



4601 Padre Blvd
South Padre Island, Texas 78597
www.MySPI.org

Invitation to Bid

ALTPW-6823 Laguna Boulevard Palm Trees

Bids must be received before:

November 9, 2023

2:30 P.M. central time

City of South Padre Island

ATTN: City Manager's Office

4601 Padre Blvd.

South Padre Island, TX 78597

City of South Padre Island – City Secretary

4601 Padre Blvd • South Padre Island, TX 78597 • (956) 761-8109 • Fax (956) 761-3888
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INTRODUCTION

Bids are solicited for **Laguna Boulevard Palm Trees** with the following definitions, terms and conditions of bidding. Upon award by the City, this Bid will shall become the working contract for the Parties.

A. **NOTICE**

Sealed bids are due at **2:30 P.M. on November 9, 2023** after which time all qualified bids will be opened and publicly read aloud at 4601 Padre Blvd, South Padre Island, Texas 78597. Bids received after the specified deadline will be returned unopened.

Sealed bids shall be clearly marked with the bid number and title and addressed to the City of South Padre Island – City Secretary. Bids shall be delivered using one of the following:

Hand-deliver to:	Mail to:	Ship to (FedEx, UPS, DHL):
4601 Padre Blvd	4601 Padre Blvd.	4601 Padre Blvd.
South Padre Island, TX 78597	South Padre Island, TX 78597	South Padre Island, TX 78597

Vendors may receive notice of bids from the City of South Padre Island from a variety of channels. Approved methods of dissemination include: City of South Padre Island website or the City of South Padre Island City Secretary. The receipt of solicitations through any other means may result in the receipt of incomplete specifications or addenda which could ultimately render your bid non-compliant. City of South Padre Island accepts no responsibility for the receipt or notification of solicitations through any other source.

B. **QUESTIONS and INQUIRIES**

Questions and inquiries about this Solicitation shall be submitted in writing to the following individual:

Carlos Alejandro Sanchez, P.E., CFM.
Public Works Director/ City Engineer
csanchez@myspi.org

The deadline for written questions is **October 30, 2023**

C. **SCHEDULE OF IMPORTANT DATES**

The tentative schedule for this Solicitation is as follows:

Release ITB to Vendors	October 12 th 2023
Advertisement Dates	October 12 th & October 19 th
Pre-Bid Conference	October 25 th (11:00AM)
Deadline for Questions and Inquiries	October 30, 2023
ITB Due Date	November 9, 2023 (2:30PM)
Earliest Award by City	December 6, 2023

DEFINITIONS

The following definitions shall be used to identify terms throughout this invitation to bid:

A. AGREEMENT/CONTRACT

A mutually binding legal document obligating the Vendor to furnish the products specified within this solicitation and obligating the City to pay for the goods as specified. This may be an authorized purchase order or this Invitation to Bid.

B. BID/RESPONSE/OFFER/QUOTATION

A complete, properly signed response to this solicitation that, if accepted, would bind the Respondent to perform the resulting contract.

C. BIDDER/RESPONDENT/OFFERER

The Respondent identified throughout the solicitation that they consider themselves qualified to provide the products specified herein, and are interested in making an offer to provide the goods to the City.

D. CITY

The City of South Padre Island, located in Cameron County, Texas.

E. CITY COUNCIL

The elected officials of the City of South Padre Island, Texas, given the authority to exercise such powers and jurisdiction of all City business as conferred by the City Charter and State Constitution and Laws.

F. PIGGYBACK CONTRACT

A contract or agreement that has been competitively bid in accordance with State of Texas statutes, rules, policies and procedures and has been extended for the use of state and local agencies that have entered (or will) into an Interlocal Agreement with the City.

G. PURCHASE ORDER

A purchase order records the financial obligation of the City to pay for products properly received; therefore, a purchase order is also required for all contracts with an expenditure of funds entered into by the City Manager or City Council.

H. SOLICITATION/INVITATION TO BID

This Solicitation document issued by the City containing terms, conditions and specifications for the products to be procured.

I. VENDOR/CONTRACTOR

Person or business enterprise providing products to the City as fulfillment of obligations arising from an agreement or purchase order.

INSTRUCTION TO BIDDERS

Qualified bidders interested in responding to this Solicitation must submit the following information as part of their bid response. Failure to provide any information requested in this Solicitation may result in disqualification of the bid response.

A. **FORMS**

All Responses must be submitted on the form(s) provided by the City, and accompanied by all required attachments. All figures must be written in ink or typewritten. Mistakes may be crossed out, corrections inserted adjacent thereto and initiated in ink by the person certifying the bid.

B. **RECEIPT OF BIDS**

Sealed bids must be received by the City prior to the date and time specified. The mere fact that the bid was dispatched will not be considered; the bidder must insure that the bid is actually delivered. Bids received after that time will be returned unopened to the Respondent. Bid responses submitted via fax or email are not acceptable.

C. **CERTIFICATION**

This Solicitation includes a certification page. Respondent must:

1. Furnish complete name, mailing address, telephone number and email of the individual duly authorized to execute contractual documents on behalf of the Respondent.
2. Furnish name of individual(s), along with respective telephone numbers and email addresses, who will be responsible for answering all questions.
3. Certify that they have not conspired with any other potential Respondents in any manner to attempt to control competitive pricing.
4. Certify that they are duly qualified, capable and otherwise bondable business entity not in receivership or contemplating same, and has not filed bankruptcy.

D. **EXCEPTIONS**

Any deviations from terms, conditions or specifications contained herein must be clearly indicated in the Response to this Solicitation in writing at or before the due date and time. Any deviations or exceptions are subject to review by the City and may deem the Response disqualified or non-responsive. If no exceptions are stated, it will be understood that all general terms and conditions and specific requirements will be complied with, without exception.

E. **TAX EXEMPT**

Respondents bid prices must be net, exclusive of taxes. The City is exempt from State Retail Tax and Federal Excise Tax.

F. **DISCLOSURE OF INTERESTED PARTIES**

Contracting hereunder may require compliance with §2252.908 Texas Government Code/Disclosure of Interested Parties for contracts that (1) require an action or vote by the City Council before the contract may be signed; or (2) has a value of at least \$1 million. The law provides that a governmental entity may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity or state agency.

The process as implemented by the Texas Ethics Commission (“TEC”) is as follows:

1. The disclosure of interested parties must be performed using the [Texas Ethics Commission’s electronic filing application](#) listing each interested party of which the business entity is aware

on Form 1295, obtaining a certification of filing number for this form from the TEC, and printing a copy of it to submit to the City.

2. The copy of Form 1295 submitted to the City must contain the unique certification number from the TEC. The form must be filed with the City pursuant to §2252.908 Texas Government Code, “at the time the business entity submits the signed contract” to the City.

The City, in turn, will submit a copy of the disclosure form to the TEC not later than the 30th day after the date the City receives the disclosure of interested parties from the business entity.

STANDARD TERMS and CONDITIONS

A. ACCEPTANCE

Acceptance is deemed to have occurred upon the latter of the following: the Vendor’s signature on this Invitation to Bid or approval by the City Council, or their designee. A City of South Padre Island Purchase Order is required prior to the delivery of any products provided to the City.

B. ABSENCE of PURCHASE ORDER or AGREEMENT

The City is not responsible for delivery of any commodities or equipment without a proper Purchase Order.

C. ADDENDA

If it becomes necessary to revise any part of this bid, prior to the due date and time, a written addendum will be provided to all Bidders. The City is not bound by any oral representations, clarifications, or changes made in the written specification by the City’s employees, unless such clarification of change is provided to Bidders in written addendum form from the City.

Addenda will be transmitted to all that are known to have received a copy of the bid documents and specifications. However, it shall be the sole responsibility of the Bidder to verify issuance of any addenda and to check all avenues of document availability prior to the opening date and time. Bidder shall provide written acknowledgment of all addenda.

D. ADVERTISING and PUBLICITY

Vendor shall not advertise or otherwise publicize, without the City’s prior written consent, the fact that the City has entered into the Agreement, except to the extent required by applicable law.

E. ASSIGNMENTS

The Agreement shall be binding upon and inure to the benefit of the City and the Vendor, and their respective successors and assignees, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Vendor without the prior written consent of the City. Any attempted assignment or delegation by the Vendor shall be void unless made in conformity with this Paragraph. The Agreement is not intended to confer any rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement.

F. AWARD of CONTRACT

A Contract may be awarded to either the lowest responsible bidder or the bidder who provides goods or materials at the best value for the City. In determining the best value for the City, the City may consider, but is not necessarily limited to, the following factors:

- a. conformity to specifications;
- b. the purchase price, including payment discount terms;
- c. the reputation of the bidder and of the bidder's goods or services;
- d. the quality of the bidder's goods or services;

- e. the extent to which the goods or services meet the City's needs;
- f. the bidder's past relationship with the City;
- g. the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- h. delivery terms;
- i. payment terms;
- j. availability of repair and maintenance parts;
- k. financial condition;
- l. products or services that have a lesser or reduced effect on human health and the environment when compared with competing products and services that serve the same purpose. This comparison may consider raw materials acquisition, product, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service;
- m. the total long-term cost to the City to acquire the bidder's goods or services; and
- n. any relevant criteria specifically listed in this request for bid.

Although the cost of products to be provided is an essential part of the Bid, the City is not obligated to award a contract on the sole basis of cost.

G. BUSINESS PRACTICES

Minority business enterprises and/or historically underutilized businesses will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

H. CANCELLATION or TERMINATION

1. Termination For Cause:

In the event of default by the Vendor, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Vendor, within such ten (10) day period cures such default, or provides evidence sufficient to prove to the City's satisfaction that such default does not, in fact, exist. In addition to any other remedies available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses incurred by the City as a result of the Vendor's default, including without limitation, cost of cover, reasonable attorneys' fees, court costs and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of default by the Vendor, the City may remove the Vendor from the City's Vendor List and any Offer submitted by the Vendor may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and not exclusive of any other right or remedy provided by law.

2. Termination Without Cause:

The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Vendor shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Vendor, to the extent of funds appropriated or otherwise legally available for such purposes, for all products actually delivered and obligations incurred prior to the date of termination in accordance with the terms hereof.

3. Non-Appropriation:

The resulting Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate the Agreement if, for any reason, funds are not appropriated to continue this Agreement.

4. Cancellation:

The City reserves the right to cancel the Agreement for default for all or any part of the delivered portion of the deliverables if the Vendor breaches any term hereof including warranties, or becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies which the City may have in law or in equity.

I. CLAIMS

If a claim, demand, suit or other action is asserted against the Vendor which arises under or concerns the Agreement, or which could have a material adverse effect on the Vendor's ability to perform thereunder, the Vendor shall give written notice to the City within ten (10) calendar days after receipt of notice by the Vendor. Such notice to the City shall state the date of notification of any such claim, demand, suit or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted. Such notice shall be delivered to the City Manager, 4601 Padre Blvd, South Padre Island, TX 78597.

J. CODES, PERMITS, LICENSES

Vendor shall comply with all federal, state and local standards, codes and ordinances, as well as other authorities that have jurisdiction pertaining to the products delivered and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. Vendor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations to the City.

K. COLLUSION

Advanced disclosures of any information to any particular bidder which gives that particular bidder any advantage over any other interested bidder in advance of the opening of bids, whether in response to advertising or an informal request for bids, made or permitted by a member of the governing body or an employee or representative thereof, will cause to void all responses to that particular bid solicitation or request.

L. COMMUNICATION

To insure the proper and fair evaluation of this bid, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Respondent to the City Official or Employee evaluating or considering the Responses prior to the time an award has been made. Communication between Respondents and the City will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Bid. Ex parte communication may be grounds for disqualifying the offending Respondent from consideration or award of the Bid then in evaluation, or any future Solicitation.

Unless otherwise specified, all requests for clarification or questions regarding a Solicitation must be directed as provided herein.

M. CONFIDENTIALITY

In order to provide the deliverables to the City, Vendor may require access to certain of the City's and/or its licensors' confidential information (including, but not limited to, inventions, employee information, trade secrets, confidential know-how, confidential business information and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Vendor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors, and any unauthorized use, disclosure, dissemination or other release of the Confidential Information will substantially injure the City and/or its licensors. The Vendor (including its employees, subcontractors, agents or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate or otherwise use the Confidential Information without the prior written consent of the City, or in a manner not expressly permitted under this Agreement, unless the Confidential

Information is required to be disclosed by law or as a result of an order of any court or other governmental authority with proper jurisdiction, provided the Vendor promptly notifies the City prior to disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Vendor agrees to use protective measures no less stringent than the Vendor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

N. DEFAULT

Vendor shall be in default under the Agreement if the Vendor (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to fully, timely and faithfully perform any of its material obligations under any agreement Vendor has with the City, (c) fails to timely pay any fees or taxes owed to the City, (d) becomes insolvent or seeks relief under the bankruptcy laws of the United States, or (e) makes a material misrepresentation in Vendor's bid, or in any report or deliverable required to be submitted by Vendor to the City.

A Vendor who abandons or defaults the work on the Agreement and causes the City to purchase the products elsewhere may be charged the difference in cost of products, if any, and may not be considered in the re-advertisement of the service and may be rejected as an irresponsible bidder and not considered in future Solicitations for the same type of commodity unless the scope of work is significantly modified.

O. DELAYS

The City may delay scheduled deliveries or other due dates by written notice to the Vendor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Agreement, the City and the Vendor shall negotiate an equitable adjustment for costs incurred by the Vendor in the Agreement price and execute an amendment to the Agreement. The Vendor must assert its right to an adjustment within ten (10) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Process specified herein. However, nothing in this provision shall excuse the Vendor from delaying the deliveries as notified.

P. DISCLOSURE OF PENDING LITIGATION:

Each Respondent shall include in its proposal a complete disclosure of any material civil or criminal litigation or pending investigation which involves the Respondent or in which the Respondent has been judged guilty.

Q. DISPUTE RESOLUTION

If either the Vendor or the City has a claim, dispute or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties in accordance with the Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation then in effect. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.

R. EFFECTIVE DATE and TERM

This Bid shall be effective upon approval by the City and full execution of this Invitation to Bid and issuance of a City Purchase Order, and shall continue in effect until all obligations are performed in accordance with the terms and conditions herein.

S. FORCE MAJEURE

Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond reasonable control. In the event of default or delay in performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

T. FRAUD

Fraudulent statements by the Vendor on any bid or in any report or deliverable required to be submitted by the Vendor to the City shall be grounds for termination of the Agreement for cause by the City and may result in legal action.

U. GRATUITIES

The City may, by written notice to the Vendor, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by the Vendor or any agent or representative of the Vendor to any officer or employee of the City with the intent of securing the Agreement or securing favorable treatment with respect to awarding or amending or the making of any determinations with respect to performance of the Agreement. In the event the Agreement is cancelled by the City pursuant to this Section, the City shall be entitled, in addition to any other rights and remedies, to recover the benefits or payments to the Vendor, as a result of the gratuities.

V. INDEPENDENT CONTRACTOR

Nothing in this bid is intended to be construed as creating an employer/employee relationship, a partnership or joint venture. The Vendor's services shall be those of an independent contractor. The Vendor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City. Vendor shall not be within protection or coverage of the City's Worker Compensation Insurance, Health Insurance, Liability Insurance or any other insurance that the City, from time to time, may have in force.

W. INDEMNITY

VENDOR SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY THE CONTRACTOR UNDER THIS CONTRACT. SUCH INDEMNITY SHALL APPLY REGARDLESS OF WHETHER THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, OR LIABILITY ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY, ANY OTHER PARTY INDEMNIFIED HEREUNDER, THE CONTRACTOR, OR ANY THIRD PARTY.

X. INFRINGEMENT

Vendor represents and warrants to the City that: (a) Vendor shall provide the City good and indefeasible title to the deliverables and (b) the deliverables supplied by the Vendor in accordance with the specifications of the Agreement shall not infringe, directly or contributory, any patent, trademark, copyright, trade secret or any other intellectual property right of any kind of any third party; that no claims have been made by an person or entity with respect to the ownership or

operation of the deliverables and the Vendor does not know of any basis for any such claims. Vendor shall, at its sole expense, defend, indemnify and hold the City harmless from and against all liability, damages and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (a) any claim that the City exercises anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverable infringes the intellectual property rights of any third party; or (b) Vendor's breach of any of the Vendor's representations or warranties stated in this Agreement. In the event of any such claim, the City shall have the right to monitor such claim or, at its option, engage its own separate counsel to act as co-counsel on the City's behalf. Further, Vendor agrees that the City's specifications regarding the deliverables shall in no way diminish Vendor's warranties or obligations under this Paragraph, and the City makes no warranty that the products, development or delivery of such deliverables will not impact such warranties of Vendor.

Y. INSURANCE REQUIREMENTS

Upon request, Vendor shall provide a copy of its insurance policies to the City.

Z. INTERLOCAL AGREEMENT

Other governmental entities may be extended the opportunity to purchase from Solicitations awarded by the City, with the consent and agreement of the successful Vendor(s) and the City. Such consent and agreement shall be conclusively inferred from lack of exception to this clause in Vendor's Response. However, all parties indicate their understanding and all parties hereby expressly agree that the City is not an agent of, partner to or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that arise out of such independently negotiated piggyback procurements.

AA. INTERPRETATION

The Agreement is intended by both parties as the final, complete and exclusive statement of the terms of their Agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner fair to both parties, reading no provision more strictly against one party of the other. Whenever a term defined by the Uniform Commercial Code (the "UCC"), as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control unless otherwise defined in the Agreement.

BB. INVALIDITY

The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace the stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

CC. LIABILITY

Any person, firm or corporation party to this Agreement or Purchase Order shall be liable for all damages incurred while in the performance of the Agreement. Vendor assumes full responsibility for the terms contained herein and hereby releases, relinquishes, and discharges the City, its officers, agents and employees from all claims, demands and causes of action of any nature including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third party, supplier or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties, caused by or alleged to have

been caused by, arising out of or in connection with the issuance of the Agreement or Purchase Order to the Vendor and the negligence of the Vendor, whether or not said claims, demands and causes of action in whole or in part are covered by insurance. Certificates of insurance may be required for, but not limited to, Commercial General Liability, Business Auto Liability, Workers Compensation and Professional Liability Insurance.

DD. LIENS

Vendor shall defend, indemnify and hold the City harmless from and against any and all liens and encumbrances for all products delivered under this Agreement. At the City's request, the Vendor or its subcontractors shall provide a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.

EE. MANAGEMENT

Should there be a change in ownership or management, the Agreement may be canceled unless a mutual Agreement is reached with the new owner to continue the Agreement with its present terms, conditions and pricing. The Agreement is nontransferable by either party.

FF. NOTICES

Unless otherwise specified, all notices, requests or other communications required or appropriate to be given under the Agreement shall be in writing and deemed delivered three (3) business days after postmarked if sent by US Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, fax, or other commercially accepted means. Notices to the Vendor shall be sent to the address specified in the Vendor's bid or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to: City of South Padre Island, 4601 Padre Blvd., South Padre Island, TX 78597 and marked to the attention of the City Manager.

GG. OVERCHARGES

Vendor hereby assigns to the City any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and/or which arise under the antitrust laws of the State of Texas, *Business and Commerce Code Ann.*, Section 15.01, et seq.

HH. PAYMENT TERMS

1. Tax Exempt Status:

The City is exempt from all federal excise, state and local taxes unless otherwise stated in this document. The City claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates are furnished upon request. Vendor will not charge for such taxes. If billed, the City will not remit payment until a corrected invoice is received.

2. Invoicing Requirements:

Unless otherwise specified, all invoices shall be submitted to City of South Padre Island, Accounts Payable, 4601 Padre Island, South Padre Island, TX 78597, and issued as required by the Purchase Order or Agreement. ***Each invoice must reference the unique Purchase Order number, and include the Vendor's complete name and remit to address.*** If applicable, transportation and delivery charges must be itemized on the each invoice. A copy of the bill of lading and the freight waybill must be submitted with the invoice if applicable.

3. Payment Terms:

All payments will be processed in accordance with Texas Prompt Payment Act, *Texas Government Code*, Subtitle F, Chapter 2251. The City will pay Vendor within thirty days after acceptance of good or materials delivered, or the day of receipt of a correct invoice, whichever

is later. The Vendor may charge a late fee (fee shall not be greater than that permitted under the Texas Prompt Payment Act) for payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Vendor concerning the good delivered, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Vendor and a subcontractor and its suppliers concerning deliveries made, which caused the payment to be late; or (d) the invoice is not mailed to the City in strict accordance with instructions on the Purchase Order or Agreement, or other such contractual agreement.

4. Right To Audit:

The Vendor agrees that the representatives of the City shall have access to, and the rights to audit, examine, or reproduce, any and all records of the Vendor related to the performance under this Agreement. The Vendor shall retain all such records for a period of four (4) years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of the Vendor are resolved, whichever is longer. The Vendor agrees to refund to the City any overpayments disclosed by any such audit.

5. Firm Pricing:

The price shall remain firm for the duration of the Agreement, or any extension period, unless expressly approved in writing. No separate line item charges shall be permitted for either bidding or invoice purposes, which shall include equipment rental, demurrage, fuel surcharges, delivery charges, and costs associated with obtaining permits or any other extraneous charges. Vendor further certifies that the prices in the bid have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6. Price Warranty:

The Vendor warrants the prices quoted are not materially higher than the Vendors current prices on orders by others for like deliverables under similar terms of purchase. In addition to any other remedy available, the City may deduct from any amounts owed to the Vendor, or otherwise recover, any amounts paid for items materially in excess of the Vendor's current prices on orders by others for like deliverables under similar terms of purchase.

7. Travel Expenses:

All travel, lodging and/or per diem expenses associated with providing the products specified must be included in the original Bid and resulting Purchase Order. All travel expenses are subject to review by the City and documentation of actual itemized expenses may be requested. No reimbursement will be made without prior authorization, or for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed.

II. PERSONAL INTEREST

No employee or City Council Member of the City may have any financial interest, directly or indirectly, in any proposed or existing agreement, purchase, work, sale or service to, for, with or by the City.

JJ. PRIORITY OF DOCUMENTS

In the event there are inconsistencies between the general provisions and special (or other) terms and conditions contained herein, the latter will take precedence.

KK. PROHIBITED VENDORS

The City of South Padre Island prohibits conducting business with vendors under the following conditions:

1. Vendors who have failed to comply with their state contracts and have been debarred from doing business with the State of Texas.
2. Vendors who boycott Israel. By signing and submitting this bid, Vendor certifies that:
 - a. Vendor does not boycott Israel; and
 - b. Vendor will not boycott Israel during the term of the agreement.

LL. PUBLIC INFORMATION

All Responses are subject to release as public information unless the Response or specific parts of the Response can be shown to be exempt from the Texas Public Information Act. Respondents are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The City assumes no obligation or responsibility for asserting legal arguments on behalf of potential Respondents.

If a Respondent believes that a Response or parts of a Response are confidential, then the Respondent shall so specify. The Respondent shall stamp in bold red letters the term "**CONFIDENTIAL**" on that part of the Response, which the Respondent believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Responses and parts of Responses that are not marked as confidential will be automatically considered public information.

MM. REIMBURSEMENTS

There is no expressed or implied obligation for the City of South Padre Island to reimburse responding firms for any expenses incurred in preparing bids in response to this Invitation to Bid and the City will not reimburse responding firms for these expenses, nor will the City pay any subsequent costs associated with the provision of additional information or presentation, or to procure a contract for these products.

NN. RESERVATIONS

The City reserves the right to request clarification or additional information specific to any response after all Responses have been received and the Solicitation due date has passed. Additionally, the City reserves the right to accept or reject all or part of any Response, waive any formalities or technical inconsistencies, delete any requirement or specification from the Solicitation, or terminate the Solicitation when deemed to be in City's best interest.

OO. RESPONSES BECOME PROPERTY OF THE CITY

Submissions received in response to a Solicitation become the sole property of the City.

PP. RIGHT TO ASSURANCES

In the event the City, in good faith, has reason to question the intent of the Vendor to perform, the City may demand written assurances of the intent to perform. In the event no written assurance is given within the time specified, the City may treat this failure as an anticipatory repudiation of the Agreement.

QQ. SEVERABILITY

The invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other provision.

RR. SURVIVABILITY OF OBLIGATIONS

All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

SS. VENDOR'S OBLIGATION

Vendor shall fully and timely provide all deliverables described in this Solicitation, Vendor's bid must be in strict accordance with the terms, covenants and conditions of the Agreement and all applicable federal, state and local laws, rules and regulations.

TT. VENUE

This Agreement is made under and shall be governed by the laws of the State of Texas, including when applicable, the UCC as adopted in Texas, VTCA, *Business & Commerce Code*, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. This Agreement is fully performable in South Padre Island, Texas, and the venue for any action related to this Agreement shall be South Padre Island, Texas. All issues arising from this Agreement shall be resolved in the courts of Cameron County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or the ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein and does not waive the City's defense of sovereign immunity.

UU. WAIVER

No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Vendor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default(s), whether of similar or different character.

VV. WITHDRAWAL

Respondents may request withdrawal of a sealed bid prior to the scheduled bid opening time, provided the request for withdrawal is submitted to the City in writing.

SPECIAL TERMS and CONDITIONS

A. BID LITERATURE

Respondents must submit with their bid the latest printed literature and detailed specifications on equipment or material the Bidder proposes to furnish. Any catalog, brand name, or manufacturer's reference used is considered to be descriptive-not restrictive and is indicative of the type and quality the City desires to purchase.

B. COMMODITIES/EQUIPMENT

1. Material Safety Data Sheets: Under the "Hazardous Communication Act," commonly known as the "Texas Right to Know Act," a Vendor must provide to the City WITH EACH DELIVERY Material Safety Data Sheets, which are applicable to hazardous substances as defined in the Act.
2. Assembly: Products provided under this Agreement shall be completely assembled, adjusted, and all equipment including standard and supplemental equipment installed, and made ready for continuous operation unless otherwise specified in bid document.
3. Goods: Products furnished shall be the latest improved model in current production, as offered to commercial trade, and shall be of quality workmanship and material. The Vendor represents that all products offered shall be new. Unless otherwise specified, used, shopworn, demonstrator, prototype or discontinued models are not acceptable.
4. Packaging of Deliverables: Vendor must package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and the unit price. Unless otherwise provided in writing by the City, each shipping container shall be clearly and permanently marked with the Vendor's name and address, and the City's name, address and Purchase Order number. Vendor shall bear all costs of packaging. Deliverables must be suitably packed to secure lowest transportation cost, conform with

requirements of common carriers and ensure safe delivery. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

5. **Warranty:** The products specified shall be warranted against defects in material or workmanship for a period of not less than twelve (12) months from date of acceptance by the City. If the manufacturer's warranty exceeds twelve (12) months, then the manufacturer's warranty shall be in effect. Vendor shall furnish a copy of the manufacturer's warranty at the time of delivery.
6. **No Limitation of Manufacturers' Warranties:** Vendor may not limit, exclude or disclaim any warranty provided by manufacturer.
7. **Special Tools and Equipment:** If the price stated in the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Vendor to fulfill the Agreement, such special tooling and/or equipment and all process sheets associated thereto shall become the property of the City and shall be identified by the Vendor as such.

C. DELIVERY

1. **Delivery Terms, Transportation Charges, and FOB:** Deliverables shall be shipped FOB point of delivery unless otherwise specified on the Purchase Order or in the Solicitation. The Vendor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship deliverables. The place of delivery shall be specified in the Purchase Order.
2. **No Substitutions or Cancellations:** Unless specifically permitted in writing by the City, no substitutions or cancellations shall be acceptable.
3. **Notice of Delay in Delivery:** If a delay in delivery is anticipated, Vendor shall give written notice to the City. The City has the right to extend the delivery time/service date, or to cancel the Purchase Order or Agreement. Vendor shall keep the City advised at all times of the status of the order. Default in promised delivery or failure to meet specifications authorizes the City to procure the products from an alternate source and charge the full increase, if any, in cost and handling to defaulting Vendor. Default on delivery may result in legal action and recourse.
4. **Delivery Location, Hours, Days, and Holidays:** Unless otherwise specified, all deliveries must be made to City of South Padre Island, between the hours of 8AM and 5PM (CST), Monday through Friday except regularly observed state and federal holidays. Receipt of products does not signify acceptance. If goods are delivered to the incorrect location, Vendor is responsible for all expenses associated delivering items to their correct destination.
5. **No Shipment under Reservation:** Vendor is not authorized to ship deliverables under reservation and no tender of bill of lading will operate as a tender of deliverables.
6. **Title/Risk of Loss:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables (no delivery, no sale).
7. **Right of Inspection and Rejection:** The City expressly reserves all rights under law, including but not limited to, the Uniform Commercial Code, to inspect the deliverables at delivery or at a reasonable time subsequent to delivery, and to reject defective or non-conforming deliverables. The Vendor will be notified if the products are not in compliance with the required specifications. If any products are rejected as non-compliant, the required products may be procured from an alternate source, and the Vendor may be charged the full increase in cost, if any. If the City has the right to inspect the Vendor's or the Vendor's subcontractors facilities, or the deliverables at the Vendor's or the Vendor's subcontractors premises, the Vendor shall furnish or shall cause to be furnished without additional charge all reasonable facilities and assistance to the City to facilitate such inspection.
8. **Acceptance of Incomplete or Non-Conforming Goods:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept such deliverables, the City may do so. The Vendor shall pay all claims, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City

may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If discovery that the deliverables are defective or non-conforming occurs after final payment, Vendor may be required to refund such amounts to the City.

D. REGULATIONS and STANDARDS

The products provided shall meet or exceed all Federal and State of Texas safety, health, lighting, and noise regulations and standards in effect and applicable to equipment furnished at the time of manufacture.

E. SAMPLES

Samples of items shall be furnished, if requested by the City, without charge, and if not destroyed, shall upon request be returned at the bidder's expense.

F. VENDORS SALES TERRITORY

City waives any responsibility or liability for Respondents bidding products "outside" their authorized territory by manufacturer or product line. Any Respondent bidding outside an approved manufacturer line does so at his own risk and discretion. Respondents shall comply with all sales terms according to the original bid and Purchase Order regardless of claim or dispute with product line representatives.

G. WORKMANSHIP

All parts not specifically mentioned which are necessary for the unit to be complete and ready for operation or which are normally furnished as standard equipment shall be furnished by the successful bidder. All parts shall conform in strength, quality, and workmanship to the accepted standards of the industry.

TECHNICAL SPECIFICATIONS

Palm trees shall be Phoenix Dactyliferous (True Date Palm) with a minimum 10' trunk height. As an alternative the palm trees can be Phoenix Sylvestris (Sylvester Date Palm). Root ball must be covered and contained in plastic or burlap and fully trimmed with fronds tied up on the top.

The Supplier must be within **60 miles** from the Island to be able to acclimate to the Island conditions. Delivery will be in three phases. Anticipated order dates are April 1st, August 1st and January 1st. Minimum number of palm trees per order is anticipated to be 33 each.

QUOTATION FORM

A. DELIVERY REQUIREMENTS

Respondent will show exact cost to deliver. Response must show the number of days required to deliver items or provide products to the City's designated location under normal conditions. Unrealistically short or long delivery promises may cause Response to be disregarded. Failure to state delivery time obligates Respondent to complete delivery in 14 calendar days.

FOB: SOUTH PADRE ISLAND, TX

DELIVERY DATE: _____ (calendar days per order)

B. DISCOUNTS

Cash discounts will not be considered in determining award; all cash discounts offered will be taken if earned. Respondent will list and deduct all discounts not based on early payment from prices quoted.

C. QUANTITIES

Quantities indicated below are estimated based upon the best available information. The City reserves the right to increase or decrease the quantities by any amount deemed necessary to meet its needs without any adjustments in the unit prices bid.

D. UNIT PRICES

Prices should be itemized. Unit prices shall be set to no more than four (4) decimal places. The City reserves the right to award by item or by total bid. If there are discrepancies between unit prices and extension, the unit price will prevail.

E. VALIDITY OF PRICING

Pricing will be considered firm for acceptance for a minimum of 60 days after the due date unless otherwise specified in the Solicitation. The validity period may be extended beyond that date on agreement of parties.

F. QUOTATION

All Responses must be submitted on the form(s) provided below:

BASE BID

<u>Item #</u>	<u>Description</u>	<u>Quantity</u>	<u>UOM</u>	<u>Unit Price</u>	<u>Total Price</u>
1.	Phoenix Dactyliferous (True Date Palm) (6-8 foot)	100	EA	\$ _____	\$ _____
TOTAL BASE BID					\$ _____

ALTERNATIVE BID #1

<u>Item #</u>	<u>Description</u>	<u>Quantity</u>	<u>UOM</u>	<u>Unit Price</u>	<u>Total Price</u>
1.	Phoenix Sylvestris (Sylvester Palm) (6-8 foot)	100	EA	\$ _____	\$ _____
TOTAL ALTERNATIVE BID					\$ _____

ALTERNATIVE BID #2

<u>Item #</u>	<u>Description</u>	<u>Quantity</u>	<u>UOM</u>	<u>Unit Price</u>	<u>Total Price</u>
1.	Sabal Palemto (Sabal Palm) (6-8 foot)	100	EA	\$ _____	\$ _____
TOTAL ALTERNATIVE BID #2					\$ _____

CERTIFICATION and ACKNOWLEDGMENT

The undersigned affirms that they are duly authorized to execute this contract, that this bid has not been prepared in collusion with any other bidder, and that the contents of this bid have not been communicated to any other bidder prior to the official opening of this bid. To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Bidder certifies that it: i) does not boycott Israel; and ii) will not boycott Israel during the term of the Agreement.

Signed By: _____ Title: _____

Typed Name: _____ Company Name: _____

Phone No.: _____ Fax No.: _____

Email: _____

Bid Address: _____
P.O. Box or Street City State Zip

Order Address: _____
P.O. Box or Street City State Zip

Remit Address: _____
P.O. Box or Street City State Zip

Federal Tax ID No.: _____

DUNS No.: _____

Date: _____

FOR CITY USE ONLY

Approved By: _____ Date: _____

Title: _____