

# Palm Beach State College

Purchasing Department, MS# 27

4200 Congress Avenue

Lake Worth, FL 33461

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Invitation to Negotiate, ITN 13/14-05

Job Classification and Compensation  
Consultant

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## **1.0 INTRODUCTION, PURPOSE, AND GENERAL INFORMATION**

- 1.1 **GENERAL COLLEGE INFORMATION.** Palm Beach State College (hereinafter referred to as the “College”) provides higher education and, technical and occupational training for the residents of Palm Beach County, its district by law, as well as a number of international students. As one of the twenty eight state colleges in the Florida system, the College is designed to be a community-based institution that offers a comprehensive range of programs responsive to changes in the community and in technology.
- 1.2 **PURPOSE OF ITN.** Palm Beach State College is requesting competitive proposals from those firms, or individuals, that provide consulting and analytical services related to salary compensation and classification of non-bargaining positions. The College has 936 regular fulltime and part-time non-bargaining positions and 342 job titles for this group. Refer to Attachment A - organizational charts and Attachment B – Salary Schedule for additional information.

The intent of this Invitation to Negotiate is to select one Firm to provide a comprehensive classification and compensation study and make recommendations for enhancement, if necessary. The District Board of Trustees of Palm Beach State College will consider contracting with a consulting firm for the services pursuant to this ITN. The College reserves the right to add services during the contract period under the same terms and conditions of this agreement. Palm Beach State College reserves the specific right to award this contract based on non-economic factors if, in the opinion of the College, it is in the College’s best interest.

1.3 **ITN CONTACT and SUBMITTAL OF QUESTIONS.**

CONTACT:	Jodi Hart	EMAIL:	<b>purchasing@palmbeachstate.edu</b>
TELEPHONE:	561-868-3465	FAX:	561-868-3460

Questions must be received, in writing, on or before the date established in the tentative calendar below. Any question(s) which requires a response which amends the ITN document in any way will be answered via addendum by the Purchasing Department available on our website <http://www.palmbeachstate.edu/purchasing/bid-openings.aspx>. Any verbal or written information received by proposers, which is obtained by any means other than this ITN document or by Addenda, shall not be binding on the College.

- 1.4 **CONTACT AFTER PROPOSER’S SUBMITTAL (CONE OF SILENCE).** Any respondent or a lobbyist for a respondent is prohibited from having any communication concerning this solicitation or any response with any member of the College District Board of Trustees, the College President, any Evaluation Committee Member or any other College employee after the release of the ITN and prior to the contract being awarded unless so notified by the Purchasing Department. A proposal from any firm will be disqualified when the respondent or a lobbyist for the respondent violates this condition of the solicitation. No verbal or written information which is obtained other than by information in this document or by Addenda to this solicitation shall be binding on the College.



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All questions submitted in writing will be answered to all proposers via Purchasing website at <http://www.palmbeachstate.edu/purchasing/bid-openings.aspx>. All questions shall be submitted in accordance with Section 1.3. Any information given, by any party, at the Proposers' Conference is not binding on the College unless it is contained within a subsequently released posting on our website.

- 1.8 **Subsequent Research/Survey Campus Visits.** Any subsequent site visits desired by any Contractor who attended the Proposer's Conference, must be by appointment only. Please contact Jodi Hart, Purchasing Director, Purchasing Department, to arrange your visit (phone 561-868-3465). All representatives of proposing Contractors must adhere to the following rules and policies:
- Have prior written permission from Ms. Hart to visit the facilities as other than a normal customer in retail operations/public areas.
  - Do not disrupt normal business operations by speaking to the management and staff teams.
- 1.9 **Implied Agreement.** By submitting a proposal, the Contractor agrees to be governed by the terms and conditions set forth in this ITN.

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## 2.0 SPECIAL CONDITIONS

- 2.1 **AWARD OF CONTRACT.** Firms will be evaluated by a Selection Committee on their qualifications and abilities to successfully perform the scope of services as indicated herein. The COLLEGE reserves the right to make award to a single contractor, or more than one contractor, or to include an award that designates one or more alternates, or to reject any or all proposals received.
- 2.2 **CONTRACT TERM.** The purpose of the ITN is to establish a deliverables based contract for each Category beginning with an anticipated contract to start on or about TBD and to expire when deliverables are met or six (6) calendar months after start.
- 2.3 **JOINT VENTURES.** In the event multiple proposers submit a joint submittal, a single proposer shall be identified as the Prime Proposer. If offering a joint submittal, Prime Proposer must include the name and address of all parties of the joint submittal. Prime Proposer shall provide all bonding and insurance requirements, execute any Contract, complete the **REQUIRED RESPONSE FORM** shown herein, and have overall and complete accountability to resolve any dispute arising within this contract. Only a single contract with one proposer shall be acceptable. Prime Proposer responsibilities shall include, but not be limited to, performing of overall contract administration, preside over other proposers participating or present at College meetings, oversee preparation of reports and presentations, and file any notice of protest and final protest as described herein. Prime Proposer shall also prepare and present a consolidated invoice(s) for services performed. The College shall issue only one check for each consolidated invoice to the Prime Proposer for services performed. Prime Proposer shall remain responsible for performing services associated with response to this ITN.
- 2.4 **INSURANCE REQUIREMENTS.** Proof of the following insurance will be furnished by any awardee to the College by Certificate of Insurance within 10 days of notification by the College.
- A. Commercial General Liability Insurance:

1. Each Occurrence	\$1,000,000
2. General Aggregate	\$3,000,000
3. Excessive Umbrella Liability	\$5,000,000
  - B. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this ITN \$1,000,000.
  - C. Commercial General Liability includes, but is not limited to: consumption or use of products, existence of equipment or machines on location and contractual obligations to customers.
  - D. Worker's Compensation in accordance with Florida Statutory limits and Employer's Liability Insurance.
  - E. Insurance Certification must list the College as Certificate Holder.
  - F. Insurance Certification must contain a provision for notification to College 30 days in advance of any material change in coverage or cancellation.
  - G. The College **shall be named as an additional insured with reference to this ITN.** Insurance Certificate must reference ITN # of this solicitation and must list the College as Additional Insured, as follows: "The College is additional insured with respect to General Liability (and Excess Liability if issued) in regards to the terms, conditions, and agreements of (ITN 13/14-05) entitled **Job Classification and Compensation Consultant** from date of commencement to six months after date of completion."
  - H. The College will not accept **"Claims-Made"** insurance policies.

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- I. The Insurance policies shall be issued by companies qualified to do business in the State of Florida and grant the College thirty days of advanced written notice of cancellation, expiration or any material change in the specified coverage. The insurance companies must be rated at least A-VI by AM Best or Aa3 by Moody's Investor Service. All policies must remain in effect during the performance of the contract.

Prior to the commencement of any work the awardee must provide the College Purchasing Department with a Certificate of Insurance which is evidence of the above coverage and with the College named as an additional insured.

Any questions as to the intent or meaning of any part of the above required coverage's should be submitted in writing in accordance with Section 1.3.

**3.0: REQUIRED RESPONSE FORM**

<u>ITN #:</u> <b>ITN 13/14-05</b>	<u>ITN TITLE:</u> <b>JOB CLASSIFICATION AND COMPENSATION CONSULTANT</b>		<u>RELEASE DATE:</u> <b>November 24, 2013</b>
<u>DATE DUE:</u> <b>December 17, 2013</b>	<u>TIME DUE – AT OR BEFORE:</u> <b>3:00 p.m. local time</b>	<u>ORIGINAL HARD COPY PROPOSALS REQUIRED FOR ITN:</u> <b>1</b>	<u>FLASHDRIVE FOR ITN:</u> <b>1</b>

**PROPOSER INFORMATION**

<b>Proposer's Name</b>					
<b>Street Address</b>				<b>City &amp; State</b>	
<b>Telephone</b>		<b>Fax</b>		<b>Toll-Free</b>	
<b>Contact Person</b>					
<b>Contact's Address</b>					
<b>Contact's Telephone</b>		<b>Contact's Fax</b>		<b>Contact's Toll-Free</b>	
<b>Email Address</b>			<b>Website URL</b>		
<b>Proposer's Taxpayer Identification Number</b>					

How were you informed of this solicitation? (Please provide media name(s) in blank space):

Website: \_\_\_\_\_ Newspaper: \_\_\_\_\_ Other: \_\_\_\_\_

**Proposal Certification**

I hereby certify that: I am submitting the following information as my firm's (proposer) proposal and am authorized by proposer to do so; proposer agrees to complete and unconditional acceptance of the contents of this document inclusive of this Request for Qualifications, and all attachments, exhibits and appendices and the contents of any Addenda released hereto; proposer agrees to be bound to any and all specifications, terms and conditions contained in the Request for Qualifications, and any released Addenda and understand that the following are requirements of this ITN and failure to comply will result in disqualification of submittal ; proposer has not divulged, discussed, or compared the submittal with other proposers and has not colluded with any other proposer or party to any other proposal; proposer acknowledges that all information contained herein is part of the public domain as defined by the State of Florida Sunshine and Public Records Laws; all responses, data and information contained in this proposal are true and accurate.

Signature of Proposer's Authorized Principal

Date

Name of Proposer's Authorized Principal

Title of Proposer's Authorized Principal

**NOTE:** Entries must be type written only. This original Required Response Form must be fully executed and submitted with the Proposal Submission (see Section 4.2.1).



**PROPOSAL ORGANIZATION FORMAT &  
SUBMITTAL CHECKLIST**

✓	TAB #	SECTION
<b>GENERAL INFORMATION</b>		
	1	Title Page
	2	Letter of Transmittal
	3	Acknowledgement of Released Addenda to ITN
	4	W-9 Form: Section
	5	Notice Provision
<b>MINIMUM ELIGIBILITY CRITERIA</b>		
	6	Required Response Form: Section 3.0
<b>PROPOSER'S EXPERIENCE AND QUALIFICATIONS</b>		
	7	Letter of Interest
	8	Organizational Profile
	9	Organizational Chart
	10	References
	11	Service Termination History
	12	Litigation History
<b>PROJECT SCOPE AND METHODOLOGY</b>		
	13	Project Scope
	14	Meetings and Deliverables
	15	Financials

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#### **4.0 - INFORMATION TO BE INCLUDED IN THE SUBMITTAL**

In order to maintain comparability and facilitate the review process, it is required that proposals be organized in the manner specified below. Hard copy submittals should be presented in a three (3) ring binder and should be limited to not more than 60 (8.5 inch x 11 inch) pages printed on one side, (excluding, covers, Table of Contents, section dividers, tabs and financial statements). Oversize pages will be counted as two pages. Dividers shall divide the sections TAB 1 through TAB 16. Secondary dividers (not in the page count) may be used at the Proposer's discretion to present information clearly. Submissions in excess of 60 pages will not be disqualified; however, clarity, conciseness, and brevity will be taken into consideration during the evaluation process. Include all information requested herein in your submittal.

#### **4.1 General Information**

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(1) 4.1.1	<b>Title Page</b>	Include ITN number, date, subject, the name of the proposer, address, and telephone number.
(2) 4.1.2	<b>Letter of Transmittal</b>	Include the name(s) of the person(s) who will be authorized to make representations for the proposer, their title(s), address(es) and telephone number(s).
(3) 4.1.3	<b>Acknowledgement of Released Addenda to ITN</b>	<p>The College reserves the right to issue any addendum modifying any portion of this ITN. Caution is given that certain addenda may be required to be submitted with proposals as specified in the particular addenda.</p> <p>It is the prospective proposer's responsibility to verify they have received all released addenda and, thereby must include acknowledgement (as per addenda instructions when addenda are released) of any addenda that are required to be submitted with proposal.</p>
(4) 4.1.4	<b>W-9 Form</b>	It is a requirement of this ITN that all proposers submit a completed Internal Revenue Service W-9 Form (Request for Taxpayer Identification Number and Certification) with proposal or within three (3) days of notification. The W-9 form may be downloaded at <a href="http://www.irs.gov">www.irs.gov</a> . Failure to submit W-9 Form as stated herein will result in no payments being issued in relations to this project, once awarded, until such time as W-9 is received.
(5) 4.1.5	<b>Notice Provision</b>	<p>When any of the parties desire to give notice to the other, such notice must be in writing, sent by US Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of the paragraph. <b>This information must be submitted with the proposal.</b> For the present, the parties designate the following as the respective places for giving notice:</p> <p><b>To College:</b> Jodi Hart, Purchasing Director Purchasing Department, MS 27 4200 Congress Avenue, Lake Worth, FL 33461</p> <p><b>With Copy To (College):</b> Barb Matias, Interim Executive Director, Human Resources, Safety &amp; Risk Office of Human Resources, MS 10 4200 Congress Avenue, Lake Worth, FL 33461</p> <p><b>To Proposer:</b> <i>(Proposer to Insert)</i></p> <p><b>With Copy To (Proposer):</b> <i>(Proposer to Insert)</i></p>

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## 4.2 Minimum Eligibility Criteria

In order to be considered for award and to be further evaluated, proposer must meet or exceed the following criteria. Failure to meet minimum eligibility criteria, detailed below, will result in proposal disqualification.

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(6) 4.2.1	<b>Required Response Form</b>	Submit Required Response Form (Section 3) with all required information completed and all signatures as specified. Any modifications or alterations to this form shall not be accepted and proposal will be rejected. The enclosed original Required Response Form will be the only acceptable form. Failure to submit a Required Response Form, as requested herein, will result in proposal disqualification.
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## 4.3 Proposer's Experience and Qualifications

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(7) 4.3.1	<b>Letter of Interest</b>	Submit a brief abstract, of no more than three pages, stating the proposer's interest in the contract; overview of firm qualifications; names, and contact information of key personnel; understanding of the nature and scope of the services to be provided and proposer's ability to comply with all requirements of contract. <ol style="list-style-type: none"><li>a) Signed by a duly authorized officer(s) of respondent.</li><li>b) The respondent shall explain in detail why respondent is interested and why firm would be the best choice for the College.</li><li>c) Letter shall include the year the firm was established, summarize the firm and their qualification for the miscellaneous projects and identify principal(s) who will be assigned to the miscellaneous projects.</li><li>d) The firm shall acknowledge receipt of any and all addenda, if any, listing the Addenda by number(s) and date(s) as the last sentence in their Letter of Interest after the signature.</li></ol>
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(8) 4.3.2	<b>Organizational Profile</b>	Identify the prime Proposer responsible for all portions of this ITN. Include: <ol style="list-style-type: none"><li>a) Current organization's name, address, telephone number, and fax number.</li><li>b) The date that organization was established.</li><li>c) The size of the organization.</li><li>d) The number of years established in business, including operation under other firm names, providing services same or similar as described herein.</li><li>e) Number of years in business.</li></ol>
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In the event that the proposal consists of a Joint Venture, a fully executed Joint Venture Agreement between the parties is required. At a minimum, the Joint Venture Agreement must outline the roles and responsibilities of the parties and must identify one party as Prime for the purposes of this project

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(9) 4.3.3	<b>Organizational Chart</b>	Include organizational chart including Local, District and Corporate levels for Proposer. Describe how the organizational structure will ensure orderly communications, distribution of information, effective coordination of activities, accountability, and decision-making authority.
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(10) 4.3.4	<b>Personnel Profile</b>	Submit resume of personnel who will work on this project to include qualifications, years of relevant experience, educational background, and brief summary of responsibility within the organization.
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- (11)  
4.3.5           **References**   Provide three references, preferably higher education clients, for which proposer has performed (or is currently performing) work similar in nature, scope and size within the last five (5) years:
- a) Client Name
  - b) Client Address
  - c) Similarity with scope and size of the College
  - d) Owner Contact (owner representative, address, telephone number and email).

It is the responsibility of each proposer to ensure that all references are current and fully completed. The College reserves the right to contact all references submitted or to seek additional references. The College reserves the right to use an external party to conduct reference checks.

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- (12)  
4.3.6           **Service Termination History**   Has your firm terminated, or had any contracts terminated with a company or installation during the past 24 months? If so, identify the name, address, and contact individual, and telephone number of that company or installation. If no service termination history exists, provide a statement to that effect. For Joint Venture proposers, submit the requested information for each member of the Joint Venture.

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- (13)  
4.3.7           **Litigation History**   Provide a statement of any litigation or regulatory action that has been filed against your firm(s) in the last five (5) years. If an action has been filed, state and describe the litigation or regulatory action filed, and identify the court or agency before which the action was instituted, the applicable case or file number, and the status or disposition for such reported action. If no litigation or regulatory action has been filed against your firm(s), provide a statement to that effect. For Joint Venture, submit the requested information for each member of the Joint Venture.

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#### **4.4 Project Scope and Methodology**

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- (14)  
4.4.1           **Project Scope**   4.4.1.1   The Firm will be expected to perform a comprehensive assessment of the overall market competitiveness of the College's salaries, the mathematical soundness of the College's current pay structure, as well as to make suggestions for appropriate changes to ensure the College's total compensation program remains competitive in the market. The scope of work for this assessment will consist of:

- a) Developing an understanding of the College's current compensation and classification practices, including the philosophy and structure of its pay plan. Benchmark all selected position titles against comparable government, nonprofit educational and private sector markets. The number of position titles to benchmark will be determined by the Office of Human Resources.
- b) Reviewing the current mathematical design of the pay structure relative to overall soundness and making recommendations for changes to this structure, if warranted.
- c) Reviewing employee salary to address, if necessary, salary compression concerns.
- d) Assessing the market competitiveness and internal equity of the College's current salaries and pay structure.
- e) Providing recommendations on what enhancements, if any, should be considered to the College's compensation program to ensure it remains competitive.

4.4.1.2. Describe the techniques, methods and tools used to collect and analyze data. Based on the contract dates provided, develop a timeline for the project.

(15)  
4.4.2

**Meetings and Deliverables**

The Firm will be expected at a minimum to engage in the following meetings and produce the following deliverables based upon work performed:

- a) Conduct pre-study project planning and schedule meetings with the College's Vice President of Administration and Business Services, Interim Executive Director of Human Resources and designated staff as needed to effectively perform this Scope of Work.
- b) Develop and recommend a phased approach to gathering and analyzing relevant data needed to effectively complete the Scope of Work, including such activities as:
  - i. Reviewing organizational charts, operational functions, pay plans, position descriptions, and relevant College reports with particular emphasis on compensation and classification design elements.
  - ii. Conducting project briefings and question and answer sessions with the executive administrators, management or other identified staff to better understand the College's compensation and classification program.
  - iii. Working with relevant College staff to collect data and information necessary to complete the Scope of Work.
  - iv. Conducting orientation sessions with employees to include facilitating employee and supervisor focus group sessions.
- c) Conduct periodic status meetings at least twice per month during the course of the engagement with the College's Human Resource designees and Vice President of Administration and Business Services.
- d) Develop a time-phased, structured management action/development plan for action recommended as to what should be done, who should be responsible for doing it, when it should begin and when it should be completed.
- e) Prepare a draft written report and recommendations for review and comment by Human Resource designees and Vice President of Administration and Business Services. The draft report should include at least:
  - i. An Executive Summary of the findings and recommendations contained in the report.
  - ii. A comprehensive, written report documenting the methodologies, analysis, findings and recommendations developed during this engagement.
  - iii. An editable electronic copy of the draft written report that can be reproduced by the College, in whole or in part, as needed.
- f) Deliver a final written report and recommendations to the College's District Board of Trustees, in terminology that will be meaningful to management, to assist the Board and executive administrators in making decisions pertaining to recommended changes to the College's compensation program. Final report should include at least:
  - i. An Executive Summary of the findings and recommendations contained in the report.
  - ii. A comprehensive, written report documenting the methodologies, analysis, findings and recommendations developed during this engagement.
  - iii. Thirty (30) hard copies of the written report that can be reproduced by the College, in whole or in part, as needed.
  - iv. A final electronic copy of the written report that can be reproduced by the College, in whole or in part, as needed.
  - v. Presentations of the report orally, as necessary, to the District Board of Trustees and the College's executive administrators, to review the report, ensure understanding of the implications of the study findings and recommendations and respond to questions and concerns.
- g) Presentations of the report orally of the final work product to employees at each campus location – Belle Glade, Boca Raton, Lake Worth, and Palm Beach Gardens.

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## 4.5 Financials

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(16)  
4.5.1

**Costs** The Firm will provide schedule for computing any extra work not specified in the proposal.

The Firm will provide a statement of total costs and estimated time frames to complete the entirety of the scope of work.

The Firm should include in its proposal the estimated project timeline and breakdown of costs to benchmark the following scenarios:

- a) The estimated project timeline and breakdown of costs to benchmark 30% of the College's total number of position titles.
  - b) The estimated project timeline and breakdown of costs to benchmark 50% of the College's total number of position titles.
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## 5.0 -EVALUATION OF PROPOSALS

- 5.1 **Evaluation Criteria (Initial Screening).** The Evaluation Committee (hereinafter referred to as "Committee") shall evaluate all submittals received for **ITN 13/14-05**, which meet or exceed Section 4.2, Minimum Eligibility Requirements, according to the following initial screening criteria:

<b>Criteria Section:</b>		<b>Maximum Points</b>
a)	Proposer's Experience Qualifications	30
b)	Project Scope and Methodology	50
c)	Total Cost	20
<b>Total Maximum:</b>		<b>100</b>

- 5.2 **Result of Evaluation of Proposals.** Based upon the results of Section 5.1, the College, at its sole discretion, may: 1) recommend award to the top ranked proposer; 2) may recommend award to more than one top ranked proposer; 3) may short-list the top ranked proposers (short-list number to be determined by the College) for further consideration and interviews; or, 4) may reject all proposals received.

- 5.2.1 **Proposal Clarification.** During the review of proposals, the College reserves the right to ask questions of a clarifying nature in order to obtain clarity on proposal elements submitted. However, proposers will not be allowed to enhance or alter their initial proposal and may only clarify existing proposal elements.

- 5.3 **Interviews.** In the event that the College chooses to interview recommended short listed proposers in accordance with Section 5.1 and 5.2, the Committee shall interview the short-listed proposers, in order to make an award recommendation. Scores and rankings as a result of Section 5.1 will neither be considered, nor carried forth as part of the scores and rankings resulting from the interview phase. Short-listed proposers will be interviewed against a set of standard questions (same questions for all short listed proposers) and/or clarifying questions (proposal-specific with the intent to clarify issues), and shall be evaluated according to the following criteria:

<b>Criteria Section:</b>		<b>Maximum Points</b>
a)	Understanding of the College's requirements	20
b)	Relevant experience and qualifications of personnel assigned to the project	20
c)	Unique qualifications	20
d)	Overall approach, methodology, and ability to perform scope of work	40
<b>Total Maximum:</b>		<b>100</b>

- 5.4 **Result of Interviews and Presentations:** Based upon the results of Section 5.3, the College, at its sole discretion, may recommend award to one or more top ranked proposers. The College will select for award of the contract, the responsive contractor or vendors as determined by the Evaluation Committee.
- 5.5 **Contract Negotiation:** The Negotiations Team will begin negotiations with the top-ranked proposer(s) as recommended by the Evaluation Committee in Section 5.4, Interviews. The enclosed "sample" contract (Section 7.0) shall be the basis for any contract negotiation and resulting agreement. The final contract shall reference and incorporate all addenda, specifications, terms, and conditions of this ITN, and to include proposer's offer, contract negotiations, and final acceptance. The College may add to or amend any term or condition of the sample contract prior to final acceptance by both parties. Negotiations will continue with one or more proposals until such time as a contract is agreed upon or until the College rejects any or all proposals.

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5.5.1 The College reserves at any time during the negotiations process to:

- Schedule additional negotiation sessions with any or all responsive proposers;
- Require any or all responsive proposers to provide additional or revised detailed written proposals addressing specific topics;
- Require any or all responsive proposers to provide a best and final offer;
- Require any or all responsive proposers to address services, prices, or conditions offered by any other proposer;
- Pursue a contract with one or more responsive proposers for the services encompassed by this solicitation, any addenda thereto and any request for additional or revised detailed written proposals or request for best and final offers;
- Pursue the division of contracts between responsive proposers by type of service or geographical area, or both;
- Arrive at any agreement with a responsive proposer, finalize contract terms with such proposer and terminate negotiations with any or all other proposers, regardless of the status of or scheduled negotiations with such other proposers;
- Decline to conduct further negotiations with any proposer;
- Reopen negotiations with any proposer;
- Take any additional administrative steps deemed necessary in determining the final award, including additional fact-finding, evaluation, or negotiation, where necessary and consistent with the terms of this solicitation.

The College has sole discretion in deciding whether and when to take any of the foregoing actions, the responsive proposer(s) affected and whether to provide concurrent public notice of such decision.



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## **6.0 – GENERAL CONDITIONS**

1. **SUBMITTAL OF QUESTIONS.** Any questions concerning any portion of this solicitation must be received by the contracting officer named herein on or before the due date for submittal of questions as stated in the project calendar. If necessary, the College will issue an addendum to respond to question(s) received. Any verbal or written information, which is obtained other than by information in herein or by Addenda shall not be binding on the College. The proposer may examine this ITN to determine if the College's requirements are clearly stated. If there are any requirements that restrict competition, the proposer may request, in writing, to the College that the specifications be changed. The proposer that requests changes to the College's specifications must identify and describe the proposer's difficulty in meeting the specifications, must provide detailed justification for a change, and must recommend changes to the specifications. Proposer's failure to request changes shall be considered to constitute proposer's acceptance of the specifications. The College shall determine what changes to this ITN shall be acceptable to the College. If required, the College shall issue an addendum reflecting the acceptable changes to this ITN, which shall be available to all proposers in order that all proposers shall be given the opportunity of proposing to the same specifications.
2. **AWARD.** In order to meet the needs of the College award may be made by item or by group, as indicated herein. The College may make an award to one or more awardee(s) or may split award among respondents. The terms of the award shall be defined in the award recommendation document. Interested respondents may request copies of tabulations and score sheets and may request a debriefing session after award of solicitation has been completed. The College reserves the right to reject any or all proposals, to not make an award resulting from this solicitation or to withdraw this solicitation at any time.
3. **SEALED PROPOSALS.** All proposals must be executed and submitted in a sealed envelope. Do not include more than one proposal per envelope. All proposals are subject to the conditions specified herein. Those which do not comply with these conditions are subject to rejection. It is the sole responsibility of the proposer to deliver the proposal to the address contained herein on, or before, the closing hour and date indicated. The College is not responsible for delays with postal delivery or the normal delay in delivery for internal mail procedures. Palm Beach State College will not be responsible for the inadvertent opening of a proposal not properly sealed, addressed or identified.
4. **SEALED EXECUTION OF PROPOSAL.** Proposals must contain a manual signature of an authorized representative in the space provided on the proposal submittal form. Proposal must be typed or printed in ink. No erasures are permitted. If a correction is necessary, draw a single line through the entered figure and enter the correct figure above it. Corrections must be initialed by the person signing the proposal. Any illegible entries, pencil proposals or corrections not initialed will not be tabulated.
5. **COSTS.** The College is not liable for any costs incurred by a proposer in responding to this ITN, including those for presentations, when applicable.
6. **MISTAKES.** Proposers are expected to examine the specifications, delivery schedule, proposal prices, extensions, and all instructions pertaining to supplies and services. Failure to do so will be at the proposer's risk. In case of mistake in extension, the unit price will govern.
7. **PROPOSAL OPENING.** Shall be public, at the address indicated on the ITN document, on the date and at the time specified on the proposal form. Proposals will not be evaluated nor will questions be fielded at the time of opening. The proposal opening is to determine the contractor pool only. It is the proposer's responsibility to assure that the proposal is delivered at the proper time and place of the opening. Proposals received after the date and time will be retained, unopened, for the record. Proposals by fax, email or telephone will not be accepted.
8. **PURCHASES BY OTHER ENTITIES.** With the consent and agreement of the successful bidder(s), purchases may be made under this bid by other colleges, universities, school boards, political subdivisions, or state agencies. Such purchases shall be

governed by the same terms and conditions stated in the bid/proposal solicitation as provided in State Board of Education Rule 6A-14.0734(2) (d).

9. **EMPLOYMENT OF ALIEN WORKERS.** The College will comply with all aspects of Section 274A of the Immigration and Nationality Act. We will not knowingly engage with a company that does not adhere to these regulations and it is the obligation of the proposer to disclose any violation of such law to the College.
10. **PUBLIC RECORD LAW.** Any material submitted in response to this ITN will become a public document pursuant to Section 119.07, F.S. This includes material which the responding proposer might consider to be confidential or a trade secret. Any claim of confidentiality is waived upon submission, effective after opening pursuant to Section 119.07, Contractor's refusal to comply with this provision shall constitute sufficient cause for termination of the contract resulting from this ITN.
11. **COMMENCEMENT OF WORK/SHIPMENT.** No shipment of goods or commencement of work shall begin until such time as awardee receives a College Purchase Order. Goods or services received prior to issuance of Purchase Order may be rejected.
12. **LEGAL REQUIREMENTS.** Applicable provision of all Federal, State, county and local laws, and of all ordinances, rules, and regulations shall govern development submittal and evaluation of all proposals received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a ITN response hereto and the College by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any bidder shall not constitute a cognizable defense against the legal effect thereof.
13. **PROTECTION OF WORK, PROPERTY AND PERSONNEL.** The awardee shall at all times guard against damage and/or loss to the property of the College, and shall replace and/or repair any loss or damages unless such is caused by the College. The College may withhold payment or make such deductions, as it might deem necessary to insure reimbursement for loss and/or damages to the property through negligence of the awardee. The awardee shall take the necessary safety precautions to protect both personnel and property while the work is in progress simultaneously adhering to the project schedule.
14. **CANCELLATION/TERMINATION.** The College may, by written notice, terminate in whole or in part contract or any purchase orders resulting from this solicitation when such action is in the best interest of the College or when any provision(s) of this solicitation are violated by the respondent. In the event of cancellation/termination, the College shall be liable only for payment for services rendered prior to the effective date of cancellation/termination.
15. **IRREVOCABILITY OF PROPOSAL.** A proposal in response to this solicitation may not be withdrawn before the expiration of 90 days from the date of proposal due date.
16. **PROPOSAL PUBLIC RECORD.** Respondent acknowledges that all information contained within their proposal is part of the public domain as defined by the State of Florida Sunshine and Public Record Laws.
17. **NONCONFORMANCE TO CONTRACT CONDITIONS.** Goods or services offered as a result of any award resulting from this solicitation must be in compliance with all conditions and specifications and any resulting agreement at all times. Orders for goods or services not conforming as required may be terminated at awardee(s) expense and acquired on the open market.
18. **GOVERNING LAW.** This solicitation, and any award(s) resulting from same, shall be governed by and construed under the laws of the State of Florida and must have venue established in Palm Beach County, Florida or the United States Court of the Southern District of Florida.

19. **TORT IMMUNITY.** The College hereby reserves to itself any and all tort immunity as provided to it by the laws of the State of Florida. It is hereby agreed that the College's liability is limited to the extent permitted by the Florida Constitution and Florida Statute 768.28 or any amendments thereto. Any and all such liability shall be limited to and shall not exceed amount of insurance coverage applicable to such an agreement provided to the College thru the Florida Community College Risk Management Consortium. Nothing contained in this document is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity applies.
20. **LEGAL REQUIREMENTS.** Respondent agrees to be in full compliance with any federal, state, county and local laws, ordinances, rules, regulations or codes that in any manner affect the goods or services covered herein. Lack of knowledge by the respondent will in no way be a cause for relief from responsibility.
21. **ADVERTISING.** In submitting an solicitation, respondent agrees not to use the results there from as a part of any commercial advertising without prior written approval of College.
22. **PAYMENT.** A purchase order will be released after award by College for any goods or services to be delivered as a result of the solicitation. Any charge that does not directly correspond to a purchase order may not be authorized for payment. Payment will be provided after delivery is verified to be in compliance with all the conditions of award. Payment shall be made within 30 days of acceptance by the College.
23. **CONFLICT OF INTEREST.** The award of this solicitation is subject to the provisions of Chapter 112, Florida Statutes, as currently enacted or as amended from time to time. All respondents must disclose with their proposal the name of any officer, director or agent who is also an employee of College. All respondents must disclose in their response the name of any officer, director, employee or agent of firm who is also an employee of College or an immediate family member of an employee of College.
24. **PATENTS/INTELLECTUAL RIGHTS AND ROYALTIES.** The respondent, without exception, shall indemnify and save harmless College and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by College. If the respondent uses any design, device, or materials covered by letters, patent, or copyright or other intellectual rights, it is mutually understood and agreed without exception that the solicitation prices shall include all royalties or cost arising from the use of such design, device or materials in any way involved in the work.
25. **DISPUTES.** In the event of a conflict between the documents, the order of priority of the documents shall be as follows:
- a. Any agreement resulting from the award of this solicitation; then
  - b. Addenda released for this solicitation, with the latest Addendum taking precedence and chronologically thereafter; then
  - c. this solicitation ; then
  - d. respondent's proposal.
  - e. In case of any other doubt or difference of opinion, the decision of College shall be final and binding on both parties.
26. **PUBLIC ENTITY CRIMES.** Section 287.133(2)(a), Florida Statutes, as currently enacted or as amended from time to time, states that a person or affiliate who has been placed on the convicted contractor list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit a proposal 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 [currently \$35,000] for a period of 36 months from the date of being placed on the convicted contractor list. By submitting response to this solicitation respondent certifies that it has

not been convicted of a public entity crime.

27. **AVAILABILITY OF FUNDS.** Florida Statutes, prohibits the College from creating obligations on anticipation of budgeted revenues for a period in excess of one year. As such, College may, during the contract period, terminate or discontinue the items covered in this solicitation. This written notice will release College of all obligations, subsequent to the termination date, in any way related to the items covered in this solicitation upon 30 days prior written notice to the awardee.
28. **USE OF OTHER CONTRACTS.** College reserves the right to utilize any other College contract, any State of Florida Contract, any contract awarded by any other city or county governmental agencies, other College, other community College/state university system cooperative agreements, or to directly negotiate/purchase per College policy and/or State Board Rule, as currently enacted or as amended from time to time, in lieu of any offer received or award made as a result of this solicitation if it is in its best interest to do so.
29. **SUBCONTRACTING AND ASSIGNMENT.** Neither any award of this solicitation nor any interest in any award of this solicitation may be subcontracted, assigned, transferred or encumbered by any party without the prior written consent of the College.
30. **INDEMNIFICATION.**
- a. By College: College agrees to be fully responsible for its acts of negligence or its agents' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. Nothing herein is intended to serve as a waiver of sovereign immunity by College. Nothing herein shall be construed as consent by College to be sued by third parties in any matter arising out of any contract.
  - b. By Awardee: Awardee agrees to indemnify, hold harmless and defend College, its agents, servants and employees from any and all claims, judgments, costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which College, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by the Awardee, its agents, servants or employees; the equipment of the Awardee, its agents, servants or employees while such equipment is on premises owned or controlled by College; or the negligence of Awardee or the negligence of Awardee's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including College's property, and injury or death of any person whether employed by the Awardee, College or otherwise.
31. **SOLICITATION and ADDENDA.** It is the sole responsibility of the respondent to assure it has received the entire solicitation package and any and all Addendum. No submissions made after the proposal opening, amending or supplementing the proposal shall be considered.
32. **CONTACT AFTER PROPOSER 'S SUBMITTAL (CONE OF SILENCE ).** Any respondent or a lobbyist for a respondent is prohibited from having any communication concerning this solicitation or any response with any member of the College District Board of Trustees, the College President, any Evaluation Committee Member or any other College employee after the submittal of their proposal and prior to the contract being awarded with the exception of communications with the office of the Associate Vice-President for Purchasing, unless so notified by the Purchasing Department. A proposal from any firm will be disqualified when the respondent or a lobbyist for the respondent violates this condition of the solicitation. No verbal or written information which is obtained other than by information in this document or by Addenda to this solicitation shall be binding on College.

33. **GRATUITIES.** Respondents shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or agent of the College; including any District Board of Trustee Member, College President and any Evaluation Committee Members, for the purpose of influencing consideration of this proposal.
34. **PREPARATION COST OF PROPOSAL.** Respondent is solely responsible for any and all costs associated with responding to this solicitation. College will not reimburse any respondent for any costs associated with the preparation and submittal of any proposal, or for any travel and per diem costs that are incurred by any respondent.
35. **DEFAULT and LITIGATION COSTS.** In the event of a default on this contract, the defaulting party shall pay all attorney's fees and court costs incurred by the non-defaulting party, at both the trial and appellate levels, in any action brought to enforce and collect damages arising from the default as allowable by law.
36. **SITE VISITS/INSPECTIONS.** The College reserves the right to conduct a site visit to any respondent's place(s) of business in order to ascertain the respondent's ability to perform.
37. **EXCESS PAYMENT.** The College reserves the right to audit any contract or payment history of any agreement resulting from this solicitation. In the event that the College determines that payment in excess to those agreed to hereunder have been made to Contractor, Contractor agrees to return payment to the College within 30 days of being notified. In the event that the excess payment is due to erroneous invoicing by the Contractor and that said excess payments exceed five percent (5%) of the fees agreed to hereunder, the Contractor agrees to pay for the costs of said audit.
38. **TIE BREAKER.** Resolution of tie bids or proposals shall be resolved in accordance with College Policy 6Hx2-6.35.
39. **EMERGENCY SERVICES DUE TO NATURAL DISASTERS/FORCES.** For the purposes of this ITN, "Natural Force" is defined as conflagration, flood, storm, earthquake, hurricane or other public calamity. Bidder, by virtue of submitting a bid, agrees that, if receiving an award, THE COLLEGE shall be given top priority for use by the bidder's resources, and bidder shall make available to THE COLLEGE all of its resources such as vehicles, equipment tools, and both workforce and management personnel, in the event of a natural disaster such as a hurricane, tornado, windstorm, flood, or fire during the term of award or contract.
40. **SUSPENSION OF WORK.** The College may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the College to do so. The College shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the College shall either (1) issue a notice authorizing resumption of work, at which time work can resume, or (2) terminate the contract, or (3) extend the period of suspension.
41. **FORCE MAJEURE, NOTICE OF DELAY, AND NO DAMAGES FOR DELAY.** The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the College in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages or additional charges, other than for an extension of time, shall be asserted

against the College. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the College agrees to, in writing, to any modification of the contract terms.

42. **CONTRACT.** The College will provide a contract subject to the terms and conditions of this ITN. By bidding, the proposer agrees to these terms unless otherwise stipulated in writing and agreed upon by both parties. A contract will be executed within 30 calendar days of notification of intended award or the College reserves the right to terminate intent to award and contract with the next most beneficial contractor as determined by the College.
43. **DISPUTE RESOLUTION.** Any dispute concerning performance of the Contract shall be communicated through the College's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the College a petition for administrative hearing. The College's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.
44. **EMPLOYEES, SUBCONTRACTORS, AND AGENTS.** All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the College and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The College may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The College may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a College's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The College may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents. The College shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the College. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the College the Contractor, provided that the Contractor grants preferential treatment to the College with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.
45. **PROTESTING OF CONDITIONS/SPECIFICATIONS.** Any person desiring to protest the conditions/specifications in this solicitation, or any Addenda subsequently released thereto, shall file a notice of protest, in writing, within 72 consecutive hours after the receipt of the solicitation or Addenda and shall file a formal written protest within ten calendar days after the date the notice of protest was filed. The time provided for filing a notice of protest shall be based upon whenever a person receives this solicitation, or any Addenda released thereto. Receipt of a copy of this solicitation, or any Addenda released thereto, which is received in accordance with Chapter 119, Florida Statutes, or College Policy, as currently enacted or as amended from time to time, shall not be used as a basis for filing a notice of protest as described herein. Saturdays, Sundays, legal holidays or days during which the College administration is closed, shall be excluded in the computation of the 72 consecutive hours. If the tenth calendar day falls on a Saturday, Sunday, legal holiday or days during which the College administration is closed, the formal written protest must be received on or before 5:00 p.m. local time of the next calendar day that is not a Saturday, Sunday, legal holiday or days during which the College administration is closed. Section 120.57(3)(b), Florida Statutes, as currently enacted or as amended from time to time, states that "The formal written protest shall state with particularity the facts and law upon which the protest is based".

a. Failure to file a notice of protest or to file a formal written protest within the time prescribed shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. Notices of protest, formal written protests, and the required bonds, shall be filed at College, Purchasing Department MS 27, 4200 Congress Avenue, Lake Worth, FL 33461. Fax filing will not be acceptable for the filing of bonds.

46. **PROTESTING OF AWARD RECOMMENDATIONS/TABULATIONS.** Award Recommendations and Tabulations will be posted in the Purchasing Department on the date and time stipulated on the solicitation and will remain posted for 72 consecutive hours. Any change to the date and time established herein for posting of solicitation Award Recommendations shall be posted in the Purchasing Department and on the departmental web site. In the event the date and time of the posting of Award Recommendation is changed, it is the responsibility of each respondent to ascertain the revised date of the posting of Award Recommendation. Any person desiring to protest the intended decision shall file a notice of protest, in writing, within 72 consecutive hours after the posting of the Award Recommendation (or receipt of written notice of intended decision) and shall file a formal written protest within ten calendar days after the date the notice of protest was filed. A written notice of intended decision shall only apply when the Purchasing Department gives notice of an intended decision about this solicitation. A written notice of intended decision received in accordance with Chapter 119, Florida Statutes, or College Policy, as currently enacted or as amended from time to time, shall not be used as a basis for filing a notice of protest as described herein. Saturdays, Sundays, legal holidays and days during which the College administration is closed shall be excluded in the computation of the 72 consecutive hours. If the tenth calendar day falls on a Saturday, Sunday, legal holiday or days during which the College administration is closed, the formal written protest must be received on or before 5:00 p.m. local time of the next calendar day that is not a Saturday or Sunday, legal holiday or days during which the College administration is closed. No submissions made after the proposal opening amending or supplementing the proposal shall be considered. Section 120.57(3)(b), Florida Statutes, as currently enacted or as amended from time to time, states that "The formal written protest shall state with particularity the facts and law upon which the protest is based". Any person who files an action protesting an intended decision shall post with the College, at the time of filing the formal written protest, a bond, payable to College, in an amount equal to one percent (1%) of the College's estimate of the total volume of the contract. The College shall provide the estimated contract amount to the contractor within 72 hours, excluding Saturdays, Sundays and other days during which the College administration is closed, of receipt of notice of intent to protest. The estimated contract amount shall be established on the award recommendation as the "contract award amount". The estimated contract amount is not subject to protest pursuant to Section 120.57(3), Florida Statutes. The bond shall be conditioned upon the payment of all costs which may be adjudged against the protestant in an Administrative Hearing in which the action is brought and in any subsequent appellate court proceeding. In lieu of a bond, the College may accept a cashier's check, official bank check or money order in the amount of the bond. If, after completion of the Administrative Hearing process and any appellate court proceedings, the College prevails, and then the College shall recover all costs and charges which shall be included in the Final Order or judgment, including charges made by the Division of Administrative Hearings, but excluding attorney's fees. If the protestant prevails, then the protestant shall recover from the College all costs and charges which shall be included in the Final Order or judgment, excluding attorney's fees.

a. Failure to file a notice of protest or to file a formal written protest within the time prescribed shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. Notices of protest, formal written protests, and the required bonds, shall be filed at College, at Purchasing Department MS 27, 4200 Congress Avenue, Lake Worth, FL 33461. Fax filing will not be acceptable for the filing of bonds.

47. **CONE OF SILENCE.** Any proposer or a lobbyist for a proposer is prohibited from having any communication concerning this solicitation or any response with any member of the College District Board of Trustees, the College President, or any other College employee after the release of this solicitation and prior to the contract being awarded unless so notified by the Purchasing Department. A proposal from any firm will be disqualified when the proposer or a lobbyist for the proposer violates this condition of the solicitation. No verbal or written information which is obtained other than by information in this document or by Addenda to this solicitation shall be binding on College.

48. **STATE LICENSING REQUIREMENT.** All entities defined under Chapters 607, 617 or 620, Florida Statutes, seeking to do business with the College shall be on file and in good standing with the State Of Florida's Department of State.

49. **DISCRIMINATORY VENDOR'S LIST.** Any entity or affiliate who has been placed on the Discriminatory Vendors List may not submit a proposal to provide goods or services to a public entity, may not be awarded a contract or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity and may not transact business with any public entity.
50. **PUBLIC MEETING NOTIFICATION.** All meetings to judge and/or evaluate this solicitation or to make recommendations for award are held in strict compliance with Florida Statutes as they pertain to Florida in the Sunshine regulations. All meetings are fully open to all proposers as well as the public at-large.
51. **DISPUTES.** In case of any doubt or difference of opinion as to the specifications, equivalent products, or items to be furnished here under, the decision of the College shall be final and binding on both parties.
52. **PROTEST.** "Failure to file a protest within the time prescribed in S.120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes." All protests must be delivered to the Purchasing Director within the time prescribed in Chapter 120, Florida Statutes to be considered valid.
53. **AMERICANS WITH DISABILITIES ACT.** The contractor shall comply with the Americans with Disabilities Act. In the event of the contractor's non-compliance with the non-discrimination clauses of the Americans with Disabilities Act, or with any other such rules, regulations or orders, any contract resulting from this ITN may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further contracts.
54. **REJECTION OF PROPOSALS.** The College may reject any and all proposals not meeting mandatory responsiveness requirements, which include terms, conditions or requirements that must be met by the proposer to be responsive to this ITN. These responsiveness requirements are mandatory. Failure to meet these responsiveness requirements will cause rejection of the proposal. In addition, the College may reject any or all proposals containing material deviations. Any bid rejected for failure to meet mandatory responsiveness requirements will not be reviewed.



**7.0 – SAMPLE CONTRACT**

Parties	
Palm Beach State College	
(hereinafter referred to as the "COLLEGE")	(hereinafter referred to as the "CONTRACTOR")
4200 Congress Avenue, MS 27	
Lake Worth, FL 33461	

**ARTICLE 2 – SPECIAL CONDITIONS**

**2.01 Order of Precedence.** Any inconsistency or conflict between the standard terms and conditions set forth herein and those typed on the face of this AGREEMENT or any attachment thereof shall be resolved by giving precedence in the following order:

First	This Agreement
Second	ITN 13/14-05 Job Classification and Compensation Consultant

**2.02 Scope of Agreement.** CONTRACTOR will provide COLLEGE services within the Statement of Work, also known as SOW, (Attachment 1). All staff provided by CONTRACTOR shall be employee or agents of CONTRACTOR, including sub-contractors, and not of COLLEGE. CONTRACTOR shall be responsible for all matters relative to its employees/agents including, but not limited to wages, payment of all applicable taxes, workers compensation coverage, adhering to all applicable statutes, regulations, and requirements, all applicable licenses, insurances and coverages, all employee-related responsibilities and liabilities, as well as non-obligatory employee fringe benefit programs. CONTRACTOR agrees to hold COLLEGE harmless from any expense or liability which may result from CONTRACTOR's failure to withhold these taxes, failure to provide benefits for their employees, or failure to conduct itself in accordance with all applicable statutes, regulations and requirements. COLLEGE's responsibility shall be limited to providing payment to CONTRACTOR for services rendered in accordance with this Agreement.

**2.03 Indemnification.**

A. By COLLEGE: COLLEGE agrees to be fully responsible for its acts of negligence or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By CONTRACTOR: CONTRACTOR agrees to indemnify, hold harmless and defend COLLEGE, its agents, servants and employees from any and all claims, judgments costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery cost, court costs and all other sums which COLLEGE, its agents, servants and employees must pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon (collectively referred to as "Claim"), arising or alleged to have arisen solely out of the gross negligence or willful misconduct of CONTRACTOR and/or its agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including COLLEGE's property, and injury or death of any person whether employed by CONTRACTOR, COLLEGE or otherwise, provided that: i) COLLEGE promptly notifies CONTRACTOR upon the COLLEGE's first knowledge of such Claim, (ii) COLLEGE agrees to allow CONTRACTOR to fully control any litigation and settlement of such Claim, (iii) COLLEGE shall not knowingly or negligently do or omit to do anything in relation to such Claim which could increase such Claim; (iv) COLLEGE shall at the request of CONTRACTOR afford to CONTRACTOR all reasonable assistance for the purpose of investigating and/or contesting such Claim.

- 2.04 Patent or Copyright Infringement – Indemnity.** CONTRACTOR shall hold harmless and defend COLLEGE against any and all suits based on any claim that the use by COLLEGE of the deliverables provided under this Agreement by CONTRACTOR infringes on any United States patent right or copyright, provided CONTRACTOR is promptly notified in writing of any such suit or claim against COLLEGE, and further provided that COLLEGE permits CONTRACTOR to defend, compromise or settle the same, and gives CONTRACTOR all available information, reasonable assistance, and authority to enable CONTRACTOR to do so. This indemnity shall not apply to any infringement arising out of: (i) the unauthorized alteration or modification of the deliverables by COLLEGE; (ii) any use of the deliverables which is not authorized or contemplated herein; or (iii) use of the deliverables with any computer hardware or software not disclosed to CONTRACTOR. This provision sets forth CONTRACTOR's sole obligation and liability and COLLEGE's exclusive remedy for any proprietary rights infringement by the deliverables.
- 2.05 Payments.** COLLEGE shall make all payments as set forth in Statement of Work with thirty (30) days of invoice. Any reimbursement for travel or related expenses shall be in accordance with the limits established in Florida law, and agreed upon in advance, in writing.
- 2.06 No Waiver of Sovereign Immunity.** Palm Beach State College is a political subdivision of the State of Florida and is protected by Sovereign Immunity. Nothing contained herein expressly nor impliedly waives Palm Beach State College's Sovereign immunity protection, except as may be otherwise stated in Florida Statutes 768.28, which may change from time to time.
- 2.07 No Third Party Beneficiaries.** The Parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. 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 any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.
- 2.08 Termination.** This Agreement may be canceled by COLLEGE during the term thereof upon thirty (30) days written notice to the Vendor of COLLEGE'S desire to terminate this Agreement. Only those portions of the scope of work that have been completed and accepted will be eligible for payment.
- 2.09 Records.** Each Party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each Party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and award of attorney's fees for non-compliance with that law.
- 2.10 Entire Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and 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. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- 2.11 Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.
- 2.12 Preparation of Agreement.** The Parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

- 2.13 **Waiver.** The Parties 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. Any party's failure 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 a subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 2.14 **Compliance with Laws.** Each Party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.
- 2.15 **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the Seventeenth Judicial Circuit Court of Palm Beach County, Florida.
- 2.16 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of both Parties hereto and their respective successors and assigns.
- 2.17 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from COLLEGE.
- 2.18 **Force Majeure.** Neither Party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either Party be deemed Force Majeure.
- 2.19 **Place of Performance.** All obligation of COLLEGE under terms of this Agreement are reasonably susceptible of being performed in Palm Beach County, Florida and shall be payable and performable in Palm Beach County, Florida.
- 2.20 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.
- 2.21 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the Party for whom he or she is signing, and to bind and obligate such Party with respect to all provisions contained in this Agreement.
- 2.22 **Excess Funds.** Any party receiving funds paid by COLLEGE under this Agreement agrees to promptly notify COLLEGE of any funds erroneously received from COLLEGE upon discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to COLLEGE with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by COLLEGE.
- 2.23 **Insurance.** The contractor shall, for a period not less than the date of contract award to six months after contract completion, comply with the insurance requirements stipulated in Attachment 2.
- 2.24 **Availability of Funds.** Notwithstanding any contrary provision of this agreement, each payment obligation of the COLLEGE resulting from this agreement is contingent upon the availability of funds appropriated by the Florida legislature. If such funds are not, this agreement may be terminated by the COLLEGE. No penalty shall accrue to the COLLEGE in the event this provision is exercised, and the COLLEGE shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed so as to permit the COLLEGE to terminate this agreement in order to purchase, lease, or rent similar equipment or services from another party.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the date first above written.

For <b>CONTRACTOR</b>	For <b>COLLEGE</b>
_____ SIGNATURE DATE	_____ SIGNATURE DATE
_____ PRINT NAME/TITLE	_____ Jodi Hart, Purchasing Director PRINT NAME/TITLE
ATTEST:  _____ SIGNATURE DATE	
_____ PRINT NAME/TITLE	