

LEGISLATIVE #

130547B



Issue Date: April 10, 2014

N/A for this project-(Non) Mandatory Pre-Proposal Conference:

Bid Due Date: May 8, 2014 @ 3:00 p.m. local time

REQUEST FOR PROPOSAL

RFP NO. CAUD140037-DH

**EXTERNAL INVESTIGATIVE REVIEW OF GAINESVILLE
REGIONAL UTILITIES**

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**City of Gainesville
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**CITY OF GAINESVILLE
REQUEST FOR PROPOSALS FOR
EXTERNAL INVESTIGATIVE REVIEW OF
GAINESVILLE REGIONAL UTILITIES**

**SECTION I – REQUEST FOR PROPOSAL OVERVIEW
& PROPOSAL PROCEDURES**

RFP#: CAUD140037-DH

**May 8, 2014
(Due Date)**

A. INTRODUCTION/BACKGROUND

Introduction

The City of Gainesville (hereafter "City") is requesting proposals from qualified individuals, firms, partnerships or corporations (hereafter "Consultants"), having specific financial, auditing and legal expertise to conduct an investigative review of the City-owned Gainesville Regional Utilities (hereafter "GRU") with the following two primary objectives:

- 1) Recommendations of institutional controls that can be implemented that would help avoid the management discrepancies of the past and help strengthen the working relationship between GRU management and the City Commission, and
- 2) Opportunities for financial and operational benefit to GRU related, but not limited to, the Gainesville Renewable Energy Center (GREC) power purchase agreement (PPA).

The City is the county seat and the largest city in Alachua County. There are approximately 54 square miles of land included within the corporate boundaries of the City. The City operates under a Commission-Manager form of government with seven elected officials. The population is currently estimated at 126,047.

GRU operates as a set of separate enterprise funds of the City and provides the Gainesville urban area with electric, water, wastewater, natural gas and telecommunication services. GRU serves over 95,000 customers with one or more of these services. The Fiscal Year 2014 GRU budget is approximately \$406 million.

Background

On October 8, 2007, the Gainesville City Commission authorized staff to issue a Request for Proposals (RFP) to solicit biomass-fueled electrical generation. The RFP set forth a two step process, whereby the three top ranked respondents from the first step would be invited to submit binding proposals. On January 28, 2008, the City Commission authorized staff to request binding proposals from the top three ranked respondents, allowing respondents to offer multiple proposal options. On May 12, 2008, the City Commission approved the ranking of these proposals and authorized the GRU General Manager to negotiate and execute a long term contract with Nacogdoches Power, LLC for a 100MW biomass plant, which would provide renewable energy as part of GRU's energy supply resources.

During the contractual negotiations, GRU utilized the services of outside consultants to provide information and advice to the negotiating team. This included Haddad Resource Management, LLC, who provided three construction

costs analyses between February and April 2009. The resulting contract (or PPA) between the City of Gainesville d/b/a GRU and Gainesville Renewable Energy Center (GREC), LLC for a 100MW biomass plant was signed by the GRU General Manager on April 29, 2009 and approved by the City Commission on May 7, 2009. At that meeting, the GRU General Manager stated the contract “would probably be the biggest commitment for GRU and City since Deerhaven 2” (a City-owned coal-fueled power plant). The fiscal note in the agenda item indicated:

The projected thirty year net present value for the facility compared to the projected market electricity costs ranges from \$212 million to \$492 million based on various sensitivities, such as projected completion date, implementation of a renewable portfolio standard and/or carbon constraint legislation. The greater value of the plant accumulates after the initial portion (five years plus) of the contract period. With approximately one-half contractual third party participation included with the other sensitivities, the monthly fuel adjustment impact on a typical customer (1000 kwh/month) could range from \$4 to \$8 in 2014, but by 2019 this approaches a break even point. After 2019, the projected fuel adjustment benefits to customers are significant as discussed above considering net present value.

Under the terms of the PPA, GREC owns and operates the plant and GRU purchases 100% of the energy generated at an estimated total cost in excess of \$3 billion dollars over the 30 year term. At the time, the City Commission approved a redacted contract as GREC claimed proprietary confidentiality. Approximately two years later, in exchange for a group of citizens dropping their appeals related to permits for the biomass plant, GREC agreed to release an un-redacted contract. Changes made between the initial RFP process and eventual PPA included increasing the length of the contract from 20 to 30 years and eliminating a Commission discussed “back out clause.” Additionally, GREC was expected to be eligible for a Federal 1603 Grant and contract prices reflected GREC receiving this grant. The PPA also included a “Right of First Offer” should GREC desire to sell the power plant. After the PPA was executed, the following events occurred:

- June 17, 2010 - GREC documents in an e-mail to the GRU Assistant General Manager-Strategic Planning GREC’s belief that certain emissions requirements of the Florida Department of Environmental Protection (FDEP) constitute a “Change in Law” under PPA Section 3.2, PPA Section 3.2, which states:

The Parties recognize and agree that the Contract Prices are based on the current regulatory requirements for generating and selling the Products. A “Change in Law” shall be a change in any applicable law, regulation, permit, ordinance, market rule, or order of any governmental or regulating authority, market regulator, court or arbitration tribunal enacted after the Effective Date where such change in law specifically increases or decreases the actual cost of generating and selling the Products, but it shall not include any such change in law that is not specifically directed toward generating facilities or which just has general economic effects that indirectly increase or decrease Seller’s costs, nor shall it include any change in law with respect to Production Tax Credits, Renewable Energy Grant or Investment Tax Credits. If there is a Change in Law, then the Contract Prices shall be equitably adjusted to cover the additional costs, or pass on the additional savings, associated with generating and selling the Products. No claim for extra compensation based on a change in law that results in an increase in Seller’s costs shall be presented by Seller or considered by Purchaser unless Seller shall first have provided written notice of such claim to Purchaser. No claim for a reduction in payments shall be presented by Purchaser or considered by Seller unless Purchaser shall first have provided written notice of such claim to Seller.

The GREC representative also indicated in the e-mail:

At this time, it was my understanding that you discussed this with your team and were in general agreement that this change from an SNCR to an SCR would constitute a “change in law” and that we would need to re-evaluate the Contract Prices under the PPA at some point in the future.

- September 2010 - A Memorandum of Understanding (“MOU”) was negotiated between the Suwannee River Water Management District (SRWMD), GREC, GRU, and the City of Alachua related to SRWMD making the use of available reclaimed water a condition of the Water Consumptive Use Permit for the biomass facility to reduce groundwater use. The MOU states that GREC “and/or” GRU shall pay any and all costs that are not covered by any grants made available to the City of Alachua. The City Commission approved the MOU and authorized the GRU General Manager to negotiate and execute the final agreement. The agenda item did not

include estimated costs or delineate plans for allocating costs between GREC and GRU. Construction of the pipeline began in January 2012 and subsequent documents indicate GRU paid the full cost of construction, approximately \$1.1 million, to the City of Alachua through an escrow account. However, the “Equitable Adjustment for Change of Law” signed in March 2011 provides the only documentation of GRU agreeing to pay the full cost of the pipeline.

- November 5, 2010 - The GRU Assistant General Manager-Energy Supply, in an e-mail to the Assistant General Manager-Strategic Planning copied to the General Manager and Utilities Attorney, indicates strong disagreement that the environmental rules constitute a “change in law.” He also suggests GRU “should review some case law to see if we owe them anything” and that “I don’t think we should agree to give them a dime until we absolutely, positively know we’re legally obligated to do so.”
- November 15, 2010 - GREC provides a detailed memorandum to the GRU General Manager, Assistant General Manager-Strategic Planning and Assistant General Manager-Energy Supply regarding “Changes in Regulatory Environment.” In the memorandum, GREC explains “the effect that these changes have had on the GREC facility, both technically and economically, and why we believe the Contract Prices need to be equitably adjusted to cover the additional costs resulting from these changes as provided for in Section 3.2 of the PPA.”
- December 20, 2010, GRU’s outside legal counsel provides a detailed memorandum to GRU regarding the GREC PPA concluding that:

The FDEP’s decision to require the use of a SCR system does not fall within the change-in-law provision because there was, quite simply, no change in law. Instead, the FDEP’s decision – although not necessarily expected – was based on the long-standing Best Available Control Technology (“BACT”) regulatory standard that was in effect at the time the parties entered into the PPA.

The memorandum also indicates that the Assistant General Manager-Strategic Planning “did not have apparent authority to bind GRU because GRU did nothing to lead GREC LLC to believe that he was authorized to provide a binding interpretation of the PPA.”

- March 15, 2011 – After continued discussions with GRU, GREC provides the GRU General Manager, Assistant General Manager-Strategic Planning and Utilities Attorney with a “written notice of a claim for extra compensation due to a change in the regulatory requirements for generating and selling the Products, as defined in the PPA.”
- March 16, 2011 – The GRU Chief Financial Officer signs the “Equitable Adjustment for Change of Law” in the place of the GRU General Manager, which is also approved as to form and legality by the Utilities Attorney. This adjustment states:

(i) the Non-Fuel Energy Charge Contract Price of “\$50.00/MWh x Construction Cost Adjuster” set forth at Appendix III is hereby adjusted to hereafter be “\$54.40/MWh x Construction Cost Adjuster,”
(ii) the Non-Fuel Energy Charge Contract Price of “\$58.10/MWh x Construction Cost Adjuster” set forth at Appendix III is hereby adjusted to hereafter be “\$62.50/MWh x Construction Cost Adjuster;”
and (iii) Purchaser shall, to the extent not funded by grants received, fund the costs of connecting the Facility to the reclaimed water system of the City of Alachua.

The “Equitable Adjustment for Change of Law” is expected to result in increased costs to GRU under the PPA of approximately \$3.5 million annually or \$105 million over the 30 year contract term. The construction of the reclaimed water pipeline added a one-time cost of approximately \$1.1 million.

The Equitable Adjustment was never placed on the City Commission agenda to be formally approved. One of the recitals in the “Equitable Adjustment for Change of Law” states:

Whereas, by action of the City Commission of the City of Gainesville on May 7, 2009, the undersigned General Manager of Purchaser has been duly authorized to implement the Agreement on behalf of Purchaser and to execute and deliver any instruments in connection therewith.

- April 6, 2011 – The un-redacted GREC PPA was released to the public. An unsigned and undated copy of a memorandum from the GRU Marketing & Communications Manager to the Mayor and Commissioners indicates:

This packet contains documents you may find helpful in answering questions when the GREC Purchased Power Agreement (PPA) is released publicly this Wednesday, April 6. The PPA will be posted that day on www.gru.com in a version that highlights the redacted portions and includes the Equitable Adjustment Agreement along with a letter from GREC to GRU removing the confidentiality requirement.

The memo indicates that the packet contains the un-redacted PPA and the “Equitable Adjustment Agreement to accommodate new state and federal regulations.” A GRU news “eLINE” was also released on April 6 titled “American Renewables Removes Confidentiality Requirement for Biomass Contract.” A paragraph within the eLINE states: “With American Renewables removing its confidentiality requirement, GRU was also able to release today an adjustment to the power purchase agreement that addresses negotiated costs associated with recent changes in federal environmental regulations and state permitting requirements.” The paragraph concludes with a statement from the GRU General Manager indicating “changes will have a minimal impact on customers.”

- October 7, 2013 – At the conclusion of a Special City Commission meeting regarding whether or not to execute a “Right of First Offer” to GREC, a City Commissioner asked if the City Attorney had a copy of a memorandum prepared by GRU’s outside legal counsel regarding the reclaimed water line to the City of Alachua. The City Attorney suggested the Commissioner ask outside legal counsel, present at the meeting, about the memorandum. GRU’s outside legal counsel indicated that they had not prepared a memorandum regarding the reclaimed water line to the City of Alachua, but that they had prepared a memorandum regarding a change in law under the PPA. This memo was subsequently provided to the Commissioner by the City Attorney via the Utilities Attorney.

Upon review of the memorandum, the City Attorney began to question how and why the GRU General Manager entered into the “Equitable Adjustment for Change of Law,” despite a written opinion from GRU’s outside legal counsel. The City Attorney conducted a limited investigation into the circumstances of the “Equitable Adjustment for Change of Law” with several former and current GRU managers, as well as the former City Attorney and Utilities Attorney. In a December 19, 2013 memorandum to the City Commission, the City Attorney indicated:

It appears from the inquiry conducted by this Office that the execution of the “Equitable Adjustment for Change of Law of the Power Purchase Agreement” was an ultra vires act; however, it is the opinion of this Office that legal action would not likely be successful because the City Commission was provided notice of the “Equitable Adjustment for Change of Law of the Power Purchase Agreement” within one month after its execution, because of certain exception language contained in the City’s Purchasing Policy and Procedures and because the document was approved as to form and legality.

In the course of the inquiry, the City Attorney’s Office also became aware of another document that amended the PPA without City Commission approval. This document, dated June 30, 2011, was titled a “Consent and Agreement” and appears to have been provided in the context of GREC obtaining financing for the biomass facility. This document assigned a collateral interest in the PPA for the benefit of GREC’s lender and made 10 amendments to the PPA.

- October 31, 2013 - The City Attorney’s limited investigation included the use of outside counsel. In a “memo to file” dated October 31, 2013, the outside counsel concludes that the City does appear to have viable arguments that the actions of the GRU General Manager and the Utilities Attorney, in approving the “Equitable Adjustment for Change of Law” constitute ultra vires actions that were not “authorized.” The “memo to file” also indicates that the Utilities Attorney who approved the “Equitable Adjustment” as to form and legality “candidly admitted to the City Attorney recently that in the period prior to his retirement he had signed a number of documents that he ‘probably should not have signed.’” The “memo to file” also indicated that since the GRU General Manager is not an attorney he “has no competency to make a legal determination as to what is, or is not a “change in law. He must rely on experienced counsel for that assessment.”
- Additionally, a series of resignations and retirements from top GRU management and legal staff occurred from 2010 to 2013. The City Attorney, Utilities Attorney and Assistant General Manager-Strategic Planning retired

after long careers with the City. The GRU General Manager negotiated a separation package with the City and the GRU Chief Financial Officer left GRU to pursue other opportunities.

B. RFP TIME TABLE

The anticipated schedule for the RFP and contract approval is as follows:

RFP available for distribution	April 10, 2014
[Mandatory]Pre-Proposal Conference	N/A
Deadline for receipt of questions	April 24, 2014
Deadline for receipt of proposals	May 8, 2014 (3:00 p.m. local time)
Evaluation/Selection process	May 12, 2014 through May 29, 2014
Oral presentations, if conducted	Week of June 9, 2014
Projected Ranking & recommendation presented to Audit, Finance & Legislative Committee/City Commission	TBD

C. PROPOSAL SUBMISSION

One original and five (5) copies (a total of six (6)) of the complete proposal must be received by May 8, 2014 at 3:00 p.m. local time at which time all proposals will be publicly opened. In addition, proposer should provide one (1) electronic copy of their proposal in PDF format on a CD or USB flash drive.

The original, all copies, and the separate sealed price envelope, if required, must be submitted in a sealed envelope or container stating on the outside the proposer's name, address, telephone number, RFP title, number and due date and delivered to:

City of Gainesville
General Government Purchasing
200 East University Avenue, Room 339
Gainesville, Florida 32601

Hand-carried and express mail proposals may be delivered to the above address **ONLY** between the hours of 7:00 a.m. and 6:00 p.m., local time, Monday through Thursday, excluding holidays observed by the City.

Proposers are responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the required address information appears on the outer wrapper or envelope used by such service.

Any proposal received after 3:00 p.m. (local time), May 8, 2014 will not be considered and will be returned unopened.

Both the Technical Proposal and the Price Proposal, if required to be submitted in a separate envelope, must be signed by an officer of the company who is legally authorized to enter into a contractual relationship in the name of the proposer, and proposer(s) must affix their company's corporate seal to both Proposals. In the absence of a corporate seal, the Proposals must be notarized by a Notary Public.

The submittal of a proposal by a proposer will be considered by the City as constituting an offer by the Proposer to perform the required services at the stated fees.

D. [NON] MANDATORY PRE-PROPOSAL CONFERENCE (N/A for this Project)

A [non] mandatory pre-proposal conference has been scheduled for (day) (time) on (date) at (location). At that time, prospective proposers or their representatives may discuss any questions pertaining to the project. [Failure to attend this mandatory pre-proposal conference will disqualify proposers.]

E. CONTACT PERSON

The contact person for this RFP is Diane Holder, Senior Buyer at (352) 334-5021 (email: holderds@cityofgainesville.org) in Purchasing. Explanation(s) desired by proposer(s) regarding the meaning or interpretation of this RFP must be requested from the contact person, in writing, as is further described below.

To ensure fair consideration and consistent and accurate dissemination of information for all proposers, the City prohibits communication to or with any department, employee, or agent evaluating or considering the proposals during the submission process, except as authorized by the contact person.

During the blackout period as defined herein, except as pursuant to an authorized appeal, no person may lobby, as defined herein, on behalf of a competing party in a particular procurement process, City officials or employees except the purchasing designated staff contact in the purchasing division. Violation of this provision shall result in disqualification of the party on whose behalf the lobbying occurred.

The blackout period means the period between the issue date which allows for immediate submittals to the City of Gainesville Purchasing Department for an invitation for bid or the request for proposal, or qualifications, or information, or the invitation to negotiate, as applicable, and the time the City Officials and Employee awards the contract . Lobbying means when any natural person, for compensation, seeks to influence the governmental decision-making, to encourage the passage, defeat or modification of any proposal, recommendation or decision by City officials and employees, except as authorized by procurement documents.

F. ADDITIONAL INFORMATION/ADDENDA

Requests for additional information or clarifications must be made in writing no later than the date specified in the RFP Timetable. The request must contain the proposer's name, address, phone number, and facsimile number. Electronic facsimile will be accepted at (352) 334-3163.

Facsimiles must have a cover sheet which includes, at a minimum, the proposer's name, address, number of pages transmitted, phone number, and facsimile number.

The City will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Proposal Due Date. Proposers should not rely on any representations, statements or explanations other than those made in this RFP or in any addendum to this RFP. Where there appears to be a conflict between the RFP and any addenda issued, the last addendum issued will prevail.

It is the proposer's responsibility to be sure all addenda were received. The proposer should verify with the designated contact persons prior to submitting a proposal that all addenda have been received. Proposers are required to acknowledge the number of addenda received as part of their proposals.

G. LATE PROPOSALS, LATE MODIFICATIONS AND LATE WITHDRAWALS

Proposals received after the Proposal Due Date and time are late and will not be considered. Modifications received after the Proposal Due Date are also late and will not be considered. Letters of withdrawal received after the Proposal Due Date or after contract award, whichever is applicable, are late and will not be considered.

H. RFP POSTPONEMENT/CANCELLATION/WAIVER OF IRREGULARITIES

The City may, at its sole and absolute discretion, reject any and all, or parts of any and all, proposals; re-advertise this RFP; postpone or cancel, at any time, this RFP process; or waive any irregularities in this RFP or in the proposals received as a result of this RFP.

I. COSTS INCURRED BY PROPOSERS

All expenses involved with the preparation and submission of proposals to the City, or any work performed in connection therewith shall be borne by the proposer(s). No payment will be made for any responses received, nor for any other effort required of or made by the proposer(s) prior to commencement of work as defined by a contract approved by the City Commission.

J. ORAL PRESENTATION

The City may require proposers to give oral presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein.

K. EXCEPTION TO THE RFP

Proposers may take exceptions to any of the terms of this RFP unless the RFP specifically states where exceptions may not be taken. Should a proposer take exception where none is permitted, the proposal will be rejected as non-responsive. All exceptions taken must be specific, and the Proposer must indicate clearly what alternative is being offered to allow the City a meaningful opportunity to evaluate and rank proposals.

Where exceptions are permitted, the City shall determine the acceptability of the proposed exceptions and the proposals will be evaluated based on the proposals as submitted. The City, after completing evaluations, may accept or reject the exceptions. Where exceptions are rejected, the City may request that the Proposer furnish the services or goods described herein, or negotiate an acceptable alternative.

L. PROPRIETARY INFORMATION

Responses to this Request for Proposals, upon receipt by the City, become public records subject to the provisions of Chapter 119 F.S., Florida's Public Records Law. If you believe that any portion of your response is exempt, you should clearly identify the specific documents for which confidentiality is claimed, and provide specific legal authority of the asserted exemption. It is also strongly recommended that those specific materials that you assert qualify for exemption from Chapter 119 be submitted in a separate envelope and clearly identified as "TRADE SECRETS EXCEPTION," with your firm's name and the proposal number marked on the outside. Please also note that details of proposals, including alleged trade secrets, with the exception of a company's financial statements, may be disclosed at a public meeting.

In the event the City determines that any materials claimed to be exempt as trade secrets do not qualify as such, the proposer will be contacted and will have the opportunity to rescind their proposal or waive their claim to confidentiality. Please be aware that the designation of an item as a trade secret by you, and the refusal to disclose any materials submitted to the City, may be challenged in court by any person. By your designation of material in your proposal as a "trade secret" you agree to hold harmless the City for any award to a plaintiff for damages, costs or attorneys' fees and for costs and attorneys' fees incurred by the City by reason of any legal action challenging your claim, and the City's refusal to disclose.

M. QUALIFICATIONS OF PROPOSERS

As a part of the Proposal evaluation process, City may conduct a background investigation of proposer, including a record check by the Gainesville Police Department. Proposer’s submission of a Proposal constitutes acknowledgment of the process and consent to such investigation.

No proposal shall be accepted from, nor will any contract be awarded to, any proposer who is in arrears to City upon any debt, fee, tax or contract, or who is a defaulter, as surety or otherwise, upon any obligation to City, or who is otherwise determined to be irresponsible or unreliable by City.

If Proposer is determined to be irresponsible or unreliable, City will notify Proposer of its finding, including evidence used, and allow proposer an informal hearing and the opportunity to come into compliance within three business days of notification.

N. NEGOTIATIONS

The City may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the proposer’s best terms from a cost or price and technical standpoint.

The City reserves the right to enter into contract negotiations with the selected proposer. If the City and the selected proposer cannot negotiate a successful contract, the City may terminate said negotiations and begin negotiations with the next selected proposer. This process will continue until a contract has been executed or all proposers have been rejected. No proposer shall have any rights against the City arising from such negotiations.

O. RIGHTS OF APPEAL

Participants in this RFP solicitation may protest RFP specifications or award in accordance with Section 41-580 of the City of Gainesville’s Financial Services Procedures Manual.

P. RULES; REGULATIONS; LICENSING REQUIREMENT

The proposer shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. Proposers are presumed to be familiar with all Federal, State and local laws, ordinances, codes and regulations that may in any way affect the services offered.

Q. REVIEW OF PROPOSALS

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in the RFP. A responsive proposal is one which follows the requirements of the RFP, includes all required documentation, is submitted in the format outlined in the RFP, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may deem your proposal non-responsive.

R. LOCAL SMALL BUSINESS PARTICIPATION

It is the policy of the City of Gainesville that qualified local small business (SBEs) as defined in the City of Gainesville’s Local Small Business Procurement Program (the “Program”) shall have the maximum practical opportunity to participate in the competitive process of supplying commodities and services to the City. Notification is hereby given that local small businesses are strongly encouraged to submit a bid in response to any procurement opportunity let by the City of Gainesville. Prime contractors are strongly encouraged to utilize qualified local small business subcontractors and material suppliers.

Any individual or entity that engages in fraud, misrepresentation, or other wrongful conduct, whether by act or omission, related to its participation in or eligibility to participate in the Program or in the performance of its SBE obligations under a City contract, shall be in violation of the Program. This determination shall be solely at the discretion of the City. Violators of the Program may be subject to, on an individual and/or entity basis, the debarment or suspension from participating in the City's contracts in accordance with the City of Gainesville's Debarment and Suspension Policy.

S. LIVING WAGE

- This contract is a covered service. (See Living Wage Decision Tree - Exhibit C attached hereto)
 This contract is **not** a covered service.

The Living Wage ordinance, Ordinance 020663, as amended at Ordinance 030168, and as shown on the City's web page, applies to certain contracts for specific "Covered Services," which the City has determined may include services purchased under this Contract, depending upon the cost/price of the contract awarded. A copy of the ordinance, as amended, will be attached to and made a part of the executed contract. Bidders/Proposers should consider the effect/cost of compliance, if any, with the requirements of the Living Wage Ordinance if the services purchased are "Covered Services", the prime contract amount exceeds the threshold amount, the bidder/proposer meets the definition of Service Contractor/Subcontractor (and is not otherwise excluded from the application of the ordinance) and the ordinance provisions, which are incorporated herein, apply to any Covered Employees.

If applicable, the adjusted Living Wage for this contract will be \$_____ per hour (Living Wage with Health Benefits) or \$_____ per hour if Health Benefits are not offered.

If applicable, a successful Service Contractor/Subcontractor shall be required to execute the certification, attached as Exhibit B hereto, prior to the City executing the contract. Once executed, such certification will become part of the contract; however, failure to sign such certification will prevent execution of the contract, may result in forfeiture of any applicable bid or proposal bond, and could result in other adverse action.

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

- (1) The Contractor shall comply with the provisions of the City of Gainesville's living wage requirements, as applicable. Failure to do so shall be deemed a breach of contract and shall authorize the City to withhold payment of funds until the living wage requirements have been met.
- (2) The Contractor will include the provision of (1) above in each subcontract for Covered Services with a Service Contractor/Subcontractor, as defined herein, so that the provisions of (1) above will be binding upon each such Service Contractor/Subcontractor. The Contractor will take such action with respect to any such subcontract as may be directed by the contract administrator as a means of enforcing such provisions; provided, however, the City shall not be deemed a necessary or indispensable party in any litigation between the contractor and a subcontractor concerning compliance with living wage requirements.

T. LOCAL PREFERENCE

In bidding of, or letting contracts for procurement of, supplies, materials, equipment and services, as described in the purchasing policies, the city commission, or other purchasing authority, may give a preference to local businesses in making such purchase or awarding such contract in an amount not to exceed five percent of the local business' total bid price, and in any event the cost differential should not exceed \$25,000.00. Total bid price shall include not only the base bid price but also all alterations to that base bid price resulting from alternates which were both part of the bid and actually purchased and awarded by the City Commission or other authority. In the case of requests for proposals, letter of interest, best evaluated bids, qualifications or other solicitations and competitive negotiation and selection in which objective factors are used to evaluate the responses. Local Businesses are assigned five (5) percent of the total points of the total evaluation points. If Local Preference is requested by the proposer, the attached Exhibit A must be submitted with the proposal.

Local business means the vendor has a valid business tax receipt, issued by the City of Gainesville at least six months prior to bid or proposal opening date, to do business in said locality that authorizes the business to provide

the goods, services, or construction to be purchased, and a physical business address located within the limits of said locality, in an area zoned for the conduct of such business, from which the vendor operates or performs business on a day-to-day basis. Post office boxes are not verifiable and shall not be used for the purpose of establishing said physical address. In order to be eligible for local preference, in the Bid or RFP evaluation, the vendor must provide a copy of the business tax receipt and Zoning Compliance Permit. Exhibit -A-(Attach Codified document)

U. RECORDS/AUDIT

Contractor shall maintain records sufficient to document their completion of the scope of services established by this Contract. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the City. These records shall be kept for a minimum of three (3) years after completion of the Contract. Records which relate to any litigation, appeals or settlements of claims arising from performance under this Order shall be made available until a final disposition has been made of such litigation, appeals, or claims.

V. INVESTIGATION OF ALLEGED WRONGDOINGS, LITIGATION/SETTLEMENTS/FINES/PENALTIES

The City Commission specifically requests that responders to this document indicate in writing any investigations of wrongdoings, litigation and/or settlements, and fines or penalties (anywhere in the U.S) involving the Contractor and specific Contractors listed as projected to provide services to the City. You may be required to respond to questions on this subject matter.

W. DISCRIMINATION PROHIBITION

No person shall, on the grounds of race, color, religion, gender, national origin, marital status, sexual orientation, age, disability, and gender identity, be refused the benefits of, or be otherwise subjected to, discrimination under any activities resulting from this RFQ.

X. ART IN PUBLIC PLACES

In 1989, the City of Gainesville adopted an ordinance (Art in Public Places) requiring that, “each appropriation for the original construction or major renovation of a local government building which provides public access shall include an amount of at least one (1) percent of the total appropriation for the construction or major renovation of the building to be used for the acquisition of art”. Compliance with the Art in Public Places ordinance is required for this project and will require coordination between the Contractor, architect and an artist. A copy of the ordinance is available upon request.

Y. DAVIS-BACON

It will be the responsibility of the contractor to check with the department project manager to determine if compliance with the Davis Bacon Act and the DOL regulations are required.

SECTION II – SCOPE OF SERVICES

A. INTENT

It is the intent of the City of Gainesville to obtain proposals from Consultants having specific financial, auditing and legal expertise to conduct an investigative review of the City-owned Gainesville Regional Utilities (hereafter “GRU”) with the following two primary objectives:

- 1) Recommendations of institutional controls that can be implemented that would help avoid the management discrepancies of the past and help strengthen the working relationship between GRU management and the City Commission, and.
- 2) Opportunities for financial and operational benefit to GRU related, but not limited to, the Gainesville Renewable Energy Center (GREC) power purchase agreement (PPA).

Investigative services provided should include a review of the decision making processes and relevant transactions occurring from the time the City Commission authorized staff to issue an RFP to solicit biomass-fueled electrical generation in October 2007 until November 15, 2013 when the GRU General Manager left the employ of GRU. Services would include reviewing the flow of financial information provided to the City Commission, especially as it relates to the “Equitable Adjustment Agreement for Change of Law.” The Consultant should provide any relevant recommendations it believes would provide possible financial or operational benefits to GRU and the City of Gainesville.

During the course of the initial review and investigation, the scope of work may be further expanded or altered by request of the City Commission.

B. MINIMUM REQUIREMENTS

The review shall include but not be limited to:

1. A review of relevant agreements, documents, financial records, memos, e-mails and any other materials associated with the GREC PPA and any subsequent amendments.
2. A review of activities and decisions involving the GREC PPA and subsequent amendments, including the “Equitable Adjustment Agreement for Change of Law,” with a focus on policy, legal and administrative standards and compliance.
3. A determination as to whether any financial recoveries may be available for GRU.
4. Preparation of data in a manner consistent with legal practices necessary for pursuance of legal action, if appropriate.
5. A review of GRU’s policies, procedures and practices with respect to expenditure contracting and other compliance issues that may include recommendations to strengthen the working relationship between GRU management and the City Commission and to improve financial oversight going forward.

C. REPORTS TO BE ISSUED

Following the completion of the investigative review, the Consultant shall issue a final written report focused on the primary objectives established by the City Commission regarding:

- 1) Opportunities for financial and operational benefit to GRU related, but not limited to, the Gainesville Renewable Energy Center (GREC) power purchase agreement (PPA), and
- 2) Recommendations of institutional controls that can be implemented that would help avoid the management discrepancies of the past and help strengthen the working relationship between GRU management and the City Commission.

It is also expected that an oral presentation of the conclusions and recommendations in the final report will be presented to the City Commission

SECTION III – PROPOSAL FORMAT

Instructions to proposers: Proposals must contain each of the below enumerated documents, each fully completed, signed, and notarized as required. Proposals submitted which do not include the following items may be deemed non-responsive and may not be considered for contract award.

A. FORMAT AND CONTENTS OF PROPOSAL

1. Table of Contents

The table of contents should outline in sequential order the major areas of the proposal, and all pages of the proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the table of contents.

2. Technical Proposals

The technical proposal is a narrative which addresses the scope of work, the proposed approach to the work, the schedule of the work, and any other information called for by the RFP which the proposer deems relevant.

3. Price Proposal

The price proposal is a presentation of the proposer's total offering price including the estimated cost for providing each component of the required goods or services.

Proposers should indicate the dollar amount which will be attributed to each sub-contractor, if any.

See SECTION VII – PRICE PROPOSAL for specific requirements.

If a prescribed format for the price proposal is appended, proposers must use it; otherwise, proposers may use formats of their choice.

4. Qualifications

The response to the minimum qualification requirements contained below is a list of the minimum qualification requirements prescribed for the RFP. Proposers must provide documentation which demonstrates their ability to satisfy all of the minimum qualification requirements. Proposers who do not meet the minimum qualification requirements or who fail to provide supporting documentation will not be considered for award. If a prescribed format, or required documentation for the response to minimum qualification requirements is stated below, proposers must use said format and supply said documentation.

A copy of your Business tax receipt and Zoning Compliance Permit should be submitted with the proposal if a local preference is requested.

B. QUALIFICATIONS/STATEMENT OF QUALIFICATIONS

[Include a description of the experience, qualifications including any minimum qualifications, financial stability, recent references of the proposer's performance on contracts of similar scope and size required. A specific format may be required of the proposers. Experience may be included as the number of years, level of technical knowledge, educational degrees and certifications required. Financial stability may be determined by requesting the proposers most recent financial statement, certified audit, balance sheet, or evidence of bonding capacity.]

SECTION IV – EVALUATION CRITERIA AND PROCEDURES

A. EVALUATION CRITERIA

1.0 SELECTION AND EVALUATION CRITERIA

Proposals will be evaluated in accordance with the procedures described in the City's Professional Services Evaluation Handbook. The proposals will be evaluated in four stages: Technical Qualifications Evaluation, Written Proposal Evaluation and/or Presentation/Interview Evaluation, and Other Factors as deemed appropriate. The City shall consider the ability of the firm's professional personnel, willingness to meet time and budget requirements, workload, location, past performance, volume of previous work with the City, and location. The Evaluation process provides a structured means for consideration of all these areas.

1.1 Technical Qualifications Evaluation

The Technical Qualifications Evaluation will assess each responding firm's ability based on experience and qualifications of key team members, the firm's capability of meeting time and budget requirements, and the firm's record with regard to this type of work, particularly in the City of Gainesville or in the State of Florida. This stage does not involve review and evaluation of a proposal addressing the project scope of work. Consideration will be given to the firm's current workload, financial stability, and the location where the majority of the technical work will be produced. The City will not be impressed with excessive amounts of boilerplate, excessive numbers of resumes, excessive length of resumes, excessive numbers of photographs, work that distant offices have performed, or work not involving personnel to be assigned to the proposed project.

1.2 Written Proposal Evaluation

The Written Proposal Evaluation will assess the firm's understanding of the project and the proposed approach to be undertaken as addressed in a written proposal. The evaluation process will assess how effectively the requirements of the scope of services have been addressed. The written proposal should identify a project manager and other key members of the project/service team. It should relate the capabilities of the project/service team to the requirements of the scope of services.

1.3 Presentation/Interview Evaluation

The Proposal Presentation/Interview Evaluation is based on an oral presentation that addresses both the technical qualifications of the firm and the approach to the project. Importance is given to the firm's understanding of the project scope of work, the placement of emphasis on various work tasks, and the response to questions. The evaluation process will assess the project manager's capability and understanding of the project and his/her ability to communicate ideas. The role of key members of the project/service team should be established based on the scope of services and the firm's approach to the project/service. The role of any subcontracted firm in the proposal should be clearly identified. Unique experience and exceptional qualifications may be considered with emphasis on understanding of the project/service, particularly "why it is to be done" as well as "what is to be done." The City of Gainesville will not be impressed with excessive boilerplate, excessive participation by "business development" personnel, and the use of "professional" presenters who will not be involved in the project or future presentations.

1.4 Other factors

The Other Factors to be considered, based upon the specific project (but not limited to), are those items, such as SBPP and/ or Local Preference. Fee proposals, when requested and deemed appropriate, are also to be considered in the evaluation process, where the request for such fees is in accordance with the City's Purchasing Policies and Procedures.

B. SELECTION PROCESS

The contractor(s) will be selected from the qualified vendors submitting responses to this Request for Proposals. The selection process will be as follows:

1. Evaluators consisting of staff will review the written proposals. The evaluation process provides a structured means for consideration of all proposals.
2. Upon review and evaluation, the City may request oral presentations from the top ranked vendors. During the oral presentations, the vendors shall further detail their qualifications, approach to the project and ability to furnish the required services. These presentations shall be made at no cost to the City. Firms selected for further presentations should provide one (1) electronic copy of materials presented in PDF format on a CD.
3. Prior to final ranking of firms, the apparent top ranked vendor will be required to furnish proof to the City that it complies with the specifications.
4. The final ranking of firms will be in accordance with the procedures described in the City's Professional Services Evaluation Handbook. If required, the final ranking of firms will be presented to the City Commission. The City Commission will be requested to approve the recommended ranking and authorize negotiation and execution of the contract beginning with the top ranked vendor.
5. Provided that the City Commission approves the ranking and an award, the City will negotiate a contract with the top ranked proposer for the provision of an investigative review of GRU. Should the City be unable to negotiate a satisfactory contract with the top ranked vendor, negotiations will be terminated with that proposer and negotiations will be initiated with the second most qualified proposer, and so on until a satisfactory contract is negotiated.

SECTION V – GENERAL PROVISIONS

A. CONTRACT AWARD

The award(s), if any, shall be made to the proposer(s) whose proposal(s) shall be deemed by the City to be in the best interest of the City. The decision of the City of whether to make the award(s) and which proposal is in the best interest of the City shall be final.

The Contract to be entered into with the successful proposer will designate the successful proposer as the City's Contractor and will include, but not be limited to, the following terms and conditions.

B. GENERAL TERMS AND CONDITIONS

Following are the General Terms and Conditions, supplemental to those stated elsewhere in the Request for Proposals, to which the Vendor must comply to be consistent with the requirements for this Request for Proposals. Any deviation from these or any other stated requirements should be listed as exceptions in a separate appendix of the proposal.

1. Public Entity Crimes. Section 287.133 (2)(a), Florida Statutes, contains the following provisions: "A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity, in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."
2. Tie Bids. Whenever two or more bids which are equal with respect to price, quality and service are received, preference shall be given in the following order: (1) Bidders submitting the attached Drug-Free Workplace form with their bid/proposal certifying they have a drug free workplace in accordance with Section 287.087, Florida Statutes; (2) Bidders located within the City of Gainesville, if not subject to the Local Preference Ordinance; (3) Bidders located within Alachua County; and (4) Bidders located within the State of Florida. In the case where Federal funds are being utilized, articles 2,3 and 4 will not apply.
3. Drugfree Workplace. Preference shall be given to submitters providing a certification with their qualifications certifying they have a drug-free workplace whenever two or more bids which are equal with respect to price, quality, and service are received in accordance with Section 287.087, Florida Statutes. The attached form should be filled out and returned with the qualifications in order to qualify for this preference.
4. Indemnification. The Contractor shall agree to indemnify and save harmless the City, its officers, agents, and employees, from and against any and all liability, claims, demands, fines, fees, expenses, penalties, suits, proceedings, actions and costs of action, including attorney's fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with the performance of the contract whether by act or omission or negligence of the Contractor, its agents, servants, employees or others, or because of or due to the mere existence of the Contract between the parties.
5. Insurance. Contractor shall provide proof of insurance in an amount as noted below:

Worker's Compensation Insurance providing coverage in compliance with Chapter 440, Florida Statutes.

Professional Liability Insurance in the amount of \$1,000,000 per occurrence (combined single limit for bodily injury and property damage).

Public Liability Insurance (other than automobile) consisting of broad form comprehensive general liability insurance including contractual coverage \$1,000,000 per occurrence (combined single limit for bodily injury and property damage).

The City shall be an additional insured on such Public Liability Insurance and the Contractor shall provide copies of endorsements naming the City as additional insured.

Automobile Liability Insurance

Property Damage \$500,000 per occurrence (combined single limit for bodily injury and property damage).

The Contractor shall furnish the City a certificate of insurance in a form acceptable to the City for the insurance required. Such certificate or an endorsement provided by the Contractor must state that the City will be given thirty (30) days' written notice (except the City will accept ten (10) days written notice for non-payment) prior to cancellation or material change in coverage.

6. Sovereign Immunity. Nothing in the executed contract shall be interpreted that the City waives its sovereign immunity granted under Section 768.28, Florida Statutes.
7. Term. The term of the contract will commence upon final execution and will continue for 4 months, subject to funding in subsequent fiscal years. At the end of the contract period, upon satisfactory performance, the City, may at its option, negotiate and extend the contract for 2 additional 4 month periods.
8. Termination. The contract will provide termination by either party without cause upon 30 days prior written notice to the other party. In the event of termination, the Contractor will be compensated for services rendered up to and including the day of termination.
9. Applicable Law. The contract and the legal relations between the parties hereto shall be governed and construed in accordance with the laws of the State of Florida. Venue in the courts of Alachua County, Florida.
10. Joint Bidding/Cooperative Purchasing Agreement: All bidders submitting a response to this invitation to bid agree that such response also constitutes a bid to all State Agencies and Political Subdivisions of the State of Florida under the same terms and conditions, for the same prices and the same effective period as this bid, should the bidder deem it in the best interest of its business to do so. This agreement in no way restricts or interferes with any State Agency or Political Subdivision of the State of Florida to rebid any or all items.
11. Subcontractors. All successful contractors specific to construction in the amount of \$300 thousand or more to include material suppliers shall be required to provide information of subcontractors in addition to sub and sub subcontractors prior to final payment under the contract.
12. Florida Public Records Act
Florida has a very broad public records law. By entering into an agreement with the City, the contractor acknowledges that it will comply with the Florida Public Records Act (Chapter 119, Florida Statutes). In complying with the Florida Public Records Act the contractor shall:
 - a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;
 - b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided by law;
 - c) Ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;
 - d) Meet all requirements for retaining public records and transfer, at no cost, to the City all public record in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure

requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

Failure to comply with the Florida Public Records Act, including failure to provide a public record upon request, is a breach of the contract between City and contractor. City may pursue all remedies for breach of this agreement

SECTION VI – TECHNICAL SPECIFICATIONS

A. SCOPE

The purpose of the technical proposal is to demonstrate the qualifications, competence and capacity of the firm(s) seeking to undertake an investigative review of the GRU PPA and subsequent amendments in conformity with the requirements of this request for proposals. The technical proposal should also specify an approach that will meet the requirements of this request for proposals. If this proposal is a joint venture, the proposal should include similar information on the other firm(s) involved.

The technical proposal should address all the points outlined in the request for proposals. The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements presented herein. While additional data may be presented the following subjects, items Nos. 2 through 7, must be included as they represent the criteria against which the proposal will be evaluated.

1. Firm Profile

- Name of Business
- Mailing Address, telephone, fax number and email address
- Name of persons to be contacted for information or services if different from name of person in charge
- Business hours
- State whether the firm is local, regional, national or international and indicate the business legal status (corporation, partnership, etc.)
- Date business was organized and/or incorporated, and where location of the office from which the work is to be done and the number of professional staff employees at that office
- Indicate whether the business is a parent or subsidiary in a group of firms/agencies

2. Independence

The firm shall provide an affirmative statement that it is independent of the City, GRU and GREC. The firm should also list and describe the firm's professional relationships involving the City, GRU or GREC for the past five (5) years, along with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed engagement. In addition, the firm shall give the City written notice on any professional relationships entered into during the period of this engagement.

3. License or Certifications to Practice

An affirmative statement must be included indicating if the firm and all assigned key professional staff are licensed or certified (i.e., Attorneys, CPA's, CFE's, etc.)

4. Firm Qualifications and Experience with Other Government and Utility Entities

Describe the range of services performed by the firm. Include a description of investigative reviews that have been completed for government and/or utility entities. Include a discussion of nationwide resources available to your firm in the aforementioned areas in performing the services and providing technical advice.

For the firm's professional staff assigned responsibility for this engagement, list and rank the five most relevant engagements performed in the last three years that are similar to the engagement described in this Request for Proposals. These engagements should be ranked on the basis of total staff hours.

Indicate the scope of work, date, engagement staff, total hours and the name and telephone number of the principal client contact. The City reserves the right to contact the above mentioned references and any other clients. Also provide the names and qualifications of the daily on-site supervisors.

The proposal should demonstrate the experience and capacity of the Consultant in identifying, preparing and implementing an investigative review of the nature and scope required by this Request for Proposals, identify the key personnel to be assigned to render the services proposed and indicate the main contact person for the project.

The Consultant must demonstrate a level of expertise and experience necessary to successfully complete the project within the proposed timeline, the capability to competently produce the required elements of the project and the ability to work in a responsive and cooperative manner with City and GRU management and staff.

The Consultant must also include in the response:

- a. Name, address, phone number, fax number, email address and brief description of firm.
- b. Resumes of key personnel to be assigned to this project, highlighting skills, abilities and knowledge related to the proposed services.
- c. A narrative as to Consultant's skills, abilities, and knowledge relating to the delivery of the proposed services.
- d. Three or more references. At least two of the references must deal directly with the Consultant's delivery of investigative review services preferably related to municipal utilities.
- e. Description of services to be provided by the firm which meets the services requested by the Scope of Work section of this RFP. If firm cannot provide the specific service requested, firm will indicate this in the response and have the option of proposing an alternative service.
- f. Cost of providing services listed in the Scope of Work.

5. Partner, Supervisory and Staff Qualifications and Experience

The proposal shall identify the principal supervisory and management staff of the firm, including partners, managers, other supervisors and specialists, who would be assigned to this engagement. The proposal shall also include information on the relevant experience of each person on the team in government and utility investigative reviews, as applicable. Information should include relevant professional certifications and designations relevant to this engagement.

The proposer should provide as much information as possible regarding the number, qualifications, experience and training of the specific staff to be assigned to this engagement. The proposal shall also indicate how the quality of the staff over the term of the agreement will be assured. Engagement partners, managers, other supervisory staff and specialists may be changed during the term of the agreement with the express prior written permission of the City if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons; but in either case, the City retains the right to approve or reject replacements.

6. Conflict of Interest

The proposal must also disclose any potential conflicts of interest due to any other clients' contract or property interest or include a notarized statement certifying that no member of your firm's ownership, management, or staff currently have a vested interest which might be considered a conflict of interest. Any potential conflict of interest listed by a firm will be reviewed with the City Attorney. If the conflict of interest is found to be substantive, the proposal will be rejected.

7. Specific Engagement Approach

The proposal must set forth a work plan, including an explanation of the engagement methodology to be followed to perform the services required as described in this document. In developing the work plan,

reference should be made to such sources of information as the City's budget and related materials, organizational charts, manuals, programs, and other financial and management information. Proposers will be required to provide the following information on their engagement approach:

- a. Proposed segmentation of the engagement
- b. Staffing assignments and levels to be designated to each proposed segment of the engagement
- c. Extent of evaluation and use of electronic data processing software in the engagement
- d. Approach to be taken to gain and document an understanding of the City's internal control structure
- e. Approach to be taken in determining laws and regulations that will be subject to investigative review

8. Proof of Professional Liability Insurance

Consultant must meet the minimum insurance requirements at all times as required by law and the City, including professional liability insurance. Consultant will procure and maintain insurance with coverage amounts as required and furnish the City certificate(s) of insurance in a form acceptable to the City. Consultant must notify City of any changes in coverage within seven (7) business days. Failure to maintain minimum coverage may result in breach of contract.

SECTION VII – PRICE PROPOSAL

Price proposals should provide a detailed rate structure, including the billable hourly rate by classification for all personnel to be assigned. The hourly rate shall include overhead and profit as well as the direct salary costs; estimates of the total project cost, if possible, and a not to exceed price. If this proposal is a joint venture, the proposal shall include similar information on the other firms or individuals involved.

Understanding the Scope of Work is broad and may change, the City recognizes that budgets will be difficult to provide. However, as a local entity, cost is a major factor. Therefore, to assist with budgeting, we provide two suggestions. First, we encourage proposers to be innovative in budgeting. Reduced hourly rates, monthly flat rates or other alternative billing solutions are welcome. Second, the Consultant should provide two items – an overall budget or not to exceed amount believed necessary to perform the base services and a supplemental expense sheet detailing hourly rates to provide any additional services that may be necessary.

DRUG-FREE WORKPLACE FORM

The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies that

_____ does:

(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for the drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

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

Bidder's Signature

Date

DEBARRED AND SUSPENDED BIDDERS:

Breach of Contract

1. **Scope.**

This policy prescribes policies and procedures relating to:

 - (a) the debarment of bidders for cause;
 - (b) the suspension of bidders for cause under prescribed conditions;
and,
 - (c) the rejection of bids, revocation of acceptance and termination of contracts for cause.

It is directly applicable to the advertised and negotiated purchases and contracts, for equipment and services of the City.
2. **General.**

Debarment and suspension are measures which may be invoked by the City either to exclude or to disqualify bidders and contractors from participation in City contracting or subcontracting. These measure should be used for the purpose of protecting the interests of the City and not for punishment. To assure the City the benefits to be derived from the full and free competition of interested bidders, these measures should not be instituted for any time longer than deemed necessary to protect the interests of the City, and should preclude awards only for the probably duration of the period of non-responsibility.
- 2.1 **Definitions.**
 - (a) "Debarment" means, in general, an exclusion from City contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense, improper conduct or the inadequacy of performance.
 - (b) "Suspension" means a disqualification from City contracting and subcontracting for a temporary period of time because a concern or individual is suspected upon adequate evidence (See Section 6) of engaging in criminal, fraudulent, improper conduct or inadequate performance.
 - (c) A "debarment list" or "debarred bidders list" means a list of names of concerns or individuals against whom any or all of the measures referred to in this policy have been invoked.
 - (d) "Bidders" means, wherever the term is used in this policy, an offerors bidding pursuant to an invitation for bids or a request for proposals.
 - (e) "Affiliates" means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.
 - (f) "Business operations" means commercial or industrial activity engaged in regularly and continuously over a period of time for the purpose of receiving pecuniary benefit or otherwise accomplishing an objective. "Business operations" constitute and are equivalent to "carrying on business", "engaged in business", "doing business".
3. **Establishment and Maintenance of a List of Concerns or Individuals Debarred or Suspended.**
 - (a) The Purchasing Department shall establish and maintain on the basis contained in Sections 6 and 6.1, a consolidated list of concerns and individuals to whom contracts will not be awarded and from whom bids or proposals will not be solicited.
 - (b) The list shall show as a minimum the following information:
 - (1) the names of those concerns or individuals debarred or suspended (in alphabetical order) with appropriate cross-reference where more than one name is involved in a single action;
 - (2) the basis of authority for each action;
 - (3) the extent of restrictions imposed; and,
 - (4) the termination date for each debarred or suspended listing.
 - (c) The list shall be kept current by issuance of notices of additions and deletions.
4. **Treatment to be Accorded Firms or Individuals Debarred or Suspended**

Firms or individuals listed by the Purchasing Department as debarred or suspended shall be treated as follows.

 - (a) **Total restrictions.** A contract shall not be awarded to a concern or individual that is listed on the basis of a Section 5(a)(1), (2) or (3) felony "conviction", or to any concern, corporation, partnership, or association in which the listed concern or individual has actual control or a material interest; nor shall bids or proposals be solicited therefrom. However, when it is determined essential in the public interest by the City Commission, an exception may be made with respect to a particular procurement action where the individual or concern is effectively the sole source of supply or it is an emergency purchase.
 - (b) **Restrictions on subcontracting.** If a concern or individual listed on the debarred and suspended bidders list is proposed as a subcontractor, the Purchasing Department shall decline to approve subcontracting with that firm or individual in any instance in which consent is required of the City before the subcontract is made, unless it is determined by the City to grant approval City Commission essential to public interest and the individual or concern is effectively the sole source of supply or it is an emergency purchase.
5. **Causes and Conditions Applicable to Determination of Debarment.**

Subject to the following conditions, the Purchasing is authorized to debar a firm or individual in the public interest for any of the following causes occurring with ten (10) years of debarment.

- (a) Causes
 - (1) "Conviction" for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.
 - (2) "Convictions" of embezzlement, theft, forgery, issuance of worthless checks, bribery, falsification or destruction of records, perjury, or receiving stolen property where the conviction is based upon conduct which arose out of, or was related to, business operations of the bidder.
 - (3) "Conviction" for bid-rigging activities arising out of the submission of bids or proposals.
 - (4) Violation of contract provisions, as set forth below, of a character which is regarded by the City to be so serious as to justify debarment action:
 - (i) willful failure to perform in accordance with the specifications or within the time limit provided in the contract;
 - (ii) a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts. Failure to perform or unsatisfactory performance caused by acts beyond the control of the firm or individual as a contractor shall not be considered to be a basis for debarment.
 - (5) Debarment by any other governmental agency.
- (b) Conditions.
 - (1) Debarment for any of the causes set forth in this section shall be made only upon approval of the Purchasing.
 - (2) The existence of any of the causes set forth in (a) of this section does not necessarily require that a firm or individual be debarred except as provided in 4(a). In each instance, whether the offense or failure, or inadequacy of performance, be of criminal, fraudulent, or serious nature, the decision to debar shall only be made if supported by a preponderance of the credible evidence available. Likewise, all mitigating factors may be considered in determining the seriousness of the offense, failure, or inadequacy of performance, in deciding whether debarment is warranted. The actual or apparent authority of an involved individual, the present relationship of involved individuals with the bidder, the past performance of the individual or concern, and the relationship of the violation to the services or materials involved shall be considered.
 - (3) The existence of a cause set forth in (a)(1), (2), and (3) of this section shall be established by criminal "conviction" by a court of competent jurisdiction. In the event that an appeal taken from such conviction results in reversal of the "conviction", the debarment shall be removed upon the request of the bidder (unless other causes for debarment exists). For the purposes of this policy, the following shall have the same effect as a "conviction": pleading guilty or nolo contendere, or being found guilty by a jury or court of, the offense in question, regardless of whether probation is imposed and adjudication withheld.
 - (4) The existence of a cause set forth in (a)(4) and (5) of this section shall be established by a preponderance of credible evidence by the Purchasing.
 - (5) Debarment for the cause set forth in (a)(5) of this section (debarment by another agency) shall be proper if one of the causes for debarment set forth in (a)(1) through (4) of this section was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

5.1 Period of Debarment.

- (a) Debarment of a firm or individual shall be for a reasonable, definitely stated period of time commensurate with the seriousness of the offense or the failure or inadequacy or performance. As a general rule, a period of debarment shall not exceed five (5) years. However, when partial or total debarment for an additional period is deemed necessary, notice of the proposed additional debarment shall be furnished to that concern or individual in accordance with Section 8.
- (b) A debarment may be removed or the period thereof may be reduced by the City Manager upon the submission of an application supported by documentary evidence, setting forth appropriate grounds for the granting of relief; such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which the debarment was imposed. The City Manager may request additional information, shall consider all relevant facts, and shall render a decision within twenty (20) days of receipt of the application unless a longer period is warranted under the circumstances.

6. Suspension of Bidders.

- (a) Suspension is a drastic action and, as such, shall not be based upon an unsupported accusation. In assessing whether evidence exists for invoking a suspension, consideration should be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, as well as to the inferences which may properly be drawn from the existence or absence of affirmative facts. This assessment should include an examination of basic documents, such as contracts, inspection reports, and correspondence. In making a determination to suspend, the Purchasing shall consider the factors set forth in Section 5(b)(2). A suspension may be modified by the City Manager as described in Section 5.1(b).

6.1 Causes and Conditions Under Which the City May Suspend Contractors

- (a) The Purchasing may, in the interest of the City, suspend a firm or individual when the firm or individual is suspected, upon credible evidence, of having committed one or more the following act(s) within three (3) years of the date of suspension:
 - (1) Commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract;
 - (2) Violation of statutes concerning bid-rigging activities out of the submission of bids and proposals; and,
 - (3) Commission of embezzlement, theft, forgery, issuance of worthless checks, bribery, falsification, or destruction of records, perjury, receiving stolen property. Commission of any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a City contractor.
- 6.2 Period of Suspension.
- (a) All suspension shall be for temporary period pending the completion of an investigation and such legal proceedings as may ensue. In the event that prosecution has not been initiated within twelve (12) months form the date of the suspension, the suspension shall be terminated. Upon removal of suspension, consideration may be given to debarment in accordance with Section 5 of this policy.
7. Scope of Debarment or Suspension.
- (a) A debarment or suspension may include all known affiliates of a concern or individual.
 - (b) Each decision to include a known affiliate within the scope of a proposed debarment or suspension is to be made on a case-by-case basis, after giving due regard to actual or apparent authority of the controlling concern or individual and similarity of the services provided by the affiliate to those provided by the debarred individual or concern.
 - (c) The criminal, fraudulent, or seriously improper conduct of an individual may be imputed to the business concern with which he is connected, where such impropriety was accomplished within the course of his official duty or apparent authority, or was effected by him with the knowledge and approval of that concern. When the individual was an officer of the concern, knowledge and approval may be presumed. Likewise, where a concern is involved in criminal, fraudulent, or seriously improper conduct, any individual who was involved in the commission of the impropriety may be debarred or suspended.
8. Notice of Debarment of Suspension.
- When the Purchasing seeks to debar or suspend a concern or individual (or any affiliate thereof) for cause, it shall furnish that party with a written notice:
- (1) stating that debarment or suspension is being considered;
 - (2) setting forth the reasons for the proposed action;
 - (3) indicating that such party will be afforded an opportunity for a hearing if he so requests one within ten (10) days; and,
 - (4) indicating that such party may make a written response in accordance with Section 9(a).
9. Response to Notice of Debarment or Suspension.
- (a) In lieu of requesting a hearing within the prescribed ten (10) day period, the party may, within said ten (10) day period, notify the City of its intent to provide a written reply and submit written evidence to contest the debarment or suspension. Such written evidence must be submitted within twenty (20) days after receipt of the notice of proposed debarment or suspension in order for it to be considered.
 - (b) Whatever response is received to the notice of intent to debar or suspend, such will be considered in determining whether debarment or suspension action will be made. Where a reply is received to the notice of intent to debar or to suspend, and evidence to refute such action is furnished but no hearing is requested, the information furnished will be considered in determining the action to be taken.
 - (c) If a hearing is requested, it shall be conducted by the City Manager. The hearing will be held at a location convenient to the City as determined by the City Manager and on a date and at a time stated. An opportunity shall be afforded to the firm or individual to appear with witnesses and counsel, to present facts or circumstances showing cause why such firm or individual should not be debarred or suspended. The proceeding shall be of an informal nature as determined by the City Manager. After consideration of the facts, the City Manager shall notify the firm or individual of the final decision.
 - (d) If no response is made to the notice of debarment or suspension within the first ten (10) day period, the decision of the Purchasing shall be deemed final and the party so notified.
10. Rejection of Bids, Breach of Contract.
- (a) Previously solicited and/or accepted bids may be rejected or acceptance revoked prior to beginning of performance upon discovery by the City that the bidder or its affiliates have committed any act which would have been cause for debarment.
 - (b) If after a contract is awarded and performance has been begun the City discovers that the bidder or its affiliates have committed any act prior to award or acceptance which would have been cause for debarment had it been discovered prior to solicitation or acceptance, the City may consider such to be a material breach of the contract and such shall constitute cause for termination of the contract.

- (c) If after bids have been solicited and/or accepted or after a contract is awarded and performance begun, the City discovers that the bidder or its affiliates committed any act prior to award or acceptance which would have been cause for disbarment or suspension had it been discovered prior to solicitation or acceptance, the City may require additional satisfactory assurances that such act(s) have not occurred and that the contract can and will be faithfully performed. If additional assurances are requested and are not satisfactory or if the bidder or its affiliates fail to immediately cooperate with all reasonable requests, including requests for information reasonably calculated to lead to the discovery of relevant evidence, then such may be considered a material breach of the contract and such shall constitute cause for termination of the contract.

ARTICLE X. LOCAL PREFERENCE POLICY*

***Editor's note:** Section 9 of Ord. No. 001261 states: "This ordinance shall become effective October 1, 2004, and shall be reviewed by the City Commission October 1, 2005, and unless extended by action of the City Commission, shall be deemed repealed effective March 31, 2006, provided that it shall remain applicable to new contracts solicited prior to repeal."

Sec. 2-620. Findings of fact.

The city annually spends significant amounts on purchasing personal property, materials, and contractual services and in constructing improvements to real property or to existing structures. The dollars used in making those purchases are derived, in large part, from taxes, fees, and utility revenues derived from local businesses in the corporate city limits of Gainesville, and the city commission has determined that funds generated in the community should, to the extent possible, be placed back into the local economy. Therefore, the city commission has determined that it is in the best interest of the city to give a preference to local businesses in the corporate city limits of Gainesville in making such purchases whenever the application of such a preference is reasonable in light of the dollar-value of proposals received in relation to such expenditures.

(Ord. No. 001261, § 1, 3-29-04)

Sec. 2-621. Definition.

"Local business" means the vendor has a valid occupational license, issued by the City of Gainesville at least six months prior to bid or proposal opening date, to do business in said locality that authorizes the business to provide the goods, services, or construction to be purchased, and a physical business address located within the limits of said locality, in an area zoned for the conduct of such business, from which the vendor operates or performs business on a day-to-day basis. Post office boxes are not verifiable and shall not be used for the purpose of establishing said physical address. In order to be eligible for local preference, the vendor must provide a copy of the occupational license.

(Ord. No. 001261, § 2, 3-29-04)

Sec. 2-622. Local preference in purchasing and contracting.

In bidding of, or letting contracts for procurement of, supplies, materials, equipment and services, as described in the purchasing policies, the city commission, or other purchasing authority, may give a preference to local businesses in making such purchase or awarding such contract in an amount not to exceed five percent of the local business' total bid price, as described below, and in any event the cost differential should not exceed \$25,000.00. Total bid price shall include not only the base bid price but also all alterations to that base bid price resulting from alternates which were both part of the bid and actually purchased or awarded by the city commission or other authority. In the case of requests for proposals, letters of interest, best evaluated bids, qualifications or other solicitations and competitive negotiation and selection in which objective factors are used to evaluate the responses, local businesses are assigned five percent of the total points of the total evaluation points.

(Ord. No. 001261, § 3, 3-29-04)

Sec. 2-623. Exceptions to local preference policy.

The preference set forth in this Article X shall not apply to any of the following purchases or contracts:

- (1) Good or services provided under a cooperative purchasing agreement;

- (2) Contracts for professional services procurement of which is subject to the Consultants' Competitive Negotiation Act (F.S. § 287.055) or subject to any competitive consultant selection policy or procedure adopted or utilized by the city commission or charter officer;
- (3) Purchases or contracts which are funded, in whole or in part, by a governmental entity and the laws, regulations, or policies governing such funding prohibit application of that preference; or
- (4) Purchases made or contracts let under emergency or noncompetitive situations, or for litigation related legal services, etc., as such are described in the city's purchasing policies;
- (5) Purchases with an estimated cost of \$50,000.00 or less;
- (6) Application of local preference to a particular purchase, contract, or category of contracts for which the city commission is the awarding authority may be waived upon written justification and recommendation of the charter officer and approval of the city commission. The preferences established herein in no way prohibit the right of the city commission or other purchasing authority to compare quality or fitness for use of supplies, materials, equipment and services proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms, or corporations submitting bids or proposals. Further, the preferences established herein in no way prohibit the right of the city commission or other purchasing authority from giving any other preference permitted by law in addition to the preference authorized herein.

(Ord. No. 001261, § 4, 3-29-04)

Sec. 2-624. Application, enforcement.

The local preference shall apply to new contracts for supplies, materials, equipment and services first solicited after October 1, 2004. This article shall be implemented in a fashion consistent with otherwise applicable city purchasing policies and procedures.

(Ord. No. 001261, § 5, 3-29-04)

Local Preference is requested: YES NO

If Local preference is requested this exhibit must be submitted with the proposal.

A copy of your Business tax receipt and Zoning Compliance Permit should be submitted with the proposal if a local preference is requested.

CITY OF GAINESVILLE

CERTIFICATION OF COMPLIANCE WITH LIVING WAGE

The undersigned hereby agrees to comply with the terms of the Living Wage Ordinance and to pay all covered employees, as defined by City of Gainesville Ordinance 020663 as amended at 030168 (Living Wage Ordinance), during the time they are directly involved in providing covered services under the contract with the City of Gainesville for _____ a living wage of \$_____ per hour to covered employees who receive Health Benefits from the undersigned employer and \$_____ per hour to covered employees not offered health care benefits by the undersigned employer.

Name of Service Contractor/Subcontractor: _____
Address: _____
Phone Number: _____
Name of Local Contact Person _____
Address: _____
Phone Number: _____
 \$ _____ (Amount of Contract)

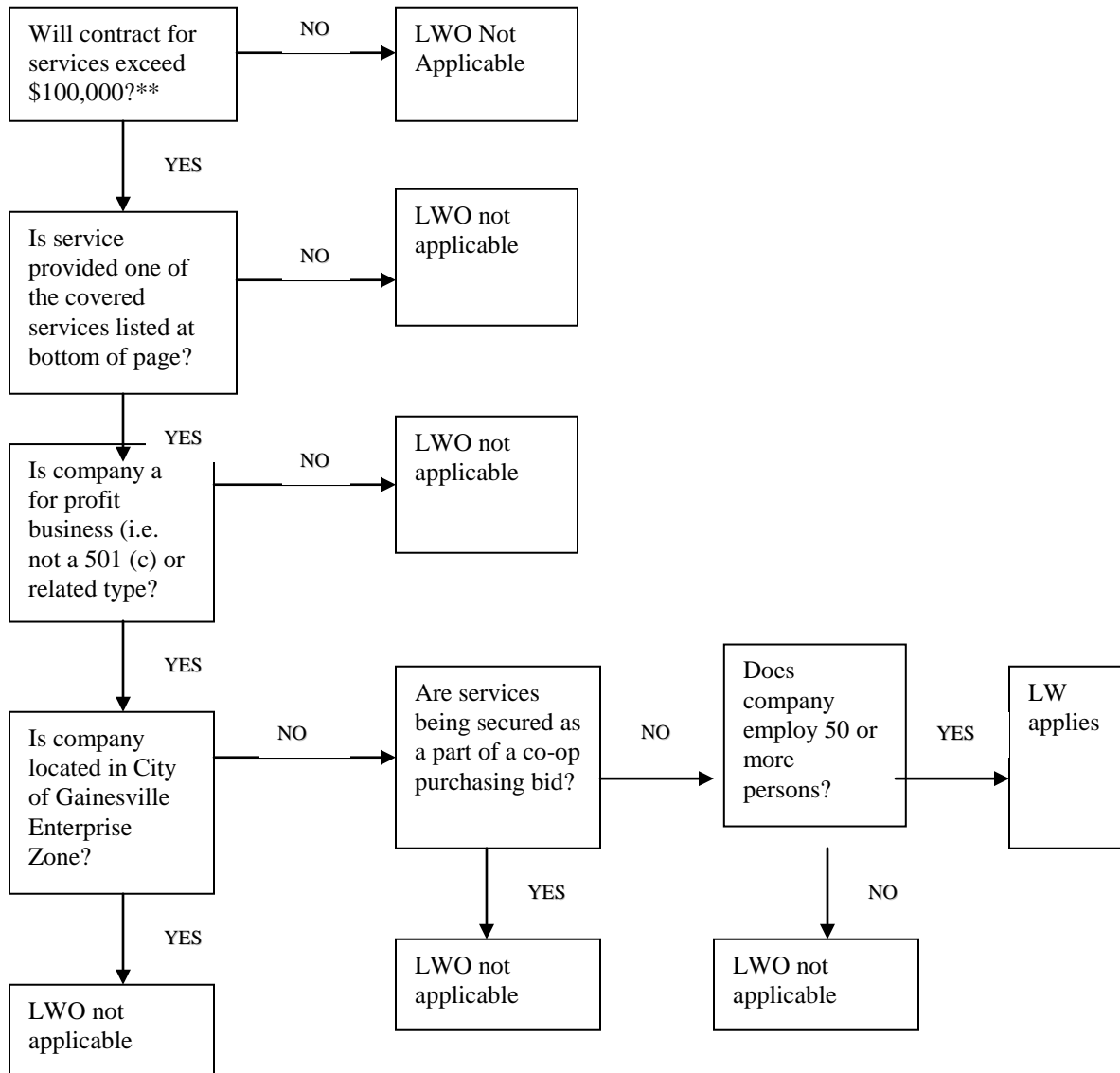
Signature: _____ Date: _____

Printed Name: _____

Title: _____

LIVING WAGE DECISION TREE

While not all encompassing, the following is provided as a guideline for contractors in determining whether the City of Gainesville Living Wage Ordinance applies to their firm in the performance of specified service contracts for covered services* with the City. Contractors are advised to review the entire text of the Living Wage Ordinance in conjunction with this guideline.



***Covered Services:** food preparation and/or distribution; custodial/cleaning; refuse removal; maintenance and repair; recycling; parking services; painting/refinishing; printing and reproduction services; landscaping/grounds maintenance; agricultural/forestry services; and construction services
****Total value of contract.**

LIVING WAGE COMPLIANCE

See Living Wage Decision Tree (Exhibit C hereto)

Check one:

- Living Wage Ordinance does not apply
(check all that apply)
- Not a covered service
 - Contract does not exceed \$100,000
 - Not a for-profit individual, business entity, corporation, partnership, limited liability company, joint venture, or similar business, who or which employees 50 or more persons, but not including employees of any subsidiaries, affiliates or parent businesses.
 - Located within the City of Gainesville enterprise zone.
- Living Wage Ordinance applies and the completed Certification of Compliance with Living Wage is included with this bid.

NOTE: If Contractor has stated Living Wage Ordinance does not apply and it is later determined Living Wage Ordinance does apply, Contractor will be required to comply with the provision of the City of Gainesville's living wage requirements, as applicable, without any adjustment to the bid price.

**CITY OF GAINESVILLE
GENERAL GOVERNMENT
PURCHASING DIVISION SURVEY
BID INFORMATION**

BID #: CAUD140037-DH

DUE DATE: May 8, 2014

SEALED PROPOSAL ON: External Investigative Review of Gainesville Regional Utilities

IF YOU DO NOT BID

Please check the appropriate or explain:

- _____ 1. Not enough bid response time.
- _____ 2. Specifications not clear.
- _____ 3. Do not submit bids to Municipalities.
- _____ 4. Current work load does not permit time to bid.
- _____ 5. Delay in payment from Governmental agencies.
- _____ 6. Do not handle this item.
- _____ 7. Other: _____

Company: _____

Address: _____

Are you a minority business? yes _____ no _____

RFP (09/22/03)
Rev. local pref. 10/1/04;7/25/05;10/05;4/06;10/06;3/07;10/11;05/12

This form Document No. P04-213 is a legal instrument approved by the City Attorney. Any deviations from its intended use should be authorized by the City Attorney