 16, 2023**
- **Agreement start date** **May 17, 2023**

A.5 Public Records Law

Pursuant to section 119.0701(2)(a), Florida Statutes, the City is required to provide Contractor with this statement and establish the following requirements as contractual obligations pursuant to the Agreement:

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305)809-3831, Clerk@cityofkeywest-fl.gov, by mail, City of Key West, Attn: City Clerk-Public Records Custodian, 1300 White Street, Key West, FL 33040.**

By entering into this Contract, Contractor acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Contract are

public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any Contractor entering into a contract for services with the City is required to:

1. Keep and maintain public records required by the City to perform the services and work provided pursuant to this Contract.
2. Upon request from the City's custodian of public records, 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.
3. Ensure that 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 Contract term and following completion or termination of the Contract if the Contractor does not transfer the records to the City.

Upon completion or termination of the Contract, transfer, at no cost, to the City all public records in the possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion or termination of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion or termination of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Requests to inspect or copy public records relating to the City's Contract for services must be made directly to the City. If Contractor receives any such request, Contractor shall instruct the requestor to contact the City. If the City does not possess the records requested, the City shall notify the Contractor of such request, and the Contractor must provide the records to the City or otherwise allow the records to be inspected or copied within a reasonable time.

Contractor acknowledges that failure to provide the public records to the City within a reasonable time may be subject to penalties under section 119.10, Florida Statutes. Contractor further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the City. Contractor shall indemnify, defend, and hold the City harmless for and against any and all claims, damage awards, and causes of action arising from the Contractor's failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorney's fees and costs arising therefrom. Contractor authorizes City to seek declaratory, injunctive, or other appropriate relief against Contractor from a Circuit Court in the Lower Keys Division of Monroe County, Florida on an expedited basis to enforce the requirements of this section.

All material submitted becomes the property of the City and may be returned only at the City's option. The City has the right to use any or all ideas presented in any reply to this RFP. Selection or rejection of any submittal does not affect this right. The City of Key West, Florida, is governed by the Public Record Law, Chapter 119, FS, (as amended).

#### A.6 Other Agencies

All Respondents awarded Contracts from this solicitation may, upon mutual agreement, permit any municipality or other governmental agency to participate in the Contract under the same prices, terms, and conditions.

It is understood that at no time will any city or municipality or other agency be obligated for placing an order for any other city, municipality, or agency, nor will any city, municipality, or agency be obligated for any bills incurred by any other city, municipality, or agency. Further it is understood that each agency will issue its own purchase order to the awarded Respondent(s) and the City of Key West shall have no liability or responsibility whatsoever regarding another municipality or governmental agency's order.

#### A.7 Use of City Logo

The City owns and retains all proprietary rights in its logos, trademarks, trade names, and copyrighted images (Intellectual Property). As such, nothing in this solicitation permits or shall be construed as authorizing Respondent to use or display City's Intellectual Property without the City's express written permission.

#### A.8. Assignment

Contractor may not assign or otherwise convey Contractor's rights and/or obligations under this Agreement without obtaining City's prior written consent, which consent City may withhold, limit and/or condition in City's sole discretion, including, but not limited to, requiring the Contractor or his/her proposed successor in interest to post a performance bond. Any consent by the City under this Section shall be by written amendment to the Agreement in a form and substance specified by the City in its sole discretion.

#### A.9 Contract

A draft Contract has been posted as Appendix A. The RFP will be utilized as an Exhibit to the final Contract. The contents of this RFP and all provisions of the successful proposal deemed pertinent by the City may be, at the sole discretion of the City, incorporated into the Contract and become legally binding on the selected proposer. The content of the Contract may contain changes as a result of the RFP process and the content of the submittal received. The Contract shall, at minimum, include the substantive terms and conditions as outlined in the draft Contract and be subject to review by the City attorney or designee prior to approval and execution for determination of legal form and substantive sufficiency, and may contain those additional terms and conditions that the City deems in its best interest.

The draft Contract has been produced only as a sample to inform the Respondents of the types of terms and conditions that the City has included in its Contracts with vendors or contractors; they are not for execution. As such, the draft Contract shall not be construed to limit the terms or conditions of a resulting Contract based on this solicitation. Terms are subject to negotiation between the City and successful proposer, however, there are material requirements that are not subject to negotiation, including but not limited to the duration of the base and option terms, and indemnification.

#### A.10 Venue and Governing Law

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any legal proceedings arising out of this Agreement shall be in Monroe County, Florida, Lower Keys Division of the Circuit Court or the Southern District of Florida (Monroe County). This Agreement is not subject

to arbitration. Each Respondent agrees to submit to the personal jurisdiction of these courts for any lawsuits filed there against Respondent. In the event of a legal proceeding, the action shall be by non-jury trial for the adjudication of such suit.

All questions concerning the validity, operation, interpretation, construction and enforcement of any terms, covenants or conditions of this Contract shall in all respects be governed by and determined in accordance with the laws of the State of Florida without giving effect to the choice of law principles thereof and unless otherwise preempted by federal law.



## **B. SCOPE OF WORK AND SERVICES**

- A. Through this RFP, the City seeks proposals from qualified and experienced advertising individuals or firms to maximize the income potential of the City of Key West buses as an advertising medium; a Minimum Annual Guarantee is preferred. It is the intent of the City of Key West that the successful proposer will market advertising to the general public with the idea that their advertising will be seen throughout the community through the use of directly applied vinyl advertising copy to the exterior of the buses (bus wraps), interior styrene or laminated signs, multi-media on the on-board bus installed screen(s), and on-board Wi-Fi services and pay revenue to the City of Key West. The restriction on coverage on the buses includes, but is not limited to vent panels, logo, and vehicle safety information labels. All work shall be done at the City Transit Facility under the supervision of the Director of Transportation and/or his/her designee. The term of the advertising agreement is expected to be three (3) years with the option of a two (2) year renewal.
- B. All advertisements shall be pre-approved by the Director of Transportation and/or his/her designee, before the advertisements are applied, presented to the public and/or displayed on buses. In addition, the City reserves the right to disapprove any advertising which, in the sole opinion of the Director of Transportation or his/her designee, is not in the best interest of the City. The Contractor shall agree to remove immediately any advertisement at the request of the City. The Contractor shall maintain the highest standards of maintenance, immediately replacing without charge any advertising media which is damaged or outdated, and removing any advertising displayed beyond Contract termination or expiration.
- C. The Contractor shall be responsible for, but not limited to:
1. All professional services necessary to sell advertising;
  2. Production services for all signs, appliqués, placards, and displays;
  3. Service and personnel to change, replace, and clean advertising signs, appliqués, placards, displays and electronic media;
  4. Removal of window film within 48 hours, when reported by the City that window film is damaged;
  5. Provide durable advertising signs, appliqués, placards, and displays produced utilizing processes subject to the approval of the City;
  6. A record and reporting system to substantiate billings, sales, commissions and payments to the City, with accountings of such billings, sales, and commissions to be provided to the City on at least a monthly basis;
  7. Provide services in strict compliance with all applicable laws and statutes of the United States, the State of Florida and the Charter, Ordinances, regulations or resolutions of the City of Key West;
  8. Acknowledge full liability and responsibility for any claim for damages resulting

- out of the services performed under the Contract resulting from this solicitation;
9. Providing revenue to the City in exchange for the exercise of Contractor's rights under the advertising Contract;
  10. Return all vehicles and buses to their original state and condition when advertising is removed and/or the resulting Contract expires or is terminated. Any charges or fees for the repair of damage to and/or repainting of the City's buses and vehicles shall be paid by the Contractor;
  11. Perform all services in a professional manner and in accordance with the aesthetic standards prescribed by the City.
  12. Accept only such advertising that comports with community standards and is acceptable to the City;
  13. Provide installation and removal of all advertising medium at City Transit Facility located at 5701 College Road, Key West, Florida 33040 under the supervision of the Director of Transportation and/or his/her designee;
  14. Prohibit advertising sales contingent upon geographic location or display. The City's fleet is assigned based on mileage and the transportation needs of the City at large, and the City cannot limit the use of buses or vehicles to certain areas, cities, or neighborhoods within the service area of the City;
  15. Contractor shall be responsible for incorporating into the design of any full bus wrap or appliqué the City's transit logo both street and curb-side at its expense and any other required safety, identifying, or regulatory marks or displays, as required by the City. City vehicles are required to maintain certain signage on the interior and the exterior per Florida Department of Transportation and Federal Transit Administration requirements. Contractor shall ensure that all bus advertising does not interfere with the required signage, markings and displays;
  16. Ensure that all advertising agreements are reviewed and approved by the City in writing prior to being issued to each advertiser for signature and including in each advertising sales agreement entered into pursuant to the resulting Contract, a provision requiring the immediate removal of any installed advertisement declared inappropriate by the City as set forth in subsection C.17 of this Scope of Services;
  17. Regardless of whether advertising is preapproved by the City as contemplated in Section B. of this Scope of Services, the City, shall be permitted, at no cost or charge to the City, to reject or order the removal of any installed advertising that is not (i) in the best interest of the, (ii) in accordance with community standards, and/or (iii) otherwise in compliance with those specifications and limitations established pursuant to the resulting Contract between the Contractor and the City; and
  18. Ensure that any and all advertising contracts or sales of advertising entered into between the Contractor and all advertisers include a contractual provision allowing for the immediate termination and removal of the advertising purchased pursuant to such contract or sale without consequence to the City, if such advertising agreement,

display, or sale is determined by the City, in its sole discretion, (i) to violate any applicable federal, state, or local laws, rules, or regulations, (ii) require the City to reimburse any federal or state agency for any grant funds received, or (iii) to otherwise jeopardize or threaten the City’s continued receipt of state or federal funding.

D. The City will be responsible for the following:

1. To supply, install, maintain and replace any existing interior advertising frames/ related hardware electronic signage on the City’s fleet;
2. To apply decals or signage identifying the City’s public transit system on its fleet of fixed route and demand response buses. Such decals or signage may be applied to the front and rear bumper, street and curb-side of each vehicle. Contractor shall accommodate the City’s placement of such signage as set forth in subsection C.16. of this Scope of Services;
3. Provide Contractor with the exclusive right to sell and install advertising on the interior and exterior of all the City’s buses as specified in the resulting Contract; and
4. Review and approve or disallow advertising prior to the execution of any advertising contracts between the Contractor and any advertisers.

E. Determination as to the size and location of advertising is specified as follows:

**Current Fleet of Vehicles**

	2003	2008	2015	2016	2017	2018	2020
<b>29ft. Diesel Gillig</b>	<b>5</b>		<b>3</b>	<b>1</b>	<b>2</b>	<b>2</b>	
<b>35ft. Diesel Gillig</b>		<b>2</b>		<b>2</b>		<b>1</b>	
<b>29ft. Hybrid Gillig</b>			<b>1<sup>C</sup></b>			<b>1<sup>C</sup></b>	
<b>25ft. Chevy Cutaway</b>							<b>4<sup>AB</sup></b>

**Available “Bus Wrap” areas:**

**Street Side (Left side of bus)**

**Curb-Side (Right side of bus)**

**Tail**

**Exceptions:**

**A= Exterior Ads Only (No Interior or Multimedia)**

**B= No Tail advertising**

**C= Interior Ads Only (No Exterior)**

**On-board multimedia advertising consists of “infotransit” screens capable of video or static electronic signage flips.**

**Video advertising clips should not be longer than 1 minute. All content will be approved by KWT and adhere to standard advertising practices.**

**On-board WiFi advertising can include a WiFi landing page in which several ads may be placed.**

## **C. RESPONSE INFORMATION**

### C.1 Response Information

The evaluation of the RFP will be based on a respondent's aptitude, experience and approach to tasks as identified herein by the City. Responses should be submitted to the address by the date and time listed in the submission details. The City will not be responsible for submittals that are delinquent, lost, mismarked, or sent to an address other than that given above. The City reserves the right, after opening the submittal, to reject any or all proposals, or to accept the proposal(s) that in its sole judgment is (are) in the best interest of the City. Also, the City will not be responsible for proposals submitted after the specified date and time. Each proposal shall also be evaluated using the following criteria in addition to the criteria in this RFP:

1. That all proposal documentation was submitted timely and in conformance with all requirements of the RFP;
2. Demonstrated understanding of the Scope of Services and its purpose; and
3. Financial stability: A Dun and Bradstreet report may be used by the City to evaluate Respondent's financial stability. All Respondent's shall be prepared to supply a financial statement upon request, preferably a certified audit of the last available fiscal year.

All questions from any respondent regarding the RFP or matters relating thereto must be submitted to Rod Delostrinos [KWDOT@cityofkeywest-fl.gov](mailto:KWDOT@cityofkeywest-fl.gov) via email no later than **3:00 p.m. on April 12, 2023**. Verbal communications, per the City's "Cone of Silence" ordinance are not allowed. Each question must identify the section number in this RFP for which clarification is being requested. The City will respond to all properly submitted questions by addendum at least five (5) business days prior to the date that the Proposals are due. All questions will be posted as an addendum at [www.cityofkeywest-fl.gov](http://www.cityofkeywest-fl.gov) and [www.DemandStar.com](http://www.DemandStar.com).

### C.2 Submission Details

1. **Submit to:**  
  
City Clerk, City of Key West  
1300 White Street  
Key West, Florida 33040
2. **Due Date: April 26, 2023** NO LATER THAN 3 PM
3. **Identification of Responses:**

Responses shall be submitted in a sealed envelope, clearly marked on the outside "**Proposals for**

**Transit Bus Advertising, RFP # 23-001.**” addressed and delivered to the City Clerk at the address and by the date and time noted above.

C.3 Number of Copies

Applicants shall submit one (1) printed copy and (2) two flash drives, each with a single PDF file of the complete proposal submitted. PDF shall be named “*Firm Name* RFP #23-001.”

C.4 Response Preparation Costs

Response preparation costs are the applicant’s total responsibility.

C.5 Authorized Signature

The initial response must contain the signature of a duly authorized officer or agent of the proposer’s company empowered with the right to bind the respondent to the RFP. The respondent must provide evidence of the authority of the officer or agent to bind the respondent.

C.6 Property of the City and Period of Valid Responses

All responses and related materials provided to the City related to this RFP will become the property of the City of Key West and shall be valid for ninety (90) days from the date of submittal. The City may hold responses for a period of up to ninety (90) days without taking action.

C.7 License Requirements

The selected respondent will also be required to obtain and maintain a City of Key West Business Tax Receipt for the duration of the work.

C.8 Insurance /Indemnification

Per Paragraph 7.9 in Appendix A (Sample Contract)

C.9 Cone of Silence

Pursuant to Section 2-773 of the City of Key West Code of Ordinances, as amended, a “Cone of Silence” shall be in effect during the course of a competitive solicitation. Cone of Silence Affidavit, attached hereto under Exhibit A.

C.10 Response Evaluation

Responses will be ranked in accordance with the Selection Criteria attached hereto as Exhibit B, Selection Criteria and Scoring Worksheet.

### C.11 Response Selection Process

All complete and responsive submittals will be evaluated, scored, and ranked by a City Manager appointed selection committee at a publicly noticed meeting. The City of Key West reserves the right to ask questions, seek clarification of any or all responding firms or teams as part of its evaluation. Evaluation and ranking will be accomplished using the Selection Criteria and Scoring Worksheet (Exhibit B). Each respondent may be required to make a presentation of no more than ten (10) minutes to the City Commission; the exact length of the presentation is up to the discretion of the Commission. Final award will be made by the City Commission, based solely on that response which, in their opinion, is in the best interest of the City of Key West, all factors considered, notwithstanding the City Manager appointed selection committee ranking.

A final contract, including a detailed scope and revenue schedule, must be negotiated by the City Manager with approval of the City Attorney, and then approved by the City Commission. The City reserves the right, without qualification, to exercise discretion and apply its judgment with respect to any responses submitted, as well as to reject all responses. The selected respondent must NOT be debarred from any federal and/or state agency. A review of the respondent's status on SAM.gov will be conducted.

### C.12 Response Content

The City requires the Proposer to submit a concise narrative clearly addressing all the requirements outlined in this RFP. Responses must include, at a minimum, the following sections in the order indicated.

1. *Cover Letter* – No more than one page
2. *Information Page* – Include project name, name of contractor (prime) submitting the response, contact information for the person who will act as project manager and contact information for the person who has authority to make representations for the firm, including name, title, address, telephone and fax numbers and email addresses.
3. *Organization Chart* – Show prime Contractor, sub-contractors, key staff, areas of responsibility and location of personnel as well as overall project management and methodology/approach to support the needs and objectives of the project, including the location office(s) from which sales and carding will be handled.
4. *Company Information* – Background information about the vendor and each subcontractor and the services each provides.
5. *Approach and Methodology* – Descriptions should enable the City to assess the Proposer's capability to secure paid advertising accounts in a structured and efficient manner.
6. *Personnel* – Resumes of the principal(s) assigned to the project and key staff, and/or

subcontractors available to support the proposed efforts.

7. *Qualifications – Representative (from similar assignments/projects) and depth of experience of key staff* – Narrative description of similar assignments for the firm and each subcontractor connected with providing similar project work. Depth of experience of key staff/team members and demonstration of capacity to work successfully together on similar projects should be included. List a minimum of five (5) advertising and marketing projects in the last three (3) years which yielded revenue. Submit any experience and familiarity with other government agencies in providing these services. Provide websites of customers to view delivered product. In order to evaluate past performance, all Respondents are required to submit three (3) references illustrating a minimum of five (5) years relevant service that are the same or similar to the magnitude of this RFP. For company name and/or ownership changes, appropriate documentation shall be required.
8. *Client References* – Submit at least three (3) references for similar assignments (projects) which were conducted by the team, including other agency/client’s contact names, telephone numbers, and email addresses.
9. *Sworn Statements and Affidavits* – The contractor shall have signed and returned all forms attached herein as Exhibit A (Anti-Kickback, Non-Collusion, Public Entity Crimes, Equal Benefits for Domestic Partners, Cone of Silence, Scrutinized Companies List, Indemnification).
10. *Revenue Proposal* – Using the Revenue Proposal form in Exhibit C, provide your revenue proposal to accomplish the scope of work and services outlined in Section B of this RFP. The revenue proposal must categorize each transit bus advertising media to include bus wraps, interior printed signage, on-board electronic signage/video, and on-board WiFi based advertising. Please note that the highest proposal will not be used as the sole basis for entering into this contract.

**Total proposal length (not including required forms, Sworn Statements, or Affidavits) will not exceed 10 double (20 single) side pages.**

#### C.13 Selection Criteria Details

The competitive selection process provided for this RFP will focus on the criteria set forth in Exhibit B, Proposal Ranking Form and Scoring Worksheet. Company experience, staffing, capabilities, marketing and sales plan, qualifications and references, and revenue percentage/minimum guarantee will be assessed by the Selection Committee to rank RFP submittals. Proposers shall include sufficient information to allow the Selection Committee to thoroughly evaluate and score their proposals. The contract will be awarded to the most qualified proposer per the Selection Criteria and Scoring Worksheet in Exhibit B.

Proposers are urged to review additional details regarding the selection criteria in the Scoring Worksheet in Exhibit B.



## **Exhibit A: Affidavits and Certifications**

**ANTI-KICKBACK AFFIDAVIT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I the undersigned hereby duly sworn, depose and say that no portion of the sum herein response will be paid to any employee of the City of Key West as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

BY: \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me by means of [\_\_\_] physical presence or [\_\_\_] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

(NOTARY SEAL)

\_\_\_\_\_  
(Signature of Notary Public- State of Florida)

\_\_\_\_\_  
(Name of Notary Typed, Printed, or Stamped)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

**NON-COLLUSION AFFIDAVIT**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, the undersigned hereby declares that the only persons or parties interested in this Proposal are those named herein, that this Proposal is, in all respects, fair and without fraud, that it is made without collusion with any official of the Owner, and that the Proposal is made without any connection or collusion with any person submitting another Proposal on this Contract.

BY: \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me by means of [\_\_\_] physical presence or [\_\_\_] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary Public- State of Florida)  
(NOTARY SEAL)  
\_\_\_\_\_  
(Name of Notary Typed, Printed, or Stamped)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(A)**  
**FLORIDA STATUTES, 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 for \_\_\_\_\_  
(print individual's name and title)

by \_\_\_\_\_  
(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 "conviction" as defined in Paragraph 287.133(1)(g), 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 agent 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 of 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 Statute 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, or 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 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 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 ONE (1) 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 THE CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(DATE)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me by means of [\_\_\_\_] physical presence or [\_\_\_\_] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary Public- State of Florida)  
(NOTARY SEAL)

\_\_\_\_\_  
(Name of Notary Typed, Printed, or Stamped)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

**EQUAL BENEFITS FOR DOMESTIC PARTNERS AFFIDAVIT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, the undersigned hereby duly sworn, depose and say that the firm of \_\_\_\_\_  
\_\_\_\_\_ provides benefits to domestic partners of its employees on the  
same basis as it provides benefits to employees' spouses, per City of Key West Code of Ordinances  
Sec. 2-799.

By: \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me by means of [\_\_\_] physical presence or [\_\_\_] online  
notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary Public – State of Florida)

(NOTARY SEAL)

\_\_\_\_\_  
(Signature of Notary Public – State of Florida)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

**CONE OF SILENCE AFFIDAVIT**

**Pursuant to City of Key West Code of Ordinances Section 2-773** (attached below) STATE

OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I the undersigned hereby duly sworn depose and say that all owner(s), partners, officers, directors, employees and agents representing the firm of \_\_\_\_\_ have read and understand the limitations and procedures regarding communications concerning City of Key West issued competitive solicitations pursuant to City of Key West Ordinance Section 2-773 Cone of Silence (attached).

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

Sworn to (or affirmed) and subscribed before me by means of [\_\_\_] physical presence or [\_\_\_] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary Public – State of Florida)

(NOTARY SEAL)

\_\_\_\_\_  
(Signature of Notary Public – State of Florida)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_



**Sec. 2-773. Cone of Silence.**

- (a) *Definitions.* For purposes of this section, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:
- (1) *Competitive solicitation* means a formal process by the City of Key West relating to the acquisition of goods or services, which process is intended to provide an equal and open opportunity to qualified persons and entities to be selected to provide the goods or services. Competitive solicitation shall include request for proposals ("RFP"), request for qualifications ("RFQ"), request for letters of interest ("RFLI"), invitation to bid ("ITB") or any other advertised solicitation.
  - (2) *Cone of silence* means a period of time during which there is a prohibition on communication regarding a particular competitive solicitation.
  - (3) *Evaluation or selection committee* means a group of persons appointed or designated by the city to evaluate, rank, select, or make a recommendation regarding a vendor or the vendor's response to the competitive solicitation. A member of such a committee shall be deemed a city official for the purposes of subsection (c) below.
  - (4) *Vendor* means a person or entity that has entered into or that desires to enter into a contract with the City of Key West or that seeks an award from the city to provide goods, perform a service, render an opinion or advice, or make a recommendation related to a competitive solicitation for compensation or other consideration.
  - (5) *Vendor's representative* means an owner, individual, employee, partner, officer, or member of the board of directors of a vendor, or a CONTRACTOR, lobbyist, or actual or potential subcontractor or sub-CONTRACTOR who acts at the behest of a vendor in communicating regarding a competitive solicitation.
- (b) *Prohibited communications.* A cone of silence shall be in effect during the course of a competitive solicitation and prohibit:
- (1) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and the city's administrative staff including, but not limited to, the city manager and his or her staff;
  - (2) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and the mayor, city commissioners, or their respective staff;
  - (3) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and any member of a city evaluation and/or selection committee therefore; and
  - (4) Any communication regarding a particular competitive solicitation between the mayor, city commissioners, or their respective staff, and a member of a city evaluation and/or selection committee therefore.
- (c) *Permitted communications.* Notwithstanding the foregoing, nothing contained herein shall prohibit:

- (1) Communication between members of the public who are not vendors or a vendor's representative and any city employee, official or member of the city commission;
  - (2) Communications in writing at any time with any city employee, official or member of the city commission, unless specifically prohibited by the applicable competitive solicitation.
    - (A) However, any written communication must be filed with the city clerk. Any city employee, official or member of the city commission receiving or making any written communication must immediately file it with the city clerk.
    - (B) The city clerk shall include all written communication as part of the agenda item when publishing information related to a particular competitive solicitation;
  - (3) Oral communications at duly noticed pre-bid conferences;
  - (4) Oral presentations before publicly noticed evaluation and/or selection committees;
  - (5) Contract discussions during any duly noticed public meeting;
  - (6) Public presentations made to the city commission or advisory body thereof during any duly noticed public meeting;
  - (7) Contract negotiations with city staff following the award of a competitive solicitation by the city commission; or
  - (8) Purchases exempt from the competitive process pursuant to [section 2-797](#) of these Code of Ordinances;
- (d) *Procedure.*
- (1) The cone of silence shall be imposed upon each competitive solicitation at the time of public notice of such solicitation as provided by [section 2-826](#) of this Code. Public notice of the cone of silence shall be included in the notice of the competitive solicitation. The city manager shall issue a written notice of the release of each competitive solicitation to the affected departments, with a copy thereof to each commission member, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance.
  - (2) The cone of silence shall terminate at the time the city commission or other authorized body makes final award or gives final approval of a contract, rejects all bids or responses to the competitive solicitation or takes other action which ends the competitive solicitation.
  - (3) Any city employee, official or member of the city commission that is approached concerning a competitive solicitation while the cone of silence is in effect shall notify such individual of the prohibitions contained in this section. While the cone of silence is in effect, any city employee, official or member of the city commission who is the recipient of any oral communication by a potential vendor or vendor's representative in violation of this section shall create a written record of the event. The record shall indicate the date of such communication, the persons with whom such communication occurred, and a general summation of the communication.
- (e) *Violations/penalties and procedures.*
- (1) A sworn complaint alleging a violation of this ordinance may be filed with

the city attorney's office. In each such instance, an initial investigation shall be performed to determine the existence of a violation. If a violation is found to exist, the penalties and process shall be as provided in section 1-15 of this Code.

- (2) In addition to the penalties described herein and otherwise provided by law, a violation of this ordinance shall render the competitive solicitation void at the discretion of the city commission.
- (3) Any person who violates a provision of this section shall be prohibited from serving on a City of Key West advisory board, evaluation and/or selection committee.
- (4) In addition to any other penalty provided by law, violation of any provision of this ordinance by a City of Key West employee shall subject said employee to disciplinary action up to and including dismissal.
- (5) If a vendor is determined to have violated the provisions of this section on two more occasions it shall constitute evidence under City Code section 2-834 that the vendor is not properly qualified to carry out the obligations or to complete the work contemplated by any new competitive solicitation. The city's purchasing agent shall also commence any available debarment from city work proceeding that may be available upon a finding of two or more violations by a vendor of this section. (*Ord. No. 13-11, § 1, 6-18-2013*)

**VENDOR CERTIFICATION REGARDING  
SCRUTINIZED COMPANIES LISTS**

Respondent Vendor Name: _____
Vendor FEIN: _____
Vendor's Authorized Representative Name and Title: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone Number: _____
Email Address: _____

Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria.

AS THE PERSON AUTHORIZED TO SIGN ON BEHALF OF RESPONDENT, I HEREBY CERTIFY THAT THE COMPANY IDENTIFIED ABOVE IN THE SECTION ENTITLED "RESPONDENT VENDOR NAME" IS NOT LISTED ON EITHER THE SCRUTINIZED COMPANIES THAT BOYCOTT ISRAEL LIST, SCRUTINIZED COMPANIES WITH ACTIVITIES IN SUDAN LIST OR THE SCRUTINIZED COMPANIES WITH ACTIVITIES IN THE IRAN PETROLEUM ENERGY SECTOR LIST I UNDERSTAND THAT PURSUANT TO SECTION 287.135, FLORIDA STATUTES, THE SUBMISSION OF A FALSE CERTIFICATION MAY SUBJECT SUCH COMPANY TO CIVIL PENALTIES, ATTORNEY'S FEES, AND/OR COSTS AND TERMINATION OF THE CONTRACT AT THE OPTION OF THE AWARDING GOVERNMENTAL ENTITY.

CERTIFIED BY: _____, <span style="display: inline-block; width: 30%; text-align: center;"><i>PRINT NAME</i></span> <span style="display: inline-block; width: 30%; text-align: center;"><i>PRINT TITLE</i></span>
WHO IS AUTHORIZED TO SIGN ON BEHALF OF THE ABOVE REFERENCED COMPANY.
Authorized Signature: _____.

## **CITY OF KEY WEST INDEMNIFICATION FORM**

PROPOSER agrees to protect, defend, indemnify, save and hold harmless The City of Key West, all its Departments, Agencies, Boards, Commissions, officers, City's CONTRACTOR, agents, servants and employees, including volunteers, from and against any and all claims, debts, demands, expense and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur or in any way grow out of any act or omission of the PROPOSER, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the City as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of The City of Key West, all its Departments, Agencies, Boards, Commissions, officers, agents, servants and employees. The PROPOSER agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent. The City of Key West does not waive any of its sovereign immunity rights, including but not limited to, those expressed in Section 768.28, Florida Statutes. PROPOSER understands and agrees that any and all liabilities regarding the use of any subcontractor for services related to this agreement shall be borne solely by the PROPOSER. Ten dollars of the consideration paid by the City is acknowledged by PROPOSER as separate, good and sufficient consideration for this indemnification.

This indemnification shall be interpreted to comply with Section 725.06 and 725.08, Florida Statutes.

These indemnifications shall survive the term of this agreement. In the event that any action or proceeding is brought against the City of Key West by reason of such claim or demand, PROPOSER shall, upon written notice from the City of Key West, resist and defend such action or proceeding by counsel satisfactory to the City of Key West.

The indemnification provided above shall obligate PROPOSER to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the City of Key West's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the City of Key West whether performed by PROPOSER, or persons employed or utilized by PROPOSER.

The PROPOSER's obligation under this provision shall not be limited in any way by the agreed upon Contract Price as shown in this agreement, or the PROPOSER's limit of or lack of sufficient insurance protection.

**[REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

PROPOSER:

\_\_\_\_\_

Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature

\_\_\_\_\_

\_\_\_\_\_

Print Name

Date

\_\_\_\_\_

Title

NOTARY FOR THE PROPOSER

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of [\_\_\_] physical presence or [\_\_\_] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

Signature of Notary \_\_\_\_\_ Print, Type or Stamp Name of Notary

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced

\_\_\_\_\_

## DRUG-FREE WORK PLACE

The undersigned firm, in accordance with Florida statute 287.087, hereby certifies that \_\_\_\_\_

\_\_\_\_\_ does:

*(Name of Firm)*

1. Publish a statement notifying employees that the unlawful manufacture, 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 commodities or contractual services that are proposed a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under proposal, the employee will propose 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.

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Firm

\_\_\_\_\_  
Street address

\_\_\_\_\_  
City, State, Zip

**CERTIFICATION REGARDING DEBARMENT (PRIME)**

**Certification Regarding Debarment, Suspension, And Other Responsibility Matters  
Primary Covered Transactions**

**TO BE COMPLETED BY PRIMARY CONTRACTOR**

- A. The prospective primary participant (contractor) certifies to the best of its knowledge and belief, that it and its principals (subcontractors and suppliers):
  - 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - 2. Have not within a three (3) year period preceding this bid proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
  - 3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
  - 4. Have not within a three-year period preceding this bid proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
  
- B. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid proposal.

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Firm

\_\_\_\_\_  
Street address

\_\_\_\_\_



City, State, Zip

**CERTIFICATION REGARDING DEBARMENT (SUB)**

**Certification Regarding Debarment, Suspension, Ineligibility  
And Voluntary Exclusion**

**TO BE COMPLETED BY ALL SUB-CONTRACTORS**

- A. The prospective participant (sub-contractor) certifies to the best of its knowledge and belief, that it and its principals (subcontractors and suppliers):
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  2. Have not within a three (3) year period preceding this bid proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
  3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
  4. Have not within a three-year period preceding this bid proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
- B. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid proposal.

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Firm

\_\_\_\_\_  
Street address

City, State, Zip

**Exhibit B: Proposal Ranking Form and Scoring Worksheet**

Project Name: **Transit Bus Advertising**

Project Number: **RFP #23-001**

Firm

---

Date

---

<b>SELECTION CRITERIA</b>	<b>POINTS ALLOWED</b>	<b>POINTS SCORED</b>
Company experience and history, staffing/personnel, and capabilities	10	
Marketing and Sales Plan	10	
Qualifications, Quality of Work and References	10	
Revenue and Minimum Guarantee	70	
<b>Total Points</b>	<b>100</b>	



EXHIBIT B				
RFP 23-??? Scoring Worksheet: Transit Bus Advertising				
<b>Firm Name:</b>				
	<b>Range of possible scores per criterion</b>	<b>Score assigned</b>		<b>Comments/considerations</b>
<b>Company experience, staffing, and capabilities</b>	<b>0-10</b>			
Unresponsive	0-1		Submittal lacks required information to evaluate the proposal or firm demonstrates no experience in transit marketing and advertising.	
Acceptable	2-4		Team members have less than 5 years experience in transit marketing and advertising. Firm has some directly related experience and has completed limited in transit marketing and advertising.	
Advantageous	5-7		Team members have at least 5 years experience in transit marketing and advertising. Firm has significant experience completing multiple projects that reflect the scope in RFP Section B.	
Highly advantageous	8-10		Team members have experience that surpasses aforementioned standards. Highly experienced firm has completed extensive work in transit marketing and advertising. Firm has a significant track record of highly successful work demonstrating expert knowledge and skill.	
<b>Criterion score</b>		<b>0</b>		
<b>Marketing and Sales Plan</b>	<b>0-10</b>			
Unresponsive	0-1		Submittal lacks required information to evaluate the proposal or approach and methodology are not clearly stated.	
Acceptable	2-4		Firm's approach and methodology includes a satisfactory description of a plan to capitalize on paid advertising opportunities as well as how they will implement that plan.	
Advantageous	5-7		Firm's approach and methodology includes a clear and concise description of a plan to capitalize on paid advertising opportunities as well as implementation of that plan.	
Highly advantageous	8-10		Firm's approach and methodology provides comprehensive planning and implementation of transit advertising aforementioned standards .	
<b>Criterion score</b>		<b>0</b>		
<b>Qualifications and References</b>	<b>0-10</b>			
Unresponsive	0-1		Submittal lacks required information to evaluate the proposal or firm demonstrates minimal qualifications and references.	
Acceptable	2-4		Firm provided some information showing team's performance, capacity to work successfully together and depth of experience on similar assignments ; submittal includes less than 5 examples of successful advertising projects; submittal includes 3 references.	

Advantageous	5-7		Firm's narrative demonstrates team's performance, capacity to work successfully together and depth of experience on similar assignments ; submittal includes 5 examples of successful advertising projects; submittal includes 3 references.	
Highly advantageous	8-10		Firm's performance, capacity to work successfully together and depth of experience surpasses aforementioned standards demonstrating explemplary advertising projects; submittal includes 3 references	
<b>Criterion score</b>		<b>0</b>		
<b>Revenue and Minimum Guarantee</b>	<b>0-70</b>			
Formula score between 0 &16 (Score determined by formula; negative score gets 0)	0-16		Revenue scores are determined by the proposal with the highest total revenue; highest revenues gets the maximum number of revenue points; remaining proposals are rated using the following formula:  [1 - (B-A)/A] x C = Final Revenue Score  A = Highest Offeror's Revenue B = Offeror's revenue being scored C = maximum number of revenue points available	
Formula score between 17 & 34 (Score determined by formula)	17-34		Cost scores are determined by the proposal with the lowest total cost; lowest total cost gets the maximum number of cost points; remaining proposals are rated using the following formula:  [1 - (B-A)/A] x C = Final Cost Score  A = lowest Offeror's cost B = Offeror's cost being scored C = maximum number of cost points available	
Formula score between 35 & 52 (Score determined by formula)	35-52		Cost scores are determined by the proposal with the lowest total cost; lowest total cost gets the maximum number of cost points; remaining proposals are rated using the following formula:  [1 - (B-A)/A] x C = Final Cost Score  A = lowest Offeror's cost B = Offeror's cost being scored C = maximum number of cost points available	
Highest cost proposal (Gets max points)	53-70		Cost scores are determined by the proposal with the lowest total cost; lowest total cost gets the maximum number of cost points; remaining proposals are rated using the following formula:  [1 - (B-A)/A] x C = Final Cost Score  A = lowest Offeror's cost B = Offeror's cost being scored C = maximum number of cost points available	
<b>Criterion score</b>		<b>0</b>		
<b>Total firm score</b>		<b>0</b>		

**Exhibit C: Revenue Proposal**

Firm Name: \_\_\_\_\_

Project Name: **Transit Bus Advertising**

Project Number: **RFP #23-001**

**Exterior Bus Wrap Vinyl Advertising (lump sum):** Please enter a lump sum guaranteed minimum and percentage of advertising revenue that will be paid to the City on a quarterly basis.

<b>Year</b>	<b>Annual Guaranteed Minimum</b>	<b>Percentage of Advertising revenue</b>
Year 1	\$	
Year 2	\$	
Year 3	\$	
Year 4 – (Year 1 of two-year option to renew)	\$	
Year 5 – (Year 2 of two-year option to renew)	\$	
<b>Total 5-Year Guaranteed Minimum Revenue for Bus Wraps</b>	\$	

**Interior Printed Styrene or Laminated Signs:** Please enter a lump sum guaranteed minimum and percentage of advertising revenue that will be paid to the City on a quarterly basis.

<b>Year</b>	<b>Annual Guaranteed Minimum</b>	<b>Percentage of Advertising revenue</b>
Year 1	\$	
Year 2	\$	
Year 3	\$	
Year 4 – (Year 1 of two-year option to renew)	\$	
Year 5 – (Year 2 of two-year option to renew)	\$	
<b>Total 5-Year Guaranteed Minimum Revenue for Interior Printed Signs</b>	\$	

**Interior Electronic Media (Signage/Video):** Please enter a lump sum guaranteed minimum and percentage of advertising revenue that will be paid to the City on a quarterly basis.

<b>Year</b>	<b>Annual Guaranteed Minimum</b>	<b>Percentage of Advertising revenue</b>
Year 1	\$	
Year 2	\$	
Year 3	\$	
Year 4 – (Year 1 of two-year option to renew)	\$	
Year 5 – (Year 2 of two-year option to renew)	\$	
<b>Total 5-Year Guaranteed Minimum Revenue for Interior Electronic Media</b>	\$	

**WiFi landing page/ advertising on City provided on-board internet access service :** Please enter a lump sum guaranteed minimum and percentage of advertising revenue that will be paid to the City on a quarterly basis.

<b>Year</b>	<b>Annual Guaranteed Minimum</b>	<b>Percentage of Advertising revenue</b>
Year 1	\$	
Year 2	\$	
Year 3	\$	
Year 4 – (Year 1 of two-year option to renew)	\$	
Year 5 – (Year 2 of two-year option to renew)	\$	
<b>Total 5-Year Guaranteed Minimum Revenue for WiFi landing page/advertising</b>	\$	



<b>5-Year Total Guaranteed Minimum Revenue for all advertising medium listed above (This total used for scoring)</b>	\$
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**APPENDIX A: SAMPLE CONTRACT**

(subject to negotiation)

**THE FOLLOWING AGREEMENT IS A  
DRAFT AGREEMENT AND SHOULD  
NOT BE FILLED OUT AS PART OF THE  
SUBMISSION PACKAGE. FINAL  
AGREEMENT WILL BE IN  
SUBSTANTIAL CONFORMANCE WITH  
THE ATTACHED**

**AGREEMENT**

**between**

**CITY OF KEY WEST**

**and**

---

**for**

**TRANSIT BUS ADVERTISING**

**KEY WEST, FLORIDA**

This is an Agreement between: CITY OF KEY WEST, its successors and assigns, hereinafter referred to as "CITY," and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_, its successors and assigns, hereinafter referred to as "CONTRACTOR".

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONTRACTOR agree as follows:

## ARTICLE 1

### DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1. Agreement:** This document, Articles 1 through 7, inclusive. Other terms and conditions are included in the CITY's RFP 23-001, CONTRACTOR's Response to RFP dated \_\_\_\_\_, 20\_\_, all exhibits, and supplemental documents that are by this provision expressly incorporated herein by reference.
- 1.2. Commissioners:** Members of the City Commission with all legislative powers of the CITY vested therein.
- 1.3. CONTRACTOR:** The firm selected to perform the services pursuant to this Agreement.
- 1.4. Contract Administrator:** The ranking managerial employee of the CITY or some other employee expressly designated as Contract Administrator by the City Manager, who is the representative of the CITY. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.5. CITY:** City of Key West.

## ARTICLE 2

### PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and generally to express the objectives and intentions of the respective parties hereto, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1. The CITY has selected CONTRACTOR to perform the services hereunder based on the Request for Proposals \_\_\_\_\_ incorporated by reference and made a part hereof and the Response to the Request for Proposals from CONTRACTOR dated \_\_\_\_\_, 20\_\_\_, incorporated by reference and made a part of.
- 2.2. Negotiations pertaining to the services to be performed by CONTRACTOR were undertaken between CONTRACTOR and staff selected by the Commission, and this Agreement incorporates the results of such negotiations.

## ARTICLE 3

### SCOPE OF SERVICES AND STANDARD OF CARE

- 3.1. CONTRACTOR's services may include but are not limited to the following in regard to the Agreement: **Transit Bus Advertising. The scope of work included in the RFP is specifically referenced and incorporated herein.**
- 3.2. CONTRACTOR's will market advertising to the general public with the idea that their advertising will be seen throughout the community through the use of directly applied vinyl advertising copy to the exterior of the buses (bus wraps), interior styrene or laminated signs, multi-media on the on-board bus installed screen(s), and on-board Wi-Fi services and pay revenue to the City of Key West-Key West Transit. The restriction on coverage on the buses includes, but is not limited to vent panels, logo, and vehicle safety information labels.
- 3.3. CONTRACTOR and CITY acknowledge that the Scope of Services does not delineate every detail and minor work required to be performed by CONTRACTOR. If, during the course of the performance of the terms included in this Agreement, CONTRACTOR determines that work should be performed to complete work which is, in the CONTRACTOR's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONTRACTOR shall notify Contract Administrator in writing in a timely manner before proceeding with the work. If CONTRACTOR proceeds with such work without notifying the Contract Administrator, the work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by CITY to perform the work.

Performance of work by CONTRACTOR outside the originally anticipated level of effort without prior written CITY approval is at CONTRACTOR's sole risk.

- 3.4. The CITY and CONTRACTOR may negotiate additional scopes of services, revenue, time of performance and other related matters for work as allowed by this Agreement. If CITY and CONTRACTOR cannot contractually agree, CITY shall have the right to immediately terminate negotiations at no cost to CITY.
- 3.6. CONTRACTOR shall perform the services under this Agreement at the level customary for competent and prudent professionals in CONTRACTOR'S field performing such services at the time and place where the services are provided. In the event CONTRACTOR does not comply with this standard, and omissions or errors and/or substandard work as determined solely by the CITY are made by CONTRACTOR, CONTRACTOR will correct such work that contains errors or omissions at no cost to CITY and reimburse CITY through compensation for damages.
- 3.7. CONTRACTOR is required to perform work consistent with current applicable Federal, State and City laws, codes and regulations that pertain to the Task Order.

#### **ARTICLE 4**

#### **TERM OF AGREEMENT; TIME FOR PERFORMANCE; CONTRACTOR DAMAGES;**

The term of this Agreement shall be for a period of three (3) years from the effective date of the Agreement with the option of a two (2) year renewal. The Agreement will be in effect upon execution by both parties. The Agreement may be renewed at the discretion of the CITY.

- 4.1. CONTRACTOR shall perform the services within the time periods specified. Any amendment to such time period must be agreed to by CITY in writing.
- 4.2. Prior to the start of any ordering or supplying the Services under this Agreement, CONTRACTOR shall designate a primary and alternate representative, who will have management responsibility for the Services and who will have authority to act on technical matters and resolve problems with the Services and the Contract Documents, to the CITY in writing. Such designation shall include the contact information (including phone numbers) of Contractor's representative. CITY will advise CONTRACTOR in writing of the personnel who will represent CITY in the administration of the Contract Documents. Such writing from CITY may include the specific duties of each individual and each representative's limits of authority.
- 4.3. *Exclusive Right to Sell.* CONTRACTOR shall have the exclusive right to sell advertising on the Vehicles, as specified in the RFP. However, CITY specifically reserves the right to contract with other entities for advertising that is not on the Vehicles, if it deems, in its sole discretion, such action to be in CITY's best interest.
- 4.4. *Reviews.* Throughout the entire term of this Agreement, CONTRACTOR shall allow representatives of the CITY to visit the offices and other places of Contractor's work periodically to monitor CONTRACTOR's work.

- 4.5. Release of Information/Promotional Materials.** Before releasing any public press releases, including reports or promotional materials, prepared in connection with this Agreement, CONTRACTOR shall provide a copy to the CITY for review and approval prior to release of said documents.
- 4.6. Contractor Responsibility.** CONTRACTOR shall provide services of first quality, and the workmanship must be in accordance with customary standards of the various trades and industries involved in the Services. The Services and the work associated therewith shall be high-quality in all respects. No advantage will be taken by CONTRACTOR in the omission of any part or detail of the Services. CONTRACTOR hereby assumes responsibility for all materials, equipment, and processes used in the Services, whether the same is manufactured by CONTRACTOR or purchased readymade from a source outside CONTRACTOR's company..
- 4.7 Status Reports.** CONTRACTOR shall submit monthly written status reports to the CITY outlining the status of the Services to date throughout the term of this Agreement. Each status report shall be a concise narrative description of activities to date and planned activities until the next status report. A final report, one (1) original and two copies, shall be submitted by CONTRACTOR upon expiration or termination of this Agreement, however terminated.
- 4.8 Compliance with Laws.** CONTRACTOR shall comply with all federal, state, county, and local laws, rules and/or regulations, and lawful orders of public authorities including those set forth in this Agreement and that, in any manner, could bear on the provision of the Services under the Contract Documents. Omission of any applicable laws, ordinances, rules, regulations, standards or orders by CITY in the Contract Documents shall be construed as an oversight and shall not relieve CONTRACTOR of its obligations to comply with such laws fully and completely. Upon request, CONTRACTOR shall furnish to CITY certificates of compliance with all such laws, orders and regulations. CONTRACTOR shall be responsible for obtaining all necessary permits and licenses required for performance under this Agreement.

## **ARTICLE 5**

### **AGREEMENT PRICE AND COMPENSATION**

**5.1. Payment Pursuant to Fee Schedule.** The CONTRACTOR shall pay the CITY in accordance with the Section 7.4, Payments. The CONTRACTOR agrees to pay the CITY in current funds, as compensation for Services detailed within Exhibit C.

**5.2. Errors and Omissions in Pricing.** Compensation shall not be adjusted because of errors or omissions which are not the fault of the CITY in computing the Work or Services costs which result in an increase in the cost of this Agreement or because the time for completion varies from the original estimate, including completion or substantial completion of this Agreement prior to the scheduled or Agreement completion date or on account of CITY's election to furnish any of the Work or Services. In addition, CONTRACTOR shall certify that the original Agreement Compensation for the Scope of Services/Work and any additions thereto shall be adjusted to exclude any significant sums by which the CITY determines the Compensation was decreased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

**5.3 Reimbursable Expenses.** Given the nature of this particular Agreement, no reimbursable expenses are anticipated nor shall they be allowed to the CONTRACTOR absent a duly executed amendment to this Agreement between the parties or as may be specifically authorized by the CITY herein or in accordance with applicable law and the CITY’s purchasing policies and procedures.

**5.4 Payments.** In consideration of the CONTRACTOR providing the Deliverables in accordance with the terms and conditions of this Agreement, Contractor shall pay the following. Payments shall be addressed from the CONTRACTOR and submitted to the CITY’s Project Manager.

- 5.4.1 Year 1 .....\$ \_\_\_\_\_
- 5.4.2 Year 2 .....\$ \_\_\_\_\_
- 5.4.3 Year 3 .....\$ \_\_\_\_\_
- 5.4.4 Year 4 .....\$ \_\_\_\_\_
- 5.4.5 Year 5 .....\$ \_\_\_\_\_

**5.5** The CONTRACTOR’s payment(s) shall be accompanied by supporting data as may be required by the CITY’s Project Manager, including the reports referenced in Article 5 of this Agreement. The CITY Project Manager shall review the CONTRACTOR ’s payment and supporting data and notify the CONTRACTOR in writing within twenty (20) days from receipt of the statement if any amounts are disputed or lack adequate support or documentation.

**5.6** CONTRACTOR shall make all payments due to the CITY under this Agreement. CONTRACTOR shall pay MAG in accordance with this Agreement. Such payments shall be sent to the address specified by the CITY.

**5.7** CONTRACTOR shall pay late fees equal to one and one half percent (1½ %) per month of any unpaid amounts due from the CONTRACTOR to the CITY.

**5.8** CONTRACTOR shall supply County with an annual report detailed by vehicle identification number, type, and size for the purposes of substantiating all revenues that exceed the Minimum Annual Guarantee. Annual gross revenue from the CONTRACTOR includes all sources of revenue derived from the CONTRACTOR.

**5.9 Minimum Annual Guarantee (MAG).** The MAG amount for the corresponding year of the Agreement as set forth in Section 7.4 shall be paid to the CITY on a monthly basis, within twenty (20) days after the end of the month, in an amount equal to 1/12th of the MAG. Such payment shall be accompanied by a monthly report of year-to-date (YTD) gross and net revenues and commissions paid, if any, including a detail of gross and net bus advertising revenues, invoices, and collections from the prior month as charged to and collected from each client, any and all advertising commissions, if any, paid from gross revenues collected from each client, and any other information the CITY may deem relevant for its accounting purposes.

**5.10 Payment of Subcontractors.** CONTRACTOR shall pay its Subcontractors and suppliers, within thirty (30) days following receipt of payment from the CITY for such subcontracted Work or supplies. CONTRACTOR agrees that if it withholds an amount as retainage from such Subcontractors or suppliers, that it shall release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from CITY.



**5.11 Indemnification as to Payment of Subcontractors.** CONTRACTOR shall save, defend, and hold the CITY harmless from any and all claims and actions from Contractor's Subcontractors for payment for Services and Deliverables provided by Subcontractors for CONTRACTOR under this Agreement. Regardless of the foregoing, nothing in this Agreement shall create any contractual relationship between any Subcontractor and the CITY or any obligation on the part of the CITY to pay or to see the payment of any moneys due any Subcontractor, except as may otherwise be required by law.

## **ARTICLE 6**

### **CITY'S RESPONSIBILITIES**

- 6.1.** CITY shall assist CONTRACTOR by placing at CONTRACTOR's disposal all information CITY has available pertinent to the work including previous reports and any other relative data.
- 6.2.** CITY shall arrange for access to, and make all provisions for, CONTRACTOR to enter upon public and private property as required for CONTRACTOR to perform its services.
- 6.3.** CITY shall review the CONTRACTOR's itemized deliverables/documents identified and respond in writing with any comment within the time set forth in the Task Order or within a reasonable time.
- 6.4.** CITY shall give prompt written notice to CONTRACTOR whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of CONTRACTOR's services or any defect in the work of any Contract.

## **ARTICLE 7**

### **MISCELLANEOUS**

#### **7.1. OWNERSHIP OF DOCUMENTS**

Any and all records provided or created in connection with his Agreement are and shall remain property of CITY. All finished or unfinished documents, data, data matrices, analyses, compiled information and calculations generated and used to evaluate and compute the material requirements for the Task Order, studies, surveys, drawings, maps, models, photographs, analyses, compiled information and reports prepared or provided by CONTRACTOR in connection with this Agreement, whether in hard copy or electronic form, shall become the property of CITY, whether the Task Order for which they are made is completed or not. CONTRACTOR agrees to perform all actions reasonably requested by CITY (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments). Upon completion of this Agreement or Termination by either party, any and all records relating to the Agreement in the possession of CONTRACTOR shall be delivered by the CONTRACTOR to the CITY, at no cost to the CITY, within ten (10) days. All such records stored electronically by CONTRACTOR shall

be delivered to CITY in a format compatible with the CITY'S information technology systems. If applicable, CITY may withhold any payments then due to CONTRACTOR until CONTRACTOR complies with the provisions of this Article. CONTRACTOR is not responsible for damages caused by the unauthorized re-use by others of any of the materials for another Task Order.

**If applicable, CITY may withhold any payments then due to CONTRACTOR until CONTRACTOR complies with the provisions of this Article.**

**CONTRACTOR'S failure or refusal to comply with the provisions of this Article shall result in the immediate termination of this Agreement by the CITY.**

## **7.2. TERMINATION**

7.2.1. This Agreement may be terminated with or without cause by CITY at any time.

7.2.2. Notice of termination shall be provided in accordance with paragraph 7.12 NOTICES of this Agreement.

7.2.3. In the event this Agreement is terminated, CONTRACTOR shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 7.1 of this Agreement are provided to the CITY. Upon being notified of CITY's election to terminate,

CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment of profit for services that have not been performed.

## **7.3. AUDIT RIGHT AND RETENTION OF RECORDS**

7.3.1. CITY shall have the right to audit the books, records, and accounts of CONTRACTOR that are related to any Task Order. CONTRACTOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Task Order.

7.3.2. CONTRACTOR shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONTRACTOR's records, CONTRACTOR shall comply with all requirements thereof; however, CONTRACTOR shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of

any payment upon such entry.

#### **7.4. NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AMERICANS WITH DISABILITIES ACT, AND EQUAL BENEFITS FOR DOMESTIC PARTNERS**

7.4.1. CONTRACTOR shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

7.4.2. CONTRACTOR's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, gender identity or expression, national origin, marital status, physical or mental disability, political affiliation, or any other factor that cannot be lawfully or appropriately used as a basis for service delivery. CONTRACTOR shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, gender identity or expression, marital status, political affiliation, or physical or mental disability. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeships), and accessibility.

7.4.3. CONTRACTOR shall comply with City Ordinance Sec. 2-799 Requirements for City Contractors to Provide Equal Benefits for Domestic Partners.

#### **7.5. PUBLIC ENTITY CRIMES ACT**

7.5.1. CONTRACTOR represents that the execution of this Agreement shall not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, architect or other provider and 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 CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or architect under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid

hereto and may result in being barred from CITY’s competitive procurement activities.

7.5.2. In addition to the foregoing, CONTRACTOR further represents that there has been no determination, based on an audit, that it or any sub-CONTRACTOR, has committed an act defined by Section 287.133, Florida Statutes, as a “public entity crime” and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether CONTRACTOR has been placed on the convicted vendor list.

7.5.3. CONTRACTOR shall promptly notify CITY if it or any subcontractor or sub-CONTRACTOR is formally charged with an act defined as a “public entity crime” or has been placed on the convicted vendor list.

## **7.6. SUB-CONTRACTORS**

CONTRACTOR may use the sub-CONTRACTORS identified in the proposal that was a material part of the selection of CONTRACTOR to provide the services under this Agreement. The CITY reserves the right to accept the use of a sub-CONTRACTOR or to reject the selection of a particular sub-CONTRACTOR and to inspect all facilities of any sub-CONTRACTORS in order to make determination as to the capability of the sub-CONTRACTOR to perform properly under this Contract. The CITY’s acceptance of a sub-CONTRACTOR shall not be unreasonably withheld. CONTRACTOR shall obtain written approval of Contract Administrator prior to changing or adding to the list of sub-CONTRACTORS. The list of sub-CONTRACTORS submitted and currently approved is as follows:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

Hourly rates for such said Sub-CONTRACTORS are as on attached Exhibit A. The CONTRACTOR shall be responsible for all payments to any SUB-CONTRACTOR(S) and shall maintain responsibility for all work related to the services provided.

## **7.7. ASSIGNMENT AND PERFORMANCE**

7.7.1. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party and CONTRACTOR shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 7.6.

7.7.2. CONTRACTOR represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY’s satisfaction for the agreed compensation.

7.7.3. CONTRACTOR shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONTRACTOR's performance and all interim and final product(s) provided to or on behalf of CITY shall be in accordance with the standard of care set forth in Paragraph 3.6.

7.7.4. CONTRACTOR shall not change or replace overall project manager identified in the CONTRACTOR's response to the RFP without the Contract Administrator's prior written approval.

## **7.8. INDEMNIFICATION OF CITY**

7.8.1. To the fullest extent permitted by law, the CONTRACTOR expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents, and employees (herein called the "indemnities") from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR, its Subcontractors or persons employed or utilized by them in the performance of the Contract. Claims by indemnities for indemnification shall be limited to the amount of CONTRACTOR's insurance or \$1 million per occurrence, whichever is greater. The parties acknowledge that the amount of the indemnity required hereunder bears a reasonable commercial relationship to the Contract and it is part of the project specifications or the bid documents, if any.

7.8.2. The indemnification obligations under the Contract shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR under workers' compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the CONTRACTOR or of any third party to whom CONTRACTOR may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of the Work.

## **7.9. INSURANCE**

7.9.1. CONTRACTOR is to secure, pay for, and file with the City of Key West, prior to commencing any work under the Contract, all certificates for workers' compensation, public liability, and property damage liability insurance, and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amounts indicated. Notwithstanding any other provision of the Contract, the CONTRACTOR shall provide the minimum limits of liability insurance coverage as follows:

Auto Liability	\$1,000,000	Combined Single Limit
General Liability	\$2,000,000	Aggregate (Per Project)

	\$2,000,000	Products Aggregate
	\$1,000,000	Any One Occurrence
	\$1,000,000	Personal Injury
	\$ 300,000	Fire Damage/Legal
Professional Liability	\$2,000,000	Per Claim / Aggregate

7.9.2. CONTRACTOR shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as an additional insured on all policies— excepting Professional Liability—on a PRIMARY and NON CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its equivalent, (combination of CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations, is acceptable) including a waiver of subrogation clause in favor of City of Key West on all policies. CONTRACTOR will maintain the Professional Liability insurance coverage summarized above with coverage continuing in full force including the additional insured endorsement until at least 3 years beyond completion and delivery of the work contracted herein.

7.9.3. Notwithstanding any other provision of the Contract, the CONTRACTOR shall maintain complete worker’s compensation coverage for each and every employee, principal, officer, representative, or agent of the CONTRACTOR who is performing any labor, services, or material under the Contract. Further, CONTRACTOR shall additionally maintain the following minimum limits of coverage:

Bodily Injury Each Accident	\$1,000,000
Bodily Injury by Disease Each Employee	\$1,000,000
Bodily Injury by Disease Policy Limit	\$1,000,000

7.9.4. USL&H Act (WC 00 01 06 A) and Jones Act (WC 00 02 01 A) coverage not applicable to this RFP.

7.9.5. CONTRACTOR shall give 30 days written notice to the City of Key West in the event of cancellation or material change.

7.9.6. Certificates of Insurance submitted to the City of Key West will not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation/material change notice endorsements, and waivers of subrogation. Copies of USL&H Act and Jones Act endorsements will also be required if necessary. PLEASE ADVISE YOUR INSURANCE AGENT ACCORDINGLY.

7.9.7. CONTRACTOR will comply with any and all safety regulations required by any agency or regulatory body including but not limited to OSHA. CONTRACTOR will notify City of Key West immediately by telephone at (305) 809-3741 any accident or injury to anyone that occurs on the jobsite and is related to any of the work being performed by the CONTRACTOR.

- 7.9.8. It shall be the responsibility of the CONTRACTOR to ensure that all sub-CONTRACTORS/subcontractors comply with the same insurance requirements as is required of CONTRACTOR.
- 7.9.9. In addition, it is understood if at any time any of the policies required by the City shall become unsatisfactory to the City as to form or substance, or if a company issuing any such policy shall become unsatisfactory to the City, the CONTRACTOR shall obtain a new policy, submit the same to the City for approval and submit a certificate of insurance as which may be required by the contract. It is understood that upon failure of the CONTRACTOR to furnish, deliver and maintain such insurance as required above, the contract at the election of the City may be declared suspended, discontinued or terminated. Further, failure of the CONTRACTOR to take out and/or maintain any required insurance shall not relieve the CONTRACTOR from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the CONTRACTOR concerning indemnification.

#### **7.10. REPRESENTATIVE OF CITY AND CONTRACTOR**

- 7.10.1. The parties recognize that questions in the day-to-day conduct of the Task Order will arise. The Contract Administrator, upon CONTRACTOR 's request, subject to approval of the CITY MANAGER, shall advise CONTRACTOR in writing of one (1) or more CITY employees to whom all communications pertaining to the day-to-day conduct of the Task Order shall be addressed.
- 7.10.2. CONTRACTOR shall inform the Contract Administrator in writing of CONTRACTOR 's representative to whom matters involving the conduct of the Task Order shall be addressed.

#### **7.11. ALL PRIOR AGREEMENTS SUPERSEDED**

- 7.11.1. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document and the exhibits attached and/or documents incorporated by reference. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.
- 7.11.2. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

#### **7.12. NOTICES**

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance

with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

FOR THE CITY OF KEY WEST:

City of Key West  
Attn: City Manager  
1300 White Street  
Key West, FL 33040

With copies to: Contract Administrator  
P.O. Box 1409  
Key West, Florida 33041

FOR CONTRACTOR:

Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7.13. TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Agreement by CONTRACTOR shall act as the execution of a truth-in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price for any Task Order and any additions thereto shall be adjusted to exclude any significant sums, by which CITY determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

**7.14. INTERPRETATION**

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence or paragraph where they appear, unless the context otherwise requires. Whenever reference is made to a Paragraph or Article of this Agreement, such reference is to the Paragraph or Article as a whole, including all of the subsections of such Paragraph, unless the reference is made to a particular subsection or subparagraph of such Paragraph or Article.

**7.15. CONTRACTOR'S STAFF**



- 7.15.1. CONTRACTOR shall provide the key staff identified in their proposal as long as such key staffs are in CONTRACTOR's employment. Key Staff as referenced in this agreement shall mean [...]
- 7.15.2. CONTRACTOR shall obtain prior written approval of Contract Administrator prior to changing key staff. CONTRACTOR shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contract Administrator shall be reasonable in evaluating key staff qualifications.
- 7.15.3. Contract Administrator may request removal of any of CONTRACTOR's staff at his or her discretion with approval of City Manager or his or her designee.
- 7.15.4. The CITY reserves the right to approve the members of the Consulting Team and the roles they will undertake in the assignment. The CITY's acceptance of a team member shall not be unreasonably withheld.
- 7.15.5. Each assignment issued under this Agreement by the CITY to the CONTRACTOR, the CONTRACTOR will at the CITY's request, disclose the role, qualifications and hourly rate of each individual working on the assignment.
- 7.15.6. The CITY reserves the right to require replacement of any of the members of the Consulting Team. Any proposed addition or change of members of the Consulting Team initiated by the CONTRACTOR must obtain the CITY Representative's prior written approval.
- 7.15.7. In the event of the death, incapacity or termination of employment of any member of the Consulting Team before Completion of the Services, the CONTRACTOR shall at its own expense and as soon as reasonably practicable arrange to substitute or replace the individual member concerned subject to section 7.15.
- 7.15.8. The CONTRACTOR shall ensure that the substitute or replacement is no less qualified in terms of relevant experience and qualifications than the outgoing individual and is available at the relevant time to act as such replacement or substitute. The CONTRACTOR shall without delay forward curriculum vitae of the proposed substitute or replacement to the CITY. The deployment of such substitute or replacement shall be subject to the CITY's consent.
- 7.15.9. The CONTRACTOR shall solely be responsible for all direct, indirect and consequential costs or losses that may arise from the substitution or replacement of members of the Consulting Team.

## **7.16. INDEPENDENT CONTRACTOR**

CONTRACTOR is an independent contractor under this Agreement. Services provided by CONTRACTOR shall be subject to the supervision of CONTRACTOR. In providing the services, CONTRACTOR or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the CITY, nor shall they accrue any of the rights or benefits of a CITY employee. The parties expressly acknowledge

that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

#### **7.17. THIRD PARTY BENEFICIARIES**

Neither CONTRACTOR nor CITY intend directly or substantially to benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. No subcontractor or sub-CONTRACTOR, whether named or unnamed, shall be a third party beneficiary of this Agreement.

#### **7.18. CONFLICTS**

7.18.1. Neither CONTRACTOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONTRACTOR's loyal and conscientious exercise of judgment related to its performance under this Agreement.

7.18.2. CONTRACTOR agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

7.18.3. In the event CONTRACTOR is permitted to use sub-CONTRACTORS to perform any services required by this Agreement, CONTRACTOR agrees to prohibit such sub- CONTRACTOR from having any conflicts as within the meaning of this section, and shall so notify them in writing.

#### **7.19. CONTINGENCY FEE**

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, CITY shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

## **7.20. WAIVER OF BREACH AND MATERIALITY**

7.20.1. Failure by CITY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

7.20.2. CITY and CONTRACTOR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

## **7.21. COMPLIANCE WITH LAWS**

CONTRACTOR shall comply with federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement applicable at the time the scope of services was drafted for this agreement and shall obtain all required permits from all jurisdictional agencies to perform the services under this Agreement at its own expense. In addition, at the time each Task Order is executed, any revisions to applicable federal state, and local laws, codes, ordinances, rules and regulations shall apply.

## **7.22. SEVERABILITY**

In the event this Agreement or a term or a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall continue to be valid and enforceable to the fullest extent permitted by law unless CITY or CONTRACTOR elects to terminate this Agreement.

## **7.23. JOINT PREPARATION**

Preparation of this Agreement has been a joint effort of CITY and CONTRACTOR and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

#### **7.24. PRIORITY OF PROVISIONS**

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 7 of this Agreement shall prevail and be given effect.

#### **7.25. APPLICABLE LAW AND VENUE**

The laws of the State of Florida govern the validity of this Agreement, its interpretation and performance, and any claims related to it. The venue for mediation, litigation or any other legal proceeding shall be Monroe County, Florida, Lower Keys Division of the Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

#### **7.26. INCORPORATION BY REFERENCE**

The attached exhibits are incorporated into and made a part of this Agreement:

Exhibit A – CONTRACTOR/Sub-CONTRACTORS' Hourly Rates

Exhibit B – Appendix II to Part 200

Exhibit C – RFP 23-001

Exhibit D - CONTRACTOR's Response to RFP 23-001

#### **7.27. SURVIVAL OF PROVISIONS.**

Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

#### **7.28 COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

By: CITY OF KEY WEST

By: CONTRACTOR

\_\_\_\_\_  
Patti McLauchlin, City Manager

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Attest:

\_\_\_\_\_  
Cheryl Smith, City Clerk

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**Exhibit A  
Hourly Fee Schedule**

**Company Name: \_\_ Date: \_\_\_\_\_**

**Position Title**

**Hourly Rate**

## **Exhibit B**

### **Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” ([30 FR 12319, 12935, 3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act ([42 U.S.C. 7401-7671q.](#)) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with



obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See [§ 200.323](#).

(K) See [§ 200.216](#).

(L) See [§ 200.322](#).

[[78 FR 78608](#), Dec. 26, 2013, as amended at [79 FR 75888](#), Dec. 19, 2014; [85 FR 49577](#), Aug. 13, 2020]