



GENERAL TERMS AND CONDITIONS

1. Definitions

Contract – The entire written agreement between the parties including, but not limited to, the Request for Bids, Request for Quotes, Request for Proposals or Letters of Qualifications and all specifications, terms and conditions, solicitation instructions, solicitation addenda, Vendor's offer, the contract document, and contract amendments if any, including, without limitation, these General Terms and Conditions and the purchase order or other contract document but excluding correspondence of any type unless specifically accepted by both parties in writing.

Contract Term – The contract term will be the term set forth in the Contract, or if none, the Contract will continue to the date all goods are delivered and accepted by the Port Authority except as to any warranties that extend beyond that date.

Port Authority or Authority – The Lee County Port Authority, a political subdivision and special district of the State of Florida.

Vendor – An individual, partnership, corporation or business entity that enters into a Contract with the Port Authority.

2. Applicability of General Terms and Conditions

These purchase order terms are in addition to the terms and conditions set forth in any solicitation document and/or purchase agreement and should be read in conjunction with the same unless the document indicates otherwise. To the extent that Vendor has furnished terms and conditions that may conflict with these General Terms and Conditions, the latter shall control. Either party's failure to insist upon the performance of any provision of these General Terms and Conditions shall not be construed as a waiver of that party's present or future right to such performance or each party's obligations in respect thereto and shall continue in full force and effect.

3. Contract Provisions by Reference

It is mutually agreed by and between the Port Authority and the Vendor that the Port Authority's acceptance of the Vendor's offer by the issuance of a purchase order or Contract shall, upon acceptance of the purchase order or execution of the Contract, create an agreement between the parties thereto containing the following:

- All specifications, terms and conditions in the solicitation document except as amended in the contract.
- These General Terms and Conditions.

Unless otherwise specified, in the event of any conflicts, the documents shall control in the following order:

1. The written contract (if any);
2. The Vendor's exceptions, if expressly accepted by Port Authority in writing;
3. The solicitation document;
4. These General Terms and Conditions;
5. The Vendor's offer.

4. Governing Law and Dispute Resolution

Contracts with the Port Authority shall be governed and construed in accordance with the laws of the State of Florida, and by the laws, rules and regulations of the United States. Any suit or action brought by either party to the contract against the other party relating to or arising out of the contract shall be brought either in the Florida state courts in Lee County, Florida, or in the United States Federal District Court for the Middle District of Florida, Fort Myers Division. If the Port Authority is the prevailing party in any such suit or action it shall be entitled to recover from the other party its' reasonable attorneys' fees and court costs.

5. Indemnification

Vendor shall defend, indemnify and hold harmless Lee County Port Authority and Lee County, Florida, and their respective agents and employees, from and against all claims, damages, losses and expenses to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Vendor and persons employed or utilized by the Vendor in the provision of goods or the performance of the services hereunder.

6. Insurance

All Vendors shall furnish proof of acceptable insurance in the form of a current insurance certificate including, additional insured endorsements, with coverages and limits meeting the following minimum standard requirements:

SUMMARY OF COVERAGES

GENERAL LIABILITY		\$1,000,000
	General Aggregate	\$2,000,000
	Products	\$2,000,000
AUTO LIABILITY		\$1,000,000
	<i>Or, if Vendor will be Airside</i>	\$5,000,000
WORKERS COMPENSATION		Per Florida Statutes
Employers Liability:	Per Employee (disease)	\$1,000,000
	Policy Limit	\$1,000,000
PROFESSIONAL LIABILITY	If required, per occurrence	\$1,000,000
	Aggregate	\$2,000,000

At the discretion of the Authority, all insurance limits may be reevaluated and changed at any time during the term of the contract.

Professional liability insurance may be required, insuring the Vendor's legal liability arising out of the performance of any professional services under the contract. Such insurance shall have limits of minimum \$1,000,000.00 per occurrence and \$2,000,000 aggregate. Any deductible applicable to any claim shall be the Vendor's sole responsibility.

Workers' compensation and employer's liability insurance shall be maintained, as required by Florida law, by the Vendor and shall remain in force during the term of the contract for all employees (if any) engaged in any work. The limits of such insurance shall not be less than Lee County Port Authority's current standard insurance requirements of Statutory Limits for Workers' Compensation and \$1,000,000.00 per employee and policy limit for Employers' Liability.

General liability insurance shall be maintained by Vendors and must include, but not be limited to, bodily injury and property damage, operations and completed operations, contractual, and personal injury in the amounts of \$1,000,000 per occurrence and \$2,000,000 aggregate.

Business automobile liability insurance shall be maintained by Vendors for bodily injury, property damage, and legal liability caused by an automobile accident resulting from the Vendor's operations. The limits of insurance shall not be less than the amounts stated in the Port Authority's current standard insurance requirements of \$1,000,000, each accident. Any work Airside will raise the aforesaid limits to \$5,000,000 per occurrence

The insurance provided must include coverage for all parties employed by the Vendor.

The appointed insurance agent or carrier shall be duly licensed to provide coverage and honor claims within Florida. The certificate of insurance must indicate that the insurance policies have been endorsed to provide the Authority advance notice of cancellations state that the coverage is primary and noncontributory; and that the Lee County Port Authority is an additional insured on any general liability and automobile liability insurance. Vendor agrees to waive its right to subrogation against the Authority.

If the Vendor has a self-insured retention (SIR), that is greater than \$50,000 per claim, the Port Authority retains the right to require the vendor to obtain a dedicated commercial general liability policy with no SIR provision which names the Port Authority as an additional insured, and contains the Port Authority's current standard insurance requirements.

An insurance certificate on an approved form is required from Vendor in the amounts stated above. This form must be properly executed and submitted before any goods are delivered or any work may begin. No purchase order for services in which a Vendor will be coming onto Authority property shall be issued until Vendor's certificate of insurance is approved.

7. Termination

The Vendor shall be considered in material default of the Contract and such default will be considered cause for Authority to terminate the Contract, in whole or in part, as further set forth in this section, for any of the following reasons:

1. Failure to begin work under the Contract within the times specified;
2. Failure to properly and timely provide the goods or perform the services as directed by Authority and as provided in the Contract;
3. The bankruptcy or insolvency or a general assignment for the benefit of creditors by Vendor;
4. Failure to obey laws, ordinances, regulations or other codes of conduct;
5. Failure to perform or abide by the terms or spirit of the Contract;
6. For any other just cause, or
7. Authority may also terminate the Contract for any reason, or no reason, if in the best interest of the Authority by giving Vendor seven (7) calendar days written notice of termination.

If the Port Authority has reason to believe Vendor will be unable to perform under the Contract, it may make a demand for reasonable assurances that Vendor will be able to timely perform all obligations under the Contract. If Vendor is unable to provide such adequate assurances, then such failure shall be an event of default and grounds for termination of the Contract.

8. Notice Regarding Public Entity Crimes

Section 287.133(2) (a), Florida Statutes, prohibits a person or affiliate who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime from:

- a. Contracting to provide goods or services to a public entity.
- b. Submitting a bid on a contract for construction or repair of a public building or public work.
- c. Submitting bids on leases of real property to a public entity.
- d. Being awarded or perform work as a Vendor, supplier, or subcontractor under a contract with any public entity in excess of \$35,000.00.

The prohibitions listed above apply for a period of thirty-six (36) months from the date a person or an affiliate is placed on the convicted Vendor list.

By agreeing to provide goods or services under the contract the Vendor certifies that is has not been debarred, suspended, or declared ineligible as defined in the Federal Acquisition Regulation (FAR 48 C.F.R Ch. 1 Subpart 9.4). Vendor will immediately notify the Port Authority if the Vendor is placed on the Consolidated List of Debarred, Suspended, and Ineligible Vendors.

9. Compensable Damages for Breach

The Vendor agrees that the following items shall be included as compensable damages for any breach of Contract with the Port Authority:

- Replacement costs;
- Costs of reissuing and repeating the competitive bid ;
- Expenses incurred as the result of delay in obtaining replacements;

The enumeration of compensable damages contained in this section is not intended to be exclusive and will not operate to bar recovery by the Port Authority for any other damages occasioned by the Vendor’s breach of the contract. However, in cases where the contract provides for liquidated damages, said liquidated damages shall be in lieu of all other damages, including those enumerated.

10. Assignment and Subcontracting

The Vendor(s) may not assign or delegate its rights and obligations under the Contract in whole or in part without the prior written consent of the Port Authority. Any attempted assignment or subcontracting shall be void.

11. Vendor’s Responsibility in Performing Work

The Vendor is solely responsible for the fulfillment of the Contract with the Port Authority. Vendor and its agents, subcontractors, independent contractors and other types of representatives shall be independent contractors and shall not act as agents of the Port Authority. All persons furnished or retained by Vendor in connection with the Contract shall be considered employees or agents of the Vendor.

The Vendor shall be responsible for any employee misconduct while on the Port Authority’s premises. Vendors shall ensure that employees abide by any applicable Port Authority policies and regulations concerning behavior/conduct. Any employee under the influence of alcohol or controlled substances, other than prescription medications, shall not be allowed on the Port Authority premises and shall be permanently dismissed if found to be so. Further, offensive language, sexual or other types of harassment of employees or visitors to the Port Authority could result in immediate and permanent dismissal of the offending person(s) from the Port Authority site.

12. Environmental Sustainability

The Vendor is encouraged to use as many environmentally preferable “green” products, materials, supplies and methods as possible in order to promote a safe and healthy environment. Environmentally preferable products are those products that have a reduced adverse effect on the environment, or that promote environmental sustainability.

13. Additions, Deletions or Contract Changes

The Port Authority reserves the right to add, delete, or change items or services in any Contract. No modification or change of a contract provision shall be made, unless such modification is mutually agreed to in writing by the Vendor and the Port Authority and incorporated as a written modification to the Contract. Memoranda of understanding or other correspondence shall not be interpreted as a modification to or part of the Contract, unless specifically agreed to in writing by both parties.

14. Permits, Licenses and Taxes

The Vendor must be authorized to transact business in the State of Florida. All applicable laws and regulations of the State of Florida and ordinances and regulations of the Port Authority will apply to the Contract.

The Vendor shall procure all necessary permits and licenses and abide by all applicable laws, regulations and ordinances of all federal, state, and local governments in which work under the Contract is performed.

The Authority is exempt from federal excise and state sales tax. Nothing herein shall affect the Vendor's normal tax liability. The Vendor shall pay any sales, use, personal property, and other taxes arising out of the Contract and the transactions contemplated hereby. Any other taxes levied upon the Contract, the transaction, or the equipment or services delivered pursuant hereto shall be the responsibility of the Vendor.

15. Proprietary Information, Data Duplication, and Disclosure

The Vendor agrees that any information disclosed by the Port Authority to the Vendor for the purpose of any Contract shall be used only in the performance of the Contract. Vendor will keep information confidential, will not disclose it to any third party except as authorized by the Authority, and will only disclose it to those within its organization who need to use it in performance of the Contract. Upon completion or termination of the Contract, Vendor shall return all such information to the Port Authority or make such other disposition thereof as may be directed or approved by the Port Authority.

No item furnished under the Contract, or tools, plans, designs or specifications for producing the same which have been specifically designed for use by the Port Authority shall be duplicated or used by the Vendor. Upon completion or termination of the Contract, Vendor shall return all items, tools, plans, designs or specifications to the Port Authority or make such other disposition thereof as may be directed by or approved by the Port Authority.

The Vendor agrees that it will not, without prior written approval of the Port Authority, publicize the Contract or disclose, confirm or deny any details thereof to third parties, or use the Port Authority's name in connection with Vendor's sales promotion or publicity without prior written approval of the Port Authority.

Nothing in this provision shall restrict Vendor's right to use or disclose any information which is or becomes generally known to the public without breach of this provision by Vendor, or is rightfully obtained without restriction from other sources.

16. Non-Discrimination and Equal Opportunity

The Vendor is subject to and shall comply with all applicable federal, state and local laws and regulations governing equal employment opportunity and affirmative action including, but not limited to, the federal requirements set forth in Titles VI and VII of Civil Rights Act of 1964, as amended; Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; Executive Order 11246 as amended; The Age Discrimination in Employment Act of 1967, as amended; the Age Discrimination Act of 1975, as amended; The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; and all regulations and administrative rules established pursuant to the foregoing laws. Expressly, Vendor shall not discriminate in employment on the basis of race, color, religion, age, sex, national origin, physical or mental disability, or because a person is a disabled veteran or a veteran of the Vietnam era.

17. Vendor and Subcontractors Responsibility with Federally Funded Contracts

Section 503 Disabilities Vendors and subcontractors shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime Vendors and subcontractors to employ and advance in employment qualified individuals with disabilities.

VEVRAA - Vendors and any subcontractors shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered Vendors and subcontractors to employ and advance in employment qualified protected veterans.

18. Public Records Access and Audits

Any materials submitted to the Port Authority including all written communications relating to the Contract are considered public documents in accordance with Section 119.0701, Florida Statutes.

This includes materials that the responding Vendor might consider to be confidential. Any information submitted that the responding Vendor believes to be confidential and exempt from disclosure (e.g. a trade secret) must be specifically identified as such. Upon receipt of a public records request for information the Vendor has designated as a trade secret or asserts is otherwise exempt from disclosure, the Port Authority will make a determination will be made whether the identified information is, in fact, confidential.

All Vendors shall maintain records related to charges, expenses and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of the Contract. The Port Authority shall have access to such records as required in this section for the purpose of inspection or audit during normal business hours, at the Vendor's place of business.

Notwithstanding anything contained herein, as provided under Section 119.0701, Florida Statutes, if the Vendor provides a service and acts on behalf of the Port Authority as provided under Section 119.011(2), Florida Statutes, the Vendor shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time.

The Vendor is specifically required to:

- Keep and maintain public records required by the Port Authority to perform services as provided under this Contract.
- Upon request from the Lee County Port Authority, provide 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 that provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- Upon completion of the Contract, transfer, at no cost, all public records in its possession to the Port Authority, unless notified otherwise by the Port Authority.

The Vendor acknowledges that it has familiarized itself with the requirements of Chapter 119, Florida Statutes, and other requirements of state law applicable to public records not specifically set forth herein. Failure of Vendor to comply with these requirements shall be a material breach of the Contract. The Port Authority shall have the right to exercise any and all remedies available for breach of Contract, including but not limited to, the right to terminate the contract for cause.

If the Vendor has questions regarding the application of Chapter 119, Florida Statutes, concerning the Vendor's duty to provide public records in relation to a Contract, he or she should contact the Lee County Port Authority Custodian of Public Records at:

Lee County Port Authority Custodian of Public Records

Victoria B. Moreland

11000 Terminal Access Road, Suite 8671

Fort Myers, FL 33913-8213

Email: publicrecords@flylcpa.com

Phone: 239-590-4504

Fax: 239-590-4539

19. Exemptions from Public Record

Vendor acknowledges that any information concerning its services may be exempt from disclosure under the Florida Public Records Law as follows:

- (1) **Airport Security Plans** – The Southwest Florida International Airport security plan, and other critical operational materials designated by the Authority, are exempt from disclosure as public records under Section 331.22, Florida Statutes (2001). These materials include, but are not limited to, any photograph, map, blueprint, drawing, or similar material that depicts critical operational information that the Authority determines could jeopardize airport security if generally known.

- (2) **Building Plans** - Vendor further acknowledges that Section 119.07(3)(b)1., Florida Statutes, exempts building plans, blueprints, schematic drawings, and diagrams depicting internal layouts and structural elements of a public building from the disclosure requirements of the Florida Public Records Law.
- (3) **Airport Security Systems** – Section 281.301, Florida Statutes, exempts information relating to the security systems for any property owned by or leased to the Authority and information relating to the security systems for any property owned by or leased to the Authority and any information relating to the security systems for any privately owned or leased property which is in Authority's possession, including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information, is confidential and exempt from disclosure. Section 119.0701(3)(a)1 and 2., Florida Statutes, reiterates the security system exemption and expands upon it to include threat assessments, threat response plans, emergency evacuation plans, shelter arrangements, security manuals, emergency equipment, and security training as confidential and exempt from disclosure. Vendor agrees not to divulge, furnish or make available to any third person, firm or organization, without Authority's prior written consent, or unless incidental to the proper performance of Vendor's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any confidential or exempt information concerning the services to be rendered by Vendor hereunder. Vendor shall require all of its employees, agents, and subcontractors to comply with the provisions herein.

20. Conflict of Interest

The Vendor affirms that, to the best of its knowledge, there exist no conflicts of interest between the Vendor and the Port Authority or its employees. In the event of change in Vendor's interests, Vendor shall inform the Port Authority regarding any conflicts of interest that are likely to arise as a result of such change. Vendor hereby represents that it has not participated in any illegal or unethical conduct in connection with the Contract. If, at any time, the Port Authority determines the Vendor is in violation of the foregoing representation, the Port Authority may cancel the Contract upon written notice to the Vendor and the Port Authority shall have no further obligation to the Vendor.

21. General Warranties

The Vendor warrants that all goods shall conform to the specifications of the Contract and shall be merchantable, free from defects (including defects in design and fit) and suitable for the intended purposes. Vendor further warrants that all services shall conform to the specifications of the Contract and shall be performed in a professional and workmanlike manner. These warranties shall remain in effect for at least one year following Port Authority's acceptance of the goods or services or for the duration of Vendor's standard warranty period if such period exceeds one year. The foregoing warranties are in addition to, and shall not limit, any other warranties or buyer protections that exist by operation of law.

22. Price Warranty:

The Vendor warrants that the price(s) for the goods or services sold to the Port Authority hereunder are not less favorable than those extended to any other customer (whether government or commercial) for the same or similar articles or services in similar quantities. If the Vendor reduces its price(s) for such articles or services during the term of the Contract, Vendor agrees to reduce the prices hereof accordingly. Vendor warrants that prices shown on the Contract shall be complete, and no additional charges of any type shall be added without the Port Authority's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, customs, duties, taxes, storage, insurance, boxing and crating.

23. Final Inspection and Acceptance

The Port Authority reserves the right to perform inspection and/or expediting of the materials and fabrication thereof at the facility of the Vendor or its suppliers at any reasonable times. All materials and services are subject to final inspection and acceptance by the Port Authority at destination, notwithstanding any prior payments or inspection at the source. Such final inspection shall take place within thirty (30) days from the date of delivery or installation or completion of services, whichever is latest.

In addition to other remedies which may be available under law or in equity, the Port Authority, at its option, may return to the Vendor any nonconforming or defective item(s), at no cost to the Port Authority, and require correction or replacement of the item(s). If the Port Authority does not require correction or replacement of nonconforming or defective item(s), Vendor shall repay such portion of the contract price or such additional amount as is equitable under the circumstances. The rights of the Port Authority are in addition to and shall not be limited by Vendor's standard warranties.

24. Delivery, Transportation and Packaging

The Vendor covenants that it shall:

- Adequately pack all commodities and equipment according to accepted commercial practice and according to the packing and marking instructions stated in the contract documents or purchase order.
- Make deliveries as stated in the Contract. It is understood by the Vendor that all deliveries shall be made by the end of the Port Authority's fiscal year in which the Contract is awarded unless otherwise specified in the contract.
- Make deliveries during normal working day hours to the point or points specified in the contract documents or purchase order unless otherwise noted.

25. Price Redetermination

Prices quoted shall be firm and fixed unless otherwise stipulated in the competitive solicitation documents issued by the Port Authority. For multiple year Contracts, unless stated differently in the Contract, prices shall remain firm and fixed during the initial term of the Contract. At the end of the initial contract term, and at the end of each contract term thereafter, the Vendor may request a price adjustment. Such requests must be submitted in writing at least 60 calendar days prior to the end of the current contract term and shall include the cause for the adjustment, the amount of change requested, and documentation to support the requested adjustment.

Only pass-through price adjustments will be considered and any proposed price increase must be proven to be general throughout the industry. Requests for price increases must be accompanied by sufficient documentation to justify the request including, for example, certified letters from a manufacturer or published price indices such as the Producer Price Index that substantiate a price increase.

The Port Authority must agree to and approve any proposed price adjustment, in writing, before its effective date. Any adjusted price(s) become effective starting with the term beginning after the Port Authority's approval of the increase and shall be firm and fixed for the next contract term.

26. Payment Terms

The Port Authority's payment terms are net 45 calendar days following receipt of an acceptable invoice or as otherwise provided by applicable Florida Statutes. In order for the Port Authority to make payment the Vendor's legal name, address and TIN/FEIN number on the Vendor's offer must exactly match that on the invoice and in the Port Authority's Vendor Management System. It is the Vendor's responsibility to make any updates to their vendor record.

27. Airport Access and Badging Requirements

Vendor acknowledges that the Authority is subject to strict federal security regulations limiting access to secure areas of the airport and prohibiting violations of the adopted Airport Security Program. Vendor may need access to these secure areas to complete work required by the Contract.

Vendor therefore agrees, in addition to the other indemnification and assumption of liability provisions set forth herein, to indemnify and hold harmless the Authority and Lee County, Florida, and their respective commissioners, officers and employees, from any duty to pay any fine or assessment or to satisfy any punitive measure imposed on the Authority or Lee County, Florida by the FAA or any other governmental agency for breaches of security rules and regulations by Vendor, its agents, employees,

subcontractors, or invitees.

Vendor further acknowledges that its employees and agents may be required to undergo background checks and take Security Identification Display Area (SIDA) training before receiving an airport security identification badge.

Immediately upon completion of any work requiring airport security access under the Contract, or upon the resignation or dismissal or conclusion of any work justifying airport security access to any agent, employee, subcontractor or invitee of the Vendor, Vendor shall notify the Airport's Police Department that the Vendor's access authorization or that of any of Vendor's agents, employees, subcontractors, or invitees has changed. Vendor will confirm that notice, by written confirmation on company letterhead, within twenty four (24) hours of providing initial notice to the Airport's Police Department.

Upon termination of the Contract, or the resignation or dismissal of any employee or agent, or conclusion of any work justifying airport security access to any agent, employee, subcontractor, or invitee of the Vendor, Vendor shall surrender any airport security identification badge held by the Vendor or its representatives. Should Vendor fail to surrender these items within five (5) days, the Vendor shall be assessed a fee of Twenty-Five Dollars (\$25.00) per identification badge not returned. This fee will be billed to the Vendor or deducted from any money owed to the Vendor, at the Authority's discretion.