



Advertise Date: Friday, September 22, 2023

Lee County Board of County Commissioners  
DEPARTMENT OF PROCUREMENT MANAGEMENT

Invitation to Bid (B)  
DOT Construction Only

Solicitation No.: **B230579LND**

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Solicitation Name: **County Wide Arterials - Daniels Pkwy 3 FY24 C**

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Open Date/Time: **Thursday, October 26, 2023** Time: **2:30 PM**

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Location: **Lee County Procurement Management  
2115 Second Street, 1<sup>st</sup> Floor  
Fort Myers, FL 33901**

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Procurement Contact: **Lilla Davis** Title **Procurement Analyst**

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Phone: **(239) 533-8857** Email: **[Ldavis2@leegov.com](mailto:Ldavis2@leegov.com)**

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Requesting Dept. **Transportation**

**Pre-Bid Conference:**  
Type: **No meeting scheduled at this time**

All solicitation documents are available for download at [www.leegov.com/procurement](http://www.leegov.com/procurement)



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## INTRODUCTIONS AND BACKGROUND

### Notice to Bidder

#### Invitation to Bid (B) Construction

Lee County, Florida, is requesting bids from qualified individuals/firms for

#### **B230579LND - County Wide Arterials - Daniels Pkwy 3 FY24 C**

Then and there to be publicly opened and read aloud for the purpose of selecting a vendor to furnish all necessary labor, services, materials, equipment, tools, consumables, transportation, skills, and incidentals required for Lee County, Florida, in conformance with the Solicitation Documents, which include technical Specifications and/or a Scope of Work.

Those individuals/firms interested in being considered for this Solicitation are instructed to submit, in accordance with the Specifications, their Bids, pertinent to this project prior to

**2:30 PM Thursday, October 26, 2023**

to the office of the **Procurement Management Director, 2115 Second Street, 1<sup>st</sup> Floor, Fort Myers, Florida 33901**. The Invitation to Bid shall be received in a sealed envelope, prior to the time scheduled to receive Bid(s), and shall be clearly marked with the Solicitation name, Solicitation number, Bidder name, and contact information as identified in these Solicitation Documents.

The Scope of Work/Specifications for this solicitation is available from [www.leegov.com/procurement](http://www.leegov.com/procurement). Bidders who obtain Scope of Work/Specifications from sources other than [www.leegov.com/procurement](http://www.leegov.com/procurement) are cautioned that the solicitation package may be incomplete. The County's official bidders list, addendum(s) and information must be obtained from [www.leegov.com/procurement](http://www.leegov.com/procurement). It is the bidder's responsibility to check for posted information. The County may not accept incomplete Bids.

#### **There will be no Pre-Bid Conference for this solicitation.**

It has been determined that the specifications and scope of work within this solicitation are adequate to describe the product or services being requested. A pre-bid conference and site visit has not been scheduled for this solicitation. Questions regarding this solicitation are to be directed, in writing, to the individual listed below using the email address listed below or faxed to (239) 485 8383 during normal working hours.

**Lilla Davis at [Ldavis2@leegov.com](mailto:Ldavis2@leegov.com)**

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam Brooke", is written over a large, stylized blue scribble.

Adam Brooke, CPPO, CPPB  
Procurement Manager

\*[WWW.leegov.Com/Procurement](http://WWW.leegov.Com/Procurement) is the County's official posting site

## Terms and Conditions

### INVITATION TO BID (B) CONSTRUCTION

1. **DEFINITIONS.** Additional definitions may be found in the Draft Construction Agreement attached hereto.
  - 1.1. **Addendum/Addenda:** A written document used to modify the terms of a procurement instrument (such as an Invitation to Bid or Request for Proposals). An addendum is not to be confused with a contract "amendment."
  - 1.2. **Approved Alternate:** Solicitation documents may make reference of specific manufacturer(s) or product(s). These references serve only as a recommendation and a guide to minimum quality and performance. The references are not intended to exclude Approved Alternatives of other manufacturer(s) or product(s).
  - 1.3. **Award:** The determination of a successful Bidder(s) in response to this Solicitation.
  - 1.4. **Bid/Proposal Package:** An offer specifically given to the County in response to an informal or competitive procurement invitation issued by the County. This is also referred to as a "Response."
  - 1.5. **Bid Bond/Security:** Security in the form and amount required by the County pledging that the Bidder shall enter into a Contract with the County in accordance with the terms stated in its Bid.
  - 1.6. **Bidder:** Any individual, firm, partnership, joint venture, or corporation submitting a Bid for this project, acting directly or through an authorized representative.
  - 1.7. **County:** The Board of County Commissioners of Lee County, Florida, a political subdivision of the State of Florida, its successors, and assigns.
  - 1.8. **Contract/Agreement:** The written contract between the County and a successful Bidder pursuant to this Solicitation, a draft copy of which is attached hereto.
  - 1.9. **Contract Documents:** The documents listed in Section I of the attached draft Agreement.
  - 1.10. **Department of Procurement Management:** Shall mean the Lee County Department of Procurement Management.
  - 1.11. **Due Date and Time/Opening:** The date and time upon which a Bid or Proposal shall be submitted to, and actually received by, the Lee County Department of Procurement Management. Only Bids or Proposals received prior to the established date and time shall be considered.
  - 1.12. **Liquidated Damages:** Damages, usually in the form of monetary payment, agreed to by the parties to a contract which are due and payable as damages in the event of a breach of all or part of such contract. Liquidated Damages may be applied on a daily basis for as long as the breach is in effect.
  - 1.13. **Local Bidder:** Any Vendor whose physical business address, in the sole opinion of the County, is located within the boundaries of Lee County, Florida; at least two (2) fulltime employees in Lee County; and a Local Business Tax Receipt issued by Lee County at least one year prior to solicitation opening.
  - 1.14. **Responsible Bidder:** A Bidder submitting a Response who has the capability in all respects to perform fully the Contract requirements and the experience, capacity, facilities, equipment, credit, sufficient qualified personnel, and having the integrity and reliability with a record of timely and acceptable past performance that will ensure good faith performance.
  - 1.15. **Responsive Bidder:** A Bidder submitting a Response that substantially conforms with all material respects to the requirements and criteria set forth in this Solicitation.
  - 1.16. **Solicitation/Solicitation Documents:** This document, its attachments, and any document hereinafter incorporated by reference.
  - 1.17. **Work:** All labor, materials, equipment, and incidentals required to fully, finally, and properly complete the construction project described herein and otherwise fully, finally and properly comply with all terms and conditions of the Contract Documents.
2. **ORDER OF PRECEDENCE**
  - 2.1. In resolving conflicts, errors, and discrepancies among the provisions of the Contract Documents, the order of precedence shall be as follows
    - 2.1.1. Florida State Law as applied to County Purchasing
    - 2.1.2. Lee County Procurement Ordinance 22-06

- 2.1.3. Change Orders
- 2.1.4. Contract/Agreement including amendments and Exhibits
- 2.1.5. Field Directive Change Orders
- 2.1.6. The Solicitation Documents, including any Addenda

3. RULES, REGULATIONS, LAWS, ORDINANCES AND LICENSES

- 3.1. It shall be the responsibility of the Bidder to ensure compliance with all federal, state, or county codes, rules, regulations, or other requirements, as each may apply.
- 3.2. **Local Business Tax Account:** As applicable, anyone providing merchandise or services to the public within the jurisdiction of Lee County must obtain a Lee County business tax account to operate unless specifically exempted.
- 3.3. **License(s):** Bidder should provide, at the time of the opening of the Bid, licenses required for this product and/or service.

4. PREPARATION OF SUBMITTAL

- 4.1. **Sealed Bid:** Submission must be in a sealed envelope/box, and the outside of the submission should be marked with the following information (Sealed Bid Label Form is attached for your use):
  - 4.1.1. "Sealed Bid"
  - 4.1.2. Bid number
  - 4.1.3. Bid title
  - 4.1.4. Bid due date
  - 4.1.5. Name of the Bidder submitting the Bid
  - 4.1.6. Bidder's Contact e-mail and telephone number
- 4.2. **Bid submission shall:**
  - 4.2.1. Provide two (2) hard copies. Mark one "Original," one "Copy."
  - 4.2.2. Provide one (1) electronic flash drive set of the entire submission documents.
  - 4.2.3. Provide that the electronic submission document is one single Adobe PDF file in the same order as the original hard copy.
  - 4.2.4. Limit the color and number of images to avoid unmanageable file sizes.
  - 4.2.5. Not lock files.
- 4.3. **Submission Format:**
  - 4.3.1. Required Forms: complete and return **all** required forms. If the form is not applicable, please return with "Not Applicable" or "N/A" in large letters across the form.
  - 4.3.2. Failure to submit required or requested information may result in the Bidder being considered non-responsive.
  - 4.3.3. Execution of Bid: All documents must be signed by a corporate authorized representative, witnessed, and corporate and/or notary seals affixed, where applicable. All Bids shall be typed or printed in ink. The Bidder may not use erasable ink. All corrections made to the Bids shall be initialed.
  - 4.3.4. The County may request specific files be submitted in specialty format (i.e. Microsoft Excel, PowerPoint etc.). Vendor shall accommodate such specialty requests as stated or described herein. Should files not be provide in the format or quantity as requested Bidder may be deemed non-Responsive and therefore ineligible for award.
  - 4.3.5. The submission should not contain links to other web pages.
  - 4.3.6. Include any information requested by the County necessary to analyze your Bid, i.e., required submittals, literature, technical data, or financial statements.
  - 4.3.7. Bid Security/Bond(s), as applicable.
- 4.4. **Preparation Cost:** The Bidder is solely responsible for any and all costs associated with responding to this Solicitation. No reimbursement shall be made for any costs associated with the preparation and submittal of any Bid, or for any travel and per diem costs that are incurred by any Bidder.

## 5. RESPONSES RECEIVED LATE

- 5.1. It shall be the Bidder's sole responsibility to deliver the Bid submission to the Lee County Department of Procurement Management prior to or on the time and date required. All references to date and time herein reference Lee County, FL local time.
- 5.2. Any Bids received after the stated time and date shall not be considered. Late Bids shall not be opened at the public opening.
- 5.3. The Lee County Department of Procurement Management shall not be responsible for delays caused by the method of delivery such as, but not limited to internet, United States Postal Service, overnight express mail service(s), or delays caused by any other occurrence.

## 6. BIDDER REQUIREMENTS (unless otherwise noted)

- 6.1. **Responsive and Responsible Bidders:** Only Bids received from Responsive and Responsible Bidders shall be considered. The County reserves the right, before recommending any Award, to inspect the facilities and organization; or to take any other necessary action, such as background checks, to determine if the Bidder is satisfactorily able to perform and reserves the right to reject submission packages where evidence submitted, or investigation and evaluation indicates an inability for the Bidder to perform.
  - 6.1.1. Additional sources may be utilized to determine credit worthiness and ability to perform.
  - 6.1.2. Any Bidder or sub-contractor that will have access to County facilities or property may be required to be screened to a level that may include but is not limited to fingerprinting and a statewide criminal background check. There may be fees associated with these procedures. These costs are the responsibility of the Bidder or sub-contractor.
  - 6.1.3. Bidders are responsible for ensuring that any required background screening are conducted in accordance with Chapter 435. Bidders shall be aware, understand, and ensure compliance with the statutory requirements regarding background checks. FL Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Bidder who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law. Such requirements shall flow down to sub-contractors/consultants of the prime Bidder and prime Bidder shall ensure compliance with Chapter 435 of such parties.
    - 6.1.3.1. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.
- 6.2. **Past Performance:** A Bidder's past performance and prior dealings with Lee County (i.e., failure to meet specifications, poor workmanship, late delivery, etc.) may be reviewed. Poor or unacceptable past performance may result in Bidder disqualification.

## 7. PRE-BID CONFERENCE

- 7.1. A pre-bid conference will be held in the location, date, and time specified on the cover of this Solicitation. The cover will also note if the pre-bid conference is non-mandatory or mandatory. All prospective Bidders are encouraged to obtain and review the Solicitation Documents prior to the pre-bid conference so they may be prepared to discuss any questions or concerns they have concerning this project. All questions must be submitted formally in writing to the procurement staff noted on the first page of the Solicitation Documents. A formal response will be provided in the form of an Addendum (see "County Interpretation/Addendums" for additional information). If appropriate, a site visit may follow the pre-bid conference.
- 7.2. **Non-Mandatory:** Pre-bid conferences are generally non-mandatory, but it is highly recommended that prospective Bidders participate.
- 7.3. **Mandatory:** In the event a mandatory pre-bid conference is held, no Bids shall be considered by Bidders that fail to attend, and a Bid submitted by any such Bidder shall be considered **non-responsive**.

## 8. COUNTY INTERPRETATION/ADDENDUMS

- 8.1. Each Bidder shall examine the Solicitation Documents and shall judge all matters relating to the adequacy and accuracy of such documents. Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the Bid shall be made **in writing, submitted at least eight (8) calendar days prior to the date when the Bid is due.**
- 8.2. Response(s) will be in the form of an Addendum posted on [www.lee.gov/procurement](http://www.lee.gov/procurement). It is solely the Bidder's responsibility to check the website for information. The Lee County Department of Procurement Management will send no notifications regarding postings associated with this solicitation.
- 8.3. All Addenda shall be incorporated into the Contract Documents.
- 8.4. The County shall not be responsible for oral interpretations given by any County employee, representative, agent, or other person. Interpretation of the meaning of the plans, Specifications, or any other Contract Document, or for correction of any apparent ambiguity, inconsistency, or error there in, shall be in writing. Issuance of a written Addendum by the County's Department of Procurement Management is the only official method whereby interpretation, clarification or additional information may be given.

9. QUALITY GUARANTEE/WARRANTY (as applicable)

- 9.1. Bidder will guarantee their work without disclaimers, unless otherwise specifically approved by the County, for a minimum of twelve (12) months from the date of final completion.
- 9.2. Unless otherwise specifically provided in the specifications, all equipment and materials and articles incorporated in the work covered by this contract shall be new, unused and of the most suitable grade for the purpose intended. Refurbished parts or equipment are not acceptable unless otherwise specified in the specifications. All warranties will begin from the date of final completion.
- 9.3. Unless otherwise specifically provided in the specifications, the equipment must be warranted for twelve (12) months, shipping, parts, and labor. Should the equipment be taken out of service for more than forty-eight (48) hours to have warranty work performed, a loaner machine of equal capability or better shall be provided for use until the repaired equipment is returned to service at no additional charge to the County.
- 9.4. If any product does not meet performance representation or other quality assurance representations as published by manufacturers, producers or distributors of such products or the specifications listed, the vendor shall pick up the product from the County at no expense to the County. The County reserves the right to reject any or all materials, if in its judgment the item reflects unsatisfactory workmanship or manufacturing or shipping damage. The vendor shall refund, to the County, any money which has been paid for same.

10. SUBSTITUTION(S)/APPROVED ALTERNATE(S)

- 10.1. Unless otherwise specifically provided in the Specifications, reference to any equipment, material, article or patented process, by trade name, brand name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. If a Bidder wishes to make a substitution in the Specifications, the Bidder shall furnish to the County, **no later than ten (10) business days prior to the Bid opening date**, the name of the manufacturer, the model number, and other identifying data and information necessary to aid the County in evaluating the substitution. Such information is submitted through the Department of Procurement Management. Any such substitution shall be subject to County approval through the issuance of a written Addendum by the County's Department of Procurement Management. Substitutions shall be approved only if determined by the County to be an **Approved Alternate** to the prescribed Specifications.
- 10.2. A Bid containing a substitution is subject to disqualification if the substitution is not approved by the County. Items Bid must be identified by brand name, number, manufacturer, and model, and shall include full descriptive information, brochures, and appropriate attachments. Brand names are used for descriptive purposes only. An **Approved Alternate** product or service may be used.

11. ADDITIONS, REVISIONS AND DELETIONS

- 11.1. Additions, revisions, or deletions to the Terms and Conditions, specifications that change the intent of the solicitation will cause the solicitation to be non-responsive and the proposal will not be considered.

The Procurement Management Director shall be the sole judge as to whether or not any addition, revision, or deletion changes the intent of the solicitation.

## 12. NEGOTIATED ITEMS

- 12.1. Any item not outlined in the Scope of Work/Specifications may be subject to negotiations between the County and the successful Bidder.
- 12.2. After Award of this Bid, the County reserves the right to add or delete items/services at prices to be negotiated at the time of addition or deletion.
- 12.3. At contract renewal time(s) or in the event of significant industry wide market changes, the County may negotiate justified adjustments such as price, terms, etc., if in its sole judgment, the County considers such adjustments to be in their best interest.

## 13. CALCULATION ERRORS

- 13.1. In the event of multiplication/addition error(s), the unit price shall prevail, and the corrected sum shall be considered the bid price. All Bids will be reviewed mathematically and corrected, if necessary, using these standards, prior to further evaluation.

## 14. CONFIDENTIALITY

- 14.1. Bidders should be aware that all submissions provided are generally considered public records subject to public disclosure upon conclusion of the Solicitation process, and shall **not** be afforded confidentiality, unless otherwise provided by law.
- 14.2. If information is submitted with a Bid that is deemed “confidential,” the Bidder must stamp those pages of the submission that are considered confidential. The Bidder must provide sufficient documentation demonstrating why such documents should be deemed confidential in accordance with Florida law.
- 14.3. Lee County **will not reveal engineering estimates or budget amounts for a project** unless required by grant funding or unless it is in the best interest of the County. Pursuant to § 337.168, F.S.: A document or electronic file revealing the official cost estimate of the department of a project is confidential and exempt from the provisions of § 119.07(1), F.S. until the Contract for the project has been executed or until the project is no longer under active consideration.

## 15. CONFLICT OF INTEREST

- 15.1. **Business Relationship Disclosure Requirement:** The Award hereunder is subject to the provisions of Chapter 112, F.S. All Bidders must disclose with their submission the name of any officer, director or agent who is also an officer or employee of Lee County or any of its agencies or a spouse or child of such officers or employees. Furthermore, all Bidders must disclose the name of any County officers, employees, or spouses or children thereof who own directly or indirectly, an interest of five percent (5%) or more in the Bidder’s firm or any of its branches.
- 15.2. A Vendor that assisted in preparing and/or writing a scope of work and/or specifications may not submit a bid or proposal for County consideration on that project.

## 16. ANTI-LOBBYING CLAUSE (Cone of Silence)

- 16.1. Upon the issuance of the Solicitation, prospective Bidders, or any agent, representative or person acting at the request of said Bidder shall not have any contact, communicate with or discuss any matter relating in any way to the Solicitation with any commissioner, evaluation review committee, agent or employee of the County other than the Procurement Management Director or their designee. This prohibition begins with the issuance of any Solicitation and ends upon issuance of the Notice of Intended Decision, the rejection of all responses, or the termination of this competitive procurement. **If it is determined that improper communications were conducted, the Bidder may be declared non-responsible.**

## 17. ANTITRUST VIOLATION

- 17.1. A person or an affiliate who has been placed on the antitrust violator vendor list, available at [Antitrust Violator Vendor List / Vendor Registration and Vendor Lists / State Agency Resources / State Purchasing / Business Operations / Florida Department of Management Services - DMS](#)

[myflorida.com](http://myflorida.com)), following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to Lee County; may not submit a bid, proposal, or reply for a new contract with Lee County for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to Lee County; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with Lee County; and may not transact new business with Lee County.

## 18. DRUG FREE WORKPLACE

- 18.1.** The County encourages Drug Free Workplace programs.

## 19. FLORIDA CERTIFIED ENTERPRISES

- 19.1.** The County encourages the use of Florida Certified Enterprises such as such as Disadvantaged, Minority, Women, Veterans Business Enterprise (DBE, MBE, WBE, VBE) firms.
- 19.2.** Bidder/Proposer is requested to indicate whether the Firm and/or any proposed sub-consultants are a Florida Certified Enterprise. Lee County encourages the utilization and participation of DBE, MBE, WBE, VBE or similar in procurements, and evaluation proceedings will be conducted within the established guidelines regarding equal employment opportunity and nondiscriminatory action based upon the grounds of race, color, sex or national origin. Interested Florida Certified Enterprises such as Disadvantaged, Minority, Women, Veterans Business Enterprise (DBE, MBE, WBE, VBE) firms and similar are encouraged to submit.

## 20. ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

- 20.1.** The Bidder agrees to comply, at its own expense, with all federal, state, and local laws and regulations, including federal, state, and local laws, codes, statutes, ordinances, rules, regulations, and requirements applicable to the Work, including but not limited to those dealing with taxation, workers' compensation, equal employment and safety. Bidder acknowledges and agrees, in accordance with, the Rehabilitation Act of 1973 as amended, the Americans with Disabilities Act of 1990 (ADA), and the ADA Amendments Act of 2008 (ADAAA), that in performing the Work hereunder, no person on the grounds of race, religion, color, age, sex, national origin, disability or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- 20.2.** The Bidder shall not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, disability, or marital status. The Bidder shall make affirmative efforts to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, disability, or marital status.
- 20.3.** The Bidder shall include the provisions of this section in every sub-contract under this Contract to ensure its provisions will be binding upon each sub-contractor. The Bidder shall take such actions in respect to any sub-contractor, as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance.
- 20.4.** An entity or affiliate who has been placed on the State of Florida's Discriminatory Vendor List (this list may be viewed by going to the Department of Management Services website at <http://www.dms.myflorida.com>) may not submit a Bid on a contract to provide 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 award or perform work as a vendor, supplier, sub-contractor, or consultant under contract with any public entity, and may not transact business with any public entity.

## 21. SUB-CONTRACTORS

- 21.1.** The use of sub-contractors under this Solicitation requires prior written authorization from the County representative.



## 22. PROJECT GUIDELINES (as applicable)

- 22.1. The County has established the following guidelines, criteria, goals, objectives, constraints, schedule, budget and or requirements which shall serve as a guide to the Bidder(s) in performing the Work provided for pursuant to this Contract:
- 22.1.1. No amount of Work is guaranteed upon the execution of a Contract.
  - 22.1.2. Rates and all other negotiated expenses shall remain in effect throughout the duration of the Contract period inclusive of any renewals unless otherwise specified herein.
  - 22.1.3. This Contract does not entitle any Bidder to exclusive rights to County contracts. The County reserves the right to perform any and all available required Work in-house or by any other means it so desires.
  - 22.1.4. In reference to vehicle travel, mileage and man-hours spent in travel, time is considered incidental to the Work and not an extra compensable expense.
  - 22.1.5. Lee County reserves the right to add or delete, at any time, any or all material, tasks or services associated with this Contract.
  - 22.1.6. Any Single Large Project: The County, in its sole discretion, reserves the right to separately solicit any project that is outside the scope of this Solicitation, whether through size, complexity or the dollar value.
  - 22.1.7. Background Check(s): The County is committed to maintaining a safe and secure environment. The following shall apply to the contractor, contractor employees, employees hired through a third-party staffing vendor, subcontractors and any other staffing that may be working in or around a County Facility, School, Library, and other locations as deemed necessary.  
Upon written request by Lee County Procurement Management, the contractor at its expense must conduct a background check for each of its employees, as well as for the employees of its subcontractors, who will provide services to the County or have access to the County computer systems, through either onsite or remote access. Contractor employees, for the purpose of this requirement, include such temporary staff as office support, custodial service, and any third-party vendor. Background checks shall be conducted through the Florida Department of Law Enforcement and provided to Lee County Procurement Management Department at [procurement@leegov.com](mailto:procurement@leegov.com). Background checks must be conducted prior to commencement of said project(s).

## 23. TIEBREAKER

- 23.1. Whenever two or more Bids, which are equal with respect to price, quality, and service, are received for procurement of commodities or contractual services, from Responsive and Responsible Bidders, the following steps shall be taken to establish the Award to the lowest Bidder. This method shall be used for all ties.
- 23.1.1. Step 1 - Local Bidder: Between a Local Bidder, and a non-Local Bidder, a Contract Award, or the first opportunity to negotiate, as applicable, shall be made to the Local Bidder. **If local preference is prohibited by the funding source, then step 2 will replace step 1.**
  - 23.1.2. Step 2 - Drug Free Workplace: At the conclusion of step 1, if all is equal, the Bidder with a Drug Free Workplace program shall be given preference over a Bidder with no Drug Free Workplace program. The Contract Award, or the first opportunity to negotiate, as applicable, shall be made to the Bidder with the Drug Free Workplace program.
  - 23.1.3. Step 3 - Coin Flip: At the conclusion of Step 1 and Step 2, if all is equal, the Contract Award, or the first opportunity to negotiate, as applicable, the final outcome shall be determined by the flip of a coin.
- 23.2. When the tie has been broken pursuant to the above procedures, the Contract Award, or the first opportunity to negotiate, as applicable, shall be furnished to the prevailing Bidder.
- 23.3. If an Award or negotiation is unsuccessful with the initial Bidder, Award or negotiations may commence with the next highest Bidder, utilizing the tiebreaker steps above to make the determination of next lowest Bidder, if necessary.

## 24. WITHDRAWAL OF BID

- 24.1. No Bid may be withdrawn for a period of **180 calendar days** after the scheduled time for receiving submissions. A Bid may be withdrawn prior to the Solicitation opening date and time. Withdrawal requests must be made in writing to the Procurement Management Director, who will approve or disapprove the request.
- 24.2. After submissions are opened, but prior to Award of the Contract by the County Commission, the Procurement Management Director may allow the withdrawal of a Bid because of the mistake of the Bidder in the preparation of the submission document. In such circumstance, the decision of the Procurement Management Director to allow the submission withdrawal, although discretionary, shall be based upon a finding that the Bidder, by clear and convincing evidence, has met each of the following four tests:
  - 24.2.1. The Bidder acted in good faith in submitting the Bid;
  - 24.2.2. The mistake in Bid preparation was of such magnitude that to enforce compliance by the Bidder would cause a severe hardship on the Bidder;
  - 24.2.3. The mistake was not the result of gross negligence or willful inattention by the Bidder; and
  - 24.2.4. The mistake was discovered and was communicated to the County prior to the County Commission having formally Awarded the Contract.

25. PROTEST RIGHTS

- 25.1. Any Bidder that has submitted a formal Response to Lee County, and who is adversely affected by an intended decision with respect to the Award, has the right to protest an intended decision posted by the County as part of the Solicitation process.
- 25.2. Notice of Intended Decision is posted on the Lee County Department of Procurement Management website ([www.lee.gov/procurement](http://www.lee.gov/procurement)). Bidders are solely responsible to check for information regarding the Solicitation.
- 25.3. Refer to the “Procurement Protest” section of the Lee County Procurement Ordinance 22-06 for a complete description of the protest process and associated requirements. The ordinance is posted on the Lee County website or may be obtained by contacting the Procurement Management Director.
- 25.4. In order to preserve the right to protest, a written **“Notice of Intent to File a Protest” must be filed with the Lee County Procurement Management Director within seventy-two (72) hours of Posting of the Notice of Intended Decision.**
  - 25.4.1. The notice shall clearly indicate all grounds being claimed for the protest.
  - 25.4.2. The notice must be physically received by the Procurement Management Director within the required time frame described above. No additional time will be granted for mailing.
- 25.5. Following receipt of the Notice of Intent to File a Protest, a **“Protest Bond”** and **“Formal Written Protest”** must be filed **within ten (10) business days** of Posting of the Notice of Intended Decision.
- 25.6. **Failure to follow the protest procedures requirement within the time frames as prescribed herein and in the Lee County Procurement Ordinance 22-06 shall constitute a waiver of the right to protest and shall bar any resulting claims.**

26. AUTHORITY TO UTILIZE BY OTHER GOVERNMENT ENTITIES

- 26.1. This procurement opportunity is also made available to any government entity. Pursuant to their own governing laws, and subject to the Agreement/Contract of the Bidder, other entities may be permitted to make purchases at the terms and conditions contained herein. The Lee County Board of County Commissioners shall not be financially responsible for the purchases of other entities from this Solicitation.

27. CONTRACT ADMINISTRATION

27.1. **Designated Contact:**

- 27.1.1. The Awarded Bidder shall appoint a person(s) to act as a primary contact for all County departments. This person or their designee shall be readily available during normal working hours by phone or in person and shall be knowledgeable of the terms and procedures involved.

27.1.2. Lee County requires that the Awarded Bidder provide the name of a contact person(s) and phone number(s) which will afford Lee County access twenty-four (24) hours per day, 365 days per year, in the event of major breakdowns or natural disasters.

**27.2. Basis of Award:**

27.2.1. The County shall issue a Notice of Intended Decision to the lowest Responsive and Responsible Bidder who submits a Bid.

27.2.2. In the event the lowest Responsive and Responsible Bid exceeds the architectural or engineering cost estimates or the amount of available funds, the County Administrator or designee may, when time or economic considerations preclude re-bidding of Work of a reduced scope, negotiate an adjustment of the Scope of Work with the lowest Responsive and Responsible Bidder, in order to bring the Bid within the amount of available funds.

27.2.3. The County reserves the right to make Award(s) by individual item, group of items, all or none, or a combination thereof. The County reserves the right to reject any and all Bids or to waive any minor irregularity or technicality in the Bids received. Award shall be made to the lowest Responsible and Responsive Bidder(s) within the category chosen for basis of Award.

27.2.4. The County reserves the right to Award to one or multiple Bidders at the discretion of the requesting authority and approval of the Procurement Management Director.

**27.3. Contract:**

27.3.1. The Awarded Bidder will be required to enter into the Contract with the County and will be required to perform the Work in accordance with the Contract terms and conditions. The draft Contract is attached to this Solicitation and incorporated herein by reference. The Contract may be viewed on-line at <http://www.leegov.com/procurement/forms>.

**27.4. Records:**

27.4.1. Retention: The Bidder shall maintain such financial records and other records as may be prescribed by Lee County or by applicable federal and state laws, rules, and regulations. Unless otherwise stated in the Specifications, the Bidder shall retain these records for a period of ten (10) years after final payment, or until they are audited by Lee County, whichever event occurs first.

27.4.2. Right to Audit/Disclosure: These records shall be made available during the term of the Contract as well as the retention period. These records shall be made readily available to County personnel with reasonable notice and other persons in accordance with the Florida General Records Schedule. Awarded Bidder(s) are hereby informed of their requirement to comply with Chapter 119, F.S., specifically to:

27.4.2.1. Keep and maintain public records required by the County to perform the service.

27.4.2.2. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided or as otherwise provided by law.

27.4.2.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the contractor does not transfer the records to the County.

27.4.2.4. Upon completion of the Contract, transfer, at no cost, to the County all public records in possession of the Bidder or keep and maintain public records required by the County to perform the service. If the Bidder transfers all public records to the County upon completion of the Contract, the Bidder shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Bidder keeps and maintains public records upon completion of the Contract, the Bidder shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon

request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

**27.4.3. Public Records: IF THE BIDDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BIDDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, Email at [PRRCustodian@leegov.com](mailto:PRRCustodian@leegov.com) or Visit <http://www.leegov.com/publicrecords>.**

**27.4.4. Ownership:** It is understood and agreed that all documents, including detailed reports, plans, original tracings, specifications, and all data prepared or obtained by the successful Bidder in connection with its services hereunder, including any documents bearing the professional seal of the successful Bidder, shall be delivered to, and become the property of Lee County, prior to final payment to the successful Bidder or the termination of the Contract. This includes any electronic versions, such as CAD or other computer aided drafting programs.

**27.5. Termination:**

**27.5.1.** Termination of an Award or Contract entered into pursuant to this Solicitation shall be governed by the terms of such Contract and by the provisions of this section.

**27.5.2.** The Procurement Management Director may immediately terminate any Award resulting from this Solicitation for emergency purposes, as defined by the Lee County Procurement Ordinance 22-06.

**27.5.3.** Any Bidder who has voluntarily withdrawn from a Solicitation without the County's mutual consent during the Contract period shall be barred from further County procurement for a **period of 180 calendar days**. The Bidder may apply to the Board for a waiver of this debarment. Such application for waiver of debarment must be coordinated with and processed by the Procurement Management Department.

**27.5.4.** For a Contract over \$1,000,000, the County reserves the right to terminate an award of such contract upon information or belief of any of the following, when, applicable:

**27.5.4.1.** Bidder is found to have submitted a false certification as provided under § 287.135 (5), F.S.;

**27.5.4.2.** Bidder has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (§ 215.473, F.S.);

**27.5.4.3.** Bidder has engaged in business operations in Cuba or Syria (§ 215.471, F.S.);

**27.5.4.4.** Bidder has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel (§ 215.4725, F.S.).

**27.5.4.5.** The County reserves the right to review, on a case-by-case basis, and waive this stipulation if it is deemed to be advantageous to the County.

**27.6 Termination for Convenience:**

**27.6.1.** The County may terminate the entire Contract or any portion thereof, if the Director determines that a termination is in the County's interest. The Director will deliver to the Contractor a Written Notice of Termination specifying the extent of termination and the effective date.

**27.6.1.1.** When the County terminates the entire Contract, or any portion thereof, before the Contractor completes all items of work in the Contract, the County will make payment for the actual number of units or items of work that the Contractor has completed, at the Contract unit price, and according to the formulas and provisions set forth in the contract documents for work partially completed, and such payments will constitute full and complete compensation for such work or items. No payment

of any kind or amount will be made for items of work not started. The County will not consider any claim for loss of anticipated profits, or overhead of any kind (including home office and jobsite overhead or other indirect impacts) except as provided for within the contract documents for partially completed work.

27.6.1.2. The County will consider reimbursing the Contractor for actual cost of mobilization (when not otherwise included in the Contract) including moving equipment to the job where the volume of the work that the Contractor has completed is too small to compensate the Contractor for these expenses under the Contract unit prices.

27.6.1.3. The County may purchase at actual cost acceptable materials and supplies procured for the work, that the County has inspected, tested, and approved and that the Contractor has not incorporated in the work. Submit the proof of actual cost, as shown by receipted bills and actual cost records, at such points of delivery as the Director may designate.

27.6.1.4. Termination of a contract or a portion thereof, does not relieve the Contractor or the surety of its responsibilities for the completed portion of the contract or its obligations for and concerning any just claims arising out of the work performed.

27.6.1.5. All Contractor claims for additional payment, due to the County's termination of the entire Contract or any portion thereof, must meet the requirements as stated within the contract documents.

## 28. WAIVER OF CLAIMS

28.1. Once the Contract associated with this Solicitation expires, or final payment has been requested and made, the Awarded Bidder shall have waived any claims against the County concerning such Contract, except those previously made in writing and identified by the Awarded Bidder as unsettled at the time of the final application for payment.

## 29. LEE COUNTY PAYMENT PROCEDURES

29.1. Unless otherwise noted, all Awarded Bidders are requested to mail an original invoice to:

**Lee County Finance Department  
Post Office Box 2238  
Fort Myers, FL 33902-2238**

29.2. All invoices shall be paid as directed by the Lee County payment procedure, unless otherwise stated in the Contract or detailed Specifications for this project.

29.3. Lee County shall not be liable for requests for payment deriving from aid, assistance, or help by any individual, vendor, proposer, or Bidder for the preparation of these Specifications.

## 30. SAFETY DATA SHEETS (SDS) (as applicable)

30.1. It is the Bidder's responsibility to provide Lee County with Safety Data Sheets on Bid materials, as may apply to this procurement.

## 31. BOND/SURETY

31.1. Bonding/Surety is required in accordance with the Lee County Procurement Ordinance 22-06.

31.2. **Bid Bond/Security: The Procurement Management Department shall determine if a Bid Bond shall be required for any Competitive Procurement.** Each Bidder shall submit **not less than five percent (5%) of the proposed dollar amount** (including applicable Alternates) as Bid Bond/Security. One **ORIGINAL** Bid Bond/Security shall be submitted to the County with each Bid submission. The Bid Bond/Security of the Bidder will be retained until the Bidder and the County have entered into the Contract, whereupon the Bid Bond/Security may be returned. The Bid Bond/Security of a Bidder whom the County believes to have a reasonable chance of receiving the Award may be retained by the County until the effective date of the Contract, whereupon any Bid Bonds/Securities furnished by a Bidder may be returned. The following types of Bid Security shall be accepted:

- 31.2.1. **A Certified Check or a Cashier's Check** in the amount of not less than five percent (5%) of the proposed dollar amount. Any Certified Check or Cashier's Check submitted in lieu of a Bid Bond shall be drawn on a solvent bank or trust company, made payable to Lee County Board of County Commissioners and shall have all necessary documentary revenue stamps attached (if required by law); or
- 31.2.2. **A Bid Bond** may be submitted on a Lee County paper Bid Bond Form. Such Bid Bond must be signed by all required parties, must be in the amount of not less than five percent (5%) of the proposed dollar amount (including Alternate(s) as applicable), and shall accompany each submission. The Bid Bond shall be issued by a surety authorized to do business and in good standing with the Florida Department of State.
- 31.3. **Performance and Payment Bond:** As further described in the Contract, the successful Bidder shall provide Performance and Payment Bonds in the amount of one hundred percent (100%) of the total Awarded Contract amount within **seven (7) calendar days** after notification by the County of the approval to award the Contract, the costs of which are to be paid by the successful Bidder. Such Performance and Payment Bonds shall be in the form prescribed by the Exhibits to the attached Contract. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to the County; provided, however, the surety shall be rated as "B" or better as reported in the most current Best's Key Rating Guide, published by A.M. Best Company, Inc. The successful Bidder shall record the Performance and Payment Bond with the Lee County Clerk of Courts, at its sole expense, and provide the original, recorded bond document to the County.
- 31.4. **A Clean Irrevocable Letter of Credit or Cash Bond** may be accepted by the County in lieu of the Public Payment and Performance Bond.
- 31.5. **Personal Checks are not acceptable to Lee County as a Bid Security.**

32. LOCAL VENDOR PREFERENCE

- 32.1. The Procurement Management Department will adhere to the Lee County Ordinance No. 22-06 and as may be amended from time to time (the County's "Local Vendor Preference"). It shall be at the discretion of the County Manager or Designee whether to apply Local Vendor Preference to any particular Solicitation.
- 32.2. The County's Local Vendor Preference, as it relates to Bidding preferences for local Vendors, is not applicable to Solicitations or Contracts when Commodities and/or Services may be provided in the event of an Emergency.
- 32.3. The County's Local Vendor Preference shall not apply in any procurement for Commodities or Services if the use of the Local Vendor Preference is prohibited by the terms of a grant or funding agreement or other prevailing law or policy.

33. INSURANCE (AS APPLICABLE)

- 33.1. Insurance shall be provided by the Awarded Bidder pursuant to the Specifications provided herein and/or in the Contract. Prior to execution of the Contract, a certificate of insurance (COI) complying with the Solicitation Documents shall be provided by the Bidder.
- 33.2. Insurance carriers providing coverage required herein shall be licensed to conduct business in the State of Florida and shall possess a current A.M. Best's Financial Strength Rating of "B or better."

End of Terms and Conditions Section

## INSURANCE GUIDE



### Lee County Insurance Requirements

**Minimum Insurance Requirements:** *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:
  - \$1,000,000 per occurrence
  - \$2,000,000 general aggregate
  - \$1,000,000 products and completed operations
  - \$1,000,000 personal and advertising injury
  
- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:
  - \$1,000,000 combined single limit (CSL); or
  - \$500,000 bodily injury per person
  - \$1,000,000 bodily injury per accident
  - \$500,000 property damage per accident
  
- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:
  - \$500,000 per accident
  - \$500,000 disease limit
  - \$500,000 disease – policy limit

***\*The required minimum limit of liability shown in a. and b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."***



## Lee County Insurance Requirements

### **Verification of Coverage:**

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

- a. **Under the Description of Operations, the following must read as listed:**

*“Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials are automatic additional insureds and includes an automatic waiver of subrogation with regard to general liability. The certificate holder is an additional insured on a primary and noncontributory basis with regards to general liability.”*

- b. **The certificate holder must read as follows:**

Lee County, a political subdivision and Charter County of the State of Florida  
P.O. Box 398  
Fort Myers, Florida 33902

### **Special Requirements:**

1. An appropriate "Indemnification" clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to ensure that all subcontractors comply with all insurance requirements.

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End of Insurance Guide Section



## **SPECIAL CONDITIONS**

These are conditions that are in relation to this Solicitation only and have not been included in the County's standard Terms and Conditions or the Scope of Work and Specifications.

### **1. TERM**

1.1. From the Notice to Proceed or the Purchase Order date, whichever applies, the timeframe for completion of all Work to Final Acceptance shall be **30 CALENDAR DAYS**.

### **2. LIQUIDATED DAMAGES (CONSTRUCTION)**

2.1. In accordance with the terms set forth in the Agreement, should the Contractor fail to achieve Final Acceptance of the Work within the time period stated in the Agreement, the County shall be entitled to assess the amount set forth in Article 8-10 of Exhibit E Standard Specifications, as Liquidated Damages, but not as a penalty, for each calendar day thereafter until Final Acceptance is achieved.

### **3. BASIS OF AWARD**

3.1. The basis of award shall be determined by the lowest *Project Total* of the most responsive, responsible, and qualified Contractor meeting all bid specifications.

3.2. The County reserves the right to reject any bids or portion of the bid with just cause, which shall include, but not be limited to, an "unbalanced bid," to the detriment of the County. An "unbalanced bid" shall include: excessive unit pricing, other unfair pricing for materials or labor, or a disproportionate allocation of cost to the County for the actual construction performed.

### **4. LOCAL PREFERENCE**

4.1. The Lee County Local Vendor Preference shall be included as part of the award process for this project. As such, Lee County at its sole discretion may choose to award a preference to any qualified Local Vendor.

### **5. LANE CLOSURES**

5.1. Lane closures will be allowed during daytime hours during this project except when in conflict with provision 5.2. In accordance with the timeframes set forth in Exhibit J, Special Provisions, all work requiring lane closures shall occur from the hours of 9:00 AM to 4:00 PM. School zones work hours shall be 9:00AM to 2:00PM unless otherwise authorized in writing.

5.2. If work is to be performed between Thanksgiving and Easter, no lane closures will be allowed on Arterial and Collector roadways except during nighttime hours.

5.3. MOT plans must be submitted to the Project Manager and approved prior to commencement of work.

End of Special Conditions Section

## SCOPE OF WORK AND SPECIFICATIONS

### 1. GENERAL SCOPE OF WORK SUMMARY

- 1.1. Lee County Board of County Commissioners seeks to contract with a qualified Contractor to provide milling and resurfacing improvements to various roads within Lee County, Florida. Work shall include, but not be limited to; milling, resurfacing, restriping, ADA upgrades and minor signal work to accommodate ADA upgrades.
- 1.2. All work performed shall follow all Federal, State, Local, OSHA and department mandated regulations and specifications for associated work.
- 1.3. Contractor(s) shall review the list of roads and all drawings detailing work to be performed under this solicitation.
- 1.4. The scope of work is further defined and detailed within Exhibits E-O found attached to the draft Contract Agreement affixed to this solicitation package as well as within the plans associated with this project. Contractor is responsible for reviewing all documentation associated with this project.

### 2. DESCRIPTION OF WORK AND LOCATIONS

- 2.1. The work on this Contract consists of approximately the following:
  - 2.1.1. All loops shall be installed under the asphalt and not cut in. Bridges/Culverts shall be milled so that the existing deck is not damaged.
  - 2.1.2. All roads shall be milled 1 1/2" and tacked, receiving a 1.5" (165lbs) avg overlay of Superpave FC-12.5 traffic level C PG76-22.
  - 2.1.3. Any potholes or depressions shall be filled and compacted prior to paving the roadway mainline.
  - 2.1.4. Milled surfaces may be left up to 24 hours as long as they do not exceed 1 mile in length and also have appropriate markings and signage for the travelling public. And have a smooth transition into and out of the milled area (minimum 6 ft transition).
  - 2.1.5. Striping to match existing; if there is a conflict between existing striping and MUTCD or FDOT, FDOT shall prevail.
  - 2.1.6. Striping shall be refreshed on Berkshire Lakes Blvd after loops are installed.
  - 2.1.7. **Signal loops shall be installed prior to final lift of asphalt installation and under the final lift of asphalt except on Berkshire Lake Blvd. There shall be no cuts in the final lift of asphalt for signal loops except on Berkshire Lake Blvd.**

- 2.1.8. The contractor shall follow 660-001 for loop installation. **(loop windows in asphalt)**
- 2.1.9. Preexisting loops shall be reconnected, new loops shall be pulled to the pull box and an extra 10” of wire shall be coiled in the pull box, to be connected to the cabinet by others.
- 2.1.10. New Pull boxes shall be installed as far as practical from the travel lanes.
- 2.1.11. Conduit is incidental to pull boxes and no additional compensation shall be made for this item.
- 2.1.12. Driveways shall be cleaned of debris after the paving operation has been completed.
- 2.1.13. No feathered joints at driveways and/or roadway tie-ins.
- 2.1.14. Temp paint is incidental to the Thermoplastic installation.
- 2.1.15. Manholes and valve boxes may be adjusted with Metal rings as needed.
- 2.1.16. Millings from this project shall be property of the winning bidder.

End of Scope of Work and Specifications Section

## SUPPLEMENTAL INFORMATION

1. **Dainels Parkway Roadway, Intersection, & ADA Design Plans. See Attachment A.**

End of Supplemental Information Section

LEE COUNTY DOCUMENT MANAGEMENT FORM

For

**B230579LND - County Wide Arterials - Daniels Pkwy 3 FY24 C**

These forms are required as indicated below and all required forms should be submitted with the Bidder's/Proposer's submission package. If it is determined that forms in this selection are not applicable to your company or solicitation, they should be marked "N/A or Not Applicable" across the form in large letters and returned with your submission package.

FORM #	TITLE / DESCRIPTION	REQUIRED STATUS (Required, Not Required, If Applicable)	VENDOR CHECK-OFF
1	Solicitation Response Form	Required	
1a	Bid/Proposal Form	Required	
N/A	Business Relationship Disclosure Requirement	If Applicable	
2	Affidavit Certification Immigration Laws	Required	
3	Reference Survey <i>*(Requested after opening of lowest Bidder only)</i>	Required	
4	Negligence or Breach of Contract Disclosure Form	Required	
5	Sub-Contractor List	Required	
6	Public Entity Crime Form	Required	
7	Bid Bond	Required	
*	Proposal Label	Required	

It is the Bidder's/Proposer's responsibility to review the submittal request in its entirety and ensure that all submittal requirements are included within their submission package. Failure to submit required forms may deem your company as non-responsive.

# FORMS DESCRIPTION & INSTRUCTIONS

## INVITATION TO BID

This table provides a brief list, description, and instructions regarding the standard requested forms that should be submitted with all bids or proposals. This is not intended to be an all-inclusive list of forms required for your submission, but rather a guide to assist in completion of the County's standard forms. Bidders/Proposers should utilize the Lee County Document Management Form for a complete list of all forms required for project submission.

<u>Form #</u>	<u>Title/Description</u>
---------------	--------------------------

<b>1</b>	<b><i>Solicitation Response Form</i></b>
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All signatures must be by a corporate authorized representative, witnessed, and corporate and/or notary seal (as applicable.) The corporate or mailing address must match the company information as it is listed with the Florida Department of State Division of Corporations. Attach a copy of the webpage(s) from <http://www.sunbiz.org> as certification of this required information. Sample attached for your reference.

Verify that all Addenda and tax identification number have been provided.

<b>1a</b>	<b><i>Bid/Proposal Form</i></b>
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This form is used to provide itemization of project cost. A more detailed "schedule of values" may be requested by the County.

<b>N/A</b>	<b><i>Business Relationship Disclosure Requirement</i></b>
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Sections 112.313(3) and 112.313(7), F.S., prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. If this **disclosure is applicable, the Bidder must request the form entitled "INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS"** (Required by § 112.313(12)(b), F.S.) to be completed and **returned with the Solicitation Response. It is the Bidder's responsibility to request the form and disclose this relationship; failure to do so may result in being declared non-responsive.**

NOTICE: UNDER THE PROVISIONS OF § 112.317, F.S., A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR, AND MAY BE PUNISHED BY, ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.00.

<b>2</b>	<b><i>Affidavit Certification Immigration Laws</i></b>
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Submission of this form constitutes acknowledgement that the Bidder is in compliance in regard to all applicable immigration laws.

<b>3</b>	<b><i>Reference Survey</i></b>
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Provide this form to reference respondents. **For Bids, this form will be requested from the apparent low Bidder prior to the award. (Not required to submit with bid)**

- Section 1:** Bidder/Proposer to complete with reference respondent's information prior to providing to them for their response. (This is **not** the Bidder/Proposer's information.)
- Section 2:** Enter the name of the Bidder/Proposer; provide the project information in which the reference respondent is to provide a response.
- The reference respondent should complete "**Section 3.**"
- Section 4:** The reference respondent to print and sign name
- Three (3) Reference responses** are to be provided upon request.
- Failure to obtain reference surveys may make your company non-responsive.

**4**      ***Negligence or Breach of Contract Disclosure Form***

The form may be used to disclose negligence or breach of contract litigation that your company may have been a part of over the past ten (10) years. You may need to duplicate this form to list all history. If the Bidder has more than ten (10) lawsuits, you may narrow them to litigation of the company or subsidiary submitting the Solicitation Response. Include, at a minimum, litigation for similar projects completed in the State of Florida. Final outcome should include in whose favor the litigation was settled and whether a monetary amount was awarded. The settlement amount may remain anonymous.

If you have **no litigation**, enter **“None”** in the first **“type of incident”** block of the form. Please do not write N/A on this form.

**5**      ***Sub-Contractor/Consultant List***

To be completed and returned when sub-contractor/consultants are to be utilized and are known at the time of the submission.

**6**      ***Public Entity Crime Form***

Any person or affiliate, as defined by statute, who has been placed on the convicted vendor list following a conviction for a public entity crime, may not submit a Bid on a Contract to provide any goods or services to the County; may not submit a Bid on a contract with the County for the construction or repair of a public building or a public work; may not submit Bids or leases of real property to the County; may not be Awarded or perform Work as a contractor, supplier, subcontractor, or consultant under a contract with the County, and may not transact business with the County in excess of \$25,000.00 for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

**7**      ***Bid Bond***

Guarantee to County that Bidder/Proposer will take on job if selected.

**\***      ***Bid/Proposal Label***

Self-explanatory. Please affix to the outside of the sealed submission documents.

**\***      ***Include any licenses or certifications requested***

Local Business Tax Account (as applicable) issued by City and/or County entity. This is necessary for all Florida vendors.

It is the Bidder’s responsibility to ensure the Solicitation Response is mailed or delivered in time to be received no later than the specified opening date and time. (If Solicitation is not received prior to the deadline, it cannot be considered or accepted)

Form 1 – Solicitation Response Form



LEE COUNTY PROCUREMENT MANAGEMENT
SOLICITATION RESPONSE FORM

Date Submitted: Bid Due Date: 10/26/2023

SOLICITATION IDENTIFICATION: B230579LND

SOLICITATION NAME: County Wide Arterials - Daniels Pkwy 3 FY24 C

COMPANY NAME:

NAME & TITLE: (TYPED OR PRINTED)

BUSINESS ADDRESS: (PHYSICAL)

CORPORATE OR MAILING ADDRESS:

[ ] SAME AS PHYSICAL

ADDRESS MUST MATCH SUNBIZ.ORG

E-MAIL ADDRESS:

PHONE NUMBER: FAX

NOTE REQUIREMENT: IT IS THE SOLE RESPONSIBILITY OF THE BIDDER/PROPOSER TO CHECK THE LEE COUNTY PROCUREMENT MANAGEMENT WEB SITE FOR ANY ADDENDA ISSUED FOR THIS PROJECT. THE COUNTY WILL POST ADDENDA TO THIS WEB PAGE BUT WILL NOT NOTIFY.

By responding to this sealed Solicitation, the Bidder/Proposer makes all representations required by the instructions and further warrants and represents that: Bidder/Proposer has examined copies of all the Solicitation Documents and of the following Addenda:

No. Dated: No. Dated: No. Dated:
No. Dated: No. Dated: No. Dated:

Taxpayer Identification Number:

(1) Employer Identification Number -OR- (2) Social Security Number:

\*\* Lee County collects your social security number for tax reporting purposes only

Please submit a copy of your registration from the website www.sunbiz.org establishing your firm as authorized (including authorized representatives) to conduct business in the State of Florida, as provided by the Florida Department of State, Division of Corporations. (a sample is attached for your reference)

1 Collusion Statement: Lee County, Florida. The undersigned, as Bidder/Proposer, hereby declares that no person or other persons, other than the undersigned, are interested in this Solicitation as principal, and that this Solicitation is submitted without collusion with others; and that they have carefully read and examined the Specifications or Scope of Work, and with full knowledge of all conditions under which the services herein is contemplated must be furnished, hereby Bid and agree to furnish this service according to the requirements set out in the Solicitation Documents, Specifications or Scope of Work for said service for the prices as listed on the County provided price sheet or (CCNA) agree to negotiate prices in good faith if a contract is Awarded.

2 Scrutinized Companies Certification: Section 287.135, F.S. entitled "Prohibition against contracting with scrutinized companies" prohibits agencies from contracting with companies, for goods or services over \$1,000,000, that are on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, Scrutinized Companies that Boycott Israel List, have been engaged in a boycott of Israel, or been engaged in business operations in Cuba or Syria. The County reserves the right to review, on a case-by-case basis, and waive this stipulation if it is deemed advantageous to the County.

As the person authorized to sign on behalf of Respondent, I hereby certify that the company identified above is in compliance with Section 287.135, F.S. I understand that submission of a false certification may subject company to contract termination, civil penalties, attorney's fees, and/or costs.



**Form 1 – Solicitation Form, Page 2**

**3 Business Relationship Disclosure Requirement:** Sections 112.313(3) and 112.313(7), F.S., prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. See Part III, Chapter 112, F.S., and/or the brochure entitled "A Guide to the Sunshine Amendment and Code of Ethics for Public Officers, Candidates and Employees" for more details on these prohibitions. However, Section 112.313(12), F.S., provides certain limited exemptions to the above-referenced prohibitions, including one where the business is awarded under a system of sealed, competitive bidding; the public official has exerted no influence on bid negotiations or specifications; and where disclosure is made, prior to or at the time of the submission of the bid, of the official's or his/her spouse's or child's interest and the nature of the intended business. The Commission on Ethics has promulgated this form for such disclosure, if and when applicable to a public officer or employee.

**If this disclosure is applicable, the Bidder must request form “INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS” (Required by 112.313(12)(b), F.S.) to be completed and returned with Solicitation Response. It is the Bidder/proposer’s responsibility to disclose this relationship, failure to do so could result in being declared non-responsive.**

**Business Relationship Applicable (request form)**                       **Business Relationship NOT Applicable**

**4** Disadvantaged, Minority, Women, Veterans Business Enterprise (DBE, MBE, WBE, VBE)  Yes  No  
 Proposer? If yes, please attach a current certificate.

**ALL SUBMISSIONS MUST BE EXECUTED BY AN AUTHORIZED AUTHORITY OF THE BIDDER/PROPOSER. WITNESSED AND SEALED (AS APPLICABLE)**

\_\_\_\_\_  
 Company Name (Name printed or typed)



(Affix Corporate Seal, as applicable)

\_\_\_\_\_  
 Authorized Representative Name (printed or typed)

\_\_\_\_\_  
 Authorized Representative’s Title (printed or typed)

\_\_\_\_\_  
 Witnessed/Attested by: (Witness/Secretary name and title printed or typed)

\_\_\_\_\_  
 Authorized Representative’s Signature

\_\_\_\_\_  
 Witness/Secretary Signature

Any blank spaces on the form(s), qualifying notes or exceptions, counter offers, lack of required submittals, or signatures, on County’s form may result in the submission being declared non-responsive by the County.

Bidders may not adjust or modify data provided within the Bid Schedule. Bids received with modified data may deem the Bidder as non-responsive and ineligible for award.

**Detail by Entity Name**

**Florida Profit Corporation**

Bill's Widget Corporation

**Filing Information**

**Document Number** 655555  
**FEI/EIN Number** 5111111111  
**Date Filed** 09/22/1980  
**State** FL  
**Status** ACTIVE  
**Last Event** AMENDED AND RESTATED ARTICLES  
**Event Date Filed** 07/25/2006  
**Event Effective Date** NONE

**Principal Address**

555 N Main Street  
Your Town, USA 99999  
Changed 02/11/2012

**Mailing Address**

555 N Main Street  
MYour Town, USA 99999  
Changed 02/11/2012

**Registered Agent Name & Address**

My Registered Agent  
111 Registration Road  
Registration, USA99999

Name Changed: 12/14/2006

Address Changed: 12/14/2006

**Officer/Director Detail**

**Name & Address**

Title P

President, First  
555 AVENUE  
Anytown, USA99999

Title V

President, Second  
555 AVENUE  
Anytown, USA99999

Sample Only



Lee County Procurement Management  
**BID/PROPOSAL FORM**

Company Name: \_\_\_\_\_

Solicitation # B230579LND Solicitation Name County Wide Arterials - Daniels Pkwy 3 FY24 C

**This page serves as a header/placeholder only. Please refer to the Excel document provided with the solicitation for the complete Bid Schedule. The Excel document contains formulas for convenience; however, it is the Contractor’s responsibility to verify all pricing and calculations are CORRECT. Lee County is not responsible for errors in formulas or calculations contained within Excel document(s).**

**REMINDER: In the event there is a discrepancy between the total quoted amount, or the extended amounts and the unit prices quoted, the unit prices will prevail, and the corrected sum will be considered the quoted price.**

**The County will only accept bids submitted on bid forms provided by the County. Bids submitted on other forms, other than those provided by the County, will deem Bidder as non-responsive and ineligible for award.**

**Bidders may not adjust or modify data provided within the Bid/Proposal Form. Bids received with modified data may deem the Bidder as non-responsive and ineligible for award.**

**PLEASE ENSURE you have provided a printed copy of the Bid Schedule with your hard copy submission packages and provided the excel version with your digital submission package.**

**PRICING**

**Pricing shall be inclusive of all labor, equipment, supplies, overhead, profit, materials, and any other incidental costs required to perform and complete all work as specified herein.**



**AFFIDAVIT CERTIFICATION IMMIGRATION LAWS**

SOLICITATION NO.: **B230579LND** SOLICITATION NAME: **County Wide Arterials - Daniels Pkwy 3 FY24 C**

LEE COUNTY WILL NOT INTENTIONALLY AWARD COUNTY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT (“INA”).

LEE COUNTY MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY LEE COUNTY.** PROPOSER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

BY REGISTERING AS A VENDOR, SUBMITTING A RESPONSE TO A SOLICITATION, OR ENTERING INTO A CONTRACT, YOU ARE OBLIGATED TO COMPLY WITH THE PROVISIONS OF SECTION 448.095, FLA. STAT., "EMPLOYMENT ELIGIBILITY." FURTHER, BY YOUR REGISTRATION AS A VENDOR, RESPONSE TO A SOLICITATION, ENTERING INTO A CONTRACT, YOU AFFIRM AND REPRESENT THAT YOU ARE REGISTERED WITH THE E-VERIFY SYSTEM AND ARE USING SAME, AND WILL CONTINUE TO USE SAME AS REQUIRED BY SECTION 448.095, F.S. COMPLIANCE WITH SECTION 448.095 INCLUDES, BUT IS NOT LIMITED TO, UTILIZATION OF THE E-VERIFY SYSTEM TO VERIFY THE WORK AUTHORIZATION STATUS OF ALL NEWLY HIRED EMPLOYEES, AND REQUIRING ALL SUBCONTRACTORS TO PROVIDE AN AFFIDAVIT ATTESTING THAT THE SUBCONTRACTOR DOES NOT EMPLOY, CONTRACT WITH, OR SUBCONTRACT WITH, AN UNAUTHORIZED ALIEN. FAILURE TO COMPLY WILL LEAD TO TERMINATION AS A VENDOR, DISQUALIFYING YOU FOR AWARD OF A SOLICITATION, DENIAL OF ENTERING INTO A CONTRACT AND/OR, CANCELLATION OF AN ACTIVE CONTRACT, OR IF YOUR SUBCONTRACTOR KNOWINGLY VIOLATES THE STATUTE, THE SUBCONTRACT MUST BE TERMINATED IMMEDIATELY. ANY CHALLENGE TO TERMINATION UNDER THIS PROVISION MUST BE FILED NO LATER THAN 20 CALENDAR DAYS AFTER THE DATE OF TERMINATION. IF TERMINATED FOR A VIOLATION OF THE STATUTE BY THE VENDOR, THE VENDOR MAY NOT BE ALLOWED TO DO BUSINESS WITH THE COUNTY OR BE AWARDED A SOLICITATION OR CONTRACT FOR A PERIOD OF 1 YEAR AFTER THE DATE OF TERMINATION. ALL COSTS INCURRED TO INITIATE AND SUSTAIN THE AFOREMENTIONED PROGRAMS SHALL BE THE RESPONSIBILITY OF THE VENDOR.

Company Name: \_\_\_\_\_

\_\_\_\_\_  
Signature Title Date

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was signed and acknowledged before me, by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by \_\_\_\_\_ who has produced  
(Print or Type Name)

\_\_\_\_\_ as identification.  
(Type of Identification)

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Notary Commission Number/Expiration

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. **LEE COUNTY RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.**

Form 3 - Reference Survey

Lee County Procurement Management  
Reference Survey

**\*\*REQUIRED OF THE LOWEST APPARENT BIDDER ONLY\*\***

Reference surveys submitted can be a maximum of twelve (12) months old. If using a previous reference, Proposers must clearly identify the project name and number the reference is being submitted for.

Project Name & Number: \_\_\_\_\_

Section 1	Reference Respondent Information	<b>Please return completed form to:</b>	
<b>FROM:</b>	_____	<b>Bidder/Proposer:</b>	_____
<b>COMPANY:</b>	_____	<b>Due Date:</b>	_____
<b>PHONE #:</b>	_____	<b>Total # Pages:</b>	<b>1</b>
<b>FAX #:</b>	_____	<b>Phone #:</b>	<b>Fax #:</b>
<b>EMAIL:</b>	_____	<b>Bidder/Proposer E-Mail:</b>	

Section 2	Enter Bidder/Proposer Information, as applicable Similar Performed Project (Bidder/Proposer to enter details of a project performed for above reference)		
Bidder/Proposer Name:	_____		
Reference Project Name:	Project Address:	Project Cost:	_____
Summarize Scope:	_____	_____	_____

**You as an individual or your company has been given as a reference on the project identified above. Please provide your responses in Section 3 below.**

Section 3		Indicate: "Yes" or "No"
1. Did this company have the proper resources and personnel by which to get the job done?		
2. Were any problems encountered with the company's work performance?		
3. Were any change orders or contract amendments issued, other than owner initiated?		
4. Was the job completed on time?		
5. Was the job completed within budget?		
6. On a scale of one to ten, ten being best, how would you rate the overall work performance, considering professionalism; final product; personnel; resources. <span style="float: right;">Rate from 1 to 10. (10 being highest)</span>		
7. If the opportunity were to present itself, would you rehire this company?		
8. Please provide any additional comments pertinent to this company and the work performed for you:		

**Section 4** Please submit non-Lee County employees as references

Reference Name (Print Name) \_\_\_\_\_

Reference Signature \_\_\_\_\_



**ALLEGED NEGLIGENCE OR BREACH OF CONTRACT  
DISCLOSURE FORM**

“Please fill in the form below. Provide details for each incident of alleged negligence, breach of contract, or non-compliance with governmental regulation that has occurred over the past 10 years. Examples of non-compliance with governmental regulation include but are not limited to zoning violations, code enforcement violations, civil or criminal citations, and denial, or revocation of permits. Provide details for all entities currently or previously owned in whole or in part by the proposer in the last 10 years. Please complete in chronological order with the most recent incident starting on page 1. Please do not modify this form (expansion of spacing allowed) or submit your own variation.”

**Company Name:** \_\_\_\_\_

<b>Type of Incident</b> <i>Alleged Negligence, Breach of Contract or Non-Compliance</i>	<b>Incident Date And Date Filed</b>	<b>Plaintiff</b> <i>(Company, person, entity- acted against your company or state if your company initiated the action)</i>	<b>Case Number</b>	<b>Court</b> <i>(Name of State and County)</i>	<b>Project</b> <i>(Address and Name)</i>	<b>Allegation</b> <i>(Stated reason your company was accused of negligence, breach of contract or non-compliance of governmental regulation or the allegations your company made)</i>	<b>Final Outcome</b> <i>(who prevailed)</i>

Make as many copies of this sheet as necessary to **provide a 10-year history** of the requested information. If there is no action pending or action taken in the last 10 years, complete the **company name and write “NONE” in the first “Type of Incident” box** of this page and return with your proposal package. This form should also include the primary partners listed in your proposal. Do not include litigation with your company as the plaintiff. The final outcome should include who prevailed and what method of settlement was made. If a monetary settlement was made the amount may remain anonymous. Proposals may be declared “non-responsive” due to omissions of “Negligence or Breach of Contract” on this disclosure form. Additionally, proposals may be declared “not responsible” due to past or pending lawsuits that are relevant to the subject procurement such that they call into question the ability of the proposer to assure good faith performance. This determination may be made by the Procurement Management Director, after consulting with the County Attorney.

Page Number: \_\_\_\_\_ Of \_\_\_\_\_ Total pages

Update the page number to reflect the current page and the total number of pages. Example: Page 3, of 5 total submitted pages of this form.



**SUB-CONTRACTOR/CONSULTANT LIST**

Sub-Contractor/Consultant Company Name	Area Of Work	Point Of Contact Or Project Supervisor	Contact Info Phone or Email	Qualified DBE, MBE, WBE, VBE or Similar	Amount or Percentage of Total

Please include sub-contractor/consultant name, area of work (i.e., mechanical, electrical, etc.) and a **valid** phone number and/or email. Also include the dollar value or percentage that the sub-contractor/consultant will be performing. If sub-contractor/consultant qualifies as a current certificate Florida Certified Business Enterprise such as MBE, WBE, DBE, VBE or similar please indicate such above and provide proof of certification.

### Public Entity Crime Form

This form must be signed and sworn to in the presence of a notary public or other officer authorized to administer oaths.

1. This sworn statement is submitted to \_\_\_\_\_  
(Print name of the public entity)

by \_\_\_\_\_  
(Print individual's name and title)

for \_\_\_\_\_  
(Print name of entity submitting sworn statement)

whose business address is \_\_\_\_\_

(If applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_\_

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: On the attached sheet.) Required as per IRS Form W-9.

2. I understand that a "public entity crime" as defined in Section 287.133(1) (g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including but not limited to, a bid or contract for goods or services to be provided to any public entity or agency or political subdivision or any other state or of the United States, and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Section 287.133(1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that "affiliate" as defined in Section 287.133(1)(a), Florida Statutes, means:  
1. A predecessor or successor of a person convicted of a public entity crime:  
or:  
2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those offices, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of the affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not fair market value under an arm's length Agreement/Contract, shall be a facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding thirty-six (36) months shall be considered an affiliate.

5. I understand that a "person" as defined in Section 287.133(1) (c), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of the entity.

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting those sworn statement. (Please indicate which statement applies)

\_\_\_\_\_ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity nor affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.



\_\_\_\_\_ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearing and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH ONE ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OR ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me, by means of  physical presence or  online notarization, this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, by \_\_\_\_\_ who has produced  
(Print or Type Name)

\_\_\_\_\_ as identification.  
(Type of Identification)

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Notary Commission Number/Expiration

BID BOND

Complete EITHER Lee County Paper Bid Bond OR provide cashier's check

KNOW ALL MEN BY THESE PRESENTS, that we

\_\_\_\_\_ as Principal, and  
(BIDDER'S Name)

\_\_\_\_\_ a corporation licensed to do  
(Surety's Name)

business under the laws of the State of Florida as a Surety, are held and firmly bound unto LEE COUNTY BOARD OF COUNTY COMMISSIONERS, LEE COUNTY, FLORIDA, a political subdivision of the State of Florida,

in the SUM OF \_\_\_\_\_ for the payment whereof, well and truly to be made, we bind ourselves, our heirs, successors, personal representatives, and assigns, jointly and severally, firmly, by these presents.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

WHEREAS, said Principal is herewith submitting a Bid/Proposal for the project know as:

**B230579LND - County Wide Arterials - Daniels Pkwy 3 FY24 C**

NOW, THEREFORE, the condition of the above obligation is such that if said Principal shall be Awarded the Contract upon said Bid/Proposal within the specified time and shall enter into a written Contract, satisfactory in form, provide an acceptable Public Performance and Payment Bond from a Surety acceptable to the County and provide other insurance as may be required to the County within seven (7) calendar days after the written Notice of Intent to Award date, or within such extended period as the County may grant, then this obligation shall be null and void; otherwise said Principal and Surety shall pay to said County in money the difference between the amount of the Bid of said Principal and the amount for which said County may legally contract with another party to perform said Work, if the latter amount be in excess of the former, together with any expenses and reasonable attorney's fees incurred by said County if suit be brought hereon, but in no event shall said Surety's liability exceed the penal sum hereof plus such expenses and attorney's fees. For purposes of unsuccessful bid protests filed by the Principal herein, this obligation shall bind the Surety to pay costs and damages associated with the bid protest or delays to the project upon a finding from the Board of County Commissioners for Lee County that the bid protest was frivolous and/or lacked merit. The liability of the Surety shall not exceed the penal sum of the bid bond.

Witness as to Principal: \_\_\_\_\_ (SEAL)  
(Principal)

\_\_\_\_\_  
(By) Printed Name

Witness as to Surety: \_\_\_\_\_ (SEAL)  
(Surety's Name)

\_\_\_\_\_  
(By-As Attorney-in-Fact, Surety)

Affix Corporate Seals and attach proper Power of Attorney for Surety.

*Sealed Bid Label*

**Cut along the outer border and affix this label to your sealed solicitation envelope to identify it as a “Sealed Bid”.**

<b>SEALED BID DOCUMENTS • DO NOT OPEN</b>	
BID No.:	<b>B230579LND</b>
BID TITLE:	<b>County Wide Arterials - Daniels Pkwy 3 FY24 C</b>
DATE DUE:	<b>Thursday, October 26, 2023</b>
TIME DUE:	<b>Prior to: 2:30 PM</b>
SUBMITTED BY:	_____ (Name of Company)
e-mail address	Telephone
<b>DELIVER TO:</b>	Lee County Procurement Management 2115 Second Street, 1 <sup>st</sup> Floor Fort Myers FL 33901



**\*Notice:** The Date Due/Bid Due Date/Opening Date as stated on this label and other forms contained herein may have been updated via issuance of Addenda against this project. It is the sole responsibility of the Contractor to monitor the County project webpage for any updates to the Date Due/Bid Due Date/Opening Date via Addenda. This label nor other original forms may not be updated. Contractor may strike through and update Date Due/Bid Due Date/Opening Date at their discretion to match any updates to this date that have been published via Addenda.

Submission received after the time and date of the Date Due/Bid Due Date/Opening Date will not be acceptable at the sole discretion of the County.

**PLEASE PRINT CLEARLY**

## DRAFT CONSTRUCTION AGREEMENT

## CONSTRUCTION AGREEMENT

LEE COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners, situated at 2115 Second St., Fort Myers, FL 33901 (the "County"), hereby contracts with [Contractor's name **exactly** as it appears on Sunbiz] (the "Contractor") of [Contractor's primary business address] a [Contractor's state] contractor licensed to perform all Work in the State of Florida in connection with the County's Solicitation No. [Solicitation Number and Project Name] (the "Project"), as said Work is set forth in the Plans and Specifications prepared by [Engineer of Record's name], the "Engineer of Record," and other Contract Documents hereafter specified (the "Work").

The County and the Contractor, for the consideration herein set forth, agree as follows:

### Section 1. Contract Documents.

A. The Contract Documents consist of this Agreement, the Exhibits described in Section 6 hereof, the legal advertisement, the instructions to bidders, the Proposal and Proposal Forms, the solicitation documents and any duly executed and issued addenda, the Contractor's proposal, Change Orders, Field Directive Change Orders, and amendments relating thereto. All of the foregoing Contract Documents are incorporated by reference and made a part of this Agreement with the exception of the solicitation which shall be incorporated to the extent that it does not conflict with the remainder of the Agreement (all of said documents including the Agreement sometimes being referred to herein as the "Contract Documents" or "Contract" and sometimes as the "Agreement"). A copy of the Contract Documents shall be maintained by Contractor at the Project Site at all times during the performance of the Work.

B. The Engineer of Record is the initial interpreter of the Contract Documents concerning design intent, but is not the judge between the County and the Contractor. The County reserves the right to make final decisions considering the Engineer of Record's recommendations or interpretations of the Contract Documents. The Engineer of Record does not have authority to obligate or commit the County to fund additional expenditures or approve extensions of time over the approved Contract Time or Amount. However, the Engineer of Record's interpretation as to the intent of her or his design shall be final and not subject to interpretation by the County's staff.

C. The Construction Engineering and Inspection Consultant ("CEI Consultant") is the initial interpreter of the Contract Documents in all matters not concerning design intent. The CEI Consultant shall administer, monitor, test, sample, and inspect the Construction of the Project to ensure that the Project is constructed in reasonable conformity with the plans, specifications, and special provisions of the Contract Documents and shall observe the Contractor's work to determine the progress and quality of work, identify discrepancies, report significant discrepancies to the County, and direct the Contractor to correct such observed discrepancies. The County reserves the right to make final decisions considering the CEI Consultant's recommendations or

interpretations of the Contract Documents. The CEI Consultant may issue Field Directive Change Orders to the Contractor, but the CEI Consultant does not have authority to change the scope of the Project, obligate or commit the County to fund additional expenditures, or approve extensions of time over the approved Contract Time or Amount. The CEI Consultant shall consult with the Engineer of Record regarding any questions concerning the intent of the Project design.

D. Any Work that may be reasonably inferred from the Plan and Specifications as being required to produce the intended result shall be supplied whether or not it is specifically called for. In case of any inconsistency or conflict among the provisions of the Contract Documents, the order of precedence shall be as follows: (1) Change Orders; (2) the Agreement, including amendments and Exhibits; (3) Field Directive Change Orders; (4) the solicitation documents, including any addenda. Exhibit E, Article 5-2 provides the order of precedence for Specifications, Plans, Special Provisions, Technical Special Provisions, and other Project specifications. The Contract Documents represent the entire and integrated Agreement between the parties hereto, and supersede prior negotiations, representations, or agreements, either written or oral.

E. Work, materials or equipment described in words which have a well-known technical or trade meaning, shall be deemed to refer to such recognized standards.

F. The County shall furnish to the Contractor Contract Documents in electronic form and PDF file format.

G. The Contractor agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the County.

H. The Work to be provided by Contractor for the Project shall be under the general direction of the CEI Consultant, or their successor, who shall act as the County's representative during the term of this Agreement. If the County's representative is not a County employee, then County's representative is not authorized to issue changes to the Contract Amount, Contract Time, or Scope of Work without express approval by the County Director, County Manager, or Board of County Commissioners.

## Section 2. Scope of Work.

A. The Contractor agrees to furnish and pay for all management, supervision, financing, labor, materials, tools, transportation, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely, and fully perform and complete in a good and workmanlike manner the Work required by this Agreement.

B. The Work shall be prosecuted and administered in accordance with the Standard Specifications attached hereto and incorporated herein as Exhibit E.

### Section 3. Contract Amount.

A. In consideration of the faithful performance by the Contractor of the covenants in this Contract to the full satisfaction and acceptance of the County, the County agrees to pay, or cause to be paid, to Contractor the following Contract Amount in accordance with the terms of this Agreement: \$[Contract amount in numbers] or in words: [Contract amount in words].

B. Measurement and payment provisions are provided in Division 1, Section 9 of the Standard Specifications attached hereto as Exhibit E.

### Section 4. Bonds.

A. The Contractor shall provide and maintain through the life of the Contract, including the warranty period, Performance and Payment Bonds, in the form prescribed in the Exhibits to the Agreement, in the amount of 100% of the Contract Amount, the costs of which are to be paid by Contractor. If the Contract is increased by a Change Order, it shall be the Contractor's responsibility to ensure that the Performance and Payment Bonds are amended accordingly and a copy of the amendment recorded by the Lee County Clerk of Court and forwarded to the County. The Performance and Payment Bonds shall be underwritten by a Surety authorized to do business in the State of Florida and otherwise acceptable to the County; provided, however, the Surety shall be rated as "B or better" as to general policy holders rating as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc.

B. Attorneys-in-Fact who sign Bonds for County projects must file with such Bond a certified copy of their Power of Attorney to sign such Bond. All agents of Surety companies must list their name, address, and telephone number on all Bonds. The life of all Bonds provided to the County shall extend twelve (12) months beyond the date of final payment and shall contain a waiver of alternation to the terms of the Contract, extensions of time and/or forbearance on the part of the County. The Surety must have fulfilled all of its obligations on all other Bonds previously provided to the County. The Surety must have a minimum underwriting limitation of \$5,000,000 published in the latest edition of the Federal Register for Federal Bonds (U.S. Dept. of Treasury).

C. If the Surety for any Bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, the Contractor shall, within five (5) calendar days thereafter, substitute at Contractor's cost another Bond and Surety, both of which shall be subject to the County's approval.

D. If the Contractor cannot obtain another Bond and Surety within five (5) calendar days, the County may accept and the Contractor shall submit an irrevocable letter of credit drawn on a Lee County, Florida bank until the Bond and Surety can be obtained.

E. In case of default on the part of the Contractor, the County will charge against the Contract/Performance Bond all expenses for services incidental to ascertaining and collecting losses under the Contract/Performance Bond, including accounting, engineering, and legal services, together with any and all costs incurred in connection with renegotiation of the Contract.

F. The Surety shall indemnify and provide defense for the County when called upon to do so for all claims or suits against the County, by third parties, pertaining to Contractor payment or performance issues arising out of the Contract where the Contractor has failed to timely provide the County such defense. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved Contract amount, which shall be the original Contract amount as may be modified by subsequent Supplemental Agreements.

G. The principal and Surety executing the Contract/Performance Bond shall be liable to the County in any civil action that might be instituted by the County or any officer of the County authorized in such cases, for triple any amount in money or property the County might lose, or be overcharged, or otherwise be defrauded of by any wrongful or criminal act of the Contractor, their agent or their employees.

#### Section 5. Contract Time and Liquidated Damages

A. Time is of the essence in the performance of the Work under this Agreement. The Commencement Date is established in the Notice to Proceed to be issued by the County, and the Contractor must begin the Work within the number of days specified by the Notice to Proceed. Written Notice to Proceed is contingent upon and will be done subsequent to the Contractor fully satisfying the County's stated insurance and Bond submittal requirements. No Work shall be performed at the Project Site prior to the Commencement Date. Any Work performed by the Contractor prior to the Commencement Date shall be at the sole risk of the Contractor. Final Acceptance of the Work shall be achieved within [The number of days specified in the Contractor's proposal in words and (number)] calendar days from the Commencement Date, and that time period shall be the Contract Time. The date of Final Acceptance of the Work (or designated portions thereof) is the date certified by the Director pursuant to Exhibit E, Article 5-11.

B. Prosecution and progress of the Work provisions are provided in Division 1, Section 8 of the Standard Specifications attached hereto as Exhibit E.

C. The County and the Contractor recognize that, since time is of the essence for this Agreement, the County will suffer financial loss if Final Acceptance of the Work is not achieved within the time specified above, as said time may be adjusted as provided for herein. Should the Contractor fail to achieve Final Acceptance of the Work within the time period noted above, the County shall be entitled to assess the amount set forth in



Article 8-10 of the Standard Specifications, as Liquidated Damages, but not as a penalty, for each calendar day thereafter until Final Acceptance is achieved. Final Acceptance of the Work shall be deemed to occur on the date the Director issues a written notice of Final Acceptance pursuant to the terms hereof. The Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted Liquidated Damages as a penalty, which the parties agree represents a fair and reasonable estimate of the County's actual damages at the time of contracting if the Contractor fails to achieve Final Acceptance of the Work in a timely manner.

D. When any period of time is referenced by days herein, it shall be computed to include the first day and last day of such period. All days shall mean calendar day and not business day.

E. Any agreed upon changes to the Contract Time must be accomplished by an approved, written Change Order in the form attached to this Agreement.

#### Section 6. Exhibits Incorporated.

The following documents are attached and expressly agreed as incorporated into and made a part of this Agreement:

- A. Legal Advertisement
- B. Invitation to Bid and all addenda, including the Project Plans
- C. Bid Form and Required Documents
- D. Form of Public Construction Performance and Payment Bond
- E. Standard Specifications
- F. Insurance Requirements, including Certificates of Insurance
- G. Form of Release and Affidavit
- H. Change Order Form
- I. Supplemental Specifications
- J. Special Provisions
- K. Technical Special Provisions
- L. FDOT and Lee County Design Standards
- M. Developmental Specifications
- N. Contractor's Background Screening Affidavit
- O. Other relevant forms

#### Section 7. Public Records.

A. In addition to other requirements provided herein, Contractor shall comply with public records laws embodied in Chapter 119, Florida Statutes, and specifically shall:

A.1. Keep and maintain public records required by the County in order to perform the Scope of Services identified herein.

A.2. Upon request from the County provide the County with any requested public

records or allow the requested records to be inspected or copied within a reasonable time by the County.

A.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and thereafter if the Contractor does not transfer all records to the County.

A.4. Transfer, at no cost, to County all public records in possession of the Contractor upon termination of this Agreement 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 County, upon request from the County, in a format that is compatible with the information technology systems of the County. If the Contractor keeps and maintains public records upon the conclusion of this Agreement, the Contractor shall meet all applicable requirements for retaining public records that would apply to the County.

B. If Contractor does not comply with a public records request, the County shall treat that omission as a breach of this Agreement and enforce the Contract provisions accordingly. Additionally, if the Contractor fails to provide records when requested, the Contractor may be subject to penalties under Section 119.10, Florida Statutes, and reasonable costs of enforcement, including attorney fees.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, [PRRCustodian@leegov.com](mailto:PRRCustodian@leegov.com); <http://www.leegov.com/publicrecords>.**

Section 8. Audit.

A. Upon execution of the Contract, the County reserves the right to conduct an audit of the Contractor's records pertaining to the Project. The County or its representatives may conduct an audit, or audits, at any time prior to final payment, or thereafter pursuant to 5-12 of the Standard Specifications. The County may also require submittal of the records from either the Contractor or any subcontractor or material supplier. As the County deems necessary, records include all books of account, supporting documents, and papers pertaining to the cost of performance of the Work.

B. The Contractor must retain all records pertaining to the Contract for a period of not less than five (5) years from the date of the Director's final acceptance of the Project, unless a longer minimum period is otherwise specified. Upon request, make all such records available to the County or its representative(s). For the purpose of this section, records include but are not limited to all books of account, supporting documents,

and papers that the County deems necessary to ensure compliance with the provisions of the Contract Documents.

C. If the Contractor fails to comply with these requirements, the County may disqualify or suspend the Contractor from bidding on or working as a subcontractor on future Contracts.

D. The Contractor must ensure that the subcontractors provide access to their records pertaining to the project upon request by the County.

#### Section 9. Indemnification and Insurance.

A. Contractor agrees to save harmless, indemnify, and defend or, at the option of the County, pay the cost of defense, the County and its representative from any and all claims, losses, penalties, demands, judgments, and costs of suit, including attorneys' fees and paralegals' fees, for any expense, damage or liability incurred by any of them, whether for personal injury, property damage, direct or consequential damages, or economic loss, arising directly or indirectly on account of or in connection with the Work performed by Contractor under this Agreement or by any person, firm or corporation to whom any portion of the Work is subcontracted by Contractor or resulting from the use by Contractor, or by any one for whom Contractor is legally liable, of any materials, tools, machinery or other property of the County. This provision is intended to apply even if the injury or damage is caused in whole or in part by any act, omission or default of the County or Engineer of Record or their consultants, agents, officers and employees. The County and Contractor agree the first \$100.00 of the Contract Amount paid by the County to Contractor shall be given as separate consideration for this indemnification, and any other indemnification of the County by Contractor provided for within the Contract Documents, the sufficiency of such separate consideration being acknowledged by Contractor by Contractor's execution of the Agreement. The Contractor's obligation under this provision shall not be limited in any way by the agreed upon Contract Amount as shown in this Contract or the Contractor's limit of, or lack of, sufficient insurance protection.

B. The Contractor guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against him or any subcontractor, in connection with the Contract. The Department's final acceptance and payment does not release the Contractor's bond until all such claims are paid or released.

C. Contractor shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in the Insurance Requirements attached to this Agreement. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies which are registered with the State of Florida. Prior to execution of the Agreement, Contractor shall provide the County with properly executed Certificates of Insurance to evidence Contractor's compliance with the insurance requirements of the Contract Documents. Said Certificates of Insurance shall be on forms approved by the County. The Certificates of Insurance shall be personally,

manually signed by the authorized representatives of the insurance company/companies shown on the Certificates of Insurance, with proof that they are authorized representatives thereof. In addition, certified, true and exact copies of all insurance policies required hereunder shall be provided to the County, on a timely basis, when requested by the County.

D. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) calendar days prior written notice by registered or certified mail shall be given to the County of any cancellation, intent not to renew, or reduction in the policies or coverages, except in the application of the aggregate limits provisions. In the event of a reduction in the aggregate limit of any policy, Contractor shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.

E. To the extent multiple insurance coverage and/or County's self-insured retention may apply, any and all insurance coverage purchased by Contractor and its Subcontractors identifying the County as an additional named insured shall be primary. The acceptance by the County of any Certificate of Insurance does not constitute approval or agreement by the County that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of the Contract Documents. No Work shall commence at the Project Site unless and until the required Certificates of Insurance are received by the County.

F. The Contractor will be fully responsible for all acts and omissions of his Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts they may be liable to the same extent that they are employed by him. Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor and the County. The County may, upon request, furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to the Contractor on account of specific Work done.

G. Contractor shall require each of its Subcontractors to procure and maintain, until the completion of the Subcontractor's work, insurance of the types and to the limits specified in the Insurance Requirements attached to this Agreement, unless such insurance requirements for the Subcontractor are expressly waived in writing by the County. All liability insurance policies, other than professional liability, workers' compensation, employer's liability and business auto liability policies, obtained by Contractor to meet the requirements of the Contract Documents shall name the County and Engineer of Record as additional insureds. If any insurance provided pursuant to the Contract Documents expires prior to the completion of the Work, renewal Certificates of Insurance and, if requested by the County, certified, true copies of the renewal policies, shall be furnished by Contractor within thirty (30) calendar days prior to the date of expiration.

H. Should at any time the Contractor not maintain the insurance coverages required herein, the County may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the Contractor for such coverages

purchased. The County shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the County to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

I. Contractor shall submit to Engineer of Record a copy of all accident reports arising out of any injuries to its employees or those of any firm or individual to whom it may have subcontracted a portion of the Work, or any personal injuries or property damages arising or alleged to have arisen on account of any Work by Contractor under the Contract Documents.

#### Section 10. Compliance with Laws and Regulations

A. Contractor agrees to comply, at its own expense, with all federal, state, and local Laws and Regulations, including federal, state and local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to the Project, including but not limited to those dealing with taxation, workers' compensation, equal employment and safety. If Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify the County and Engineer of Record in writing.

B. Legal Requirements and provisions concerning Laws and Regulations to be observed are provided in Division 1, Section 7 of the Standard Specifications attached hereto as Exhibit E.

#### Section 11. Warranty

A. Contractor shall obtain and assign to the County all express warranties given to Contractor or any Subcontractors by any materialmen supplying materials, equipment or fixtures to be incorporated into the Project.

B. Contractor warrants to the County that any materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Contractor further warrants to the County that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, Suppliers or processors except as otherwise provided for in the Contract Documents. If, within one (1) year after Final Acceptance, any Work is found to be Defective or not in conformance with the Contract Documents, Contractor shall correct it promptly after receipt of written notice from the County. Contractor shall also be responsible for and pay for replacement or repair of adjacent materials or Work which may be damaged as a result of such replacement or repair. These warranties are in addition to those express or implied warranties to which the County is entitled as a matter of law.

C. The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an application for progress payment, whether incorporated in the Project or not, will be passed to the County prior to the next application for progress payment, free and clear of all liens, claims, security interest and encumbrances; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor or by any other person performing the Work at the site or furnishing materials and equipment for the Project subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

Section 12. Notices.

A. All notices required or made pursuant to this Agreement by the Contractor to the County shall be in writing and delivered by hand or by United States Postal Service, first class mail, postage pre-paid, return receipt requested, or by courier, addressed to the following:

Roger Desjarlais  
Lee County Manager  
P.O. Box 398  
Fort Myers, FL 33902

With copies addressed to each of the following:

[County Project Manager Name], Project Manager, P.O. Box 398, Fort Myers, FL 33902

[County Procurement Director Name], Procurement Management Director, P.O. Box 398, Fort Myers, FL 33902

[County DOT Director Name], Department of Transportation Director, P.O. Box 398, Fort Myers, FL 33902

B. All notices required or made pursuant to this Agreement by the County to Contractor shall be made in writing and shall be delivered by hand or by United States Postal Service, first class mail, postage pre-paid, return receipt requested, or by courier, addressed to the following:

[Corporate Name of Contractor]

Attention: [Name of person with their title to whose attention the notice should be sent]

[Address (including city, state and zip)]

Telephone: [Telephone Number] Fax: [Fax Number]

C. Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

#### Section 13. Modification.

No modification or change to the Agreement shall be valid or binding upon the parties unless in writing and executed by the appropriate parties intended to be bound by it.

#### Section 14. Successors and Assigns.

Subject to other provisions hereof, the Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Agreement.

#### Section 15. No Waiver.

The failure of the County to enforce, at any time or for any period of time, any one or more of the provisions of the Agreement shall not be construed to be, and shall not be, a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

#### Section 16. Federal Requirements

A. In the event this Project is funded in whole or in part from any granting agency or source, the specific terms, regulations and requirements governing the disbursement of those funds are incorporated by reference and made a part of the Contract Documents.

#### Section 17. Entire Agreement.

Each of the parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, Work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by the Agreement.

#### Section 18. Severability.

Should any provision of the Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) indicated below.

WITNESS:

**CONTRACTOR: [Contractor Name]**

Signed By: \_\_\_\_\_

Signed By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**OWNER: LEE COUNTY**

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: \_\_\_\_\_

CHAIR

DATE: \_\_\_\_\_

ATTEST:  
CLERK OF THE CIRCUIT COURT  
Linda Doggett, Clerk

BY: \_\_\_\_\_

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY:

BY: \_\_\_\_\_  
OFFICE OF THE COUNTY ATTORNEY



**EXHIBIT A**  
**LEGAL ADVERTISEMENT**

**EXHIBIT B**  
**INVITATION TO BID**

[Include the entire bid package with all addenda, plans and drawings. Include the solicitation package **up to the label page**. Do not include the Draft Construction Agreement title page.]

**EXHIBIT C**  
**BID FORM AND REQUIRED DOCUMENTS**

[Include the Contractor's bid submission: the bid form and all the documents required by the solicitation.]

**EXHIBIT D**  
**PUBLIC CONSTRUCTION PERFORMANCE AND PAYMENT BOND**

By this bond, we [Name of Contractor], as **Principal**, and [Name of Surety], as **Surety**, are bound to **Lee County Board of County Commissioners**, a political subdivision of the State of Florida, herein called **Owner**, in the sum of **[Total Contract Price]**, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

**THE CONDITION OF THIS BOND IS** that is that if Principal:

1. Performs this contract dated \_\_\_\_\_, 20\_\_\_, between Principal and Owner for construction of improvements known as **[Name of Project]** located at **[Street Address or Legal Description]**, under Lee County Solicitation No. [Solicitation number], the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05 (1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes do not affect Surety's obligation under this bond.

	<b>OWNER</b>	<b>PRINCIPAL</b>	<b>SURETY</b>
<b>NAME</b>	Lee County Board of County Commissioners	[Name of Contractor]	[Name of Surety]
<b>ADDRESS</b>	2115 Second St. Fort Myers, FL 33901	[Principal Business Address of Contractor]	[Principal Business Address of Surety]
<b>PHONE NUMBER</b>	239-533-2221	[Principal Business Phone of Contractor]	[Principal Business Phone of Surety]

[The remainder of this page intentionally left blank.]

**BOND NO. [Surety to enter bond #]**

\_\_\_\_\_  
[Name of Contractor]

DATED THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 2\_\_\_\_\_

By: \_\_\_\_\_  
[Printed Name and Title of Signer]

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by [name of person acknowledging].

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public  
[Name of Notary Typed, Printed, or Stamped]

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced:

\_\_\_\_\_  
[Name of Surety]

DATED THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 2\_\_\_\_\_

By: \_\_\_\_\_  
[Printed Name] as Attorney in Fact

Address: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by [name of person acknowledging].

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public  
[Name of Notary Typed, Printed, or Stamped]

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced:

**EXHIBIT E**  
**STANDARD SPECIFICATIONS**

The Standard Specifications comprise Divisions I, II and III as noted below:

1. Division I General Requirements and Covenants, Sections 1-9 as included herein.
2. Division II-Construction Details and Division III-Materials refer to the July, 2023 edition of the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, available at the following link:

<http://www.fdot.gov/programmanagement/Implemented/SpecBooks/>

# DIVISION I

## General Requirements and Covenants

### SECTION 1 DEFINITIONS AND TERMS

#### 1-1 General.

These Specifications are written to the bidder, prior to award of the Contract, and to the Contractor. Within Divisions I and II of the specifications, sentences that direct the Contractor to perform work are written in the active voice-imperative mood. These directions to the Contractor are written as commands. In the imperative mood, the subject “the bidder” or “the Contractor” is understood.

All other requirements to be performed by others, with the exception of the Method of Measurement and the Basis of Payment Articles, have been written in the active voice, but not in the imperative mood. Sentences written in the active voice identify the party responsible for performing the action. For example, “The Engineer will determine the density of the compacted material.” Certain requirements of the Contractor may also be written in the active voice, rather than active voice-imperative mood.

Division III of the Specifications (Materials) is written in the passive voice writing style.

#### 1-2 Abbreviations.

The following abbreviations, when used in the Contract Documents, represent the full text shown.

<b>AAN</b>	American Association of Nurserymen, Inc.
<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>ACI</b>	American Concrete Institute
<b>AGC</b>	The Associated General Contractors of America, Inc.
<b>AGMA</b>	American Gear Manufacturers Association
<b>AIA</b>	American Institute of Architects
<b>AISI</b>	American Iron and Steel Institute
<b>ANSI</b>	American National Standards Institute, Inc.
<b>AREA</b>	American Railway Engineering Association
<b>ASCE</b>	American Society of Civil Engineers
<b>ASME</b>	American Society of Mechanical Engineers
<b>ASTM</b>	American Society for Testing and Materials
<b>AWG</b>	American Wire Gauge
<b>AWPA</b>	American Wood Preservers Association
<b>AWS</b>	American Welding Society
<b>AWWA</b>	American Water Works Association
<b>CRSI</b>	Concrete Reinforcing Steel Institute
<b>EASA</b>	Electrical Apparatus Service Association
<b>EPA</b>	Environmental Protection Agency of the United States Government
<b>FDOT</b>	Florida Department of Transportation
<b>FHWA</b>	Federal Highway Administration

<b>FSS</b>	Federal Specifications and Standards
<b>IEEE</b>	Institute of Electrical and Electronics Engineers
<b>IES</b>	Illuminating Engineering Society
<b>IPCEA</b>	Insulated Power Cable Engineers Association
<b>ISO</b>	International Organization for Standards
<b>MASH</b>	AASHTO Manual for Assessing Safety Hardware
<b>MUTCD</b>	Manual on Uniform Traffic Control Devices
<b>NEC</b>	National Electrical Code
<b>NEMA</b>	National Electrical Manufacturers Association
<b>NFPA</b>	National Fire Protection Association
<b>NIST</b>	National Institute for Standards and Technology
<b>NOAA</b>	National Oceanic and Atmospheric Administration
<b>OSHA</b>	Occupational Safety and Health Administration
<b>SAE</b>	Society of Automotive Engineers
<b>SI</b>	International System of Units
<b>SSPC</b>	Society of Protective Coatings
<b>UL</b>	Underwriters' Laboratories

Each of the above abbreviations, when followed by a number or letter designation, or combination of numbers and letters, designates a specification, test method, or other code or recommendation of the particular authority or organization shown.

Use standards, specifications, test methods, or other codes as specified in the current edition at the time of the bid opening.

### **1-3 Definitions.**

The following terms, when used in the Contract Documents, have the meaning described.

#### **Advertisement.**

The public announcement, as required by law, inviting bids for work to be performed or materials to be furnished, usually issued as “Notice to Contractors,” or “Notice to Bidders.”

#### **Article.**

The numbered prime subdivision of a Section of these Specifications.

#### **Bidder.**

An individual, firm, or corporation submitting a proposal for the proposed work.

#### **Bridge.**

A structure, including supports, erected over a depression or over an obstruction such as water, highway or railway, or for elevated roadway, for carrying traffic or other moving loads, and having a length, measured along the center of the roadway, of more than 20 feet between the inside faces of end supports. A multiple-span box culvert is considered a bridge, where the length between the extreme ends of the openings exceeds 20 feet.

#### **Calendar day.**

Every day shown on the calendar, ending and beginning at midnight.



**Contract.**

The term “Contract” means the entire and integrated agreement between the parties thereunder and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract Documents form the Contract between the Department and the Contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Work and the basis of payment.

**Contract Bond.**

The security furnished by the Contractor and the surety as a guaranty that the Contractor shall fulfill the terms of the Contract and pay all legal debts pertaining to the construction of the project.

**Contract Claim (Claim).**

A written demand submitted to the Department by the Contractor in compliance with 5-12.3 seeking additional monetary compensation, time, or other adjustments to the Contract, the entitlement or impact of which is disputed by the Department.

**Contract Documents.**

The term “Contract Documents” includes: Advertisement for Proposal, Proposal, Certification as to Publication and Notice of Advertisement for Proposal, Appointment of Agent by Nonresident Contractors, Noncollusion Affidavit, Warranty Concerning Solicitation of the Contract by Others, Resolution of Award of Contract, Executed Form of Contract, Performance Bond and Payment Bond, Specifications, Plans (including revisions thereto issued during construction), Estimated Quantities Report, Standard Plans, Addenda, or other information mailed or otherwise transmitted to the prospective bidders prior to the receipt of bids, work orders and supplemental agreements, all of which are to be treated as one instrument whether or not set forth at length in the form of contract.

Note: As used in Sections 2 and 3 only, Contract Documents do not include work orders, and supplementary agreements. As used in Section 2 only, Contract Documents also do not include Resolution of Award of Contract, Executed Form of Contract, and Performance and Payment Bond.

**Contract Letting.**

The date that the Department opened the bid proposals.

**Contract Time.**

The number of calendar days allowed for completion of the Contract work, including authorized time extensions.

**Contractor.**

The individual, firm, joint venture, or company contracting with the Department to perform the work.

**Contractor’s Engineer of Record.**

A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing of components of the permanent structure as part of a redesign or Cost Savings Initiative Proposal, or for repair

designs and details of the permanent work. The Contractor's Engineer of Record may also serve as the Specialty Engineer.

The Contractor's Engineer of Record must be an employee of a pre-qualified firm. The firm shall be pre-qualified in accordance with the Rules of the Department of Transportation, Chapter 14-75. Any Corporation or Partnership offering engineering services must hold a Certificate of Authorization from the Florida Department of Business and Professional Regulation.

As an alternate to being an employee of a pre-qualified firm, the Contractor's Engineer of Record may be a Department-approved Specialty Engineer. For items of the permanent work declared by the State Construction Office to be "major" or "structural", the work performed by a Department-approved Specialty Engineer must be checked by another Department-approved Specialty Engineer. An individual Engineer may become a Department-approved Specialty Engineer if the individual meets the Professional Engineer experience requirements set forth within the individual work groups in Chapter 14-75, Rules of the Department of Transportation, Florida Administrative Code. Department-approved Specialty Engineers are listed on the State Construction Website. Department-approved Specialty Engineers will not be authorized to perform redesigns or Cost Savings Initiative Proposal designs of items fully detailed in the Plans.

### **Controlling Work Items.**

The activity or work item on the critical path having the least amount of total float. The controlling item of work will also be referred to as a Critical Activity.

### **Culverts.**

Any structure not classified as a bridge that provides an opening under the roadway.

### **Delay.**

Any unanticipated event, action, force or factor which extends the Contractor's time of performance of any controlling work item under the Contract. The term "delay" is intended to cover all such events, actions, forces or factors, whether styled "delay", "disruption", "interference", "impedance", "hindrance", or otherwise, which are beyond the control of and not caused by the Contractor, or the Contractor's subcontractors, materialmen, suppliers or other agents. This term does not include "extra work".

### **Department.**

State of Florida Department of Transportation.

### **Developmental Specification.**

See definition for Specifications.

### **Engineer.**

The Director, Office of Construction, acting directly or through duly authorized representatives; such representatives acting within the scope of the duties and authority assigned to them.

Note: In order to avoid cumbersome and confusing repetition of expressions in these Specifications, it is provided that whenever anything is, or is to be done, if, as, or, when, or where "acceptable, accepted, approval, approved, authorized, condemned, considered necessary, contemplated, deemed necessary, designated, determined, directed, disapproved, established,

given, indicated, insufficient, ordered, permitted, rejected, required, reserved, satisfactory, specified, sufficient, suitable, suspended, unacceptable, or unsatisfactory,” it shall be understood as if the expression were followed by the words “by the Engineer,” “to the Engineer,” or “of the Engineer.”

### **Engineer of Record.**

The Professional Engineer or Engineering Firm registered in the State of Florida that develops the criteria and concept for the project, performs the analysis, and is responsible for the preparation of the Plans and Specifications. The Engineer of Record may be Departmental in-house staff or a consultant retained by the Department.

The Contractor shall not employ the Engineer of Record as the Contractor’s Engineer of Record or as a Specialty Engineer.

### **Equipment.**

The machinery and equipment, together with the necessary supplies for upkeep and maintenance thereof, and all other tools and apparatus necessary for the construction and acceptable completion of the work.

### **Estimated Quantities Report.**

The Estimated Quantities Report contains pay item and quantity information for the project. When the Plans do not adequately describe quantity related information, refer to the Estimated Quantities Report.

### **Extra Work.**

Any “work” which is required by the Engineer to be performed and which is not otherwise covered or included in the project by the existing Contract Documents, whether it be in the nature of additional work, altered work, deleted work, work due to differing site conditions, or otherwise. This term does not include a “delay”.

### **Federal, State, and Local Rules and Regulations.**

The term “Federal, State and Local Rules and Regulations” includes: any and all Federal, State, and Local laws, bylaws, ordinances, rules, regulations, orders, permits, or decrees including environmental laws, rules, regulations, and permits.

### **Highway, Street, or Road.**

A general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.

### **Holidays.**

Days designated by the State Legislature or Cabinet as holidays, which include, but are not limited to, New Year’s Day, Martin Luther King’s Birthday, Memorial Day, Independence Day, Labor Day, Veterans’ Day, Thanksgiving Day and the following Friday, and Christmas Day.

### **Inspector.**

An authorized representative of the Engineer, assigned to make official inspections of the materials furnished and of the work performed by the Contractor.

**Laboratory.**

The official testing laboratory used by the Department.

**Major Item of Work.**

Any item of work having an original Contract value in excess of 5% of the original Contract amount.

**Materials.**

Any substances to be incorporated in the work under the Contract.

**Median.**

The portion of a divided highway or street separating the traveled ways for traffic moving in opposite directions.

**Plans.**

The plans sheets and digital models (2D and 3D) provided as contract documents, including reproductions thereof, showing the location, character, dimensions, and details of the work.

**Proposal (Bid, Bid Proposal).**

The offer of a bidder, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.

**Proposal Form.**

The official form or the electronically generated bid item sheets on which the Department requires formal bids to be prepared and submitted for the work.

**Proposal Guaranty.**

The security furnished by the bidder as guaranty that the bidder will enter into the Contract for the work if the Department accepts the proposal.

**Request for Correction.**

A document initiated by the Contractor proposing a method for correction of work that is not in compliance with the Contract Documents. The Request for Correction is submitted to the Engineer for review and disposition.

**Request for Information.**

A document initiated by the Contractor that is submitted to the Engineer for interpretation of a Contract Document provision, the meaning of which is not clear to the Contractor. The Request for Information is submitted to the Engineer for review and disposition.

**Request for Modification.**

A document initiated by the Contractor requesting to modify the Contract Documents, that is submitted to the Engineer for review and disposition.

**Right-of-Way.**

The land that the Department has title to, or right of use, for the road and its structures and appurtenances, and for material pits furnished by the Department.

**Roadbed.**

The portion of the roadway occupied by the subgrade and shoulders.

**Roadway.**

The portion of a highway within the limits of construction.

**Secretary.**

Secretary of Transportation, State of Florida Department of Transportation, acting directly or through an assistant or other representative authorized by him; the chief officer of the Department of Transportation.

**Section.**

A numbered prime division of these Specifications.

**Special Event.**

Any event, including but not limited to, a festival, fair, run or race, motorcade, parade, civic activity, cultural activity, charity or fund drive, sporting event, or similar activity designated in the Contract Documents.

**Special Provisions.**

See definition for Specifications.

**Specialty Engineer.**

A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing preparation of components, systems, or installation methods and equipment for specific temporary portions of the project work or for special items of the permanent works not fully detailed in the Plans and required to be furnished by the Contractor. The Specialty Engineer may also provide designs and details, repair designs and details, or perform Engineering Analyses for items of the permanent work declared by the State Construction Office to be “minor” or “non-structural”.

For items of work not specifically covered by the Rules of the Department of Transportation, a Specialty Engineer is qualified if he has the following qualifications:

1. Registration as a Professional Engineer in the State of Florida.
2. The education and experience necessary to perform the submitted design as required by the Florida Department of Business and Professional Regulation.

**Specifications.**

The directions, provisions, and requirements contained herein, together with all stipulations contained in the Contract Documents, setting out or relating to the method and manner of performing the work, or to the quantities and qualities of materials and labor to be furnished under the Contract.

Standard Specifications: “Standard Specifications for Road and Bridge Construction” an electronic book, applicable to all Department Contracts containing adopted requirements, setting out or relating to the method or manner of performing work, or to the quantities and qualities of materials and labor.

Supplemental Specifications: Approved additions and revisions to the Standard Specifications, applicable to all Department Contracts.

**Special Provisions:** Specific clauses adopted by the Department that add to or revise the Standard Specifications or supplemental specifications, setting forth conditions varying from or additional to the Standard Specifications applicable to a specific project.

**Technical Special Provisions:** Specifications, of a technical nature, prepared, signed, and sealed by an Engineer registered in the State of Florida other than the State Specifications Engineer or his designee, that are made part of the Contract as an attachment to the Contract Documents.

**Developmental Specification:** A specification developed around a new process, procedure, or material.

**Standard Plans.**

“Standard Plans for Road and Bridge Construction”, an electronic book describing and detailing aspects of the Work. Where the term Design Standards appears in the Contract Documents, it will be synonymous with Standard Plans.

**Standard Specifications.**

See definition for Specifications.

**State.**

State of Florida.

**Subarticle.**

A headed and numbered subdivision of an Article of a Section of these Specifications.

**Subgrade.**

The portion of the roadbed immediately below the base course or pavement, including below the curb and gutter, valley gutter, shoulder and driveway pavement. The subgrade limits ordinarily include those portions of the roadbed shown in the Plans to be constructed to a design bearing value or to be otherwise specially treated. Where no limits are shown in the Plans, the subgrade section extends to a depth of 12 inches below the bottom of the base or pavement and outward to 6 inches beyond the base, pavement, or curb and gutter.

**Substructure.**

All of that part of a bridge structure below the bridge seats, including the parapets, backwalls, and wingwalls of abutments.

**Superintendent.**

The Contractor’s authorized representative in responsible charge of the work.

**Superstructure.**

The entire bridge structure above the substructure, including anchorage and anchor bolts, but excluding the parapets, backwalls, and wingwalls of abutments.

**Supplemental Agreement.**

A written agreement between the Contractor and the Department, and signed by the surety, modifying the Contract within the limitations set forth in these Specifications.

**Supplemental Specifications.**

See definition for Specifications.

**Surety.**

The corporate body that is bound by the Contract Bond with and for the Contractor and responsible for the performance of the Contract and for payment of all legal debts pertaining thereto.

**Technical Special Provisions.**

See definition for Specifications.

**Traveled Way.**

The portion of the roadway for the movement of vehicles, exclusive of shoulders and bicycle lanes.

**Unilateral Payment.**

A payment of money made to the Contractor by the Department pursuant to Section 337.11(12), Florida Statutes (2009), for sums the Department determines to be due to the Contractor for work performed on the project, and whereby the Contractor by acceptance of such payment does not waive any rights the Contractor may otherwise have against the Department for payment of any additional sums the Contractor claims are due for the work.

**Work.**

All labor, materials and incidentals required to execute and complete the requirements of the Contract including superintendence, use of equipment and tools, and all services and responsibilities prescribed or implied.

**Work Order.**

A written agreement between the Contractor and the Department modifying the Contract within the limitations set forth in these Specifications. Funds for this agreement are drawn against the Initial Contingency Pay Item or a Contingency Supplemental Agreement.

**Working Day.**

Any calendar day on which the Contractor works or is expected to work in accordance with the approved work progress schedule.

## SECTION 2 PROPOSAL REQUIREMENTS AND CONDITIONS

### 2-1 Prequalification of Bidders.

Except as noted below, prequalify with the Department to be eligible to bid. The Department publishes regulations covering prequalification of Bidders under separate cover.

The Department does not require the Bidder to be a prequalified Contractor if bidding construction contracts of \$250,000 or less, or if constructing buildings. In addition, at its sole discretion, the Department may waive prequalification requirements on contracts of \$500,000 or less.

For construction contracts requiring prequalification, file an application for qualification using the Department's online prequalification application system, giving detailed information with respect to financial resources, equipment, past record, personnel, and experience. For qualified applicants, the Department will issue a certificate fixing the types of work and the aggregate amount of work that the Department allows the prequalified Bidder to have under contract at any one time.

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit the following:

1. A bid on a Contract to provide any goods or services to a public entity.
2. A bid on a Contract with a public entity for the construction or repair of a public building or public work.
3. Bids on leases of real property to a public entity.

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime 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 F.S., for Category Two. All restrictions apply for a period of 36 months from the date of placement on the convicted vendor list.

All prequalified Contractors bidding on any Contract must certify their total dollar amount of Work Underway and submit Form 375-020-39 or a spreadsheet in a similar format prior to submitting a bid. This information must be submitted at least once during the month the bid is due via the "Work Underway" link in the Contractor Pre-Qualification System.

### 2-2 Proposals.

**2-2.1 Obtaining Proposal Forms:** Obtain Proposal Forms under the conditions stipulated in the Advertisement. The Advertisement states the location and description of the work to be performed; the estimate of the various quantities (if applicable); the pay items of work to be performed (if applicable); the Contract Time; the amount of Proposal Guaranty; and the date, time, and place of the opening of Proposals.

The Plans, Specifications and other documents designated in the Advertisement are part of the Proposal, whether attached or not.

Upon advertising, the Department will make the Proposal Forms available for download as an electronic file from the Online Ordering System or provide the Proposal Forms on portable electronic media as stipulated in the Advertisement. This file contains the information to be used by the Bidder, who has ordered and obtained the Proposal Forms, to submit the Proposal.



The Department is not responsible for loss of or damage to the portable electronic media after it has been received by or delivered to the Bidder. If loss or damage occurs, the Bidder may order replacement Proposal Forms.

If the Bidder requests replacement Proposal Forms, the Department will attempt to provide the replacement by overnight delivery or by electronic transmittal of the files. The Department will not be held responsible if the Bidder cannot complete and submit a bid due to failure or incomplete delivery of the files.

Unless otherwise indicated in the Advertisement, the Bidder has the option to submit a bid either as an Internet Bid Submittal in accordance with 2-2.3 or as a Hard Copy Bid Submittal in accordance with 2-2.4. When an Internet bid submittal is used, the hard copy will not be considered.

**2-2.2 Department Modifications to Contract Documents:** Notification of modifications to any Contract Documents will be posted on the Department's website at the following URL address: [https://www.fdot.gov/contracts/Lettings/Letting\\_Project\\_Info.shtm](https://www.fdot.gov/contracts/Lettings/Letting_Project_Info.shtm) and will also be transmitted to the Bidder. The email address provided by the Bidder at the time of registration for Online Ordering will be used to transmit notification of modifications. Follow the instructions provided in the notification of modifications to access the amendment files.

The Bidder shall take responsibility for downloading the revised information per the instructions included in the notification of modifications.

**2-2.3 Internet Bid Submittals:** Unless otherwise indicated in the Advertisement, the Bidder shall use the Department's bid software to prepare a bid for Internet submittal. The Department will accept, as the official bid, the set of Proposal Forms generated from the Department's bid software along with a complete Proposal package, submitted via the Internet in accordance with 2-5 and 2-8. A Digital ID is required to submit a bid via the Internet. Digital IDs may be obtained as outlined in the Advertisement.

The Department will not be responsible for any communications or machine breakdowns, transmission interruptions, delays, or any other problems that interfere with the receipt of Proposals as required above either at the Bidder's transmitting location, at the Department's receiving location, or anywhere between these locations. Receipt or non-receipt of Proposals will not be considered grounds for a bid protest. The Department will not be held responsible if the Bidder cannot complete or submit a bid due to failure or incomplete delivery of the files submitted via the Internet.

**2-2.4 Hard Copy Bid Submittals:** Unless otherwise indicated in the Advertisement, the Bidder shall use the Department's bid software to prepare a bid for hard copy submittal.

The Department will accept, as the official bid, this set of Proposal Forms generated from the Department's bid software along with a complete Proposal package, delivered to the Department in hard copy in accordance with the instructions listed below and the requirements of 2-5 and 2-8.

Print and submit bid item sheets generated from the Department's bid software on letter size paper. Ensure that all computer generated sheets are legible. Do not submit computer generated sheets using a font size smaller than 9 point.

Return the Department's bid software generated Proposal as the official bid, with the Proposal labeled with the Bidder's Name, Vendor Number, Letting Date, Revision Date (if applicable) and the Proposal ID.

## **2-3 Interpretation of Estimated Quantities.**

**2-3.1 Lump Sum Contracts:** The Bidder is responsible for the determination of the quantities for those items constructed within the authorized plan limits or dimensions.

The Department does not assume any responsibility for any incidental information in bid documents that may be construed as a quantity of work and/or materials.

**2-3.2 Contracts other than Lump Sum:** For those items constructed within authorized plan limits or dimensions, use the quantities shown in the Plans and in the Proposal Form as the basis of the bid. The Department will also use these quantities for final payment as limited by the provisions for the individual items. For those items having variable final pay quantities that are dependent on actual field conditions, use and measurement, the quantities shown in the Plans and in the Proposal Form are approximate and provide only a basis for calculating the bid upon which the Department will award the Contract. Where items are listed for payment as lump sum units and the Plans show estimates of component quantities, the Department is responsible for the accuracy of those quantities limited to the provisions of 9-3.3. Where items are listed for payment as lump sum units and the Plans do not show estimates of component quantities, the Bidder is solely responsible for their own estimates of such quantities.

The Department may increase, decrease, or omit the estimated quantities of work to be done or materials to be furnished.

## **2-4 Examination of Plans, Specifications, Special Provisions, and Site of Work.**

Examine the Contract Documents and the site of the proposed work carefully before submitting a Proposal for the work contemplated. Investigate the conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished and as to the requirements of all Contract Documents.

The Department does not guarantee the details pertaining to borings, and pavement cores as shown in the Contract Documents, to be more than a general indication of the materials likely to be found adjacent to holes bored at the site of the work, approximately at the locations indicated. The Bidder shall examine boring and pavement core data, where available, and make their own interpretation of the subsoil investigations and other preliminary data and shall base their bid solely on their own opinion of the conditions likely to be encountered.

The Bidder's submission of a Proposal is prima facie evidence that the Bidder has made an examination as described in this Article.

## **2-5 Preparation of Proposals.**

**2-5.1 General:** Submit Proposals on the Proposal Form described in 2-2. Any pay item that will be provided free or at no cost to the Department shall be indicated as "free" or "\$.00". If the pay item is left blank or n/a is used, the bid may be declared irregular. Show the total of the bid on the face of the Proposal.

**2-5.2 Internet Bid Submittals:** The Bidder shall execute the Proposal under the Bidder's Digital ID and enter the firm's bidding office street address on the Bidders Information Tab in the Department's bid software. This Digital ID represents the firm as an individual, partnership, corporation, limited liability company, or joint venture. By entering and submitting the Digital ID the authorized parties obligate the firm to the bid. Internet Bid Submittals must acknowledge, on behalf of, the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free

competitive bidding in connection with the submitted bid, by indicating such in the Proposal. The Department will not consider any bid unless such acknowledgment is included.

**2-5.3 Hard Copy Bid Submittals:** If the Proposal is made by an individual, either in the Bidder's own proper person or under a trade or firm name, the Bidder shall execute the Proposal under the Bidder's signature and enter the firm's bidding office street address. If the Proposal is made by a partnership, execute the Proposal by setting out in full the names of the partners, the firm name of the partnership, if any, have two or more of the general partners or authorized person sign the Proposal and enter the firm's bidding office street address. If the Proposal is made by a corporation, execute the Proposal by setting out in full the corporate name and have the president or other legally authorized corporate officer or agent sign the Proposal, affix the corporate seal and enter the corporation's bidding office street address. If the Proposal is made by a limited liability company, execute the Proposal by setting out the company name, have the manager or authorized member sign the Proposal and enter the company's bidding office address. If the Proposal is made by a joint venture, execute the Proposal by setting out the joint venture name, have the authorized parties sign the Proposal and enter the bidding office's street address. File with the Department Form 375-020-08, contained in the Proposal, which includes an unsworn statement executed by, or on behalf of, the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. The Department will not consider any bid unless such form is properly completed in accordance with the requirements shown thereon.

## **2-6 Rejection of Irregular Proposals.**

A Proposal is irregular and the Department may reject such Proposal if the Proposal shows omissions, alterations of form, additions not specified or required, conditional or unauthorized alternate bids, or irregularities of any kind; or if the unit prices are obviously unbalanced, or if the cost is in excess of or below the reasonable cost analysis values, or if the Bidder submits a Proposal which was not generated using the Department's bid software.

When the Department provides for alternate bids in the Proposal Form, make only one entry for each alternate. A Proposal that provides for alternative bids is irregular and the Department may reject such Proposal if the Bidder makes entries for more than one alternate.

## **2-7 Guaranty to Accompany Proposals.**

The Department will not consider any Proposal unless accompanied by a Proposal Guaranty of the character and amount indicated in the Advertisement, and unless made payable to the Florida Department of Transportation. Submit the Proposal with the understanding that the successful Bidder shall furnish a Contract Bond pursuant to the requirements of 3-5.

The Bidder's Proposal Guaranty is binding for all projects included in the Contract awarded to the Contractor pursuant to the provisions of this Subarticle.

## **2-8 Delivery of Proposals.**

**2-8.1 Internet Bid Submittals:** Unless otherwise indicated in the Advertisement, the Proposal may be submitted via the Internet. The Department will not accept responsibility for Internet bids not meeting the time requirement stipulated in the Advertisement.

**2-8.2 Hard Copy Bid Submittals:** Unless otherwise indicated in the Advertisement, the Proposal may be submitted via hard copy. Submit the Proposal in a sealed envelope, bearing on

the outside the name of the Bidder, the Bidder's address, and the Proposal ID of the project for which the Bidder submitted the bid. For Proposals that are submitted by mail, enclose the Proposal in a sealed envelope, marked as directed above. Enclose the sealed envelope in a second outer envelope addressed to the Department, at the place designated in the Advertisement. For a Proposal that is not submitted by mail, deliver the Proposal to the Contracts Office of the Department, or to the place as designated in the Advertisement. The Department will not consider Proposals received after the time set for opening bids. The Department will retain these Proposals unopened.

## **2-9 Withdrawal or Revision of Proposals.**

**2-9.1 Internet Bid Submittals:** A Bidder may withdraw a Proposal any time prior to the bid submittal deadline specified in the Advertisement. The resubmission of any Proposal so withdrawn must be made as a complete Proposal, subject to the provisions of 2-8.

A Bidder may revise a Proposal any time prior to the bid submittal deadline specified in the Advertisement. Revisions may be made via Internet in accordance with 2-8.1 or by fax in accordance with 2-9.2.

The Department will not be responsible for any communications or machine breakdowns, transmission interruptions, delays, or any other problems that interfere with the receipt of revisions to Proposals as required above either at the Bidder's transmitting location, at the Department's receiving location, or anywhere between these locations. Receipt or non-receipt of revisions to a Proposal will not be considered grounds for a bid protest. The Department will not be held responsible if the Bidder cannot complete or submit revisions to a bid due to failure or incomplete delivery of the files submitted via the Internet.

**2-9.2 Hard Copy Bid Submittals:** A Bidder may withdraw or revise a Proposal after submission, provided the Department receives a written request to withdraw or revise the Proposal prior to the time set for opening of bids. The resubmission of any Proposal withdrawn under this provision is subject to the provisions of 2-8.

Legible facsimile (FAX) Proposal changes will be accepted if received in full at the fax number listed in the Bid Solicitation Notice by the time Proposals are due on the day of the letting and provided that all of the following conditions are met:

1. The Bidder's name is the same on the faxed Proposal change as shown on the original Proposal.
2. The Proposal change includes the following:
  - a. The correct Proposal ID.
  - b. The correct bid item number for which the price is being changed and the respective unit price change.
  - c. The correct revised total per item.
  - d. The revised total bid amount.
  - e. The signature of the President or Vice President of the Company.

Faxed Proposal changes failing to meet all of these requirements will not be considered and will not change the original bid.

The Department will not be responsible for any communications or fax machine breakdowns, transmission interruptions, delays, or any other problems that interfere with the receipt of faxed Proposal changes as required above either at the Bidder's fax location, at the Department's fax location, or anywhere between these locations. Receipt or non-receipt of a faxed Proposal change will not be considered grounds for a bid protest.

## **2-10 Opening of Proposals.**

The Department will open and publicly announce Proposals at the time and place indicated in the Advertisement. The Department invites Bidders, their authorized agents, and other interested parties to attend.

## **2-11 Disqualification of Bidders.**

The Department may disqualify any Bidder and reject the Bidder's Proposal or Proposals for any of the following reasons:

1. The submission of more than one Proposal for the same work from an individual, firm, or corporation under the same or a different name.
2. Evidence that one Bidder has a financial interest in the firm of another Bidder for the same work.
3. Evidence of collusion among Bidders. The Department will not recognize a participant in such collusion as a Bidder for any future work of the Department until the Department reinstates such participant as a qualified Bidder.
4. Failure to qualify in accordance with 2-1.
5. Uncompleted work on other projects that, in the judgment of the Department, could hinder or prevent the prompt completion of the proposed work.
6. Failure to pay or satisfactorily settle all bills due for labor and material on other contracts in force at the time of advertisement for bids.
7. Default under a previous contract.
8. Employment of unauthorized aliens in violation of Section 274A (e) of the Immigration and Nationality Act.
9. Falsification on any form required by the Department.
10. The submission of a Proposal that was not solicited by the Department.

## **2-12 Material, Samples and Statement.**

The Department may require that the Bidder furnish a statement of the origin, composition, and manufacture of any and all materials to be used in the construction of the work, together with samples that may be subjected to the tests provided for in these Specifications to determine the materials' quality and fitness for the work.

## SECTION 3 AWARD AND EXECUTION OF CONTRACT

### 3-1 Consideration of Bids.

For the purpose of award, after opening and reading the Proposals, the Department will consider as the bid the correct summation of each unit bid price multiplied by the estimated quantities shown in the Proposal. On this basis, the Department will compare the amounts of each bid and make the results of such comparison available to the public. Until the actual award of the Contract, however, the Department reserves the right to reject any or all Proposals and to waive technical errors that the Department determines, in its sole discretion, to be in the best interest of the State.

The Department reserves the right to delete the bid portion of the utility relocation work from the Contract. When the Department deletes utility relocation work from the Contract, the Department will recalculate the Contract bid tabulations based on the remaining project quantities.

In the event that the Department deletes utility relocation work from the Contract, the utility owner will relocate such utilities in accordance with the backup Utility Relocation Schedule contained in the Contract Documents.

### 3-2 Award of Contract.

**3-2.1 General:** If the Department decides to award the Contract, the Department will award the Contract to the lowest responsible Bidder whose Proposal complies with all the Contract Document requirements. If awarded, the Department will award the Contract within 50 days after the opening of the Proposals, unless the Special Provisions change this time limit, or the Bidder and the Department extend the time period by mutual consent.

Prior to award of the Contract by the Department, the Bidder must provide proof of authorization to conduct business in the State of Florida.

**3-2.2 Bids Exceeding Bidder's Maximum Capacity Rating:** Prior to award of the Contract, the Department will address bids exceeding a Bidder's maximum capacity rating, and the resulting impact on the Bidder's qualification to bid, in accordance with Florida Administrative Code Rules 14-22.003 and 14-22.009.

### 3-3 Cancellation of Award.

The Department reserves the right to cancel the award of any Contract at any time before the execution of the Contract by all parties, with no compensation due any of the Bidders.

### 3-4 Release of Proposal Guaranty.

The Department will release all Proposal Guaranties except those of the two lowest responsible Bidders immediately following the opening and checking of the Proposals. The Department will immediately release the Proposal Guaranty of the two lowest responsible Bidders after the successful Bidder delivers the executed Contract and a satisfactory Contract Bond to the Department, except that the Department will not retain the Proposal Guaranty of the next-to-lowest responsible Bidder longer than 50 days after the opening of the Proposals unless the Department awards the Contract to the next lowest responsible Bidder prior to the expiration of this time limit.

### **3-5 Contract Bond Required.**

**3-5.1 General Requirements of the Contract Bond:** Upon award, furnish to the Department, and maintain in effect throughout the life of the Contract, an acceptable Contract Bond in a sum at least equal to the amount of the Contract. Execute such Contract Bond on Department Form 375-020-27. Obtain the Contract Bond from a Surety licensed to conduct business in the State of Florida, meeting all of the requirements of the laws of Florida and the regulations of the Department, and having the Department's approval. Ensure that the Surety's Florida Licensed Insurance Agent's name, address, and telephone number is clearly stated on the Contract Bond form.

The Department may waive the requirement for all or a portion of a Contract Bond if:

1. The Contract amount is \$250,000 or less, and the Department determines that the project is of a noncritical nature and that nonperformance will not endanger the public health, safety, or property;
2. The Contractor is a qualified nonprofit agency for the blind or for the other severely handicapped under Section 413.036(2), Florida Statutes; or,
3. The Contractor uses a subcontractor that is a qualified nonprofit agency for the blind or for the other severely handicapped under Section 413.036(2), Florida Statutes. However, the Department may not waive more than the amount of the subcontract.

The Department may require alternate means of security if it waives the requirement for a Contract Bond.

**3-5.2 Continued Acceptability of Surety:** Provide a Contract Bond that remains acceptable to the Department throughout the life of the Contract. In the event that the Surety executing the Contract Bond, although acceptable to the Department at the time of execution of the Contract, subsequently becomes insolvent or bankrupt, or becomes unreliable or otherwise unsatisfactory due to any cause that becomes apparent after the Department's initial approval of the Surety, then the Department may require that the Contractor immediately replace the Contract Bond with a similar Contract Bond issued by a Surety that is reliable and acceptable to the Department. In such an event, the Department will bear all costs of the premium for the new Contract Bond, after deducting any amounts that are returned to the Contractor from their payment of premium on the original Contract Bond.

**3-5.3 Default by Contractor:** In case of default on the part of the Contractor, the Department will charge against the Contract Bond all expenses for services incidental to ascertaining and collecting losses under the Contract Bond, including accounting, engineering, and legal services, together with any and all costs incurred in connection with renegotiation of the Contract.

**3-5.4 Surety to Furnish Legal Defense as to Payment and Performance Claims or Suits:** The Surety shall indemnify and provide defense for the Department when called upon to do so for all claims or suits against the Department, by third parties, pertaining to Contractor payment or performance issues arising out of the Contract where the Contractor has failed to timely provide the Department such defense. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved Contract amount, which shall be the original Contract amount as may be modified by subsequent Supplemental Agreements.

**3-5.5 Liability for Wrongful or Criminal Act by Contractor:** The principal and Surety executing the Contract Bond shall be liable to the State in any civil action that might be instituted

by the Department or any officer of the State authorized in such cases, for double any amount in money or property the State might lose, or be overcharged, or otherwise be defrauded of by any wrongful or criminal act of the Contractor, their agent or their employees.

### **3-6 Execution of Contract and Contract Bond.**

Within 10 calendar days, excluding Saturdays, Sundays, and State holidays, after receipt of the Contract award, execute the necessary agreements to enter into a Contract with the Department and return the Contract along with a satisfactory Contract Bond and documentation evidencing all insurance required by 7-13 to the Department's Contracts Office that awarded the Contract. For each calendar day, excluding Saturdays, Sundays, and State holidays, the Contractor is late in delivering to the Department's Contracts Office all required documents in properly executed form, the Department will deduct one day from the Contract Time. The Department will not be bound by any Proposal until the Department executes the associated Contract.

The Department will execute the Contract within 5 calendar days, excluding Saturdays, Sundays, and State holidays, after receipt of the signed Contract, necessary agreements, Contract Bond, and all other required documents from the Contractor.

### **3-7 Failure by Contractor to Execute Contract and Furnish Bond.**

In the event that the Contractor fails to execute the awarded Contract and to submit an acceptable Contract Bond, as prescribed in 3-5 and 3-6, within 10 calendar days, excluding Saturdays, Sundays, and State holidays, of receipt of the Contract award, the Department may annul the award, causing the Contractor to forfeit the Proposal Guaranty to the Department as liquidation of damages sustained. The Department may then award the Contract to the next lowest responsible Bidder, re-advertise, or accomplish the Work using alternate resources.

### **3-8 Audit of Contractor's Records.**

Upon execution of the Contract, the Department reserves the right to conduct an audit of the Contractor's records pertaining to the project. The Department or its representatives may conduct an audit, or audits, at any time prior to final payment, or thereafter pursuant to 5-13. The Department may also require submittal of the records from either the Contractor or any subcontractor or material supplier. As the Department deems necessary, records include all books of account, supporting documents, and papers pertaining to the cost of performance of the Work.

Retain all records pertaining to the Contract for a period of not less than three years from the date of the Engineer's final acceptance of the project, unless a longer minimum period is otherwise specified. Upon request, make all such records available to the Department or its representative(s). For the purpose of this Article, records include but are not limited to all books of account, supporting documents, and papers that the Department deems necessary to ensure compliance with the provisions of the Contract Documents.

If the Contractor fails to comply with these requirements, the Department may disqualify or suspend the Contractor from bidding on or working as a subcontractor on future Contracts.

Ensure that the subcontractors provide access to their records pertaining to the project upon request by the Department.

Comply with Section 20.055(5), Florida Statutes, and incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.



### **3-9 Public Records.**

The Contractor shall comply with Chapter 119, Florida Statutes. Specifically, the Contractor shall:

1. Keep and maintain public records required by the Department to perform the service.
2. Upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the Department.
4. Upon completion of the Contract, transfer at no cost to the Department, all public records in possession of the Contractor or keep and maintain public records required by the Department to perform the service. If the Contractor transfers all public records to the Department upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

Failure to comply with Chapter 119, Florida Statutes and the Article 3-9 shall be grounds for immediate unilateral termination of this Contract by the Department pursuant to 8-9.1.

## SECTION 4 SCOPE OF THE WORK

### 4-1 Intent of Contract.

The intent of the Contract is to provide for the construction and completion in every detail of the work described in the Contract. Furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the Contract Documents.

Upon execution of the Contract, conduct all written communication associated with the Contract using a paperless electronic means. When the Specifications require a submission of documentation, such documents must be submitted and exchanged electronically using the Department provided web-based collaboration site.

All documents requiring a signature must be executed electronically by both parties in accordance with Chapter 668, Florida Statutes, and have the same force and effect as a written signature. All persons requiring access to the collaboration site shall be identified during the preconstruction conference. Persons may be added or removed during the life of the Contract on an as needed basis. All signatories must acquire a digital signature certificate.

### 4-2 Work not covered by Standard Specifications.

Proposed construction and any contractual requirements not covered by these Standard Specifications may be covered by Contract Plan notes or by Supplemental Specifications or Special Provisions for the Contract, and all requirements of such Supplemental Specifications or Special Provisions shall be considered as a part of these Specifications.

### 4-3 Alteration of Plans or of Character of Work.

**4-3.1 General:** The Engineer reserves the right to make, at any time prior to or during the progress of the work, such increases or decreases in quantities, whether a significant change or not, and such alterations in the details of construction, whether a substantial change or not, including but not limited to alterations in the grade or alignment of the road or structure or both, as may be found necessary or desirable by the Engineer. Such increases, decreases or alterations shall not constitute a breach of Contract, shall not invalidate the Contract, nor release the Surety from any liability arising out of this Contract or the Surety bond. The Contractor agrees to perform the work, as altered, the same as if it had been a part of the original Contract.

The term “significant change” applies only when:

1. The Engineer determines that the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction, or

2. A major item of work, as defined in 1-3, is increased in excess of 125% or decreased below 75% of the original Contract quantity. The Department will apply any price adjustment for an increase in quantity only to that portion in excess of 125% of the original Contract item quantity in accordance with 4-3.2 below. In the case of a decrease below 75% the Department will only apply a price adjustment for the additional costs that are a direct result of the reduction in quantity.

In (1) above, the determination by the Engineer shall be conclusive. If the determination is challenged by the Contractor in any proceeding, the Contractor must establish

by clear and convincing proof that the determination by the Engineer was without any reasonable basis.

**4-3.2 Increase, Decrease or Alteration in the Work:** The Engineer reserves the right to make alterations in the character of the work which involve a substantial change in the nature of the design or in the type of construction or which materially increases or decreases the cost or time of performance. Such alteration shall not constitute a breach of Contract, shall not invalidate the Contract or release the Surety.

Notwithstanding that the Contractor shall have no formal right whatsoever to any extra compensation or time extension deemed due by the Contractor for any cause unless and until the Contractor follows the procedures set forth in 5-12.2 for preservation, presentation and resolution of the claim, the Contractor may at any time, after having otherwise timely submitted a notice of intent to claim or preliminary time extension request pursuant to 5-12.2 and 8-7.3.2, submit to the Department a request for equitable adjustment of compensation or time or other dispute resolution proposal. The Contractor shall in any request for equitable adjustment of compensation, time, or other dispute resolution proposal certify under oath and in writing, in accordance with the formalities required by Florida law, that the request is made in good faith, that any supportive data submitted is accurate and complete to the Contractor's best knowledge and belief, and that the amount of the request accurately reflects what the Contractor in good faith believes to be the Department's responsibility. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor. Any such certified statements of entitlement and costs shall be subject to the audit provisions set forth in 5-12.14. While the submittal or review of a duly certified request for equitable adjustment shall neither create, modify, nor activate any legal rights or obligations as to the Contractor or the Department, the Department will review the content of any duly certified request for equitable adjustment or other dispute resolution proposal, with any further action or inaction by the Department thereafter being in its sole discretion. Any request for equitable adjustment that fails to fully comply with the certification requirements will not be reviewed by the Department.

The monetary compensation provided for below constitutes full and complete payment for such additional work and the Contractor shall have no right to any additional monetary compensation for any direct or indirect costs or profit for any such additional work beyond that expressly provided below. The Contractor shall be entitled to a time extension only to the extent that the performance of any portion of the additional work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. All time related costs for actual performance of such additional work are included in the compensation already provided below and any time extension entitlement hereunder will be without additional monetary compensation. The Contractor shall have no right to any monetary compensation or damages whatsoever for any direct or indirect delay to a controlling work item arising out of or in any way related to the circumstances leading up to or resulting from additional work (but not relating to the actual performance of the additional work, which is paid for as otherwise provided herein), except only as provided for under 5-12.6.2.1.

**4-3.2.1 Allowable Costs for Extra Work:** The Engineer may direct in writing that extra work be done and, at the Engineer's sole discretion, the Contractor will be paid pursuant to an agreed Supplemental Agreement or in the following manner:

1. Labor and Burden: The Contractor will receive payment for actual costs of direct labor and burden for the additional or unforeseen work. Labor includes foremen

actually engaged in the work; and will not include project supervisory personnel nor necessary on-site clerical staff, except when the additional or unforeseen work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. Compensation for project supervisory personnel, but in no case higher than a Project Manager’s position, shall only be for the pro-rata time such supervisory personnel spent on the contract. In no case shall an officer or director of the Company, nor those persons who own more than 1% of the Company, be considered as project supervisory personnel, direct labor or foremen hereunder.

Payment for burden shall be limited solely to the following:

Table 4-1	
Item	Rate
FICA	Rate established by Law
FUTA/SUTA	Rate established by Law
Medical Insurance	Actual
Holidays, Sick & Vacation benefits	Actual
Retirement benefits	Actual
Workers Compensation	Rates based on the National Council on Compensation Insurance basic rate tables adjusted by Contractor’s actual experience modification factor in effect at the time of the additional work or unforeseen work.
Per Diem	Actual but not to exceed State of Florida’s rate
Insurance*	Actual
*Compensation for Insurance is limited solely to General Liability Coverage and does not include any other insurance coverage (such as, but not limited to, Umbrella Coverage, Automobile Insurance, etc.).	

At the Pre-construction conference, certify to the Engineer the following:

- a. A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the contract,
- b. Actual Rate for items listed in Table 4-1,
- c. Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and,
- d. Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

Such certification must be made by an officer or director of the Contractor with authority to bind the Contractor. Timely certification is a condition precedent to any right of the Contractor to recover compensations for such costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such costs. Any subsequent changes shall be certified to the Engineer as part of the cost proposal or seven calendar days in advance of performing such extra work.

2. Materials and Supplies: For materials accepted by the Engineer and used on the project, the Contractor will receive the actual cost of such materials incorporated into the work, including Contractor paid transportation charges (exclusive of equipment as hereinafter

set forth). For supplies reasonably needed for performing the work, the Contractor will receive the actual cost of such supplies.

3. Equipment: For any machinery or special equipment (other than small tools), including fuel and lubricant, the Contractor will receive 100% of the “Rental Rate Blue Book” for the actual time that such equipment is in operation on the work, and 50% of the “Rental Rate Blue Book” for the time the equipment is directed to standby and remain on the project site, to be calculated as indicated below. The equipment rates will be based on the latest edition (as of the date the work to be performed begins) of the “Rental Rate Blue Book for Construction Equipment” as published by EquipmentWatch, a division of Informa Business Media, Inc., using all instructions and adjustments contained therein and as modified below. On all projects, the Engineer will adjust the rates using regional adjustments and Rate Adjustment Tables according to the instructions in the “Rental Rate Blue Book.”

Allowable Equipment Rates will be established as set out below:

a. Allowable Hourly Equipment Rate = Monthly

Rate/176 x Adjustment Factors x 100%.

b. Allowable Hourly Operating Cost = Hourly Operating

Cost x 100%.

c. Allowable Rate Per Hour = Allowable Hourly

Equipment Rate + Allowable Hourly Operating Cost.

d. Standby Rate = Allowable Hourly Equipment

Rate x 50%.

The Monthly Rate is The Basic Machine Rate Plus Any Attachments. Standby rates will apply when equipment is not in operation and is directed by the Engineer to standby at the project site when needed again to complete work and the cost of moving the equipment will exceed the accumulated standby cost. Standby rates will not apply on any day the equipment operates for eight or more hours. Standby payment will be limited to only that number of hours which, when added to the operating time for that day equals eight hours. Standby payment will not be made on days that are not normally considered work days on the project.

The Department will allow for the cost of transporting the equipment to and from the location at which it will be used. If the equipment requires assembly or disassembly for transport, the Department will pay for the time to perform this work at the rate for standby equipment.

Equipment may include vehicles utilized only by Labor, as defined above.

4. Indirect Costs, Expenses, and Profit: Compensation for all indirect costs, expenses, and profit of the Contractor, including but not limited to overhead of any kind, whether jobsite, field office, division office, regional office, home office, or otherwise, is expressly limited to the greater of either (a) or (b) below:

a. Solely a mark-up of 17.5% on the payments in (1) through (3),

above.

1. Bond: The Contractor will receive compensation for any premium for acquiring a bond for such additional or unforeseen work at the original Contract bond rate paid by the Contractor. No compensation for bond premium will be allowed for additional or unforeseen work paid by the Department via initial contingency pay item.

2. The Contractor will be allowed a markup of 10% on the first \$50,000 and a markup of 5% on any amount over \$50,000 on any subcontract directly related to the additional or unforeseen work. Any such subcontractor mark-up will be allowed only by the prime Contractor and a first tier subcontractor, and the Contractor must elect the markup for any eligible first tier subcontractor to do so.

b. Solely the formula set forth below and only as applied solely as to such number of calendar days of entitlement that are in excess of ten cumulative calendar days as defined below.

$$D = \frac{A \times C}{B}$$

Where A = Original Contract Amount

B = Original Contract Time

C = 8%

D = Average Overhead Per Day

Cumulative Calendar Days is defined as the combined total number of calendar days granted as time extensions due to either extra work, excluding overruns to existing contract items, that extend the duration of the project or delay of a controlling work item caused solely by the Department, or the combined total number of calendar days for which a claim of entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined to be in favor of the Contractor.

No compensation, whatsoever, will be paid to the Contractor for any jobsite overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when combined together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, Holidays, and Special Events.

Further, for (a) or (b) above, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay.

**4-3.2.2 Subcontracted Work:** Compensation for the additional or unforeseen work performed by a subcontractor shall be limited solely to that provided for in 4-3.2.1 (1), (2), (3) and (4)(a). In addition, the Contractor compensation is expressly limited to the greater of the total provided in either 4-3.2.1(4)(a) or (4)(b), except that the Average Overhead Per-Day calculation is as follows:

$$Ds = \frac{As \times C}{B}$$

Where As = Original Contract Amount minus Original Subcontract amounts(s)\*

B = Original Contract Time

C = 8%

Ds = Average Overhead Per-Day

\* deduct Original Subcontract Amount(s) of subcontractor(s) performing the work

The subcontractor may receive compensation for any premium for acquiring a bond for the additional or unforeseen work; provided, however, that such payment for additional subcontractor bond will only be paid upon presentment to the Department of clear and convincing proof that the subcontractor has actually submitted and paid for separate bond premiums for such additional or unforeseen work in such amount and that the subcontractor was required by the Contractor to acquire a bond.

The Contractor shall require the subcontractor to submit a certification, in accordance with 4-3.2.1 (1), as part of the cost proposal and submit such to the Engineer. Such certification must be made by an officer or director of the subcontractor with authority to bind the subcontractor. Timely certification is a condition precedent to any right of the Contractor to recover compensation for such subcontractor costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such subcontractor costs.

**4-3.3 No Waiver of Contract:** Changes made by the Engineer will not be considered to waive any of the provisions of the Contract, nor may the Contractor make any claim for loss of anticipated profits because of the changes, or by reason of any variation between the approximate quantities and the quantities of work actually performed. All work shall be performed as directed by the Engineer and in accordance with the Contract Documents.

**4-3.4 Conditions Requiring a Supplemental Agreement or Unilateral Payment:** A Supplemental Agreement or Unilateral Payment will be used to clarify the Plans and Specifications of the Contract; to provide for unforeseen work, grade changes, or alterations in the Plans which could not reasonably have been contemplated or foreseen in the original Plans and Specifications; to change the limits of construction to meet field conditions; to provide a safe and functional connection to an existing pavement; to settle documented Contract claims; to make the project functionally operational in accordance with the intent of the original Contract and subsequent amendments thereto.

A Supplemental Agreement or Unilateral Payment may be used to expand the physical limits of the project only to the extent necessary to make the project functionally operational in accordance with the intent of the original Contract. The cost of any such agreement extending the physical limits of the project shall not exceed \$100,000 or 10% of the original Contract price, whichever is greater.

Perform no work to be covered by a Supplemental Agreement or Unilateral Payment before written authorization is received from the Engineer. The Engineer's written authorization will set forth sufficient work information to allow the work to begin. The work

activities, terms and conditions will be reduced to written Supplemental Agreement or Unilateral Payment form promptly thereafter. No payment will be made on a Supplemental Agreement or Unilateral Payment prior to the Department's approval of the document.

**4-3.5 Extra Work:** Extra work authorized in writing by the Engineer will be paid in accordance with the formula in 4-3.2. Such payment will be the full extent of all monetary compensation entitlement due to the Contractor for such extra work. Any entitlement to a time extension due to extra work will be limited solely to that provided for in 4-3.2 for additional work.

**4-3.6 Connections to Existing Pavement, Drives and Walks:** Generally adhere to the limits of construction at the beginning and end of the project as detailed in the Plans. However, if the Engineer determines that it is necessary to extend the construction in order to make suitable connections to existing pavement, the Engineer will authorize such a change in writing.

For necessary connections to existing walks and drives that are not indicated in the Plans, the Engineer will submit direction regarding the proper connections in accordance with the Standard Plans.

**4-3.7 Differing Site Conditions:** During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the Contractor disturbs the conditions or performs the affected work.

Upon receipt of written notification of differing site conditions from the Contractor, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly. The Engineer will notify the Contractor whether or not an adjustment of the Contract is warranted.

The Engineer will not allow a Contract adjustment for a differing site condition unless the Contractor has submitted the required written notice.

The Engineer will not allow a Contract adjustment under this clause for any effects caused to any other Department or non-Department projects on which the Contractor may be working.

**4-3.8 Changes Affecting Utilities:** The Contractor shall be responsible for identifying and assessing any potential impacts to a utility that may be caused by the changes proposed by the Contractor, and the Contractor shall at the time of making the request for a change notify the Department in writing of any such potential impacts to utilities.

Department approval of a Contractor proposed change does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the design or construction activities from those in the original Contract Specifications, Design Plans (including Traffic Control Plans) or other Contract Documents and which effect a change in utility work different from that shown in the Utility Plans, joint project agreements or utility relocation schedules.

#### **4-3.9 Cost Savings Initiative Proposal:**

##### **4-3.9.1 Intent and Objective:**



1. This Subarticle applies to any cost reduction proposal (hereinafter referred to as a Proposal) that the Contractor initiates and develops for the purpose of refining the Contract to increase cost effectiveness or significantly improve the quality of the end result. A mandatory Cost Savings Initiative Workshop will be held prior to Contract Time beginning for the Contractor and Department to discuss potential Proposals. This mandatory workshop can only be eliminated if agreed to in writing by both the Contractor and Department. This Subarticle does not, however, apply to any such proposal unless the Contractor identifies it at the time of its submission to the Department as a proposal submitted pursuant to this Subarticle.

2. The Department will consider Proposals that would result in net savings to the Department by providing a decrease in the cost of the Contract. Proposals must result in savings without impairing essential functions and characteristics such as safety, service, life, reliability, economy of operation, ease of maintenance, aesthetics and necessary standard design features. The Department will not recognize the Contractor's correction of plan errors that result in a cost reduction, as a Proposal. Deletions of work, approved by the Engineer which are not directly associated with or integral to a Proposal will be handled as full credits to the Department for the work deleted.

3. The Department shall have the right to reject, at its discretion, any Proposal submitted that proposes a change in the design of the pavement system or that would require additional right-of-way. Pending the Department's execution of a formal supplemental agreement implementing an approved Proposal, the Contractor shall remain obligated to perform the work in accordance with the terms of the existing Contract. The Department may grant time extensions to allow for the time required to develop and review a Proposal.

4. For potential Proposals not discussed at the Cost Savings Initiative Workshop, a mandatory concept meeting will be held for the Contractor and Department to discuss the potential Proposal prior to development of the Proposal. This mandatory meeting can only be eliminated if agreed to in writing by both the Contractor and Department.

**4-3.9.2 Subcontractors:** The Department encourages the Contractor to include the provisions of this Subarticle in Contracts with subcontractors and to encourage submission of Proposals from subcontractors. However, it is not mandatory to submit Proposals to the Department or to accept or transmit subcontractor proposed Proposals to the Department.

**4-3.9.3 Data Requirements:** As a minimum, submit the following information with each Proposal:

1. a description of the difference between the existing Contract requirement, including any time extension request, and the proposed change, and the comparative advantages and disadvantages.

2. separate detailed cost estimates for both the existing Contract requirement and the proposed change. Break down the cost estimates by pay item numbers indicating quantity increases or decreases and deleted pay items. Identify additional proposed work not covered by pay items within the Contract, by using pay item numbers in the Basis of Estimates Manual. In preparing the estimates, include overhead, profit, and bond within pay items in the Contract. Separate pay item(s) for the cost of overhead, profit, and bond will not be allowed.

3. an itemization of the changes, deletions or additions to plan details, plan sheets, Standard Plans and Specifications that are required to implement the Proposal if the Department adopts it. Submit preliminary plan drawings sufficient to describe the proposed changes.

4. engineering or other analysis in sufficient detail to identify and describe specific features of the Contract that must be changed if the Department accepts the Proposal with a proposal as to how these changes can be accomplished and an assessment of their effect on other project elements. The Department may require that engineering analyses be performed by a prequalified consultant in the applicable class of work. Support all design changes that result from the Proposal with drawings and computations signed and sealed by the Contractor's Engineer of Record. Written documentation or drawings will be submitted clearly delineating the responsibility of the Contractor's Engineer of Record.

5. the date by which the Department must approve the Proposal to obtain the total estimated cost reduction during the remainder of the Contract, noting any effect on the Contract completion time or delivery schedule.

6. a revised project schedule that would be followed upon approval of the Proposal. This schedule would include submittal dates and review time for the Department and Peer reviews.

**4-3.9.4 Processing Procedures:** Submit Proposals to the Engineer or his duly authorized representative. The Department will process Proposals expeditiously; however, the Department is not liable for any delay in acting upon a Proposal submitted pursuant to this Subarticle. The Contractor may withdraw, in whole or in part, a Proposal not accepted by the Department within the period specified in the Proposal. The Department is not liable for any Proposal development cost in the case where the Department rejects or the Contractor withdraws a Proposal.

The Engineer is the sole judge of the acceptability of a Proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. In determining the estimated net savings, the Department reserves the right to disregard the Contract bid prices if, in the judgment of the Engineer, such prices do not represent a fair measure of the value of work to be performed or to be deleted.

Prior to approval, the Engineer may modify a Proposal, with the concurrence of the Contractor, to make it acceptable. If any modification increases or decreases the net savings resulting from the Proposal, the Department will determine the Contractor's fair share upon the basis of the Proposal as modified and upon the final quantities. The Department will compute the net savings by subtracting the revised total cost of all bid items affected by the Proposal from the total cost of the same bid items as represented in the original Contract.

Prior to approval of the Proposal that initiates the supplemental agreement, submit acceptable Contract-quality plan sheets revised to show all details consistent with the Proposal design.

**4-3.9.5 Computations for Change in Contract Cost of Performance:** If the Proposal is adopted, the Contractor's share of the net savings as defined hereinafter represents full compensation to the Contractor for the Proposal.

The Department will not include its costs to process and implement a Proposal in the estimate. However, the Department reserves the right, where it deems such action appropriate, to require the Contractor to pay the Department's cost of investigating and implementing a Proposal as a condition of considering such proposal. When the Department imposes such a condition, the Contractor shall accept this condition in writing, authorizing the Department to deduct amounts payable to the Department from any monies due or that may become due to the Contractor under the Contract.

#### **4-3.9.6 Conditions of Acceptance for Major Design Modifications of**

**Category 2 Bridges:** A Proposal that proposes major design modifications of a category 2 bridge, as determined by the Engineer, shall have the following conditions of acceptance:

All bridge Plans relating to the Proposal shall undergo an independent peer review conducted by a single independent engineering firm referred to for the purposes of this article as the Independent Review Engineer who is not the originator of the Proposal design, and is pre-qualified by the Department in accordance with Rule 14-75, Florida Administrative Code. The independent peer review is intended to be a comprehensive, thorough verification of the original work, giving assurance that the design is in compliance with all Department requirements. The Independent Review Engineer's comments, along with the resolution of each comment, shall be submitted to the Department. The Independent Review Engineer shall sign and seal the submittal cover letter stating that all comments have been adequately addressed and the design is in compliance with the Department requirements. If there are any unresolved comments the Independent Review Engineer shall specifically list all unresolved issues in the signed and sealed cover letter.

The Contractor shall designate a primary engineer responsible for the Proposal design and as such will be designated as the Contractors Engineer of Record for the Proposal design. The Department reserves the right to require the Contractor's Engineer of Record to assume responsibility for design of the entire structure.

New designs and independent peer reviews shall be in compliance with all applicable Department, FHWA and AASHTO criteria requirements including bridge load ratings.

**4-3.9.7 Sharing Arrangements:** If the Department approves a Proposal, the Contractor shall receive 50% of the net reduction in the cost of performance of the Contract as determined by the final negotiated agreement between the Contractor and the Department. The net reduction will be determined by subtracting from the savings of the construction costs the reasonable documented engineering costs incurred by the contractor to design and develop a Proposal. The reasonable documented engineering costs will be paid by the Department. Engineering costs will be based on the consultant's certified invoice and may include the costs of the Independent Review Engineer in 4-3.9.6. The total engineering costs to be subtracted from the savings to determine the net reduction will be limited to 25% of the construction savings and shall not include any markup by the Contractor or the costs for engineering services performed by the Contractor.

**4-3.9.8 Notice of Intellectual Property Interests and Department's Future Rights to a Proposal:**

**4-3.9.8.1 Notice of Intellectual Property Interests:** The Contractor's Proposal submittal shall identify with specificity any and all forms of intellectual property rights that either the Contractor or any officer, shareholder, employee, consultant, or affiliate, of the Contractor, or any other entity who contributed in any measure to the substance of the Contractor's Proposal development, have or may have that are in whole or in part implicated in the Proposal. Such required intellectual property rights notice includes, but is not limited to, disclosure of any issued patents, copyrights, or licenses; pending patent, copyright or license applications; and any intellectual property rights that though not yet issued, applied for or intended to be pursued, could nevertheless otherwise be subsequently the subject of patent, copyright or license protection by the Contractor or others in the future. This notice requirement does not extend to intellectual property rights as to stand-alone or integral components of the

Proposal that are already on the Department's Approved Product List (APL) or Standard Plans, or are otherwise generally known in the industry as being subject to patent or copyright protection.

**4-3.9.8.2 Department's Future Rights to a Proposal:** Notwithstanding 7-3 nor any other provision of the Standard Specifications, upon acceptance of a Proposal, the Contractor hereby grants to the Department and its contractors (such grant being expressly limited solely to any and all existing or future Department construction projects and any other Department projects that are partially or wholly funded by or for the Department) a royalty-free and perpetual license under all forms of intellectual property rights to manufacture, to use, to design, to construct, to disclose, to reproduce, to prepare and fully utilize derivative works, to distribute, display and publish, in whole or in part, and to permit others to do any of the above, and to otherwise in any manner and for any purpose whatsoever do anything reasonably necessary to fully utilize any and all aspects of such Proposal on any and all existing and future construction projects and any other Department projects.

Contractor shall hold harmless, indemnify and defend the Department and its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorneys' fees), which are incurred or are suffered by any breach of the foregoing grants, and regardless of whether such intellectual property rights were or were not disclosed by the Contractor pursuant to 4-3.9.8.1, unless the Department has by express written exception in the Proposal acceptance process specifically released the Contractor from such obligation to hold harmless, indemnify and defend as to one or more disclosed intellectual property rights.

#### **4-4 Unforeseeable Work.**

When the Department requires work that is not covered by a price in the Contract and such work does not constitute a "Significant Change" as defined in 4-3.1, and the Department finds that such work is essential to the satisfactory completion of the Contract within its intended scope, the Department will make an adjustment to the Contract. The Engineer will determine the basis of payment for such an adjustment in a fair and equitable amount.

#### **4-5 Rights in and Use of Materials Found on the Site of the Work.**

**4-5.1 Ownership and Disposal of Existing Materials:** Take ownership and dispose of all materials that are not designated as the property of other parties, in both roadway and structures, found on the right-of-way, and all material in structures designated for removal. Such materials do not include earth or other excavated material required for the construction of the project. During construction, the Contractor may use materials from existing structures that are required to be removed and that are designated to remain the property of the Department. Do not cut or otherwise damage such material during removal unless the Engineer gives permission to do so. Store material in an accessible location as the Engineer directs. The Department is not responsible for the quality or quantity of any material salvaged.

**4-5.2 Ornamental Trees and Shrubs:** Take ownership of all ornamental trees or shrubs existing in the right-of-way that are required to be removed for the construction operations and which are not specifically designated in the Plans to be reset, or to be removed by others prior to the construction operations.

#### **4-6 Final Cleaning Up of Right-of-Way.**

Upon completion of the work, and before the Department accepts the work and makes final payment, remove from the right-of-way and adjacent property all falsework, equipment, surplus and discarded materials, rubbish and temporary structures; restore in an acceptable manner all property, both public and private, that has been damaged during the prosecution of the work; and leave the waterways unobstructed and the roadway in a neat and presentable condition throughout the entire length of the work under Contract. Do not dispose of materials of any character, rubbish or equipment, on abutting property, with or without the consent of the property owners. The Engineer will allow the Contractor to temporarily store equipment, surplus materials, usable forms, etc., on a well-kept site owned or leased by the Contractor, adjacent to the project. However, do not place or store discarded equipment, materials, or rubbish on such a site.

Shape and dress areas adjacent to the project right-of-way that were used as plant sites, materials storage areas or equipment yards when they are no longer needed for such purposes. Restore these areas in accordance with 7-11.1 and 7-11.2. Grass these areas when the Engineer directs.

## SECTION 5 CONTROL OF THE WORK

### 5-1 Plans and Working Drawings.

**5-1.1 Contract Documents:** Have available the Contract Documents on the worksite at all times.

**5-1.2 Department's Plans:** Plans consist of general drawings showing such details as are necessary to give a comprehensive idea of the construction contemplated. In general, roadway plans will show alignment, profile grades, typical sections and general plan view details. Cross sectional views maybe provided or created from provided surface models. In general, structure plans will show in detail all dimensions of the work contemplated. When the structure plans do not show the dimensions in detail, they will show general features and such details as are necessary to give a comprehensive idea of the structure.

Elevations and B.M. Datum shown are North American Vertical Datum 1988 (NAVD-1988), National Geodetic Vertical Datum of 1929 (NGVD-1929), or other datum as noted in the Plans.

The existing surface is a combination of the following:

1. The natural ground or the original ground line,
2. The bottom of the existing pavement,
3. The bottom of existing features removed by clearing and grubbing,
4. The bottom of the existing base, if the base is to be removed,

The finished graded surface includes the completed grades of side slopes, unpaved shoulders, and the bottom of the base for flexible or rigid pavement.

**5-1.3 Alterations in Plans:** The Department will issue, in writing, all authorized alterations affecting the requirements and information given on the approved Plans.

### 5-1.4 Shop Drawings:

**5-1.4.1. Definitions:** In addition to the definitions below, also refer to Section 1, Definitions and Terms.

1. Bracing: Temporary structural member(s) placed between beams, girders, piles, precast columns, etc. to provide stability during construction activities.
2. Construction Affecting Public Safety: Construction that may jeopardize public safety such as structures and construction operations spanning over or adjacent to functioning vehicular roadways, pedestrian walkways, railroads, navigable waterways and walls supporting fill sections or excavations immediately adjacent to functioning roadways. Construction Affecting Public Safety may also apply to the construction or demolition of a bridge with continuous beams or girders if traffic is being placed under one of the spans within the unit. It does not apply to those areas of the site outside the limits of normal public access. Adjacent as used above applies to any project or property where normal construction operations could impact functioning vehicular roadways, pedestrian walkways, railroads, and navigable waterways.
3. Contractor Originated Designs: Items which the Contract Documents require the Contractor to design, detail and incorporate into the permanent works.
4. Detailer: The steel detailer that prepares the steel shop drawings for the fabrication, geometry and fit-up for all steel members in accordance with the Plans.
5. Falsework: Any temporary construction work used to support the permanent structure until it becomes self-supporting. Falsework includes steel or timber beams,

girders, columns, bracing, piles and foundations, and any proprietary equipment including modular shoring frames, post shores, and adjustable horizontal shoring.

6. Formwork: Any structure or mold used to retain plastic or fluid concrete in its designated shape until it hardens. Formwork may be comprised of common materials such as wood or metal sheets, battens, soldiers and walers, ties, proprietary forming systems such as stay-in-place metal forms, and proprietary supporting bolts, hangers and brackets. Formwork may be either permanent formwork requiring a shop drawing submittal such as stay-in-place metal or concrete forms or may be temporary formwork which requires certification by the Specialty Engineer for Construction Affecting Public Safety and for Major and Unusual Structures.

7. Major and Unusual Structures: Bridges of complex design. Generally, this includes the following types of structures:

- a. Bridges with an individual span longer than 300 feet.
- b. Structurally continuous superstructures with spans over 150 feet.
- c. Steel box and plate girder bridges.
- d. Concrete or steel straddle piers and straddle pier caps.
- e. Steel truss bridges including proprietary pedestrian steel truss spans not satisfying the Category 1 conditions of FDOT Design Manual 266.4.
- f. Concrete segmental, post-tensioned girder bridges and post-tensioned substructures.
- g. Cable stayed, extradosed or suspension bridges.
- h. Arch bridges.
- i. Tunnels.
- j. All movable bridges (including specifically structural, electrical and mechanical components).
- k. Rehabilitation, widening, lengthening or jacking of any of the above structures.

8. Permanent Works: All the permanent structures and parts thereof required of the completed Contract.

9. QA/QC Shop Drawing Check Prints: The Engineer of Record is responsible for conducting a review of all shop drawings regardless of whether the shop drawing is originated by the Engineer of Record or by others. QA/QC Shop Drawing Check Prints shall consist of highlighting items that the EOR is able to verify based on the EOR's plans and design information on each sheet reviewed. Each sheet shall be initialed by the reviewer. QA/QC Shop Drawing Check Prints shall be submitted to the Department along with the stamped Shop Drawing.

10. Scaffolding: An elevated work platform used to support workers, materials and equipment, but not intended to support the structure.

11. Shop Drawings: A shop drawing is a drawing or set of drawings produced by the contractor, supplier, manufacturer, subcontractor, or fabricator for prefabricated components. Shop drawings also include all working drawings, erection plans, associated trade literature, material cut-sheets, calculations, schedules, erection manuals, geometry control manuals and other manuals and similar documents submitted by the Contractor to define some portion of the project work. The type of work includes both permanent and temporary works as appropriate to the project.

12. Shoring: A component of falsework such as horizontal, vertical or inclined support members. In this Section, this term is interchangeable with falsework.

13. Special Erection Equipment: Includes launching gantries, beam and winch equipment, form travelers, segment lifters, beam shifters, erection trusses, launching noses or similar items made purposely for construction of the structure. It does not apply to commonly available proprietary construction equipment such as cranes.

14. Temporary Works: Any temporary construction work necessary for the construction of the permanent works. This includes but is not limited to bracing, falsework, formwork, scaffolding, shoring, stability towers, strong-backs, counterweights, temporary earthworks, sheeting, cofferdams, and special erection equipment.

**5-1.4.2 Shop Drawing Submittal and Review Requirements:** See table below for shop drawing submittal and review requirements.

Table 5-1 Submittal and Review Requirements					
Shop Drawing for:	Originated by Specialty Engineer Not Signed and Sealed	Originated by Detailer Not Signed and Sealed	Originated by Specialty Engineer Signed and Sealed	Originated by Contractor's EOR Signed and Sealed	Requires Review, QA/QC Shop Drawing Check prints and disposition stamp by Design EOR
Steel Fabrication Drawings		Originator			Reviewer
Steel Erection Plan			Originator		Reviewer
Geometry Control Manual				Originator	Reviewer
Segmental Erection Manual				Originator	Reviewer
Segmental Shop Drawings					Reviewer
Post-tensioning Mock-up Plan			Originator		Reviewer
Post-tensioning Systems <sub>1</sub>			Originator		Reviewer
Pretensioned Prestressed Concrete Products Containing FRP Bars or Strands Excluding Standard Piles and Sheet Piles			Originator		Reviewer



Table 5-1  
Submittal and Review Requirements

Shop Drawing for:	Originated by Specialty Engineer Not Signed and Sealed	Originated by Detailer Not Signed and Sealed	Originated by Specialty Engineer Signed and Sealed	Originated by Contractor's EOR Signed and Sealed	Requires Review, QA/QC Shop Drawing Check prints and disposition stamp by Design EOR
Temporary Works Affecting Public Safety <sub>2</sub>			Originator		Reviewer
Demolition Plans of Bridges with Continuous Beams or Girders Where One Span Within the Unit is Over Traffic			Originator		Reviewer
Prefabricated Bridge Elements and System Connection Mock-Up Plans			Originator		Reviewer
Bridge Formwork Including SIP Forms			Originator		Reviewer
Construction Equipment Placed on Existing Bridges				Originator	Reviewer
Bridge components not fully detailed in the Plans, i.e., post-tensioning details, handrails, temporary operating systems for movable bridges etc.				Originator	Reviewer
Retaining Wall Systems			Originator		Reviewer

**Table 5-1  
Submittal and Review Requirements**

Shop Drawing for:	Originated by Specialty Engineer Not Signed and Sealed	Originated by Detailer Not Signed and Sealed	Originated by Specialty Engineer Signed and Sealed	Originated by Contractor's EOR Signed and Sealed	Requires Review, QA/QC Shop Drawing Check prints and disposition stamp by Design EOR
Precast Box Culverts			Originator		Reviewer
Non-standard structures and components for drainage, lighting, signalization and signing			Originator		Reviewer
Building structures			Originator <sub>3</sub>		Reviewer <sub>4</sub>
Non-standard crash cushions and other nonstructural items			Originator		Reviewer
Design and structural details furnished by the Contractor in compliance with the Contract				Originator	Reviewer
Material or Product Cut-Sheets	Originator				Reviewer

1. Include integration details of the post-tensioning system.
2. Does not include formwork complying with Standard Plans, Index 102-600 (concrete placement is not permitted directly over traffic). Also, does not include critical temporary walls that are fully detailed in the plans unless redesigned by the Contractor. Does not include specialized equipment if traffic is removed from under equipment while equipment is being loaded, launched, and while loads are being transported by equipment.
3. In lieu of a Specialty Engineer, originator may be a licensed Architect.
4. In lieu of the Design Engineer of Record, the reviewer may be the Design Architect of Record.

**5-1.4.3 Schedule of Submittals:** Prepare and submit a schedule of submittals that identifies the work for which shop drawings apply. For each planned submittal, define the type, and approximate number of drawings or other documents that are included and the planned submittal date, considering the processing requirements herein. Submit the schedule of submittals to the Department's Shop Drawing Review Office and the Engineer of Record within 60 days of the start of the Contract, and prior to the submission of any shop drawings.

Coordinate subsequent submittals with construction schedules to allow sufficient time for review, resubmittal and approval prior to beginning fabrication, as necessary.

#### **5-1.4.4 Style, Numbering, and Material of Submittals:**

**5-1.4.4.1 Drawings:** Submit all shop drawings that are necessary to complete the structure in compliance with the design shown in the Plans. Prepare all shop drawings using the same units of measure as those used in the Plans. Consecutively number each sheet in the submittal series and indicate the total number in the series (i.e., 1 of 12, 2 of 12 . . . 12 of 12). Include on each sheet the following items as a minimum requirement: the complete Financial Project Identification Number, Bridge Number(s), drawing title and number, a title block showing the names of the fabricator or producer and the Contractor for which the work is being done, the initials of the person(s) responsible for the drawing, the date on which the drawing was prepared, the location of the item(s) within the project, the Contractor's approval stamp with date and initials, and, when applicable, the documents shall be signed and sealed by the Specialty Engineer or Contractor's Engineer of Record. A re-submittal will be requested when any of the required information is not included.

Shop drawings shall be submitted in Portable Document Format (PDF) files, formatted on sheets 11 by 17 inches.

**5-1.4.4.2 Other Documents:** Submit PDF files of other documents such as trade literature, catalogue information, calculations, and manuals formatted on sheets no larger than 11 by 17 inches. Clearly label and number each sheet in the submittal to indicate the total number of sheets in the series (i.e., 1 of 12, 2 of 12 . . . 12 of 12).

Prepare all documents using the same units of measure as the Plans and include a Table of Contents cover sheet. List on the cover sheet the total number of pages and appendices, and include the complete Financial Project Identification Number, a title referencing the submittal item(s), the name of the firm and person(s) responsible for the preparation of the document, the Contractor's approval stamp with date and initials, and, when applicable, the documents shall be signed and sealed by the Specialty Engineer or Contractor's Engineer of Record.

Submit appropriately prepared and checked calculations and manuals that clearly outline the design criteria. Include on the internal sheets the complete Financial Project Identification Number and the initials of the person(s) responsible for preparing and checking the document.

Clearly label trade literature and catalogue information on the front cover with the title, Financial Project Identification Number, date and name of the firm and person(s) responsible for that document.

#### **5-1.4.5 Submittal Paths:**

**5-1.4.5.1 General:** Shop drawings are not required for items on the Approved Products List used as intended in the relevant Standard Plans and Standard Specifications. For non-prequalified items, determine the submittal path to be followed based upon the identity of the Engineer of Record as shown adjacent to the title block on the structural plan sheets, and on the key sheets of roadway plans, signing, and pavement marking plans, and/or lighting plans. At the preconstruction conference, the Department will notify the Contractor in writing of any changes in the submittal path and whether the Department's or the Consultant's review stamp will signify an officially reviewed shop drawing.

1. When the Florida Department of Transportation is the Engineer of Record, submit shop drawings to the Resident Engineer and to the appropriate Department

Review Office. Include in the submittal other information such as catalog data, procedure manuals, fabrication/welding procedures, and maintenance and operating procedures when required by the work. Submit material certifications and material tests to the Resident Engineer.

2. When the Engineer of Record is a consultant hired by the Department, submit shop drawings to the consultant, the Resident Engineer and, when requested, to the appropriate Department Review Office. Include in the submittal other documentation such as catalog data, procedure manuals, fabrication/welding procedures, and maintenance and operating manuals when required by the work. Submit material certifications and material tests to the Resident Engineer.

**5-1.4.5.2 Building Structures:** Submit shop drawings and all correspondence related to building structures, such as Rest Area Pavilions, Office Buildings, and Maintenance Warehouses, to the Architect of Record and the Resident Engineer for review and approval.

**5-1.4.5.3 Contractor-Originated Design:** Submit shop drawings and applicable calculations to the Engineer of Record for review. The shop drawings and applicable calculations must be signed and sealed by the Specialty Engineer or the Contractor's Engineer of Record. Submit in accordance with the requirements of 5-1.4.1 through 5-1.4.3, as appropriate.

**5-1.4.5.4 Temporary Works:** For Construction Affecting Public Safety, submit to the Engineer of Record shop drawings and the applicable calculations for the design of special erection equipment, bracing, falsework, scaffolding, etc. The shop drawings and applicable calculations must be signed and sealed by the Specialty Engineer. Submit in accordance with the requirements of 5-1.4.1 through 5-1.4.3, as appropriate.

**5-1.4.5.5 Demolition Plans of Bridges with Continuous Beams or Girders when Traffic is Under Any of the Spans of the Unit During Demolition Activities:** For demolition plans of bridges with continuous beams or girders when traffic is placed under any of the spans of the unit during demolition activities, the Specialty Engineer shall prepare signed and sealed demolition plans and applicable calculations including a step-by-step sequence of demolition, etc. Clearly denote any traffic restrictions for all demolition steps. Submit in accordance with the requirements of 5-1.4. 1 through 5-1.4. 3, as appropriate.

**5-1.4.5.6 Falsework Founded on Shallow Foundations:** When vertical displacement limits are provided in the Plans for falsework founded on shallow foundations such as spread footings and mats, submit to the Engineer of Record shop drawings and applicable calculations of the falsework system including subsurface conditions and settlement estimates. The shop drawings and applicable calculations must be signed and sealed by the Specialty Engineer. Submit in accordance with the requirements of 5-1.4.1 through 5-1.4.3, as appropriate.

**5-1.4.5.7 Formwork and Scaffolding:** The Contractor is solely responsible for the safe installation and use of all formwork and scaffolding. The Department does not require any formwork or scaffolding submittals unless such work would be classified as Construction Affecting Public Safety. For formwork, scaffolding, or other temporary works affecting public safety; develop the required designs in accordance with the AASHTO Guide Design Specifications for Bridge Temporary Works, the AASHTO Construction Handbook for Bridge Temporary Works, and Chapter 11 of the Structures Design Guidelines (SDG) using wind loads specified in the SDG.

**5-1.4.5.8 Beam, Girder and Column Temporary Bracing:** The Contractor is solely responsible for ensuring stability of beams, girders and columns during all handling, storage, shipping and erection. Adequately brace beams, girders and columns to resist

wind, weight of forms and other temporary loads, especially those eccentric to the vertical axis of the products, considering actual beam geometry and support conditions during all stages of erection and deck construction. At a minimum, provide temporary bracing at each end of each beam or girder. Develop the required bracing designs in accordance with the AASHTO LRFD Bridge Design Specifications (LRFD) and Chapter 11 of the SDG using wind loads specified in the SDG. For information not included in the SDG or LRFD, refer to the AASHTO Guide Design Specifications for Bridge Temporary Works and the AASHTO Construction Handbook for Bridge Temporary Works.

For Construction Affecting Public Safety, when temporary bracing requirements are shown in the Plans, submit plans and calculations signed and sealed by a Specialty Engineer for the design of temporary bracing members and connections based on the forces shown in the Plans. In addition, submit a written certification that construction loads do not exceed the assumed loads shown in the Plans.

For Construction Affecting Public Safety, when temporary bracing requirements are not shown in the Plans or an alternate temporary bracing system is proposed, submit plans and calculations signed and sealed by a Specialty Engineer including the stability analysis and design of temporary bracing members and connections.

#### **5-1.4.5.9 Erection Plan, Geometry Control Manual and Erection**

**Manual:** Submit, for the Engineer's review, an Erection Plan that meets the specific requirements of Sections 450, 452 and 460 and this section. Submit in writing for the Engineer's review, an Erection Manual and Geometry Control Manual that meets the specific requirements of Section 462 and this Section. For all Erection Plans and Erection Manuals refer to Standard Plans, Index 102-600 for construction activities not permitted over traffic. For construction activities not covered in Index 102-600, clearly denote what additional construction steps are not allowed over traffic.

#### **5-1.4.5.10 Other Miscellaneous Design and Structural Details**

**Furnished by the Contractor in Compliance with the Contract:** The Engineer of Record shall review all shop drawings and the applicable calculations for miscellaneous design and structural details as required by the Contract. The shop drawings and applicable calculations will be signed and sealed by the Specialty Engineer. Submit in accordance with the requirements of 5-1.4.1 through 5-1.4.3, as appropriate.

#### **5-1.4.6 Processing of Shop Drawings:**

**5-1.4.6.1 Contractor Responsibility for Accuracy and Coordination of Shop Drawings:** Coordinate, schedule, and control all submittals, with a regard for the required priority, including those of the various subcontractors, suppliers, and engineers, to provide for an orderly and balanced distribution of the work.

Coordinate, review, date, stamp, approve and sign all shop drawings prepared by the Contractor or agents (subcontractor, fabricator, supplier, etc.) prior to submitting them to the Engineer for review. Submittal of the drawings confirms verification of the work requirements, units of measurement, field measurements, construction criteria, sequence of assembly and erection, access and clearances, catalog numbers, and other similar data. Indicate on each series of drawings the Specification section and sheet or drawing number of the Plans to which the submission applies. Indicate on the shop drawings all deviations from the Contract drawings and itemize all deviations in the letter of transmittal. Likewise, whenever a submittal does not deviate from the Plans, clearly state so in the submittal.

Schedule the submission of shop drawings to allow for a 45 calendar day review period for all submittals associated with a category 2 bridge; tolling components identified in the current FDOT General Tolling Requirements (GTR) Part 3; and the tolling-related signing, DMS and ITS infrastructure. Schedule the submission of shop drawings to allow for a 25 calendar day review period for all other items. The review period commences upon the Engineer's receipt of the valid submittal or valid re-submittal and terminates upon the transmittal of the submittal back to the Contractor. A valid submittal includes all the minimum requirements outlined in 5-1.4.4.

Submit shop drawings to facilitate expeditious review. The Contractor is discouraged from transmitting voluminous submittals of shop drawings at one time. For submittals transmitted in this manner, allow for the additional review time that may result.

Only shop drawings distributed with the approval stamps are valid and all work that the Contractor performs in advance of approval will be at the Contractor's risk. Work affecting Public Safety may not be performed prior to approval of appropriate submittals and work may not proceed at the Contractor's risk.

**5-1.4.6.2 Scope of Review by Engineer of Record:** The Engineer of Record's review of the shop drawings is for conformity to the requirements of the Contract Documents and to the intent of the design. The Engineer of Record's review of shop drawings which include means, methods, techniques, sequences, and construction procedures are limited to the effects on the permanent works. The Engineer of Record's review of submittals which include means, methods, techniques, sequences, and construction procedures does not include an in-depth check for the ability to perform the work in a safe or efficient manner.

**5-1.4.6.3 Special Review by Engineer of Shop Drawings for Construction Affecting Public Safety:** The Engineer may request copies of shop drawings related to Construction Affecting Public Safety for review and comment. When shop drawings are requested, do not proceed with construction of the permanent works until receiving the Engineer's written approval.

#### **5-1.4.7 Other Requirements for Shop Drawings for Bridges:**

**5-1.4.7.1 Shop Drawings for Structural Steel and Miscellaneous Metals:** Submit shop drawings for structural steel and miscellaneous metals. Shop drawings shall consist of shop and erection drawings, welding procedures, and other working plans, showing details, dimensions, sizes of material, and other information necessary for the complete fabrication and erection of the metal work.

**5-1.4.7.2 Shop Drawings for Concrete Structures:** Submit shop drawings for concrete components that are not cast-in-place and are not otherwise exempted from submittal requirements. Also, submit shop drawings for all details that are required for the effective execution of the concrete work and are not included in the Contract Documents such as: special erection equipment, masonry layout diagrams, and diagrams for bending reinforcing steel, in addition to any details required for concrete components for the permanent work.

**5-1.4.7.3 Shop Drawings for Major and Unusual Structures:** In addition to any other requirements, within 60 days from the Notice to Proceed, submit information to the Engineer outlining the integration of the Major and Unusual Structure into the overall approach to the project. Where applicable to the project, include, but do not limit this information to:

1. The overall construction program for the duration of the Contract. Clearly show the Milestone dates. (For example, the need to open a structure by a certain time for traffic operations.)

2. The overall construction sequence. The order in which individual structures are to be built, the sequence in which individual spans of girders or cantilevers are erected, and the sequence in which spans are to be made continuous, and the order that components are to be installed (such as mechanical and electrical devices in moveable bridges).

3. The general location of any physical obstacles to construction that might impose restraints or otherwise affect the construction, and an outline of how to deal with such obstacles while building the structure(s). (For example, obstacles might include road, rail and waterway clearances, temporary diversions, transmission lines, utilities, property, and the Contractor's own temporary works, such as haul roads, cofferdams, plant clearances and the like.)

4. The approximate location of any special lifting equipment in relation to the structure, including clearances required for the operation of the equipment. (For example, crane positions, operating radii and the like.)

5. The approximate location of any temporary falsework, and the conceptual outline of any special erection equipment. Provide the precise locations and details of attachments, fixing devices, loads, etc. in later detailed submittals.

6. An outline of the handling, transportation, and storage of fabricated components, such as girders or concrete segments. Provide the precise details in later detailed submittals.

7. Any other information pertinent to the proposed scheme or intended approach.

Clearly and concisely present the above information on as few drawings as possible in order to provide an overall, integrated summary of the intended approach to the project. The Department will use these drawings for information, review planning, and to assess the Contractor's approach in relation to the intent of the original design. Submittal to and receipt by the Engineer does not constitute any Department acceptance or approval of the proposals shown thereon. Include the details of such proposals on subsequent detailed shop drawing submittals. Submit timely revisions and re-submittals for all variations from these overall scheme proposals.

**5-1.4.8 Cost of Shop Drawings:** Include the cost of shop drawings submittal in the Contract prices for the work requiring the shop drawings. The Department will not pay the Contractor additional compensation for such drawings.

### **5-1.5 Certifications:**

**5-1.5.1 Special Erection Equipment:** Prior to its use, ensure that the Specialty Engineer personally inspects the special erection equipment and submits a written certification to the Engineer that the equipment has been fabricated in accordance with the submitted drawings and calculations. In addition, after assembly, ensure that the Specialty Engineer observes the equipment in use and submits a written certification to the Engineer that such equipment is being used as intended and in accordance with the submitted drawings and calculations. In each case, the Specialty Engineer must sign and seal the letter of certification.

**5-1.5.2 Falsework and Shoring Requiring Shop Drawings:** After its erection or installation but prior to the application of any superimposed load, ensure that a Specialty

Engineer or a designee inspects the falsework and certifies to the Engineer in writing that the falsework has been constructed in accordance with the materials and details shown on the submitted drawings and calculations. The letter of certification must be signed and sealed by the Specialty Engineer. Where so directed in the shop drawings, ensure all welds are performed by welders qualified under AWS D1.5 for the type of weld being performed.

**5-1.5.3 Temporary Formwork:** For Construction Affecting Public Safety and for Major and Unusual Structures, prior to the placement of any concrete, ensure that a Specialty Engineer or a designee inspects the formwork and submits a written certification to the Engineer that the formwork has been constructed to safely withstand the superimposed loads to which it will be subjected. The Specialty Engineer must sign and seal the letter of certification.

**5-1.5.4 Erection:** For Construction Affecting Public Safety, submit an erection plan signed and sealed by the Specialty Engineer to the Engineer at least four weeks prior to erection commencing. Include, as part of this submittal, signed and sealed calculations and details for any falsework, bracing or other connection supporting the structural elements shown in the erection plan. Unless otherwise specified in the Plans, erection plans are not required for simple span precast prestressed concrete girder bridges with spans of 170 feet or less.

At least two weeks prior to beginning erection, conduct a Pre-erection meeting to review details of the plan with the Specialty Engineer that signed and sealed the plan, and any Specialty Engineers that may inspect the work and the Engineer.

After erection of the elements, but prior to opening of the facility below the structure, ensure that a Specialty Engineer or a designee has inspected the erected member. Ensure that the Specialty Engineer has submitted a written certification to the Engineer that the structure has been erected in accordance with the signed and sealed erection plan.

For structures without temporary supports but with temporary girder bracing systems, perform, as a minimum, weekly inspections of the bracing until all the diaphragms and cross frames are in place. For structures with temporary supports, perform daily inspections until the temporary supports are no longer needed as indicated in the erection plans. Submit written documentation of the inspections to the Engineer within 24 hours of the inspection.

**5-1.6 Request for Correction:** For work that the Contractor constructs incorrectly or does not meet the requirements of the Contract Documents, the Contractor has the prerogative to submit an acceptance proposal to the Engineer for review and disposition. The acceptance proposal shall describe the error or defect and either describe remedial action for its correction or propose a method for its acceptance. In either case, the acceptance proposal shall address structural integrity, aesthetics, maintainability, and the effect on Contract Time. The Department will judge any such proposal for its effect on these criteria and for its effect on Contract Administration.

When the Engineer judges that a proposal infringes on the structural integrity or maintainability of the structure, the Contractor's Engineer of Record will perform a technical assessment and submit it to the Engineer for approval. Do not take any corrective action without the Engineer's written approval.

Carry out all approved corrective construction measures at no expense to the Department.

Notwithstanding any disposition of the compensation aspects of the defective work, the Engineer's decision on the technical merits of a proposal is final.



**5-1.7 Request for Information:** Submit Requests for Information in writing to the Engineer to request clarification where a provision, detail or drawing in the Contract Documents seems to have more than one meaning, have an unclear meaning, or have conflicts between Plans and Specifications. A Request for Information is not considered a Notice of Claim. Notices of Claim must be submitted in accordance with 5-12.2.

**5-1.8 Request for Modification:** Where the Engineer allows the Contractor to make modifications to the permanent works for the purposes of expediting the Contractor's chosen construction methods, the Contractor shall submit proposals to the Engineer for review and approval prior to modifying the works. Submit proposals for minor modifications under the shop drawing process. Indicate on all drawings the deviations from the Contract Documents and itemize all deviations in the letter of transmittal. Major modifications must be submitted as a Cost Savings Initiative Proposal.

Minor modifications are those items that, in the opinion of the Engineer, do not significantly affect the quantity of measured work, or the integrity or maintainability of the structure or its components.

The Engineer's decision on the delineation between a minor and a major modification and the disposition of a proposal is final.

## **5-2 Coordination of Contract Documents.**

These Specifications, the Plans, Special Provisions, and all supplementary documents are integral parts of the Contract; a requirement occurring in one is as binding as though occurring in all. All parts of the Contract are complementary and describe and provide for a complete work. In addition to the work and materials specified in the Specifications as being included in any specific pay item, include in such pay items additional, incidental work, not specifically mentioned, when so shown in the Plans, or if indicated, or obvious and apparent, as being necessary for the proper completion of the work under such pay item and not stipulated as being covered under other pay items.

In cases of discrepancy, the governing order of the documents is as follows:

1. Special Provisions.
  2. Technical Special Provisions.
  3. Plans.
  4. Standard Plans.
  5. Developmental Specifications.
  6. Supplemental Specifications.
  7. Standard Specifications.
- Computed dimensions govern over scaled dimensions.

## **5-3 Conformity of Work with Contract Documents.**

Perform all work and furnish all materials in reasonably close conformity with the lines, grades, models, dimensions, and material requirements, including tolerances, as specified in the Contract Documents.

In the event that the Engineer finds that the Contractor has used material or produced a finished product that is not in reasonably close conformity with the Contract Documents, but that the Contractor has produced reasonably acceptable work, the Engineer will determine if the Department will accept the work in place. In this event, the Engineer will document the basis of acceptance by Contract modification, which provides for an appropriate reduction in the Contract

price for such work or materials included in the accepted work as deemed necessary to conform to the determination based on engineering judgment.

In the event that the Engineer finds that the Contractor has used material or produced a finished product that is not in reasonably close conformity with the Contract Documents, and that the Contractor has produced an inferior or unsatisfactory product, the Contractor shall remove and replace or otherwise correct the work or materials at no expense to the Department.

For base and surface courses, the Department will allow the finished grade to vary as much as 0.1 foot from the grade shown in the Plans, provided that the Contractor's work meets all templates and straightedge requirements and contains suitable transitions.

#### **5-4 Errors or Omissions in Contract Documents.**

Do not take advantage of any apparent error or omission discovered in the Contract Documents, but immediately notify the Engineer in writing of such discovery. The Engineer will then make such corrections and interpretations as necessary to reflect the actual spirit and intent of the Contract Documents.

#### **5-5 Authority of the Engineer.**

Perform all work to the satisfaction of the Engineer.

The Director, Office of Construction will decide all questions, difficulties, and disputes, of whatever nature, that may arise relative to the interpretation of the Plans, construction, prosecution, and fulfillment of the Contract, and as to the character, quality, amount, and value of any work done, and materials furnished, under or by reason of the Contract.

#### **5-6 Authority and Duties of Engineer's Assistants.**

The Director, Office of Construction may appoint such assistants and representatives as desired. These assistants and representatives are authorized to inspect all work done and all materials furnished. Such inspection may extend to all or any part of the work and to the manufacture, preparation, or fabrication of the materials to be used. Such assistants and representatives are not authorized to revoke, alter, or waive any requirement of these Specifications. Rather, they are authorized to call to the attention of the Contractor any failure of the work or materials to meet the Contract Documents, and have the authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the Engineer. The Engineer will immediately submit written notification to the Contractor of any such suspension of the work, stating in detail the reasons for the suspension. The presence of the inspector or other assistant in no way lessens the responsibility of the Contractor.

#### **5-7 Engineering and Layout.**

**5-7.1 Control Points Furnished by the Department:** The Engineer will provide centerline control points (Begin Project, End Project, PIs, PTs, etc.) and benchmarks at appropriate intervals along the line of the project to facilitate the proper layout of the work. Normally, the Engineer will furnish only one benchmark for water crossings. Preserve all reference points and benchmarks that the Department furnishes.

As an exception to the above, for projects where the Plans do not show a centerline or other survey control line for construction of the work (e.g., resurfacing, safety modifications, etc.) the Engineer will provide only points marking the beginning and ending of the project, and all exceptions.

**5-7.2 Furnishing of Stake Materials:** Furnish all stakes, templates, and other materials necessary for establishing and maintaining the lines and grades necessary for control and construction of the work.

**5-7.3 Layout of Work:** Utilizing the control points furnished by the Department in accordance with 5-7.1, establish all horizontal and vertical controls necessary to construct the work in conformity to the Contract Documents. Perform all calculations required, and set all stakes needed such as grade stakes, offset stakes, reference point stakes, slope stakes, and other reference marks or points necessary to provide lines and grades for construction of all roadway, bridge, and miscellaneous items.

When performing utility construction as part of the project, establish all horizontal and vertical controls necessary to carry out such work.

**5-7.4 Specific Staking Requirements:** When performing new base construction as part of the project, set stakes to establish lines and grades for subgrade, base, curb, and related items at intervals along the line of the work. If Automated Machine Guidance is utilized, set stakes as needed. If Automated Machine Guidance is not utilized, set stakes no greater than 50 feet on tangents and 25 feet on curves. Set grade stakes at locations that the Engineer directs to facilitate checking of subgrade, base, and pavement elevations in crossovers, intersections, and irregular shaped areas.

For bridge construction stakes and other control, set references at sufficiently frequent intervals to ensure construction of all components of a structure in accordance with the lines and grades shown in the Plans.

For projects where the Plans do not show a centerline or other survey control line for construction of the work (resurfacing, safety modifications, etc.), provide only such stakes as necessary for horizontal and vertical control of work items.

For resurfacing and resurfacing-widening type projects, establish horizontal controls adequate to ensure that the asphalt mix added matches with the existing pavement. In tangent sections, set horizontal control points at 100-foot intervals by an instrument survey. In curve sections, set horizontal control points at 25-foot intervals by locating and referencing the centerline of the existing pavement.

Establish by an instrument survey, and mark on the surface of the finished pavement at 25-foot intervals, the points necessary for striping of the finished roadway. As an exception, for resurfacing and resurfacing/widening projects, establish these points in the same manner as used for horizontal control of paving operations. Mark the pavement with white paint. If performing striping, the Engineer may approve an alternate method for layout of striping provided that the Contractor achieves an alignment equal to or better than the alignment that would be achieved using an instrument survey.

For projects that include temporary or permanent striping of "no passing zones", provide the location and length of these zones as shown in the Plans, except projects where the vertical or horizontal alignment is new or altered from preconstruction alignment. For projects that consist of new or altered vertical or horizontal alignment, the Department will provide the location and length of the "no passing zones" during construction. For these projects, submit written notification to the Engineer not less than 21 calendar days prior to beginning striping.

For all projects, set a station identification stake at each right-of-way line at 100-foot intervals and at all locations where a change in right-of-way width occurs. Mark each of these stakes with painted numerals, of a size readable from the roadway, corresponding to the project station at which it is located. As an exception to the above, for projects where Plans do

not show right-of-way lines, set station identification stakes at locations and intervals appropriate to the type of work being done. For resurfacing and resurfacing/widening projects, set station identification stakes at 200-foot intervals.

**5-7.5 Personnel, Equipment, and Record Requirements:** Employ only competent personnel and use only suitable equipment in performing layout work. Do not engage the services of any person or persons in the employ of the Department for performance of layout work.

Keep adequate field notes and records while performing as layout work. Make these field notes and records available for the Engineer's review as the work progresses, and submit to the Engineer at the time of completion of the project. The Engineer's inspection, checking, or acceptance of the Contractor's field notes or layout work does not relieve the Contractor of his responsibility to achieve the lines, grades, and dimensions shown in the Contract Documents.

Prior to final acceptance of the project, mark, in a permanent manner on the surface of the completed work, all horizontal control points originally furnished by the Department.

**5-7.6 Global Navigation Satellite Systems (GNSS) Work Plan:** If used, submit a comprehensive written GNSS Work Plan to the Engineer for Department review and acceptance at the preconstruction conference or at least 30 days before starting work using GNSS. Update the plan as necessary during construction and notify the Department of all changes. The GNSS Work Plan shall describe how GNSS enabled Automated Machine Guidance technology will be integrated into other technologies employed on the project. At a minimum, the GNSS Work Plan will include the following:

1. Designate which portions of the Contract will be done using GNSS enabled Automated Machine Guidance and which portions will be constructed using conventional survey methodology.
2. Describe the manufacturer, model, and software version of the GNSS equipment.
3. Provide information on the qualifications of Contractor staff. Include formal training and field experience. Designate a single staff person as the primary contact for GNSS technology issues.
4. Describe how project control will be established. Include a list and map showing control points enveloping the site.
5. Describe site calibration procedures. Include a map of the control points used for site calibration and control points used to validate the site calibration. Describe the frequency of site calibration and how site calibration will be documented. At a minimum, verify the site calibration twice daily.
6. Describe the Contractor's quality control procedures for verifying mechanical calibration and maintenance of construction and guidance equipment. Include the frequency and type of verification performed to ensure the constructed grades conform to the Contract Documents.

Keep on site and provide upon request, a copy of the project's most up to date GNSS Work Plan at the project site.

**5-7.7 Payment:** Include the cost of performing layout work as described above in the Contract unit prices for the various items of work that require layout.

## **5-8 Contractor's Supervision.**

**5-8.1 Prosecution of Work:** Give the work the constant attention necessary to ensure the scheduled progress, and cooperate fully with the Engineer and with other contractors at work in the vicinity.

**5-8.2 Contractor's Superintendent:** Maintain a competent superintendent at the site at all times while work is in progress to act as the Contractor's agent. Provide a superintendent who is a competent superintendent capable of properly interpreting the Contract Documents and is thoroughly experienced in the type of work being performed. Provide a superintendent with the full authority to receive instructions from the Engineer and to execute the orders or directions of the Engineer, including promptly supplying any materials, tools, equipment, labor, and incidentals that may be required. Provide such superintendence regardless of the amount of work sublet.

Provide a superintendent who speaks and understands English, and maintain at least one other responsible person who speaks and understands English, on the project during all working hours.

**5-8.3 Supervision for Emergencies:** Provide a responsible person, who speaks and understands English, and who is available at or reasonably near the worksite on a 24-hour basis, seven days a week. Designate this person as the point of contact for emergencies and in cases that require immediate action to maintain traffic or to resolve any other problem that might arise. Submit the phone numbers and names of personnel designated to be contacted in cases of emergencies, along with a description of the project location, to the Florida Highway Patrol and all other local law enforcement agencies.

## **5-9 General Inspection Requirements.**

**5-9.1 Cooperation by Contractor:** Do not perform work or furnish materials without obtaining inspection by the Engineer. Provide the Engineer with safe means of access to the work, so the Engineer can determine whether the work performed and materials used are in accordance with the requirements and intent of the Contract Documents. For bridge projects with construction operations accessible only by watercraft, provide safe passage and transport to facilitate the Engineer's inspection of the Work. If the Engineer so requests at any time before final acceptance of the work, remove or uncover such portions of the finished work as directed. After examination, restore the uncovered portions of the work to the standard required by the Contract Documents. If the Engineer determines that the work so exposed or examined is unacceptable, perform the uncovering or removal, and the replacing of the covering or making good of the parts removed, at no expense to the Department. However, if the Engineer determines that the work thus exposed or examined is acceptable, the Department will pay for the uncovering or removing, and the replacing of the covering or making good of the parts removed in accordance with Section 4-4.

**5-9.2 Failure of Engineer to Reject Work During Construction:** If, during or prior to construction operations, the Engineer fails to reject defective work or materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject in no way prevents the later rejection when such defect is discovered, or obligates the Department to final acceptance. The Department is not responsible for losses suffered due to any necessary removals or repairs of such defects.

**5-9.3 Failure to Remove and Renew Defective Materials and Work:** If the Contractor fails or refuses to remove and renew any defective materials used or work performed, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of the

Contract within the time indicated in writing, the Engineer has the authority to repair, remove, or renew the unacceptable or defective materials or work as necessary, all at the Contractor's expense. The Department will obtain payment for any expense it incurs in making these repairs, removals, or renewals, that the Contractor fails or refuses to make, by deducting such expenses from any moneys due or which may become due the Contractor, or by charging such amounts against the Contract bond.

**5-9.4 Inspection by Federal Government:** When the United States Government pays a portion of the cost of construction, its representatives may inspect the construction work as they deem necessary. However, such inspection will in no way make the Federal Government a party to the Contract.

## **5-10 Final Inspection.**

**5-10.1 Maintenance until Acceptance:** Maintain all Work until the Engineer has given final acceptance in accordance with 5-11.

**5-10.2 Inspection for Acceptance:** Upon submittal of written notification that all Contract Work, or all Contract Work on the portion of the Contract scheduled for acceptance, has been completed, the Engineer will make an inspection for acceptance. The inspection will be made within seven days of such notification. If the Engineer finds that all work has been satisfactorily completed, the Department will consider such inspection as the final inspection. If any or all of the Work is found to be unsatisfactory, the Engineer will detail the remedial work required to achieve acceptance. Immediately perform such remedial work. Subsequent inspections will be made on the remedial work until the Engineer accepts all Work.

Upon satisfactory completion of the Work, the Department will submit written notice of acceptance, either partial or final, to the Contractor.

Until final acceptance in accordance with 5-11, replace or repair any damage to the accepted Work. Payment of such work will be as provided in 7-14.

**5-10.3 Partial Acceptance:** At the Engineer's sole discretion, the Engineer may accept any portion of the Work under the provisions of 5-10.2.

**5-10.4 Conditional Acceptance:** The Engineer will not make, or consider requests for conditional acceptance of a project.

## **5-11 Final Acceptance.**

When, upon completion of the final construction inspection of the entire project, the Engineer determines that the Contractor has satisfactorily completed the work, the Engineer will submit written notice of final acceptance to the Contractor.

## **5-12 Claims by Contractor.**

**5-12.1 General:** When the Contractor deems that extra compensation or a time extension is due beyond that agreed to by the Engineer, whether due to delay, additional work, altered work, differing site conditions, breach of Contract, or for any other cause, the Contractor shall follow the procedures set forth herein for preservation, presentation and resolution of the claim.

Submission of timely notice of intent to file a claim, preliminary time extension request, time extension request, and the certified written claim, together with full and complete claim documentation, are each a condition precedent to the Contractor bringing any circuit court, arbitration, or other formal claims resolution proceeding against the Department for the items and for the sums or time set forth in the Contractor's certified written claim. The failure to provide such notice of intent, preliminary time extension request, time extension request,

certified written claim and full and complete claim documentation within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for such claim.

### **5-12.2 Notice of Claim:**

**5-12.2.1 Claims For Extra Work:** Where the Contractor deems that additional compensation or a time extension is due for work or materials not expressly provided for in the Contract or which is by written directive expressly ordered by the Engineer pursuant to 4-3, the Contractor shall submit written notification to the Engineer of the intention to make a claim for additional compensation before beginning the work on which the claim is based, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the delay. If such written notification is not submitted and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, equipment, and time, the Contractor waives the claim for additional compensation or a time extension. Such notice by the Contractor, and the fact that the Engineer has kept account of the labor, materials and equipment, and time, shall not in any way be construed as establishing the validity of the claim or method for computing any compensation or time extension for such claim. On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after final acceptance of the project in accordance with 5-11, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after final acceptance of the project in accordance with 5-11, the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9. However, for any claim or part of a claim that pertains solely to final estimate quantities disputes the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9, as to such final estimate claim dispute issues, within 90 or 180 calendar days, respectively, of the Contractor's receipt of the Department's final estimate.

If the Contractor fails to submit a certificate of claim as described in 5-12.9, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in 5-12.9, without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten-calendar day notice shall constitute a waiver of the claim.

**5-12.2.2 Claims For Delay:** Where the Contractor deems that additional compensation or a time extension is due on account of delay, differing site conditions, breach of Contract, or any other cause other than for work or materials not expressly provided for in the Contract (Extra Work) or which is by written directive of the Engineer expressly ordered by the Engineer pursuant to 4-3, the Contractor shall submit a written notice of intent to the Engineer within ten days after commencement of a delay to a controlling work item expressly notifying the Engineer that the Contractor intends to seek additional compensation, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay to a controlling work item, as to such delay and providing a reasonably complete description as to the cause and nature of the delay and the possible impacts to the Contractor's work by such delay, and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the delay.

On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after final acceptance of the project in accordance with 5-11, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after final acceptance of the project in accordance with 5-11, the Contractor shall submit full and complete documentation as described in 5-12.3 and duly certified pursuant to 5-12.9.

If the Contractor fails to submit a certificate of claim as described in 5-12.9, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in 5-12.9, without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten-calendar day notice shall constitute a waiver of the claim.

There shall be no Contractor entitlement to any monetary compensation or time extension for any delays or delay impacts, whatsoever, that are not to a controlling work item, and then as to any such delay to a controlling work item entitlement to any monetary compensation or time extension shall only be to the extent such is otherwise provided for expressly under 4-3 or 5-12, except that in the instance of delay to a non-controlling item of work the Contractor may be compensated for the direct costs of idle labor or equipment only, at the rates set forth in 4-3.2.1(1) and (3), and then only to the extent the Contractor could not reasonably mitigate such idleness.

If the Contractor provides the written notice of intent, the preliminary request for time extension, and the request for Contract Time extension in compliance with the aforementioned time and content requirements, the Contractor's claim for delay to a controlling work item will be evaluated as of the date of the elimination of the delay even if the Contractor's performance subsequently overcomes the delay. If the claim for delay has not been settled, the Contractor must also comply with 5-12.3 and 5-12.9 to preserve the claim.

**5-12.3 Content of Written Claim:** As a condition precedent to the Contractor being entitled to additional compensation or a time extension under the Contract, for any claim, the Contractor shall submit a certified written claim to the Department which will include for each individual claim, at a minimum, the following information:

1. A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected and included in each claim;
2. The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident;
3. Identification of all pertinent documents and the substance of any material oral communications relating to such claim and the name of the persons making such material oral communications;
4. Identification of the provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract which allegedly have been breached and the actions constituting such breach;
5. A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:
  - a. documented additional job site labor expenses;
  - b. documented additional cost of materials and supplies;
  - c. a list of additional equipment costs claimed, including each piece of equipment and the rental rate claimed for each;



d. any other additional direct costs or damages and the documents in support thereof;

e. any additional indirect costs or damages and all documentation in support thereof.

6. A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the delay, and a breakout of the number of days claimed for each identified event, circumstance or occurrence.

Further, the Contractor shall be prohibited from amending either the bases of entitlement or the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder, and any circuit court, arbitration, or other formal claims resolution proceeding shall be limited solely to the bases of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder. This shall not, however, preclude a Contractor from withdrawing or reducing any of the bases of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder at any time.

**5-12.4 Action on Claim:** The Engineer will respond in writing on projects with an original Contract amount of \$3,000,000 or less within 90 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3, and on projects with an original Contract amount greater than \$3,000,000 within 120 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3. Failure by the Engineer to respond to a claim in writing within 90 or 120 days, respectively, after receipt of a complete claim submitted by the Contractor in compliance with 5-12.3 constitutes a denial of the claim by the Engineer. If the Engineer finds the claim or any part thereof to be valid, such partial or whole claim will be allowed and paid for to the extent deemed valid and any time extension granted, if applicable, as provided in the Contract. No circuit court or arbitration proceedings on any claim, or a part thereof, may be filed until after final acceptance per 5-11 of all Contract work by the Department or denial hereunder, whichever occurs last.

**5-12.5 Pre-Settlement and Pre-Judgment Interest:** Entitlement to any pre-settlement or pre-judgment interest on any claim amount determined to be valid subsequent to the Department's receipt of a certified written claim in full compliance with 5-12.3, whether determined by a settlement or a final ruling in formal proceedings, the Department shall pay to the Contractor simple interest calculated at the Prime Rate (as reported by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks) as of the 60th calendar day following the Department's receipt of a certified written claim in full compliance with 5-12.3, such interest to accrue beginning 60 calendar days following the Department's receipt of a certified written claim in full compliance with 5-12.3 and ending on the date of final settlement or formal ruling.

**5-12.6 Compensation for Extra Work or Delay:**

**5-12.6.1 Compensation for Extra Work:** Notwithstanding anything to the contrary contained in the Contract Documents, the Contractor shall not be entitled to any compensation beyond that provided for in 4-3.2.

**5-12.6.2 Compensation for Delay:** Notwithstanding anything to the contrary contained in the Contract Documents, the additional compensation set forth in 5-12.6.2.1 shall be the Contractor's sole monetary remedy for any delay other than to perform extra work caused by

the Department unless the delay shall have been caused by acts constituting willful or intentional interference by the Department with the Contractor's performance of the work and then only where such acts continue after Contractor's written notice to the Department of such interference. The parties anticipate that delays may be caused by or arise from any number of events during the term of the Contract, including, but not limited to, work performed, work deleted, supplemental agreements, work orders, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the Engineer pursuant to 8-6.1, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, special events, suspension of Contract Time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.

**5-12.6.2.1 Compensation for Direct Costs, Indirect Costs, Expenses, and Profit thereon, of or from Delay:** For any delay claim, the Contractor shall be entitled to monetary compensation for the actual idle labor (including supervisory personnel) and equipment, and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1(4) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.

**5-12.7 Mandatory Claim Records:** After submitting to the Engineer a notice of intent to file a claim for extra work or delay, the Contractor must keep daily records of all labor, material and equipment costs incurred for operations affected by the extra work or delay. These daily records must identify each operation affected by the extra work or delay and the specific locations where work is affected by the extra work or delay, as nearly as possible. The Engineer may also keep records of all labor, material and equipment used on the operations affected by the extra work or delay. The Contractor shall, once a notice of intent to claim has been timely filed, and not less than weekly thereafter as long as appropriate, submit the Contractor's daily records to the Engineer and be likewise entitled to receive the Department's daily records. The daily records to be submitted hereunder shall be done at no cost to the recipient.

**5-12.8 Claims for Acceleration:** The Department shall have no liability for any constructive acceleration of the work, nor shall the Contractor have any right to make any claim for constructive acceleration nor include the same as an element of any claim the Contractor may otherwise submit under this Contract. If the Engineer gives express written direction for the Contractor to accelerate its efforts, such written direction will set forth the prices and other pertinent information and will be reduced to a written Contract Document promptly. No payment will be made on a Supplemental Agreement for acceleration prior to the Department's approval of the documents.

**5-12.9 Certificate of Claim:** When submitting any claim, the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what

the Contractor in good faith believes to be the Department's liability. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.

**5-12.10 Non-Recoverable Items:** The parties agree that for any claim the Department will not have liability for the following items of damages or expense:

1. Loss of profit, incentives or bonuses;
2. Any claim for other than extra work or delay;
3. Consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;
4. Acceleration costs and expenses, except where the Department has expressly and specifically directed the Contractor in writing "to accelerate at the Department's expense"; nor
5. Attorney fees, claims preparation expenses and costs of litigation.

**5-12.11 Exclusive Remedies:** Notwithstanding any other provision of this Contract, the parties agree that the Department shall have no liability to the Contractor for expenses, costs, or items of damages other than those which are specifically identified as payable under 5-12. In the event any legal action for additional compensation, whether on account of delay, acceleration, breach of contract, or otherwise, the Contractor agrees that the Department's liability will be limited to those items which are specifically identified as payable in 5-12.

**5-12.12 Settlement Discussions:** The content of any discussions or meetings held between the Department and the Contractor to settle or resolve any claims submitted by the Contractor against the Department shall be inadmissible in any legal, equitable, arbitration or administrative proceedings brought by the Contractor against the Department for payment of such claim. Dispute Resolution Board, State Arbitration Board and Claim Review Committee proceedings are not settlement discussions, for purposes of this provision.

**5-12.13 Personal Liability of Public Officials:** In carrying out any of the provisions of the Contract or in exercising any power or authority granted to the Secretary of Transportation, Engineer or any of their respective employees or agents, there shall be no liability on behalf of any employee, officer or official of the Department for which such individual is responsible, either personally or as officials or representatives of the Department. It is understood that in all such matters such individuals act solely as agents and representatives of the Department.

**5-12.14 Auditing of Claims:** All claims filed against the Department shall be subject to audit at any time following the filing of the claim, whether or not such claim is part of a suit pending in the Courts of this State. The audit may be performed, at the Department's sole discretion, by employees of the Department or by any independent auditor appointed by the Department, or both. The audit may begin after ten days written notice to the Contractor, subcontractor, or supplier. The Contractor, subcontractor, or supplier shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any claim, the Contractor, subcontractor, or supplier must retain sufficient records, and provide full and reasonable access to such records, to allow the Department's auditors to verify the claim and failure to retain sufficient records of the claim or failure to provide full and reasonable access to such records shall constitute a waiver of that portion of such claim that cannot be verified and shall bar recovery thereunder. Further, and in addition to such audit access, upon the Contractor submitting a written claim, the Department shall have the right to request and receive, and the Contractor shall have the affirmative obligation to submit to the Department any and all documents in the possession of the Contractor or its subcontractors, materialmen or suppliers as

may be deemed relevant by the Department in its review of the basis, validity or value of the Contractor's claim.

Without limiting the generality of the foregoing, the Contractor shall upon written request of the Department make available to the Department's auditors, or upon the Department's written request, submit at the Department's expense, any or all of the following documents:

1. Daily time sheets and foreman's daily reports and diaries;
2. Insurance, welfare and benefits records;
3. Payroll register;
4. Earnings records;
5. Payroll tax return;
6. Material invoices, purchase orders, and all material and supply acquisition contracts;
7. Material cost distribution worksheet;
8. Equipment records (list of company owned, rented or other equipment used);
9. Vendor rental agreements and subcontractor invoices;
10. Subcontractor payment certificates;
11. Canceled checks for the project, including, payroll and vendors;
12. Job cost report;
13. Job payroll ledger;
14. General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;
15. Cash disbursements journal;
16. Financial statements for all years reflecting the operations on this project;
17. Income tax returns for all years reflecting the operations on this project;
18. All documents which reflect the Contractor's actual profit and overhead during the years this Contract was being performed and for each of the five years prior to the commencement of this Contract;
19. All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based;
20. All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim;
21. Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents that establish which time periods and individuals were involved, and the hours and rates for such individuals.

### **5-13 Recovery Rights, Subsequent to Final Payment.**

The Department reserves the right, if it discovers an error in the partial or final estimates, or if it discovers that the Contractor performed defective work or used defective materials, after the final payment has been made, to claim and recover from the Contractor or his surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the work and materials.

## SECTION 6 CONTROL OF MATERIALS

### 6-1 Acceptance Criteria.

**6-1.1 General:** Acceptance of materials is based on the following criteria. All requirements may not apply to all materials. Use only materials in the work that meet the requirements of these Specifications. The Engineer may inspect and test any material, at points of production, distribution and use.

**6-1.2 Sampling and Testing:** Use the Department's current sample identification and tracking system to provide related information and attach the information to each sample. Restore immediately any site from which material has been removed for sampling purposes to the pre-sampled condition with materials and construction methods used in the initial construction, at no additional cost to the Department.

Ensure when a material is delivered to the location as described in the Contract Documents, there is enough material delivered to take samples, at no expense to the Department.

**6-1.2.1 Pretest by Manufacturers:** Submit certified manufacturer's test results to the Engineer for qualification and use on Department projects. Testing will be as specified in the Contract Documents. The Department may require that manufacturers submit samples of materials for independent verification purposes.

**6-1.2.2 Point of Production Test:** Test the material during production as specified in the Contract Documents.

**6-1.2.3 Point of Distribution Test:** Test the material at Distribution facilities as specified in the Contract Documents.

**6-1.2.4 Point of Use Test:** Test the material immediately following placement as specified in the Specifications. After delivery to the project, the Department may require the retesting of materials that have been tested and accepted at the source of supply, or may require the testing of materials that are to be accepted by manufacturer certification. The Department may reject all materials that, when retested, do not meet the requirements of these Specifications.

### 6-1.3 Certification:

**6-1.3.1 Manufacturer Material Certification:** Submit material certifications for all materials to the Engineer for approval when required by the Specifications. Materials will not be considered for payment when not accompanied by a material certification. Sample material certification forms are available on the Department's website at the following URL:

<https://www.fdot.gov/materials/administration/resources/library/publications/certifications/sampleforms.shtm> . Ensure that the material certification follows the format of the sample form, is submitted on the manufacturer's letterhead and is signed by a legally responsible person employed by the manufacturer.

**6-1.3.1.1 Approved Product List:** This list provides assurance to Contractors, consultants, designers, and Department personnel that specific products and materials are approved for use on Department facilities. The Department will limit the Contractor's use of products and materials that require use of APL items to those listed on the APL effective at the time of placement. Where the terms Qualified Products List (QPL) appear in the Contract Documents, they will be synonymous with Approved Product List (APL).

Manufacturers seeking to have a product evaluated for the APL must submit an application, available on the Department's website at the following URL: <https://www.fdot.gov/programmanagement/ProductEvaluation/Default.shtm>. Applications must include the following documentation:

1. Supporting documentation as required by the Specifications, Standard Plans, and APL approval process. A sample may be requested to verify the product, in accordance with the specifications.
2. A photograph displaying the product as shipped with packaging.
3. A list displaying all components within the shipped packaging, if applicable.
4. Installation instructions and materials, if applicable.
5. Product packaging or product labels as required by the Specifications.
6. Construction material percentages and country source of materials.
7. Last two manufacturing steps and country of manufacture.
8. Manufacturer name and material designation (product name, product model/part number/style number, etc.) must be as identified on the product, product packaging, and product labels.
9. Applications must be signed by a legally responsible person employed by the manufacturer of the product.

Required test reports must be conducted by an independent laboratory or other independent testing facility. Required drawings and calculations must be signed and sealed by a Professional Engineer licensed in the State of Florida.

Products that have successfully completed the Department's evaluation process are eligible for inclusion on the APL. Manufacturers are required to submit requests to the Department for approval of any modifications or alterations made to a product listed on the APL. This includes, but is not limited to, design, raw material, or manufacturing process modifications. Modification or alteration requests must be submitted along with supporting documentation that the product continues to meet Section 6, the Specification, or Standard Plans requirements. A product sample and additional product testing and documentation may be required for the modification evaluation. Any marked variations from original test values, failure to notify the Department of any modifications or alterations, or any evidence of inadequate performance of a product may result in removal of the product from the APL.

Manufacturers must submit supporting documentation to the Department for a periodic review and re-approval of their APL products on or before the product's original approval anniversary. APL products that are not re-approved may be removed from the APL. Documentation requirements for the product review and re-approval, including schedule and criteria, are available on the Department's website at the following URL: <https://www.fdot.gov/programmanagement/ProductEvaluation/Default.shtm>.

**6-1.3.2 Contractor Installation Certification:** Submit installation certifications as required by the Contract Documents.

## **6-2 Applicable Documented Authorities Other Than Specifications.**

**6-2.1 General:** Details on individual materials are identified in various material specific Sections of the Specifications that may refer to other documented authorities for requirements. When specified, meet the requirements as defined in such references.

**6-2.2 Test Methods:** Methods of sampling and testing materials are in accordance with the Florida Methods (FM). If an FM does not exist for a particular test, perform the testing in accordance with the method specified in the Specification. When test methods or other standards are referenced in the Specifications without identification of the specific time of issuance, use the most current issuance, including interims or addenda thereto, at the time of bid opening.

**6-2.3 Construction Aggregates:** Aggregates used on Department projects must be in accordance with Rule 14-103, FAC.

## **6-3 Storage of Materials and Samples.**

**6-3.1 Method of Storage:** Store materials in such a manner as to preserve their quality and fitness for the work, to facilitate prompt inspection, and to minimize noise impacts on sensitive receivers. More detailed specifications concerning the storage of specific materials are prescribed under the applicable Specifications. The Department may reject improperly stored materials.

**6-3.2 Use of Right-of-Way for Storage:** If the Engineer allows, the Contractor may use a portion of the right-of-way for storage purposes and for placing the Contractor's plant and equipment. Use only the portion of the right-of-way that is outside the clear zone, which is the portion not required for public vehicular or pedestrian travel. When used, restore the right-of-way to pre-construction condition at no additional cost to the Department or as specified in the Contract Documents. Provide any additional space required at no expense to the Department.

**6-3.3 Responsibility for Stored Materials:** Accept responsibility for the protection of stored materials. The Department is not liable for any loss of materials, by theft or otherwise, or for any damage to the stored materials.

**6-3.4 Storage Facilities for Samples:** Provide facilities for storage of samples as described in the Contract Documents and warranted by the test methods and Specifications.

## **6-4 Defective Materials.**

Materials not meeting the requirements of these Specifications will be considered defective. The Engineer will reject all such materials, whether in place or not. Remove all rejected material immediately from the site of the work and from storage areas, at no expense to the Department.

Do not use material that has been rejected, until the Engineer has approved the material's use. Upon failure to comply promptly with any order of the Engineer made under the provisions of this Article, the Engineer has the authority to have the defective material removed and replaced by other forces and deduct the cost of removal and replacement from any moneys due or to become due the Contractor.

**6-4.1 Engineering Analysis:** As an exception to the above, within 30 calendar days of the termination of the LOT or rejection of the material, the Contractor may submit to the Engineer a proposed Engineering Analysis Scope to determine the disposition of the material. The Engineering Analysis Scope must contain at a minimum:

1. Description of the defective materials.

2. Supporting information, testing or inspection reports with nonconformities, pictures, drawings, and accurately dimensioned deficiency maps as necessary. For cracked elements, provide drawings showing the location, average width, depth, length, and termination points of each crack along the surfaces. Provide the distance from each termination point to a fixed reference point on the component, such as beam end or edge of flange.

3. Proposed approach of investigation and analysis.

4. Name and credentials of the proposed Specialty Engineer or Contractor's Engineer of Record who will perform the engineering analysis.

5. Proposed testing laboratories, qualified in accordance with

Section 105-7.

Upon approval of the Engineering Analysis Scope by the Engineer, the Specialty Engineer or Contractor's Engineer of Record may perform the engineering analysis as defined in the approved scope and submit a signed and sealed Engineering Analysis Report (EAR) to the Engineer. The EAR must contain at a minimum:

1. The approved Engineering Analysis Scope.

2. Any investigations performed, and the associated results obtained.

3. Analysis and conclusion.

4. Proposed disposition of the material, addressing the performance and durability of the proposed action.

Provide as appropriate:

1. Written evidence of a previously approved comparable deficiency and its repair.

2. Documented research demonstrating the effectiveness of the proposed repair.

3. Engineering calculations.

A Specialty Engineer, who is an independent consultant, or the Contractor's Engineer of Record as stated within each individual Section shall perform any such analysis within 45 calendar days of the Engineer's approval of the Engineering Analysis Scope, complete and submit the EAR. The EAR must be signed and sealed by the Specialty Engineer or the Contractor's Engineer of Record that performed the engineering analysis. Allow for a 45 calendar day review period for all EARs associated with a category 2 bridge; tolling components identified in the current FDOT General Tolling Requirements (GTR) Part 3; and the tolling-related signing, DMS and ITS infrastructure. Allow for a 25 calendar day review period for all other items. The Engineer will determine the final disposition of the material after review of the EAR. No additional monetary compensation or time extension will be granted for the impact of any such analysis or review.

## 6-5 Products and Source of Supply.

**6-5.1 Source of Supply—Convict Labor (Federal-Aid Contracts Only):** Do not use materials that were produced after July 1, 1991, by convict labor for Federal-aid highway construction projects unless the prison facility has been producing convict-made materials for Federal-aid highway construction projects before July 1, 1987.

Use materials that were produced prior to July 2, 1991, by convicts on Federal-aid highway construction projects free from the restrictions placed on the use of these materials by 23 U.S.C. 114. The Department will limit the use of materials produced by convict labor for use in Federal-aid highway construction projects to:



1. Materials produced by convicts on parole, supervised release, or probation from a prison or,

2. Materials produced in a qualified prison facility.

The amount of such materials produced for Federal-aid highway construction during any 12-month period shall not exceed the amount produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

**6-5.2 Source of Supply:** Comply with Section 70914 of Public Law No. 117-58, §§ 70901-52, also known as the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, which includes the Build America, Buy America Act (BABA). Domestic compliance for all affected products will be listed on the APL.

**6-5.2.1 Steel and Iron:** Use steel and iron manufactured in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States. As used in this specification, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product, beginning with the initial melting and continuing through the final shaping and coating. If a steel or iron product is taken outside the United States for any manufacturing process, it becomes foreign source material. When using steel or iron materials as a component of any manufactured product (e.g., concrete pipe, prestressed beams, corrugated steel pipe, etc.), these same provisions apply. Foreign steel and iron may be used when the total actual cost of such foreign materials does not exceed 0.1% of the total Contract amount or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work but are not applicable to steel and iron items that the Contractor uses but does not incorporate into the finished work. Submit a certification from the manufacturer of steel or iron, or any product containing steel or iron, stating that all steel or iron furnished or incorporated into the furnished product was produced and manufactured in the United States or a statement that the product was produced within the United States except for minimal quantities of foreign steel and iron valued at \$ (actual cost). Submit each such certification to the Engineer prior to incorporating the material or product into the project. Prior to the use of foreign steel or iron materials on a project, submit invoices to document the actual cost of such material, and obtain the Engineer's written approval prior to incorporating the material into the project.

**6-5.2.2 Manufactured Products:** Use Manufactured Products that are consumed in, incorporated into, or affixed to an infrastructure project that are manufactured in the United States, in accordance with BABA requirements and applicable waivers.

**6-5.2.3 Construction Materials:** Use non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project that are manufactured in the United States, in accordance with BABA requirements.

**6-5.2.4 Exemptions to Build America, Buy America:** Temporary devices, equipment, and other items removed at or before the completion of the project are exempt from BABA funding eligibility requirements. Aggregates, cementitious materials, and aggregate binding agents or additives are exempted from BABA funding eligibility requirements.

**6-5.3 Contaminated, Unfit, Hazardous, and Dangerous Materials:** Do not use any material that, after approval and/or placement, has in any way become unfit for use. Do not use materials containing any substance that has been determined to be hazardous by the State of Florida Department of Environmental Protection or the U.S. Environmental Protection Agency

(EPA). Provide workplaces free from serious recognized hazards and to comply with occupational safety and health standards, as determined by the U.S. Department of Labor Occupational Safety and Health Administration (OSHA).

**SECTION 7**  
**LEGAL REQUIREMENTS AND**  
**RESPONSIBILITY TO THE PUBLIC**

**7-1 Laws to be Observed.**

**7-1.1 General:** Become familiar with and comply with all Federal, State, and Local Rules and Regulations that control the action or operation of those engaged or employed in the work or that affect material used. Pay particular attention called to the safety regulations promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). In addition, comply with Chapter 403, of the Florida Statutes, regarding control of air pollution. Direct special attention to that portion of Chapter 62-256, Rules of the Department of Environmental Protection, Florida Administrative Code, pertaining to open burning in land clearing operations. Where work or structures included in the Contract are in “Navigable Waters of the U.S.,” (reference 33 of the Code of Federal Regulations, Part 329); “Waters of the U.S.,” (reference 33 of the Code of Federal Regulations, Parts 323 and 328); or “Waters of the State,” (reference Part 4, Chapters 253 and 373 of the Florida Statutes and Section 62-340 of the Florida Administrative Code); comply with the regulatory provisions of Section 404 of the Federal Clean Water Act of 1977; Sections 9 and 10 of the Federal River and Harbor Act of 1899; Chapter 161 of the Florida Statutes; and any local authority having jurisdiction over such waters.

Comply with Part IV, Chapter 378, of the Florida Statutes regarding land reclamation. Direct special attention to Chapters 62C-36 and 62C-39 of the Florida Administrative Code. Submit the Notice of Intent to Mine to:

Department of Environmental Protection  
Collins Building  
2051 East Dirac Drive  
Tallahassee, Florida 32310-3760

with a copy to the Engineer. The Engineer will determine consistency with the environmental documents prior to commencement of mining.

Obtain certification from the Construction Industry Licensing Board as required by Part I, Chapter 489, of the Florida Statutes, regardless of exemptions allowed by subsection 489.103, prior to removing underground pollutant storage tanks. Dispose of tanks and pollutants in accordance with the requirements and regulations of any Federal, State, or local, agency having jurisdiction.

Prior to building construction or renovation, submit current registrations or certifications issued by the Florida Construction Industry Licensing Board in accordance with Chapter 489, for the appropriate category of construction.

Corporations must be registered with the State of Florida, Department of State, Division of Corporations, and hold a current State Corporate Charter Number in accordance with Chapter 607, Florida Statutes.

The Contractor or the authorized subcontractor applying the roofing material must be licensed or be an approved dealer and applicator of the proposed roofing material.

Indemnify, defend, and save harmless the Department and all of its officers, agents, and employees, in the amount of the Contract price, against all claims or liability arising from or based on the violation of any such Federal, State, and Local Rules and Regulations, whether by himself or his employees.

The Contractor shall comply with all environmental permits, including measures identified in the National Pollutant Discharge Elimination System (NPDES) Stormwater Pollution Prevention Plan and Sediment and Erosion Control Plan for the work.

The Contractor shall exert every reasonable and diligent effort to ensure that all labor employed by the Contractor and his subcontractors for work on the project work harmoniously and compatibly with all labor used by other building and construction contractors now or hereafter on the site of the work covered by this Contract. Include this provision in all subcontracts, and require all subcontractors to include it in their subcontracts with others. However, do not interpret or enforce this provision so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article I, Section 6 of the Florida Constitution.

Comply with Chapter 556 of the Florida Statutes during the performance of excavation or demolition operations.

The Executive Order 11246 Electronic version, dated September 24, 1965 is posted on the Department's website at the following URL address:  
[https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/urlinspecs/files/deo112468a91904c88e94148b94569982fdff3d2.pdf?sfvrsn=6b78d1d6\\_2](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/urlinspecs/files/deo112468a91904c88e94148b94569982fdff3d2.pdf?sfvrsn=6b78d1d6_2). Take responsibility to obtain the information posted on this website up through five calendar days before the opening of bids and comply with the provisions contained in Executive Order 11246.

If the Department's website cannot be accessed, contact the Department's Specifications Office Web Coordinator at (850) 414-4101.

**7-1.2 Plant Quarantine Regulations:** The U.S. Department of Agriculture and the Florida Department of Agriculture and Consumer Services have issued quarantine regulations pertaining to control of the nematodes of citrus, Rule 5B-44, Florida Administrative Code, and other plant pests. Contact the local (or other available) representatives of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, and the Division of Plant Industry of the Florida Department of Agriculture and Consumer Services to ascertain all current restrictions regarding plant pests that are imposed by these agencies. Keep advised of current quarantine boundary lines throughout the construction period.

These restrictions may affect operations in connection with such items as clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping, and other items which might involve the movement of materials containing plant pests across quarantine lines.

Obtain quarantine regulations and related information from the following:

Animal and Plant Health Inspection Service  
U.S. Department of Agriculture  
3029 Lake Alfred Road  
Winter Haven, Florida 33881

Director, Division of Plant Industry  
Florida Department of Agriculture and Consumer Services  
Post Office Box 147100  
Gainesville, Florida 32614-7100

**7-1.3 Introduction or Release of Prohibited Aquatic Plants, Plant Pests, or Noxious Weeds:** Do not introduce or release prohibited aquatic plants, plant pests, or noxious weeds into the project limits as a result of clearing and grubbing, earthwork, grassing and mulching,

sodding, landscaping, or other such activities. Immediately notify the Engineer upon discovery of all prohibited aquatic plants, plant pests, or noxious weeds within the project limits. Do not move prohibited aquatic plants, plant pests, or noxious weeds within the project limits or to locations outside of the project limits without the Engineer's permission. Maintain all borrow material brought onto the project site free of prohibited aquatic plants, plant pests, noxious weeds, and their reproductive parts. Refer to Rule 5B-64 and Rule 5B-57, of the Florida Administrative Code for the definition of prohibited aquatic plants, plant pests, and noxious weeds.

#### **7-1.4 Compliance with Federal Endangered Species Act and other Wildlife**

**Regulations:** The Federal Endangered Species Act requires that the Department investigate the potential impact to a threatened or endangered species prior to initiating an activity performed in conjunction with a highway construction project. If the Department's investigation determines that there is a potential impact to a protected, threatened or an endangered species, the Department will conduct an evaluation to determine what measures may be necessary to mitigate such impact. When mitigation measures and/or special conditions are necessary, these measures and conditions will be addressed in the Contract Documents or in permits as identified in 7-2.1.

In addition, in cases where certain protected, threatened or endangered species are found or appear within close proximity to the project boundaries, the Department has established guidelines that will apply when interaction with certain species occurs, absent of any special mitigation measures or permit conditions otherwise identified for the project.

These guidelines are posted at the following URL address:

[https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/urlinspecs/files/endangeredwildlifeguidelines.pdf?sfvrsn=e27baf3f\\_2](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/urlinspecs/files/endangeredwildlifeguidelines.pdf?sfvrsn=e27baf3f_2).

Take responsibility to obtain this information and take all actions and precautions necessary to comply with the conditions of these guidelines during all project activities.

Prior to establishing any off-project activity in conjunction with a project, notify the Engineer of the proposed activity. Covered activities include but are not necessarily limited to borrow pits, concrete or asphalt plant sites, disposal sites, field offices, and material or equipment storage sites. Include in the notification the Financial Project ID, a description of the activity, the location of the site by township, range, section, county, and city, a site location map including the access route, the name of the property owner, and a person to contact to arrange a site inspection. Submit this notification at least 30 days in advance of planned commencement of the off-site activity, to allow for the Department to conduct an investigation without delaying job progress.

Do not perform any off-project activity without obtaining written clearance from the Engineer. In the event the Department's investigation determines a potential impact to a protected, threatened or endangered species and mitigation measures or permits are necessary, coordinate with the appropriate resource agencies for clearance, obtain permits and perform mitigation measures as necessary. Immediately notify the Engineer in writing of the results of this coordination with the appropriate resource agencies. Additional compensation or time will not be allowed for permitting or mitigation, associated with Contractor initiated off-project activities.

**7-1.5 Occupational Safety and Health Requirements:** The Contractor shall take all precautions necessary for the protection of life, health, and general occupational welfare of all

persons, including employees of both the Contractor and the Department, until the Contractor has completed the work required under the Contract as provided in 5-10 and 5-11.

Comply at all times with applicable Federal, State, and local laws, provisions, and policies governing safety and health, including 29 CFR 1926, including all subsequent revisions and updates.

**7-1.6 Discovery of an Unmarked Human Burial:** When an unmarked human burial is discovered, immediately cease all activity that may disturb the unmarked human burial and notify the Engineer. Do not resume activity until specifically authorized by the Engineer.

**7-1.7 Insecticides, Herbicides and Fertilizers:**

**7-1.7.1 Insecticides and Herbicides:** Use products found on the following website, <http://state.ceris.purdue.edu/>, approved by the Florida Department of Agriculture and Consumer Services. The use of restricted products is prohibited. Do not use any products in the sulfonylurea family of chemicals. Herbicide application by broadcast spraying is not allowed.

Procure any necessary licenses, pay all charges and fees, and give all notices necessary for lawful performance of the work.

Ensure that all insecticides and herbicides are applied in accordance with Chapter 5E-9, Florida Administrative Code. Submit a copy of current certificates to the Engineer upon request.

Ensure that employees who work with herbicides comply with all applicable Federal, State, and local regulations.

Comply with all regulations and permits issued by any regulatory agency within whose jurisdiction work is being performed. Post all permit placards in a protected, conspicuous location at the work site.

Acquire any permits required for work performed on the rights-of-way within the jurisdiction of National Forests in Florida. Contact the Local National Forest Ranger District, or the United States Department of Agriculture (USDA) office for the proper permits and subsequent approval.

Acquire all permits required for aquatic plant control as outlined in Chapter 62C-20, Florida Administrative Code Rules of the Florida Department of Environmental Protection. Contact the Regional Field Office of Bureau of Invasive Plant Management of the Florida Department of Environmental Protection for proper permits and subsequent approval. If application of synthetic organo-auxin herbicides is necessary, meet the requirements of Chapter 5E-2, Florida Administrative Code.

**7-1.7.2 Fertilizer:** Ensure that all employees applying fertilizer, possess a current Florida Department of Agriculture and Consumer Services Commercial Applicator license in accordance with Section 482.1562, F.S. Upon request, submit the current certificates to the Engineer.

**7-1.8 Compliance with Section 4(f) of the USDOT Act:** Section 4(f) of the USDOT Act prohibits the U. S. Secretary of Transportation from approving a project which requires the use of publicly owned land of a public park, recreation area or a wildlife and waterfowl refuge, or of any historic site of national, state, or local significance unless there is no prudent or feasible alternative to using that land and the program or project includes all possible planning to minimize the harm to the site resulting from the use.

Before undertaking any off-project activity associated with any federally assisted undertaking, ensure that the proposed site does not represent a public park, recreation area, wildlife or waterfowl refuge, or a historic site (according to the results of the Cultural Resources

Survey discussed in 120-6.2). If such a site is proposed, notify the Engineer and provide a description of the proposed off-site activity, the Financial Project ID, the location of the site by township, range, section, a county or city map showing the site location, including the access route and the name of the property. It is the Contractor's responsibility to submit justification for use of Section 4(f) property that is sufficient for the Florida Department of Transportation and the Federal Highway Administration to make a Section 4(f) determination. Submit this notification sufficiently in advance of planned commencement of the off-site activity to allow a reasonable time for the Engineer to conduct an investigation without delaying job progress. Do not begin any off-project activity without obtaining written clearance from the Engineer.

**7-1.9 Florida Minority Business Loan Mobilization Program:** The Loan Mobilization Program is established by Section 288.706 of the Florida Statutes, and has as its goal to assist minority business enterprises by facilitating working capital loans to those eligible businesses that are Contractors or subcontractors on Department contracts.

The limits of such advances under this program shall be as specified in Section 288.706 of the Florida Statutes. In the case of a subcontractor, the amount of the advance will be based on the subcontract unit prices, not the contract unit prices.

All prime Contractor vendors shall be required to incorporate the designated loan mobilization payment procedures in subcontract agreements with minority business enterprise vendors participating in this program and to cooperate in the release of designated loan mobilization payments to achieve the objective of providing working capital for minority business enterprise subcontract vendors.

When the Contract has been awarded or, in the case of a subcontractor, a subcontract has been signed with the prime Contractor, application for participation in this program will be submitted in writing to the Engineer. Such application must be made prior to commencement of the work. If the application is made on behalf of a subcontractor, it shall be considered incomplete if the subcontract with the unit prices of the work clearly delineated is not included in the submittal.

When all applicable conditions have been met, approval for participation will be made by the Office of the Comptroller and the applicant will be notified of the approval action taken.

Once approval has been obtained and the Notice to Proceed has been issued, disbursement of the monies will be made at the request of the applicant. The designated loan mobilization payment may be paid prior to the commencement of work on the Contract. However, if the work on the Contract has not commenced and the payment has not been made, then the Contract Time may not commence until the payment is made. All designated loan mobilization payments will be made payable jointly to the prime Contractor and the participating financial institution. When a subcontractor is the participant in the program, such payments shall be paid to the participant within 10 business days after receipt of the funds from the Department.

Repayment of monies advanced through this program will be made after the value of the work accomplished by the participant reaches 50 percent. Contractors are encouraged to make weekly or bi-weekly payments to subcontractors participating in this program.

## **7-2 Permits and Licenses.**

**7-2.1 General:** Except for permits procured by the Department, as incorporated by Special Provision expanding this Subarticle, if any, procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work.

The Department will also acquire any modifications or revisions to an original permit incorporated by Special Provision to this Subarticle when the Contractor requires such modifications or revisions to complete the construction operations specified in the Plans or Special Provisions and within the right-of-way limits.

Acquire all permits for work performed outside the right-of-way or easements for the project.

In carrying out the work in the Contract, when under the jurisdiction of any environmental regulatory agency, comply with all regulations issued by such agencies and with all general, special, and particular conditions relating to construction activities of all permits issued to the Department as though such conditions were issued to the Contractor. Post all permit placards in a protected location at the worksite.

In case of a discrepancy between any permit condition and other Contract Documents, the more stringent condition shall prevail.

**7-2.2 Work or Structures in Navigable Waters of the U.S., Waters of the U.S., and Waters of the State:** In general, one or more governmental agencies will exercise regulatory authority over work or structures, including related construction operations, in all tidal areas (channelward of the mean high water lines on the Atlantic and Gulf Coast); in the ocean and gulf waters to the outer limits of the continental shelf; in all rivers, streams, and lakes to the ordinary high water line; in marshes and shallows that are periodically inundated and normally characterized by aquatic vegetation capable of growth and reproduction; in all artificially created channels and canals used for recreational, navigational, or other purposes that are connected to navigable waters; and in all tributaries of navigable waters up to their headwaters.

Whenever the work under or incidental to the Contract requires structures or dredge/fill/construction activities in “Navigable Waters of the U.S.,” “Waters of the U.S.,” and “Waters of the State,” the Federal, State, county, and local regulatory agencies may require the Department to obtain a permit. For such dredge/fill /construction specified in the Plans to be accomplished within the limits of the project, or for any dredge/fill/construction within the limits of Department-furnished borrow areas, the Department will procure the necessary permits prior to advertising for bids.

### **7-2.3 As-Built Drawings and Certified Surveys:**

#### **7-2.3.1 Surface Water Management Systems for Water Management**

**Districts:** As a condition precedent to final acceptance of the project, submit to the Engineer the as-built drawings and a certified survey verifying the as-built conditions for all installed and constructed surface water management systems. The as-built drawings and certified survey must be PDF files in the same scale as the Plans, formatted on 11 inch by 17 inch sheets, and satisfy all the requirements and special conditions listed in the Water Management District’s Environmental Resource Permit (ERP) and any applicable local permit. The as-built drawings and certified survey must be signed and sealed by an appropriately licensed professional registered in the State of Florida.

If the ERP does not contain specific requirements, submit as-built drawings with the following information as a minimum:

1. Discharge structures: structure identification number, type, locations (latitude and longitude), dimensions and elevations of all, including weirs, bleeders, orifices, gates, pumps, pipes, and oil and grease skimmers.



2. Side bank and underdrain filters, or exfiltration trenches: locations, dimensions and elevations of all, including clean-outs, pipes, connections to control structures and points of discharge to receiving waters.
3. Storage areas for treatment and attenuation: storage area identification number, dimensions, elevations, contours or cross-sections of all, sufficient to determine stage-storage relationships of the storage area and the permanent pool depth and volume below the control elevation for normally wet systems.
4. System grading: dimensions, elevations, contours, final grades or cross-sections to determine contributing drainage areas, flow directions and conveyance of runoff to the system discharge points.
5. Conveyance: dimensions, elevations, contours, final grades or cross-sections of systems utilized to divert off-site runoff around or through the new system.
6. Water levels: existing water elevations and the date determined.
7. Benchmarks: location and description (minimum of one per major water control structure).

**7-2.3.2 Bridge Clearances for Projects under the Authority of a U.S. Coast Guard Permit:** As a condition precedent to final acceptance of the project, submit to the Engineer a certified survey verifying the as-built clearances described in the U.S. Coast Guard Owner's Certification of Bridge Completion. The certified survey must be signed and sealed by a Professional Engineer or Professional Surveyor and Mapper registered in the State of Florida.

**7-2.3.3 Projects Under the Authority of a U.S. Army Corps of Engineers Permit:** As a condition precedent to final acceptance of the project, submit to the Engineer the as-built drawings and a certified survey verifying the as-built conditions. The as-built drawings and certified survey must be submitted in PDF files formatted in the same scale as the Plans, formatted on 11 inch by 17 inch sheets, and satisfy all of the requirements and special conditions listed in the U.S. Army Corps of Engineers permit. The as-built drawings and certified survey must be signed and sealed by a Professional Engineer or Professional Surveyor and Mapper registered in the State of Florida.

### **7-3 Patented Devices, Materials and Processes.**

Include all royalties and costs arising from patents, trademarks, and copyrights, in any way involved in the work in the Contract price. Whenever using any design, device, material, or process covered by letters patent or copyright, obtain the right for such use by suitable legal agreement with the patentee or owner of the copyright. File a copy of such agreement with the Engineer. However, whether or not such agreement is made or filed as noted, the Contractor and the surety in all cases shall indemnify, defend, and save harmless, the Department from all claims for infringement by reason of the use of any such patented design, device, material, or process on work under the Contract, and shall indemnify the Department for all costs, expenses, and damages that it may be obliged to pay by reason of any such infringement, at any time during the prosecution or after the completion of the work.

### **7-4 Right-of-Way Furnished by the Department.**

Except as otherwise stipulated in these Specifications or as shown in the Plans, the Department will furnish all rights-of-way necessary for the proper completion of the work at no expense to the Contractor.

Should Department-furnished areas for obtaining borrow material, contain limerock material do not remove such material from the pit unless the Engineer gives specific approval.

Use of Department owned right-of-way for the purpose of equipment or material storage, lay-down facilities, pre-cast material fabrication sites, batch plants for the production of asphalt, concrete or other construction related materials, or other similar activities, shall require advance written approval by the Department prior to making use of said Department owned right of way. Use of Department owned right of way for these purposes is expressly limited to the storage of equipment and materials for the Project or production of materials or products for the Project.

#### **7-5 Restoration of Surfaces Opened by Permit.**

Upon the presentation of a duly authorized and satisfactory permit that provides that all necessary repair work will be paid for by the party holding such permit, the Engineer may authorize the Contractor to allow parties bearing such permits to make openings in the highway. Upon the Engineer's written order, perform, in an acceptable manner, all necessary repairs due to such openings, and such necessary work that the Engineer orders, subject to the same conditions as the original work performed. The Department will pay the Contractor for such work either under applicable Contract items or in accordance with 4-4 when Contract items are not applicable.

#### **7-6 Sanitary Provisions.**

The Contractor shall provide and maintain, in a neat and sanitary condition, such accommodations for the use of his employees as are necessary to comply with the requirements and regulations of the State and local boards of health. Commit no public nuisance.

#### **7-7 Control of the Contractor's Equipment.**

**7-7.1 Traffic Interference:** Do not allow equipment, while it is on or traversing a road or street, to unreasonably interfere with traffic.

**7-7.2 Overloaded Equipment:** Do not operate on any road, street or bridge including a Department owned temporary bridge, any hauling unit or equipment loaded in excess of:

1. the maximum weights specified in the Florida Highway Patrol, Commercial Motor Vehicle Manual (Trucking Manual), or
2. lower weight limits legally established and posted for any section of road or bridge by the Department or local authorities.

The governmental unit having jurisdiction over a particular road or bridge may provide exceptions by special permit under the provisions of 7-7.3.

This restriction applies to all roads and bridges inside and outside the Contract limits as long as these roads and bridges are open for public use. The Contractor may overload roads and bridges which are to be demolished after they are permanently closed to the public. The Contractor is responsible for all loss or damages resulting from equipment operated on a structure permanently closed to the public.

**7-7.3 Crossings:** Where it is necessary to cross an existing road or street, including specifically the existing traveled lanes of a divided highway within the limits of the project, obtain permits from the Department, for crossing overloaded or oversized equipment. Cross existing roads or streets only at Engineer-designated points. The Engineer may require the Contractor to protect the pavement or Roadway at the crossing by using lumber, planks, or fill. Movement of equipment around the project site must be in accordance with requirements of the Standard Plans and not create an undue hazard to the traveling public or workers. Provide flagging and watchman service, or approved signal devices, for the protection of traffic at all such crossings, in accordance with an approved written plan for that activity.

**7-7.4 Protection from Damage by Tractor-Type Equipment:** Take positive measures to ensure that tractor-type equipment does not damage the road. If any such damage should occur, repair it without delay, at no expense to the Department and subject to the Engineer's approval.

**7-7.5 Contractor's Equipment on Bridge Structures:** The Contractor's Engineer of Record shall analyze the effect of imposed loads on bridge structures, including Department owned temporary bridges, within the limits of a construction contract, resulting from the following operations:

1. Overloaded Equipment as defined in 7-7.2:
  - a. Operating on or crossing over completed bridge structures.
  - b. Operating on or crossing over partially completed bridge structures.
2. Equipment within legal load limits:
  - a. Operating on or crossing over partially completed bridge structures.
3. Construction cranes:
  - a. Operating on completed bridge structures.
  - b. Operating on partially completed bridge structures.
4. Asphalt Milling Equipment:
  - a. In excess of 90,000 lbs crossing bridge structures.
  - b. Less than 90,000 lbs crossing bridge structures listed on the overweight

routing map CRN-2 located on the Office of Maintenance Over-Weight Dimension Permits website at <https://www.fdot.gov/maintenance/owod-permit-documents#BlanketAttachments>.

Any pipe culvert(s) or box culvert(s) qualifying as a bridge under 1-3 is excluded from the requirements above.

A completed bridge structure is a bridge structure in which all elemental components comprising the load carrying assembly have been completed, assembled, and connected in their final position. The components to be considered shall also include any related members transferring load to any bridge structure.

The Contractor's Engineer of Record shall determine the effect that equipment loads have on the bridge structure and develop the procedures for using the loaded equipment without exceeding the structure's design load capacity.

Submit to the Department for approval the design calculations, layout drawings, and erection drawings showing how the equipment is to be used so that the bridge structure will not be overstressed. The Contractor's Engineer of Record shall sign and seal the drawings and the cover sheet of the calculations for the Department's Record Set.

**7-7.6 Posting of the Legal Gross Vehicular Weight:** Display the maximum legal gross weight, as specified in the Florida Uniform Traffic Code, in a permanent manner on each side of any dump truck or dump type tractor-trailer unit hauling embankment material, construction aggregates, road base material, or hot bituminous mixture to the project over any public road or street. Display the weight in a location clearly visible to the scale operator, in numbers that contrast in color with the background and that are readily visible and readable from a distance of 50 feet.

## **7-8 Structures over Navigable Waters.**

**7-8.1 Compliance with Federal and Other Regulations:** When working on structures in, adjacent to, or over, navigable waters, observe all regulations and instructions of Federal and other authorities having control over such waters. Do not obstruct navigation channels without permission from the proper authority, and provide and maintain navigation lights and signals in

accordance with the Federal requirements for the protection of the structure, of false work, and of navigation.

When working on moveable bridges, requests for temporarily changing the operating requirements for the moveable bridge must be submitted in writing to the appropriate Coast Guard District Bridge Branch, 90 days before the start of any action.

For all other bridges, notify the appropriate Coast Guard District Bridge Branch, at least 60 days prior to the start of any operations including construction and 30 days prior to any channel operations, closures, or opening restrictions.

When work platforms are indicated in the permit for construction, submit work platform construction plans to the appropriate Coast Guard District for approval. Obtain approval prior to beginning construction on the platform.

**7-8.2 Maintenance of Channel:** Where the work includes the excavation of a channel or other underwater areas to a required section, maintain the section from shoaling or other encroachment until final acceptance of the project.

In the event of accidental blocking of the navigation channel, immediately notify the U.S. Coast Guard of the blockage and upon removal of the blockage.

## **7-9 Use of Explosives.**

When using explosives for the prosecution of the work, exercise the utmost care not to endanger life or property, including new work. The Contractor is responsible for all damage resulting from the use of explosives.

Store all explosives in a secure manner in compliance with all laws and ordinances, and clearly mark all such storage places with the words: "DANGEROUS - EXPLOSIVES". Place such storage in the care of a competent watchman. Where no local laws or ordinances apply, provide storage satisfactory to the Engineer and, in general, not closer than 1,000 feet from the road or from any building, camping area, or place of human occupancy.

Notify each public utility company having structures in proximity to the site of the work of the intention to use explosives. Give such notice sufficiently in advance to enable the companies to take precautionary steps to protect their property from injury.

## **7-10 Forest Protection.**

**7-10.1 Compliance with State and Federal Regulations:** In carrying out work within or adjacent to State or National forests or parks, comply with all of the regulations of the State or Federal authority having jurisdiction, governing the protection of and the carrying out of work in forests or parks, and observe all sanitary laws and regulations with respect to the performance of work in these areas. Keep the areas in an orderly condition, dispose of all refuse, and obtain permits for the construction, installation, and maintenance of any construction camps, living quarters, stores, warehouses, sanitary facilities, and other structures; all in accordance with the requirements of the forest or park official.

**7-10.2 Prevention and Suppression of Forest Fires:** Take all reasonable precautions to prevent and suppress forest fires. Require employees and subcontractors, both independently and at the request of forest officials, to do all reasonably within their power to prevent and suppress forest fires. Assist in preventing and suppressing forest fires, and make every possible effort to notify a forest official at the earliest possible moment of the location and extent of all fires. Extinguish the fire if practicable.

## **7-11 Preservation of Existing Property.**

**7-11.1 General:** Preserve from damage all existing property within the project limits of or in any way affected by the Work, the removal or destruction of which is not specified in the Plans. This applies to, but is not limited to, public and private property, public and private utilities (except as modified by the provisions of 7-11.5), trees, shrubs, crops, sod, signs, monuments, fences, guardrail, pipe and underground structures, Intelligent Transportation Systems (ITS) facilities, traffic control signals and devices, highway lighting, and public highways (except natural wear and tear of highway resulting from legitimate use thereof by the Contractor).

Department owned underground facility locations shown in the Plans are approximate. Unless otherwise shown in the Plans, Department owned underground facilities will not be located by the Department nor through notification to "Sunshine 811". Locate all fiber optic cables. Provide a fiber optic cable locator in accordance with Section 633.

Whenever the Contractor's activities damage such existing property, immediately restore it to a condition equal to or better than that existing at the time such damage occurred, at no expense to the Department. Temporary repairs may be used to immediately restore ITS facilities and traffic control signals and devices. Permanent repairs to ITS facilities and traffic control signals and devices shall be made within 90 days of any temporary repairs and prior to final acceptance of the project. Submit permanent ITS facility repair plans to the Engineer prior to beginning repair work.

Protect existing bridges during the entire construction period from damage caused by the Work. Immediately repair, at no expense to the Department, all damage to existing bridges caused by the Work, prior to continuing the Work. The Department will not require the Contractor to provide routine repairs or maintenance for such structures.

Direct special attention to the protection of all geodetic monuments, horizontal or vertical, and Public Land Survey Corners located within the project. If any geodetic monument or Public Land Survey Corner, located within the project, is at risk of being damaged or destroyed, immediately notify the Engineer. Locate and replace any damaged or destroyed geodetic monuments or Public Land Survey Corners under the direction of a Professional Surveyor and Mapper registered in the State of Florida.

Whenever the actions of a third party damage such existing property and is not otherwise due to any fault or activities of the Contractor, either restore it to a condition equal to or better than that existing at the time such damage occurred or provide access and coordinate with the Department's maintenance Contractor in accordance with 8-4.4 as directed by the Engineer. The Department will compensate the Contractor for the costs associated with the repairs for restoring the existing property in accordance with 4-4. Theft and vandalism are considered damage caused by a third party.

**7-11.2 Failure to Restore Damaged Existing Property:** In case of failure on the part of the Contractor to restore such property, bridge, road or street, or to make good such damage or injury, the Engineer may, upon 48 hours notice, proceed to repair, rebuild, or otherwise restore such property, road, or street as may be deemed necessary, and the Department will deduct the cost thereof from any monies due or which may become due the Contractor under the Contract. Nothing in this clause prevents the Contractor from receiving proper compensation for the removal, damage, or replacement of any public or private property, not shown in the Plans, that is made necessary by alteration of grade or alignment. The Engineer will authorize such work,

provided that the Contractor, or his employees or agents, have not, through their own fault, damaged such property.

### **7-11.3 Contractor's Use of Streets and Roads:**

**7-11.3.1 On Systems Other than the State Highway System:** When hauling materials or equipment to the project over roads and bridges on the State park road system, county road system, or city street system, and such use causes damage, immediately, at no expense to the Department, repair such road or bridge to as good a condition as before the hauling began.

The Department may modify the above requirement in accordance with any agreement the Contractor might make with the governmental unit having jurisdiction over a particular road or bridge, provided that the Contractor submits written evidence of such agreement to the Engineer.

**7-11.3.2 On the State Highway System:** The Department is responsible for the repair of any damage that hauling materials to the site causes to roads outside the limits of the project, that are either on the State highway system (roads under the jurisdiction of the Department) or specifically designated in the Plans as haul roads from Department-furnished material pits, except in the event damage is due to failure to comply with 7-7.2. The Contractor is responsible for all damages to any road or bridge caused by the Contractor's failure to comply with 7-7.2.

**7-11.3.3 Within the Limits of a Construction Project:** The Department will not allow the operation of equipment or hauling units of such weight as to cause damage to previously constructed elements of the project, including but not necessarily limited to bridges, drainage structures, base course, and pavement. Do not operate hauling units or equipment loaded in excess of the maximum weights specified in 7-7.2 on existing pavements that are to remain in place (including pavement being resurfaced), cement-treated subgrades and bases, concrete pavement, any course of asphalt pavement, and bridges. The Engineer may allow exceptions to these weight restrictions for movement of necessary equipment to and from its worksite, for hauling of offsite fabricated components to be incorporated into the project, and for crossings as specified in 7-7.3.

**7-11.4 Operations within Railroad Right-of-Way:** Submit written advanced notification of the flagging services and railroad right-of-way access required, construction timeframe, and duration to the Engineer and District Rail Office at least 45 calendar days prior to beginning any operation within the limits of the railroad right-of-way or the adjoining 15 feet. Operations include the movement of employees, equipment, and trucks in areas other than public crossings or any traffic signal work within 500 feet of a signalized at-grade railroad crossing. The Railroad Company will notify the District Rail Office when flaggers are available for use in project scheduling.

No operations shall be conducted that affect railroad operations and property without written approval from the railroad.

**7-11.4.1 Notification to the Railroad Company:** Submit written notification to the Engineer, District Rail Office and the authorized Railroad Representative at least 72 hours before beginning any operation within the limits of the railroad right-of-way; any operation requiring movement of employees, trucks, or other equipment across the tracks of the railroad company at locations other than an established public crossing; and any other work that may affect railroad operations or property.

**7-11.4.1.1 Florida East Coast Railway (FEC):** Contact the FEC Signal Office at 904-279-3182 and FEC Railway at 1-800-342-1131, ext. 2377 in addition to the requirements in Section 7-11.4.1.

**7-11.4.2 Contractor's Responsibilities:** Unless instructed otherwise in writing by the Railroad Company, do not perform work within or adjacent to the railroad right-of-way without a flagger present (including temporary lane closures, lane shifts or detours). Comply with requirements deemed necessary by the railroad company's authorized representative to safeguard the railroad's property and operations.

The Contractor is responsible for all damages, delays, or injuries and all suits, actions, or claims brought on account of damages or injuries resulting from the Contractor's operations within or adjacent to railroad company right-of-way. The work includes all items necessary to relieve the flagger from providing protective services.

Costs incurred by the Railroad Company for Contractor-caused delays that adversely impact railway operations will be forwarded to the Contractor for payment. If the Contractor fails to pay said cost, the Department will deduct the amount from payments owed to the Contractor.

**7-11.4.2.1 CSXT:** Comply with the Construction Submission Criteria of the CSXT Public Project Information document and Construction Requirements sections of the CSXT Pipeline and Wireline Design and Construction Specifications prior to beginning work. These documents are available at the following URL:

<https://www.fdot.gov/programmanagement/Implemented/URLinSpecs/CSXT.shtm>.

Perform no work within the limits of the railroad right-of-way on CSXT holidays (except with permission of CSXT for emergencies such as natural disasters). CSXT holidays are New Year's Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the following Friday, Christmas Eve, Christmas Day, and New Year's Eve. Holidays falling on Saturday are observed on Friday and those falling on Sunday are observed on Monday.

**7-11.4.2.2 Norfolk Southern (NS):** Comply with the NS Special Provisions for Protection of Railway Interests (Appendix E) and the Construction Requirements (Appendix 4.3) of the NS Public Projects Manual document prior to beginning and during all work. These documents are available at the following URL:

[http://www.nscorp.com/content/dam/nscorp/ship/shipping-tools/Public\\_Projects\\_Manual.pdf](http://www.nscorp.com/content/dam/nscorp/ship/shipping-tools/Public_Projects_Manual.pdf).

**7-11.4.2.3 FEC:** Complete the On-Track Contractor Roadway Worker Training Course for FEC Railway. Contact FEC Railway at 1-800-342-1131 for training information.

**7-11.4.2.4 South Florida Rail Corridor (SFRC):** Complete the On-Track Contractor Roadway Worker Training Course for South Florida Regional Transportation Authority (SFRTA) Railway. Contact SFRTA at 954-788-7920 for training information.

**7-11.4.3 Watchman or Flagging Services:** The railroad company will furnish protective services (i.e., watchman or flagging services) to ensure the safety of railroad operations during certain periods of the project. The Department will reimburse the railroad company for the cost thereof. Schedule work that affects railroad operations so as to minimize the need for protective services by the railroad company.

Submit construction schedules and schedule changes to the Engineer and District Rail Office which include an estimated start date, weekly construction schedule, daily

hours of operation, and the calendar day duration for which flagging services will be necessary to perform work activities within railroad right-of-way in accordance with 8-3.2.

**7-11.4.3.1 Central Florida Rail Corridor (CFRC) and SFRC:** The Department will furnish protective services (i.e., watchman or flagging services) to ensure the safety of railroad operations.

**7-11.5 Utilities:**

**7-11.5.1 Arrangements for Protection or Adjustment:** Do not commence work at points where the construction operations are adjacent to utility facilities until all necessary arrangements have been made for removal, temporary removal, relocation, de-energizing, deactivation or adjustment with the utility facilities owner to protect against damage that might result in expense, loss, disruption of service, or other undue inconvenience to the public or to the owners. The Contractor is solely and directly responsible to the owners and operators of such properties for all damages, injuries, expenses, losses, inconveniences, or delays caused by the Contractor's operations.

Do not request utility removal, temporary removal, relocation, de-energizing, deactivation, or adjustment when work can be accomplished within the utility work schedules. In the event that removal, temporary removal, relocation, de-energizing, deactivation, or adjustment of a utility or a particular sequence of timing in the relocation of a utility is necessary and has not been addressed in a utility work schedule, the Engineer will determine the necessity for any such utility work. Coordinate such work as to cause the least impediment to the overall construction operations and utility service. The Department is not responsible for utility removal, temporary removal, relocation, de-energizing, deactivation, or adjustment work where such work is determined not necessary by the Engineer or done solely for the benefit or convenience of the utility owner or its contractor, or the Contractor.

**7-11.5.2 Cooperation with Utility Owners:** Cooperate with the owners of all underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum, and that services rendered by the utility owners will not be unnecessarily interrupted.

In the event of interruption of water or other utility services as a result of accidental breakage, exposure, or lack of support, promptly notify the proper authority and cooperate with the authority in the prompt restoration of service. If water service is interrupted and the Contractor is performing the repair work, the Contractor shall work continuously until the service is restored. Do not begin work around fire hydrants until the local fire authority has approved provisions for continued service.

**7-11.5.3 Utility Adjustments:** Certain utility adjustments and reconstruction work may be underway during the progress of the Contract. Cooperate with the various utility construction crews who are maintaining utility service. Exercise due caution when working adjacent to relocated utilities. The Contractor shall repair all damage to the relocated utilities resulting from his operations at no expense to the Department. The requirements of 7-11.1 and 7-11.5.2 outline the Contractor's responsibility for protecting utility facilities. The Department will include in the Contract the utility authorities who are scheduled to perform utility work on the project.

**7-11.5.4 Weekly Meetings:** Conduct weekly meetings on the job site with all the affected utility companies and the Engineer in attendance to coordinate project construction and utility relocation. Submit a list of all attendees one week in advance to the Engineer for approval.



Submit the approved Work Progress Schedule and Work Plan for the project, as specified in 8-3.2, to document the schedule and plan for road construction and utility adjustments.

When utility relocations no longer affect construction activities, the Contractor may discontinue the meetings with the Engineer's approval.

## **7-12 Responsibility for Damages, Claims, etc.**

**7-12.1 Contractor to Provide Indemnification:** The Contractor shall indemnify and hold harmless the Department, its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the construction Contract.

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.

**7-12.2 Guaranty of Payment for Claims:** The Contractor guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against him or any subcontractor, in connection with the Contract. The Department's final acceptance and payment does not release the Contractor's bond until all such claims are paid or released.

## **7-13 Insurance.**

**7-13.1 Workers' Compensation Insurance:** Provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent Contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.

**7-13.2 Commercial General Liability Insurance:** Carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Contract. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. Cause the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Contract, and may not be shared with or diminished by claims unrelated to the contract. The policy/ies and coverage described herein may be subject to a deductible. Pay all deductibles as required by the policy. No policy/ies or coverage described herein may contain or be subject to a

Retention or a Self-Insured Retention. Prior to the execution of the Contract, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.

**7-13.3 Insurance Required for Construction at Railroads:** When the Contract includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, you shall, in addition to the insurance coverage required pursuant to 7-13.2 above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with the Department as an Additional Insured on the policy/ies procured pursuant to subsection 7-13.2 above. At the preconstruction conference, and at all renewal periods which occur prior to final acceptance of the work, both the Department and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have.

**7-13.4 Insurance for Protection of Utility Owners:** When the Contract involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the policy/ies procured pursuant to subsection 7-13.2 above.

#### **7-14 Contractor's Responsibility for Work.**

The Contractor will take charge and custody of the Work and take every necessary precaution against damage to the Work, by the action of the elements or from any other cause whatsoever, until the Department's final acceptance of the Work. The Contractor will rebuild, repair, restore, and make good, all damage to any portion of the Work occasioned by any of the above causes before final acceptance of the Contract.

The Department will have no obligation to pay any reimbursement for damage caused by the execution or nonexecution of the Work by the Contractor or its sub-contractors, or damage the Contractor was negligent in preventing.

For damage to installed material caused by third parties, the Contractor may pursue recovery from the third party or seek reimbursement from the Department, but not both. The Department will not reimburse the Contractor for repair costs due to damage to installed material caused by known third parties unless the Contractor has contacted law enforcement within 14 days of the damage, filed a report, and provided the report to the Department within 14 calendar days of receiving the report from law enforcement. Upon submission of the report to

the Department, the Department solely retains the right to pursue recovery from the known third party. If damage to installed material is caused by a known third party, the Department will reimburse the Contractor for costs associated with the repair after reducing the amount of the repair cost by a \$2000.00 deductible for each occurrence, borne solely by the Contractor. If the Department is successful in recovery, the Contractor may be reimbursed proportionally, up to the amount of the deductible.

If damage to installed material other than guardrail, guardrail transitions and end treatments, and crash cushions is caused by an unknown third party, the Department will reimburse the contractor for 50% of the cost of the repair after reducing the amount of the repair cost by a \$2000.00 deductible for each occurrence, borne solely by the Contractor. Repair costs for damage to guardrail, guardrail transitions and end treatments, and crash cushions installed as part of the work caused by unknown third parties will be reimbursed at the manufacturer's/distributor's invoice price for the new materials/parts plus 20% markup. The 20% markup is compensation for all necessary work, including but not limited to labor, equipment, supplies and profit, as authorized by the Engineer. Payment for any additional MOT required for the repair of guardrail, guardrail transitions and end treatments, and crash cushions installed as part of the work will be paid for under the appropriate MOT pay item.

Repair cost will be determined in accordance with 4-4. Theft and vandalism are considered damage caused by an unknown third party.

The Department may, at its discretion, reimburse the Contractor for the repair of damage to the Work not caused by a third party and due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to Acts of God, of the public enemy, or of governmental authorities.

### **7-15 Opening Sections of the Project to Traffic.**

Whenever any section of the project is in acceptable condition for use, the Engineer may direct the Contractor to open it to vehicular or pedestrian traffic. The Department's direction to open a section of the project does not constitute an acceptance of the project, or any part thereof, or waive any Contract provisions. Perform all necessary repairs or renewals, on any section of the project thus opened to traffic under direction from the Engineer, due to defective material or work or to any cause other than ordinary wear and tear, pending completion and the Engineer's acceptance of the project, at no expense to the Department.

### **7-16 Wage Rates for Federal-Aid Projects.**

For all projects that include Federal-aid participation, the Special Provisions contain requirements with regard to payment of predetermined minimum wages. Predetermined Wage Rate Decisions (U.S. Department of Labor provided Wage Rate Tables) exist for Heavy, Highway, and Building Construction Projects.

### **7-17 Supplemental Agreements.**

Section 337.11 of the Florida Statutes as amended, which prescribe certain limitations on the use of supplemental agreements, are a part of the Contract.

### **7-18 Scales for Weighing Materials.**

**7-18.1 Applicable Regulations:** When determining the weight of material for payment, use scales meeting the requirements of Chapter 531 of Florida Statutes, pertaining to

specifications, tolerances, and regulations, as administered by the Bureau of Weights and Measures of the Florida Department of Agriculture.

**7-18.2 Base for Scales:** Place such scales on a substantial horizontal base to provide adequate support and rigidity and to maintain the level of the scales.

**7-18.3 Protection and Maintenance:** Maintain all scale parts in proper condition as to level and vertical alignment, and fully protect them against contamination by dust, dirt, and other matter that might affect their operation.

### **7-19 Source of Forest Products.**

As required by Section 255.2575 of the Florida Statutes, where price, fitness and quality are equal, and when available, use only timber, timber piling, or other forest products that are produced and manufactured in the State of Florida. This provision does not apply to Federal-aid projects.

### **7-20 Regulations of Air Pollution from Asphalt Plants.**

**7-20.1 General:** Perform all work in accordance with all Federal, State, and local laws and regulations regarding air pollution and burning. In particular, pay attention to Chapters 62-210 and 62-256, Rules of the Department of Environmental Protection, Florida Administrative Code, and to any part of the State Implementation Plan applicable to the project. See also 110-9.2 regarding burning of debris.

**7-20.2 Dust Control:** Control dust during the storage and handling of dusty materials by wetting, covering, or other means as approved by the Engineer.

**7-20.3 Asphalt Material:** Use only emulsified asphalt, unless otherwise stated in the Plans and allowed by Chapter 62-210, Rules of the Department of Environmental Protection, Florida Administrative Code. Store and handle asphalt materials and components so as to minimize unnecessary release of hydrocarbon vapors.

**7-20.4 Asphalt Plants:** Operate and maintain asphalt plants in accordance with Chapter 62-210, Rules of the Department of Environmental Protection, Florida Administrative Code. Provide the plant site with a valid permit as required under Chapter 62-210 prior to start of work.

### **7-21 Dredging and Filling.**

Section 370.033 of the Florida Statutes, requires that all persons, who engage in certain dredge or fill activities in the State of Florida, obtain a certificate of registration from the Florida Department of Environmental Protection, Tallahassee, Florida 32301, and that they keep accurate logs and records of all such activities for the protection and conservation of the natural resources. Obtain details as to the application of this law from the Department of Environmental Protection.

### **7-22 Available Funds.**

For Contracts in excess of \$25,000 or a term for more than one year, comply with the following provisions of Chapter 339 of the Florida Statutes:

The Department will not, during any fiscal year, expend money, incur any liability, or enter into any Contract that, by its terms, involves the expenditures of money in excess of the amounts budgeted as available for expenditure during such fiscal year. If the Department enters into such a Contract, verbal or written, in violation of this subsection, such Contract is null and void, and the Department will not make any payments thereon. The Department will require a

statement from the Department's comptroller that funds are available prior to entering into any such Contract or other binding commitment of funds. Nothing herein contained prevents the Department from executing Contracts for a period exceeding one year, but the Department will make such Contracts executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. The Department will incorporate this paragraph verbatim in all Contracts in excess of \$25,000 or having a term for more than one year.

### **7-23 Contractor's Motor Vehicle Registration.**

The Contractor shall provide the Department with proof that all motor vehicles operated or caused to be operated by such Contractor are registered in compliance with Chapter 320 of the Florida Statutes. Submit such proof of registration on Department Form 700-010-52.

The Department will not make payment to the Contractor until the required proof of registration is on file with the Department.

If the Contractor fails to register any motor vehicle that he operates in Florida, pursuant to Chapter 320 of the Florida Statutes, the Department may disqualify the Contractor from bidding, or the Department may suspend and revoke the Contractor's certificates of qualification.

### **7-24 Disadvantaged Business Enterprise Program.**

**7-24.1 Disadvantaged Business Enterprise Affirmative Action Plan:** Prior to award of the Contract, have an approved Disadvantaged Business Enterprise (DBE) Affirmative Action Program Plan filed with the Equal Opportunity Office. Update and resubmit the plan every three years. No Contract will be awarded until the Department approves the Plan. The DBE Affirmative Action Program Plan is incorporated into and made a part of the Contract.

**7-24.2 Required Contract and Subcontract DBE Assurance Language:** In accordance with 49 CFR 26.13 (b), the Contract FDOT signs with the Contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: "The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to,

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the Contractor from future bidding as non-responsible."

**7-24.3 Plan Requirements:** Include the following in the DBE Affirmative Action Program Plan:

1. A policy statement, signed by an authorized representative (president, chief executive officer, or chairman of the contractor), expressing a commitment to use DBEs in all aspects of contracting to the maximum extent feasible, outlining the various levels of responsibility, and stating the objectives of the program. Circulate the policy statement throughout the Contractor's organization.
2. The designation of a Liaison Officer within the Contractor's organization, as well as support staff, necessary and proper to administer the program, and a description of the authority, responsibility, and duties of the Liaison Officer and support staff. The Liaison Officer and staff are responsible for developing, managing, and implementing the program on a day-to-

day basis for carrying out technical assistance activities for DBEs and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to participate in Contracts let by the Department.

3. Utilization of techniques to facilitate DBE participation in contracting activities which include, but are not limited to:

a. Soliciting price quotations and arranging a time for the review of Plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations.

b. Providing assistance to DBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.

c. Carrying out information and communication programs or workshops on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

d. Encouraging eligible DBEs to apply for certification with the Department.

e. Contacting Minority Contractor Associations and city and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible DBE contractors to apply for certification with the Department.

**7-24.4 DBE Records and Reports:** Submit the following through the Equal Opportunity Compliance System:

1. DBE Commitments - at or before the Pre-Construction Conference.

2. Report monthly, through the Equal Opportunity Compliance System on the Department's Website, actual payments (including retainage) made to DBEs for work performed with their own workforce and equipment in the area in which they are certified. Report payments made to all DBE and Minority Business Enterprise (MBE) subcontractors and DBE and MBE construction material and major suppliers.

The Equal Opportunity Office will provide instructions on accessing this system. Develop a record keeping system to monitor DBE affirmative action efforts which include the following:

1. the procedures adopted to comply with these Specifications;

2. the number of subordinated Contracts on Department projects awarded to DBEs;

3. the dollar value of the Contracts awarded to DBEs;

4. the percentage of the dollar value of all subordinated Contracts awarded to DBEs as a percentage of the total Contract amount;

5. a description of the general categories of Contracts awarded to DBEs;

and

6. the specific efforts employed to identify and award Contracts to DBEs.

Upon request, provide the records to the Department for review.

Maintain all such records for a period of five years following acceptance of final payment and have them available for inspection by the Department and the Federal Highway Administration.

#### **7-24.5 Counting DBE Participation and Commercially Useful Functions:**

49 CFR Part 26.55 specifies when DBE credit shall be awarded for work performed by a DBE. DBE credit can only be awarded for work actually performed by DBEs themselves for the types of work for which they are certified. When reporting DBE Commitments, only include the

dollars that a DBE is expected to earn for work they perform with their own workforce and equipment. Update DBE Commitments to reflect changes to the initial amount that was previously reported or to add DBEs not initially reported.

When a DBE participates in a contract, the value of the work is determined in accordance with 49 CFR Part 26.55, for example:

1. The Department will count only the value of the work performed by the DBE toward DBE goals. The entire amount of the contract that is performed by the DBE's own forces (including the cost of supplies, equipment and materials obtained by the DBE for the contract work) will be counted as DBE credit.

2. The Department will count the entire amount of fees or commissions charged by the DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services or for providing bonds or insurance specifically required for the performance of a Department-assisted contract, toward DBE goals, provided that the Department determines the fees to be reasonable and not excessive as compared with fees customarily followed for similar services.

3. When the DBE subcontracts part of the work of its contract to another firm, the Department will count the value of the subcontracted work only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

4. When a DBE performs as a participant in a joint venture, the Department will count the portion of the dollar value of the contract equal to the distinct, clearly defined portion of the work the DBE performs with its own forces toward DBE goals.

5. The Contractors shall ensure that only expenditures to DBEs that perform a commercially useful function (CUF) in the work of a contract may be counted toward the voluntary DBE goal.

6. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

7. Contractors wishing to use joint checks involving DBE credit must provide written notice to the District Contract Compliance Office prior to issuance of the joint check. The Contractor must also provide a copy of the notice to the DBE subcontractor and maintain a copy with the project records.

8. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

9. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

10. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own workforce, or if the DBE subcontracts a greater

portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE has not performed a commercially useful function.

**7-24.6 Prompt Payments:** Meet the requirements of 9-5 for payments to all DBE subcontractors.

**7-25 On-The-Job Training Requirements.**

As part of the Contractor’s equal employment opportunity affirmative action program, training shall be provided as follows:

The Contractor shall provide On-The-Job Training aimed at developing full journeymen in the type of trade or job classification involved in the work. In the event the Contractor subcontracts a portion of the contract work, it shall determine how many, if any, of the trainees are to be trained by the subcontractor provided, that the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this Section. Ensure that, when feasible, 25% of trainees in each occupation are in their first year of training. The Contractor shall incorporate the requirements of this Section into such subcontract.

The number of trainees will be estimated on the number of calendar days of the contract, the dollar value, and the scope of work to be performed. The trainee goal will be finalized at a Post-Preconstruction Trainee Evaluation Meeting and the goal will be distributed among the work classifications based on the following criteria:

1. Determine the number of trainees on Federal Aid Contract:

a. No trainees will be required for contracts with a Contract Time allowance of less than 275 calendar days.

b. If the Contract Time allowance is 275 calendar days or more, the number of trainees shall be established in accordance with the following chart:

Estimated Contract Amount	Trainees Required
\$2,000,000 or less	0
Over \$2,000,000 to \$4,000,000	2
Over \$4,000,000 to \$6,000,000	3
Over \$6,000,000 to \$12,000,000	5
Over \$12,000,000 to \$18,000,000	7
Over \$18,000,000 to \$24,000,000	9
Over \$24,000,000 to \$31,000,000	12
Over \$31,000,000 to \$37,000,000	13
Over \$37,000,000 to \$43,000,000	14
Over \$43,000,000 to \$49,000,000	15
Over \$49,000,000 to \$55,000,000	16
Over \$55,000,000 to \$62,000,000	17
Over \$62,000,000 to \$68,000,000	18
Over \$68,000,000 to \$74,000,000	19
Over \$74,000,000 to \$81,000,000	20
Over \$81,000,000 to \$87,000,000	21
Over \$87,000,000 to \$93,000,000	22
Over \$93,000,000 to \$99,000,000	23
Over \$99,000,000 to \$105,000,000	24
Over \$105,000,000 to \$112,000,000	25



Estimated Contract Amount	Trainees Required
Over \$112,000,000 to \$118,000,000	26
Over \$118,000,000 to \$124,000,000	27
Over \$124,000,000 to \$130,000,000	28
Over \$130,000,000 to *	
*One additional trainee per \$6,000,000 of estimated Construction Contract amount over \$130,000,000	

Further, if the Contractor or subcontractor requests to utilize banked trainees as discussed later in this Section, a Banking Certificate will be validated at this meeting allowing credit to the Contractor for previously banked trainees. Banked credits of prime Contractors working as Subcontractors may be accepted for credit. The Contractor’s Project Manager, the Construction Project Engineer and the Department’s District Contract Compliance Manager will attend this meeting. Within ten days after the Post-Preconstruction Training Evaluation Meeting, the Contractor shall submit to the Department for approval an On-The-Job Training Schedule indicating the number of trainees to be trained in each selected classification and the portion of the Contract Time during which training of each trainee is to take place. This schedule may be subject to change if any of the following occur:

1. When a start date on the approved On-The-Job Training Schedule has been missed by 14 or more days;
2. When there is a change in previously approved classifications; or
3. When replacement trainees are added due to voluntary or involuntary termination

The revised schedule will be resubmitted to and approved by the Department’s District Contract Compliance Manager.

The following criteria will be used in determining whether or not the Contractor has complied with this Section as it relates to the number of trainees to be trained:

1. Credit will be allowed for each trainee that is both enrolled and satisfactorily completes training on this Contract. Credit for trainees, over the established number for this Contract, will be carried in a “bank” for the Contractor and credit will be allowed for those surplus trainees in subsequent, applicable projects. A “banked” trainee is described as an employee who has been trained on a project, over and above the established goal, and for which the Contractor desires to preserve credit for utilization on a subsequent project.
2. Credit will be allowed for each trainee that has been previously enrolled in the Department’s approved training program on another contract and continues training in the same job classification and completes their training on a different contract.
3. Credit will be allowed for each trainee who, due to the amount of work available in their classification, is given the greatest practical amount of training on the contract regardless of whether or not the trainee completes training.
4. Credit will be allowed for any training position indicated in the approved On-The-Job Training Schedule, if the Contractor can demonstrate that a good faith effort to provide training in that classification was made.
5. No credit will be allowed for a trainee whose employment by the Contractor is involuntarily terminated unless the Contractor can clearly demonstrate good cause for this action.

Training and upgrading of minorities, women and economically disadvantaged persons toward journeyman status is a primary objective of this Section. Accordingly, the Contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic

and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent such persons are available within a reasonable area of recruitment. If a non-minority male is enrolled into the On-The-Job Training Program, the On-The-Job Training Notification of Personnel Action Form notifying the District Contract Compliance Manager of such action shall be accompanied by a disadvantaged certification or a justification for such action acceptable to the Department's District Contract Compliance Manager. The Contractor will be given an opportunity and will be responsible for demonstrating the steps that it has taken in pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this Section. This training is not intended, and shall not be used, to discriminate against any applicant for training, whether a minority, woman or disadvantaged person.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training course leading to journeyman status, or have been employed as a journeyman. The Contractor may satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established at the Post-Preconstruction Trainee Evaluation Meeting and approved by the Department. Graduation to journeyman status will be based upon satisfactory completion of a Proficiency Demonstration set up at the completion of training and established for the specific training classification, completion of the minimum hours in a training classification range, and the employer's satisfaction that the trainee does meet journeyman status in the classification of training. Upon reaching journeyman status, the following documentation must be forwarded to the District Contract Compliance Office:

1. Trainee Enrollment and Personnel Action Form
2. Proficiency Demonstration Verification Form indicating completion of each

standard established for the classification signed by representatives of both the Contractor and the Department.

The Department and the Contractor shall establish a program that is tied to the scope of the work in the project and the length of operations providing it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee for journeyman status in the classifications concerned, by at least, the minimum hours prescribed for a training classification. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal Aid highway construction contract. Approval or acceptance of a training schedule shall be obtained from the Department prior to commencing work on the classifications covered by the program.

A voluntary On-The-Job Training Program is available to a Contractor which has been awarded a state funded project. Through this program, the Contractor will have the option to train employees on state funded projects for "banked credit" as discussed previously in this provision, to be utilized on subsequent Federal Aid Projects where training is required. Those Contractors availing themselves of this opportunity to train personnel on state funded projects and bank trainee hours for credit shall comply with all training criteria set forth in this Section

for Federal Aid Projects; voluntary banking may be denied by the Department if staff is not available to monitor compliance with the training criteria.

It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial type positions. Training is permissible in lower level management positions such as office engineers, estimators, etc., where the training is oriented toward construction applications. Training in the laborer classifications, except Common/General Laborer, may be permitted provided that significant and meaningful training is provided and approved by the District Contract Compliance Office.

When approved in advance by the District Contract Compliance Manager, credit will be given for training of persons in excess of the number specified herein under the current contract or a Contractor will be allowed to bank trainees who have successfully completed a training program and may apply those trainees to a training requirement in subsequent project(s) upon approval of the Department's District Contract Compliance Manager. This credit will be given even though the Contractor may receive training program funds from other sources, provided such other source do not specifically prohibit the Contractor from receiving other form of compensation. Offsite training is permissible as long as the training is an integral part of an approved training program and does not compromise a significant part of the overall training. Credit for offsite training indicated above may only be made to the Contractor when it does one or more of the following and the trainees are concurrently employed on a Federal Aid Project:

1. Contributes to the cost of the training,
2. Provides the instruction to the trainee,
3. Pays the trainee's wages during the offsite training period.

The Contractor shall compensate the trainee at no less than the laborer rate established in the Contract at the onset of training. The compensation rate will be increased to the journeyman's wage upon graduation from the training program for the remainder of the time the trainee works in the classification in which they were trained.

The Contractor shall furnish the trainee a copy of the program they will follow in providing the training. The Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed. The Contractor shall enroll a trainee in one training classification at a time to completion before the trainee can be enrolled in another classification on the same project.

The Contractor shall maintain records to document the actual hours each trainee is engaged in training on work being performed as a part of this Contract.

The Contractor shall submit to the District Contract Compliance Manager a copy of an On-The-Job Training Notification of Personnel Action form no later than seven days after the effective date of the action when the following actions occur: a trainee is transferred on the project, transferred from the project to continue training on another contract, completes training, is upgraded to journeyman status or voluntarily terminates or is involuntary terminated from the project.

The Contractor shall furnish to the District Contract Compliance Manager a copy of a Monthly Time Report for each trainee. The Monthly Time Report for each month shall be submitted no later than the tenth day of the subsequent month. The Monthly Time Report shall indicate the phases and sub-phases of the number of hours devoted to each proficiency.

Highway or Bridge Carpenter Helper, Mechanic Helper, Rodman/Chainman, and Timekeeper classifications will not be approved for the On-The-Job Training Program.

The number of trainees may be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment.

The Contractor will have fulfilled the responsibilities of this Specification when acceptable training has been provided to the trainee as specified above.

## SECTION 8 PROSECUTION AND PROGRESS

### **8-1 Subletting or Assigning of Contracts.**

Do not, sell, transfer, assign or otherwise dispose of the Contract or Contracts or any portion thereof, or of the right, title, or interest therein, without written consent of the Department. If the Contractor chooses to sublet any portion of the Contract, the Contractor must submit a written request to sublet work on the Certification of Sublet Work form developed by the Department for this purpose. With the Engineer's acceptance of the request, the Contractor may sublet a portion of the work, but shall perform with its own organization work amounting to not less than 40% of the total Contract amount. The Certification of Sublet Work request will be deemed acceptable by the Department, for purposes of the Department's consent, unless the Engineer notifies the Contractor within 5 business days of receipt of the Certification of Sublet Work that the Department is not consenting to the requested subletting.

Include in the total Contract amount the cost of materials and manufactured component products, and their transportation to the project site. For the purpose of meeting this requirement the Department will not consider off-site commercial production of materials and manufactured component products that the Contractor purchases, or their transportation to the project, as subcontracted work.

If the Contractor sublets a part of a Contract item, the Department will use only the sublet proportional cost in determining the percentage of subcontracted normal work.

Execute all agreements to sublet work in writing and include all pertinent provisions and requirements of the Contract. All other agreements must be in writing and reference all applicable Contract provisions. Upon request, submit to the Department a copy of the subcontract and agreement. The subletting of work does not relieve the Contractor or the surety of their respective liabilities under the Contract.

The Department recognizes a subcontractor only in the capacity of an employee or agent of the Contractor, and the Engineer may require the Contractor to remove the subcontractor as in the case of an employee.

### **8-2 Work Performed by Equipment-Rental Agreement.**

The limitations set forth in 8-1, concerning the amount of work that may be sublet, do not apply to work performed by equipment-rental agreement. However, for any work proposed to be performed by equipment-rental agreement, notify the Engineer in writing of such intention before using the rented equipment, and indicate whether the equipment will be rented on an operated or non-operated basis. Include with the written notice a listing and description of the equipment and a description of the particular work to be performed with such equipment. As an exception to the above requirements, the Department will not require written notice for equipment to be rented (without operators) from an equipment dealer or from a firm whose principal business is the renting or leasing of equipment.

The operators of all rented equipment, whether rented on an operated or a non-operated basis, are subject to all wage rate requirements applicable to the project. When renting equipment without operators, the Contractor shall carry the operators on his own payroll. For equipment that is rented on an operated basis, and when required by the Contract or requested by the Engineer, submit payrolls from the lessor with the names of the operators shown thereon.

When a lessor provides rentals of equipment on an operated basis that exceed \$10,000, such lessor is subject to any Equal Employment Opportunity requirements that are applicable to the project.

### **8-3 Prosecution of Work.**

**8-3.1 Compliance with Time Requirements:** Commence work in accordance with the accepted working schedule and provide sufficient labor, materials, and equipment to complete the work within the time limit(s) set forth in the proposal. Should the Contractor fail to furnish sufficient and suitable equipment, forces, and materials, as necessary to prosecute the work in accordance with the required schedule, the Engineer may withhold all estimates that are, or may become due, or suspend the work until the Contractor corrects such deficiencies.

**8-3.2 Submission of Contract Schedule:** Within 21 calendar days after Contract award or at the preconstruction conference, whichever is earlier, submit to the Engineer a Contract Schedule for the project. The Engineer will review and respond to the Contractor within 15 calendar days of receipt.

Provide a Contract Schedule that shows the various activities of work in sufficient detail to demonstrate a reasonable and workable plan to complete the project within the Contract Time. Show the order and interdependence of activities and the sequence for accomplishing the work. Describe all activities in sufficient detail so that the Engineer can readily identify the work and measure the progress on of each activity. Show each activity with a beginning work date, a duration, and a monetary value. Include activities for procurement fabrication, and delivery of materials, plant, and equipment, and review time for shop drawings and submittals. Include milestone activities when milestones are required by the Contract Documents. In a project with more than one phase, adequately identify each phase and its completion date, and do not allow activities to span more than one phase.

Conduct sufficient liaison and provide sufficient information to indicate coordination activities with utility owners that have facilities within the limits of construction have been resolved. Incorporate in the Contract Schedule any utility work schedules included in the Contract Documents unless the utility company and the Department mutually agree to changes to the utility schedules shown in the Contract.

Submit a working plan with the Contract Schedule, consisting of a concise written description of the construction plan.

The Engineer will return inadequate Contract Schedules to the Contractor for corrections. Resubmit a corrected schedule within 15 calendar days from the date of the Engineer's return transmittal.

Submit an updated Contract Schedule, for Engineer's acceptance, if there is a significant change in the planned order or duration of an activity. The Engineer will review the corrected schedule and respond within 7 calendar days of receipt.

By acceptance of the Contract Schedule, the Engineer does not endorse or otherwise certify the validity or accuracy of the activity durations or sequencing of activities. The Engineer will use the accepted schedule as the baseline against which to measure the progress.

If the Contractor fails to finalize either the initial or a revised Contract Schedule in the time specified, the Engineer may withhold all Contract payments until the Engineer accepts the schedule.

The Contract Schedule may indicate a completion date in advance of the expiration of Contract Time. However, the Department will not be liable in any way for the

Contractor's failure to complete the project prior to expiration of Contract Time. Any additional costs, including extended overhead incurred between the Contractor's scheduled completion date and the expiration of Contract Time, shall be the responsibility of the Contractor. The Contractor shall not be entitled to claim or recover any such costs from the Department.

**8-3.3 Beginning Work:** Notify the Engineer not less than five days in advance of the planned start day of work. Upon the receipt of such notice, the Engineer may give the Contractor Notice to Proceed and may designate the point or points to start the work. In the Notice to Proceed, the Engineer may waive the five-day advance notice and authorize the Contractor to begin immediately. Notify the Engineer in writing at least two days in advance of the starting date of important features of the work. Do not commence work under the Contract until after the Department has issued the Notice to Proceed. The Department will issue the Notice to Proceed within 20 calendar days, excluding Saturdays, Sundays and Holidays, after execution of the Contract.

**8-3.4 Provisions for Convenience of Public:** Schedule construction operations so as to minimize any inconvenience to adjacent businesses or residences. Where necessary, the Engineer may require the Contractor to first construct the work in any areas along the project where inconveniences caused by construction operations would present a more serious handicap. In such critical locations, where there is no assurance of continuous effective prosecution of the work once the construction operations are begun, the Engineer may require the Contractor to delay removal of the existing (usable) facilities.

**8-3.5 Preconstruction Conference:** Immediately after awarding the Contract but before the Contractor begins work, the Engineer will call a preconstruction conference at a place the Engineer designates to go over the construction aspects of the project. Attend this meeting, along with the Department and the various utility companies that will be involved with the road construction.

## **8-4 Limitations of Operations.**

**8-4.1 Night Work:** During active nighttime operations, furnish, place and maintain lighting sufficient to permit proper workmanship and inspection. Use lighting with 5 ft-cd minimum intensity. Arrange the lighting to prevent interference with traffic or produce undue glare to property owners. Operate such lighting only during active nighttime construction activities. Provide a light meter to demonstrate that the minimum light intensity is being maintained.

Lighting may be accomplished by the use of portable floodlights, standard equipment lights, existing street lights, temporary street lights, or other lighting methods approved by the Engineer.

Submit a lighting plan at the Preconstruction Conference for review and acceptance by the Engineer. Submit the plan as a PDF file, in the same scale as the Plans, and formatted on 11 inch by 17 inch sheets. Do not start night work prior to the Engineer's acceptance of the lighting plan.

During active nighttime operations, furnish, place and maintain variable message signs to alert approaching motorists of lighted construction zones ahead. Operate the variable message signs only during active construction activities.

Include compensation for lighting for night work in the Contract prices for the various items of the Contract. Take ownership of all lighting equipment for night work.

**8-4.2 Sequence of Operations:** Do not open up work to the prejudice of work already started. The Engineer may require the Contractor to finish a section on which work is in progress before starting work on any additional section.

**8-4.3 Interference with Traffic:** At all times conduct the work in such manner and in such sequence as to ensure the least practicable interference with traffic. Operate all vehicles and other equipment safely and without hindrance to the traveling public. Park all private vehicles outside the clear zone. Place materials stored along the roadway so as to cause no obstruction to the traveling public as possible.

Where existing pavement is to be widened and stabilizing is not required, prevent any open trench from remaining after working hours by scheduling operations to place the full thickness of widened base by the end of each day. Do not construct widening strips simultaneously on both sides of the road, except where separated by a distance of at least 1/4 mile along the road and where either the work of excavation has not been started or the base has been completed.

**8-4.4 Coordination with other Contractors:** Sequence the Work and dispose of materials so as not to interfere with the operations of other Contractors engaged upon adjacent work; coordinate the Work, including the placement of work zone signs and temporary traffic control devices, to that of others in a proper manner, in accordance with the spirit of the Contract Documents; and perform the work in the proper sequence in relation to that of other Contractors; all as may be directed by the Engineer.

Each Contractor is responsible for any damage done by it or its agents to the adjoining work being performed by another Contractor.

**8-4.5 Drainage:** Conduct the operations and maintain the work in such condition to provide adequate drainage at all times. Do not obstruct existing functioning storm sewers, gutters, ditches, and other run-off facilities.

**8-4.6 Fire Hydrants:** Keep fire hydrants on or adjacent to the highway accessible to fire apparatus at all times, and do not place any material or obstruction within 15 feet of any fire hydrant.

**8-4.7 Protection of Structures:** Do not operate heavy equipment close enough to pipe headwalls or other structures to cause their displacement.

**8-4.8 Fencing:** Erect permanent fence as a first order of business on all projects that include fencing where the Engineer determines that the fencing is necessary to maintain the security of livestock on adjacent property, or for protection of pedestrians who are likely to gain access to the project from adjacent property.

**8-4.9 Contaminated Materials:** When the construction operations encounter or expose any abnormal condition that may indicate the presence of a contaminated material, discontinue such operations in the vicinity of the abnormal condition and notify the Engineer immediately. Be alert for the presence of tanks or barrels; discolored or stained earth, metal, wood, ground water; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions that appear abnormal as possible indicators of the presence of contaminated materials. Treat these conditions with extraordinary caution.

Make every effort to minimize the spread of any contaminated materials into uncontaminated areas.

Do not resume the construction operations in the vicinity of the abnormal conditions until so directed by the Engineer.



Dispose of the contaminated material in accordance with the requirements and regulations of any Local, State, or Federal agency having jurisdiction. Where the Contractor performs work necessary to dispose of contaminated material, and the Contract does not include pay items for disposal, the Department will pay for this work as provided in 4-4.

The Department agrees to hold harmless and indemnify the Contractor for damages when the Contractor discovers or encounters contaminated materials or pollutants during the performance of services for the Department when the presence of such materials or pollutants were unknown or not reasonably discoverable. Such indemnification agreement is only effective if the Contractor immediately stops work and notifies the Department of the contaminated material or pollutant problem.

Such indemnification agreement is not valid for damages resulting from the Contractor's willful, wanton, or intentional conduct or the operations of Contaminated and Hazardous Material Contractors.

### **8-5 Qualifications of Contractor's Personnel.**

Provide competent, careful, and reliable superintendents, foremen, and workmen. Provide workmen with sufficient skill and experience to properly perform the work assigned to them. Provide workmen engaged on special work, or skilled work, such as bituminous courses or mixtures, concrete bases, pavements, or structures, or in any trade, with sufficient experience in such work to perform it properly and satisfactorily and to operate the equipment involved. Provide workmen that shall make due and proper effort to execute the work in the manner prescribed in the Contract Documents, or the Engineer may take action as prescribed below.

It is prohibited as a conflict of interest for a Contractor to subcontract with a Consultant to perform Contractor Quality Control when the Consultant is under contract with the Department to perform work on any project described in the Contractor's Contract with the Department. Prior to approving a Consultant for Contractor Quality Control, the Contractor shall submit to the Department a Certificate from the proposed Consultant certifying that no conflict of interest exists.

Whenever the Engineer determines that any person employed by the Contractor is incompetent, unfaithful, intemperate, disorderly, or insubordinate, the Engineer will provide written notice and the Contractor shall discharge the person from the work. Do not employ any discharged person on the project without the written consent of the Engineer. If the Contractor fails to remove such person or persons, the Engineer may withhold all estimates that are or may become due, or suspend the work until the Contractor complies with such orders. Protect, defend, indemnify, and hold the Department, its agents, officials, and employees harmless from all claims, actions, or suite arising from such removal, discharge, or suspension of employees.

### **8-6 Temporary Suspension of Contractor's Operations.**

**8-6.1 Authority to Suspend Contractor's Operations:** The Engineer has the authority to suspend the Contractor's operations, wholly or in part. The Engineer will order such suspension in writing, giving in detail the reasons for the suspension. Contract Time will be charged during all suspensions of Contractor's operations. The Department may grant an extension of Contract Time in accordance with 8-7.3.2 when determined appropriate in the Department's sole judgment.

No additional compensation or time extension will be paid or granted to the Contractor when the operations are suspended for the following reasons:

1. The Contractor fails to comply with the Contract Documents.

2. The Contractor fails to carry out orders given by the Engineer.
3. The Contractor causes conditions considered unfavorable for continuing

the Work.

Immediately comply with any suspension order. Do not resume operations until authorized to do so by the Engineer in writing. Any operations performed by the Contractor, and otherwise constructed in conformance with the provisions of the Contract, after the issuance of the suspension order and prior to the Engineer's authorization to resume operations will be at no cost to the Department. Further, failure to immediately comply with any suspension order will also constitute an act of default by the Contractor and is deemed sufficient basis in and of itself for the Department to declare the Contractor in default, in accordance with 8-9, with the exception that the Contractor will not have ten calendar days to correct the conditions for which the suspension was ordered.

**8-6.1.1 State of Emergency:** The Engineer has the authority to suspend the Contractor's operations, wholly or in part, pursuant to a Governor's Declaration of a State of Emergency. The Engineer will order such suspension in writing, giving in detail the reasons for the suspension. Contract Time will be charged during all suspensions of Contractor's operations. The Department, at its sole discretion, may grant an extension of Contract Time and reimburse the Contractor for specific costs associated with such suspension. Further, in such instances, the Department's determination as to entitlement to either time or compensability will be final, unless the Contractor can prove by clear and convincing evidence to a Disputes Review Board that the Department's determination was without any reasonable factual basis.

**8-6.2 Prolonged Suspensions:** If the Engineer suspends the Contractor's operations for an indefinite period, store all materials in such manner that they will not obstruct or impede the traveling public unnecessarily or become damaged in any way. Take every reasonable precaution to prevent damage to or deterioration of the work performed. Provide suitable drainage of the roadway by opening ditches, shoulder drains, etc., and provide any temporary structures necessary for public travel through the project.

**8-6.3 Permission to Suspend Contractor's Operations:** Do not suspend operations or remove equipment or materials necessary for completing the work without obtaining the Engineer's written permission. Submit all requests for suspension of operations in writing to the Engineer, and identify specific dates to begin and end the suspension. The Contractor is not entitled to any additional compensation for suspension of operations during such periods.

**8-6.4 Suspension of Contractor's Operations - Holidays and Special Events:** Unless the Contractor submits a written request to work during one or more days of a Holiday or Special Event at least ten calendar days in advance of the beginning date of the Holiday or Special Event and receives written approval from the Engineer, the Contractor shall not work on the following days: Martin Luther King, Jr. Day; Memorial Day; the Saturday and Sunday immediately preceding Memorial Day; Independence Day; Independence Day (Observed); Labor Day; the Friday, Saturday, and Sunday immediately preceding Labor Day; Veterans Day; Veterans Day (Observed); the Wednesday immediately preceding Thanksgiving Day; Thanksgiving Day; the Friday, Saturday and Sunday immediately following Thanksgiving Day; December 24 through January 2, inclusive; and Special Events noted in the Contract Documents. Contract Time will be charged during these Holiday and Special Event periods. Contract Time will be adjusted in accordance with 8-7.3.2. The Contractor is not entitled to any additional compensation beyond any allowed Contract Time adjustment for suspension of operations during such Holiday and Special Event periods.

During such suspensions, remove all equipment and materials from the clear zone, except those required for the safety of the traveling public and retain sufficient personnel at the job site to properly meet the requirements of Sections 102 and 104. The Contractor is not entitled to any additional compensation for removal of equipment from clear zones or for compliance with Section 102 and Section 104 during such Holiday and Special Event periods.

## **8-7 Computation of Contract Time.**

**8-7.1 General:** Perform the contracted work fully, entirely, and in accordance with the Contract Documents within the Contract Time specified in the proposal, or as may be extended in accordance with the provisions herein below.

The Department considers in the computation of the Contract Time the effect that utility relocation and adjustments have on job progress and the scheduling of construction operations required in order to adequately maintain traffic, as detailed in the Plans or as scheduled in the Special Provisions.

**8-7.2 Date of Beginning of Contract Time:** The date on which Contract Time begins is either the date on which the Contractor actually begins work, or the date for beginning the charging of Contract Time as set forth in the proposal; whichever is earlier.

### **8-7.3 Adjusting Contract Time:**

**8-7.3.1 Increased Work:** The Department may grant an extension of Contract Time when it increases the Contract amount due to overruns in original Contract items, adds new work items, or provides for unforeseen work. The Department will base the consideration for granting an extension of Contract Time on the extent that the time normally required to complete the additional designated work delays the Contract completion schedule.

**8-7.3.2 Contract Time Extensions:** The Department may grant an extension of Contract Time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of bid. The Department may allow such extension of time only for delays occurring during the Contract Time period or authorized extensions of the Contract Time period. When failure by the Department to fulfill an obligation under the Contract results in delays to the controlling items of work, the Department will consider such delays as a basis for granting a time extension to the Contract.

Whenever the Engineer suspends the Contractor's operations, as provided in 8-6, for reasons other than the fault of the Contractor, the Engineer will grant a time extension for any delay to a controlling item of work due to such suspension. The Department will not grant time extensions to the Contract for delays due to the fault or negligence of the Contractor.

The Department does not include an allowance for delays caused by the effects of inclement weather or suspension of Contractor's operations as defined in 8-6.4, in establishing Contract Time. The Engineer will continually monitor the effects of weather and, when found justified, grant time extensions on either a bimonthly or monthly basis. The Engineer will not require the Contractor to submit a request for additional time due to the effects of weather.

The Department will grant time extensions, on a day for day basis, for delays caused by the effects of rains or other inclement weather conditions, related adverse soil conditions or suspension of operations as defined in 8-6.4 that prevent the Contractor from productively performing controlling items of work resulting in:

1. The Contractor being unable to work at least 50% of the normal work day on pre-determined controlling work items; or

2. The Contractor must make major repairs to work damaged by weather, provided that the damage is not attributable to the Contractor's failure to perform or neglect; and provided that the Contractor was unable to work at least 50% of the normal workday on pre-determined controlling work items.

When the Department grants a time extension due to rains or other inclement weather, the Contractor shall submit any objection to the additional time in writing within ten calendar days from receipt of written notice from the Engineer. Failure to submit a written appeal within ten calendar days from receipt of the written notice shall constitute a waiver of any and all rights to appeal the Department's decision at a later time.

No additional compensation will be made for delays caused by the effects of inclement weather.

The Department will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as a basis for granting a time extension if such delays are beyond the control of the Contractor or supplier. Such delays may include an area-wide shortage, an industry-wide strike, or a natural disaster that affects all feasible sources of supply. In such cases, the Contractor shall submit substantiating letters from a representative number of manufacturers of such materials or equipment clearly confirming that the delays in delivery were the result of an area-wide shortage, an industry-wide strike, etc. No additional compensation will be made for delays caused by delivery of materials or component equipment.

The Department will not consider requests for time extension due to delay in the delivery of custom manufactured equipment such as traffic signal equipment, highway lighting equipment, etc., unless the Contractor submits documentation that he placed the order for such equipment in a timely manner, the delay was caused by factors beyond the manufacturer's control, and the lack of such equipment caused a delay in progress on a controlling item of work. No additional compensation will be paid for delays caused by delivery of custom manufactured equipment.

The Department will consider the effect of utility relocation and adjustment work on job progress as the basis for granting a time extension only if all the following criteria are met:

1. Delays are the result of either utility work that was not detailed in the Plans, or utility work that was detailed in the Plans but was not accomplished in reasonably close accordance with the schedule included in the Contract Documents.

2. Utility work actually affected progress toward completion of controlling work items.

3. The Contractor took all reasonable measures to minimize the effect of utility work on job progress, including cooperative scheduling of the Contractor's operations with the scheduled utility work at the preconstruction conference and providing adequate advance notification to utility companies as to the dates to coordinate their operations with the Contractor's operations to avoid delays.

The Department will consider requests for time extension due to delay in work operations within the limits of the railroad right-of-way, the adjoining 15 feet, or determined by the Railroad or Department to be able to potentially foul the tracks regardless of distance from railroad right-of-way on job progress as the basis for granting a time extension only if all the following criteria are met:

1. Delays are due to a lack of availability of Railroad protective services as required by 7-11.4.

2. Work within the limits of the railroad right-of-way or the adjoining 15 feet actually impacted progress toward completion of controlling work items.

3. The Contractor took all reasonable measures to minimize the effect of work operations within the limits of the railroad right-of-way or the adjoining 15 feet on job progress, including compliance with all provisions of 7-11.4 and 5-12, and cooperative scheduling of the Contractor's operations.

As a condition precedent to an extension of Contract Time the Contractor must submit to the Engineer:

A preliminary request for an extension of Contract Time must be submitted in writing to the Engineer within ten calendar days after the commencement of a delay to a controlling item of work. If the Contractor fails to submit this required preliminary request for an extension of Contract Time, the Contractor fully, completely, absolutely and irrevocably waives any entitlement to an extension of Contract Time for that delay. In the case of a continuing delay only a single preliminary request for an extension of Contract Time will be required. Each such preliminary request for an extension of Contract Time shall include as a minimum the commencement date of the delay, the cause of the delay, and the controlling item of work affected by the delay.

Furthermore, the Contractor must submit to the Engineer a request for a Contract Time extension in writing within 30 days after the elimination of the delay to the controlling item of work identified in the preliminary request for an extension of Contract Time. Each request for a Contract Time extension shall include as a minimum all documentation that the Contractor wishes the Department to consider related to the delay, and the exact number of days requested to be added to Contract Time. If the Contractor contends that the delay is compensable, then the Contractor shall also be required to submit with the request for a Contract Time extension a detailed cost analysis of the requested additional compensation. If the Contractor fails to submit this required request for a Contract Time extension, with or without a detailed cost analysis, depriving the Engineer of the timely opportunity to verify the delay and the costs of the delay, the Contractor waives any entitlement to an extension of Contract Time or additional compensation for the delay.

Upon timely receipt of the preliminary request of Contract Time from the Contractor, the Engineer will investigate the conditions, and if it is determined that a controlling item of work is being delayed for reasons beyond the control of the Contractor the Engineer will take appropriate action to mitigate the delay and the costs of the delay. Upon timely receipt of the request for a Contract Time extension the Engineer will further investigate the conditions, and if it is determined that there was an increase in the time or the cost of performance of the controlling item of work beyond the control of the Contractor, then an adjustment of Contract Time will be made, and a monetary adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly.

The existence of an accepted schedule, including any required update(s), as stated in 8-3.2, is a condition precedent to the Contractor having any right to the granting of an extension of Contract Time or any monetary compensation arising out of any delay. Contractor failure to have an accepted schedule, including any required update(s), for the period of potential impact, or in the event the currently accepted schedule and applicable updates do not accurately reflect the actual status of the project or fail to accurately show the true controlling or non-

controlling work activities for the period of potential impact, will result in any entitlement determination as to time or money for such period of potential impact being limited solely to the Department's analysis and identification of the actual controlling or non-controlling work activities. Further, in such instances, the Department's determination as to entitlement as to either time or compensability will be final, unless the Contractor can prove by clear and convincing evidence to a Disputes Review Board that the Department's determination was without any reasonable factual basis.

## **8-8 Failure of Contractor to Maintain Satisfactory Progress.**

**8-8.1 General: Pursue the work to completion:** Section 337.16 of the Florida Statutes establishes certain requirements pertaining to the suspension or revocation of a Contractor's Certificate of Qualification because of delinquency on a previously awarded Contract.

### **8-8.2 Regulations Governing Suspension for Delinquency:**

1. A Contractor is delinquent when the Contract Time for performing the work has expired, and the Contractor has not completed the Contract work.
2. Once the Department determines that the Contractor is delinquent, the Department will give the Contractor written notice of intent to suspend the Contractor's Certificate of Qualification. If the Contractor disagrees with the delinquency, the Contractor shall file a request for an administrative hearing with the Clerk of Agency Proceedings within ten days of receipt of the notice of intent to suspend. If the Contractor does not file a request, the Department will make the suspension conclusive and final. The request for hearing is filed when the Contractor delivers it to, and it is received by, the Clerk of Agency Proceedings, Mail Station 58, Room 562, Haydon Burns Building, 605 Suwannee Street, Tallahassee, Florida 32399-0450.
3. If the Contractor files a request for a hearing, the Department will schedule the hearing within 30 days of the hearing officer's receipt of the request.
4. The Department will continue the period of suspension of the Contractor's Certificate of Qualification until the Contractor is no longer delinquent. If the Contractor requests an administrative hearing, the Department's final order, depending on the outcome of the hearing, will set forth the time period of suspension for the number of days the Department determines that the Contractor was delinquent, even if the Contractor cures the delinquency during the pendency of the administrative proceedings.
5. During the period of suspension of the Contractor's Certificate of Qualification, the Department will not allow the Contractor and its affiliates to bid on any Department Contract, regardless of dollar amount, and will not approve the Contractor as a subcontractor on any Department contract.
6. The Department may grant extensions of time during the prosecution of the work as allowed under these Specifications regardless of the Contractor's delinquency status.

## **8-9 Default and Termination of Contract.**

**8-9.1 Determination of Default:** The following acts or omissions constitute acts of default and, except as to subparagraphs 9 and 11, the Department will give notice, in writing, to the Contractor and his surety for any delay, neglect or default, if the Contractor:

1. fails to begin the work under the Contract within the time specified in the Notice to Proceed;
2. fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure prompt completion of the Contract;

3. performs the work unsuitably, or neglects or refuses to remove materials or to perform anew such work that the Engineer rejects as unacceptable and unsuitable;
4. discontinues the prosecution of the work, or fails to resume discontinued work within a reasonable time after the Engineer notifies the Contractor to do so;
5. becomes insolvent or is declared bankrupt, or files for reorganization under the bankruptcy code, or commits any act of bankruptcy or insolvency, either voluntarily or involuntarily;
6. allows any final judgment to stand against him unsatisfied for a period of ten calendar days;
7. makes an assignment for the benefit of creditors;
8. fails to comply with Contract requirements regarding minimum wage payments or EEO requirements;
9. fails to comply with the Engineer's written suspension of work order within the time allowed for compliance and which time is stated in that suspension of work order; or
10. for any other cause whatsoever, fails to carry on the work in an acceptable manner, or if the surety executing the bond, for any reasonable cause, becomes unsatisfactory in the opinion of the Department.
11. fails to comply with 3-9.

For a notice based upon reasons stated in subparagraphs (1) through (8) and (10): if the Contractor, within a period of ten calendar days after receiving the notice described above, fails to correct the conditions of which complaint is made, the Department will, upon written certificate from the Engineer of the fact of such delay, neglect, or default and the Contractor's failure to correct such conditions, have full power and authority, without violating the Contract, to take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

If the Contractor, after having received a prior notice described above for any reason stated in subparagraph (2), (3), (4), (5), (6) or (8), commits a second or subsequent act of default for any reason covered by the same subparagraph (2), (3), (4), (5), (6) or (8) as stated in the prior notice, and regardless whether the specific reason is the same, then, regardless of whether the Contractor has cured the deficiency stated in that prior notice, the Department will, upon written certificate from the Engineer of the fact of such delay, neglect or default and the Contractor's failure to correct such conditions, have full power and authority, without any prior written notice to the Contractor and without violating the Contract, to take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

Regarding subparagraph (9), if the Contractor fails to comply with the Engineer's written suspension of work order within the time allowed for compliance and which time is stated in that suspension of work order, the Department will, upon written certificate from the Engineer of the fact of such delay and the Contractor's failure to correct that condition, have full power and authority, without violating the Contract, to immediately take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

Regarding subparagraph (11), if the Contractor fails to comply with 3-9, the Department will have full power and authority, without violating the Contract, to immediately take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

The Department has no liability for anticipated profits for unfinished work on a Contract that the Department has determined to be in default.

Notwithstanding the above, the Department shall have the right to declare the Contractor (or its “affiliate”) in default and immediately terminate this Contract, without any prior notice to the Contractor, in the event the Contractor (or its “affiliate”) is at any time “convicted” of a “contract crime,” as these terms are defined in Section 337.165(1), Florida Statutes. The Department’s right to default the Contractor (or its “affiliate”) for “conviction” of a “contract crime” shall extend to and is expressly applicable to any and all Department Contracts that were either advertised for bid; for which requests for proposals or letters of interest were requested; for which an intent to award was posted or otherwise issued; or for which a Contract was entered into, after the date that the underlying or related criminal indictment, criminal information or other criminal charge was filed against the Contractor (or its “affiliate”) that resulted in the “conviction.” In the event the Department terminates this Contract for this reason, the Contractor shall hereby forfeit any claims for additional compensation, extra time, or anticipated profits. The Contractor shall only be paid for any completed work up to the date of termination. Further, the Contractor shall be liable for any and all additional costs and expenses the Department incurs in completing the Contract work after such termination.

**8-9.2 Termination of Contract for Convenience:** The Department may terminate the entire Contract or any portion thereof, if the Secretary determines that a termination is in the Department’s interest. The Secretary will deliver to the Contractor a Written Notice of Termination specifying the extent of termination and the effective date.

When the Department terminates the entire Contract, or any portion thereof, before the Contractor completes all items of work in the Contract, the Department will make payment for the actual number of units or items of work that the Contractor has completed, at the Contract unit price, and according to the formulas and provisions set forth in 4-3.2 for items of work partially completed, and such payments will constitute full and complete compensation for such work or items. No payment of any kind or amount will be made for items of work not started. The Department will not consider any claim for loss of anticipated profits, or overhead of any kind (including home office and jobsite overhead or other indirect impacts) except as provided in 4-3.2 for partially completed work.

The Department will consider reimbursing the Contractor for actual cost of mobilization (when not otherwise included in the Contract) including moving equipment to the job where the volume of the work that the Contractor has completed is too small to compensate the Contractor for these expenses under the Contract unit prices.

The Department may purchase at actual cost acceptable materials and supplies procured for the work, that the Department has inspected, tested, and approved and that the Contractor has not incorporated in the work. Submit the proof of actual cost, as shown by receipted bills and actual cost records, at such points of delivery as the Engineer may designate.

Termination of a contract or a portion thereof, under the provisions of this Subarticle, does not relieve the Contractor or the surety of its responsibilities for the completed portion of the Contract or its obligations for and concerning any just claims arising out of the work performed.

All Contractor claims for additional payment, due to the Department’s termination of the entire Contract or any portion thereof, must meet the requirements of 5-12.

**8-9.3 Completion of Work by Department:** Upon declaration of default, the Department will have full authority to appropriate or use any or all suitable and acceptable materials and equipment on the site and may enter into an agreement with others to complete the work under the Contract, or may use other methods to complete the work in an acceptable



manner. The Department will charge all costs that the Department incurs because of the Contractor's default, including the costs of completing the work under the Contract, against the Contractor. If the Department incurs such costs in an amount that exceeds the sum that would have been payable under the Contract, then the Contractor and the surety shall be liable and shall pay the Department the amount of the excess.

If, after the ten day notice period and prior to any action by the Department to otherwise complete the work under the Contract, the Contractor establishes his intent to prosecute the work in accordance with the Department's requirements, then the Department may allow the Contractor to resume the work, in which case the Department will deduct from any monies due or that may become due under the Contract, any costs to the Department incurred by the delay, or from any reason attributable to the delay.

**8-10 Liquidated Damages for Failure to Complete the Work.**

**8-10.1 Highway Code Requirements Pertaining to Liquidated Damages:**

Section 337.18, paragraph (2) of the Florida Statutes, requires that the Department adopt regulations for the determination of default and provides that the Contractor pay liquidated damages to the Department for any failure of the Contractor to complete the Contract work within the Contract Time. These Code requirements govern, and are herewith made a part of the Contract.

**8-10.2 Amount of Liquidated Damages:** Applicable liquidated damages are the amounts established in the following schedule:

Original Contract Amount	Daily Charge Per Calendar Day
\$299,999 and under.....	\$980
\$300,000 but less than \$2,000,000.....	\$1,699
\$2,000,000 but less than \$5,000,000.....	\$2,650
\$5,000,000 but less than \$10,000,000.....	\$3,819
\$10,000,000 but less than \$20,000,000.....	\$4,687
\$20,000,000 but less than \$40,000,000.....	\$7,625
\$40,000,000 and over.....	\$10,467 plus 0.00005 of any amount over \$40 million (Round to nearest whole dollar)

The Engineer may approve adjustments to the liquidated damages amounts in accordance with the Construction Project Administration Manual (CPAM) provided all contract work is complete.

**8-10.3 Determination of Number of Days of Default:** For all contracts, regardless of whether the Contract Time is stipulated in calendar days or working days, the Engineer will count default days in calendar days.

**8-10.4 Conditions under which Liquidated Damages are Imposed:** If the Contractor or, in case of his default, the surety fails to complete the work within the time stipulated in the Contract, or within such extra time that the Department may have granted then the Contractor or, in case of his default, the surety shall pay to the Department, not as a penalty, but as liquidated damages, the amount so due as determined by the Code requirements, as provided in 8-10.2.

**8-10.5 Right of Collection:** The Department has the right to apply, as payment on such liquidated damages, any money the Department owes the Contractor.

**8-10.6 Allowing Contractor to Finish Work:** The Department does not waive its right to liquidated damages due under the Contract by allowing the Contractor to continue and to finish the work, or any part of it, after the expiration of the Contract Time.

**8-10.7 Completion of Work by Department:** In the case of a default of the Contract and the completion of the work by the Department, the Contractor and his surety are liable for the liquidated damages under the Contract, but the Department will not charge liquidated damages for any delay in the final completion of the Department's performance of the work due to any unreasonable action or delay on the part of the Department.

**8-11 Release of Contractor's Responsibility.**

The Department considers the Contract complete when the Contractor has completed all work and the Department has accepted the work. The Department will then release the Contractor from further obligation except as set forth in his bond, and except as provided in 5-13.

**8-12 Recovery of Damages Suffered by Third Parties.**

In addition to the damages provided for in 8-10.2 and pursuant to Section 337.18 of the Florida Statutes, when the Contractor fails to complete the work within the Contract Time the Department may recover from the Contractor amounts that the Department pays for damages suffered by third parties unless the failure to timely complete the work was caused by the Department's act or omission.

## SECTION 9 MEASUREMENT AND PAYMENT

### 9-1 Measurement of Quantities.

**9-1.1 Measurement Standards:** The Engineer will measure all work completed under the Contract in accordance with the United States Standard Measures.

**9-1.2 Method of Measurements:** The Engineer will take all measurements horizontally or vertically.

#### **9-1.3 Determination of Pay Areas:**

**9-1.3.1 Final Calculation:** When measuring items paid for on the basis of area of finished work, where the pay quantity is designated to be determined by calculation, the Engineer will use lengths and widths in the calculations based on the station to station dimensions shown in the Plans; the station to station dimensions actually constructed within the limits designated by the Engineer; or the final dimensions measured along the surface of the completed work within the neat lines shown in the Plans or designated by the Engineer. The Engineer will use the method or combination of methods of measurement that reflect, with reasonable accuracy, the actual surface area of the finished work as the Engineer determines.

**9-1.3.2 Plan Quantity:** When measuring items paid for on the basis of area of finished work, where the pay quantity is designated to be the plan quantity, the Engineer will determine the final pay quantity based on the plan quantity subject to the provisions of 9-3.2. Generally, the Engineer will calculate the plan quantity using lengths based on station to station dimensions and widths based on neat lines shown in the Plans.

**9-1.4 Construction Outside Authorized Limits:** The Engineer will not pay for surfaces constructed over a greater area than authorized, or for material that the Contractor has moved from outside of slope stakes and lines shown in the Plans, except where the Engineer provides written instruction for the Contractor to perform such work.

**9-1.5 Truck Requirements:** Provide all trucks with numbers and certify that all trucks used have a manufacturer's certification or permanent decal showing the truck capacity rounded to the nearest tenth of a cubic yard placed on both sides of the truck. This capacity will include the truck body only and any side boards added will not be included in the certified truck body capacity. Ensure the lettering and numbers are legible for identification purposes at all times.

**9-1.6 Ladders and Instrument Stands for Bridge Projects:** On bridge projects, in order to facilitate necessary measurements, provide substantial ladders to the tops of piers and bents, and place and move such ladders as the Engineer directs.

For bridge projects crossing water or marshy areas, supply fixed stands for instrument mounting and measurements, in accordance with the details stipulated in the Specifications for the project.

### 9-2 Scope of Payments.

**9-2.1 Items Included in Payment:** Accept the compensation as provided in the Contract as full payment for furnishing all materials and for performing all work contemplated and embraced under the Contract; also for all loss or damage arising out of the nature of the work or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its final acceptance; also for all other costs incurred under the provisions of Division I.

For any item of work contained in the proposal, except as might be specifically provided otherwise in the basis of payment clause for the item, include in the Contract unit price (or lump sum price) for the pay item or items the cost of all labor, equipment, materials, tools and incidentals required for the complete item of work, including all requirements of the Section specifying such item of work, except as specifically excluded from such payments.

**9-2.1.1 Fuel:** The Department will, in the Contract Documents, provide an estimated quantity for fuel requirements for diesel to cover the Work specified in the Contract. Price adjustments will be made only for the amount of diesel fuel estimated by the Department as required to complete the Contract. The requirement of fuel for each pay item is estimated by multiplying the Department's standard fuel factor for that pay item by the quantity of that pay item. On Contracts with an original Contract Time in excess of 120 calendar days, the Department will make price adjustments on each applicable progress estimate to reflect increases or decreases in the price of diesel from those in effect during the month in which bids were received. The Contractor will not be given the option of accepting or rejecting these adjustments. Price adjustments for fuel will be made only when the current fuel price (CFP) varies by more than 5% from the price prevailing in the month when bids were received (BFP), and then only on the portion that exceeds 5%.

Price adjustments will be based on the monthly bulk average price for diesel as derived by the Department. These average indexes shall be determined by averaging bulk fuel prices on the first day of each month as quoted by major oil companies that are reasonably expected to furnish fuel for projects in the State of Florida. Average price indices for will be available on the Construction Office website before the 15th of each month, at the following URL:

<https://www.fdot.gov/construction/fuel-bit/fuel-bit.shtm>.

Payment will be based on the quantities shown on the progress estimate on all items for which established standard fuel factors are on a file maintained by the Department.

Payment on progress estimates will be adjusted to reflect adjustments in the prices for diesel in accordance with the following:

When fuel prices have decreased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - 0.95 P_b)$  during a period of decreasing prices.

$A_i$  = Total dollar amount - positive or negative - of the cost adjustment for fuel used by the Contractor during the month "i."

$F_i$  = Total gallons calculated as being used during the month.

$P_i$  = Average price for fuel prevailing during month "i."

$P_b$  = Average price for fuel prevailing during the month "b" when bids were received on this Contract.

When fuel prices have increased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - 1.05 P_b)$  during a period of increasing prices.

$A_i$  = Total dollar amount - positive or negative - of the cost adjustment for fuel used by the Contractor during the month "i."

$F_i$  = Total gallons calculated as being used during the month.

$P_i$  = Average price for fuel prevailing during month "i."

$P_b$  = Average price for fuel prevailing during the month "b" when bids were received on this Contract.

Payment will be made on the current progress estimate to reflect the index difference at the time Work was performed.

Adjustments will be paid or charged to the Prime Contractor only. Any Contractor receiving an adjustment under this provision shall distribute the proper proportional part of such adjustment to subcontractors who perform applicable Work.

**9-2.1.2 Bituminous Material:** Prepare a Contractor's Certification of Quantities, using the Department's current approved form for Superpave Asphalt Base, Driveway Asphalt Base, Asphalt Treated Permeable Base, Superpave Asphaltic Concrete, Miscellaneous Asphalt Pavement, Asphalt Concrete Friction Course, and Asphalt Membrane Interlayer pay items. Submit this certification to the Engineer no later than Twelve O'clock noon Monday after the estimate cut-off or as directed by the Engineer, based on the quantity of asphalt produced and accepted on the roadway per Contract. Ensure the certification includes the Contract Number, Financial Project Identification (FPID) Number, Certification Date and Number, the period the certification represents and the tons produced for each asphalt pay item.

On Contracts having an original Contract Time of more than 365 calendar days, or more than 5,000 tons of asphalt concrete, the Department will adjust the bid unit price for bituminous material, excluding cutback and emulsified asphalt to reflect increases or decreases in the Asphalt Price Index (API) of bituminous material from that in effect during the month in which bids were received. The Contractor will not be given the option of accepting or rejecting this adjustment. Bituminous adjustments will be made only when the current API (CAPI) varies by more than 5% of the API prevailing in the month when bids were received (BAPI), and then only on the portion that exceeds 5%.

The Department will determine the API for each month by averaging quotations in effect on the first day of the month at all terminals that could reasonably be expected to furnish bituminous material to projects in the State of Florida.

The API will be available on the Construction Office website before the 15<sup>th</sup> day of each month at the following URL: <https://www.fdot.gov/construction/fuel-bit/fuel-bit.shtm>.

Payment on progress estimates will be adjusted to reflect adjustments in the prices for bituminous materials in accordance with the following:

$$\text{\$ Adjustment} = (\text{ID})(\text{Gallons})$$

Where ID = Index Difference = [CAPI - 0.95(BAPI)] when the API has decreased between the month of bid and month of this progress estimate.

Where ID = Index Difference = [CAPI - 1.05(BAPI)] when the API has increased between the month of bid and month of this progress estimate.

Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.

For asphalt concrete items payable by the ton or square yard, the number of gallons will be determined assuming a mix design with 6.25% liquid asphalt weighing 8.58 pounds per gallon.

For asphalt concrete items payable by the cubic yard, the number of gallons will be determined assuming a mix design with 3% liquid asphalt weighing 8.58 pounds per gallon.

**9-2.2 Non-Duplication of Payment:** In cases where the basis of payment clause in these Specifications relating to any unit price in the bid schedule requires that the unit price cover and be considered compensation for certain work or material essential to the item, the Department

will not measure or pay for this same work or material under any other pay item that may appear elsewhere in these Specifications.

### **9-3 Compensation for Altered Quantities.**

**9-3.1 General:** When alteration in Plans or quantities of work not requiring a supplemental agreement as hereinbefore provided for are offered and performed, the Contractor shall accept payment in full at Contract unit bid prices for the actual quantities of work done, and no allowance will be made for increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor, resulting either directly from such alterations, or indirectly from unbalanced allocation among the Contract items of overhead expense on the part of the bidder and subsequent loss of expected reimbursement therefore, or from any other cause.

Compensation for alterations in Plans or quantities of work requiring supplemental agreements shall be stipulated in such agreement, except when the Contractor proceeds with the work without change of price being agreed upon, the Contractor shall be paid for such increased or decreased quantities at the Contract unit prices bid in the Proposal for the items of work. If no Contract unit price is provided in the Contract, and the parties cannot agree as to a price for the work, the Contractor agrees to do the work in accordance with 4-3.2.

#### **9-3.2 Payment Based on Plan Quantity:**

**9-3.2.1 Error in Plan Quantity:** As used in this Article, the term “substantial error” is defined as the smaller of (1) or (2) below:

1. a difference between the original plan quantity and final quantity of more than 5%,
2. a change in quantity which causes a change in the amount payable of more than \$5,000.

On multiple job Contracts, changes made to an individual pay item due to substantial errors will be based on the entire Contract quantity for that pay item.

Where the pay quantity for any item is designated to be the original plan quantity, the Department will revise such quantity only in the event that the Department determines it is in substantial error. In general, the Department will determine such revisions by final measurement, plan calculations, or both, as additions to or deductions from plan quantities.

In the event that either the Department or the Contractor contends that the plan quantity for any item is in error and additional or less compensation is thereby due, the claimant shall submit, at their own expense, evidence of such in the form of acceptable and verifiable measurements or calculations. The Department will not revise the plan quantity solely on the basis of a particular method of construction that the Contractor selects. For earthwork items, the claimant must note any differences in the existing surfaces from that shown in the Plans that would result in a substantial error to the plan quantity, and must be properly documented by appropriate verifiable level notes, acceptable to both the Contractor and the Department, prior to disturbance of the existing surface by construction operations. The claimant shall support any claim based upon a substantial error for differences in the existing surface by documentation as provided above.

**9-3.2.2 Authorized Changes in Limits of Work:** Where the Department designates the pay quantity for any item to be the original plan quantity and authorizes a plan change which results in an increase or decrease in the quantity of that item, the Department will revise the plan quantity accordingly. In general, the Department will determine such revisions by final measurement, plan calculations or both.

**9-3.2.3 Specified Adjustments to Pay Quantities:** Do not apply the limitations specified in 9-3.2.1 and 9-3.2.2 to the following:

1. Where these Specifications or Special Provisions provide that the Department determines the pay quantity for an item on the basis of area of finished work adjusted in accordance with the ratio of measured thickness to nominal thickness.

2. Where these Specifications provide for a deduction due to test results falling outside of the allowable specified tolerances.

3. To payment for extra length fence posts, as specified in 550-6.3.

### **9-3.3 Lump Sum Quantities:**

**9-3.3.1 Error in Lump Sum Quantity:** Where the Department designates the pay quantity for an item to be a lump sum and the Plans show an estimated quantity, the Department will adjust the lump sum compensation only in the event that either the Contractor submits satisfactory evidence or the Department determines and furnishes satisfactory evidence that the lump sum quantity shown is in substantial error as defined in 9-3.2.1.

**9-3.3.2 Authorized Changes in Work:** Where the Department designates the pay quantity for an item to be a lump sum and the Plans show an estimated quantity, the Department will adjust compensation for that item proportionately when an authorized plan change is made which results in an increase or decrease in the quantity of that item. When the Plans do not show an estimated plan quantity or the applicable specifications do not provide adjustments for contingencies, the Department will compensate for any authorized plan change resulting in an increase or decrease in the cost of acceptably completing the item by establishing a new unit price through a supplemental agreement as provided in 4-3.2.

**9-3.4 Deviation from Plan Dimensions:** If the Contractor fails to construct any item to Plan or to authorized dimensions within the specified tolerances, the Engineer, at his discretion will: require the Contractor to reconstruct the work to acceptable tolerances at no additional cost to the Department; accept the work and provide the Contractor no pay; or accept the work and provide the Contractor a reduced final pay quantity or reduced unit price. The Department will not make reductions to final pay quantities for those items designated to be paid on the basis of original plan quantity or a lump sum quantity under the provisions of this Article unless such reduction results in an aggregate monetary change per item of more than \$100, except that for earthwork items, the aggregate change must exceed \$5,000 or 5% of the original plan quantity, whichever is smaller. If, in the opinion of the Engineer, the Contractor has made a deliberate attempt to take advantage of the construction tolerances as defined in 120-12.1 to increase borrow excavation in fill sections or to decrease the required volume of roadway or lateral ditch excavation or embankment, the Department will take appropriate measurements and will apply reductions in pay quantities. The Department will not use the construction tolerance, as defined in 120-12.1, as a pay tolerance. The construction tolerance is not to be construed as defining a revised authorized template.

### **9-4 Deleted Work.**

The Department will have the right to cancel the portions of the Contract relating to the construction of any acceptable item therein, by making an adjustment in payment to the Contractor of a fair and equitable amount covering the value of all cancelled work less all items of cost incurred prior to the date that the Engineer cancels the work.

## **9-5 Partial Payments.**

**9-5.1 General:** The Engineer will make partial payments on monthly estimates based on the amount of work that the Contractor completes during the month (including delivery of certain materials, as specified herein below). The Engineer will make approximate monthly payments, and the Department will correct all partial estimates and payments in the subsequent estimates and in the final estimate and payment.

The Department will base the amount of such payments on the total value of the work that the Contractor has performed to the date of the estimate, based on the quantities completed and the Contract prices, less payments previously made and less any retainage withheld.

Retainage will not be withheld until the percent of Contract Time used exceeds 75%. From that time forward, the Department will withhold retainage of 10% of the amount due on the current estimate as retainage when the percent of Contract Time used exceeds the percent of Contract amount earned by more than 15%.

Contract amount is defined as the original Contract amount adjusted by approved supplemental agreements.

Retainage will be determined for each job on multiple job Contracts. The Department will not accept Securities, Certificates of Deposit or letters of credit as a replacement for retainage. Amounts withheld will not be released until payment of the final estimate.

**9-5.2 Unsatisfactory Payment Record:** In accordance with Sections 255.05 and 337.16 of the Florida Statutes, and the rules of the Department, the Department may disqualify the Contractor from bidding on future Department contracts if the Contractor's payment record in connection with contract work becomes unsatisfactory.

### **9-5.3 Withholding Payment:**

**9-5.3.1 Withholding Payment for Defective Work:** If the Department discovers any defective work or material prior to the final acceptance, or if the Department has a reasonable doubt as to the integrity of any part of the completed work prior to final acceptance, then the Department will not allow payment for such defective or questioned work until the Contractor has remedied the defect and removed any causes of doubt.

**9-5.3.2 Withholding Payment for Failure to Comply:** The Department will withhold progress payments from the Contractor if he fails to comply with any or all of the following within 60 days after beginning work:

1. Comply with and submit required documentation relating to prevailing wage rate provisions, Equal Employment Opportunity, On-The-Job Training, and Affirmative Action;

2. Comply with the requirement to report all necessary information, including actual payments to DBEs, all other subcontractors and major suppliers, through the Internet based Equal Opportunity Reporting System;

3. Comply with or make a good faith effort to ensure employment opportunity for minorities and females in accordance with the required contract provisions for Federal Aid Construction Contracts, and

4. Comply with or make a good faith effort to meet On-The-Job Training goals.

The Department will withhold progress payments until the Contractor has satisfied the above conditions.



**9-5.4 Release of Retainage After Acceptance:** When the Contractor has furnished the Department with all submittals required by the Contract, such as invoices, EEO reports, materials certifications, certification of materials procured, etc., (excluding Contractor's letter of acceptance of final amount due and Form 21-A release) and the Engineer has determined that the measurement and computation of pay quantities is correct, the Department may reduce the retainage to \$1,000 plus any amount that the Department elects to deduct for defective work as provided in 9-5.3.

The Department may deduct from payment estimates any sums that the Contractor owes to the Department on any account. Where more than one project or job (separate job number) is included in the Contract, the Department will distribute the reduced retainage as provided in the first paragraph of this subarticle to each separate project or job in the ratio that the Contract value of the work for the particular job bears to the total Contract amount.

**9-5.5 Partial Payments for Delivery of Certain Materials:**

**9-5.5.1 General:** The Department will allow partial payments for new materials that will be permanently incorporated into the project and are stockpiled in approved locations in the project vicinity. Stockpile materials so that they will not be damaged by the elements and in a manner that identifies the project on which they are to be used.

The following conditions apply to all payments for stockpiled materials:

1. There must be reasonable assurance that the stockpiled material will be incorporated into the specific project on which partial payment is made.
2. The stockpiled material must be approved as meeting applicable specifications.
3. The total quantity for which partial payment is made shall not exceed the estimated total quantity required to complete the project.
4. The Contractor shall submit to the Engineer certified invoices to document the value of the materials received. The amount of the partial payment will be determined from invoices for the material up to the unit price in the Contract.
5. Delivery charges for materials delivered to the jobsite will be included in partial payments if properly documented.
6. Partial payments will not be made for materials which were stockpiled prior to award of the Contract for a project.

**9-5.5.2 Partial Payment Amounts:** The following partial payment restrictions apply:

1. Partial payments less than \$5,000 for any one month will not be processed.
2. Partial payments for structural steel and precast prestressed items will not exceed 85% of the bid price for the item. Partial payments for all other items will not exceed 75% of the bid price of the item in which the material is to be used.
3. Partial payment will not be made for aggregate and base course material received after paving or base construction operations begin except when a construction sequence designated by the Department requires suspension of paving and base construction after the initial paving operations, partial payments will be reinstated until the paving and base construction resumes.

**9-5.5.3 Off Site Storage:** If the conditions of 9-5.5.1 are satisfied, partial payments will be allowed for materials stockpiled in approved in-state locations. Additionally,

partial payments for materials stockpiled in approved out-of-state locations will be allowed if the conditions of 9-5.5.1 and the following conditions are met:

1. Furnish the Department a Materials Bond stating the supplier guarantees to furnish the material described in the Contract to the Contractor and Department. Under this bond, the Obligor shall be the material supplier and the Obligees shall be the Contractor and the Florida Department of Transportation. The bond shall be in the full dollar amount of the bid price for the materials described in the contract.

2. The following clauses must be added to the construction Contract between the Contractor and the supplier of the stockpiled materials:

“Notwithstanding anything to the contrary, <supplier> will be liable to the Contractor and the Florida Department of Transportation should <supplier> default in the performance of this agreement.”

“Notwithstanding anything to the contrary, this agreement, and the performance bond issued pursuant to this agreement, does not alter, modify, or otherwise change the Contractor’s obligation to furnish the materials described in this agreement to the Florida Department of Transportation.”

3. The agreement between the Contractor and the supplier of the stockpiled materials must include provisions that the supplier will store the materials and that such materials are the property of the Contractor.

**9-5.6 Certification of Payment to Subcontractors:** The term “subcontractor,” as used herein, includes persons or firms furnishing materials or equipment incorporated into the work or stockpiled for which the Department has made partial payment and firms working under equipment-rental agreements. The Contractor is required to pay all subcontractors for satisfactory performance of their Contracts before the Department will make a further progress (partial) payment. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the subcontractor’s work is satisfactorily complete, as determined by the Department. Prior to receipt of any progress (partial) payment, the prime contractor shall certify that all subcontractors having an interest in the Contract were paid for satisfactory performance of their Contracts and that the retainage is returned to subcontractors within 30 days after satisfactory completion of the subcontractor’s work. Submit this certification in the form designated by the Department.

Within 30 days of the Contractor’s receipt of the final progress payment or any other payments thereafter, except the final payment, the Contractor shall pay all subcontractors and suppliers having an interest in the Contract for all work completed and materials furnished. The Department will honor an exception to the above when the Contractor demonstrates good cause for not making any required payment and submits written notification of any such good cause to both the Department and the affected subcontractors or suppliers within said 30 day period.

The Contractor shall indemnify and provide defense for the Department when called upon to do so for all claims or suits against the Department, by third parties, pertaining to Contractor payment or performance issues arising out of the Contract. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved Contract amount, which shall be the original Contract amount as may be increased by subsequent Supplemental Agreements.

## **9-6 Record of Construction Materials.**

**9-6.1 General:** For all construction materials used in the construction of the project, (except materials exempted by 9-6.2), preserve for the Department's inspection the invoices and records of the materials for a period of three years from the date of completion of the project. Apply this requirement when subcontractors purchase materials, and obtain the invoices and other materials records from the subcontractors. By providing the materials, the Contractor certifies that all invoices will be maintained for the required period.

**9-6.2 Non-Commercial Materials:** The provisions of 9-6.1 do not apply to materials generally classed as non-commercial, such as fill materials, local sand, sand-clay, or local materials used as stabilizer.

## **9-7 Disputed Amounts Due the Contractor.**

The Department reserves the right to withhold from the final estimate any disputed amounts between the Contractor and the Department. The Department will release all other amounts due, as provided in 9-8.

## **9-8 Acceptance and Final Payment.**

**9-8.1 Acceptance and Final Payment Documents:** Whenever the Contractor has completely performed the work provided for under the Contract and the Engineer has performed a final inspection and made final acceptance (as provided in 5-10 and 5-11), and subject to the terms of 8-11, the Engineer will prepare a final estimate showing the value of the work as soon as the Engineer makes the necessary measurements and computations. The Engineer will correct all prior estimates and payments in the final estimate and payment. The Department will pay the estimate, less any sums that the Department may have deducted or retained under the provisions of the Contract, as soon as practicable after final acceptance of the work, along with all executed supplemental agreements received after final acceptance.

If the Contractor fails to furnish all required Contract Documents as listed in (1) through (9) below within 90 days of the Department's offer of final payment or request for refund of overpayment, the Department may suspend the Contractor's Certificate of Qualification under the provisions of Florida Administrative Code 14-22.

1. The Contractor has agreed in writing to accept the balance due or refund the overpayment, as determined by the Department, as full settlement of his account under the Contract and of all claims in connection therewith, or the Contractor, has through the use of the Qualified Acceptance Letter, accepted the balance due or refunded the overpayment, as determined by the Department, with the stipulation that his acceptance of such payment or the making of such refund does not constitute any bar, admission, or estoppel, or have any effect as to those payments in dispute or the subject of a pending claim between the Contractor and the Department. To receive payment based on a Qualified Acceptance Letter, define in writing the dispute or pending claim with full particular of all items of all issues in dispute, including itemized amounts claimed for all particulars of all items, and submit it as part of the Qualified Acceptance Letter. The Contractor further agrees, by submitting a Qualified Acceptance Letter that any pending or future arbitration claim or suit is limited to those particulars, including the itemized amounts, defined in the original Qualified Acceptance Letter, and that he will commence with any such arbitration claim or suit within 820 calendar days from and after the time of final acceptance of the work and that his failure to file a formal claim within this period constitutes his full acceptance of the Engineer's final estimate and payment. The overpayment

refund check from the Contractor, if required, will be considered a part of any Acceptance Letter executed.

2. The Contractor has properly maintained the project, as specified hereinbefore.

3. The Contractor has furnished a sworn affidavit to the effect that the Contractor has paid all bills and no suits are pending (other than those exceptions listed, if any) in connection with work performed under the Contract and that the Contractor has not offered or made any gift or gratuity to, or made any financial transaction of any nature with, any employee of the Department in the performance of the Contract. Include with the listed tort liability exceptions, if any, evidence of adequate insurance coverage as required in 7-13.

4. The surety on the Contract bond consents, by completion of their portion of the affidavit and surety release subsequent to the Contractor's completion of his portion, to final payment to the Contractor and agrees that the making of such payment does not relieve the surety of any of its obligations under the bond.

5. The Contractor has complied with and settled all requirements pertaining to any wage-rate provisions.

6. The Contractor has submitted all required mill tests and analysis reports to the Engineer.

7. The Contractor has furnished the Construction Compliance with Specifications and Plans Certification. Provide the Engineer with a notarized final certification of compliance with the requirements of Section 105 to accompany the final estimate. Certification must be on a form provided by the Engineer.

8. The Contractor has submitted and the Department has accepted all as-built drawings and certified surveys.

9. The Contractor has furnished all required manufacturers' warranties to the Engineer.

**9-8.2 Review of Engineer's Final Estimate:** The Department may review the Engineer's final estimate and make changes as necessary. If changes are made, the Contractor will be so notified in writing in the "Notification of Findings Due to Additional Review". This notification letter will detail the changes made as a result of the review, and will stipulate the actions to be taken by the Department and those required by the Contractor. The issuance of a "Notification of Findings Due to Additional Review" will not impact the requirements of 9-8.1, above.

Complete the required actions and submit the signed "Notification of Findings Due to Additional Review" to the Department within the timeframe specified in 9-8.1. If the "Notification of Findings Due to Additional Review" is received after the time has expired in 9-8.1, submit to the Department within 30 days signifying agreement or disagreement with the findings. For disagreement items, submit a full explanation including the items and amount. For any claim or part of a claim that pertains solely to the "Notification of Findings Due to Additional Review" disputes, submit full and complete claim documentation as described in 5-12.3 as to such claim dispute issues within 90 days of receipt of the notification. Failure to submit the signed notification or to submit such claim documentation within the time frames specified may result in suspension of the Contractor's Certificate of Qualification under the provisions of Florida Administrative Code 14-22.

### **9-9 Interest Due on Delayed Payments.**

The Department will determine and pay any interest due the Contractor for delays in final payment in accordance with Section 337.141 of the Florida Statutes.

## **9-10 Offsetting Payments.**

Section 337.145 of the Florida Statutes, providing for offsetting payments to the Contractor, is hereby made a part of this Contract:

1. After settlement, arbitration, or final adjudication of any claim of the Department for work done pursuant to a construction contract with any party, the Department may offset such amount from payments due for work done on any construction contract, excluding amounts owed to subcontractors, suppliers, and laborers, which it has with the party owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department.

2. Offsetting any amount pursuant to (1) above shall not be considered a breach of Contract by the Department.

**EXHIBIT F**  
**INSURANCE REQUIREMENTS**

**CERTIFICATES OF INSURANCE**

(1) The Contractor shall obtain and maintain such insurance as will protect it from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of its employees including claims insured by usual personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by usual personal injury liability coverage; and (4) from claims for injury to or destruction of tangible property including loss of use resulting there from -- any or all of which claims may arise out of, or result from, the services, Work and operations carried out pursuant to and under the requirements of the Contract Documents, whether such services, Work and operations be by the Contractor, its employees, or by Subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

(2) This insurance shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.

(3) The Contractor shall require, and shall be responsible for ensuring throughout the time the Agreement is in effect, that any and all of its Subcontractors obtain and maintain until the completion of that Subcontractor's work, such of the insurance coverages described herein as are required by law to be provided on behalf of their employees and others.

(4) The Contractor shall obtain, have and maintain during the entire period of the Agreement insurance policies, which contain the following information and provisions:

- (A) The name and type of policy and coverages provided;
- (B) The amount or limit applicable to each coverage provided;
- (C) The date of expiration of coverage;
- (D) The designation of the County as an additional insured and a certificate holder (This requirement may be excepted for workers' compensation and professional liability Insurance);
- (E) The following clause must appear on the Certificate of Insurance:

Should any material change occur in any of the above described policies or should any of said policies be canceled before the expiration date thereof, the issuing company shall mail at least thirty (30) calendar days' written notice to the County.

(5) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the Work or termination of the Agreement, the Contractor shall furnish to the County, in triplicate, renewal or replacement Certificate(s) of Insurance not

later than thirty (30) calendar days prior to the date of their expiration. Failure of the Contractor to provide the County with such renewal certificate(s) shall be considered justification for the County to terminate the Agreement.

(6) Contractor shall include the County, the County's agents, officers and employees in the Contractor's General Liability and Automobile Liability policies as additional insureds.

(7) If the County has any objection to the coverage afforded by other provisions of the insurance required to be purchased and maintained by Contractor in accordance with the requirements of the Contract Documents on the basis of its not complying with the Contract Documents, the County shall notify Contractor in writing thereof within thirty (30) calendar days of the delivery of such certificates to the County. Contractor shall provide to the County such additional information with respect to its insurance as may be requested.

(8) The Contractor shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

[Insert the insurance requirements provided by Risk Management for this project.]

**EXHIBIT G**  
**RELEASE AND AFFIDAVIT**

COUNTY OF \_\_\_\_\_

STATE OF FLORIDA

Before me, the undersigned authority, personally appeared

\_\_\_\_\_,  
who after being duly sworn, deposes and says:

(1) In accordance with the Contract Documents and in consideration of \$\_\_\_\_\_ paid, \_\_\_\_\_ ("Contractor") releases and waives for itself and its subcontractors, materialmen, successors and assigns, all claims demands, damages, costs and expenses, whether in contract or in tort, against Lee County, Florida (the "County"), its Board of County Commissioners, employees and agents relating in any way to the performance of the Agreement between Contractor and the County, dated \_\_\_\_\_, \_\_\_\_\_, for the period from \_\_\_\_\_ to \_\_\_\_\_.

(2) Contractor certifies for itself and its subcontractors, materialmen, successors and assigns, that all charges for labor, materials, supplies, lands, licenses and other expenses for which the County might be sued or for which a lien or a demand against any Payment Bond might be filed, have been fully satisfied and paid.

(3) Contractor agrees to indemnify, defend and save harmless the County, its Board of County Commissioners, employees and agents from all demands or suits, actions, claims of liens or other charges filed or asserted against the County arising out of the performance by Contractor of the Work covered by this Release and Affidavit.

(4) This Release and Affidavit is given in connection with Contractor's [monthly/final] application for payment No.\_\_\_\_\_.

CONTRACTOR:

\_\_\_\_\_  
By: \_\_\_\_\_ (signature of the executive officer)

Its: \_\_\_\_\_ (title of the executive officer)

Date: \_\_\_\_\_



Witnesses

\_\_\_\_\_

[Corporate Seal]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.

My Commission Expires: \_\_\_\_\_  
(Signature of Notary)

Name: \_\_\_\_\_  
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of \_\_\_\_\_

Commission No.: \_\_\_\_\_

## EXHIBIT H CHANGE ORDER FORM



Lee County Construction Contract  
Change Order

**Print Form**

Number: \_\_\_\_\_

A Change Order requires approval by the Department Director for expenditures under \$50,000, approval by the County Manger for expenditures between \$50,000.00 and \$99,999.99, or approval by the Board of County Commissioners for expenditures over \$100,000.00.

Contract / Project Name:

Contractor: \_\_\_\_\_

Contract #: \_\_\_\_\_ Project #: \_\_\_\_\_ Bid #: \_\_\_\_\_

Lee County Project Manager: \_\_\_\_\_ Account #: \_\_\_\_\_

Fiscal Staff: \_\_\_\_\_ Date of Request: \_\_\_\_\_

Upon the completion and execution by both parties of this Change Order to the Contract, the Contractor is authorized to and shall proceed to make the following changes in the Contract Documents, as follows:  
*(If you need space other than what has been provided, please attach additional sheets.)*

Purpose of Change Order: \_\_\_\_\_

Description: \_\_\_\_\_

Attachments:(List documents supporting change) \_\_\_\_\_

Change in Contract Price	Dollar Amount	Change in Contract Time	Calendar Days
Original Contract Price		Original Contract Time	
Previous Change Order Total		Net Change from Previous Change Orders	
Contract Price Prior to this Change Order		Contract Time Prior to this Change Order	
Net Increase (Decrease) of this Change Order		Net Increase (Decrease) of this Change Order	
Contract Price with All Approved Change Orders		Contract Time with All Approved Change Orders	

It is understood and agreed that the acceptance of this modification by the CONTRACTOR constitutes an accord and satisfaction, and represents payment in full (both time and money) for all costs arising out of, or incidental to, the above mentioned change.

\_\_\_\_\_  
Contractor Signature (Print & Sign Name)

\_\_\_\_\_  
Date Accepted

\_\_\_\_\_  
Contact Email Address

\_\_\_\_\_  
Contact Phone #


**Lee County Board of County Commissioners**  
2115 Second Street, 1st Floor - Fort Myers, FL 33901  
PO Box 398 - Fort Myers, FL 33902-0398  
**Main Phone: (239) 533-8881**

**EXHIBIT I  
SUPPLEMENTAL SPECIFICATIONS**

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Division I-General Requirements and Covenants	I-1
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***I hereby certify that these Supplemental Specifications have been properly prepared by me, or under my responsible charge:***

<b>Supplemental Specification Section(s): 102, 334, 430, 710, 711</b>	
<b>Signature:</b>	
<b>Date:</b>	5/23/2023
<b>Engineer of Record:</b>	Robert L. Price, P.E.
<b>Florida License No.:</b>	PE65232
<b>Firm Name:</b>	Lee County DOT
<b>Firm Address:</b>	1500 Monroe St.,
<b>City, State, Zip Code:</b>	Fort Myers, FL 33901
<b>Cert. of Authorization No:</b>	N/A

A circular professional engineer seal for Robert L. Price. The outer ring contains the text "ROBERT L. PRICE" at the top and "PROFESSIONAL ENGINEER" at the bottom, separated by two stars. Inside the ring, the word "LICENSE" is at the top and "STATE OF FLORIDA" is at the bottom, also separated by two stars. In the center of the seal, the license number "No 65232" is printed.

Electronically signed and sealed supplemental specifications are archived at Lee County Department of Transportation.

**DIVISION I-GENERAL REQUIREMENTS AND COVENANTS**

**RESERVED**

## DIVISION II-CONSTRUCTION DETAILS

### SECTION 102 – MAINTENANCE OF TRAFFIC (LCDOT 09/19/2022)

Section 102-4: Delete Section 102-4 in its entirety and substitute the following:

The Contractor shall submit a complete Traffic Control Plan (TCP) to the Engineer for review and approval at the preconstruction meeting. Prepare the TCP in conformance with and in the form prescribed in the current version of the FDOT Design Manual, FDOT Standard Plans – Index 102 series and the MUTCD. Indicate in the plan a TCP for each phase of activities. Take responsibility for identifying and assessing any potential impacts to a utility that may be caused by the TCP, and notify the Department in writing of any such potential impacts to utilities. The TCP shall be signed and sealed by a professional engineer duly registered in the State of Florida.

Engineer's approval of the TCP does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the design or construction activities from those depicted in the original Contract Documents, and which effect a change in utility work different from that shown in the utility plans, joint project agreements, interlocal agreements or utility relocation schedules.

The County reserves the right to reject any Traffic Control Plan. Obtain the Engineer's written approval before beginning work using a TCP. The Engineer's written approval is required for all modifications to the TCP. The Engineer will only allow changes to the TCP without proper documentation on an emergency basis.

Pedestrian and/or bicycle traffic must be safely and continuously maintained through, or around, work zones on highway or streets where pedestrian and bicyclists were permitted at the start of the project. The Contractor shall submit a plan for approval signed and sealed by a professional engineer duly licensed in the State of Florida for the safe passage of pedestrian and bicycle traffic prior to closure of any existing pedestrian facility. Facilities constructed to specifically provide access for pedestrians in or around work zones must be consistent with the current United States Access Board-PROWAG. The plan shall detail the rerouting of users, duration of closure and proposed construction methods for any temporary facility.

All costs for maintenance of traffic including preparation of Traffic Control Plan shall be included in the price bids for Pay Item 102-1 – Maintenance of Traffic, except as expressly provided for in other pay items in the contract.

Subsection 102-9.15: Delete Subsection 102-9.15 in its entirety and substitute the following:

Temporary Traffic Detection Technology – Maintain all existing actuated or traffic responsive mode signal operations for main and side street movements for the duration of the

contract and restore any loss of detection within 12 hours. Video detection shall be installed at the beginning of the project before any loss of detection has occurred. The contractor shall furnish, install and operate video detection using technology approved by Lee DOT Traffic Division and as listed in Lee County DOT Traffic Plan Specifications posted on the county website at

<http://www.lee.gov/dot/Documents/Traffic%20Folder/Spec%20Book/traffic%20spec%20bookrev3.pdf>.

**SECTION 334 - SUPERPAVE ASPHALT CONCRETE, QUALITY ASSURANCE AND ACCEPTANCE PROCEDURES (LCDOT REV05/05/2023)**

Section 334: Delete Section 334 in its entirety and replace with the following:

**SECTION 334 SUPERPAVE ASPHALT CONCRETE**

**334-1 Description.**

**334-1.1 General:** Construct a Superpave Asphalt Concrete pavement with the type of mixture specified in the Contract Documents, or when offered as alternates, as selected. Superpave mixes are identified as Type SP-9.5, Type SP-12.5 or Type SP-19.0.

Obtain Superpave Asphalt Concrete from a plant that is currently on the Department’s Production Facility Listing. Producers seeking inclusion on the list shall meet the requirements of Section 105. Producers must meet the requirements of Section 320 for plant and equipment and the general construction requirements of Section 330.

**334-1.2 Traffic Levels:** The requirements for Type SP Asphalt Concrete mixtures are based on the design traffic level of the project. The traffic levels for the project are as specified in the Contract Documents.

**334-1.3 Gradation Classification:** The Superpave mixes are classified as fine and are defined in 334-3.2.2.

The equivalent AASHTO nominal maximum aggregate size Superpave mixes are as follows:

Type SP-9.5.....	9.5 mm
Type SP-12.5.....	12.5 mm
Type SP-19.0.....	19.0 mm

**334-1.4 Thickness:** The total thickness of the Type SP asphalt layers will be the plan thickness as shown in the Contract Documents. Before paving, propose a thickness for each individual layer meeting the requirements of this specification, which when combined with other layers (as applicable) will equal the plan thickness. For construction purposes, the plan thickness and individual layer thickness will be converted to spread rate based on the maximum specific gravity of the asphalt mix being used, as well as the minimum density level, as shown in the following equation:

$$\text{Spread rate (lb/yd}^2\text{)} = t \times G_{\text{mm}} \times 43.3$$

Where: t = Thickness (in.) (plan thickness or individual layer

thickness)

$G_{\text{mm}}$  = Maximum specific gravity from the verified mix

design

The weight of the mixture shall be determined as provided in 320-3.2. For target purposes only, spread rate calculations should be rounded to the nearest whole number.

Note: Plan quantities are based on a  $G_{mm}$  of 2.540, corresponding to a spread rate of 110 lb/yd<sup>2</sup>-in. Pay quantities will be based on the actual maximum specific gravity of the mix being used.

**334-1.4.1 Layer Thicknesses:** The allowable layer thicknesses for Type SP Asphalt Concrete mixtures are as follows:

Type SP-9.5..... 1 to 1-1/2 inches

Type SP-12.5..... 1-1/2 to 3 inches

Type SP-19.0..... 2 to 4 inches

In addition to the minimum and maximum thickness requirements, the following restrictions are placed on mixes when used as a structural course:

Type SP-9.5 - Limited to the top two structural layers, two layers maximum.

Type SP-9.5 - Do not use for Traffic Level E applications.

Type SP-19.0 - Do not use for the final (top) structural layer below FC-5 mixtures. Type SP-19.0 mixtures are permissible for the layer directly below FC-9.5 and FC-12.5 mixtures. Do not use for the final (top) layer of shoulders.

**334-1.4.2 Additional Requirements:** The following requirements also apply to Type SP Asphalt Concrete mixtures:

1. A minimum 1-1/2 inch initial lift is required over an Asphalt Membrane Interlayer (AMI).

2. When construction includes the paving of adjacent shoulders (less than or equal to 5 feet wide), the layer thickness for the upper pavement layer and shoulder must be the same and paved in a single pass, unless called for differently in the Contract Documents.

3. All overbuild layers must be Type SP Asphalt Concrete designed at the traffic level as stated in the Contract Documents. Use the minimum and maximum layer thicknesses as specified above unless called for differently in the Contract Documents. On variable thickness overbuild layers, the minimum and maximum allowable thicknesses will be as specified below, unless called for differently in the Contract Documents.

Type SP-9.5..... 3/8 to 2 inches

Type SP-12.5..... 1/2 to 3 inches

Type SP-19.0..... 1-1/2 to 4 inches

4. Variable thickness overbuild layers constructed using a Type SP-9.5 or SP-12.5 mixtures may be tapered to zero thickness provided the contract documents require a minimum of 1-1/2 inches of dense-graded mix placed over the variable thickness overbuild layer.

## 334-2 Materials.

**334-2.1 General Requirements:** Meet the material requirements specified in Division III. Specific references are as follows:

Superpave PG Asphalt Binder .....Section 916

Coarse Aggregate .....Section 901

Fine Aggregate .....Section 902

**334-2.2 Superpave Asphalt Binder:** Unless specified otherwise in the Contract Documents, use an asphalt binder grade as determined from Table 334-2.

High polymer binder mixtures may be used in lieu of mixtures with other specified binders at no additional cost to the Department, provided they meet the traffic level and mixture type requirements of the project.

High polymer binder may be substituted in a mixture at no additional cost to the Department when the mix design contains a maximum of 20% RAP.

### **334-2.3 Reclaimed Asphalt Pavement (RAP) Material:**

**334-2.3.1 General requirements:** RAP may be used as a component of the asphalt mixture subject to the following requirements:

1. When using a PG 76-22 asphalt binder in friction course mixtures, limit the amount of RAP material used in the mix to a maximum of 20% by weight of total aggregate. As an exception, amounts greater than 20% RAP by weight of total aggregate can be used if no more than 20% by weight of the total asphalt binder comes from the RAP material. When using a PG 76-22 asphalt binder in structural course mixtures, refer to 334-2.3.6. RAP is not allowed in mixtures containing High Polymer asphalt binder. High Polymer asphalt is defined in Section 916.

2. Assume full responsibility for the design, production and construction of asphalt mixes which incorporate RAP as a component material.

3. Use RAP from a Department approved stockpile or millings from a Department project.

4. Provide stockpiled RAP material that is reasonably consistent in characteristics and contains no aggregate particles which are soft or conglomerates of fines.

5. Provide RAP material having a minimum average asphalt binder content of 4.0% by weight of RAP. As an exception, when using fractionated RAP, the minimum average asphalt binder content for the coarse portion of the RAP shall be 2.5% by weight of the coarse portion of the RAP. The coarse portion of the RAP shall be the portion of the RAP retained on the No. 4 sieve. The Engineer may sample the stockpiles to verify that this requirement is met.

**334-2.3.2 Material Characterization for Mix Design:** Assume responsibility for establishing the asphalt binder content, gradation, and bulk specific gravity ( $G_{sb}$ ) of the RAP material based on a representative sampling of the material by roadway cores or stockpile samples. For roadway core samples, assume responsibility for the degradation that will occur during the milling operation.

**334-2.3.3 RAP Stockpile Approval:** Prior to the incorporation of RAP into the asphalt mixture, stockpile the RAP material and obtain approval for the stockpile by one of the following methods:

1. Continuous stockpile: When RAP is obtained from one or multiple sources and is either processed, blended, or fractionated, and stockpiled in a continuous manner, assure an adequate number of test results are obtained for stockpile approval. Test the RAP material for gradation and asphalt content at a minimum frequency of one sample per 1000 tons with a minimum of six test results. Test the RAP material for  $G_{mm}$  (for  $G_{sb}$  determination) at a minimum frequency of one sample per 5000 tons with a minimum of two test results. Based on visual inspection and a review of the test data, the Engineer will determine the suitability of the stockpiled material. In addition, address the details and specifics of the processing, sampling, testing and actions to be taken in the Producer Quality Control (QC) Plan.

When RAP is added to the continuous stockpile after original

approval of the stockpile as described above, test the RAP material for gradation and asphalt content at a minimum frequency of one sample per 1000 tons with a minimum of six test results. Test the RAP material for  $G_{mm}$  (for  $G_{sb}$  determination) at a minimum frequency of one sample per 5000 tons with a minimum of two test results. Monitor test results during crushing operations for conformance to the requirements of Table 334-1. After the minimum frequency of tests have been performed, the Engineer will review the test data and visually inspect the stockpiled material. The average gradation and  $G_{mm}$  of the added material shall be within the allowable ranges shown in Table 334-1 from the originally approved stockpile values. If the added RAP material does not meet the conditions of Table 334-1, then the Contractor must create a new stockpile when resuming crushing operations and the stockpile will receive a new number designation from the Department. The previously crushed material, which was added to the continuous stockpile and did not meet the conditions of Table 334-1, may remain and that stockpile used until depleted.

Table 334-1 Allowable Ranges for Continuous RAP Stockpile Properties	
Characteristic	Limit from Original Approved Stockpile Gradation
No. 8 sieve and coarser	± 6.0%
No. 16 sieve	± 5.0%
No. 30 sieve	± 5.0%
No. 50 sieve	± 4.0%
No. 100 sieve	± 3.0%
No. 200 sieve	± 2.0%
$G_{mm}$	± 0.040

2. Non-continuous single stockpile: When an individual stockpile is being constructed, obtain representative samples at random locations and test the RAP material for gradation and asphalt content at a minimum frequency of one sample per 1000 tons with a minimum of six test results. Test the RAP material for  $G_{mm}$  (for  $G_{sb}$  determination) at a minimum frequency of one sample per 5000 tons with a minimum of two test results. Based on visual inspection and a review of the test data, the Engineer will determine the suitability of the stockpiled material. If the properties of the new stockpile compare with the properties of an existing stockpile within the ranges provided in Table 334-1, the RAP in the new stockpile may be added to the existing stockpile. Once the RAP stockpile has been approved, do not add additional material without prior approval of the Engineer.

Determine the asphalt binder content and gradation of the RAP material in accordance with FM 5-563 and FM 1-T 030, respectively. Establish the  $G_{sb}$  of the RAP material by using one of the following methods:

a. Calculate the  $G_{sb}$  value based upon the effective specific gravity ( $G_{sc}$ ) of the RAP material, determined on the basis of the asphalt binder content and maximum specific gravity ( $G_{mm}$ ) of the RAP material. The Engineer will approve the estimated asphalt binder absorption value used in the calculation.



b. Measure the  $G_{sb}$  of the RAP aggregate, in accordance with FM 1-T 084 and FM 1-T 085. Obtain the aggregate by using a solvent extraction method.

**334-2.3.4 Pavement Coring Report:** When the Contract includes milling of the existing asphalt pavement, the Pavement Coring Report may be available on the Department’s website.

**334-2.3.5 Asphalt Binder for Mixes with RAP:** Select the appropriate asphalt binder grade based on Table 334-2. The Engineer reserves the right to change the asphalt binder grade at design based on the characteristics of the RAP asphalt binder, and reserves the right to make changes during production.

Table 334-2 Asphalt Binder Grade for Mixes Containing RAP	
Percent RAP	Asphalt Binder Grade
0 - 15	PG 67-22
16 - 30	PG 58-22
>30	PG 52-28

**334-2.3.6 Allowable RAP Percentages for Type SP Structural Mixtures with PG 76-22 Asphalt Binder:** For Type SP structural mixtures using PG 76-22 asphalt binder, select the percentage of RAP material based on Table 334-3.

Table 334-3 Allowable RAP Percentages <sup>1</sup> in Type SP Structural Mixtures with PG 76-22 Asphalt Binder				
		Coarse RAP	Intermediate RAP	Fine RAP
Gradation % Passing #16 Sieve <sup>2</sup>		≤ 40%	> 40% to ≤ 50%	> 50%
PG <sub>HT</sub> <sup>3</sup> > 100.0° C	Allowable RAP Percentage	≤ 25%	≤ 20%	≤ 20%
PG <sub>HT</sub> <sup>3</sup> ≤ 100.0° C		≤ 30%	≤ 25%	
Notes:				
. RAP aggregate by weight of total aggregate or RAP binder by weight of total binder.				
. RAP gradations based on ignition oven extraction of RAP material in accordance with FM 5-563.				
. PG <sub>HT</sub> : asphalt binder high temperature continuous performance grade of RAP in accordance with Section 916.				

**334-2.4 Recycled Crushed Glass:** Recycled crushed glass may be used as a component of the asphalt mixture subject to the following requirements:

1. Consider the recycled crushed glass a local material and meet all requirements specified in 902-6.
2. Limit the amount of recycled crushed glass to a maximum of 15% by weight of total aggregate.
3. Use an asphalt binder that contains an anti-stripping agent listed on the Approved Product List (APL). The anti-strip additive shall be introduced into the asphalt binder by the supplier during loading.

4. Do not use recycled crushed glass in friction course mixtures or in structural course mixtures which are to be used as the final wearing surface.

### **334-3 General Composition of Mixture.**

**334-3.1 General:** Compose the asphalt mixture using a combination of aggregate (coarse, fine or mixtures thereof), mineral filler, if required, and asphalt binder material. Size, grade and combine the aggregate fractions to meet the grading and physical properties of the mix design. Aggregates from various sources may be combined.

#### **334-3.2 Mix Design:**

**334-3.2.1 General:** Design the asphalt mixture in accordance with AASHTO R 35, except as noted herein. Prior to the production of any asphalt mixture, submit the proposed mix design with supporting test data indicating compliance with all mix design criteria to the Engineer. For all mix designs, include representative samples of all component materials, including asphalt binder. Allow the Director of the Office of Materials a maximum of four weeks to either conditionally verify or reject the mix as designed.

At no additional cost to the Department, for a Type SP mix the following Traffic Level substitutions are allowed:

Traffic Level E can be substituted for Traffic Level C.

Traffic Level C can be substituted for Traffic Level B.

The same traffic level and binder type that is used for the mainline traffic lanes may be placed in the shoulder at no additional cost to the Department, even if the conditions stated above are not met for the shoulder.

Warm mix technologies (additives, foaming techniques, etc.) listed on the Department's website may be used in the production of the mix. The URL for obtaining this information, if available, is: <https://www.fdot.gov/materials/mac/default.shtm>.

When warm mix technologies are used, for mixtures containing a PG 52-28, PG 58-22, or PG 67-22 binder, a mixture will be considered a warm mix asphalt design if the mixing temperature is 285°F or less. For mixtures containing a PG 76-22 or High Polymer binder, a mixture will be considered a warm mix asphalt design if the mixing temperature is 305°F or less.

The Engineer will consider any marked variations from original test data for a mix design or any evidence of inadequate field performance of a mix design as sufficient evidence that the properties of the mix design have changed, and the Engineer will no longer allow the use of the mix design.

**334-3.2.2 Mixture Gradation Requirements:** Combine the coarse and fine aggregate in proportions that will produce an asphalt mixture meeting all of the requirements defined in this specification and conform to the gradation requirements at design as defined in AASHTO M 323. Aggregates from various sources may be combined.

**334-3.2.2.1 Mixture Gradation Classification:** Plot the combined mixture gradation on an FHWA 0.45 Power Gradation Chart. Include the Control Points from AASHTO M 323, as well as the Primary Control Sieve (PCS) Control Point from AASHTO M 323. Fine mixes are defined as having a gradation that passes above the primary control sieve control point and above the maximum density line for all sieve sizes smaller than the primary control sieve and larger than the No. 30 sieve.

**334-3.2.3 Aggregate Consensus Properties:** For Traffic Level C and E mixtures, meet the following consensus properties at design for the aggregate blend.

Aggregate consensus properties do not apply to Traffic Level B mixtures.

**334-3.2.3.1 Coarse Aggregate Angularity:** When tested in accordance with ASTM D5821-13 (2017), meet the percentage of fractured faces requirements specified in

**334-3.2.3.2 Fine Aggregate Angularity:** When tested in accordance with AASHTO T 304, Method A, meet the uncompacted void content of fine aggregate specified in AASHTO M 323.

**334-3.2.3.3 Flat and Elongated Particles:** When tested in accordance with ASTM D4791-19, (with the exception that the material passing the 3/8 inch sieve and retained on the No. 4 sieve shall be included), meet the requirements specified in AASHTO M 323. Measure the aggregate using the ratio of 5:1, comparing the length (longest dimension) to the thickness (shortest dimension) of the aggregate particles.

**334-3.2.3.4 Sand Equivalent:** When tested in accordance with AASHTO T 176, meet the sand equivalent requirements specified in AASHTO M 323.

**334-3.2.4 Gyratory Compaction:** Compact the design mixture in accordance with AASHTO T 312, with the following exception: use the number of gyrations at  $N_{design}$  as defined in Table 334-4. Measure the inside diameter of gyratory molds in accordance with AASHTO T 312.

Table 334-4 Gyratory Compaction Requirements	
Traffic Level	$N_{design}$ Number of Gyrations
B	65
C	75
E	100

**334-3.2.5 Design Criteria:** Meet the requirements for nominal maximum aggregate size as defined in AASHTO M 323, as well as for relative density, VMA, VFA, and dust-to-binder ratio as specified in AASHTO M 323.  $N_{initial}$  and  $N_{maximum}$  requirements are not applicable.

**334-3.2.6 Moisture Susceptibility:**

1. For all traffic levels, use a liquid anti-strip agent listed on the APL at the specified dosage rate. Hydrated lime may be used instead of the liquid anti-strip agent.
2. Provide a mixture having a retained tensile strength ratio of at least 0.80 and a minimum tensile strength (unconditioned) of 100 psi in accordance with FM 1-T 283.

**334-3.2.7 Additional Information:** In addition to the requirements listed above, provide the following information with each proposed mix design submitted for verification:

1. The design traffic level and the design number of gyrations ( $N_{design}$ ).
2. The source and description of the materials to be used.
3. The Department source number and the Department product code of the aggregate components furnished from a Department approved source.
4. The gradation and proportions of the raw materials as intended to be combined in the paving mixture. The gradation of the component materials shall be

representative of the material at the time of use. Compensate for any change in aggregate gradation caused by handling and processing as necessary.

5. A single percentage of the combined mineral aggregate passing each specified sieve. Degradation of the aggregate due to processing (particularly material passing the No. 200 sieve) should be accounted for and identified.

6. The bulk specific gravity ( $G_{sb}$ ) value for each individual aggregate and RAP component, as identified in the Department’s aggregate control program.

7. A single percentage of asphalt binder by weight of total mix intended to be incorporated in the completed mixture, shown to the nearest 0.1%.

8. A target temperature for the mixture at the plant (mixing temperature) and a target temperature for the mixture at the roadway (compaction temperature) in accordance with 320-6.3. Do not exceed a target temperature of 340°F for High Polymer asphalt binders, 330°F for PG 76-22 asphalt binders, and 315°F for unmodified asphalt binders.

9. Provide the physical properties at the optimum asphalt content, which must conform to all specified requirements.

10. The name of the Construction Training Qualification Program (CTQP) Qualified Mix Designer.

11. The ignition oven and maximum specific gravity ( $G_{mm}$ ) calibration factors.

12. The warm mix technology, if used.

**334-3.3 Mix Design Revisions:** During production, the Contractor may request a target value revision to a mix design, subject to meeting the following requirements: the target change falls within the limits defined in Table 334-5, appropriate data exists demonstrating that the mix complies with production air voids specification criteria, and the mixture gradation meets the basic gradation requirements defined in 334-3.2.2.

Table 334-5 Limits for Potential Adjustments to Mix Design Target Values	
Characteristic	Limit from Original Mix Design
Asphalt Binder Content <sup>(1)</sup>	±0.3%
Gradation and Aggregate Component <sup>(2)</sup>	
No. 8 sieve and Coarser	± 5.0%
No. 16 sieve	± 4.0%
No. 30 sieve	± 4.0%
No. 50 sieve	± 3.0%
No. 100 sieve	± 3.0%
No. 200 sieve	± 1.0%
Each Component of Aggregate Blend	± 5.0 %
<sup>(1)</sup> Reductions to the asphalt binder content will not be permitted if the VMA during production is lower than 1.0% below the design criteria.	

(2) The Engineer may waive the limits for the individual sieves and component of the aggregate blend contingent upon the quality of the production data for the mixture. Revisions to FC-5 mixtures to be determined by the Engineer.

Submit all requests for revisions to mix designs, along with supporting documentation, to the Engineer. In order to expedite the revision process, the request for revision or discussions on the possibility of a revision may be made verbally, but must be followed up by a written request. The verified mix design will remain in effect until the Engineer authorizes a change. In no case will the effective date of the revision be established earlier than the date of the first communication between the Contractor and the Engineer regarding the revision.

A new design mix will be required if aggregate sources change, or for any substitution of an aggregate product with a different aggregate code, unless approved by the Engineer.

#### **334-4 Producer Process Control (PC).**

Assume full responsibility for controlling all operations and processes such that the requirements of these Specifications are met at all times. Perform any tests necessary at the plant and roadway for process control purposes. Enter all PC test data into the Department's database. The Engineer will not use these test results in the acceptance payment decision.

Address in the Producer QC Plan how PC failures will be handled. When a PC failure occurs, investigate, at a minimum, the production process, testing equipment and/or sampling methods to determine the cause of the failure, and make any necessary changes to assure compliance with these Specifications. Obtain a follow up sample immediately after corrective actions are taken to assess the adequacy of the corrections. In the event the follow-up PC sample also fails to meet Specification requirements, cease production of the asphalt mixture until the problem is adequately resolved to the satisfaction of the QC Manager.

#### **334-5 Acceptance of the Mixture.**

**334-5.1 General:** The mixture will be accepted at the plant with respect to gradation (P<sub>8</sub> and P<sub>200</sub>), asphalt content (P<sub>b</sub>), and volumetrics (volumetrics is defined as air voids at N<sub>design</sub>). The mixture will be accepted on the roadway with respect to density of roadway cores. Acceptance will be on a LOT by LOT basis (for each mix design) based on tests of random samples obtained within each subplot taken at a frequency of one set of samples per subplot. A roadway LOT and a plant production LOT shall be the same. Acceptance of the mixture will be based on Contractor QC test results that have been verified by the Department.

**334-5.1.1 Sampling and Testing Requirements:** Obtain the samples in accordance with FM 1-T 168. Obtain samples at the plant of a sufficient quantity to be split into three smaller samples; one for QC, one for Verification testing and one for Resolution testing. Obtain each split sample of a sufficient quantity, approximately 40 pounds, for all required testing. The split samples for Verification testing and Resolution testing shall be reduced in size and stored in three boxes each. The approximate size of each box must be 12 inches x 8 inches x 4 inches. Provide, label, and safely store sample boxes in a manner agreed upon by the Engineer for future testing.

The asphalt content of the mixture will be determined in accordance with FM 5-563. The gradation of the recovered aggregate will be determined in accordance with FM 1-T 030. Volumetric testing will be in accordance with AASHTO T 312 and FM 1-T 209. Prior

to testing volumetric samples, condition the test-sized sample for one hour, plus or minus five minutes, at the target roadway compaction temperature in a shallow, flat pan, such that the mixture temperature at the end of the one hour conditioning period is within plus or minus 20°F of the roadway compaction temperature.

If one of the QC gyratory specimens is damaged, make an additional gyratory specimen.

For situations where two properly prepared gyratory specimens do not meet single-operator precision requirements for  $G_{mb}$  as provided in FM 1-T 166:

1. Retest both gyratory specimens in accordance FM 1-T 166.
2. Following the retest, if the newly measured  $G_{mb}$  values do not meet single-operator precision requirements, QC shall prepare a third gyratory specimen in accordance with AASHTO T 312 and test in accordance with FM 1-T 166. All three test results shall be input into MAC. The average  $G_{mb}$  will be determined by MAC after performing an outlier check in accordance with ASTM E178.

Test for roadway density in accordance with FM 1-T 166.

**334-5.1.2 Acceptance Testing Exceptions:** When the total combined quantity of hot mix asphalt for the project, as indicated in the Plans for Type B-12.5, Type SP and Type FC mixtures only, is less than 2000 tons, the Engineer will accept the mix on the basis of visual inspection. The Engineer may require the Contractor to run process control tests for informational purposes, as defined in 334-4, or may run independent verification tests to determine the acceptability of the material.

Density testing for acceptance will not be performed on widening strips or shoulders with a width of 5 feet or less, open-graded friction courses, variable thickness overbuild courses, leveling courses, any SP-9.5 or SP-12.5 asphalt layer placed on subgrade with a layer thickness less than or equal to 3 inches, miscellaneous asphalt pavement, shared use paths, crossovers, gore areas, raised crosswalks, speed tables, or any course with a specified thickness less than 1 inch or a specified spread rate that converts to less than 1 inch as described in 334-1.4. Density testing for acceptance will not be performed on asphalt courses placed on bridge decks or approach slabs; compact these courses in static mode only per the requirements of 330-7.7. In addition, density testing for acceptance will not be performed on the following areas when they are less than 500 feet (continuous) in length: turning lanes, acceleration lanes, deceleration lanes, shoulders, parallel parking lanes, ramps, or unsignalized side streets with less than four travel lanes and speed limits less than 35 mph. Do not perform density testing for acceptance in situations where the areas requiring density testing is less than 50 tons within a subplot.

Density testing for acceptance will not be performed in intersections. The limits of the intersection will be from stop bar to stop bar for both the mainline and side streets. A random core location that occurs within the intersection shall be moved forward or backward from the intersection at the direction of the Engineer.

Where density testing for acceptance is not required, compact these courses (with the exception of open-graded friction courses) in accordance with the rolling procedure (equipment and pattern) as approved by the Engineer or with Standard Rolling Procedure as specified in 330-7.2. In the event that the rolling procedure deviates from the procedure approved by the Engineer, or the Standard Rolling Procedure, placement of the mix shall be stopped.

The density pay factor (as defined in 334-8.2) for areas not requiring

density testing for acceptance will be paid at the same density pay factor as for the areas requiring density testing within the same LOT. If the entire LOT does not require density testing for acceptance, the LOT will be paid at a density pay factor of 1.00.

**334-5.2 Full LOTs:** Each LOT will be defined (as selected by the Contractor prior to the start of the LOT) as either (1) 2,000 tons, with each LOT subdivided into four equal sublots of 500 tons each, or (2) 4,000 tons, with each LOT subdivided into four equal sublots of 1,000 tons each. As an exception to this, the initial LOT of all new mix designs shall be defined as 2,000 tons, subdivided into four equal sublots of 500 tons each. Before the beginning of a LOT, the Engineer will develop a random sampling plan for each subplot and direct the Contractor on sample points, based on tonnage, for each subplot during construction.

**334-5.3 Partial LOTs:** A partial LOT is defined as a LOT size that is less than a full LOT. A partial LOT may occur due to the following:

1. The completion of a given mix type or mix design on a project.
2. Closure of the LOT due to time. LOTs will be closed 30 calendar days after the start of the LOT. Time periods other than 30 calendar days may be used if agreed to by both the Engineer and the Contractor, but under no circumstances shall the LOT be left open longer than 90 days.

3. A LOT is terminated per 334-5.4.4.

All partial LOTs will be evaluated based on the number of tests available, and will not be redefined. If a LOT is closed before the first plant random sample is obtained, then the LOT will be visually accepted by the Engineer and the LOT pay factor will be 1.00.

**334-5.4 QC Sampling and Testing:** Obtain all samples randomly as directed by the Engineer.

Should the Engineer determine that the QC requirements are not being met or that unsatisfactory results are being obtained, or should any instances of falsification of test data occur, acceptance of the Producer's QC Plan will be suspended and production will be stopped.

**334-5.4.1 Lost or Missing Verification/Resolution Samples:** In the event that any of the Verification and/or Resolution asphalt mixture samples that are in the custody of the Contractor are lost, damaged, destroyed, or are otherwise unavailable for testing, the minimum possible pay factor for each quality characteristic as described in 334-8.2 will be applied to the entire LOT in question, unless called for otherwise by the Engineer. Specifically, if the LOT in question has more than two sublots, the pay factor for each quality characteristic will be 0.55. If the LOT has two or less sublots, the pay factor for each quality characteristic will be 0.80. If only the roadway cores are lost, damaged, destroyed, or are otherwise unavailable for testing, then the minimum possible pay factor for density will be applied to the entire LOT in question. In either event, the material in question will also be evaluated in accordance with 334-5.9.5.

If any of the Verification and/or Resolution samples that are in the custody of the Department are lost, damaged, destroyed or are otherwise unavailable for testing, the corresponding QC test result will be considered verified, and payment will be based upon the Contractor's data.

**334-5.4.2 Plant Sampling and Testing Requirements:** Obtain one random sample of mix per subplot in accordance with 334-5.1.1 as directed by the Engineer. Test the QC split sample for gradation, asphalt binder content and volumetrics in accordance with 334-5.1.1. Complete all QC testing within one working day from the time the samples were obtained.

**334-5.4.3 Roadway Sampling and Testing Requirements:** Obtain five 6 inch diameter roadway cores within 24 hours of placement at random locations as directed by the

Engineer within each subplot. Test these QC samples for density ( $G_{mb}$ ) in accordance with 334-5.1.1. Obtain a minimum of three cores per subplot at random locations as identified by the Engineer in situations where the subplot/LOT was closed or terminated before the random numbers were reached or where it is impractical to cut five cores per subplot. Do not obtain cores any closer than 12 inches from an unsupported edge. The Engineer may adjust randomly generated core locations for safety purposes or as the Engineer deems necessary. Do not perform density testing for acceptance in a subplot if the plant random sample for that subplot has not been obtained. Maintain traffic during the coring operation; core the roadway, patch the core holes (within three days of coring); and trim the cores to the proper thickness prior to density testing.

Density for the subplot shall be based on the average value for the cores cut from the subplot with the target density being a percentage of the maximum specific gravity ( $G_{mm}$ ) of the subplot, as defined in the Contract. Once the average density of a subplot has been determined, do not retest the samples unless approved by the Engineer. Ensure proper handling and storage of all cores until the LOT in question has been accepted.

**334-5.4.4 Individual Test Tolerances for QC Testing:** Terminate the LOT if any of the following QC failures occur:

1. An individual test result of a subplot for air voids does not meet the requirements of Table 334-6,
2. The average subplot density does not meet the requirements of Table 334-6,
3. Two consecutive test results within the same LOT for gradation or asphalt binder content do not meet the requirements of Table 334-6,

When a LOT is terminated due to a QC failure, stop production of the mixture until the problem is resolved to the satisfaction of the QC Manager and/or Asphalt Plant Level II technician responsible for the decision to resume production after a QC failure, as identified in Section 105. In the event that it can be demonstrated that the problem can immediately be or already has been resolved, it will not be necessary to stop production. When a LOT is terminated, make all necessary changes to correct the problem. Do not resume production until appropriate corrections have been made. Prior to resuming production, inform the Engineer of the problem and corrections made to correct the problem. After resuming production, sample and test the material to verify that the changes have corrected the problem. Summarize this information and provide it to the Engineer prior to the end of the work shift when production resumes.

In the event that a QC failure is not addressed as defined above, the Engineer's approval will be required prior to resuming production after any future QC failures.

Address any material represented by a failing test result, as defined above in this subarticle, in accordance with 334-5.9.5. Any LOT terminated under this subarticle will be limited to a maximum Pay Factor of 1.00 (as defined in 334-8.2) for all quality characteristics and will include all material placed up to the point when the LOT was terminated.

In the event that a  $G_{mm}$  test result differs by more than 0.040 from the mix design  $G_{mm}$ , investigate the causes of the discrepancy and report the findings and proposed actions to the Engineer.



Table 334-6 Master Production I	
Characteristic	Tolerance <sup>(1)</sup>
Asphalt Binder Content (%)	Target ±0.55
Passing No. 200 Sieve (%)	Target ±1.50
Air Voids (%)	2.30 – 6.00
Density (minimum % G <sub>mm</sub> ) <sup>(2)</sup>	89.50

Tolerances for sample size of n = 1 from the verified mix design  
Based on an average of three to five randomly located cores

**334-5.5 Verification Testing:** In order to determine the validity of the Contractor’s QC test results prior to their use in the Acceptance decision, the Engineer will run verification tests.

**334-5.5.1 Plant Testing:** At the completion of each LOT, the Engineer will test a minimum of one Verification split sample randomly selected from the LOT. Results of the testing and analysis for the LOT will be made available to the Contractor within one working day from the time the LOT is completed. Verification samples shall be reheated at the target roadway compaction temperature for 1-1/2 hours, plus or minus 5 minutes, reduced to the appropriate testing size, and conditioned and tested as described in 334-5.1.1. In lieu of the 1-1/2 hours reheating procedure, the mixture may be reheated to within plus or minus 20°F of the roadway compaction temperature using a microwave oven. Stir the mixture as necessary during the reheating process to maintain temperature uniformity. Subsequently, condition and test the mixture as described in 334-5.1.1.

The Verification test results will be compared with the QC test results based on the between-laboratory precision values shown in Table 334-7.

Table 334-7 Between-Laboratory Precision Values	
Property	Maximum Difference
G <sub>mm</sub>	0.016
G <sub>mb</sub> (gyratory compacted samples)	0.022
G <sub>mb</sub> (roadway cores)	0.014
P <sub>b</sub>	0.44%
P-200	FM 1-T 030 (Figure 2)
P-8	FM 1-T 030 (Figure 2)

If all of the specified mix characteristics compare favorably, then the LOT will be accepted, with payment based on the Contractor’s QC test data for the LOT.

If any of the results do not compare favorably, then the Resolution samples from the LOT will be sent to the Resolution laboratory for testing, as described in 334-5.6.

**334-5.5.2 Roadway Testing:** At the completion of each LOT, the Engineer will determine the density ( $G_{mb}$ ) of each core (previously tested by QC) as described in 334-5.1.1 from the same subplot as the plant samples. For situations where roadway density is not required for the random subplot chosen, then another subplot shall be randomly chosen for roadway density cores only. Results of the testing and analysis for the LOT will be made available to the Contractor within one working day from the time the LOT is completed.

The individual Verification test results will be compared with individual QC test results by the Engineer based on the between-laboratory precision values given in Table 334-7.

If each of the core test results compare favorably, then the LOT will be accepted with respect to density, with payment based on the Contractor's QC test data for the LOT.

If any of the results do not compare favorably, then the core samples from the LOT will be sent to the Resolution laboratory for testing as specified in 334-5.6.

### **334-5.6 Resolution System:**

**334-5.6.1 Plant Samples:** In the event of an unfavorable comparison between the Contractor's QC test results and the Engineer's Verification test results on any of the properties identified in Table 334-7, the Resolution laboratory will test all of the split samples from the LOT for only the property (or properties) in question. Resolution samples shall be reheated at the target roadway compaction temperature for 1-1/2 hours, plus or minus 5 minutes, reduced to the appropriate testing size, and conditioned and tested as described in 334-5.1.1. In lieu of the 1 1/2 hours reheating procedure, the mixture may be reheated to within plus or minus 20°F of the roadway compaction temperature using a microwave oven. Stir the mixture as necessary during the reheating process to maintain temperature uniformity. Subsequently, condition and test the mixture as described in 334-5.1.1.

**334-5.6.2 Roadway Samples:** In the event of an unfavorable comparison between the Contractor's QC test data and the Engineer's Verification test data on the density results, the Resolution laboratory will test all of the cores from the LOT. Testing will be as described in 334-5.1.1.

**334-5.6.3 Resolution Determination:** The Resolution test results (for the property or properties in question) will be compared with the QC test results based on the between-laboratory precision values shown in Table 334-7.

If the Resolution test results compare favorably with all of the QC results, then acceptance and payment for the LOT will be based on the QC results, and the Department will bear the costs associated with Resolution testing. No additional compensation, either monetary or time, will be made for the impacts of any such testing.

If the Resolution test results do not compare favorably with all of the QC results, then acceptance and payment for the LOT will be based on the Resolution test data for the LOT, and the costs of the Resolution testing will be deducted from monthly estimates. No additional time will be granted for the impacts of any such testing.

In addition, the material failure requirements of 334-5.4.4 apply to the Resolution test data. Address any material represented by the failing test results in accordance with 334-5.9.5. For this situation, the LOT will be limited to a maximum Pay Factor of 1.00 (as defined in 334-8.2) for all quality characteristics.

In the event of an unfavorable comparison between the Resolution test

results and QC test results, make the necessary adjustments to assure that future comparisons are favorable.

### **334-5.7 Independent Verification (IV) Testing:**

**334-5.7.1 Plant:** The Contractor shall provide sample boxes and take samples as directed by the Engineer for IV testing. Obtain enough material for three complete sets of tests (two samples for IV testing by the Engineer and one sample for testing by the Contractor). If agreed upon by both the Engineer and the Contractor, only one sample for IV testing by the Engineer may be obtained. IV samples will be reheated at the target roadway compaction temperature for 1-1/2 hours, plus or minus 5 minutes, reduced to the appropriate testing size, and conditioned and tested as described in 334-5.1.1. The Contractor's split sample, if tested immediately after sampling, shall be reduced to the appropriate testing size, and conditioned and tested as described in 334-5.1.1. If the Contractor's sample is not tested immediately after sampling, then the sample shall be reheated at the target roadway compaction temperature for 1 1/2 hours, plus or minus 5 minutes, reduced to the appropriate testing size, and conditioned and tested as described in 334-5.1.1. For the IV and Contractor's samples, in lieu of the 1-1/2 hours reheating procedure, the mixture may be reheated to within plus or minus 20°F of the roadway compaction temperature using a microwave oven. Stir the mixture as necessary during the reheating process to maintain temperature uniformity. Subsequently, condition and test the mixture as described in 334-5.1.1. The Contractor's test results shall be provided to the Engineer within one working day from the time the sample was obtained.

If any of the IV test results do not meet the requirements of Table 334-6, then a comparison of the IV test results and the Contractor's test results, if available, will be made. If a comparison of the IV test results and the Contractor's test results meets the precision values of Table 334-7 for the material properties in question, or if the Contractor's test results are not available, then the IV test results are considered verified and the Contractor shall cease production of the asphalt mixture until the problem is adequately resolved (to the satisfaction of the Engineer), unless it can be demonstrated to the satisfaction of the Engineer that the problem can immediately be (or already has been) resolved. Address any material represented by the failing test results in accordance with 334-5.9.5.

If a comparison of the IV test results and the Contractor's test results does not meet the precision values of Table 334-7 for the material properties in question, then the second IV sample shall be tested by the Engineer for the material properties in question. If a comparison between the first and second IV test results does not meet the precision values of Table 334-7 for the material properties in question, then the first IV test results are considered unverified for the material properties in question and no action shall be taken, with the following exception: if the first and second IV test results do not meet the precision values of Table 334-7 and the first IV test result and Contractor's test result do not meet the precision values of Table 334-7, yet all three test results do not meet the requirements of Table 334-6, then address any material represented by the failing test results in accordance with 334-5.9.5.

If a comparison between the first and second IV test results meets the precision values of Table 334-7 for the material properties in question, then the first IV sample is considered verified and the Contractor shall cease production of the asphalt mixture until the problem is adequately resolved (to the satisfaction of the Engineer), unless it can be demonstrated to the satisfaction of the Engineer that the problem can immediately be (or already has been) resolved. Address any material represented by the failing test results in accordance with 334-5.9.5.

The Engineer has the option to use the IV sample for comparison testing as specified in 334-6.

**334-5.7.1.1 Asphalt Binder and Mixture Sampling for Determination of Asphalt Binder Quality:** At the Department's request, obtain an asphalt binder sample from the asphalt plant storage tank and a corresponding asphalt mixture sample using binder from the same storage tank. Samples of asphalt binder and mixture shall be sampled the same day. The asphalt binder from the storage tank and the asphalt binder recovered from the asphalt mixture will be tested by the Department for compliance with Contract Documents.

**334-5.7.2 Roadway:** Obtain five 6-inch diameter roadway cores within 24 hours of placement, as directed by the Engineer, for IV testing. In situations where it is impractical to cut five cores per subplot, obtain a minimum of three cores per subplot at random locations, as identified by the Engineer. These independent cores will be obtained from the same LOTs and sublots as the Independent Verification Plant samples, or as directed by the Engineer. The density of these cores will be obtained as described in 334-5.1.1. If the average of the results for the subplot does not meet the requirements of Table 334-6 for density, then a comparison of the IV  $G_{mm}$  test results and the Contractor's  $G_{mm}$  test results, if available, will be made in accordance with the procedure provided in 334-5.7.1. Address any material represented by the failing test results in accordance with 334-5.9.5.

**334-5.8 Surface Tolerance:** The asphalt mixture will be accepted on the roadway with respect to surface tolerance in accordance with the applicable requirements of 330-9.

**334-5.9 Minimum Acceptable Quality Levels:**

**334-5.9.1 PFs Below 0.90:** In the event that an individual pay factor for any quality characteristic of a LOT falls below 0.90, take steps to correct the situation and report the actions to the Engineer. In the event that the pay factor for the same quality characteristic for two consecutive LOTs is below 0.90, cease production of the asphalt mixture until the problem is adequately resolved (to the satisfaction of the Engineer), unless it can be demonstrated to the satisfaction of the Engineer that the problem can immediately be (or already has been) resolved. Actions taken must be approved by the Engineer before production resumes.

**334-5.9.2 CPFs Less Than 0.90 and Greater Than or Equal to 0.80:** If the composite pay factor for the LOT is less than 0.90 and greater than or equal to 0.80, cease production of the asphalt mixture until the problem is adequately resolved (to the satisfaction of the Engineer), unless it can be demonstrated to the satisfaction of the Engineer that the problem can immediately be (or already has been) resolved. Actions taken must be approved by the Engineer before production resumes.

**334-5.9.3 CPFs Less Than 0.80 and Greater Than or Equal to 0.75:** If the CPF for the LOT is less than 0.80 and greater than or equal to 0.75, address the defective material in accordance with 334-5.9.5.

**334-5.9.4 CPFs Less Than 0.75:** If the CPF for the LOT is less than 0.75, remove and replace the defective LOT at no cost to the Department, or as approved by the Engineer.

**334-5.9.5 Defective Material:** Assume responsibility for removing and replacing all defective material placed on the project, at no cost to the Department.

As an exception to the above and upon approval of the Engineer, obtain an engineering analysis in accordance with Section 6 by an independent laboratory (as approved by the Engineer) to determine the disposition of the material. The engineering analysis must be signed and sealed by a Professional Engineer licensed in the State of Florida.

The Engineer may determine that an engineering analysis is not necessary or may perform an engineering analysis to determine the disposition of the material.

Any material that remains in place will be accepted with a CPF as determined by 334-8, or as determined by the Engineer.

If the defective material is due to a gradation, asphalt binder content or density failure, upon the approval of the Engineer the Contractor may perform delineation tests on roadway cores in lieu of an engineering analysis to determine the limits of the defective material that may require removal and replacement. Prior to any delineation testing, all sampling locations shall be approved by the Engineer. All delineation sampling and testing shall be monitored and verified by the Engineer. For materials that are defective due to air voids, an engineering analysis is required.

When evaluating defective material by engineering analysis or delineation testing, at a minimum, evaluate all material located between passing QC, PC or IV test results. Exceptions to this requirement shall be approved by the Engineer.

### **334-6 Comparison Testing.**

At the start of the project (unless waived by the Engineer) and at other times as determined necessary by the Engineer, provide split samples for comparison testing with the Engineer. The purpose of these tests is to verify that the testing equipment is functioning properly and that the testing procedures are being performed correctly. In the event that the Engineer determines that there is a problem with the Contractor's testing equipment and/or testing procedures, immediately correct the problem to the Engineer's satisfaction. In the event that the problem is not immediately corrected, cease production of the asphalt mixture until the problem is adequately resolved to the satisfaction of the Engineer.

If so agreed to by both the Contractor and the Engineer, the split sample used for comparison testing may also be used for the QC sample. The split sample used for comparison testing must also meet the requirements for IV testing described in 334-5.7.

### **334-7 Method of Measurement.**

For the work specified under this Section (including the pertinent provisions of Sections 320 and 330), the quantity to be paid for will be the weight of the mixture, in tons.

The bid price for the asphalt mix will include the cost of the liquid asphalt and the tack coat application as directed in 300-8. There will be no separate payment or unit price adjustment for the asphalt binder material in the asphalt mix. For the calculation of unit price adjustments of bituminous material, the average asphalt content will be based on the percentage specified in 92.1.2. The weight will be determined as provided in 320-3.2 (including the provisions for the automatic recordation system).

Prepare and submit a Certification of Quantities to the Engineer in accordance with 92.1.2.

### **334-8 Basis of Payment.**

**334-8.1 General:** Price and payment will be full compensation for all the work specified under this Section (including the applicable requirements of Sections 320 and 330).

**334-8.2 Pay Factors:** Reserved

**334-8.3 Composite Pay Factor (CPF):** Reserved

**334-8.4 Payment:** Payment will be made under:

Item No. 334-1- Superpave Asphaltic Concrete - per ton.

## **SECTION 430 – PIPE CULVERTS AND STORM SEWERS (LCDOT 10/27/2017)**

Section 430-3: Section 430-3.1 is modified as follows:

Pipe material for storm sewer or cross drain installations under pavement shall consist of steel reinforced concrete pipe in accordance with Section 449 and shall be a minimum of Class III or HE-III.

## **SECTION 710 – PAINTED PAVEMENT MARKINGS (LCDOT 05/08/2023)**

Section 710: Throughout the entire Section replace “gross mile” with “linear foot” or “linear feet”, as applicable. All painted pavement markings will be measured on a linear foot basis.

Subsection 710-11.1: Add the following to the end of the paragraph: “Raised Pavement Markers will be paid for separately under Item No. 706- 1 Retroreflective Pavement Markers – per each. Pavement markings of a temporary nature used for maintenance of traffic purposes are not subject to payment under this provision, but shall be included in the cost of Item No. 102- 1 Maintenance of Traffic – lump sum.”

## **SECTION 711 – THERMOPLASTIC PAVEMENT MARKINGS (LCDOT 05/08/2023)**

Section 711: Throughout the Section replace “gross mile” with “linear foot” or “linear feet”, as applicable. All thermoplastic pavement markings will be measured on a linear foot basis.

## **DIVISION III-MATERIALS**

### **RESERVED**

**EXHIBIT J**  
**SPECIAL PROVISIONS**

**1. CONTRACT TIME**

Contractor shall perform the contracted work fully, entirely, and in accordance with the Contract Documents within the Contract Time specified herein. If the Contractor fails to complete the work within the time stipulated, liquidated damages will apply in accordance with Standard Specification Article 8-10 Liquidated Damages for Failure to Complete the Work.

**Contract Time: 30 Calendar Days Commencement Date to Final Acceptance**

**2. PERMITS**

In accordance with Article 7-2 of Division I, permits and licenses procured by the County are listed below and attached hereto.

None

**3. GEOTECHNICAL INFORMATION**

Certain subsurface explorations and/or testing were conducted by the County in the design of this Project. Reports summarizing this work are listed below and attached hereto. The attached information is NOT a part of the Contract Documents and is provided as a supplement for informational purposes only. The County is not responsible for the accuracy, completeness or usefulness thereof. The County makes no warranty, express or implied, for the data, interpretations or opinions contained therein. Any person or party that utilizes the attached information does so purely at its own risk, and the County disclaims any responsibility or liability for any user's reliance upon the information.

None

**4. Lane Closures**

- a. Lane closures will be allowed during daytime hours during this project except when in conflict with provision 4.b. All work requiring lane closures shall occur from the hours of 9:00 AM to 4:00 PM. School zones work hours shall be 9:00AM to 2:00PM unless otherwise authorized in writing.
- b. If work is to be performed between Thanksgiving and Easter no lane closures will be allowed on Arterial and Collector roadways except during night time hours.
- c. MOT plans must be submitted to the Project Manager and approved prior to commencement of work.

**EXHIBIT K**  
**TECHNICAL SPECIAL PROVISIONS**

**RESERVED**

*I hereby certify that these Technical Special Provisions have been properly prepared by me, or under my responsible charge:*

<b>Developmental Specifications Section(s): XXX, XXX, XXX</b>		
<b>Signature:</b>		
<b>Date:</b>		
<b>Engineer of Record:</b>		
<b>Florida License No.:</b>		
<b>Firm Name:</b>		
<b>Firm Address:</b>		
<b>City, State, Zip Code:</b>		
<b>Cert. of Authorization No:</b>		



**EXHIBIT L**  
**FDOT AND LEE COUNTY DESIGN STANDARDS**

The following design standards are expressly agreed to be incorporated by reference and made a part of this Agreement:

1. Florida Department of Transportation FY 2023-24 Standard Plans as published at the following link:

<http://www.fdot.gov/design/standardplans>

2. Lee County Department of Transportation Plan Specifications for Sign Installation, **January 2021** edition as published at the following link:

<http://www.leegov.com/dot/traffic/trafficsigninstallation>

3. Lee County Department of Transportation Plan Specifications for Signal & Street Lighting, January 2023 edition as published at the following link:

<http://www.leegov.com/dot/traffic/trafficstandard>

In the event of discrepancies between the Lee County and FDOT design standards, Lee County Standards shall govern.

**EXHIBIT M**  
**DEVELOPMENTAL SPECIFICATIONS**

**RESERVED**

*I hereby certify that these Developmental Specifications have been properly prepared by me, or under my responsible charge:*

<b>Developmental Specifications Section(s): XXX, XXX, XXX</b>	
<b>Signature:</b>	
<b>Date:</b>	
<b>Engineer of Record:</b>	
<b>Florida License No.:</b>	
<b>Firm Name:</b>	
<b>Firm Address:</b>	
<b>City, State, Zip Code:</b>	
<b>Cert. of Authorization No:</b>	

**EXHIBIT N**  
**CONTRACTOR'S BACKGROUND SCREENING AFFIDAVIT**



**CONTRACTOR BACKGROUND  
SCREENING AFFIDAVIT**

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Contractor who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The Contractor is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

**Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit.** I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Contractor will be solely responsible for complying with such legal requirements. Furthermore, the Contractor shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
Name/Title

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the above-named person and in their stated capacity, and is either personally known to me or who has produce the following as identification: \_\_\_\_\_.

[Stamp/seal required]

\_\_\_\_\_

Signature, Notary Public

**EXHIBIT O**  
**OTHER RELEVANT FORMS**