

Ovivo Amendment to the General Conditions	Broward County Terms & Conditions	CAO Response
<p>Limitation of Liability and Consequential Damage Disclaimer TO THE EXTENT PERMISSIBLE BY LAW, VENDOR SHALL HAVE NO FURTHER LIABILITY IN CONNECTION WITH THIS CONTRACT IN EXCESS OF THE AMOUNT PAID BY COUNTY FOR THE PRODUCTS GIVING RISE TO SUCH LIABILITY, NOTWITHSTANDING ANY LIABILITIES OR RESPONSIBILITIES ASSUMED BY VENDOR HEREUNDER. VENDOR SHALL IN NO EVENT BE RESPONSIBLE TO COUNTY OR ANY THIRD PARTY, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR LOSS OF ANTICIPATED PROFITS, LOSS OF BUSINESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF INCREASED EXPENSE OF OPERATION, LOSS OF DATA, SERVICE INTERRUPTIONS, COST OF PURCHASED OR REPLACEMENT POWER, COST OF MONEY, LOSS OF USE OF CAPITAL OR REVENUE OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSS OR DAMAGE, WHETHER ARISING FROM DEFECTS, DELAY, OR FROM ANY OTHER CAUSE WHATSOEVER.</p> <p>THESE LIMITS SHALL NOT APPLY TO THIRD PARTY CLAIMS BASED ON INJURY, DEATH, OR PROPERTY DAMAGE. FOR THE PURPOSE OF THIS TERM, THE EQUIPMENT PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS PROJECT SHALL NOT BE CONSIDERED PROPERTY AND SHALL INSTEAD BE COVERED UNDER THE TERMS OF THE WARRANTY HEREIN. THESE LIMITS SHALL NOT APPLY TO CLAIMS WHICH ARE BASED ON THE WILLFUL MISCONDUCT, GROSS NEGLIGENCE, OR FRAUD OF THE VENDOR.</p>	<p>Liquidated Damages Except in cases of Force Majeure, Vendor agrees to pay County, as liquidated damages, five hundred dollars (\$500) per day for every working day that elapses after the guaranteed delivery date without delivery of its equipment. Vendor's liability for liquidated damages shall not exceed, in the aggregate, any amount more than ten percent (10%) of the value of the equipment that is late in delivery. Vendor shall not be liable to pay liquidated damages for Owner/County-caused delays such as late drawing approval, inspection delays, scope changes etc. Notwithstanding any other provision of the Contract to the contrary, payment of liquidated damages shall be Vendor's sole liability and County's sole remedy for late delivery of the equipment. Such remedies shall not be enforced unless County suffers an economic loss as a result of Vendor's late delivery.</p>	<p>Recommend for rejection</p>
<p>Intellectual Property Indemnity Vendor's obligations to indemnify County for intellectual property claims shall not apply where: (1) custom items or equipment are manufactured to County's design or County's design is the cause of the claim; or (2) items or equipment are used in combination with equipment, software, or other products not supplied or required by Vendor and such infringement would not have occurred but for such combination.</p>	<p>11. Indemnification. (a) Contracts other than construction contracts (as defined in Section 725.06, Florida Statutes). Contractor shall indemnify, hold harmless, and defend the County and all of the County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to the contract, and caused or alleged to be caused, in whole or in part, by breach of this contract by Contractor or by any intentional, reckless, or negligent act or omission of Contractor, its officers, employees, or agents, arising from, relating to, or in connection with the contract (collectively, a "Claim"). If any claim is brought against an indemnified party, Contractor shall, upon written notice from the County, defend each indemnified party against each such claim by counsel satisfactory to the County or, at the County's option, pay for an attorney selected by the County Attorney to defend the indemnified party. The obligations of this section shall survive the expiration or earlier termination of this solicitation and the contract term. If considered necessary by the Contract Administrator and the County Attorney, any sums due Contractor under the contract may be retained by the County until all claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by the County. (b) Construction contracts (as defined in Section 725.06, Florida Statutes). Contractor shall indemnify and hold harmless the County and its current, past, and future officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by negligence, recklessness or intentionally wrongful conduct of Contractor or other persons employed or utilized by Contractor in the performance of the contract. The provisions of this section shall survive the expiration or earlier termination of the contract. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due Contractor under the contract may be retained by the County until all of the County's claims subject to this indemnification obligation have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by the County.</p>	<p>Recommend for rejection</p>
<p>Warranty Vendor warrants equipment and parts manufactured by it and provided to County (collectively, "Products") shall be free from defects in material and workmanship. The warranty period shall be twelve (12) months from startup of the equipment not to exceed eighteen (18) months from the earliest of the notice of readiness to ship or the actual shipment. If it is determined after inspection that Vendor is liable under this warranty to repair or replace the Product or part thereof, Vendor shall bear the transportation costs of (a) returning the Product to Vendor for inspection or sending its representative to the job site and (b) returning the repaired or replaced Products to County; however, if it is determined after inspection that Vendor is not liable under this warranty, County shall pay those costs.</p> <p>For Vendor to be liable with respect to this warranty, County must make its claims to Vendor with respect to this warranty in writing no later than thirty (30) days after the date County discovers the basis for its warranty claim and in no event more than thirty (30) days after the expiration of the Warranty Period. In addition to any other limitation or disclaimer with respect to this warranty, Vendor shall have no liability with respect to any of the following: (i) failure of the Products, or damages to them, due to County's negligence or willful misconduct, abuse or improper storage, installation, application or maintenance (as specified in any manuals or written instructions that Vendor provides to the County); (ii) any Products that have been altered or repaired in any way without Vendor's prior written authorization; (iii) The costs of dismantling and reinstallation of the Products; (iv) any Products damaged while in transit or otherwise by accident; (v) decomposition of Products by chemical action, erosion or corrosion or wear to Products; or due to conditions of temperature, moisture and dirt; or (vi) claims with respect to parts that are consumable and normally replaced during maintenance, except where such parts are not performing to Vendor's estimate of normal service life, in which case, Vendor shall only be liable for the pro rata cost of replacement of those parts based on Vendor's estimate of what the remaining service life of those parts should have been, provided, that failure of those parts did not result from any of the matters listed in clauses (i) through (v) above.</p> <p>With regard to third party parts, equipment, accessories or components not of Vendor's design, Vendor's liability shall be limited solely to the assignment of available third party warranties. THE PARTIES AGREE THAT ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY PROCESS OR PERFORMANCE WARRANTIES OR WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, WHETHER WRITTEN, ORAL OR STATUTORY, ARE EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW. All warranties and obligations of Vendor shall terminate if County fails to perform its obligations under this contract including but not limited to any failure to pay any charges due to Vendor.</p> <p>The performance of the Products is dependent upon many factors, including the influent or feed quality and quantity, additives required, time, temperature, rates of change, sizing criteria used, operating conditions, etc. Therefore, Vendor cannot assume any liability or responsibility for performance results that County is experiencing or has predicted. No verbal or written information or advice given by any personnel of the Vendor shall create a warranty or in any way increase the scope of the warranties.</p>	<p>24. Warranties and Guarantees. Contractor shall obtain all applicable manufacturers' warranties and guarantees of the equipment and materials required by this solicitation and, resulting from this solicitation for the benefit of, and in the name of, Broward County, Contractor shall deliver documentation of such warranties and guarantees to the point of delivery specified in the solicitation.</p>	<p>Recommend for rejection</p>

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<p>Insurance</p> <p>Vendor shall maintain its current levels of insurance for the duration of the project, as set forth in its standard certificate of insurance, attached hereto as Exhibit "A". Certificates of insurance shall be sufficient evidence of coverage, and in no event will Vendor be required to provide copies of insurance policies.</p>	<p>10. Insurance. Contractor shall, at its sole expense, maintain the minimum insurance coverages required in the solicitation in accordance with the terms and conditions of this section. Contractor shall maintain insurance coverage against claims relating to any act or omission by Contractor, its agents, representatives, employees, or subcontractors in connection with the contract. Contractor shall ensure that "Broward County" is listed and endorsed as an additional insured on all required policies. Contractor shall ensure that all required insurance coverages remain in full force and effect for the duration of the contract and until all performance required by Contractor has been completed. Contractor shall ensure that all required insurance policies are issued by insurers: (1) assigned an A.M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.9317 or 626.938, Florida Statutes, with approval by the County's Risk Management Division. Contractor shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against the County. Unless prohibited by the applicable policy, Contractor waives any right to subroga on that any of Contractor's insurers may acquire against the County and agrees to obtain same in an endorsement of Contractor's insurance policies.</p>	<p>Requires RMD Input</p>
<p>Right to Payment</p> <p>Vendor shall be entitled to payment for performance of contractual obligations, and Owner's payment to County shall not be a condition precedent of Vendor's right to payment. In no event shall retainage be held beyond one hundred eighty (180) days after completion of shipment.</p>	<p>3. Invoice and Payment. Contractor may submit invoices for payment no more often than on a monthly basis, but only after the goods or services for which the invoices are submitted have been delivered or completed. If subcontractor or supplier fees or costs are included in a Contractor invoice to the County, Contractor must submit a Certification of Payments to Subcontractors and Suppliers with each such invoice in the form provided by the County. Contractor must pay subcontractors and suppliers within fifteen (15) days following receipt of payment from the County for such subcontracted work or supplies. The certification shall be accompanied by a copy of the notification sent to each unpaid subcontractor listed on the form, if any, explaining the good cause why payment has not been made to that subcontractor.</p> <p>The County shall pay for all goods and services received and accepted by the County in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes, and the Prompt Payment Policy, Section 1-51.6, of the Broward County Code of Ordinances. All applications for payment shall be submitted to the address indicated in the purchase order. The County will pay Contractor after receipt, acceptance, and proper invoice is received. Invoices must bear the purchase order number. The County will only accept and pay for goods delivered or services performed by Contractor within the contract period, including any extensions or continued performance as directed by the Director of Purchasing.</p>	<p>Recommend for rejection</p>
<p>Set Off</p> <p>This Contract shall be completely independent of all other contracts between the parties and all payments due to Vendor hereunder shall be paid when due and shall not be setoff or applied against any money due or claimed to be due from Vendor to County on account of any other transaction or claim.</p>		<p>Business decision</p>
<p>Bonds</p> <p>If Vendor is required to provide a Bond, in no event shall Vendor be obligated to provide a Bond for which the value exceeds the Contract price, nor a duration which exceeds the first twenty four (24) months of the warranty period.</p>		<p>Business decision</p>
<p>Risk</p> <p>Vendor shall be liable for risk until delivery. County shall be responsible for risk during unloading equipment from transport, and for risk thereafter.</p>		<p>Recommend for rejection</p>
<p>Termination</p> <p>County may terminate or cancel this Contract in the event of a material breach by Vendor of its obligations herein upon sixty (60) days prior written notice of such breach and Vendor's failure to cure, or initiate a cure during that time. County may terminate this Contract for convenience upon thirty (30) days prior written notice to Vendor. In such case, County shall compensate Vendor for all costs and expenses (including overhead) incurred by it in performing its work and closing out the same plus a reasonable profit thereon.</p>	<p>4. Termination.</p> <p>(a) Availability of Funds. In the event funds for the contract are not made available or otherwise allocated by the Board, the County may terminate the contract upon thirty (30) days prior written notice to Contractor without penalty or liability for such termination. The Board shall be the final authority as to availability of funds and how such available funds are to be allotted and expended.</p> <p>(b) Nonperformance. The County may terminate the contract for cause if Contractor is in breach and does not correct the breach within ten (10) days after written notice from the County Contract Administrator identifying the breach. Cause for termination shall include, but not be limited to, failure to suitably perform the work; failure to suitably deliver goods in accordance with the specifications and instructions in this solicitation; failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of the County as set forth in this solicitation; or multiple breaches of the provisions of the contract notwithstanding whether any breach was previously waived or cured.</p> <p>(c) For Convenience. The County may terminate the contract for convenience upon no less than thirty (30) days written notice. If the contract is terminated for convenience, Contractor shall be paid for any goods properly delivered and services properly performed prior to the termination date specified in the notice from the County. However, upon being notified of the County's election to terminate, unless directed otherwise in writing by the County, Contractor shall cease any deliveries, shipment, or carriage of goods, and refrain from performing further services or incurring additional expenses under the terms of the contract. In no event will payment be made for lost or future profits or damages for Contractor's reliance on continued performance of the contract beyond the effective date of the termination for convenience. Contractor acknowledges and agrees that it has received good, valuable, and sufficient consideration from the County for the County's right to terminate the contract for convenience, the receipt and adequacy of which are hereby acknowledged.</p>	<p>Recommend for rejection</p>
<p>Force Majeure</p> <p>If Vendor is rendered unable, wholly or in material part, directly or indirectly, by reason of Force Majeure, to carry out any of its obligations hereunder, then on Vendor's notice in writing to County within a reasonable time after the occurrence of the cause relied upon, such obligations shall be suspended. "Force Majeure" shall include, but not be limited to, acts of God, epidemics and pandemics, acts of or delays caused by governmental authorities, changes in laws and regulations, strikes, civil disobedience or unrest, lightning, fire, flood, washout, storm, communication lines failure, delays of the County or County's subcontractors, breakage or accident to equipment or machinery, wars, police actions, terrorism, embargos, and any other causes that are not reasonably within the control of the Vendor. If the delay is the result of County's action or inaction, then in addition to an adjustment in time, Vendor shall be entitled to reimbursement of costs incurred to maintain its schedule, for the avoidance of doubt, if the cause relied upon has commenced prior to the Parties entered into a contracting relationship. It shall not render the cause void and/or not capable of being included within the definitions of Force Majeure.</p>		<p>Recommend for rejection</p>

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<p>Each party to this Contract, will bear its own costs and expenses, including but not limited to attorney's fees incurred in or arising out of, or in any way connected with any legal action (including arbitration) under this Contract.</p>	<p>11. Indemnification. (a) Contracts other than construction contracts (as defined in Section 725.06, Florida Statutes). Contractor shall indemnify, hold harmless, and defend the County and all of the County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to the contract, and caused or alleged to be caused, in whole or in part, by breach of this contract by contractor or by any intentional, reckless, or negligent act or omission of Contractor, its officers, employees, or agents, arising from, relating to, or in connection with the contract (collectively, a "Claim"). If any claim is brought against an indemnified Party, Contractor shall, upon written notice from the County, defend each Indemnified Party against each such Claim by counsel satisfactory to the County or, at the County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this solicitation and the contract term. If considered necessary by the Contract Administrator and the County Attorney, any sums due Contractor under the contract may be retained by the County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by the County.</p>	<p>Recommend for rejection</p>
<p>Dispute Resolution All disputes arising out of or in connection with this Agreement, which cannot be solved amicably, shall be exclusively and finally settled in arbitration under the Rules of Arbitration of the American Arbitration Association by one arbitrator appointed in accordance with said Rules. The seat of arbitration shall be Salt Lake City, Utah and the language of the arbitration shall be English. The award shall be final and binding upon the parties. Nothing in this contract shall limit the parties to seek temporary injunctive relief or to enforce an arbitration award in any applicable competent court of law. Each party will pay its own attorney's fees and costs and one-half of the costs of arbitration.</p>	<p>23. Legal Requirements. Applicable provisions of all federal, state, and local laws, ordinances, rules, and regulations, including the Procurement Code, shall govern development, submittal, and evaluation of responses, and shall govern any and all claims and disputes that may arise between Vendor(s) and the County or its officers, employees, and/or authorized representatives. Lack of knowledge by any Vendor of any applicable law, rule, or regulation shall not constitute a recognizable defense against the legal effect thereof.</p>	<p>Recommend for rejection</p>

Haye, Tamar

From: Garcia, Carlos
Sent: Wednesday, April 10, 2024 1:43 PM
To: Haye, Tamar
Cc: Murray, Ozell; Asgar, Oscar
Subject: RE: Vendor Amendments to BC Ts & Cs: Solicitation No. OPN2127828Q1 – Ovivo Repair, Installation and Rehabilitation Services

Tamar,
We're fine with accepting the two (16 and 18) as a business decisions but if the CAO recommends rejections for the other items, their decision holds a higher rank.

Thank you,



Carlos Garcia, PE, PMP, CPWP-M
Expansion Project Administrator
Water and Wastewater Services Operations Division
2555 W. Copans Road Pompano Beach, Florida 33069
Office: 954 831-0920 | Fax: 954 831-0925
www.broward.org/waterservices

From: Haye, Tamar <thaye@broward.org>
Sent: Tuesday, April 9, 2024 4:47 PM
To: Murray, Ozell <OLMURRAY@broward.org>
Subject: FW: Vendor Amendments to BC Ts & Cs: Solicitation No. OPN2127828Q1 – Ovivo Repair, Installation and Rehabilitation Services

Hi Ozel

Were you (WWOD) able to review the attorney's comments? Please advise.

Regards,



Tamar Haye, Purchasing Agent
www.broward.org
www.broward.org/purchasing

Attention Vendors! If you're not registered on our new BPRO electronic procurement system, you're going to miss out on future new business opportunities! Don't delay - [Register with BPRO](#) today! For help registering, call 1-800-354-8010, option 2, or email Support@gobonfire.com.

From: Haber, Matthew <MHaber@broward.org>
Sent: Friday, March 29, 2024 4:58 PM
To: Haye, Tamar <thaye@broward.org>
Cc: Hidalgo, Jose <JHIDALGO@broward.org>; Amuchastegui, Fernando <FA@broward.org>; Asgar, Oscar <OASGAR@broward.org>; Murray, Ozell <OLMURRAY@broward.org>
Subject: Re: Vendor Amendments to BC Ts & Cs: Solicitation No. OPN2127828Q1 – Ovivo Repair, Installation and Rehabilitation Services

I made a CAO response column in the attached.

From: Haye, Tamar <thaye@broward.org>
Sent: Thursday, March 28, 2024 4:11:05 PM
To: Haber, Matthew <MHaber@broward.org>
Cc: Hidalgo, Jose <JHIDALGO@broward.org>; Amuchastegui, Fernando <FA@broward.org>; Asgar, Oscar <OASGAR@broward.org>; Murray, Ozell <OLMURRAY@broward.org>
Subject: Vendor Amendments to BC Ts & Cs: Solicitation No. OPN2127828Q1 – Ovivo Repair, Installation and Rehabilitation Services

Good Afternoon Mr. Haber

The vendor Ovivo responded with amendments to Broward County General Terms and Conditions for the subject solicitation (refer to page 10 of attached tabulation). Please review and advise **by or before Thursday, April 4, 2024.**

Regards,



Tamar Haye, Purchasing Agent
Broward County Purchasing Division
Office: (954) 357-5861

www.broward.org/purchasing

Customer Care is my priority. How am I doing?

Please contact my Manager, Jose Hidalgo, at JHIDALGO@broward.org with feedback.