

FLORIDA MUNICIPAL POWER AGENCY

JOINT PURCHASE PROJECT TERMS AND CONDITIONS

The Florida Municipal Power Agency (FMPA) was formed in 1978 for the purpose of providing a means for its members to benefit from a joint association of fellow municipally-owned utilities, including joint purchasing of services, materials, supplies, and equipment utilized in the generation, transmission, and distribution of electricity.

In July of 1994 by action of its Board of Directors FMPA created a Project for the joint purchasing of services, materials, supplies, and equipment utilized in the generation, transmission, and distribution of electricity.

Those FMPA members desiring to share in the benefits of joint purchasing of services, materials, supplies and equipment have executed a project procurement agreement with FMPA and are a Participating Member of the Project.

The Procurement Agreement between FMPA and the Project Participants provides for FMPA to administer the Project for the selection, bidding, and awarding of services, materials, supplies, and equipment utilized by the Project Participating Member and for the Project Participating Member to secure services, materials, supplies, and equipment through this Project, thus enjoying the benefits resulting from bulk purchasing.

1. OVERVIEW

This is a joint Invitation to Bid issued by the Florida Municipal Power Agency (FMPA) as agent to solicit and award on behalf of the following FMPA Participating Members.

City of Bartow
City of Lake Worth Beach
Fort Pierce Utilities Authority
Homestead Public Services
Keys Energy Services
Kissimmee Utility Authority

This bid is for the joint estimated annual requirement of the Purchase and Delivery of Ductile Iron Poles as listed.

2. PURCHASING MATERIALS

Subsequent to the award, the Project Participating Members named above, will through their own initiative issue purchase orders and make subsequent release(s) of shipment to the vendor(s) awarded the contract pursuant to this Invitation to Bid. For those Participating Members, FMPA is acting as a "Solicitation Agent" only and shall not be held liable for any costs, or damages incurred pursuant to any agreement (purchase order) entered into by them with the successful bidder or offeror to this solicitation.

3. PARTICIPATING MEMBERS

This invitation to bid and specification is requesting bids for the specified services to be provided to the Participating Members. It is anticipated that Municipal Electrical Systems other than those Participating Members listed in paragraph above may wish to purchase the specified services. Therefore, the bidder(s) is requested to extend the quoted price to any municipal system. In that event, all of the applicable terms and conditions of this specification shall apply. A map showing the FMPA members is included at the end of this section.

4. FMPA'S RESPONSIBILITY

FMPA is responsible to administer the solicitation of the bids and the subsequent recommendation for award. FMPA has sole authority to modify the specification prior to bid opening and resolve disputes arising from interpretation thereof.

5. PRODUCTS/SERVICES

Products/Services will be purchased in accordance with the prices, terms, and conditions of this Invitation to Bid and any subsequent contract or purchase order.

6. QUANTITIES

The QUANTITIES listed for each item on the Bid Form are the aggregate MINIMUM ANNUAL ESTIMATED REQUIREMENTS; therefore, the estimated quantities are not guaranteed. Quantities are a good faith estimate and are based on projected usage but it is specifically understood and agreed: (1) that these quantities are approximate; (2) any increased quantities will be paid for at the contract price; (3) supplier shall not have any claim against the participating member(s) for quantities less than the estimated amounts; and, (4) participating member(s) shall purchase ALL their requirements from the contract awardee(s) only unless awardee is unable to meet all the terms and conditions specified (including delivery) or a bona fide condition of emergency exists.

6.1 Vendor shall include with the bid any standard packaging quantities and/or minimum order quantity. Unless otherwise indicated, FMPA shall assume a standard package size of one and a minimum order quantity of one.

6.2 Vendor shall indicate guaranteed delivery from receipt of purchase order for each type, size or class of item bid as applicable.

6.3 The Project Participating Member reserves the right to reject in whole or in part, any or all materials which in its judgment is not as specified, reflects unsatisfactory workmanship or is damaged. In this event, payment shall be withheld corresponding to value of the rejected material until such the delivery is complete and accepted as contracted for.

6.4 Certain Participating Member(s) are of such a size that individual construction projects have significant impact on their overall purchases. For this reason historical information is often unreliable in predicting the future. These Special Participating Member(s) are not providing estimated quantities but are identifying the items they might purchase and are committing to all the other obligations (including the purchase commitments in this paragraph 5) included in this bid specification. An assumed quantity of one (1) will be used for evaluation purposes. For purposes of this bid, the following cities are considered Special Participating Member(s): NONE.

- 6.5 The Participating Members have provided good faith estimates of their needs for the coming year. These good faith estimates do not include certain items but the Participating Members desire to have bid prices for all normal items so that they can readily respond to unforeseen requirements. Even though no quantities are given for these units on the bid forms, bidders are requested to provide bids for these units. An assumed quantity of one (1) will be used in the evaluation of the bids.
- 6.6 Some Participating Members may desire that the awarded vendor stock some or all items that they have been awarded. Vendor stocking is optional and should be indicated on the optional bid form where applicable. Bidders should inform FMPA of all conditions surrounding the provision of stocking on the part of the vendor. Notification of all clarifications made by the Bidders, should be listed on page AOC-1 of the bid forms.
- 6.6.1 Each Participating Member desiring to have items stocked will provide a firm quantity for each item. The bidder, if awarded the stocked item, will be required to immediately purchase the quantity desired and have it available for immediate delivery to the Participating Member. The Participating Member shall be invoiced for any quantities when taken.
- 6.6.2 At the end of the initial term of this bid any quantity left in the Bidders warehouse shall be delivered to the Participating Member and an appropriately invoiced.
- 6.6.3 If a Participating Member desires more than the firm quantity stated for the item during the year, the pricing and delivery time shown on the "regular" bid form shall prevail.

7. EXTENSION OPTION

This bid may be extended on a year-to-year basis at the conclusion of the one year period by mutual agreement between the Project Participating Member and the successful bidder(s) provided the same terms, conditions, and prices exist, subject to Escalation/De-escalation as provided in Section 12. Should any supplier(s) choose not to renew their portion of the bid award, the Project Participating Member reserves the right to terminate the Contract with that supplier(s) and re-advertise or select a second supplier.

8. BID FORMS, VARIANCES, ALTERNATES, AND COMPLETENESS

- 8.1 Bids must be submitted on attached FMPA bid forms, although additional information may be attached. Bidders must indicate any variances from FMPA requested specifications, terms and conditions; otherwise bidders must fully comply with FMPA requested specifications, terms and conditions. Alternate bids will not be considered unless specifically indicated otherwise by these Terms and Conditions.
- 8.2 All blank spaces must be completed with the appropriate response. The bidder must state the price, typewritten or written in ink, for which he proposes to complete each item of the project. The bidder shall submit the executed bid form with other exhibits.
- 8.3 Pages BF-1 and AOC-1 of this bid package are required forms and **MUST** be included in Bidder's response appropriately filled out and signed. Bidder to complete pages DF-1 and AOC-2 and AOC-3 if applicable.

- 8.4 Each bidder shall submit complete and definitive information on his offering in sufficient detail to permit a complete analysis of the Bid.
- 8.5 Bidders shall quote on all items in one bid form. Failure to do so may result in the bid being rejected as not responsive.
- 8.6 When quotations on certain items are optional, bidders shall insert the words "No Bid" in the space provided for an item for which no quotation is made.
- 8.7 Incorporation in the bid of substantial exceptions to the Terms and Conditions shall invalidate the bid, if the exceptions amount to a substantial modification of the contract documents. Exceptions to Technical Specifications shall be clearly noted in the "Affidavit of Compliance".
- 8.8 The bid must be signed by an authorized agent or officer of the firm.
- 8.9 Each bidder shall submit with the bid complete manufacturer's description.
- 8.10 Any bid not having sufficient descriptive matter to describe accurately the equipment or materials proposed may be rejected as irregular. The descriptive matter submitted by the bidder will be retained by FMPA.
- 8.11 Verbal statements made by the Bidder at any time regarding quality, quantity, or arrangement of product/equipment will not be considered.

9. VARIANCE WITH APPLICABLE LAW

If the Bidder observes that the specifications are at variance with any applicable law, ordinance, rule or regulation, he shall promptly notify FMPA in writing and any necessary changes shall be made. If the Vendor performs any work contrary to such law, ordinance, rules and regulations, and does not comply with the procedure above, he shall bear all cost incident to such violation.

10. QUALITY TERMS/GUARANTY

- 10.1 FMPA and the Participating Members reserve the right to reject any or all materials if in its reasonable judgment, the item reflects workmanship not meeting the specifications or shipping damages.
- 10.2 Supplier's warranty is as stated in Section 36 below.

11. BIDDER RESPONSIBILITY

Bidders are instructed to carefully read and comply with all requirements as specified in these Terms and Conditions, Technical Specifications, and Bid Forms.

The Awarded Bidder shall:

- At its expense, obtain all required licenses and permits for operating a business in the state of Florida as well as any necessary surrounding counties.
- At its expense, obtain all necessary licenses and permits as described in these specifications. Contract employees requiring licensing by City, County or State Codes, shall not be allowed to work until said licenses are obtained.
- The Awarded Bidder shall obtain, at its expense, permits or agreements from the proper governmental entities or the state of Florida to execute work.
- Provide proof of Insurance

- Adhere to these Terms and Conditions, Technical Specifications, and Bid Forms

12. ESCALATION/DE-ESCALATION

Bid prices shall remain firm for a period of one year from the date of award. At the time the option to renew is to be exercised, the bid prices may be changed for the following reasons:

- 12.1 Manufacturer's production cost may be justification for price change; however, this shall not be construed in any way to increase vendor's margin of profit.
- 12.2 Approved (Florida P.S.C.) freight rate changes may change the total bid prices.
- 12.3 Florida Department of Transportation monthly index shall be recognized and approved, when applicable.
- 12.4 All written requests for price increases must include a back-up documentation as to the nature of the increase and shall be submitted to FMPA at least 30 days prior to renewal of contract. Approval of each request shall be by written confirmation from FMPA. If FMPA should consider said increase unwarranted or unreasonable, FMPA reserves the right to terminate the contract with the vendor and re-advertise or select a second supplier. Any price decreases at the manufacturer's level shall be reflected in an immediate reduction of the bid prices and the vendor shall notify FMPA and the Project Participating Member(s) of said decrease.

13. PRICES BID

- 13.1 Prices bid, including payment discount if applicable, shall be used for payment and these prices do not include payment for transportation, labor or equipment used in delivering Goods to the point of delivery; provided, however, that Supplier is providing a separate quote for freight to multiple different zones in Florida as a line item on its bid, which will be added to the quoted price for Goods. All items to be provided under this contract shall be new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety), and of current production.
- 13.2 Bidders shall bid unit prices, delivered, F.O.B., which will apply to each Project Participating Member desiring the designated item. Unit price bid for each item will not extend beyond the hundredth of a decimal, e.g. Non-acceptable \$2.423; Acceptable \$2.42.
- 13.3 No bidder will be allowed to offer more than one price on each item even though he may feel that he has two or more types or styles that will meet specifications. Bidders must determine for themselves which to offer.
- 13.4 Give both unit price and extend and total. Prices must be stated in units of quantity specified in the bidding specifications. In case of discrepancy in computing the amount of the bid, the Unit Price quoted will govern. Each item must be bid separately and no attempt is to be made to tie any item or items in with any other item or items, unless specifically stated otherwise in these Terms and Conditions. Unless a bidder offers a discount on payment terms, it is understood that a minimum of 30 days will be required for payment, with time being computed from the latter of the date of satisfactory delivery at place of acceptance and receipt of

correct invoice at the office specified. Payment discounts, if offered, shall be as requested by these Terms and Conditions and/or bid forms.

- 13.5 Any and all discounts, other than a payment discount, must be incorporated as a reduction in the bid price and not shown separately. The price as shown on the bid shall be the price used in determining award(s).

14. HONORING PRICES

Bidder warrants, by virtue of bidding, that any orders placed within the specified period shall be honored at the prices, terms, and conditions quoted.

15. DELIVERY

All deliveries shall be made during Participating Member's normal delivery hours. It is the responsibility of the supplier to coordinate deliveries with the Participating Members.

16. RESERVED RIGHTS

- 16.1 FMPA reserves the right to: 1) reject any and all bids or parts of bids, to waive irregularities and technicalities and to request re-bids; 2) recommend the award based on criteria other than price; 3) recommend the award that FMPA deems will best serve its Members interests; and, 4) recommend award of the contract according to one of the following:

- a) On a total order basis
- b) On a city by city basis
- c) On a "by zone" basis
- d) On a line item basis

- 16.2 FMPA reserves the right to accept or reject any and/or all bids, or any part thereof and or/to waive irregularities and technicalities, and to request the submission of clarifying information. Also, FMPA reserves the right to accept all or any part of the bids and to increase or decrease quantities to meet additional or reduced requirements of FMPA Participating Members. Any sole response received may or may not be rejected by FMPA depending on available competition and timely needs of FMPA Participating Members.

- 16.3 To be responsive, a bidder shall submit a bid, which conforms in all material respects to the requirements set forth in the Invitation to Bid. To be a responsible bidder, the bidder shall have the capability in all respects to perform fully to contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

FMPA reserves the right to make such investigation as it deems necessary to make this determination. Such information may include but shall not be limited to: current financial statement, verification of availability of equipment and personnel, and past performance records.

17. BID EXCEPTIONS/DEVIATIONS TO SPECIFICATIONS

- 17.1 All deviations from the specifications must be noted in detail by the bidder, in writing, at the time of submittal of formal bid. The absence of a written list of specification deviations at the time of submittal of the bid will hold the bidder

strictly accountable to FMPA specifications as written. Any deviation from the specifications as written not previously submitted, as required by the above, will be grounds for rejection of the material and/or equipment when delivered.

- 17.2 For purpose of bid evaluation, bidders must indicate any and all variance to requirements, terms, and conditions as stated in this document no matter how slight. If variations are not stated on the Affidavit of Compliance form attached herein, it shall be construed that the bid fully complies with the requirements, terms, and conditions.
- 17.3 The contract resulting from this solicitation will be awarded to that responsible offeror whose offer, conforming to the invitation is determined most advantageous to the Project Participating Members, price, delivery and other factors considered. The offeror's proposal shall be in the form prescribed by this invitation and shall contain a response to each of the areas identified, which affects the evaluation factors for award.

18. PERFORMANCE BOND/SURETY

Neither a bid nor a performance bond or surety is required pursuant to this Invitation to Bid.

19. FINAL CONTRACT

All the above Terms and Conditions, Special Instructions, and General Conditions shall be incorporated in the final contract and/or award.

20. INVOICES

Bidder agrees to send FMPA a copy of all invoices issued pursuant to this Bid, if requested.

21. OTHER BASIS FOR AWARD

Other factors that will be considered besides the lowest price are:

- Time of Delivery or Schedule
- Past performance on previous FMPA awards
- Quality of workmanship as represented by references
- Qualified Personnel (for Services)
- Capabilities to perform to the contractual requirements.

Exceptions to the bid may be considered if determined minor in nature and acceptable to FMPA's application. All exceptions shall be noted on the attached "Affidavit of Compliance" form.

22. OPENING LOCATION

The bids will be publicly opened at the Florida Municipal Power Agency (FMPA) 8553 Commodity Circle, Orlando, Florida 32819, in the presence of FMPA Officials at the stated time and date. All bidders or their representatives are invited to be present.

23. BID DELIVERY REQUIREMENTS

Any bids received after the stated time and date will not be considered. It shall be the sole responsibility of the bidder to have their bid delivered to FMPA for receipt on or

before the above stated time and date. If a bid is sent by U.S. Mail, the bidder shall be responsible for its timely delivery to FMPA's office. Bids delayed by mail shall not be considered, shall not be opened at the public opening, and arrangements shall be made for their return at the bidder's request and expense.

24. CLARIFICATION AND ADDENDA

24.1 Each bidder shall examine all Invitation to Bid documents and shall judge all matters relating to the adequacy and accuracy of such documents. Any inquires, suggestions, or requests concerning interpretation, clarification, or additional information pertaining to the Invitation to Bid shall be made to FMPA. Clarification of bids submitted shall be in letter form, signed by bidder. FMPA shall not be responsible for oral interpretations given by any FMPA employee or representative. The issuance of a written addendum is the only official method whereby interpretation, clarification or additional information can be given. If any addenda are issued to this Invitation for Bid, FMPA will attempt to notify all prospective bidders who have secured same. All addenda will be included on FMPA web site at *www.fmpa.com*

24.2 However, it shall be the responsibility of each bidder, prior to submitting their bid, to contact FMPA by either calling (407) 355-7767 or by checking FMPA's web site, to determine if addenda were issued and to make such addenda a part of their bid.

25. SEALED AND MARKED

One (1) signed copy of your bid shall be submitted in one sealed package, **clearly marked on the outside of package** with the Invitation to Bid Number, opening date and time addressed to:

Florida Municipal Power Agency
8553 Commodity Circle
Orlando, FL 32819-9002
ATTN: Sharon Samuels

26. LEGAL NAME

Bids shall clearly indicate the legal name, address, and telephone number of the bidder (company, firm, partnership, or individual). Bids shall be signed above the typed or printed name and title of the signer. The signer shall have the authority to bind the bidder to the submitted bid. Failure to properly sign proposal shall invalidate same, and it shall not be considered for award. No erasures are permitted. If a correction is necessary, draw a single line through the entered figure and enter the corrected figure above it. Corrections must be initialed by person signing the bid.

27. BID EXPENSES

All expenses for making bids to FMPA are to be borne by the bidder.

28. IRREVOCABLE OFFER

Any bid may be withdrawn up until the date and time set above for opening of the bid. Any bid not so withdrawn shall, upon opening, constitute an irrevocable offer for a period of 45 days to sell the Participating Members the goods or services set forth in the attached specification.

29. RESERVED RIGHTS

- 29.1 FMPA reserves the right to: 1) reject any and all bids or parts of bids, to waive irregularities and technicalities, request the submission of clarifying information, and to request re-bids; 2) recommend the award based on criteria other than price; 3) recommend the award that FMPA deems will best serve its Members interests; and, 4) award the contract on a total order basis, by city, by individual zone, or on a line item basis.
- 29.2 FMPA reserves the right to increase or decrease quantities to meet additional or reduced requirements of FMPA Participating Members. Any sole response received may or may not be rejected by FMPA depending on available competition and timely needs of FMPA Participating Members.
- 29.3 To be responsive, a bidder shall submit a bid, which conforms in all material respects to the requirements set forth in the Invitation to Bid. To be a responsible bidder, the bidder shall have the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit, which will assure good faith performance.
- 29.4 FMPA reserves the right to make such investigation as it deems necessary to make this determination. Such information may include but shall not be limited to: current financial statement, verification of availability of equipment and personnel, and past performance records.

30. THE RIGHT TO AUDIT

FMPA and the Participating Members shall have the right to audit the Contractor's records pertaining to quantities of Goods for a period of three (3) years after final payment. Except as required by law, neither FMPA, the Participating Members, nor any other governmental entity will have the right to audit the components of Supplier's fixed prices.

31. APPLICABLE LAWS

All applicable laws and regulations of the State of Florida, as well as applicable regulations of FMPA provided to Supplier at the time of bid, will apply to any resulting agreement, contract, or Purchase Order. Protestors shall seek resolution of their complaints initially with FMPA. A protest with respect to this Invitation for Bid shall be submitted in writing prior to the scheduled opening date of this bid.

32. CODE OF ETHICS

With respect to this bid, if any bidder violates or is a party to a violation of the Code of Ethics of the FMPA, Florida Statutes, Chapter 12, Part III, Code of Ethics for Public Officers and Employees, such bidder may be disqualified from furnishing the goods or services for which the bid is submitted and may be further disqualified from submitting any future bids for goods or services for FMPA.

33. COLLUSION

By offering a submission pursuant to this Invitation to Bid, the bidder certifies the bidder has not divulged, discussed, or compared his bid with other bidders and has not colluded

with any other bidder or parties to this bid whatsoever. Also, the bidder certifies, and in the case of a joint bid, each party thereto certifies, as to his own organization, that in connection with this bid:

- 33.1 Any prices and/or cost data submitted have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices and or cost data, with any other bidder or with any competitor.
- 33.2 Any prices and/or cost data quoted for this bid have not knowingly been disclosed by the bidder and will not knowingly be disclosed by the bidder prior to the scheduled opening directly or indirectly to any other bidder or to any competitor.
- 33.3 No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition.
- 33.4 The only person or persons interested in this bid, principal or principals is/are named therein and that no person other than therein mentioned has any interest in this bid or in the contract to be entered into.
- 33.5 No person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or established commercial agencies maintained by the Bidder for the purpose of doing business.

34. INDEMNITY

After notification of award, the successful bidder shall indemnify and save harmless FMPA and its Participating Members from and against all claims, suits, actions, damages, or causes or action arising during the term of the resulting agreement for any personal injury, loss of life, or damage to property of third parties to the extent resulting from Supplier's negligence or willful misconduct in performance of this Agreement.

Nothing in the award, resulting agreement, contract or Purchase Order shall be deemed to affect the rights, privileges and immunities of FMPA as set forth in Florida Statute 768.28.

The successful bidder(s) covenants and agrees to indemnify and save harmless FMPA and its Participating Members and to defend from all cost, expenses, damages, reasonable attorney's fees, injury or loss to which FMPA may be subjected by any person, firm, corporation, or organization by reason and to the extent of any wrongdoing, misconduct, or negligence by the successful bidder(s), his employees, his agents or assigns.

35. INSURANCE REQUIREMENTS

Before starting and until Acceptance of Work by Participating Member, and without further limiting Supplier's liability under this Agreement or a Participant contract, the Supplier shall procure and maintain, at is sole expense, insurance of the types and in the amounts stated below:

Schedule	Amount
<u>Workers Compensation</u> Statutory Coverage Employers's liability including appropriate Federal Acts	Statutory Limits \$500,000 each occurrence
<u>Commercial General Liability</u> Premises, Operations Products Completed, Operations Contractual Liability Independent Suppliers	\$1,000,000 each occurrence \$2,000,000 aggregate – bodily injury and property damage, combined single limit
<u>Automobile/Vehicle Liability</u> All vehicles – Owned, non-owned, hired	\$1,000,000 each occurrence, combined single limit
<u>Excess/Umbrella Liability</u>	\$2,000,000 each occurrence and annual aggregate

Supplier's Commercial General Liability policy shall remain in effect for at least two years after all work is complete.

Supplier shall specify Participating Members as additional insureds for all coverage except Worker's Compensation and Employer's Liability. Such insurance shall be primary to any and all other insurance or self-insurance maintained by Participating Members.

The Supplier shall require their insurance carrier to waive all rights of subrogation against the Participating Member, their employees, directors and officers.

All deductibles for insurance specified herein shall be paid by supplier.

All Subcontractors performing Work pursuant to this bid shall procure the insurance required under this bid during the life of the subcontract. The subcontractor insurance may be provided through separate coverage or by endorsement under insurance provided by supplier. Supplier shall submit Subcontractor's certificates of insurance to Participating Member prior to allowing Subcontractor to perform Work at any site or Work Area.

36. WARRANTIES

The following Warranty terms supersede all other warranty and guarantee terms set forth on the face of Participating Member's Purchase Order.

a) Awarded Bidder warrants that all Goods and Services furnished under this bid award are: (1) to be free from defects in workmanship, material, manufacture, and design (where design is the bidder's responsibility) under conditions of normal use; (2) comply with the requirements of this bid or purchase order and all applicable federal, state and local laws, rules, and regulations. (3) (3) free and clear of any lien, security interest, or other adverse claim against title; and (4) not infringe, including without limitation their sale or use alone or in combination, any US patents, trademarks, trade secrets, copyrights, or proprietary rights of any third party other than due to the fault or action of FMPA and its Participating Members.

b) The foregoing warranties are to the exclusion of all other warranties, expressed or implied, and shall survive any delivery, inspection, acceptance, and payment by Participating Members.

c) Warranties shall be effective for one (1) year from the date of delivery of Goods. Any repairs or replacements made to bidder's Goods shall be warranted for the remainder of the original warranty term or 90 days, whichever is longer. Any Goods that do not conform to this warranty, shall be repaired or replaced by Supplier as provided in Section 36(e) below.

d) Supplier will not be liable or responsible for (A) any defects attributed to normal wear and tear, erosion or corrosion, improper storage, use, or maintenance, or use of Goods with incompatible products, or (B) defects in any part of Goods manufactured by others. If (B) above is applicable, Supplier will, as an accommodation to FMPA, assign to FMPA any warranties given to it by any such other manufacturers; provided, however, that the foregoing will not extend Supplier's warranty to any accessory products unless Supplier specifically agrees in writing. All warranties are void if Goods are modified or used in conjunction with products or accessories not manufactured or approved by Supplier or which are incompatible with Goods. This warranty does not cover failure of any part manufactured by others, failure of any part from external forces, including but not limited to corrosive soils, earthquake, installation, vandalism, vehicular or other impact, application of excessive torque to the operating mechanism, frost heave, or other Force Majeure.

e) FMPA and the Participating Members reserve the right to reject any or all materials if in its reasonable judgment, the item reflects workmanship not meeting the specifications or shipping damages. Any claim by FMPA or a Participating Member with reference to Goods for any cause will be deemed waived unless submitted to Supplier in writing within ten (10) calendar days from the date discovered, or should have discovered, any claimed breach. FMPA will give Supplier an opportunity to investigate. If FMPA furnishes prompt notice to Supplier of any defect and an opportunity to inspect the alleged defect as provided above, Supplier will, in its sole discretion, either: (i) repair the defective or nonconforming Goods; (ii) replace nonconforming Goods, or part thereof; or (iii) if Supplier is unable or chooses not to repair or replace, return the purchase price paid and cancel any obligation to pay unpaid portions of the purchase price of nonconforming Goods. In no event will any obligation to pay or refund exceed the purchase price paid. If any Goods delivered do not meet applicable specifications, Supplier shall pick up the Goods from the Participating Members at no expense to FMPA or the Participating Member. Supplier will not be responsible for any labor, removal, or installation charges that may result from repair and/or replacement of any Goods.

f) FMPA's exclusive remedy and Supplier's sole liability for any loss, damage, injury, or expense of any kind arising from manufacture, delivery, sale, installation, use, or shipment of Goods will be, at Supplier's option, the remedies described above, whether based on contract, warranty, tort, or any other basis of recovery.

g) THE WARRANTIES IN THIS SECTION 36 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BY LAW OR STATUTE OR ARISING FROM TRADE USAGE OR COURSE OF DEALING, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OR GUARANTEES IN ANY PARTICIPATING MEMBER'S PURCHASE ORDER. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

37. Intentionally omitted.

38. TERMINATION FOR DEFAULT

Any failure by Awarded Bidder to perform or comply with the material terms and conditions of the Purchase Order which continues for ten (10) calendar days after written notice from Participating Member to Awarded Bidder demanding that such failure to perform be cured, shall be deemed an event of default by Awarded Bidder. Upon the occurrence of any such event of default, Participating Member may terminate the Purchase Order.

39. TERMINATION FOR CONVENIENCE

Participating Member shall have the right in its sole discretion to terminate by written notice, in whole or in part, the Purchase Order for its convenience on no less than thirty (30) calendar days' prior written notice. Participating Member shall pay Awarded Bidder for any Goods delivered and work in progress under the Specifications of the Bid Package prior to the termination date.

40. CONTROL OF WORK AND SUBCONTRACTORS

Awarded bidder shall be solely responsible for all methods, techniques, sequences, procedures, and safety programs in connection with the performance of the Work. In addition, Awarded bidder shall be solely responsible for the engagement and management of any subcontractors used to perform any portion of the Work.

41. MODIFICATION OR WITHDRAWAL OF BID

A modification of a bid already received will be considered only if the modification is received prior to the time announced for opening of bids. All modifications shall be made in writing, executed and submitted in the same form and manner as the original bid. Modifications submitted by telephone, telegraph, or facsimile will not be considered.

Any bidder may withdraw his bid by giving written notice to FMPA, at the place such bids are to be received and at any time prior to the time announced for opening of bids.

42. ERRORS IN BIDS

Bidders or their authorized representatives are expected to fully inform themselves as to the conditions, requirements and specifications before submitting bids; failure to do so will be at the bidder's own risk. Neither law nor regulations make allowance for errors either of omission or commission on the part of bidders. In case of error of extension of prices in the bid, the unit price shall govern.

43. No Bid

If not submitting a bid, respond by returning the "Statement of No Bid" no later than the stated bid opening date and hour, and explain the reason in the space provided. Failure to respond without justification may be cause for removal of the bidder's name from the bid mailing list.

44. DESCRIPTIVE INFORMATION

Unless otherwise specifically provided in the Technical Specifications or Bid Forms, any equipment, material, or article or patented process, any trade name, make, or catalog number bid other than that specified herein is subject to disqualification if the substitution is not specifically approved in writing by FMPA.

Specified items bid shall be identified by brand name, number, manufacturer, and model, and shall include full descriptive information, brochures, or appropriate attachments.

45. "OR EQUAL" INTERPRETATION

When a particular manufacturer's name or brand is specified along with the words "or equal", bids will be considered on other brands or on the product of other manufacturers. On all such bids the bidder shall indicate clearly the product (brand and model number) on which he is bidding, and shall supply a sample or sufficient data in detail to enable an intelligent comparison to be made with the particular brand or manufacturer specified. All samples shall be submitted in accordance with these procedures. Catalog cuts and technical descriptive data shall be attached to the original copy of the bid where applicable. Failure to submit the above information may be sufficient grounds for rejection of bid.

46. USE OF TRADE NAMES

If allowed by the Technical Specifications and/or the Bid Forms, bidders may submit bids on items manufactured by other than the manufacturer specified. In these instances, bids must be accompanied with all descriptive information necessary for a thorough evaluation of the proposed material of equipment such as detailed drawings and specifications, certified operation and test data, and experience records, as well as an itemized list of any variance from, or exceptions taken to, the specifications. Failure of any bidder to furnish the data may be cause for rejection of the specified item(s) to which it pertains.

47. AUTHORIZED PRODUCT REPRESENTATION

The successful bidder(s) by virtue of submitting the name and specifications of a manufacturer's product, will be required to furnish the named manufacturer's product. By virtue of submission of the stated documents it will be presumed by FMPA that the bidder(s) is legally authorized to so submit and the successful bidder(s) will be legally bound to perform according to the documents.

48. REGULATIONS

It shall be the responsibility of each supplier to assure compliance with an OSHA, EPA and/or Federal or State of Florida rules, regulations or other requirements, as each may apply.

49. CANCELLATION

It is the intention of FMPA to purchase material from sources of supply that will give prompt and convenient shipment service. Any failure of the supplier to satisfy the requirements of FMPA shall be reason for termination of the award. Any bid may be rejected in whole or in part for good cause when in the best interest of FMPA.

50. ROYALTIES AND PATENTS

The successful bidder(s) shall pay all royalties and license fees for equipment or processes in conjunction with the equipment purchased, and shall defend all suits or claims for infringement of any patent right(s), subject to the warranty above. FMPA shall be held harmless from loss on account thereof and any cost and reasonable attorney's

fee incurred therefor except to the extent due to FMPA's or Participating Members' acts or omissions.

51. TAXES

All of the equipment, materials, and articles incorporated in the product/work furnished and invoiced directly to FMPA are purchased for resale, and such sales are exempt from Florida's sales and use taxes. FMPA will furnish a resale certificate to the contractor or vendor. All of the equipment, materials, and articles incorporated in the product/work furnished and invoices directly to an individual city are not purchases for resale, and the invoices shall include all applicable state and local taxes unless the city provides a self accrual certificate to the contractor at the time of purchase.

52. EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

The Florida Municipal Power Agency, in accordance with the provision of Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the Regulations of the Department of Commerce (15 CFR, Part 8) issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement minority business will be afforded full opportunity to submit bids in response to this advertisement and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

53. PUBLIC ENTITY CRIMES

Pursuant to Section 287.133(2)(a), FLORIDA STATUTES, all bidders should be aware of the following:

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

54. DRUG-FREE WORKPLACE

A Drug-Free Workplace Statement should be completed, signed, and returned prior to award of bid. This form will be used whenever two or more bids that are identical with respect to price, quality, delivery, and service are received; a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process.

55. BID TABULATION

Bidders desiring a copy of the bid tabulation of the Invitation to Bid may request same by enclosing a self-addressed, stamped envelope with their bid.

56. BUDGETARY CONSTRAINTS

The Florida Municipal Power Agency and the Participating Members reserve the right to reduce or increase the quantity, retract any item from the bid, or upon notification, terminate entire agreement without any obligations or penalty based upon availability of funds.

57. MANUFACTURERS

FMPA will accept bids for products manufactured by the "Approved Manufacturers" and items that are "Or Equal" to the items listed in the Technical Specification. Items bid must meet or exceed the technical and performance standards of the approved items. Bids submitted for products not approved or equal to approved manufactured item will be rejected.

58. FEMA REIMBURSEMENT

This is an acknowledgement that Federal Emergency Management Agency ("FEMA") financial assistance may be used to fund this agreement. Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives. However, the Federal Government is not a party to this contract and is not subject to any obligations or liabilities to FMPA, Contractor, or any other party pertaining to any matter resulting from the contract. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract. If applicable, FMPA or the Participating Member will provide Contractor with applicable FEMA policies, procedures, and directives.

59. REMEDIES

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction located in Leon County, Florida.

60. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, Contractor agrees as follows:

(a) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(c) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency Contractor may request the United States to enter into such litigation to protect the interests of the United States.

61. CONTRACT HOURS AND SAFETY STANDARDS ACT

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work

done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

62. CLEAN AIR ACT

If applicable:

(a) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(b) Contractor agrees to report each violation to FMPA and understands and agrees that FMPA will, in turn, report each violation as required to assure notification to the Florida Department of Environmental Protection, FEMA, and the appropriate Environmental Protection Agency Regional Office.

(c) Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

63. FEDERAL WATER POLLUTION CONTROL ACT

If applicable:

(a) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(b) Contractor agrees to report each violation to FMPA and understands and agrees that FMPA will, in turn, report each violation as required to assure notification to the Florida Department of Environmental Protection, FEMA, and the appropriate Environmental Protection Agency Regional Office.

(c) Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

64. ACCESS TO RECORDS

(a) Contractor agrees to provide FMIPA, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(b) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

65. SUSPENSION AND DEBARMENT

(a) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(b) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(c) This certification is a material representation of fact relied upon by (____). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(d) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

66. BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of \$100,000 or more shall 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 shall 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 recipient.

67. PROCUREMENT OF RECOVERED MATERIALS

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(b) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

68. DHS SEAL, LOGO, AND FLAGS

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.