



Advertise Date: Tuesday, June 11, 2024

Lee County Board of County Commissioners  
PROCUREMENT MANAGEMENT DEPARTMENT

Design-Build  
Request for Proposal

Solicitation No.:	DB240380DWJ		
Solicitation Name:	Lift Station Replacements – Phase 1		
Open Date/Time:	7/11/2024	Time:	2:30 PM
Location:	Lee County Procurement Management 2115 Second Street, 1st Floor Fort Myers, FL 33901		
Procurement Contact:	David Jones	Title	Procurement Analyst
Phone:	(239) 533-8864	Email:	<a href="mailto:DJones2@leegov.com">DJones2 @leegov.com</a>
Requesting Dept.	Utilities		

<b>Pre-Solicitation Meeting:</b>	
Type:	NON-Mandatory
Date/Time:	6/20/2024 10:00 AM
Location:	2115 Second St. 1 <sup>st</sup> Floor, Fort Myers, FL 33901

All solicitation documents are available for download at

[www.leegov.com/procurement](http://www.leegov.com/procurement)

**FUNDED IN PART OR IN WHOLE BY:**  
**Federal Emergency Management Agency (FEMA)**  
**FEMA #697923**

Vendors are required to comply in accordance with  
Federal Grant Requirements, 2 CFR part 200,  
terms, conditions, and specifications.



**Notice to Contractor / Vendor / Proposer(s)**

**Design-Build Request for Proposal**

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

**DB240380DWJ – Lift Station Replacements – Phase 1**

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 proposal documents, which include technical specifications and/or a scope of work.

Those individuals/firms interested in being considered for (RFP) are instructed to submit, in accordance with specifications, their proposals, pertinent to this project prior to

**2:30 PM Thursday, July 11, 2024**

to the office of the **Procurement Management Director**. The Proposal shall be received in a sealed envelope at **2115 Second Street, 1st Floor, Fort Myers, Florida 33901**, prior to the time scheduled to receive Proposal(s), and shall be clearly marked with the solicitation name, solicitation number, Proposer name, and contact information as identified in these solicitation documents.

The Scope of Services for this RFP is available from [www.leegov.com/procurement](http://www.leegov.com/procurement). Vendors who obtain scope of services 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 Proposer's responsibility to check for posted information. The County may not accept incomplete proposals.

**A Non-Mandatory Pre-proposal Conference has been scheduled for the following time and location:**

10:00 AM June 20, 2024 2115 Second St. 1<sup>st</sup> Floor, Fort Myers, FL 33901

for the purpose of discussing the proposed project. Prospective Proposers are encouraged to attend. All prospective Proposers are encouraged to obtain and review plans, specifications, and scope of work for this proposal before the pre-proposal so that they may be prepared to discuss any question or concerns they have concerning this project. A site visit may follow the pre-proposal conference. Questions regarding this Request for Proposal are to be directed, in writing, to the individual listed below using the email address list below or faxed to (239) 485 8383 during normal working hours.

David Jones [DJones2@LeeGov.com](mailto:DJones2@LeeGov.com)

Sincerely,

Adam Brooke, CPPO, CPPB  
Procurement Manager

\*WWW.LeeGov.Com/Procurement is the County's official posting site\*

**Terms and Conditions**  
**Request for Proposal**  
**Design-Build Firm**

1. DEFINITIONS

- 1.1. **Addendum/Addenda:** A written change, addition, alteration, correction or revision to a bid, proposal or contract agreement. Addendum/Addenda may be issued following a pre-bid/pre-proposal conference or as a result of a specification or work scope change to the solicitation.
- 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:** A bid/proposal is a document submitted by a vendor in response to some type of solicitation to be used as a basis for negotiations or for entering into a contract.
- 1.5. **Bidder/Responder/Proposer:** One who submits a response to a solicitation.
- 1.6. **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.
- 1.7. **County:** Refers to Lee County Board of County Commissioners.
- 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. **Design-Build:** is a project delivery system used in the construction industry. It is a method to deliver a project in which the design and construction services are contracted by a single entity known as the design-builder or design-build contractor.
- 1.10. **Design-Build Firm:** a single entity which provides design and construction services.
- 1.11. **Due Date and Time/Opening:** Is defined, as the date and time upon which a bid or proposal shall be submitted to the Lee County Procurement Management Department. Only bids or proposals received prior to the established date and time will be considered.
- 1.12. **Liquidated Damages:** Damages paid usually in the form of monetary payment, agreed by the parties to a contract which are due and payable as damages by the party who breaches all or part of the contract. May be applied on a daily basis for as long as the breach is in effect.
- 1.13. **Procurement Management:** shall mean the Director of Lee County's Procurement Management Department or designee.
- 1.14. **Responsible:** A vendor, business entity or individual who is fully capable to meet all of the requirements of the bid/proposal solicitation documents and subsequent contract. Must possess the full capability including financial and technical, to perform as contractually required. Must be able to fully document the ability to provide good faith performance.
- 1.15. **Responsive:** A vendor, business entity or individual who has submitted a bid or request for proposal that fully conforms in all material respects to the bid/proposal solicitation documents and all of its requirements, including all form and substance.
- 1.16. **Solicitation:** An invitation to bid, a request for proposal, invitation to negotiate or any document used to obtain bids or proposals for the purpose of entering into a contract.
- 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 Management Department Ordinance 22-06 & 23-21
  - 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 Proposer to assure compliance with all other federal, state, or county codes, rules, regulations or other requirements, as each may apply. Any involvement with Lee County shall be in accordance with but not limited to:
  - 3.1.1. Lee County Procurement Management Department Ordinance 22-06 & 23-21
  - 3.1.2. Florida State Statute 287.055: Consultant Competitive Negotiation Act (CCNA), (CN)
  - 3.1.3. Pursuant to FL § Section 119.071, Public Records, General exemptions from inspection or copying of public records, sealed bids or proposals received by the County. Pursuant to this, solicitations are exempt from public records request (s. 119.07(1) and s. 24(a), Art. I, of the Florida Constitution) until such time as the agency provides notice of a decision or intended decision (pursuant to s. 119.071(2)) or within 30 calendar days after bid or proposal opening, whichever is earlier.
  - 3.1.4. Florida Statute 218 Public Bid Disclosure Act.
  - 3.1.5. Florida Statute 337.168 Confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring.
  - 3.1.6. FL § Section 607.1501(1) states: A foreign corporation may not transact business in the State of Florida until it obtains a certificate of authority from the Department of State.
- 3.2. **Local Business Tax:** If applicable, provide with proposal.
- 3.3. **License(s):** Proposer should provide, at the time of the opening of the proposal, all necessary permits and/or licenses required for this product and/or service.

### 4. RFP – PREPARATION OF PROPOSAL

- 4.1. **Sealed Manual Submission:** Proposals must be sealed in an envelope, and the outside of the envelope must be affixed with the label included in the forms section.
- 4.2. **Submission Format:**
  - 4.2.1. 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.
  - 4.2.2. Execution of Proposal: All documents must be properly signed by corporate authorized representative, and where applicable witnessed and corporate and/or notary seals affixed. All proposals shall be typed or printed in ink. The Proposer may not use erasable ink. All corrections made to the proposal shall be initialed. Execution of submission is to be done by an authorized corporate representative. If representative is not listed on Sunbiz.org print-out a formal letter of authorization, by an officer listed in the sunbiz.org print-out, should be attached.
  - 4.2.3. Should not contain links to other Web pages.

### 5. RESPONSES RECEIVED LATE

- 5.1. It shall be the Proposer’s sole responsibility to deliver the proposal submission to the Lee County Procurement Management Department prior to or on the time and date stated.
- 5.2. Any proposals received after the stated time and date will not be considered. The proposal shall not be opened at the public opening.
- 5.3. The Lee County Procurement Management Department 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. PROPOSER REQUIREMENTS (unless otherwise noted)

- 6.1.1. **Responsive and Responsible:** Only proposals received from responsive and responsible Proposers will 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 ability to perform is satisfactory, and reserves the right to reject submission packages where evidence submitted or investigation and evaluation indicates an inability for the proposer to perform.

- 6.1.2. Additional sources may be utilized to determine credit worthiness and ability to perform. Additional sources may be utilized to determine credit worthiness and ability to perform.
- 6.1.3. Any Proposer or sub-Proposer 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 fingerprints, statewide criminal. There may be fees associated with these procedures. These costs are the responsibility of the Proposer or sub-Proposer.
- 6.1.4. Proposers are responsible for ensuring that any required background screening are conducted in accordance with Chapter 435. Proposers 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 Proposer 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 Proposer and prime Proposer shall ensure compliance with Chapter 435 of such parties.
- 6.1.4.1.1. 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:** All vendors will be evaluated on their past performance and prior dealings with Lee County (i.e., failure to meet specifications, poor workmanship, late delivery, etc.). Poor or unacceptable past performance may result in Proposer disqualification.
- 6.3. **Preparation Cost:** The Proposer is solely responsible for any and all costs associated with responding to this solicitation. No reimbursement will be made for any costs associated with the preparation and submittal of any proposal, or for any travel and per diem costs that are incurred by any Proposer.
- 6.4. **Prohibition Against Considering Social, Political Or Ideological Interests in Government Contracting – F.S. 287.05701:** Bidders are hereby notified of the provisions of section 287.05701, Florida Statutes, as amended, that the County will not request documentation of or consider a Bidder's social, political, or ideological interests when determining if the Bidder is a responsible Bidder. Bidders are further notified that the County's governing body may not give preference to a Bidder based on the Bidder's social, political, or ideological interests.
7. PRE-SOLICITATION CONFERENCE
- 7.1. A pre-solicitation 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-solicitation conference is Non-Mandatory or Mandatory. All prospective Proposers are encouraged to obtain and review the solicitation documents prior to the pre-proposal so they may be prepared to discuss any questions or concerns they have concerning this project. All verbal questions and answers are considered informal. All questions must be submitted formally in writing to the procurement staff noted on the first page of the solicitation document. A formal response will be provided in the form of an addendum (see "County Interpretation/Addendums" for additional information.) A site visit may follow the pre-proposal conference, if applicable.
- 7.2. **Non-Mandatory:** Pre-solicitation conferences are generally non-mandatory, but it is highly recommended that prospective Proposers participate.
- 7.3. **Mandatory:** Failure to attend a mandatory pre-solicitation conference will result in the proposal being considered **non-responsive**.
8. COUNTY INTERPRETATION/ADDENDUMS
- 8.1. Each Proposer 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 solicitation shall be **submitted in writing prior to 5:00 PM at least eight (8) calendar days prior to the date when the submission is due.**
- 8.2. Response(s) will be in the form of an Addendum posted on [www.leegov.com/procurement](http://www.leegov.com/procurement). It is solely the Proposer's responsibility to check the website for information. No notifications will be sent by Lee County Procurement Management Department associated with this solicitation.
- 8.3. All Addenda shall become part of the Contract Documents.

- 8.4. The County shall not be responsible for oral interpretations given by any County employee, representative, or others. 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 Procurement Management Department is the only official method whereby interpretation, clarification or additional information can be given.
9. QUALITY GUARANTEE/WARRANTY (as applicable)
- 9.1. Proposer will guarantee their work without disclaimers, unless otherwise specifically approved by the County, for a minimum of twelve (12) months from 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 proposer 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 solicitation 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 Procurement Management Division. Any such substitution shall be subject to County approval through the issuance of a written addendum by the County's Procurement Management Division. Substitutions shall be approved only if determined by the County to be an **Approved Alternate** to the prescribed specifications.
- 10.2. A proposal 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, Bid Schedule, or other document provided by Lee County Procurement Management Department that changes 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 Services may be subject to negotiations between the County and the successful Proposer.
- 12.2. After award of this proposal 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., to this contract with the County, in its sole judgment, considers such adjustments to be in the best interest of the County.

### 13. ERRORS, OMISSIONS, CALCULATION ERRORS (as applicable)

- 13.1. **Errors/Omissions:** Approval by County of the successful proposer's work product for the project shall not constitute nor be deemed a release of the responsibility and liability of the successful proposer for the accuracy and competency of the successful proposer's designs, drawings, specifications or other documents and work pertaining to the project. Additionally, approval by the County of the successful proposer's work product shall not be deemed to be an assumption of drawings, specifications or other documents prepared by the successful proposer for the project. After acceptance of the final plans by the County, the successful proposer agrees, prior to and during the construction of the project, to perform such successful proposer services, at no additional cost to the County, as may be required by the County to correct errors or omissions on the plans prepared by the successful proposer pertaining to the project.
- 13.2. **Calculation Errors:** In the event of multiplication/addition error(s), the unit price shall prevail. Written prices shall prevail over figures where applicable. All proposals shall be reviewed mathematically and corrected, if necessary, using these standards, prior to additional evaluation.

### 14. CONFIDENTIALITY

- 14.1. Proposers should be aware that all proposals provided are subject to public disclosure and will **not** be afforded confidentiality, unless provided by Chapter 119 Florida Statute.
- 14.2. If information is submitted with a proposal that is deemed "Confidential" the Proposer must stamp those pages of the proposal that are considered confidential. The Proposer must provide documentation as to validate why these documents should be declared confidential in accordance with Chapter 119, "Public Records," exemptions.
- 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. According to Florida State Statute 337.168: A document or electronic file revealing the official cost estimate of the department of a project is confidential and exempt from the provisions of s. 119.07(1) 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. All Proposers are hereby placed on formal notice that per Section 3 of Lee County Ordinance No. 92-22: The County is prohibited from solicitation of a professional services firm to perform project design and/or construction services if the firm has or had been retained to perform the project feasibility or study analysis.
- 15.2. Should your proposal be found in violation of the above stated provisions; the County will consider this previous involvement in the project to be a conflict of interest, which will be cause for immediate disqualification of the proposal from consideration for this project.
- 15.3. **Business Relationship Disclosure Requirement:** The award hereunder is subject to the provisions of Chapter 112, Public Officers and Employees: General Provisions, Florida Statutes. All Proposers must disclose with their proposal the name of any officer, director or agent who is also an employee of Lee County or any of its agencies. Further, all Proposers must disclose the name of any County employee who owns directly or indirectly, an interest of five percent (5%) or more in the Proposer's firm or any of its branches.

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

- 16.1. Upon the issuance of the solicitation, prospective Proposers or any agent, representative or person acting at the request of such Proposer 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 execution of the final contract or when the solicitation has been cancelled. **If it is determined that improper communications were conducted, the Proposer maybe 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 \(myflorida.com\)](#), 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. Lee County Board of County Commissioners encourages Drug Free Workplace programs.

## 19. FLORIDA CERTIFIED ENTERPRISES

- 19.1. The County encourages the use of Florida Certified Enterprises 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 Proposer agrees to comply with 504 of the Rehabilitation Act of 1973 as amended, the Americans with Disabilities Act of 1990 (ADA), the ADA Amendments Act of 2008 (ADAAA) that furnishing goods or services to the County 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 Proposer will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, disability or marital status. The Proposer will 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 Proposer will 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 Proposer will 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-PROPOSER/CONSULTANT

- 21.1. The use of Sub-Proposer/Consultant under this solicitation is not allowed without prior written authorization from the County representative.

## 22. BOND/SURETY (CONSTRUCTION)



- 22.1. Bonding/Surety is required in accordance with the Lee County Procurement Management Department Ordinance 22-06 & 23-21.
- 22.2. **Payment and Performance Bond:** In accordance with F.S. 255.05 and Lee County Procurement Management Ordinance 22-06 & 23-21, a Public Payment and Performance Bond is to be issued in a sum equal to one-hundred (100%) percent of the total awarded contract amount by a surety company considered satisfactory by Lee County and otherwise authorized to transact business in the State of Florida shall be required from the successful Proposer. This shall insure the faithful performance of the obligations imposed by the resulting contract and protect the County from lawsuits for non-payment of debts incurred during the successful Proposers performance under such Contract.
- 22.2.1. A public Payment and Performance bond must be properly executed, by the Surety Company and successful Proposer, and recorded with the Lee County Clerk of Court, within **seven calendar days** after notification by Lee County of the approval to award the Contract.
- 22.2.2. A **Clean Irrevocable Letter of Credit or Cash Bond** may be accepted by the County in lieu of the Public Payment and Performance Bond.
- 22.3. Only Lee County form(s) may be accepted. Forms are available at <https://www.leegov.com/procurement/forms>.
- 22.4. **Personal Checks are not acceptable to Lee County as a Bid Security.**
- 22.5. **Surety:** In order to be acceptable to the County, a Surety Company issuing Evidence of Bondability, Bid Guaranty Bonds or 100% Public Payment and Performance Bonds or Letters of Credit called for herein shall meet and comply with the minimum standards set forth in as part of the Contract Documents. The surety company shall be authorized to do business and in good standing with the Florida Department of State. All such bonds shall be issued or countersigned by a local producing agent who is a Florida resident with satisfactory evidence of its authority to execute the bond being submitted.
23. PERMITS (CONSTRUCTION)
- 23.1. Unless otherwise specified herein, the Contractor will secure and pay for all permits, impact fees, and licenses and will pay for all governmental charges and inspection fees necessary for the prosecution of the work. County permits and fees are required to be obtained and paid for by the Contractor.
- 23.2. The Contractor will also pay all public utility charges and connection fees, except as provided for in the Contract Documents.
- 23.3. Permits and licenses of regulatory agencies, which are necessary to be maintained after completion of the guarantee period, shall be secured and paid for by the County.
- 23.4. Pursuant to the requirements of Florida Statute 218.80, this is a disclosure of permits and fees to be paid by the Contractor to complete the scope of work as described herein. This list does not relieve the successful bidder/vendor of its responsibility to obtain and pay for permits required by other governmental entities as specified elsewhere in this document.
- 23.5. Permits obtained by the Contractor will be reimbursed at cost, no mark-up.
24. DESIGN-BUILD FIRM TEAM REQUIREMENTS
- 24.1. Upon the award of a Contract, the Design-Build Firm shall be contracted with the County to furnish design and construction as stated in the Design-Build agreement. The County shall at all times retain complete contractual control of all County contracts, project funds, and disbursements.
- 24.2. The Design-Build Firm shall furnish administration and management of the design and construction process and other specified services to the County. The Design-Build Firm shall perform his or her obligations in an expeditious and economical manner consistent with the interests of the County. As further defined in the Design-Build agreement located on the County website <https://www.leegov.com/procurement/forms>
- 24.3. The Design-Build Firm will comply with all County, County, State, and Federal regulations, ordinances, and laws as they apply to this Project.
- 24.4. Ancillary Technical Services: The County may request that the Design-Build Firm perform Ancillary Technical Services that shall include, but not be limited to:
- 24.4.1. Geo-technical, soil investigation, material and acceptance testing, and/or subsurface investigation services.
- 24.4.2. Land Surveying.

24.4.3. Other testing and consultant services that are determined by the County to be required for the Project.

24.5. Shall have experience with the Design/Build concepts and/or valued engineering concept.

## 25. RFP - PROJECT GUIDELINES

25.1. The County has established the following Guidelines, Criteria, Goals, Objectives, Constraints, Schedule, Budget and or Requirements which shall service as a guide to the Proposer(s) in conforming the professional services and work to provide pursuant to this Agreement/Contract:

25.1.1. This contract does not entitle any firm to exclusive rights to County agreements/contracts. The County reserves the right to perform any and all available required work in-house or by any other means it so desires.

25.1.2. In reference to vehicle travel, mileage and person-hours spent in travel time, are considered incidental to the work and not an extra compensable expense.

25.1.3. Lee County reserves the right to add or delete, at any time, and or all tasks or services associated with this agreement.

25.1.4. 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.

25.1.5. **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).

## 26. RFP – EVALUATION

26.1. **Ranking Method:** Lee County uses the Dense Ranking (1223” ranking). In Dense Ranking, items that compare equal, receive the same ranking number, and the next item(s) receive the immediately following ranking number. Equivalently, each item’s ranking number is 1 plus the number of items ranked above it that are distinct with respect to the ranking order. This ranking method is used for each individual committee member’s scores. Thus if A ranks ahead of B and C (which compare equal) which are both ranked ahead of D, then A is ranked number 1 (“first”), B is ranked number 2 (“joint second”), C is also ranked number 2 (“joint second”) and D is ranked number 3 (“third”).

26.2. **Evaluation Meeting(s):**

26.2.1. The first evaluation will rank Proposers based on the scores from the selection criteria point values.

26.2.2. Following the initial evaluation process, the short-listed proposer(s) may be required to provide an on-site interview/presentation.

26.2.3. Such subsequent evaluations are to be accomplished by simply ranking the Proposers based off the details provided through the on-site interview/presentation. Proposers will be ranked in sequential order with one (1) being the highest ranking. Proposers’ rankings will then be totaled with the total lowest scores receiving final rank order starting with one (1) that shall indicate the highest technically evaluated and most qualified Proposer by the evaluation committee.

26.2.4. Proposed short-list and final selection meeting dates are posted on the Procurement Management web page: [www.leegov.com/procurement](http://www.leegov.com/procurement) (Projects, Award Pending.)

## 27. RFP – SELECTION PROCEDURE

- 27.1. The selection will be made in accordance with Lee County Procurement Policy, Ordinance 22-06 & 23-21 and Chapter 287.055 FL § for Professional Services Contracts. Some or all of the responding Proposer(s) may be requested to provide interviews and/or presentations of their proposal, for the ranking process
- 27.2. Agreement/Contract fees will be negotiated in accordance with Section 287.055 FL §.
- 27.3. The recommendation to award, negotiated rates and agreement/contract(s) will be submitted to the Board of County Commissioners for approval, if required.
- 27.4. If a satisfactory agreement/contract(s) cannot be negotiated, in a reasonable amount of time, the County, in its sole discretion, may terminate negotiations with the selected Proposer(s) and begin agreement/contract negotiations with the next finalist.
- 27.5. The Procurement Management Director reserves the right to exercise their discretion to:
- 27.5.1. Make award(s) to one or multiple Proposers.
  - 27.5.2. Waive minor informalities in any response;
  - 27.5.3. Reject any and all proposals with or without cause;
  - 27.5.4. Accept the response that in its judgment will be in the best interest of Lee County.
28. RFP – TIEBREAKER
- 28.1. In the event of a tie, two or more proposers that have the same ranking, the following steps will be taken to determine the highest ranked proposer. This method shall be used for all (RFP) ties.
- 28.1.1. Step 1: The proposer that has the highest number of 1<sup>st</sup> place rankings shall be deemed the first ranked proposer. In the event a tie still exists the proposer with the highest number of 2<sup>nd</sup> place rankings shall be the first ranked proposer. Should a tie still remain the method used above will continue with each ranking level, 3<sup>rd</sup>, then 4<sup>th</sup>, then 5<sup>th</sup>, etc. rank, will be counted until the tie is broken.
- 28.1.2. Step 3: In the event the tie exists then the highest ranked proposer from the first evaluation committee meeting, in which point values were applied, will win the award. One being the highest.
- 28.2. When the tiebreaker is determined the highest ranked Proposer shall enter into contract negotiations.
29. RFP – EVALUATION/ SELECTION COMMITTEE
- 29.1. The selection shall be by a Selection Committee consisting of staff representatives from the appropriate County Departments as approved by the Procurement Management Director or designee unless otherwise mandated by law.
- 29.2. The Selection Committee will receive and review written proposals in response to this Request for Proposal (RFP). Responses will be evaluated against a set of criteria to determine those Proposers/Firms most qualified and suited for this project, resulting, where applicable, in a short-list of no fewer than three (3) firms to be interviewed or provide presentations.
- 29.3. The County reserves the right, where allowable and applicable, to begin negotiations with the top ranked firm(s) without hosting interviews/presentations.
30. WITHDRAWAL OF PROPOSAL
- 30.1. No proposal may be withdrawn for a period of **180 calendar days** after the scheduled time for receiving submissions. A proposal may be withdrawn prior to the proposal opening date and time. Withdrawal requests must be made in writing to the Procurement Management Director, who will approve or disapprove the request.
- 30.2. A Proposer may withdraw a proposal any time prior to the opening of the solicitation.
- 30.3. After proposals are opened, but prior to award of the contract by the County Commission, the Procurement Management Director may allow the withdrawal of a proposal because of mistakes in the preparation of the proposal document. In such circumstance, the decision of the Procurement Management Director to allow the proposal withdrawal, although discretionary, shall be based upon a finding that the Proposer, by clear and convincing evidence, has met each of the following four tests:
- 30.3.1. The Proposer acted in good faith in submitting the proposal,
  - 30.3.2. The mistake in proposal preparation that was of such magnitude that to enforce compliance by the Proposer would cause a severe hardship on the Proposer,
  - 30.3.3. The mistake was not the result of gross negligence or willful inattention by the Proposer; and

- 30.3.4. The mistake was discovered and was communicated to the County prior to the County Commission having formally awarded the contract/agreement.

### 31. PROTEST RIGHTS

- 31.1. 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.
- 31.2. Notice of Intended Decision is posted on the Lee County Department of Procurement Management website ([www.leegov.com/procurement](http://www.leegov.com/procurement)). Bidders are solely responsible to check for information regarding the Solicitation.
- 31.3. Refer to the “Procurement Protest” section of the Lee County Procurement Ordinance 22-06 & 23-21 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.
- 31.4. 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.
- 31.4.1. The notice shall clearly indicate all grounds being claimed for the protest.
- 31.4.2. 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.
- 31.5. 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.
- 31.6. **Failure to follow the protest procedures requirement within the time frames as prescribed herein and in the Lee County Procurement Ordinance 22-06 & 23-21 shall constitute a waiver of the right to protest and shall bar any resulting claims.**

### 32. AUTHORITY TO UTILIZE BY OTHER GOVERNMENT ENTITIES

- 32.1. This opportunity is also made available to any government entity. Pursuant to their own governing laws, and subject to the agreement of the vendor, other entities may be permitted to make purchases at the terms and conditions contained herein. Lee County Board of County Commissioners will not be financially responsible for the purchases of other entities from this solicitation.

### 33. CONTRACT ADMINISTRATION

#### 33.1. Designated Contact:

- 33.1.1. The awarded Proposer shall appoint a person(s) to act as a primary contact for all County departments. This person or back up shall be readily available during normal working hours by phone or in person, and shall be knowledgeable of the terms and procedures involved.
- 33.1.2. Lee County requires the awarded Proposer to provide the name of a contact person(s) and phone number(s), which will afford Lee County access 24 hours per day, 365 days per year, of this service in the event of major breakdowns or natural disasters.

#### 33.2. RFP – Basis of Award:

- 33.2.1. Award will be made to the most responsible and responsive Proposer who offers the Best Value based on the evaluation criteria.

#### 33.3. Agreement/Contract:

- 33.3.1. The awarded Proposer 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. A sample of this document may be viewed on-line at <http://www.leegov.com/procurement/forms>.

#### 33.4. Records:

- 33.4.1. Retention: The Proposer 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 Proposer 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.
- 33.4.2. 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/Proposer(s) are hereby informed of their requirement to comply with FL §119 specifically to:

- 33.4.2.1. Keep and maintain public records required by the County to perform the service.
- 33.4.2.2. 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.
- 33.4.2.3. 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.
- 33.4.2.4. Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the contractor or keep and maintain public records required by the County to perform the service. If the contractor transfers all public records to the County 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 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.

33.4.3. Public Record: **IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES , TO THE VENDOR'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>.**

33.4.4. 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 Proposer in connection with its services hereunder, include all documents bearing the professional seal of the successful Proposer, and shall be delivered to and become the property of Lee County, prior to final payment to the successful Proposer or the termination of the agreement. This includes any electronic versions, such as CAD or other computer aided drafting programs.

### 33.5. **Termination:**

33.5.1. MATERIAL BREACH A Contractor may be Terminated for Cause by the County, at the sole discretion of the Procurement Management Director, for failing to perform a contractual requirement or for a material breach of any term or condition. A material breach of a term or condition of the Agreement may include but is not limited to: 1. Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Agreement; 2. Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the Agreement; 3. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; 4. Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor's proper performance hereunder; 5. Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor's property and such appointment endangers the Contractor's proper performance hereunder; 6. A determination that the Contractor is in violation of federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the Agreement.



- 33.5.2. **OPPORTUNITY TO CURE** In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the County may issue a written cure notice. The Contractor may have a period of time in which to cure. The County is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as, determined solely within the discretion of the County. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, or otherwise affect any other remedies available against Contractor under the Agreement or by law. If the breach remains after Contractor has been provided the opportunity to cure, the County may do any one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this Agreement and any related contracts or portions thereof; 3. Procure replacements and impose damages as set forth elsewhere in this Agreement, if applicable; 4. Impose actual or liquidated damages; 5. Suspend or bar Contractor from receiving future solicitations or other opportunities; 6. Require Contractor to reimburse the County for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Agreement.
- 33.5.3. **TERMINATION FOR CAUSE** In the event the Procurement Management Director, in his/her sole discretion, determines that the Contractor has failed to comply with the conditions of this Agreement in a timely manner or is in material breach, the Procurement Management Director has the right to terminate this Agreement, in part or in whole. The Procurement Management Director shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days or as otherwise specified by the Procurement Management Director, or if such corrective action is deemed by the County to be insufficient, the Agreement may be terminated. The County reserves the right to withhold further payments or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the County to terminate the Agreement. In the event of termination, the County shall have the right to procure any replacement materials, supplies, services and/or equipment that are the subject of this Agreement on the open market. In addition, the Contractor shall be liable for damages as authorized by law including, but not limited to, any price difference between the original Agreement and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. If it is determined that: (1) the Contractor was not in material breach; or (2) failure to perform was outside of Contractor's or its subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience." The rights and remedies of the County provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.
- 33.5.4. **TERMINATION FOR CONVENIENCE** Except as otherwise provided in this Agreement, the County, at the sole discretion of the Procurement Management Director, may terminate this Agreement, in whole or in part by giving thirty (30) calendar days written notice beginning on the second day after mailing to the Contractor. If this Agreement is so terminated, the County shall be liable only for payment required under this Agreement for properly authorized services rendered, or materials, supplies and/or equipment delivered to and accepted by the County prior to the effective date of Agreement termination. The County shall have no other obligation whatsoever to the Contractor for such termination.
- 33.5.5. The Procurement Management Director may immediately terminate any agreement as a result of this solicitation for emergency purposes, as defined by the Lee County Procurement Management Ordinance 22-06 & 23-21.
- 33.5.6. Any Proposer 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 vendor 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.
- 33.5.7. The County reserves the right to terminate award or contract following any of the below for goods or services over \$1,000,000:
- 33.5.7.1. Contractor is found to have submitted a false certification as provided under FL § 287.135 (5);

- 33.5.7.2. Contractor 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;
- 33.5.7.3. Contractor has engaged in business operations in Cuba or Syria;
- 33.5.7.4. Contractor has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel – beginning October 1, 2016.

#### 34. WAIVER OF CLAIMS

- 34.1. 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.

#### 35. LEE COUNTY PAYMENT PROCEDURES

- 35.1. All vendors are requested to mail an original invoice to:  
**Lee County Finance Department**  
**Post Office Box 2238**  
**Fort Myers, FL 33902-2238**
- 35.2. All invoices will be paid as directed by the Lee County payment procedure unless otherwise stated in the detailed specification portion of this project.
- 35.3. Lee County will 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.
- 35.4. Lee County is generally a tax exempt entity subject to the provisions of the 1987 legislation regarding sales tax on services. Lee County will pay those taxes for which it is obligated, or it will provide a Certificate of Exemption furnished by the Department of Revenue. All Proposers should include in their proposal, all sales or use taxes, which they will pay when making purchases of material or sub-contractor's services.

#### 36. SAFETY DATA SHEETS (SDS)

- 36.1. It is the vendor's responsibility to provide Lee County with Material Safety Data Sheets on bid materials, as may apply to this procurement.

#### 37. DEBRIS DISPOSAL

- 37.1. Unless otherwise stated, the Proposer shall be fully responsible for the lawful removal and disposal of any materials, debris, garbage, vehicles or other such items which would interfere with the undertaking and completion of the project. There shall not be an increase in time or price associated with such removal.

#### 38. SHIPPING

- 38.1. Cost of all shipping to the site, including any inside delivery charges and all unusual storage requirements shall be borne by the proposer unless otherwise agreed upon in writing prior to service. It shall be the proposer's responsibility to make appropriate arrangements, and to coordinate with authorized personnel at the site, for proper acceptance, handling, protection and storage (if available) of equipment and material delivered. All pricing to be F.O. B. destination.
- 38.2. The materials and/or services delivered under the proposal shall remain the property of the seller until a physical inspection and actual usage of these materials and/or services is accepted by the County and is deemed to be in compliance with the terms herein, fully in accord with the specifications and of the highest quality.

#### 39. LOCAL VENDOR PREFERENCE

- 39.1. The Procurement Management Department will adhere to the Lee County Ordinance No. 22-06 & 23-21 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.
- 39.2. 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.

- 39.3. 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.

40. INSURANCE

- 40.1. Insurance shall be provided by the awarded Proposer. Upon request, a certificate of insurance (COI) complying with the attached guide shall be provided by the Proposer.
- 40.2. 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:**
**Insurance Requirements  
Design Build Projects**

**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)

- 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

- d. **Errors and Omissions** - Coverage shall include professional liability insurance, to cover claims arising out of negligent acts, errors or omissions of professional advice, privacy and network security insurance covering for losses arising from disclosure of confidential information, or other professional services.

\$1,000,000 per occurrence

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**Insurance Requirements Cont.  
Design Build Projects**

- e. **Builders Risk Insurance** - This coverage will be provided by all contractors involved in the construction of a new building, or the improvement, alteration or renovation of an existing structure. This coverage should be considered automatic on projects involving new construction or major additions to existing structures and in addition to the general liability and workers' compensation requirements found in this manual.

*\*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."*

**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. **The certificate holder shall read as follows:**

Lee County Board of County Commissioners  
P.O. Box 398  
Fort Myers, Florida 33902
  - b. "Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials" will be named as an "Additional Insured" on the General Liability policy, including Products and Completed Operations coverage.

**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 insure that all subcontractors comply with all insurance requirements.

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End of Insurance



## **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.

### **1. PROJECT TERM**

- 1.1. Single Project: From the Notice to Proceed or the Purchase Order date, whichever applies: 540 calendar days to substantial completion, 45 calendar days to final completion (total calendar days 585).

### **2. GENERAL CONDITIONS**

- 2.1. General Conditions are attached hereto and incorporated herein as "Attachment A – General Conditions" and are also incorporated within the Design Build Contract to be completed by the County and the awarded Design Builder, as described in the following paragraph.

### **3. DESIGN –BUILD CONTRACT**

- 3.1. The County will enter into a contract ("Design-Build Agreement" or "Contract") with the awarded Design-Builder for a Contract Price for the Work. The terms and conditions of this contract are fixed price and fixed time. The Design-Builder's submitted Price Proposal is to be a lump sum amount for completing the Scope of Work in this Solicitation. The Design-Builder will provide a Schedule of Values to the County for their approval. The total of the Schedule of Values will be this lump sum Contract Price for the Work.

### **4. PROJECT FUNDING NOTICE**

- 4.1. As notice to all Vendors, this project may be funding in whole or in party with Federal and State funds through the Federal Emergency Management Agency (FEMA). The Vendor agrees to abide by and comply with all Federal terms, conditions, provisions, certifications, affidavits, or otherwise as applicable and stated within this solicitation package and further agrees to incorporate all such clauses, provisions, and regulations into any sub-contracted agreements or relationships Vendor creates to support Vendor's services to the County under this Agreement.

### **5. LOCAL VENDOR PREFERENCE EXCLUSION**

- 5.1. The Lee County Local Vendor Preference Ordinance has been waived for this solicitation and all references contained herein and non-applicable to this solicitation and subsequent Agreement and/or Purchase Order(s).

### **6. LIQUIDATED DAMAGES**

- 6.1. Proposers here by agrees, if this proposal is accepted, to commence work under this project on or before ten (10) calendar days from the receipt of the Notice to Proceed and to fully complete all work on the project within the contract time stipulated. In accordance with the terms set forth in the Agreement, for each consecutive calendar day of delay in achieving Substantial Completion as set forth herein, the Contractor shall be liable to the County for liquidated damages in the amount of 1,500.00 per calendar day.

### **7. FEMA REIMBURSEMENT**

- 7.1. Work completed under this Agreement may be reimbursed by FEMA as a result of an emergency or disaster. The Vendor agrees to abide by and comply with all Federal terms, conditions, provisions, certifications, affidavits, or otherwise as applicable and stated within this solicitation package. Vendors are required to comply in accordance with Federal Grant Requirements, 2 CFR part 200, terms, conditions, and specifications.

### **8. CONDUCT**

- 8.1. Vendor agrees that all of its officers, employees and representatives shall conduct themselves in a professional manner and shall communicate with County employees and members of the public in a civil manner whenever conducting County business. All aspects of Vendor's performance, including complaints received from the public, may impact the County's decision to renew or terminate this Agreement in accordance with the provision

contained here. Vendor shall remove or suspend, or further investigate, their employees for any act of violence, sexual harassment, substance abuse, or act of bigotry/prejudice.

End of Special Conditions

## ATTACHMENT A - GENERAL CONDITIONS

### 1. Administration

The Consultant is the initial interpreter of the Contract Documents but is not the Judge between the COUNTY and the DESIGN-BUILDER. The COUNTY reserves the right to make final decisions considering the Consultant's recommendations or interpretations of the Contract Documents. The Consultant 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 price. However, the CONSULTANT'S interpretation as to the intent of his design shall be final and not subject to interpretation by the COUNTY'S staff.

#### 1.1. Copies of Documents

The COUNTY shall furnish to the DESIGN-BUILDER the number of copies specified in the Supplemental Information of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction which shall be paid by the DESIGN-BUILDER.

#### 1.2. Before Starting Construction

Before undertaking each phase of the Work, the DESIGN-BUILDER shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The DESIGN-BUILDER shall promptly report in writing to the OWNER'S REPRESENTATIVE any conflict, error or discrepancy which the DESIGN-BUILDER may discover or other information known to the DESIGN-BUILDER and shall obtain a written interpretation or clarification from the OWNER'S REPRESENTATIVE before proceeding with any Work affected thereby. If the DESIGN-BUILDER performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the OWNER'S REPRESENTATIVE, the DESIGN-BUILDER shall assume responsibility for such performance and shall share in costs associated with correction; however, the DESIGN-BUILDER shall not be liable to the COUNTY for failure to report any conflict, error or discrepancy in the Contract Documents, unless the DESIGN-BUILDER had actual knowledge thereof or should reasonably have known thereof.

1.2.1. Within ten calendar days after the Effective Date of the Agreement (unless otherwise specified in the Contract Documents), the DESIGN-BUILDER shall submit to the OWNER'S REPRESENTATIVE for review:

- 1.2.1.1. An estimated progress schedule indicating the starting and completion dates of the various stages of the Work:
- 1.2.1.2. Long lead item(s) shall be identified and scheduled accordingly.
- 1.2.1.3. A preliminary schedule of Shop Drawing submission; and
- 1.2.1.4. A preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction on form No. CMO:013. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by the DESIGN-BUILDER at the time of submission; and specify times for Application for Payment.
- 1.2.1.5. A plan of work for maintenance of traffic, when the Contract Documents require maintenance of traffic.
- 1.2.1.6. For informational purposes, a proposed listing of sub-contractors to be used for the project.

### 1.2.2. **Pre-Construction Conference**

Within fifteen calendar days after the Effective Date of the Agreement, but before the DESIGN-BUILDER starts the Work at the site, a conference attended by the DESIGN-BUILDER, the OWNER'S REPRESENTATIVE, the COUNTY, and Others as appropriate, will be held to discuss the items, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish an understanding among the parties as to the Work.

### 1.2.3 **Finalizing Schedules**

At least ten calendar days before submission of the first Application for payment, a conference attended by the DESIGN-BUILDER, the OWNER'S REPRESENTATIVE, the COUNTY, and Others as appropriate, will be held to finalize the schedules submitted. The finalized progress schedule will be acceptable to the OWNER'S REPRESENTATIVE and the COUNTY as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on the OWNER'S REPRESENTATIVE or the COUNTY responsibility for the progress or scheduling of the Work nor relieve the DESIGN-BUILDER from full responsibility therefor. The finalized schedule of Shop Drawing submissions will be acceptable to the OWNER'S REPRESENTATIVE as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to the OWNER'S REPRESENTATIVE and the COUNTY as to form and substance.

## **Definitions**

The following definition of terms associated with this Contract is provided to establish a common understanding between both parties to this Contract as to the intended usage, application and interpretation of such terms pertaining to this Contract.

*ADDENDUM* means any additional Contract provisions in writing signed and sealed by the CONSULTANT, if applicable, issued by the COUNTY prior to the receipt of Bid which clarify, correct, change or interpret the Bidding Documents or the Contract Documents.

*AGREEMENT* means the written agreement between the COUNTY and the DESIGN-BUILDER covering the Work to be performed; the Agreement is a part of the Contract Documents.

*BIDDER* is any individual, firm, partnership, joint venture, or corporation submitting a bid for this project, acting directly or through an authorized representative.

*BID* is a complete and properly signed proposal to do the Work or designated portion thereof for the sums stipulated therein, submitted in accordance with the Bidding Documents.

*BID BOND* is a security in the form and amount required by the COUNTY pledging that the BIDDER will enter into a Contract with the COUNTY on the terms stated in his Bid.

*BID DOCUMENTS* are the Invitation to Bid, the Notice to Bidders, the Invitation to Bid Terms and Conditions, sample forms, the Bid Proposal Form and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

*CHANGE ORDERS* are written order to the DESIGN-BUILDER signed by the COUNTY, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract price or the Contract Time. The Contract Price and the Contract Time may be changed only by a Change Order.

A Change Order signed by the DESIGN-BUILDER indicates his agreement therewith, including the adjustment in the Contract Price or the Contract Time.

*COMPLETION (FINAL)* means acceptance of the Project by the COUNTY as evidenced by its signature upon a final payment Certification and approval thereof by the Board of County Commissioners or their designee. The final payment Certification shall be signed only after the COUNTY has assured itself by tests, inspections, or otherwise that all of the provisions of the Contract have been carried out as required.

*COMPLETION (SUBSTANTIAL)* shall mean an acceptance of the Work by the COUNTY when construction is sufficiently complete in accordance with the Contract Documents so the COUNTY can occupy or utilize the Work or designated portion thereof for the use for which it is intended. A certificate of occupancy or compliance, when applicable, issued by the Building Official is required concurrent with or prior to issuance of the Certificate of Substantial Completion.

*CONSTRUCTION* is the erection, fabrication, assembly, remodeling, renovation, addition, modification, repair or demolition of any building or structure or any appurtenances connected or attached to such buildings or structures. The term applies but is not limited to the repair, replacement modification or construction of roads, bridges, sidewalks, traffic devices, parking lots, drainage, underground and overhead utilities.

*CONSULTANT* is the person lawfully licensed to practice Architecture or Engineering and registered in the State of Florida, or an entity lawfully practicing Architecture or Engineering, identified as such in the Construction Contract, and is referred to throughout the Contract Documents as if singular in number and masculine in genre. The term CONSULTANT means the Architect or Engineer or his authorized representative.

*CONTRACT DOCUMENTS* consist of the Invitation to Bid, Agreement, General and Special Conditions of the Contract, Specifications, the Plans, Supplemental Information, Addenda issued prior to execution of the Contract, all written modifications issued after execution of the Contract, all provisions required by law to be inserted in this Contract whether actually inserted or not, and a Contract Number issued by the COUNTY.

A *MODIFICATION* is:

- (1) A written Amendment to the Contract.
- (2) A Change Order.
- (3) A written interpretation necessary for the proper execution or progress of the Work issued by the OWNER'S Representative.
- (4) A Field Change Order.
- (5) A Field Directive Change.

*CONTRACT PRICE* means the total monies payable to the DESIGN-BUILDER under the Contract Documents.

*CONTRACT TIME* means the number of Calendar days stated in the Agreement for the purpose of establishing Substantial Completion and Final Completion dates.

*DESIGN-BUILDER* is the person, firm, joint venture, or corporation with whom the COUNTY has contracted and who has the primary responsibility for performance of the work.



*COUNTY* means the Board of County Commissioners of Lee County, Florida, a political subdivision of the State of Florida, its successors and assigns. Also hereinafter referred to as OWNER.

*DAYS* - The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically designated. A calendar day constitutes twenty four hours measured from midnight to the next midnight.

*DEFECTIVE* - An adjective which when modifying the word “Work” refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to the OWNER’S REPRESENTATIVE recommendation of final payment.

*EFFECTIVE DATE OF THE AGREEMENT* means the date on which the agreement is signed and delivered by the latter of the two parties.

*ENGINEER* shall mean the Director of the Lee County Department of Transportation or his designated County Project Manager.

*FIELD CHANGE ORDER* is a written change order requested by the OWNER’S Representative, accepted by the DESIGN-BUILDER, and approved by the PROJECT MANAGER for minor changes in the Work, not involving adjustments in the Contract Sum or an extension of Time, and not inconsistent with the overall intent of the Contract Documents.

*FIELD DIRECTIVE CHANGE* - A written directive to the CONTRACT, issued on or after the effective date of the Agreement ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as defined elsewhere in these documents. A Field Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Field Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or the Contract Time.

*FINAL ACCEPTANCE* means acceptance of the Work by the COUNTY upon the expiration of the warranty period as stated in the Contract Documents.

*MATERIALS* - Anything used in the process of, but not limited to, constructing, demolishing, renovating or remodeling of any building, structure, road, bridge, recreational facility, transportation element and utility or any addition thereto utilized for this project.

*NOTICE* means written notice. Notice shall be served upon the DESIGN-BUILDER either personally or by leaving the said Notice at his residence or with his agency in charge of the Work, or addressed to the DESIGN-BUILDER at the residence or place of business stated in the Bid Proposal and deposited in a postpaid wrapper in any United States Mailbox.

*NOTICE TO PROCEED* is a written instrument issued by the COUNTY to the DESIGN-BUILDER, authorizing the DESIGN-BUILDER to commence Work on the Project. The NOTICE TO PROCEED shall include the effective date of Commencement.

*NOTICE OF AWARD* means the written Notice given by the COUNTY to the successful Bidder.

*NOTICE OF TERMINATION* is a written instrument issued in accordance with the Contract Documents by the COUNTY to the DESIGN-BUILDER or by the DESIGN-BUILDER to the COUNTY notifying the receiving party that the Contract is being terminated. The NOTICE shall clearly identify the effective date the Contract is to be terminated.

*OWNER'S REPRESENTATIVE* is the CONSULTANT contracted by the COUNTY for Professional Services during the construction phase of this project or a qualified person authorized as his official representative, or in the absence of such a contract, the project Manager will be considered the OWNER'S REPRESENTATIVE for the purpose of this Contract Document. The OWNER'S REPRESENTATIVE is not authorized to issue change orders to the contract sum, contract time or scope of work without express approval of the Board of County Commissioners.

*PLANS AND/OR DRAWINGS* are a graphic representation of the arrangement of the materials or parts of the construction of the project and are a portion of the Contract Documents.

*PROCUREMENT MANAGEMENT* shall mean the Director of Lee County's Procurement Management Department or designee.

*PROJECT* shall mean the entire improvement of which this contract forms a part.

*PROJECT MANAGER* is an employee or the Department or the COUNTY which requested the Contract and is a designee authorized by or for that Department who is the representative of the Board of County Commissioners in matters concerning the DESIGN-BUILDER of this project. The project manager will act as the OWNER'S REPRESENTATIVE in the absence of a contract with a CONSULTANT. The PROJECT MANAGER is not authorized to issue changes to the Contract Sum, Contract Time, or Scope of Work without express approval by the Department Director, County Manager, or Board of County Commissioners.

The PROJECT MANAGER, within the authority conferred by the Board of County Commissioners, acting as the COUNTY'S designated representative shall initiate written Change Orders, and notification to the DESIGN-BUILDER of any and all changes approved by the COUNTY in the DESIGN-BUILDER'S (1) compensation (2) time and/or schedule of service delivery; (3) any Amendment (s) or other change(s) relative to the WORK and ADDITIONAL SERVICES pursuant to this Contract, or AMENDMENTS, or CHANGE ORDERS pertaining thereto. Following COUNTY approval, the Project Manager shall coordinate assurance of any such documents. The PROJECT MANAGER or his designee shall be responsible for acting on the COUNTY'S behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Contract, or any AMENDMENT(S), or CHANGE ORDER(S) issued there under.

*SPECIFICATIONS* are written documents organized into divisions, sections, and articles which provide detailed instructions to the DESIGN-BUILDER pertaining, but not limited to, materials, style, workmanship, fabrication, dimensions, colors, warranties, finishes, quality, manufacturer, grade and operational data of all components to be provided by the DESIGN-BUILDER and incorporated into the Project.

*SUB-CONTRACTOR* is a person, firm, partnership, corporation, or entity who has a direct contract with the DESIGN-BUILDER to perform any of the Work at the site. The term Sub-contractor does not

include those whose sole purpose is that of a supplier of materials. A supplier of materials shall be classified as a Sub-contractor if it enters into any agreement, whether written or verbal, for the installation of said materials. The term Sub-contractor means a Sub-contractor or its authorized representative.

*SUPPLIER* - A manufacturer, fabricator, distributor, materialmen or vendor.

*SURETY* is the surety company or individual that is bound by Contract bond with and for the DESIGN-BUILDER who is primarily liable, and is responsible for DESIGN-BUILDER'S acceptable performance of the Project and payment of all debts pertaining to the Contract Documents in accordance with Section 255.05, Florida Statutes.

*UNDERGROUND FACILITIES* - All pipeline, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

*WORK* is the construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

## 2. Starting the Work

Written Notice to Proceed is contingent upon and will be done subsequent to the DESIGN-BUILDER fully satisfying the COUNTY'S stated insurance and Bond submittal requirements. Until the DESIGN-BUILDER receives the COUNTY'S written Notice to Proceed, the DESIGN-BUILDER is advised that the COUNTY will not be liable for any expenses which the DESIGN-BUILDER may incur relative to this Contract before the written Notice to Proceed is issued.

- 2.1. The Contract time shall commence to run from the date specified in the "Notice to Proceed".
- 2.2. The DESIGN-BUILDER is required, before commencing the Work, to deliver to the COUNTY the Public Payment and Performance Bond issued by a surety insurer authorized to do business in the State of Florida as Surety. The Bond must state the name and principal business address of both the principal and the Surety and must contain a description of the project sufficient to identify it and post in conspicuous place at the project site.
- 2.3. The COUNTY will forward to the DESIGN-BUILDER a Notice of Commencement along with a copy of the recorded Public Payment and Performance Bond with instructions to post in a conspicuous spot on the project site.

## 3. Interpretation Intent, Amending and Reuse of Contract Documents

It is the intent of the Specifications and Plans to describe a complete Project to be constructed in accordance with the Contract Documents.

- 3.1 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If the DESIGN-BUILDER finds a conflict, error or discrepancy in the Contract Documents, he shall immediately call it to the attention of the OWNER'S REPRESENTATIVE in writing before proceeding with the Work affected thereby.
- 3.2 Any Work that may be reasonably inferred from the specifications or Drawings as being required

to produce the intended result shall be supplied whether or not it is specifically called for.

3.3 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.

3.4 In resolving conflicts, errors, and discrepancies, the order of precedence of the Contract Document is as follows:

- (1) Change Order
- (2) Agreement
- (3) Addenda
- (4) Special Conditions
- (5) General Conditions
- (6) Specifications
- (7) Supplemental Information
- (8) Drawings
- (9) Figure Dimensions
- (10) Scale Dimensions (Large Scale Drawings supersede Small Scale Drawings)
- (11) Terms and Conditions

3.5 Amending and Supplementing Contract Documents

The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

3.5.1 A formal Written Amendment,

3.5.2 A Change Order.

3.5.3 A Field Directive Change.

The Contract Price and the Contract Time may only be changed by a Change Order or Written Amendment.

3.6 In addition, the requirements of the Contract Documents may be supplemented and minor variations and deviations of the Work may be authorized, in one or more of the following ways:

3.6.1 A Field Change Order,

3.6.2 The OWNER'S REPRESENTATIVE approval of a Shop Drawing or sample, or

3.6.3 The OWNER'S REPRESENTATIVE written interpretation or clarification.

3.7 Reuse of Documents

Neither the DESIGN-BUILDER nor any SUB-CONTRACTOR or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the COUNTY shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of the CONSULTANT; and they shall not reuse any of them on extensions of the Project or any other project without written consent of the COUNTY or their CONSULTANT and the specific written verification or adaptation by the CONSULTANT.

#### **4 Availability of Lands**

The COUNTY will furnish, as indicated in the Contract Documents and not later than the date when needed by the DESIGN-BUILDER, the lands upon which the Work is to be done, rights-of-way for

access thereto, and such other lands which are designated for the use of the DESIGN-BUILDER. Easements for permanent structures or permanent changes in existing facilities will be obtained by the COUNTY unless otherwise specified in the Contract Documents. If the DESIGN-BUILDER believes that any delay in the COUNTY'S furnishing these lands or easements entitles him to an extension of the Contract Time, he may make a claim therefore. The DESIGN-BUILDER will provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment unless designated otherwise. The OWNER'S REPRESENTATIVE will, upon request, furnish to the DESIGN-BUILDER copies of all available boundary and topographic surveys as required and sub-surface tests. The DESIGN-BUILDER shall be responsible for staging and storing equipment or materials. All parcels utilized for staging shall be secured. All parcels utilized for staging will be kept in a neat and orderly fashion and then restored to the landowner's satisfaction upon terminating the use of the staging area or improved as noted in the plans. The DESIGN-BUILDER shall maintain on the job site written proof of authorization for the use of any private land. The COUNTY does not condone trespass on private property and will hold the DESIGN-BUILDER liable for any such trespass. Right-of-way maps, if available, of the lands upon which the improvements will be made shall be provided upon request from the OWNER'S REPRESENTATIVE. The DESIGN-BUILDER may use these lands for work associated with this contract only. The DESIGN-BUILDER shall verify the availability of these lands with the Lee County D.O.T. project manager prior to the issuance of the notice to proceed.

#### 4.1 Physical Conditions

Explorations and Reports: Reference is made to the Supplemental Information for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by the CONSULTANT and/or the COUNTY in preparation of the Contract Documents. These reports are not part of the contract Documents. The DESIGN-BUILDER may rely upon the accuracy of the technical data contained in such reports but not upon the non-technical data, interpretations or opinions contained therein for the completeness or accuracy thereof for the DESIGN-BUILDER'S purposes of preparing or submitting a bid. Except as indicated in the immediately preceding sentence, the DESIGN-BUILDER shall have full responsibility with respect to subsurface conditions at the site. The technical data which will be made available only at the DESIGN-BUILDER'S request may not be sufficient for construction purposes. Additional investigations may be necessary for the purposes of carrying out the construction project.

4.2 Existing Structures: Reference is made to the Supplemental Information for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site that have been utilized by the CONSULTANT and/or the COUNTY in preparation of the Contract Documents. The DESIGN-BUILDER may rely upon the accuracy of the technical data contained in such drawings but not for the completeness thereof for the purposes of preparing or submitting a bid. Except as indicated in the immediately preceding sentence, the DESIGN-BUILDER shall have full responsibility with respect to physical conditions in or relating to such structures.

4.3 Unless otherwise stated, the DESIGN-BUILDER shall be fully responsible for the removal of any materials, debris, garbage, vehicles or other such items which would interfere with the undertaking and completion of the project. By submission of a bid, the DESIGN-BUILDER assumes full responsibility for the expenses associated with such removal. There shall not be an increase in time or price associated with such removal.

4.4 Report of Differing Conditions: If the DESIGN-BUILDER believes that:

4.4.1.1 Any technical data on which the DESIGN-BUILDER is entitled to is inaccurate, or

4.4.1.2 Any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the Contract Documents.



- 4.4.1.3 The DESIGN-BUILDER shall, promptly after becoming aware thereof and before performing any Work in connection therewith (except in an emergency as permitted) notify the OWNER'S REPRESENTATIVE in writing about the inaccuracy or difference.
- 4.5 OWNER'S REPRESENTATIVE Review: The OWNER'S REPRESENTATIVE will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise the COUNTY in writing (with a copy to the DESIGN-BUILDER) of the OWNER'S REPRESENTATIVE'S findings and conclusions.
- 4.6 Possible Document Change: If the OWNER'S REPRESENTATIVE and the COUNTY conclude that there is a material error in the Contract Documents and a change in the Contract Documents is required, a Field Directive Change, a Field Change or a Change Order will be issued as to reflect and document the consequences of the inaccuracy or difference.
- 4.7 Possible Price and Time Adjustments: In each case of a material error in the Contract Documents, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference.
- 4.8 Physical Conditions - Underground Facilities  
 Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to the COUNTY or the CONSULTANT by the owners of such Underground facilities or by others. Unless it is otherwise expressly provided in the Supplemental Information:
- 4.8.1 The DESIGN-BUILDER shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof and for repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price. The CONSULTANT and COUNTY shall not be responsible for the accuracy or completeness of any such information or data.
- 4.9 Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which the DESIGN-BUILDER could not reasonably have been expected to be aware of, the DESIGN-BUILDER shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted) identify the owner of such Underground Facility and give written notice thereof to that owner and to the OWNER'S REPRESENTATIVE. The OWNER'S REPRESENTATIVE will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and with the COUNTY'S approval, the Contract Documents will be amended or supplemented to the extent necessary. During such time, the DESIGN-BUILDER shall be responsible for the safety and protection of such Underground Facility. The DESIGN-BUILDER shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and which the DESIGN-BUILDER could not reasonably have been expected to be aware of. Locations of existing underground utilities are not field confirmed. In the case of a conflict between this or any other utility and proposed improvements, it shall be the DESIGN-BUILDER'S duty to coordinate with all utility company relocation activities whether shown or not shown in the plans.

Coordination is to include efforts by the DESIGN-BUILDER to minimize time lost due to unexpected utility relocation or modifications.

#### 4.10 Reference Points

The COUNTY shall provide engineering surveys to establish reference points, as specified in the Supplemental Information, for construction which in the judgment of the COUNTY and the CONSULTANT are necessary to enable DESIGN-BUILDER to proceed with the Work. The DESIGN-BUILDER shall be responsible for laying out the Work (unless otherwise specified in the Technical Specifications), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the COUNTY. The DESIGN-BUILDER shall report to the OWNER'S REPRESENTATIVE whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

## 5 Bonds and Insurance

### 5.1 Public Payment and Performance Bond

The DESIGN-BUILDER will execute the Public Payment and Performance Bonds included herein as security for the faithful performance and payment of all his obligations under the Contract Documents.

5.2 This Bond shall be in amounts at least equal to the Contract Price and in such form and with such securities as are acceptable to the COUNTY. Prior to execution of the Contract Documents, the COUNTY may require the DESIGN-BUILDER to furnish such other bonds, in such form and with such sureties as it may require. If such bonds are required by written instructions given prior to opening of Bids, the Premiums shall be paid by the DESIGN-BUILDER. If the Contract is increased by a Change Order, it shall be the DESIGN-BUILDER'S responsibility to insure that the Public Payment and Performance Bond be amended accordingly and a copy of the amendment forwarded to PROCUREMENT MANAGEMENT.

5.3 If the surety on any bond furnished by the DESIGN-BUILDER is declared bankrupt or becomes insolvent or 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 DESIGN-BUILDER shall within five calendar days thereafter substitute another Bond and Surety, both of which shall be acceptable to the COUNTY.

5.4 If the DESIGN-BUILDER cannot obtain another bond and surety within five calendar days the COUNTY will accept and the DESIGN-BUILDER shall submit an irrevocable letter of credit drawn on a Lee County, Florida bank until the bond and surety can be obtained.

## 6 Qualifications of Surety Companies

In order to be acceptable to the COUNTY, a surety company issuing Bid Guaranty Bonds or 100% Public Payment and Performance Bonds, called for in these specifications, shall meet and comply with the following minimum standards:

### 6.1 General

All Sureties for Lee County projects must be authorized to do business in the State of Florida and shall comply with the provisions of Florida Statute 255.05.

6.2 Attorneys-in-Fact who sign bid bonds or Public Payment and Performance Bonds for Lee County projects must file with such bond a certified copy of their Power of Attorney to sign such bond.

6.3 Agents of surety companies must list their name, address, and telephone number on all bonds.

6.4 The life of all bonds provided to Lee County shall extend twelve months beyond the date of final payment and shall contain a waiver of alteration to the terms of the Contract, extensions of time

and/or forbearance on the part of the COUNTY.

- 6.5 To be acceptable to the OWNER on projects not in excess of \$500,000.00, Surety shall comply with these minimum provisions of State Statute 287.0935 as follows:
- 6.5.1 Surety must have twice the minimum surplus and capital required by Florida Insurance Code at the time of bid solicitation.
  - 6.5.2 Surety must be in compliance with all provisions of the Florida Insurance Code and hold a currently valid certificate of authority issued by the United States Department of the Treasury under SS.31 U.S.C. 9404-9308.
  - 6.5.3 Sureties on projects in excess of \$500,000.00 shall comply with the above minimum provisions as well as being rated thru A.M. Best Company and shall comply with the following provisions:
  - 6.5.4 The Surety shall be rated as “B“ or better as to General Policyholders Rating and Class VII or better as to financial category by the most current Best’s Key Rating Guide, published by A.M. Best Company.
  - 6.5.5 Surety must have fulfilled all of its obligations on all other bonds previously given to the COUNTY.
  - 6.5.6 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).
- 6.6 Letter of Credit  
At any time during the life of the letter of credit, should the rating of financial institution fall below both of the minimum ratings as indicated in the Contract Documents, or should the financial institution become insolvent, the DESIGN-BUILDER must, within five calendar days after notification by the COUNTY:
- 6.6.1 Replace the existing letter of credit with a replacement letter of credit from a financial institution with either of the minimum ratings as specified in the Contract Documents, or
  - 6.6.2 Have the existing letter of credit confirmed by a financial institution with either of the minimum ratings as specified in the Contract Documents.
  - 6.6.3 At the COUNTY’S option, the letter of credit may be replaced by a Public Payment and Performance Bond in accordance with the COUNTY’S existing bond policies.
- 6.7 Failure to comply with this provision may result in any or all of the following actions by the COUNTY:
- 6.7.1 Suspension of the DESIGN-BUILDER’S right to pull building permits and schedule inspections;
  - 6.7.2 A stop work order; and/or Revocation of the Land Development Permit.
- 6.8 Financial Institutions/Letters of Credit  
In order to be acceptable to the COUNTY, a financial institution issuing 100% Letters of Credit, called for in these specifications, shall meet and comply with the following minimum standards:
- 6.8.1 General  
The face of the letter of credit must be in a format utilizing Lee County Standard Form and indicate the following:
    - 6.8.1.1 The letter of credit is “clean” and “irrevocable”;
    - 6.8.1.2 An exact expiration date. The life of all letters of credit provided to Lee County shall extend twelve months beyond the date of final payment;
    - 6.8.1.3 Statement of the purpose or project for which the letter of credit is issued;
    - 6.8.1.4 A specific amount of the letter of credit, in U.S. dollars;
    - 6.8.1.5 The method of disbursement of draws against the letter of credit;
    - 6.8.1.6 The street address where draws against the letter of credit may be made; and

- 6.8.1.7 Venue in Lee County.
- 6.8.1.8 Verification of the status or certification of any financial institution may be made with:  
Department of Insurance and Treasurer  
Bureau of Collateral Securities  
200 East Gaines Street  
Tallahassee, FL 32377-0345  
Phone (850) 922-3167  
  
Or  
  
Lee County Procurement Management  
2115 Second Street, 1st Floor  
Fort Myers, FL 33901  
Phone (239) 533-8881  
  
Or  
  
Lee County Risk Management  
2115 Second Street  
Fort Myers, FL 33901  
Phone (239) 533-2221
- 6.8.1.9 At the time of issuance of the letter of credit, the financial institution must have a minimum “peer group” rating of 50 in the latest Sheshunoff Quarterly Listing or a minimum rating of 125 in the latest IDC Bank Financial Quarterly Listing.
- 6.8.1.10 Letters of Credit from financial institutions which do not meet either of the minimum ratings indicated above must be confirmed by a financial institution with either of the minimum ratings indicated above.
- 6.8.1.11 All financial institutions which issue or confirm any Letter of Credit must be authorized by the Secretary of State to do business in the State of Florida, shall show proof of same upon request by COUNTY staff, and agree to venue in Lee County.
- 6.8.1.12 In addition to the institutions meeting the aforementioned requirements, the Federal Home Loan Bank of Atlanta is authorized to issue and confirm letters of credit which are in accordance with the provisions above and all subsequent sub-paragraphs.
- 6.8.1.13 These actions shall be in effect until a satisfactory replacement bond or letter of credit is accepted by the COUNTY. The DESIGN-BUILDER agreement shall so provide for replacement or confirmation in accordance with this policy.

**7 DESIGN-BUILDER’s Liability Insurance**

- 7.1 The DESIGN-BUILDER will purchase and maintain such insurance as will protect him from claims under Worker’s Compensation laws, disability benefit laws or other similar employee benefit laws; from claims for damages because of bodily injury, occupational sickness or disease, or death of his employees including claims insured by usual personal injury, sickness and disease, or death of any person other than his employees including claims insured by usual personal injury

liability coverage; and from claims for injury to or destruction of tangible property including loss of use resulting there from any or all of which may arise out of or result from the DESIGN-BUILDER'S operations under the Contract Documents, whether such operations be by himself or any Sub-contractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. This insurance shall be written for no less than the limits of liability specified in the Contract Documents or required by law, whichever is greater, and shall include contractual liability insurance. As a prerequisite to the COUNTY signing the Contract, the DESIGN-BUILDER will file with the COUNTY certificates of such insurance, acceptable to the COUNTY; these certificates shall contain a provision for cancellation.

## 7.2 Insurance Requirements

7.2.1 Before final execution of the Agreement and until acceptance of the Work by the COUNTY, the DESIGN-BUILDER shall procure and maintain insurance of the types and the limits specified by the Insurance Guide included in the Solicitation.

7.2.2 All DESIGN-BUILDER'S Certificates of Insurance must be approved by the Lee County Risk Manager (or designee) before the final execution of the agreement by the COUNTY.

7.2.3 An Insurance Certificate shall be required from the successful BIDDER. Such form must be properly executed and submitted by an authorized representative of the insurance company and successful BIDDER within seven calendar days after notification by Lee County of the Board of County Commissioners' approval to award the contract. Such certificate of insurance state that the coverage is primary, and shall be in the types and amounts stated in the Contract Documents. Certificate should include producers' phone number and reference the name of the project.

## 8 DESIGN-BUILDER's Responsibilities

### 8.2 Supervision and Superintendence

8.1.1 The DESIGN-BUILDER will supervise and direct the Work efficiently. He will be solely responsible for the means, methods, techniques, sequences, safety, and procedure of construction, unless otherwise specified. The DESIGN-BUILDER will be responsible to see that the finished Work complies with the Contract Documents.

8.1.2 The DESIGN-BUILDER will keep on the site at all times when work is being performed, a competent, resident superintendent who shall not be replaced without prior written notice to the OWNER'S REPRESENTATIVE. The superintendent will be the DESIGN-BUILDER'S representative at the site and shall have authority to act on behalf of the DESIGN-BUILDER. All communications given to the superintendent shall be binding as if given to the DESIGN-BUILDER.

## 9 Labor Material and Equipment

9.1 The DESIGN-BUILDER will provide competent, suitable, qualified personnel to lay out the Work and perform construction as required by the Contract Documents. He will at all times maintain good discipline and order at the site.

9.2 The DESIGN-BUILDER will furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, heat, light, telephone, water and sanitary facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work unless otherwise specified. All materials and equipment such as concrete pipe, inlets, manhole covers, etc., furnished by the DESIGN-BUILDER shall be made by the same manufacturer, e.g., all pipe by one company, all inlets by one company, etc.



- 9.3 All materials and equipment will be new except as otherwise provided in the Contract Documents. If required by the OWNER'S REPRESENTATIVE, the DESIGN-BUILDER will furnish satisfactory evidence as to the kind and quality of materials and equipment furnished.
- 9.4 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricator or processors except as otherwise provided in the Contract Documents.
- 9.5 In instances where the act is applicable due to the nature of the bid matter with which this bid package is concerned, all material, equipment, etc., as proposed and offered by DESIGN-BUILDER must meet and conform to all O.S.H.A. requirements; the DESIGN-BUILDER'S signature upon the bid proposal form being by this reference considered a certification of such fact.

## **10 Adjusting the Progress Schedule**

- 10.1 The DESIGN-BUILDER shall submit to the OWNER'S REPRESENTATIVE for acceptance of adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the Contract Documents applicable thereto. The COUNTY reserves the right to reject the progress schedule from the DESIGN-BUILDER which in its judgment does not appear to devote sufficient resources of manpower to enable the timely completion of the project. If the COUNTY requests the progress schedule to be adjusted, the DESIGN-BUILDER shall do so and perform the work according to the adjusted schedule at no additional cost to the COUNTY.

## **11 Substitute Materials or Equipment**

- 11.1 If it is indicated in the specifications that the DESIGN-BUILDER may furnish or use a substitute that is equal to any material or equipment specified, and if the DESIGN-BUILDER wishes to furnish or use a proposed substitute, he will, within thirty calendar days after the award of the Contract, make written application to the OWNER'S REPRESENTATIVE for approval of such a substitute, certifying in writing that the proposed substitute will perform adequately the duties imposed by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. No substitute shall be ordered or installed without the written approval of the COUNTY who shall be the judge of quality. Whether or not the COUNTY accepts a proposed substitute, the DESIGN-BUILDER shall reimburse the COUNTY for any charges or cost for evaluating any proposed substitute.

## **12 Concerning Sub-contractors**

- 12.1 The DESIGN-BUILDER will be fully responsible for all acts and omissions of his SUB-CONTRACTORS 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 SUB-CONTRACTOR and the COUNTY. The COUNTY may, upon request, furnish to any SUB-CONTRACTOR, to the extent practicable, evidence of amounts paid to the DESIGN-BUILDER on account of specific Work done.
- 12.2 The divisions and sections of the specifications and the identifications of any Drawings shall not control the DESIGN-BUILDER in dividing the Work among SUB-CONTRACTORS or delineating the Work to be performed by any specific trade.
- 12.3 The DESIGN-BUILDER agrees to bind specifically every SUB-CONTRACTOR to the applicable terms and conditions of these Contract Documents for the benefit of the COUNTY.



- 12.4 All Work performed for the DESIGN-BUILDER by a SUB-CONTRACTOR shall be pursuant to an appropriate agreement between the DESIGN-BUILDER and the SUB-CONTRACTOR which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or perils covered by insurance, except such rights as they may have to the proceeds of such insurance held by the COUNTY as trustee.

### 13 Patent Fees and Royalties

- 13.1 The costs involved in fees, royalties, or claims for any patented invention, article, process or method that may be used upon, or in a manner connected with the work under this contract, shall be paid by the DESIGN-BUILDER. The DESIGN-BUILDER and his sureties, together with his officers, agents, and employees, shall protect and hold the COUNTY harmless against any and all demands made for such fees or claims brought or made by holder of any invention or patent. Before final payment is made on the account of this Contract, the DESIGN-BUILDER shall, if requested by the COUNTY, furnish acceptable proof of a proper release from all such fees or claims.
- 13.2 Should the DESIGN-BUILDER, his agent, employee, or any of them be enjoined from furnishing or using any invention, article, material or plans supplied or required to be supplied or used under this contract, the DESIGN-BUILDER shall promptly pay such royalties and secure the requisite licenses; or, subject to acceptance by the COUNTY, substitute other articles, materials or appliances in lieu thereof which are of equal efficiency, quality, finish, suitability and market value to those planned or required under the contract. Descriptive information of these substitutions shall be submitted to the OWNER'S REPRESENTATIVE for determination of general conformance to the design concept and the construction contract. Should the COUNTY elect to use the substitution, the DESIGN-BUILDER agrees to pay such royalties and secure such valid licenses as may be requisite for the COUNTY, his officers, agents, and employees, or any of them, to use such invention, article, material, or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof.

### 14 Permits

- 14.1 Unless otherwise specified herein, the DESIGN-BUILDER will secure and pay for all permits, impact fees, and licenses and will pay all governmental charges and inspections' fees necessary for the prosecution of the Work which are applicable at the time of his bid. The DESIGN-BUILDER will also pay all public utility charges and connection fees except as provided for in the Contract Documents. Permits and licenses of regulatory agencies which are necessary to be maintained after completion of the guarantee period shall be secured and paid for by the COUNTY.
- 14.2 Pursuant to the requirements of F.S. 218.80, the following County permits and fees are required to be obtained and paid for by the DESIGN-BUILDER.
- 14.2.1 \*Permits as required shall be responsibility of DESIGN-BUILDER unless otherwise stated herein. County permit and associated fees are available at <http://www.lee.gov.com/permits>\***
- 14.3 This is a disclosure of permits and fees, required by Lee County, for this project and does not relieve the DESIGN-BUILDER of its responsibility to obtain and pay for permits required by other governmental entities as specified elsewhere in this document.
- 14.4 The DESIGN-BUILDER will give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If the DESIGN-BUILDER observes that the Specifications or Drawings are at a variance therewith, he will give the OWNER'S REPRESENTATIVE prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modification. If the DESIGN-BUILDER performs any Work knowing it to be contrary to such

laws, ordinances, rules and regulations and without such notice to the OWNER'S REPRESENTATIVE, he will bear all cost arising therefrom; however, it shall not be his primary responsibility to make certain that the Drawings and Specifications are in accordance with such laws, ordinances, rules and regulations.

## **15 Licenses**

15.1 The DESIGN-BUILDER must be properly licensed, within the jurisdiction where the project is to be constructed, to perform the work specified in the Scope of Work at the time of bid submittal.

## **16 Use of Premises**

16.1 The DESIGN-BUILDER will confine his equipment, the storage of materials and equipment, and the operations of his workmen to the areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with materials or equipment.

## **17 Record Drawings**

17.1 The DESIGN-BUILDER will keep one record copy of all Specifications, Drawings, Addenda, Modifications and Shop Drawings at the site in good order, and annotated to show all changes made during the construction process or addition and exact location of underground or otherwise concealed components such as, but not limited to, plumbing, air conditioning, electric, culverts, drainage structures, water main, force mains, service lines, wiring, traffic loops, pond or ditch bottoms and banks, signal poles, signs, and conduit which were not installed exactly as shown on the contract drawings. These shall be available to the OWNER'S REPRESENTATIVE and shall be verified by the OWNER'S REPRESENTATIVE at 30%, 60%, and 100% completion of the Project. The DESIGN-BUILDER shall submit to the OWNER'S REPRESENTATIVE one complete set of all recorded changes made during Construction entitled "As-Built", and dated. Submittals shall be made in accordance with the above and shall be submitted at the time of substantial completion.

17.2 The sum of \$5,000.00 shall be withheld from the final payment until written acceptance or all of the Record Drawings by the OWNER'S REPRESENTATIVE has occurred.

17.3 Certified "as-built" information, which the DESIGN-BUILDER must show on marked-up copies of the design drawings, prints, and other materials as specified above shall include both authorized and unauthorized changes to horizontal pavement dimensions, finish pavement grades, finish dimensions, elevations and alignment of the items noted in Article 17.1, and any modifications to material types from that specified in the bid plans and specifications. As a prerequisite to any payments, the DESIGN-BUILDER shall make available to the Engineer all "as-built" information pertinent to the design drawings each month prior to his submission of a monthly application for payment. The DESIGN-BUILDER shall also obtain "as-built" cross-sections of the roadway, ditches, channels, and other drainage ways as shown in the Contract Documents at intervals not to exceed 100 ft. The DESIGN-BUILDER shall set benchmarks on or within 100 ft. of each control structure constructed as part of this project. A complete description including elevation and location of each control structure benchmark shall be provided to the Engineer as part of the "as-built" information. The elevation shall be clearly and permanently indicated on each benchmark.

17.4 "As-built" dimensions and elevations shall be obtained by a Professional Land Surveyor registered in the State of Florida pursuant to Chapter 472, Florida Statutes. The "as-built" drawings shall be signed and sealed by the DESIGN-BUILDER'S Professional Land Surveyor in accordance with Section 472.025, Florida Statutes.

17.5 All pertinent surveyors' field survey notes containing the "as-built" data shall be sealed and submitted to the Engineer for review and acceptance prior to authorization of the final payment.

17.6 "As-built" data shall be secured and the accuracy of measurements shall be 0.01 ft.

- 17.7 All sub-surface improvements considered part of the Work as shown in the Contract Documents shall be “as-built” by the DESIGN-BUILDER prior to backfilling.
- 17.8 A final bench level circuit shall be secured indicating accuracy of vertical closure and a copy of these field notes shall be submitted to the Engineer before final acceptance of the project.
- 17.9 The DESIGN-BUILDER shall annotate and show all “as-built” information on 11” x 17” prints of the bid plans during the course of the construction process. Upon completion of all contract work, but prior to authorization of the final payment by the Engineer, the DESIGN-BUILDER shall deliver one (1) set of such annotated, in neat draftsman-like manner, “as-built” 11” x 17” prints to the Engineer for approval. Upon approval of such “as-built” plans, the DESIGN-BUILDER shall forthwith provide two (2) sets of these drawings containing all “as-built” information, a CD of the “as-built” electronic files in AutoCAD or MicroStation format and data which have been sealed by a Professional Land Surveyor by the DESIGN-BUILDER at the DESIGN-BUILDER’S cost and forthwith become the property of the COUNTY.
- 17.10 The cost of preparing, maintaining, and providing “as-built” plans and documents as specified in this Article must be included in the Lump Sum payment for mobilization for each part of the Bid Schedule providing for Mobilization.
- 17.11 Shop drawing submittals processed by the Engineer shall not be construed as Change Orders; the purpose of a shop drawing is to demonstrate to the Engineer that the DESIGN-BUILDER understands the design concept, and that his understanding is demonstrated by indicating the equipment and material to be furnished and installed. Corrections or changes indicated by the Engineer in the shop drawings do not constitute authorization to perform extra work.
- 17.12 The review of shop drawings and schedules shall be considered general and shall not be construed as permitting any departures from the contract requirements. The design drawings and contract specifications shall take precedence over the shop drawings in the event of deviations, discrepancy, or conflict.

## **18 Safety and Protection**

- 18.1 The DESIGN-BUILDER will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. He will take all necessary precautions for the safety of and will provide the necessary protection to prevent damage, injury or loss to:
- 18.1.1 All employees on the Project and other persons who may be affected thereby;
- 18.1.2 All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and
- 18.1.3 Other property at the site or adjacent thereto including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 18.1.4 The DESIGN-BUILDER will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection and, in addition, he will comply with all applicable recommendations of the "Manual of Accident Prevention in Construction" published by the Associated General DESIGN-BUILDERS of America, Inc.; "Roadway and Traffic Design Standards" latest edition published by the Florida Department of Transportation, specifically Index 600-650; and Occupational Safety and Health Administration published by the United States Department of Labor. He will notify owners of adjacent utilities when prosecution of the Work may affect them. All damage, injury or loss to any property caused directly or indirectly, in whole or in part by the DESIGN-BUILDER, any SUB-CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable will be

remedied by the DESIGN-BUILDER; except any damage or loss attributable to the fault of the Drawings or the Specifications or to the acts or omissions of the COUNTY, and not attributable, directly or indirectly, in whole or in part, to the fault of negligence of the DESIGN-BUILDER.

- 18.1.5 The DESIGN-BUILDER will designate a member of his organization whose responsibility will be to plan for the prevention of accidents at the site. This person shall be the DESIGN-BUILDER'S Superintendent unless otherwise designated in writing by the DESIGN-BUILDER to the OWNER'S REPRESENTATIVE.

## **19 Emergencies**

- 19.1 In emergencies affecting the safety of persons, the Work or property at the site or adjacent thereto, the DESIGN-BUILDER, without special instruction or authorization from the COUNTY, is obligated to act at his discretion to prevent threatened damage, injury or loss. He will give the OWNER'S REPRESENTATIVE prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby. If the COUNTY and the OWNER'S REPRESENTATIVE determine that a change to the Contract Documents is required because of the action taken in response to an emergency, a Field Directive Change or Change Order shall thereupon be issued covering the changes and deviations involved.

## **20 Shop Drawings and Samples**

- 20.1 After checking and verifying all field measurements, the DESIGN-BUILDER will submit to the OWNER'S REPRESENTATIVE for approval, in accordance with the acceptable schedule of Shop Drawing submission, five copies (or at the option of the OWNER'S REPRESENTATIVE, one reproducible copy) of all Shop Drawings, which shall have been checked by and stamped with the approval of the DESIGN-BUILDER and identified as the OWNER'S REPRESENTATIVE may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable the OWNER'S REPRESENTATIVE to review the information as required.
- 20.2 The DESIGN-BUILDER will also submit to the OWNER'S REPRESENTATIVE for approval with such promptness as to cause no delay in the Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of the DESIGN-BUILDER, identified clearly as to material, manufacturer, any pertinent numbers and the use for which intended.
- 20.3 At the time of each submission, the DESIGN-BUILDER will in writing call the OWNER'S REPRESENTATIVE'S attention to any deviations that the Shop Drawing or sample may have from the requirements of the Contract Documents and, in addition, shall cause a specific notation to be made on each shop drawing submitted for review and approval of each such variation.
- 20.4 The OWNER'S REPRESENTATIVE will review and approve with reasonable promptness Shop Drawings and Samples, but its review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The DESIGN-BUILDER will make any corrections required by the OWNER'S REPRESENTATIVE and will return the required number of corrected copies of Shop Drawings and re-submit new samples until approved. All cost incurred by the COUNTY for the review of a shop drawing in excess of two reviews shall be the DESIGN-BUILDERS responsibility. The DESIGN-BUILDER'S stamp of approval on any Shop Drawing or sample shall constitute a representation to the OWNER'S REPRESENTATIVE that the DESIGN-BUILDER has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers and similar data or he assumes full responsibility for doing so, and that he has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract



Document.

- 20.5 No work requiring a Shop Drawing or sample submissions shall be commenced until the submission has been approved by the OWNER'S REPRESENTATIVE. Any related Work performed prior to review and approval by the COUNTY of the pertinent submission will be the sole expense and responsibility of the DESIGN-BUILDER. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the DESIGN-BUILDER at the site and shall be available to the OWNER'S REPRESENTATIVE.
- 20.6 The OWNER'S REPRESENTATIVE approval of Shop Drawings or samples shall not relieve the DESIGN-BUILDER from his responsibility for any deviations from the requirements of the Contract Documents, unless the DESIGN-BUILDER has in writing called the OWNER'S REPRESENTATIVE attention to such deviation at the time of submission and the COUNTY and the OWNER'S REPRESENTATIVE have given written approval to the specific deviation; nor shall any approval by the OWNER'S REPRESENTATIVE relieve the DESIGN-BUILDER from responsibility for errors or omissions in the Shop Drawings.
- 20.6.1 The DESIGN-BUILDER shall, upon completion of the work, furnish to the Engineer two (2) complete sets of prints, neatly bound together, and in good condition, of all the DESIGN-BUILDER'S, SubDESIGN-BUILDERS' and manufacturers' drawings as finally checked and reviewed by the Engineer with all modifications accepted by the Engineer subsequent thereto, showing the work as actually completed. Such "as-built" information for bridges, culverts, and similar structures shall also be provided by the DESIGN-BUILDER.

## 21 Indemnification

- 21.1 The DESIGN-BUILDER shall indemnify, save harmless and defend the COUNTY and all of its officers, agents, consultants and employees from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recoverable against it or them by reason of any act or omission of the DESIGN-BUILDER, his agent, consultants, employees, sub-contractors etc., in the execution of the work or in consequence of any negligence or carelessness in guarding the same and agrees to assume any related cost.
- 21.2 The DESIGN-BUILDER shall assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident during the progress of work until the same shall have been completed and accepted. The DESIGN-BUILDER agrees to repair, restore or rebuild any damages he causes to any property of the COUNTY. He shall also assume all blame or loss by reason of neglect or violation of any state or federal law or municipal rule, regulation or order. The DESIGN-BUILDER shall give to the proper authorities all required notices relating to the work, obtain all official permits and licenses and pay all proper fees. He shall repair any damage that may have occurred to any adjoining building, structure, utility or private property in the course of this work.

## 22 Cleaning Up

- 22.1 The DESIGN-BUILDER will keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work; at the completion of the Work he will remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and will leave the site clean and ready for occupancy by the COUNTY. The DESIGN-BUILDER will restore to their original condition those portions of the site not designated for alteration by the Contract Documents.
- 22.2 If the DESIGN-BUILDER fails to clean up as provided in the Contract Documents, the COUNTY may do so and the cost thereof shall be deducted from the final retainage due the DESIGN-



## BUILDER.

**23 Continuing the Work**

23.1 The DESIGN-BUILDER shall carry on the Work and adhere to the progress schedule during all disputes and disagreements with the COUNTY. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted (The COUNTY May Stop Work) or as the DESIGN-BUILDER and the COUNTY may otherwise agree in writing.

**24 Anti-Discrimination**

24.1 The DESIGN-BUILDER for itself, its successors in interest, and assignees, as part of the consideration thereof covenant and agree that:

24.2 In the furnishing of services to the COUNTY hereunder, no person on the grounds of race, religion, color, age, sex, national origin, handicap or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

24.3 The DESIGN-BUILDER will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, handicap or marital status. The DESIGN-BUILDER will make affirmative efforts to insure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, handicap or marital status. Such action shall include, but not be limited to, acts of employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships.

24.4 DESIGN-BUILDER agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this anti-discrimination clause.

24.5 DESIGN-BUILDER will provide all information and reports required by relevant regulations and/or applicable directives. In addition, the DESIGN-BUILDER shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY to be pertinent to ascertain compliance. The DESIGN-BUILDER shall maintain and make available relevant data showing the extent to which members of minority groups are beneficiaries under these contracts.

24.6 Where any information required of the DESIGN-BUILDER is in the exclusive possession of another who fails or refuses to furnish this information, the DESIGN-BUILDER shall so certify to the COUNTY its efforts made toward obtaining said information. The DESIGN-BUILDER shall remain obligated under this paragraph until the expiration of three years after the termination of this CONTRACT.

24.7 In the event of breach of any of the above anti-discrimination covenants, the COUNTY shall have the right to impose sanctions as it may determine to be appropriate, including withholding payment to the DESIGN-BUILDER or canceling, or terminating this CONTRACT, in whole or in part.

24.8 Additionally, the DESIGN-BUILDER may be declared ineligible for further COUNTY contracts by rule, regulation or order of the Board of County Commissioners of Lee County, or as otherwise provided by law.

24.9 The DESIGN-BUILDER will send to each labor union, or representative of workers with which the DESIGN-BUILDER has a collective bargaining agreement or other contract of understanding, a notice informing the labor union or worker's representative of the DESIGN-BUILDER'S commitments under this assurance, and shall post copies of the notice in conspicuous places available to the employees and the applicants for employment.

24.10 The DESIGN-BUILDER will include the provisions in every sub-contract under this contract to insure its provisions will be binding upon each Sub-contractor. The DESIGN-BUILDER will take such action with respect to any Sub-contractor, as the contracting agency may direct, as a

means of enforcing such provisions, including sanctions for non-compliance.

## **25 Work by Others**

- 25.1 The COUNTY may perform additional Work related to the Project by itself, or it may let other direct contracts which shall contain General Conditions similar to these.
- 25.2 The DESIGN-BUILDER will afford the other DESIGN-BUILDERS who are parties to such direct contracts (or the COUNTY, if it is performing the additional Work itself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of the Work, and shall properly connect and coordinate his work with theirs. Should the Contract entail relocation of facilities not a part of this Contract, the DESIGN-BUILDER will coordinate and cooperate with the applicable entity responsible for this portion of the Work.
- 25.3 Water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cableways, signals, and all other utility appurtenances within the limits of the proposed construction which are to be relocated or adjusted are to be moved by the owners at their expense, unless otherwise provided in the Contract. It is understood and agreed that the DESIGN-BUILDER has considered in his bid all of the permanent and temporary utility appurtenances in their present or relocated positions as shown on the plans and that no additional compensation will be allowed for any delays, inconveniences, or damage sustained to him due to any interference from the said utility appurtenances or the operation of moving them. If any part of the DESIGN-BUILDER'S work depends (for proper execution) upon the Work of any such other DESIGN-BUILDER (or the COUNTY), the DESIGN-BUILDER will inspect and promptly report to the OWNER'S REPRESENTATIVE in writing, any defects, deficiencies or delays in such Work that render it unsuitable for such proper execution and results. His failure to report shall constitute an acceptance of the Work, except as to defects, deficiencies and delays which may appear in the other Work after the execution of his Work.
- 25.4 The DESIGN-BUILDER will do all cutting, fitting and patching of his Work, which is consistent with the Contract Documents that may be required to make its several parts come together properly and fit it to receive or be received by such other Work. The DESIGN-BUILDER will not endanger any Work of others by cutting, excavating or otherwise altering such other Work and will only cut or alter such other work with the written consent of the OWNER'S REPRESENTATIVE.
- 25.5 If the performance of additional Work by other DESIGN-BUILDERS or the COUNTY is not noted in the Contract Documents prior to the execution of the Contract, written notice thereof shall be given to the DESIGN-BUILDER prior to starting any such additional Work.
- 25.6 The DESIGN-BUILDER shall be responsible for coordination with all activities with adjacent projects.

## **26 Owner's Representative Status During Construction**

- 26.1 County's Representatives
- 26.1.1 The COUNTY shall issue all communications to the DESIGN-BUILDER through the OWNER'S REPRESENTATIVE.
- 26.2 Clarifications and Interpretations
- 26.2.1 The OWNER'S REPRESENTATIVE will issue with reasonable promptness, through the COUNTY, such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the COUNTY may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the DESIGN-BUILDER believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the

parties are unable to agree to the amount or extent thereof, the DESIGN-BUILDER may make a claim.

### 26.3 Authorized Variations in Work

26.3.1 The OWNER'S REPRESENTATIVE may authorize, with prior approval from the COUNTY minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Change Order and the DESIGN-BUILDER shall perform the Work involved promptly. If the DESIGN-BUILDER believes that a Field Change Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, the DESIGN-BUILDER may make a claim.

## 27 Changes in Work

- 27.1 Without invalidating the Agreement, the COUNTY may unilaterally and at any time or from time to time order additions, deletions or revisions in the Work; these will be authorized by Change Orders or Field Directive Change. Upon receipt of a Change Order or Field Directive Change, the DESIGN-BUILDER will proceed with the Work involved.
- 27.2 All such Work shall be executed under the applicable conditions of the Contract Documents.
- 27.3 If any Change Order or Field Directive Change causes an increase or decrease in the Contract Price or any extension or shortening of the Contract Time, an equitable adjustment will be made.
- 27.4 Additional Work performed by the DESIGN-BUILDER without written authorization of a change in the form of an approved Change Order will not entitle him to an increase in the Contract Price or any extension of the Contract Time, except in the case of an emergency.
- 27.5 It is the DESIGN-BUILDER'S responsibility to notify the Surety of any changes affecting the general scope of the Work or change of the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly. The Surety's Acceptance must be submitted to the OWNER'S REPRESENTATIVE, by the DESIGN-BUILDER, within ten calendar days of the initiation of the change.

## 28 Change of Contract Price

- 28.1 The Contract Price constitutes the total compensation payable to the DESIGN-BUILDER for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the DESIGN-BUILDER shall be at his expense without change in the Contract Price.
- 28.2 The Contract Price may only be changed by a Change Order. Any claim for an increase or decrease in the Contract Price shall be in writing and delivered to the OWNER'S REPRESENTATIVE within fifteen calendar days of the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty calendar days after such occurrence (unless COUNTY allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the DESIGN-BUILDER'S written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the DESIGN-BUILDER has reason to believe it is entitled as a result of the occurrence of said event. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance. All claims for adjustment in the Contract Price shall be reviewed by the OWNER'S REPRESENTATIVE. Any change in the Contract Price shall be incorporated in a Change Order and approved by the COUNTY. No claim by the DESIGN-BUILDER for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

- 28.3 Where the Work involved is covered by unit prices contained in the Contract Documents or subsequently agreed upon, by application of unit prices to the quantities of the items involved.
- 28.4 By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
- 28.5 By cost of the Work and mutually acceptable fixed amount for overhead and profit agreed upon by the parties.
- 28.6 If none of the above methods is agreed upon, the value shall be determined by the COUNTY on the basis of cost of the Work and a percentage for overhead and profit. Cost shall only include labor (payroll, payroll taxes, fringe benefits, worker's compensation, etc.), materials, equipment, and other incidentals directly related to the Work involved.
- 28.7 In such cases the DESIGN-BUILDER will submit in the form prescribed by the COUNTY an itemized cost breakdown together with supporting data. The amount of credit to be allowed by the DESIGN-BUILDER to the COUNTY for any such change which results in a net decrease in cost will be the amount of the actual net decrease as determined by the COUNTY. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net decrease, if any.

## 29 Cash Allowance

- 29.1 It is understood that the DESIGN-BUILDER has included in the Contract Price any allowances so named in the Contract Documents and shall cause the Work so covered to be done by such materialmen, suppliers, or SUB-CONTRACTORS and for such sums within the limit of the allowances as the COUNTY may approve. Upon final payment, the Contract Price shall be adjusted as required and an appropriate Change Order issued. The DESIGN-BUILDER agrees that the original Contract Price includes such sums as he deems proper for cost and profit on account of cash allowances. No demand for an additional sum for overhead or profit in connection therewith will be allowed.
- 29.2 Unit Price Work
  - 29.2.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price.
  - 29.2.2 Each unit price will be deemed to include an amount considered by the DESIGN-BUILDER to be adequate to cover the DESIGN-BUILDER'S overhead and profit for each separately identified item.
  - 29.2.3 The unit price of an item of Unit Price Work shall be subject to revaluation and adjustment under the following conditions:
    - 29.2.3.1 If the total cost of a particular item of Unit Price Work amounts to 5% or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by the DESIGN-BUILDER differs by more than 15% from the estimated quantity of such item indicated in the Agreement; and,
    - 29.2.3.2 If there is no corresponding adjustment with respect to any other item of Work; and
    - 29.2.3.3 If the DESIGN-BUILDER believes that it has incurred additional expense as a result thereof; or
    - 29.2.3.4 If the COUNTY believes that the quantity variation entitles it to an

adjustment in the unit price, either the COUNTY or the DESIGN-BUILDER may make a claim for an adjustment in the Contract Price if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

### **30 Change of Contract Time**

- 30.1 The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be in writing and delivered to the OWNER'S REPRESENTATIVE within fifteen calendar days of the occurrence of the event giving rise to the claim and stating general nature of the claim. Notice of the extent of the claim with supporting data (analysis and documentation) shall be delivered within sixty calendar days after such occurrence (unless the OWNER'S REPRESENTATIVE allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the DESIGN-BUILDER'S written statement that the adjustment claimed is the entire adjustment to which the DESIGN-BUILDER has reason to believe it is entitled as a result of the occurrence of said event. If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that the weather conditions had an adverse effect on the scheduled construction. No claim by the DESIGN-BUILDER under this provision shall be allowed unless the DESIGN-BUILDER has given the notice and the analysis and documentation required in this paragraph. All claims for adjustment in the Contract Time shall be determined by the OWNER'S REPRESENTATIVE. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.
- 30.2 The COUNTY shall not be responsible for any delay in the completion of the project where the delay is beyond the control or without fault or negligence on behalf of the COUNTY. The COUNTY shall not be held accountable for extra compensation or an extension of time due to default by the DESIGN-BUILDER, SUB-CONTRACTORS, or suppliers in the furnishing of labor or materials for the project, or having to replace defective materials.
- 30.3 The DESIGN-BUILDER shall be entitled to a claim for an extension of time when a delay or hindrance is caused by an act of God, or any act or omission on the part of the COUNTY, provided the DESIGN-BUILDER gives notice to the OWNER'S REPRESENTATIVE within fifteen calendar days of the occurrence of the event giving rise to the claim and having stated the general nature of the claim. The DESIGN-BUILDER'S sole remedy shall be an extension of Contract Time.
- 30.4 No extension of Contract Time or increases in Contract Price shall be granted for any delay caused either by (1) inadequate crewing, default or bankruptcy of lower tier contract, slow submittals, etc., or (2) by severe though not unusual weather conditions (other than hurricanes and tornadoes) or (3) any delay impacting a portion of the Work within the available total float or slack time and not necessarily preventing completion of the Work within the Contract Time unless otherwise agreed to by the COUNTY in its sole discretion or (4) for any delay which is caused by the DESIGN-BUILDER having to replace defective material or equipment or (5) delays attributable to the lack of performance by Sub-contractors regardless of the reasons.
- 30.5 All time limits stated in the Contract Documents are of the essence of the Agreement. Shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court cost) for delay by either party.

### **31 Warranty and Guarantee: Acceptance of Defective Work**

#### **31.1 Warranty and Guarantee**

- 31.1.1 The DESIGN-BUILDER warrants and guarantees to the COUNTY that all materials



and equipment will be new unless otherwise specified and that all Work will be of good quality, free from faults or defects and in accordance with the requirements of the Contract Documents and any inspections, test or approvals referred to in this Article. All unsatisfactory Work, all faulty Work, and all Work not conforming to the requirements of the Contract Documents or such inspections, tests or approvals shall be considered defective. Prompt notice of all defects shall be given to the DESIGN-BUILDER. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided herein. DESIGN-BUILDER is to assign any and all warranties or guarantees on equipment, materials, etc. to the COUNTY.

### 31.2 Tests and Inspections

- 31.2.1 If the Contract Documents, laws, ordinances, rules, regulations or order of any public authority having jurisdiction require any Work to specifically be inspected, tested or approved by someone other than the DESIGN-BUILDER, the DESIGN-BUILDER will give the OWNER'S REPRESENTATIVE forty-eight (48) hours' notice of readiness therefore. The DESIGN-BUILDER will furnish the OWNER'S REPRESENTATIVE with the required certificates of inspection, testing or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organizations as may be required by law or the Contract Documents. If any such Work required to be inspected, tested or approved is covered without written approval of the OWNER'S REPRESENTATIVE, it shall, if requested by the OWNER'S REPRESENTATIVE, be uncovered for observation at the DESIGN-BUILDER'S expense. The cost of all such inspections, tests and approvals shall be borne by the DESIGN-BUILDER unless otherwise provided.
- 31.2.2 Project field testing of materials required by the specifications or the OWNER'S REPRESENTATIVE shall be provided by and at the expense of the COUNTY. The DESIGN-BUILDER shall coordinate and schedule the required testing. The DESIGN-BUILDER shall pay for all retests when the initial test result reveals that the materials failed to meet the requirements of the specifications. The DESIGN-BUILDER shall notify the OWNER'S REPRESENTATIVE twenty-four (24) hours prior to conducting any test so the OWNER'S REPRESENTATIVE may be present.
- 31.2.3 The OWNER'S REPRESENTATIVE shall have the right to require all materials to be submitted to tests prior to incorporation in the Work. In some instances, it may be expedient to perform these tests at the source of supply, and for this reason, it is required that the DESIGN-BUILDER furnish the OWNER'S REPRESENTATIVE with the information concerning the location of his source before incorporating material into the Work. This does not in any way obligate the OWNER'S REPRESENTATIVE to perform tests for acceptance of material and does not relieve the DESIGN-BUILDER of his responsibility to furnish satisfactory material. The DESIGN-BUILDER shall furnish manufacturer's certificates of compliance with these specifications covering manufactured items incorporated in the Work.
- 31.2.4 Neither observations by the OWNER'S REPRESENTATIVE, nor inspections, tests or approvals by persons other than the DESIGN-BUILDER shall relieve the DESIGN-BUILDER from his obligations to perform the Work in accordance with the requirements of the Contract Documents.
- 31.2.5 Testing/Permits: The DESIGN-BUILDER shall be responsible for performing any testing and the cost for all items that may be required as part of the NPDES, FDEP, USACOE and SFWMD permits.

**32 Close Out Procedure****32.1 General Operating/Maintenance Instructions & Manuals**

- 32.1.1 The DESIGN-BUILDER shall organize maintenance operating manual information into four suitable sets of manageable size, and bind into individual binders properly identified and indexed (thumb-tabbed). Emergency instructions, spare parts listing, warranties, wiring diagrams, recommended "turn around" cycles, inspection procedures, shop drawings, product data, and similar acceptable information shall be included. The DESIGN-BUILDER shall bind each manual of each set in a heavy duty, 3-ring vinyl covered binder, and include pocket folders for folded sheet information. Mark identification on both front and spine of each binder.
- 32.1.2 Arrange for each installer of work requiring continuing maintenance (by the OWNER) or operation, to meet with the OWNER'S personnel, at the project site, to provide basic instructions needed for proper operation and maintenance of the entire work. Include instructions by manufacturer's representatives where installers are not expert in the required procedures. Review maintenance manuals, record documentation, tools, spare parts and materials, lubricants, fuels, identification system, control sequences, hazards, cleaning and similar procedures and facilities. For operational equipment, demonstrate start-up, shut-down, emergency operations, noise and vibration adjustments, safety, economy/efficiency adjustments, and similar operations. Review maintenance and operations in relation with applicable guaranties, warranties, agreements to maintain, bonds, and similar continuing commitments.

**33 Access to the Work**

- 33.1 The COUNTY and the OWNER'S REPRESENTATIVE shall at all times have access to the Work. The DESIGN-BUILDER shall provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

**34 Uncovering the Work**

- 34.1 If any work has been covered which the OWNER'S REPRESENTATIVE has not specifically requested to observe prior to its being covered, or if the OWNER'S REPRESENTATIVE considers it necessary or advisable that covered Work be inspected or tested by others, the DESIGN-BUILDER, at the OWNER'S REPRESENTATIVE'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the OWNER'S REPRESENTATIVE may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the DESIGN-BUILDER will bear all the expense of such uncovering, exposure, observation, inspection and testing, and of satisfactory reconstruction. If, however, such Work is not found to be defective, the DESIGN-BUILDER will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, if he makes a claim therefore.

**35 County May Stop Work**

- 35.1 If the Work is defective, if the DESIGN-BUILDER fails to supply sufficient skilled workmen or suitable materials or equipment, or if the DESIGN-BUILDER fails to make prompt payments to SUB-CONTRACTORS for labor, materials or equipment: the COUNTY may order the DESIGN-BUILDER to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the COUNTY to stop the work shall not give rise to any duty on the part of the COUNTY to exercise this right for the benefit of the DESIGN-BUILDER or any other party.

- 35.2 Notwithstanding Paragraph 35.1, the COUNTY may also issue a Stop Work Order for the following reasons:
- 35.2.1 Insufficient Maintenance of Traffic practices.
  - 35.2.2 Failure to comply with permits regarding pollution control.
  - 35.2.3 Insufficient construction materials or methods.
  - 35.2.4 Failure to provide a safe working environment in accordance with the US Department of Labor Occupational Safety and Health Administration (OSHA).
- 35.3 Upon notice of the Stop Work Order, the DESIGN-BUILDER shall cease all contracted work except for the activities required to correct the problem and as directed by the COUNTY.
- 35.4 If the DESIGN-BUILDER fails to correct the problem causing the Stop Work Order and there is immediate threat to the public's health, safety, or environmental protection, the COUNTY may perform any remedial activities necessary to protect the public and environment. Any costs incurred by the County in the performance of this work shall be deducted from monies due the DESIGN-BUILDER or paid by the DESIGN-BUILDER to the County.
- 35.5 No increase in the Contract Price or extension of the Contract Time will be granted for any delays or loss of time due to a Stop Work Order.

### **36 Correction or Removal of Defective Work**

- 36.1 If required by the OWNER'S REPRESENTATIVE prior to approval of final payment, the DESIGN-BUILDER will, promptly, without cost to the COUNTY and as specified by the OWNER'S REPRESENTATIVE, either correct any defective Work whether or not fabricated, installed or completed or, if the Work has been rejected by the OWNER'S REPRESENTATIVE, remove it from the site and replace it with non-defective Work. If the DESIGN-BUILDER does not correct such defective Work or remove and replace such rejected Work within ten calendar days, all as specified in a written notice from the OWNER'S REPRESENTATIVE, the OWNER'S REPRESENTATIVE may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and replacement shall be paid by the DESIGN-BUILDER. The DESIGN-BUILDER will also bear the expense of making good all Work of others destroyed or damaged by his correction, removal or replacement of his defective Work.

### **37 One Year Correction Period**

- 37.1 If, after the approval of the final payment and prior to the expiration of one year after the date of Final Completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, the DESIGN-BUILDER will promptly, without cost to the COUNTY, and in accordance with the OWNER'S REPRESENTATIVE'S written instructions, either correct such defective Work or, if it has been rejected by the OWNER'S REPRESENTATIVE, remove it from the site and replace it with non-defective Work. If, within seven calendar days, the DESIGN-BUILDER does not comply with the terms of such instructions, the Bonding Company shall be notified of default and requested to make repairs or replacement, the COUNTY may have the defective Work corrected or the rejected Work removed and replaced. All direct and indirect costs of such removal and replacement shall be paid by the DESIGN-BUILDER.

### **38 Acceptance of Defective Work**

- 38.1 If, instead of requiring correction or removal and replacement of defective Work, the COUNTY prefers to accept it, the COUNTY may do so. In such case, if acceptance occurs

prior to approval of final payment, a Change Order shall be issued incorporating the appropriate revisions to the Contract Documents including an appropriate reduction in the Contract Price. If the acceptance occurs after approval of the final payment, an appropriate amount shall be paid by the DESIGN-BUILDER to the COUNTY.

### **39 Neglected Work By DESIGN-BUILDER**

39.1 If the DESIGN-BUILDER should neglect to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, the COUNTY may, after three calendar days written notice to the DESIGN-BUILDER and without prejudice to any other remedy it may have, make good such deficiency and the cost thereof shall be charged against the DESIGN-BUILDER. A Change Order shall be issued incorporating the appropriate revision to the Contract Documents including an appropriate reduction in the Contract Price. If the payments then or thereafter due the DESIGN-BUILDER are not sufficient to cover such amount, the DESIGN-BUILDER shall pay the difference to the COUNTY.

### **40 Payment and Completion**

#### 40.1 Schedule of Values

40.1.1 Within ten (10) calendar days after the effective date of the Agreement, the DESIGN-BUILDER must submit a schedule of values of the Work including quantities and unit prices totaling to the Contract Price. This schedule shall be satisfactory in form and substance to the COUNTY and shall subdivide the Work into sufficient detail to serve as the basis for progress payments during construction. Upon approval of the schedule of values by the OWNER'S REPRESENTATIVE, it shall be incorporated into the Estimate and Requisition for Payment prescribed by the COUNTY. Unit Price Contracts shall have the bid proposal prices incorporated into the Estimate and Requisition for Payment.

#### 40.2 Application for Progress Payment

40.2.1 Bid proposal units and unit prices shall serve as the basis for progress payments during construction. The bid proposal process shall be incorporated into the Estimate and Requisition for Payment Form No. CSD:505(4) prescribed by the COUNTY.

40.2.2 Not more often than once a month, nor less often than specified in the approved payment schedule, and on a date established at the Project Pre-Construction Conference, the DESIGN-BUILDER will submit to the OWNER'S REPRESENTATIVE for review the Estimate and Requisition for Payment form filled out and signed by the DESIGN-BUILDER covering the Work completed as of the date of the Application and supported by such data as the OWNER'S REPRESENTATIVE may reasonably require. Also, if payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by such supporting data, satisfactory to the OWNER'S REPRESENTATIVE, as will establish the COUNTY'S title to the material and equipment and protect its interest therein, including applicable insurance. All progress payments will be subject to the retainage percentage specified in the Contract Documents. Such retainage shall be paid and will be issued in the final payment after acceptance by the COUNTY of the Work.

### **41 DESIGN-BUILDER's Warranty of Title**

41.1 The DESIGN-BUILDER 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 making of 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 DESIGN-BUILDER 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 DESIGN-BUILDER or such other person.

#### **42 Approval of Payments**

- 42.1 The OWNER'S REPRESENTATIVE will, within ten calendar days after receipt of each Application for Payment, either indicate his approval of payment and deliver the application to the COUNTY or return the Application to the DESIGN-BUILDER indicating in writing the reason for refusing to approve payment. In the latter case, the DESIGN-BUILDER may make the necessary corrections and re-submit the Application. The COUNTY will, within five calendar days after receipt of each approved application for payment, either indicate their approval of payment, and within fifteen calendar days pay the DESIGN-BUILDER the amount approved, or return the application to the DESIGN-BUILDER thru the OWNER'S REPRESENTATIVE indicating in writing the reason for refusing to approve payment. In the latter case, the DESIGN-BUILDER may make the necessary corrections and resubmit the application to the OWNER'S REPRESENTATIVE.
- 42.2 The OWNER'S REPRESENTATIVE'S approval of any payment requested in an Application for Payment shall constitute a representation by him to the COUNTY, based on the OWNER'S REPRESENTATIVE'S on-site observations of the Work in progress and on his review of the Application for Payment and the supporting data that the DESIGN-BUILDER is entitled to payment of the amount approved.
- 42.3 The OWNER'S REPRESENTATIVE'S approval of final payment shall constitute an additional representation by him to the COUNTY that the conditions precedent to the DESIGN-BUILDER'S being entitled to final payment as set forth have been fulfilled.
- 42.4 The OWNER'S REPRESENTATIVE may refuse to approve the whole or any part of any payment if in his opinion; he is unable to make such representations to the COUNTY. He may then refuse to approve any such payment because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously approved, to such extent as may be necessary in his opinion to protect the COUNTY from loss because:
- 42.4.1 The Work is defective;
  - 42.4.2 A portion of such payment is the subject of a dispute or claim that has been filed;
  - 42.4.3 The Contract Price has been reduced because of Modifications;
  - 42.4.4 The COUNTY has been required to correct defective Work or complete the Work, or of unsatisfactory prosecution of the Work, including failure to clean up as required.

#### **43 Substantial Completion**

- 43.1 Prior to final payment, the DESIGN-BUILDER shall, in writing to the OWNER'S REPRESENTATIVE, certify that the entire Project is substantially complete and request that the OWNER'S REPRESENTATIVE issue a Certificate of Substantial Completion. Within fourteen calendar days thereafter, the OWNER'S REPRESENTATIVE and the DESIGN-BUILDER will make an inspection of the Project to determine the status of completion. If the COUNTY does not consider the Project substantially complete, it will notify the DESIGN-BUILDER in writing giving the reasons therefore. If the COUNTY considers the Project substantially complete, a Certificate of Substantial Completion will be issued. This certificate shall fix the date of Substantial Completion and the responsibilities between the COUNTY and



the DESIGN-BUILDER for maintenance, heat and utilities. The Certificate of Substantial Completion will also include a punch list of items to be completed or corrected, said time to be within the Contract Time, and the estimated cost to complete each item on the list. The list of items shall be prepared by the COUNTY following the inspection and provided to the DESIGN-BUILDER within 30 days of the date of the inspection. The DESIGN-BUILDER shall then provide the estimated cost to complete each item on the list back to the COUNTY within 30 days. Within 20 business days after the list is created, COUNTY must pay the DESIGN-BUILDER the remaining contract balance that includes all retainage previously withheld by the COUNTY less an amount equal to 150 percent of the estimated cost to complete the items on the list. The COUNTY shall have the right to exclude the DESIGN-BUILDER from the Project after the date of Substantial Completion but the COUNTY will allow the DESIGN-BUILDER reasonable access to complete items on the punch list.

#### **44 Partial Utilization**

44.1 Prior to final payment, the OWNER'S REPRESENTATIVE may request the DESIGN-BUILDER to permit the use of a specified part of the Project which the COUNTY believes it may use without significant interference with construction of the other parts of the Project. If the DESIGN-BUILDER agrees, he will certify to the OWNER'S REPRESENTATIVE that said part of the Project is substantially complete and request the OWNER'S REPRESENTATIVE to issue a Certificate of Substantial Completion for that part of the Project. Within fourteen calendar days thereafter, the OWNER'S REPRESENTATIVE and the DESIGN-BUILDER will make an inspection of that part of the Project to determine its status of completion. If the COUNTY considers that part of the Project to be substantially complete, the OWNER'S REPRESENTATIVE will deliver to the DESIGN-BUILDER a certificate to that effect, fixing the date of Substantial Completion as to that part of the Project, and listing the punch list of items to be completed or corrected before final payment, the estimated cost to complete each item on the list and fixing the responsibility between the COUNTY and the DESIGN-BUILDER for maintenance, heat and utilities as to that part of the Project. This list shall be prepared by the COUNTY following the inspection and provided to the DESIGN-BUILDER within 30 days of the date of the inspection. The DESIGN-BUILDER shall then provide the estimated cost to complete each item on the list back to the COUNTY within 30 days. The COUNTY shall have the right to exclude the DESIGN-BUILDER from any part of the Project which is so certified to be substantially complete but the COUNTY will allow the DESIGN-BUILDER reasonable access to complete or correct items on the punch list.

44.2 If the COUNTY fails to provide the punch list to the DESIGN-BUILDER within the timeframe specified in Paragraph 44.1, the DESIGN-BUILDER may submit a payment request to the COUNTY for the remaining balance of the contract, including all remaining retainage withheld by the COUNTY. The COUNTY will then pay the DESIGN-BUILDER within 20 business days after receipt of a proper invoice or payment request. If the COUNTY has provided written notice to the DESIGN-BUILDER specifying the failure of the DESIGN-BUILDER to meet contract requirements in the development of the list of items to be completed, the COUNTY must pay the DESIGN-BUILDER the remaining balance of the contract, less an amount equal to 150 percent of the estimated cost to complete the items that the COUNTY intended to include on the list.

#### **45 Final Inspection**

45.1 Upon written notice from the DESIGN-BUILDER that the Project is complete, the OWNER'S

REPRESENTATIVE will make a final inspection with the DESIGN-BUILDER and will notify the DESIGN-BUILDER in writing of any particulars which this inspection reveals that the Work is defective. The DESIGN-BUILDER shall immediately make such corrections as are necessary to remedy the defects within a reasonable time.

#### **46 Final Inspection for Payment**

46.1 After the DESIGN-BUILDER has completed any such corrections to the satisfaction of the OWNER'S REPRESENTATIVE and delivered all maintenance and operating instructions, schedules, guarantees, bonds, Certificates of Inspection and other documents as required by the Contract Documents, he may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by legally effective final releases or waivers of liens from the DESIGN-BUILDER and all SUB-CONTRACTORS which performed services for the DESIGN-BUILDER pursuant to the Contract Documents and the consent of surety, if applicable to final payment.

#### **47 Approval of Final Payment**

47.1 If, on the basis of its observations and review of the Work during construction, its final inspection and its review of the final Estimate and Requisition for Payment, all as required by the Contract Documents, the OWNER'S REPRESENTATIVE is satisfied that the Work has been completed and the DESIGN-BUILDER has fulfilled all of his obligations under the Contract Documents, it will, within ten calendar days after receipt of the final Application for Payment, indicate in writing its approval of payment and deliver the application to the COUNTY. Otherwise, it will return the Application to the DESIGN-BUILDER, indicating in writing its reason for refusing to approve final payment, in which case the DESIGN-BUILDER will make the necessary corrections and re-submit the Application. The COUNTY will, within fifteen calendar days after receipt of approved application for final payment, either indicate their approval of the estimate and requisition application for payment and within fifteen calendar days pay the DESIGN-BUILDER the amount approved by the COUNTY and issue a Certificate of Final Completion or return the application thru the OWNER'S REPRESENTATIVE indicating in writing the reason for refusing to approve payment. In the latter case, the DESIGN-BUILDER may make the necessary corrections and resubmit the application to the OWNER'S REPRESENTATIVE.

47.2 If, after substantial Completion of the Work, final completion is materially delayed through no fault of the DESIGN-BUILDER, and the OWNER'S REPRESENTATIVE so confirms, the COUNTY shall and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the DESIGN-BUILDER to the OWNER'S REPRESENTATIVE, prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

47.3 If liquidated damages are to be deducted from the final payment, the COUNTY shall so notify the DESIGN-BUILDER in writing at least seven calendar days prior to the COUNTY'S submittal to Finance.

47.4 The DESIGN-BUILDER will be required to submit with his final payment documents a DBE Participation Certification, indicating all DBE sub-contractor(s) and amount(s) utilized for the project.

47.5 If the DESIGN-BUILDER did not utilize the DBE firm(s) listed on the Bid Proposal, a letter

of justification, as to why shall be submitted along with the DBE Participation Certification.

- 47.6 At the final completion of the construction project if the county project manager experienced problems with the DESIGN-BUILDER the project manager will prepare a DESIGN-BUILDER Performance Evaluation, and forward to the DESIGN-BUILDER for review, comment and signature.
- 47.7 Upon receipt of the DESIGN-BUILDER Performance Evaluation the DESIGN-BUILDER will have seven calendar days, from the date received, to review, comment, sign and return back to the project manager. If the evaluation has not been received back from the DESIGN-BUILDER within the seven calendar days, the COUNTY will assume the DESIGN-BUILDER fully agrees with and has no comments to the evaluation. The evaluation will then be placed on file with Lee County Procurement Management.

#### **48 DESIGN-BUILDER'S Continuing Obligation**

- 48.1 The DESIGN-BUILDER'S obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or final payment by the COUNTY, the issuance of the Certificates of Completion, any payment by the COUNTY to the DESIGN-BUILDER under the Contract Documents, any use or occupancy of the Project or any part thereof by the COUNTY, any act of acceptance by the COUNTY, any failure to do so, nor any correction of defective Work by the COUNTY shall constitute an acceptance of Work not in accordance with the Contract Documents.

#### **49 Waiver of Claims**

- 49.1 The making and acceptance of final payment shall constitute:
- 49.1.1 A waiver of all claims by the COUNTY against the DESIGN-BUILDER other than those arising from unsettled liens, from defective Work appearing after final payment or from failure to comply with the requirements of the Contract Documents, or from the terms of any special guarantees specified therein, and,
- 49.1.2 A waiver of all claims by the DESIGN-BUILDER against the COUNTY other than those previously made in writing and still unsettled.

#### **50 Contract Termination**

- 50.1 MATERIAL BREACH A DESIGN-BUILDER may be Terminated for Cause by the County, at the sole discretion of the Procurement Management Director, for failing to perform a contractual requirement or for a material breach of any term or condition. A material breach of a term or condition of the Agreement may include but is not limited to: 1. DESIGN-BUILDER failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Agreement; 2. DESIGN-BUILDER failure to carry out any warranty or fails to perform or comply with any mandatory provision of the Agreement; 3. DESIGN-BUILDER becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; 4. DESIGN-BUILDER becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the DESIGN-BUILDER's proper performance hereunder; 5. Appointment of any receiver, trustee, or similar official for DESIGN-BUILDER or any of the DESIGN-BUILDER's property and such appointment endangers the DESIGN-BUILDER's proper performance hereunder; 6. A determination that the DESIGN-BUILDER is in violation of federal, state, or local laws or regulations and that such determination renders the DESIGN-BUILDER unable to perform any aspect of the Agreement.

- 50.2 **OPPORTUNITY TO CURE** In the event that DESIGN-BUILDER fails to perform a contractual requirement or materially breaches any term or condition, the County may issue a written cure notice. The DESIGN-BUILDER may have a period of time in which to cure. The County is not required to allow the DESIGN-BUILDER to cure defects if the opportunity for cure is not feasible as, determined solely within the discretion of the County. Time allowed for cure shall not diminish or eliminate DESIGN-BUILDER's liability for damages, or otherwise affect any other remedies available against DESIGN-BUILDER under the Agreement or by law. If the breach remains after DESIGN-BUILDER has been provided the opportunity to cure, the County may do any one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this Agreement and any related contracts or portions thereof; 3. Procure replacements and impose damages as set forth elsewhere in this Agreement, if applicable; 4. Impose actual or liquidated damages; 5. Suspend or bar DESIGN-BUILDER from receiving future solicitations or other opportunities; 6. Require DESIGN-BUILDER to reimburse the County for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Agreement.
- 50.3 **TERMINATION FOR CAUSE** In the event the Procurement Management Director, in its sole discretion, determines that the DESIGN-BUILDER has failed to comply with the conditions of this Agreement in a timely manner or is in material breach, the Procurement Management Director has the right to suspend or terminate this Agreement, in part or in whole. The Procurement Management Director shall notify the DESIGN-BUILDER in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days or as otherwise specified by the Procurement Management Director, or if such corrective action is deemed by the County to be insufficient, the Agreement may be terminated. The County reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the DESIGN-BUILDER from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the DESIGN-BUILDER or a decision by the County to terminate the Agreement. In the event of termination, the County shall have the right to procure any replacement materials, supplies, services and/or equipment that are the subject of this Agreement on the open market. In addition, the DESIGN-BUILDER shall be liable for damages as authorized by law including, but not limited to, any price difference between the original Agreement and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. If it is determined that: (1) the DESIGN-BUILDER was not in material breach; or (2) failure to perform was outside of DESIGN-BUILDER's or its sub-contractor control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience." The rights and remedies of the County provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.
- 50.4 **TERMINATION FOR CONVENIENCE** Except as otherwise provided in this Agreement, the County, at the sole discretion of the Procurement Management Director, may terminate this Agreement, in whole or in part by giving thirty (30) calendar days written notice beginning on the second day after mailing to the DESIGN-BUILDER. If this Agreement is so terminated, the County shall be liable only for payment required under this Agreement for properly authorized services rendered, or materials, supplies and/or equipment delivered to and accepted by the County prior to the effective date of Agreement termination. The County shall have no other obligation whatsoever to the DESIGN-BUILDER for such termination.

## 51 Miscellaneous

### 51.1 General

- 51.1.1 All Specifications, Drawings and copies thereof furnished by the COUNTY, to the DESIGN-BUILDER, shall remain the COUNTY'S property. They shall not be used on another Project.
- 51.1.2 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder, and, in particular but without limitation, the warrants, guarantees and obligations imposed upon the DESIGN-BUILDER and the rights and remedies available to the COUNTY thereunder shall be in addition to and not a limitation of any otherwise imposed or available by law, by special guarantee or other provisions of the Contract Documents.
- 51.1.3 Should the COUNTY or the DESIGN-BUILDER suffer injury or damage to its person or property because of any error, omission or act of the other or any of his employees, agents, or others for whose acts he is legally liable, claim should be made in writing to the other party within seven calendar days of the first observance of such injury or damage.
- 51.1.4 The Contract Documents shall be governed by the laws of the State of Florida, the County of Lee, and the municipality in which the project is being done.
- 51.2 Right-of-Way Station Boards: The DESIGN-BUILDER must establish and maintain throughout construction the right-of-way station boards at every even station within ten (10) days after the Notice to Proceed to assist and expedite construction and utility coordination. No additional compensation or separate pay item will be made for this work.
- 51.3 Abbreviations: Reference in the technical specifications to the specifications or requirements of technical societies, associated organization, or bodies shall mean their most current specifications. These groups are identified in the technical specifications.
- 51.4 Use of Public Streets: The use of public streets and roads shall be such as to minimize any inconvenience to the public and to other traffic. Any earth or other excavation materials spilled from trucks shall be removed by the DESIGN-BUILDER and the streets and roads shall be cleaned by the DESIGN-BUILDER to the satisfaction of the COUNTY.
- 51.5 Damage to Existing Property, Structures and Utilities: The DESIGN-BUILDER shall be held responsible for and shall repair all damage to pavement beyond the limits of the contract or outside the right-of-way. Also, the DESIGN-BUILDER shall repair if damaged buildings, telephone or other cables, poles, signs, mailboxes, irrigation piping, water pipes, sanitary pipes, or other structures which may be encountered, whether or not they are shown on the Drawings. Information shown on the Drawings as to the location of existing utilities has been prepared from the most reliable data available to the Engineer. However, this information is not guaranteed, and it shall be the DESIGN-BUILDER'S responsibility to determine the location, character, and depth of any existing utilities. The DESIGN-BUILDER shall assist the utility companies, by every means possible, to determine said locations. The DESIGN-BUILDER shall exercise extreme caution to eliminate any possibility of any damage to utilities resulting from his activities.
  - 51.5.1 At least two (2) business days prior to excavating any section of the Work, the DESIGN-BUILDER shall call the utility companies noted on the plans and inform them that Work on the specific section is about to commence and request that they field locate their underground utilities.
  - 51.5.2 When proceeding with the Work, the DESIGN-BUILDER shall exercise due caution to protect all underground and overhead utilities and existing structures from damage. In keeping with the Trench Safety Act, the DESIGN-BUILDER shall provide all sheeting, shoring, and bracing that may be required to properly protect adjacent property, structures and people. The DESIGN-BUILDER shall repair, to the satisfaction of the OWNER, any surface or subsurface Improvement damaged during



- the course of the Work (unless such improvement is shown to be abandoned or removed) whether or not such improvement is shown on the Drawing. Should any utilities be encountered that are not shown on the Drawing, the DESIGN-BUILDER shall immediately notify the OWNER'S REPRESENTATIVE and shall take all due caution necessary to protect the utility.
- 51.6 Adjustment of Grades: Adjustments of grades shown on Drawings may be necessary to conform to actual field conditions or to maintain cover under proposed future grades. Such adjustments shall be considered part of the job conditions and no extra compensation will be allowed for such changes, except where specifically otherwise noted in the plans or specifications. Such adjustments must be approved by the OWNER'S REPRESENTATIVE prior to being made.
- 51.7 Existing Drainage: Existing drainage shall be maintained at all times and drainage under construction shall be left open so as not to cause flooding due to blockage. Any damage to construction caused by this requirement shall be the responsibility of the DESIGN-BUILDER.
- 51.8 Reference to Other Specifications
- 51.8.1 Reference to FDOT Specifications shall mean the State of Florida Department of Transportation Standard Specifications for Road and Bridge Construction dated July 2016 and supplements thereto unless specifically stated otherwise in the Contract Documents. Where an FDOT Specification section cites or contains references to other sections, they shall also be included as though cited herein. Where FDOT Specifications refer to the "Engineer", "Engineer of Test" or "Division of Test", it shall be understood to mean the OWNER'S REPRESENTATIVE or his designee. Where FDOT Specifications refer to the "Department", it shall mean the Department of Transportation of Lee County, Florida.
- 51.8.2 In case of conflict between the referenced FDOT Specifications and the Contract Documents, the Contract Documents shall govern.
- 51.8.3 Reference to AASHTO and ASTM are to the latest editions of published text of the American Association of Highway and Transportation Officials and the American Society for Testing and Materials, respectively.
- 51.9 Shoring
- 51.9.1 Unless trench banks are cut back on a stable slope, sheet and brace trenches shall be used as necessary to prevent caving or sliding, to provide protection for workmen and the pipe, and to protect adjacent structures and facilities. The DESIGN-BUILDER shall not brace sheeting against the pipe, but shall brace it so that no concentrated loads of horizontal thrust are transmitted to the pipe. If portable metal box is used for bracing the slopes, the DESIGN-BUILDER shall take care not to disturb the pipe when the box is removed.
- 51.9.2 The DESIGN-BUILDER must comply with the Trench Safety Act, Florida Statutes Sections 553.60 – 553.64. Cost of compliance is not a separate pay item. Costs shall be included in the cost of pipe placement.
- 51.10 Dewatering: Dewatering of excavations, trenches, structures and utilities may be required. The DESIGN-BUILDER shall be responsible for obtaining water use permits for dewatering operations, as necessary, from the South Florida Water Management District. No separate payment will be made for dewatering operations or procurement of dewatering permits. Costs shall be included in the cost of items as included in the Bid Form.
- 51.11 Excess Excavated Material: Unless otherwise specified, all excavated material in excess of the needs for backfill and area fill shall become the property of the DESIGN-BUILDER, and the DESIGN-BUILDER shall remove same from the project.
- 51.12 Asphalt Paving Conference: A pre-paving conference shall be held prior to any asphalt

placement. The conference is intended to closely coordinate the DESIGN-BUILDER'S plant and site personnel with the COUNTY'S plant and field inspectors and establish expected quality assurance procedures. The DESIGN-BUILDER shall not perform any paving prior to this conference.

- 51.13 Rock Excavation: All excavations for the installation of pipes, structures, foundations, or other contract items shall be unclassified and no additional or separate payment for rock excavation shall be provided nor shall additional or separate payment be made for backfill required to compensate for excavated rock material that cannot be reused as backfill.
- 51.14 Permits
- 51.14.1 Copies of permits for this project other than for dewatering or NPDES will be provided by the COUNTY.
- 51.14.2 The DESIGN-BUILDER shall abide by all conditions, statutes, and regulations issued by the jurisdiction authorities, boards and agencies of the COUNTY, State and Federal Governments. The DESIGN-BUILDER shall be fully responsible for the execution and adherence to all directives, instructions, conditions, issuance of notices, special conditions, and limiting conditions contained in permits specifically issued for this project and which pertain to or affect the construction phase of this project. Except as may be provided elsewhere in these documents, the cost of materials, supplies, labor testing, permit fees and other direct or indirect expenses required to abide by or execute conditions of the permits shall be paid for by the DESIGN-BUILDER. There is no direct or specific payment item in the bid for cost due to compliance with said permits. The DESIGN-BUILDER'S reimbursement for said costs shall be distributed within the various items of work and materials associated with the construction of the project.
- 51.15 Field Office: DESIGN-BUILDER is not required to provide a field office within the project limits as long as DESIGN-BUILDER has a field office within Lee, Collier or Charlotte County prior to bidding. If DESIGN-BUILDER does not have an established office within Lee, Collier or Charlotte County, then the DESIGN-BUILDER shall provide and staff a field office within the project limits for the entire project duration, per FDOT requirements. This item shall be compensated under the mobilization item and no separate payment will be made. The DESIGN-BUILDER shall coordinate the location of this field office with the Lee County Project Manager prior to the issuance of the Notice to Proceed.

## **52 Computation of Time**

- 52.1 When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

## **53 Maintenance of Records**

- 53.1 The DESIGN-BUILDER shall keep adequate records and supporting documents applicable to this contractual matter. Said records and documentation will be retained by the DESIGN-BUILDER for a minimum of five years from the date of termination of this Contract. The COUNTY and its authorized agents shall have the right to audit, inspect and copy records and documentation as often as the COUNTY deems necessary during the period of this Contract and during the period of five years thereafter; provided, however, such activity shall be conducted only during normal business hours. The COUNTY, during the period of time expressed by the preceding sentence, shall also have the right to obtain a copy of, and otherwise inspect, any audit made at the direction of the DESIGN-BUILDER as concerns the aforesaid records and documentation.
- 53.2 Vendor specifically acknowledges its obligations to comply with §119.0701, F.S., with regard to public records, and shall:

- 53.2.1 keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
- 53.2.2 provide the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- 53.2.3 ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 53.2.4 meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Vendor 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 in a format that is compatible with the information technology system of the County.

53.3 **IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'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, <http://www.leegov.com/publicrecords>.**

#### 54 Federal Requirements

- 54.1 In the event this Contract is paid in whole or in part from any Federal Governmental agency or source, the specific terms, regulations and requirements governing the disbursement of these funds are incorporated by reference and made a part of this Contract as if attached hereto and become a part of this clause.

**End of General Conditions Section**

## SUPPLEMENTAL CONDITIONS AND CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

### 1. FEDERAL FUNDING

- 1.1 When property or services are procured using funds derived from a Federal grant or Agreement whether direct to the County or “pass-through” from another entity, the County is required to and will follow the Federal procurement standards in the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, 2 C.F.R. Part 200, Sections 200.318 through 200.327.
- 1.2 CONTRACTOR, further referred to as CONSULTANT/CONTRACTOR/VENDOR within this section, shall work with the County under this Agreement to assure that it will comply with the following statutes and regulations to the extent applicable:
- (1) 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Appendix II
  - (2) The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
  - (3) Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law 103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264
  - (4) 31 CFR Part 25 Rules and Procedures for Funds Transfers

Contract Cost and Price: For every procurement in excess of the Simplified Acquisition Threshold, including contract modifications, the County shall perform a cost or price analysis in connection with every procurement subject to Federal procurement guidelines, which shall include an independent estimate of cost prior to issuing bids or proposals. For proposals where price is not considered in the award, profit shall be negotiated as a separate element of the price. In determining whether profit is fair and reasonable, the County shall consider the complexity of work, the risk to be borne by the contractor, the contractor’s investment, the amount of subcontracting necessary, the quality of the contractor’s record and past performance, and industry profit rates for the surrounding geographical area. “Cost Plus Percentage” methods for determining profit may not be used.

### 2. EQUAL EMPLOYMENT OPPORTUNITY

2.1. During the performance of this contract, the contractor agrees as follows:

- 2.1.1. The CONSULTANT/CONTRACTOR/VENDOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONSULTANT/CONTRACTOR/VENDOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT/CONTRACTOR/VENDOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2.1.2. The CONSULTANT/CONTRACTOR/VENDOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT/CONTRACTOR/VENDOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 2.1.3. The CONSULTANT/CONTRACTOR/VENDOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has

inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT/CONTRACTOR/VENDOR's legal duty to furnish information.

- 2.1.4. The CONSULTANT/CONTRACTOR/VENDOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the CONSULTANT/CONTRACTOR/VENDOR's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 2.1.5. The CONSULTANT/CONTRACTOR/VENDOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 2.1.6. The CONSULTANT/CONTRACTOR/VENDOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 2.1.7. In the event of the CONSULTANT/CONTRACTOR/VENDOR's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled or terminated in whole or in part and the CONSULTANT/CONTRACTOR/VENDOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 2.1.8. The CONSULTANT/CONTRACTOR/VENDOR will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-CONSULTANT/CONTRACTOR/VENDOR. The CONSULTANT/CONTRACTOR/VENDOR will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the CONSULTANT/CONTRACTOR/VENDOR becomes involved in, or is threatened with, litigation with a sub-CONSULTANT/CONTRACTOR/VENDOR as a result of such direction, the CONSULTANT/CONTRACTOR/VENDOR may request the United States to enter into such litigation to protect the interests of the United States.

### **3. MAINTENANCE OF RECORDS/ACCESS TO RECORDS**

- 3.1. The CONSULTANT/CONTRACTOR/VENDOR will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this agreement. Said records and documentation will be retained by the CONSULTANT/CONTRACTOR/VENDOR for a minimum of five (5) years from the date of termination of this agreement, or for such period is required by law.



- 3.2. CONSULTANT/CONTRACTOR/VENDOR shall provide, when requested, access by the County, Federal granting agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the CONSULTANT/CONTRACTOR/VENDOR which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 3.3. CONSULTANT/CONTRACTOR/VENDOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 3.4. CONSULTANT/CONTRACTOR/VENDOR agrees to provide the GRANT AGENCY Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.
- 3.5. CONSULTANT/CONTRACTOR/VENDOR shall retain all records associated with this solicitation and any agreements that are created in response to the solicitation for a period of no less than five (5) years after final payments and all other pending matters are closed.
- 3.6. The County and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the County deems necessary during the period of this agreement, and during the period as set forth in the paragraphs above; provided, however, such activities shall be conducted only during normal business hours of the CONSULTANT/CONTRACTOR/VENDOR and at the expense of the County.

**4. DHS SEAL, LOGO, AND FLAGS**

- 4.1. The CONSULTANT/CONTRACTOR/VENDOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific GRANT AGENCY pre-approval.

**5. LOCAL VENDOR PREFERENCE EXCLUSION:**

- 5.1. Local Vendor Preference Ordinance has been waived for this service/purchase request and any and all references contained herein are non-applicable to this request and subsequent contract and/or purchase order(s).

**6. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, and EXECUTIVE ORDERS**

- 6.1. This is an acknowledgment that GRANT AGENCY financial assistance will be used only to fund the services requested. The CONSULTANT/CONTRACTOR/VENDOR will comply with all applicable federal law, regulations, executive orders, GRANT AGENCY policies, procedures, and directives.

**7. NO OBLIGATION BY THE FEDERAL GOVERNMENT**

- 7.1. The Federal Government is not a party to this solicitation and is not subject to any obligations or liabilities to the non-Federal entity, CONSULTANT/CONTRACTOR/VENDOR, or any other party pertaining to any matter resulting from the Solicitation.

**8. FRAUD and FALSE OR FRAUDULENT OR RELATED ACTS**

- 8.1. The CONSULTANT/CONTRACTOR/VENDOR acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT/CONTRACTOR/VENDORS actions pertaining to this solicitation.

**9. SUBCONTRACTS**

- 9.1. The selected firm must require compliance with all federal requirements of all sub-CONSULTANT/CONTRACTOR/VENDORS performing work for Prime CONSULTANT/CONTRACTOR/VENDOR under this Agreement, by including these federal requirements in all contracts with sub-CONSULTANT/CONTRACTOR/VENDORS.

## 10. CONFLICT OF INTEREST

- 10.1. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officers, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from CONSULTANT/CONTRACTOR/VENDORS or parties to subcontracts.

## 11. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (E-VERIFY)

- 11.1. Statutes and Executive Orders require employers to abide by the Immigration laws of the United States and to employ only individuals who are eligible to work in the United States. The Employment Eligibility Verification System (E-Verify) operated by the U.S. Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) to provides an internet-based means of verifying employment eligibility of workers in the united States; it is not a substitute for any other employment eligibility verification requirements.
- 11.2. Sub-CONSULTANT/CONTRACTOR/VENDOR requirement: Vendors shall require all subcontracted vendors to flow down the requirement to use E-Verify to sub-CONSULTANT/CONTRACTOR/VENDORS.
- 11.3. It shall be the vendor's responsibility to familiarize themselves with all rules and regulations governing this program.
- 11.4. For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the following website: <http://www.dhs.gov/E-Verify>.

## 12. ENERGY POLICY AND CONSERVATION ACT

- 12.1. CONSULTANT/CONTRACTOR/VENDOR must follow any mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

## 13. SMALL AND MINORITY BUSINESS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

- 13.1. CONSULTANT/CONTRACTOR/VENDOR must take all necessary steps identified in 2 C.F.R. 321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- 13.1.1 Place qualified small and minority businesses and women's business enterprises on solicitation lists.
- 13.1.2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- 13.1.3 Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

- 13.1.4 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises.
- 13.1.5 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises.
- 13.1.6 Requiring the prime CONSULTANT/CONTRACTOR/VENDOR, if subcontracts are to be let, to take the five previous affirmative steps.

#### **14. DOMESTIC PREFERENCES FOR PROCUREMENT (2 C.F.R. § 200.322)**

- 14.1. As appropriate and to the greatest extent consistent with law, state and non-state entities should, to the greatest extent practicable under its GRANT AGENCY award, provide a preference for the purchase of goods, products or materials produced in the United States (including but not limited to iron, aluminum, steel, cement and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. 2 C.F.R. § 200.322 also provides specific definitions for “Produced in the United States” and “manufactured products” that states should review.

#### **15. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS OR SERVICES (2 C.F.R. § 200.216)**

- 15.1. 2 C.F.R. § 200.216 prohibits state and non-state entities from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system as identified in Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. See Prohibitions on Expending GRANT AGENCY Award Funds for Covered Telecommunications Equipment or Services- Interim Policy for additional information.

#### **16. TERMINATION FOR CAUSE AND/OR CONVENIENCE**

- 16.1 MATERIAL BREACH A Contractor may be Terminated for Cause by the County, at the sole discretion of the Procurement Management Director, for failing to perform a contractual requirement or for a material breach of any term or condition. A material breach of a term or condition of the Agreement may include but is not limited to: 1. Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Agreement; 2. Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the Agreement; 3. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; 4. Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor’s proper performance hereunder; 5. Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor’s property and such appointment endangers the Contractor’s proper performance hereunder; 6. A determination that the Contractor is in violation of federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the Agreement.

16.2 **OPPORTUNITY TO CURE** In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the County may issue a written cure notice. The Contractor may have a period of time in which to cure. The County is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as, determined solely within the discretion of the County. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, or otherwise affect any other remedies available against Contractor under the Agreement or by law. If the breach remains after Contractor has been provided the opportunity to cure, the County may do any one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this Agreement and any related contracts or portions thereof; 3. Procure replacements and impose damages as set forth elsewhere in this Agreement, if applicable; 4. Impose actual or liquidated damages; 5. Suspend or bar Contractor from receiving future solicitations or other opportunities; 6. Require Contractor to reimburse the County for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Agreement.

16.3 **TERMINATION FOR CAUSE** In the event the Procurement Management Director, in his/her sole discretion, determines that the Contractor has failed to comply with the conditions of this Agreement in a timely manner or is in material breach, the Procurement Management Director has the right to terminate this Agreement, in part or in whole. The Procurement Management Director shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days or as otherwise specified by the Procurement Management Director, or if such corrective action is deemed by the County to be insufficient, the Agreement may be terminated. The County reserves the right to withhold further payments or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the County to terminate the Agreement. In the event of termination, the County shall have the right to procure any replacement materials, supplies, services and/or equipment that are the subject of this Agreement on the open market. In addition, the Contractor shall be liable for damages as authorized by law including, but not limited to, any price difference between the original Agreement and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. If it is determined that: (1) the Contractor was not in material breach; or (2) failure to perform was outside of Contractor's or its subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience." The rights and remedies of the County provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

16.4 **TERMINATION FOR CONVENIENCE** Except as otherwise provided in this Agreement, the County, at the sole discretion of the Procurement Management Director, may terminate this Agreement, in whole or in part by giving thirty (30) calendar days written notice beginning on the second day after mailing to the Contractor. If this Agreement is so terminated, the County shall be liable only for payment required under this Agreement for properly authorized services rendered, or materials, supplies and/or equipment delivered to and accepted by the County prior to the effective date of Agreement termination. The County shall have no other obligation whatsoever to the Contractor for such termination.

## 17. **SUSPENSION AND DEBARMENT**

17.1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONSULTANT/CONTRACTOR/VENDOR is required to verify that none of the CONSULTANT/CONTRACTOR/VENDOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

17.2. The CONSULTANT/CONTRACTOR/VENDOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

- 17.3. This certification is a material representation of fact relied upon by the awarded CONSULTANT/CONTRACTOR/VENDOR. If it is later determined that the CONSULTANT/CONTRACTOR/VENDOR did not comply with 2 C.F.R. pt.180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Lee County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 17.4. The CONSULTANT/CONTRACTOR/VENDOR agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- 17.5. If, at any point during the term of this contract, the CONSULTANT/CONTRACTOR/VENDOR or any principals thereof are found to be on a federal or state debarment list, or if federal or state debarment action is initiated against the contractor or their principals during this time period, this contract shall be immediately rendered null and void.
- 17.5.1. If debarment action has been taken against any subcontractor, the CONSULTANT/CONTRACTOR/VENDOR shall provide an alternative subcontractor within 10 days of notification. The debarred subcontractor may not work on the project.

## 18. RECOVERED MATERIALS

- 18.1. In the performance of this contract, the CONSULTANT/CONTRACTOR/VENDOR shall make maximum use of products containing recovered material that are EPA-designated items unless the product cannot be acquired:
- Competitively within a timeframe providing for compliance with the contract performance schedule;
  - Meeting contract performance requirements; or
  - At a reasonable price.
- 18.2. Information about this requirement is available EPA'S Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/> The list of EPA- designate items is available at <http://www.epa.gov/cpg/products/htm>

## 19. OTHER REMEDIES AND RIGHTS

- 19.1. Pursuing any of the above remedies will not keep the County from pursuing any other rights or remedies, which may be otherwise available under law or in equity. If the County waives any right or remedy in this Agreement or fails to insist on strict performance by the CONSULTANT/CONTRACTOR/VENDOR, it will not affect, extend or waive any other right or remedy of the County, or affect the later exercise of the same right or remedy by the County for any other default by the CONSULTANT/CONTRACTOR/VENDOR.
- 19.2. Unless otherwise provided by the Contract, all claims, counterclaims, disputes and other matters in question between the County and the CONSULTANT/CONTRACTOR/VENDOR arising out of or relating to the Agreement between the parties, or the breach of it, that cannot be resolved by and between the parties after conferring in good faith, will be decided by a court of competent jurisdiction pursuant to Florida law. If such dispute is in state court, venue shall be in the Twentieth Judicial Circuit Court in and for Lee County, Florida. If in federal court, venue shall be in the U.S. District Court for the Middle District of Florida, Ft. Myers Division.

## 20. CONTRACT WORK HOURS & SAFETY STANDARDS (40 U.S.C. 3701-3708)



- 20.1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 20.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- 20.3. Withholding for unpaid wages and liquidated damages. The State of Florida Division of Emergency Management shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- 20.4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

## **21. CLEAN AIR ACT**

- 21.1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- 21.2. The contractor agrees to report each violation to the GRANT AGENCY and the Regional Office of the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 21.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

## **22. FEDERAL WATER POLLUTION CONTROL ACT**

- 22.1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- 22.2. The contractor agrees to report each violation to the GRANT AGENCY and the Regional Office of the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure

notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- 22.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

## **23. BYRD ANTI-LOBBYING AMENDMENT**

- 23.1. CONSULTANT/CONTRACTOR/VENDORS who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

## **24. CHANGES**

- 24.1. Modifications to alter the method, price, or schedule of the work for any reason shall be completed following the terms and provisions of the associated contract documents. No changes to the contract documents or the performance provided shall be made unless the same are in writing and signed by both the CONSULTANT/CONTRACTOR/VENDOR and the County.

## **25. COPYRIGHT AND DATA RIGHTS**

- 25.1. CONSULTANT/CONTRACTOR/VENDOR grant to the County, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the CONSULTANT/CONTRACTOR/VENDOR will identify such data and grant to the County or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the CONSULTANT/CONTRACTOR/VENDOR will deliver to the County data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the County.

## **26. DAVIS-BACON ACT**

### **26.1. Minimum wages**

- i. All laborers and mechanics employed or working upon the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics. Contributions made or costs reasonably anticipated

for bona fide fringe benefits under section 1(b)(2) of the Davis - Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be Posted at all times by the CONTRACTOR and its sub- CONTRACTORS at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii.

- (A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
1. Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
  2. The classification is utilized in the area by the construction industry; and
  3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  4. With respect to helpers as defined in 29 C.F.R. 5.2(n) (4), such a classification prevails in the area in which the work is performed.
- (B) If the CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (C) In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (ii) (B) or (C) of this section, shall be paid to all workers performing Work in the classification under the Contract from the first day on which Work is performed in the classification.

26.2. Withholding - LCBOCC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the CONTRACTOR under the Contract or any other Federal contract with the same prime CONTRACTOR, or any other federally- assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime CONTRACTOR, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the CONTRACTOR or any sub-CONTRACTOR the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, LCBOCC may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### 26.3. Payrolls and basic records

- i. Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTORS employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

ii.

- (A) The CONTRACTOR shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to LCBOCC for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 C.F.R. part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime CONTRACTOR is responsible for the submission of copies of payrolls by all sub- CONTRACTORS.

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the CONTRACTOR or sub- CONTRACTOR or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5 and that such information is correct and complete;

2. That each laborer or mechanic (including each helper, apprentice, and trainee employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;
  3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of Work performed, as specified in the applicable wage determination incorporated into the Contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (c) (i) (B) of this section.
- (D) The falsification of any of the above certifications may subject the CONTRACTOR or sub-CONTRACTOR to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- iii. The CONTRACTOR or sub- CONTRACTOR shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the CONTRACTOR or sub- CONTRACTOR fails to submit the required records or to make them available, the Federal agency may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

#### 26.4.Apprentices and trainees

- i. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the Work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the CONTRACTOR as to the entire Work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. Where a CONTRACTOR is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the CONTRACTOR's or sub- CONTRACTOR's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes



shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the CONTRACTOR will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

- ii. Trainees - Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any trainee performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the CONTRACTOR will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.
- iii. Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.

26.5. Compliance with Copeland Act requirements. The CONTRACTOR shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in the Contract.

26.6. Subcontracts. The CONTRACTOR or sub- CONTRACTOR shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the sub-CONTRACTORS to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for the compliance by any sub- CONTRACTOR or lower tier sub- CONTRACTO with all the Contract clauses in 29 C.F.R. 5.5.

26.7. Contract termination: debarment. A breach of the Contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the Contract, and for debarment as a CONTRACTOR and a sub- CONTRACTOR as provided in 29 C.F.R. 5.12.

26.8. Compliance with Davis - Bacon and Related Act requirements. All rulings and interpretations of the Davis - Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in the Contract.

26.9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general disputes clause of the Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the CONTRACTOR (or any of its sub-CONTRACTORS) and the Contracting agency, the U.S. Department of Labor, or the employees or their representatives.

26.10. Certification of eligibility

- i. By entering into the Contract, the CONTRACTOR certifies that neither it (nor he or she) nor any person or firm who has an interest in the CONTRACTOR's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).
- ii. No part of the Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).
- iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**End of Supplemental Conditions**

## DETAILED SPECIFICATIONS

LEE COUNTY has established the following guidelines, objectives, constraints, schedule, and other requirements, which shall serve as a guide to the DESIGN-BUILDER in performing professional services.

### 1. GENERAL SCOPE OF PROJECT

- 1.1. Lee County Board of County Commissioners seeks to contract with a qualified Vendor to complete a Design-Build project that includes project management, design, survey, permitting, full-time CEI and construction services to permanently repair / replace 20 lift stations. See Appendix A – Map, to better understand the various locations of the lift stations across the County. Fifteen (15) lift stations require a control panel replacement, one (1) lift station requires installation of a new generator, and most lift stations require replacing or repairing miscellaneous materials. See Appendix C – FEMA DDD to see specific equipment and materials to be replaced at each lift station and Appendix D – Lift Station Information for details on each lift station.

### 2. BACKGROUND

- 2.1. During Hurricane Ian, 20 lift stations were damaged from wind and flooding.
- 2.2. The purpose of the proposed project is to permanently repair / replace the lift stations that were damaged during Hurricane Ian due to flooding, salt-water intrusion, and wind damage.

### 3. SCOPE OF WORK

#### 3.1. Pre-Design Analysis

- 3.1.1. The County will provide all lift station control panels and junction boxes as Owner Furnished Equipment (OFE).
- 3.1.2. The County will provide the 35kW generator and fuel tank as OFE.
- 3.1.3. The Design-Builder will be responsible for transporting the OFE from a County warehouse(s).
- 3.1.4. The Design-Builder must determine which wind and flood mitigation measures are appropriate and cost-effective for incorporation into the design of existing retrofit, proposed structures, and critical equipment and provide a plan for each lift station to the County.
- 3.1.5. On-site observations and meetings with Lee County staff from operations, maintenance, electrical and engineering will be required to compile additional information as needed. The Design-Builder to record and distribute meeting minutes within three (3) business days of the meeting date.
- 3.1.6. The Design-Builder is responsible for providing recommendations for any and all repairs, replacements, or upgrades to the system that are needed and provide a plan for each lift station to the County while maintaining compliance with all federal, state, and local regulations, policies, and ordinances. Including but not limited to the most current versions of The Florida Building Code, the Lee County Land Development Code, the Lee County Utilities Design Manual, FEMA and FDEP guidelines.
  - 3.1.6.1. The owner furnished materials may not be an exact like-for-like replacement with what is existing, and modifications, extensions, or relocations of the control panel racks or generator pads within the allotted easement may be required. This shall be considered and included in the recommendations plans for each lift station.

#### 3.2. Design

- 3.2.1. The Design-Builder will need to complete all professional architectural/engineering and permitting needed for the successful completion of the project.

3.2.2. The Design-Builder shall follow all FEMA guidelines as this project will be federally funded.

3.2.3. Services may include, but are not limited to the following:

- 3.2.3.1. Coordinate, attend and conduct a kick-off meeting, record and distribute to the County the meeting minutes. The Design-Builder to record and distribute meeting minutes within three (3) days of meeting date.
- 3.2.3.2. Provide survey services and assistance in acquiring any easements required for construction.
- 3.2.3.3. Provide geotechnical services as required.
- 3.2.3.4. Provide a design schedule in MS Project format and submit weekly progress reports to the County detailing overall progress percentages at each lift station and the project in it's entirety.
- 3.2.3.5. Prepare and provide a complete set of signed and sealed engineered construction plans and technical specifications meeting the project detailed specifications and Design Criteria.
- 3.2.3.6. Submit design documentation reviews at 60%, 90% and 100% levels of completion.
- 3.2.3.7. Conduct value engineering review meetings as needed or at the request of the County. The Design-Builder to record and distribute meeting minutes within three (3) days of meeting date.
- 3.2.3.8. Coordinate various design and review meetings as necessary or at the request of the County. The Design-Builder to record and distribute meeting minutes within three (3) days of meeting date.
- 3.2.3.9. Distribute, track, and coordinate submittal reviews with all parties involved. Prepare and provide a weekly submittal log.
- 3.2.3.10. Prepare permit applications and obtain permits required by all regulatory agencies, including but not limited to the following: FDEP, SFWMD, Lee County (ROW, Development Order, Building and Electrical Permits), and any other necessary permits. The Design-Builder to record and distribute meeting minutes within three (3) days of meeting date.

### 3.3. Construction

3.3.1. The Design-Builder will provide all construction services required to complete the project. Services may include, but are not limited to the following:

- 3.3.1.1. Coordinate, attend and conduct a preconstruction meeting, record and distribute to the County the meeting minutes. The Design-Builder to record and distribute meeting minutes within three (3) days of meeting date.
- 3.3.1.2. Obtain all construction permits required by Lee County and other agencies as required.
- 3.3.1.3. Manage and perform the overall project construction and administration works.
- 3.3.1.4. Manage progress scheduling and submit weekly progress reports to the County.
- 3.3.1.5. Manage procurement, delivery, and storage of all materials, including direct purchased materials by the County.
- 3.3.1.6. Provide full time engineering support services during construction.
- 3.3.1.7. Provide all construction administration services, engineering inspection and testing services.
- 3.3.1.8. Manage project costs within the guaranteed maximum price. Prepare and submit monthly construction progress payments to the County.
- 3.3.1.9. Coordinate regular progress meetings or when requested by the County. The Design-Builder to record and distribute meeting minutes within three (3) days of meeting date.
- 3.3.1.10. Coordinate all work with existing operations and other ongoing construction projects in the area.
- 3.3.1.11. Provide all start-up and performance testing services.
- 3.3.1.12. Prepare O&M Manuals.
- 3.3.1.13. Prepare accurate record drawings of all completed work.
- 3.3.1.14. Maintain an asset management spreadsheet log of all newly installed and retired equipment and submit to the County monthly.
- 3.3.1.15. Provide a construction schedule in MS Project format and submit weekly progress reports to the County detailing overall progress percentages at each lift station and the project in it's entirety.

#### 4. DESIGN-BUILDER RESPONSIBILITY

- 4.1. Excluding OFE, the Design-Builder shall provide all the labor, materials, supplies, furnishings, services, shop drawings review, supervision, equipment, expertise, and supervision to develop plans and specifications and construct the lift station repairs/replacements. The Design-Builder shall, at its expense obtain any required permits, environmental clearances, inspections, and testing as well as pay any fees required in the development of the lift station repairs/replacements.
- 4.2. The Design-Builder shall be responsible for survey, geotechnical investigation, design, acquisition of all permits not acquired by the County, maintenance of traffic, demolition, and construction on or before the date indicated in the Special Conditions.
- 4.3. The Design-Builder shall be responsible for maintaining continuous usage of the collection system during any construction periods, whether that be usage of bypass pumps, pumper trucks, or similar means of maintaining allowable levels in each lift station during construction.
- 4.4. The Design-Builder shall be responsible for providing an arc flash study for each of the lift stations in accordance with attached section 26 05 73 technical specifications.
- 4.5. The Design-Builder shall furnish signed and sealed Plans and Specifications for the Project notwithstanding any early Release for Contraction Plans. The Plans and Specifications must be sealed by Professional Engineer(s), as appropriate for the various disciplines, licensed to practice in Florida per the requirements of Chapter 481 or Chapter 471, Florida Statutes.
- 4.6. The Design-Builder shall furnish plans and specifications that comply with among others, the latest edition of the Florida Building Code.
- 4.7. The Design-Builder shall be responsible for removing and disposing of all demolition material, contaminated soil, all contaminants on site, and contaminated groundwater at their expense.
  - 4.7.1. The Design-Builder shall provide a list of salvageable equipment and material to the County prior to demolition and disposing in the case the County may want to keep the equipment or material.
- 4.8. The Design-Builder shall coordinate all utility relocation and hook-ups with the utility companies and/or municipalities. The Design-Builder shall provide to the County the LCEC or FP&L required easement survey and legal description and any other required easements survey and legal description required of the County for the Project if applicable.
- 4.9. The Design-Builder shall provide an electronic copy of the final approved Design Documents in both CAD and PDF formats and the specifications in Word format to the County.
- 4.10. The Design-Builder is responsible for producing and providing all required documentation and reports that are requested by FEMA for reimbursement. This includes a forecast of expenditures up to a three (3) month period from the current date.
- 4.11. The Design-Builder shall provide an electronic copy and hard copy of the final as-built documents in both CAD and PDF formats and the specifications in Word format to the County. These as-built drawings shall meet the County provided requirements. Updated redlines and as-built drawings shall be provided to the County on a monthly basis along with the construction progress payments.
- 4.12. The Design-Builder shall provide a weekly report including an updated schedule showing construction progress against the baseline schedule, photos and written documentation/explanation of construction progressions, including but not limited to, photos of entire site(s), specific site works, details of Mechanical, Electrical and Plumbing (MEP), and identifying items needing completion or correction along with explanations.



- 4.13. The Design-Builder shall demonstrate good Project management practices while working on this Project. These include communication with the County and others as necessary, management of time and resources, and documentation. The Design-Builder shall provide a detailed monthly Look Ahead schedule along with an updated action register.

## 5. TECHNICAL SPECIFICATIONS

- 5.1. Design-Builder shall follow Lee County Utilities Design Manual, which is in the following link: [Lee County Utilities Design Manual \(leegov.com\)](#)
- 5.2. Design-Builder shall follow Lee County's Electrical Technical Specifications, which is in the following link: [LCU WW PS Specs - All.pdf \(leegov.com\)](#)
- 5.3. Design-Builder shall reference and follow Lee County Utilities' design standards. These standards are in the following link: [Lift Station Electrical Standards \(leegov.com\)](#).
- 5.4. Top of any finished access platforms shall be 3 ft. below the bottom of control panels and generators controls.
- 5.5. All work and material storage shall remain within the lift station easement, ROW or County owned property.
  - 5.5.1. Design-Builder to notify and assist the County in obtaining Temporary Construction Easements where required.

## 6. ATTACHMENTS

- 6.1. **Appendix A – Map**
- 6.2. **Appendix B - Surveys**
- 6.3. **Appendix C – FEMA DDD**
- 6.4. **Appendix D – Lift Station Information**
- 6.5. **Lift Station Replacement Phase 1 Design-Build Criteria Package**
- 6.6. **Control Panel and Generator Submittals**
- 6.7. **Short Circuit & Coordination Study & Arch Flash Hazard Analysis**

\*\*\* FILE ACCESS FOR ATTACHMENTS USE BELOW FILE LINK:

<https://mft.leegov.com/?ShareToken=84E720D2B78A833D3107D7173773CBD978ED8109>

**END OF DETAILED SPECIFICATIONS**

(Remainder of page left intentionally blank)

## SUBMITTAL REQUIREMENTS & EVALUATION CRITERIA

### 1. SUBMITTAL REQUIREMENTS & EVALUATION CRITERIA

- 1.1 Interested firms shall include the following information in their submittal responses to this solicitation. The following format and sequence should be followed in order to provide consistency in the firm's responses and to ensure each proposal receives full consideration. Use 8 ½ x 11 sheet pages only with minimum font size of 10 points and with tabs or section dividers to separate sections as defined below. More than one section is permitted on one page unless otherwise indicated below. Undesignated information shall be inserted at the rear of each package. Place page numbers at the bottom of every page, excluding dividers. Proposal documents should not contain links to other web pages; such links will not be reviewed for evaluation purposes.
- 1.2 Submittal package may not exceed **10 pages** printed single-sided; **page restriction excludes required forms found herein and dividers**. **PLEASE INCLUDE PAGE TABS/SECTION DIVIDERS** so that those evaluating your submittal can easily compare each section with others that are submitted. If any of the information provided by the Proposer is found to be, in the sole opinion of the Evaluation Committee and Procurement Management Director, substantially unreliable their proposal may be rejected.
- 1.3 Proposers shall submit one (1) original hard copy (clearly marked as such) and six (6) electronic version(s) on a USB flash drive set(s) containing the proposal submittal in an unlocked PDF format. The County may request specific files be submitted in specialty format (IE: Provide a Project Timeline in Excel format.) Vendor shall accommodate such specialty requests as stated within the submittal requirements describe herein. Should files not be provided in the format or quantity as requested Vendor may be deemed Non-Responsive and therefore ineligible for award. In case of any discrepancies, the original will be considered by the County in evaluating the Proposal, and the electronic version is provided for the County's administrative convenience only. Limit the color and number of images to avoid unmanageable file sizes.

#### **COVER PAGE: Introduction**

- Project RFP Number & Name
- Firm's Name & Address
- Firm's Contact Person & Information (phone, fax and email address)
- How many years has Proposer been in business under present name?
- Under what other former names has your organization operated?

*\*Cover Page: Introduction does NOT count towards page restriction requested herein.\**

#### **TAB 1: Qualifications of Team**

- Provide a description of your firm, your firm's experience, and underlying philosophy in providing the services as described and requested herein. Description should include details such as: abilities, capacity, skill, strengths, number of years, location of office(s), as well as MBE, WBE, DBE, VBE or similar status, and recent, current, and/or projected workload, etc...

#### **TAB 2: Company Relevant Experience & Reference**

- Provide details of a maximum of three (3) projects similar in scope and size to that being requested through this solicitation that your firm has completed recently. Details for each project example provided should include:
  - Project Name
  - Project Address
  - Customer Name
  - Customer Contact Information
    - Point of contact Name, Phone, and Email
  - Brief description of work provided.

- Initial costs of work
  - Final costs of work
  - Number of change orders
  - Total completion time (From Notice to Proceed to Final Invoice payment)
- Provide a statement of understanding that your firm recognizes the County reserves the right to evaluate the proposing Firm on their past performance and prior dealings with Lee County (i.e., failure to meet specifications, poor workmanship, late delivery, etc.) as part of their experience criteria.

**TAB 3: Firm Plan of Approach**

- Provide a detailed Plan of Approach that explains how your firm intends to comply with and meet the anticipated deliverables as detailed within this solicitation.

**TAB 4: Personnel**

- Provide a detailed description of the firm’s **specific** project management team, inclusive of sub-Consultants anticipated to be utilized, that will be assigned to the Lee County contract. Identify the roles and responsibilities of the primary team members as they pertain/apply to the Project Approach and include details that demonstrate individual’s knowledge and understanding of the types of services to be performed as well as previous experience in similar or related work.
- Firm must identify staff member that will serve as Project Director that shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed.
- Provide a statement acknowledging your firm’s understanding that the project management team/key team members assigned to the Lee County contract, as described above, shall not be substituted without the expressed permission of Lee County.
- Provide resumes, licensure, and certifications of proposed **specific** project management team, inclusive of sub-Consultants anticipated to be utilized, to be assigned to the Lee County contract.  
*\*Resumes are not included within page restrictions, but should be limited to one (1) page per person.\**  
*\*Firms are encouraged to submit valid copies of MBE, WBE, DBE, VBE or similar certifications for adequate committee consideration.”*

**TAB 5: Price**

**Price Scoring:** The Proposer with the lowest Price Proposal will be awarded the maximum score as listed in the scoring criteria section. All other proposals will be scored according to the following formula: (Lowest Price Proposal/ Proposer’s Price Proposal) x Maximum points. Score For example, the maximum score available for price is 25. If the lowest proposed Price Proposal is \$150,000.00 that Proposer will receive the full 25 points. Another Proposer with a Price Proposal of \$160,000.00 will receive points calculated as follows: \$ 150,000.00/ \$160,000.00 = .9375 \* 25 = 23.44 points

**TAB 6: Required Forms**

- Forms 1- 11

**2. SCORING CRITERIA & WEIGHT**

CRITERIA	CRITERIA DESCRIPTION	MAX. POINTS AVAILABLE
1	QUALIFICATIONS OF TEAM (TAB 1)	25
2	COMPANY RELEVANT EXPERIENCE & REFERENCE (TAB 2)	25

3	PLAN OF APPROACH (TAB 3)	<b>30</b>
4	PERSONNEL (TAB 4)	<b>10</b>
5	PRICE (TAB 5)	<b>10</b>
<b>TOTAL POINTS</b>		<b>100</b>
<p><b>*Additional details and documents found within submittal package, although not located within tabs as listed above, may be reviewed and considered by evaluation committee when scoring Proposers.</b></p>		

**3. RFP SUBMISSION SCHEDULE**

Submission Description	Date(s)	Time
Advertise Request for Proposal (RFP)	Tuesday, June 11, 2024	N/A
Pre-Proposal Meeting	Thursday, June 20, 2024	10:00 AM
Proposal Question Deadline	8 Calendar days prior to submission deadline	Prior to 5:00 PM
Submission Deadline	Thursday, July 11, 2024	Prior to 2:30 PM
First Committee Meeting & Discussion	Wednesday, July 24, 2024	TBD
Notify Shortlist Selection via e-mail (If applicable)	Thursday, July 25, 2024	N/A
Final Scoring/Selection Meeting (If applicable)	Wednesday, August 7, 2024	TBD
Board Meeting	Tuesday, October 1, 2024	9:30 AM
<p>Additional notes on Submission Schedule:</p> <ul style="list-style-type: none"> <li>• <i>Submission Schedule is provided as a guideline only and is subject to change at the discretion of Lee County authorized personnel.</i></li> <li>• <i>Changes in closing date or other parameters may occur and will be posted to the Lee County Procurement website. It shall be the responsibility of Contractor to verify all dates through County website.</i></li> <li>• <i>Unless otherwise stated, location of all openings and meetings will take place at 2115 Second Street, 1st Floor, Fort Myers, FL 33901- Procurement Management.</i></li> </ul>		

*End of Submittal Requirements & Evaluation Criteria Section*

LEE COUNTY DOCUMENT MANAGEMENT FORM

For

**DB240380DWJ – Lift Station Replacements – Phase 1**

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	Trench Safety	Required	
8	Bid Bond	Required	
9	Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion	Required	
10	Certification Regarding Lobbying	Required	
10a	Disclosure of Lobbying Activities	If applicable	
11	E-Verify Affidavit	Required	
12	Affidavit of Compliance with Section 287.138 Florida Statutes	Required	
	Proposal Label	Required	
*	Sub-Contractor List	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.

<b>Form #</b>	<b>Title/Description</b>
<b>1</b>	<p><b><i>Solicitation Response Form</i></b></p> <p>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 web-page(s) from <a href="http://www.sunbiz.org">http://www.sunbiz.org</a> as certification of this required information. Sample attached for your reference. Verify that all Addenda and tax identification number have been provided.</p>
<b>1a</b>	<p><b><i>Bid/Proposal Form</i></b></p> <p>This form is used to provide itemization of project cost. A more detailed "schedule of values" may be requested by the County.</p>
<b>N/A</b>	<p><b><i>Business Relationship Disclosure Requirement</i></b></p> <p>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 <b>disclosure is applicable, the Bidder must request the form entitled "INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS"</b> (Required by § 112.313(12)(b), F.S.) to be completed and <b>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.</b></p> <p>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.</p>
<b>2</b>	<p><b><i>Affidavit Certification Immigration Laws</i></b></p> <p>Submission of this form constitutes acknowledgement that the Bidder is in compliance in regard to all applicable immigration laws.</p>
<b>3</b>	<p><b><i>Reference Survey</i></b></p> <p>Provide this form to reference respondents. <b>Required to submit with proposal.</b></p> <ol style="list-style-type: none"> <li>1. <b>Section 1:</b> Bidder/Proposer to complete with <u>reference respondent's</u> information prior to providing to them for their response. (This is <b>not</b> the Bidder/Proposer's information.)</li> <li>2. <b>Section 2:</b> Enter the name of the Bidder/Proposer; provide the project information in which the reference respondent is to provide a response.</li> <li>3. The <u>reference respondent</u> should complete "<b>Section 3.</b>"</li> <li>4. <b>Section 4:</b> The reference respondent to print and sign name</li> <li>5. <b>Reference responses</b> are to be provided upon request.</li> <li>6. Failure to obtain reference surveys may make your company non-responsive.</li> </ol>

**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-contractors 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**      ***Trench Safety***

Typically required in construction projects where trench excavations are in excess of 5 feet deep per Florida Trench Safety Act (90-96, Laws of Florida)

**8**      ***Bid Bond***

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

**9**      ***Suspension and Debarment Certification*****10**      ***Certification Regarding Lobbying*****11**      ***E-Verify Affidavit*****12**      ***Affidavit of Compliance with Section 287.138 Florida Statutes***

Vendor pursuant to Florida Statute certifies that Vendor is not owned by a government of a foreign country of concern, a government of a foreign country of concern does not have a controlling interest in Vendor, and Vendor is not organized under the law of nor has its principal place of business in a foreign country of concern, as defined by statute.

**\***      ***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: \_\_\_\_\_ Deadline Date: 7/11/2024

SOLICITATION IDENTIFICATION: DB240380DWJ

SOLICITATION NAME: Lift Station Replacements – Phase 1

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 NUMBER: \_\_\_\_\_

NOTE REQUIREMENT: IT IS THE SOLE RESPONSIBILITY OF THE VENDOR TO CHECK 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.

In submitting this proposal, Proposer makes all representations required by the instructions to Proposer and further warrants and represents that: Proposer has examined copies of all the solicitation documents and the following addenda:

No. \_\_\_\_\_ Dated: \_\_\_\_\_ No. \_\_\_\_\_ Dated: \_\_\_\_\_ No. \_\_\_\_\_ Dated: \_\_\_\_\_
No. \_\_\_\_\_ Dated: \_\_\_\_\_ No. \_\_\_\_\_ Dated: \_\_\_\_\_ No. \_\_\_\_\_ Dated: \_\_\_\_\_

Tax Payer 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 the Proposer/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.

1 Collusion Statement: Lee County, Florida The undersigned, as 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 we 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 propose 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, FL § , prohibits agencies from contracting with companies, for goods or services over \$1,000,000, that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Both lists are created pursuant to section 215.473, FL § . As the person authorized to sign on behalf of Respondent, I hereby certify that the company identified above not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. I understand that pursuant to section 287.135, FL § , the submission of a false certification may subject company to 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), FL §, prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. See Part III, Chapter 112, FL § 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), FL § (1983), 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 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 request form “INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS” (Required by 112.313(12)(b), Florida Statute (1983)) to be completed and returned with solicitation response. It is the Proposer’s responsibility to disclose this relationship, failure to do so could result in being declared non-responsive.**

<input type="checkbox"/> <b>Business Relationship Applicable (request form)</b> Disadvantaged, Minority, Women, Veterans Business Enterprise (DBE, MBE, WBE, VBE) Proposer? If yes, please attach a current certificate.	<input type="checkbox"/> <b>Business Relationship NOT Applicable</b> <table border="1" style="width: 100%; height: 40px; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">Yes</td> <td style="width: 50%; text-align: center;">No</td> </tr> </table>	Yes	No
Yes	No		

**ALL PROPOSALS MUST BE EXECUTED BY AN AUTHORIZED AUTHORITY OF THE PROPOSER, WITNESSED AND SEALED (IF APPLICABLE)**

Company Name <i>(Name printed or typed)</i>	<div style="border: 1px solid black; width: 100%; height: 100%;"></div> (Affix Corporate Seal, if applicable)
Authorized Representative Name <i>(printed or typed)</i>	
Authorized Representative’s Title <i>(printed or typed)</i>	Witnessed/Attested by: <i>(Witness/Secretary name and title printed or typed)</i>
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.

### Detail by Entity Name

#### Florida Profit Corporation

Bill's Widget Corporation

#### Filing Information

Document Number 655555  
 FEI/EIN Number 511111111  
 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

Verify either Principal or Mailing address is on Form 1

#### 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

##### IMPORTANT:

For corporations, ALL documents must be signed by the president of the company or an authorized individual. For any individual other than the president, we will need one of the following to confirm their authority to sign:

1. a corporate resolution by the Board of Directors, or
2. an extract of minutes, or
3. an extract of Vote by the Board of Directors

If the company's articles of incorporation identify additional positions that have the power to bind the corporation, we will accept the articles of incorporation with verification from the president that a certain individual serves in that role (e.g., the president confirms that John Doe is the CEO, and the articles of incorporation provide that the CEO has the power to bind the company).

With respect to an LLC, the authority to bind a limited liability company is controlled by Florida statutes. Managers or managing members have inherent authority to bind an LLC.

If the president of a corporation or a manager/managing member of an LLC delegates their authority, such delegation must be sent to us on company letterhead with the President's or manager's/managing member's original, wet signature.

v01/03/2018

STATE OF FLORIDA

SECRET

REGISTRATION DIVISION



Form 2 – Affidavit Certification of Immigration Laws



**AFFIDAVIT CERTIFICATION IMMIGRATION LAWS**

SOLICITATION NO.: **DB240380DWJ** SOLICITATION NAME: **Lift Station Replacements – Phase 1**

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, IF 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 WITH THE DEPARTMENT OF PROCUREMENT MANAGEMENT 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**

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: 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 , if applicable Similar Performed Project (Bidder/Proposer to enter details of a project performed for above reference respondent)		
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. Rate from 1 to 10. (10 being highest)	
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 \_\_\_\_\_

*Form 4 – Negligence, Breach and/or Non-Compliance Disclosure Form*



**ALLEGED NEGLIGENCE/BREACH OF CONTRACT/NON-COMPLIANCE WITH GOVERNMENTAL REGULATION 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, 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 and how)</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. 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



### 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 Paragraph 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, and 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 Paragraph 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 Paragraph 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, 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 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 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 submitted 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.



**Form 6 - Public Entity Crime Form, Page 2**

\_\_\_\_\_ 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 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH 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 \_\_\_\_\_

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

\_\_\_\_\_  
(NOTARY PUBLIC)

My Commission Expires: \_\_\_\_\_

**Form 7 - Trench Safety**

**TRENCH SAFETY**

Contractor/Vendor acknowledges that included in the appropriate solicitation items of the solicitation and in the Total solicitation price are costs for complying with the Florida Trench Safety Act (90-96, Laws of Florida) effective October 1, 1990. The contractor/vendor further identifies the costs of such compliance to be summarized below:

Trench Safety Measure (Description)	Units of Measure (LF, SF)	Unit (Quantity)	Unit Cost	Extended Cost
A. _____	_____	_____	_____	_____
B. _____	_____	_____	_____	_____
C. _____	_____	_____	_____	_____
D. _____	_____	_____	_____	_____
TOTAL \$				_____

If applicable, the contractor/vendor certifies that all trench excavation done within his control in excess of five (5') feet in depth shall be in accordance with the Florida Department of Transportation's Special Provisions Article 125-1 and Sub-article 125-4.1 (TRENCH EXCAVATION SAFETY SYSTEM AND SHORING, SPECIAL-TRENCH EXCAVATION).

Failure to complete the above may result in the solicitation being declared non-responsive.

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

\_\_\_\_\_  
(Company Name)

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

\_\_\_\_\_  
(NOTARY PUBLIC)

My Commission Expires: \_\_\_\_\_

**Form 8 - Bid Bond**

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:

**DB240380DWJ – Lift Station Replacements – Phase 1**

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.

*Form 9 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion*

**Certification Regarding  
Debarment, Suspension, Ineligibility  
And Voluntary Exclusion**

**CONSULTANT/CONTRACTOR/VENDOR Covered Transactions**

- (1) The prospective CONSULTANT/CONTRACTOR/VENDOR, \_\_\_\_\_ of the Sub-Recipient certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-Recipient's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

**CONSULTANT/CONTRACTOR/VENDOR**

\_\_\_\_\_

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Date

*Form 10 - Certification Regarding Lobbying*

**CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents of all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor/Consultant, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor/Consultant's Authorized Official

\_\_\_\_\_  
Name & Title of Contractor/Consultant's Authorized Official

\_\_\_\_\_  
Date



Form 10a: continued (as applicable)

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C.1352

Approved by OMB 4040-0013

<b>1. * Type of Federal Action:</b> <input type="checkbox"/> a. contract <input checked="" type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. * Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input checked="" type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. * Report Type:</b> <input checked="" type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change
<b>4. Name and Address of Reporting Entity:</b> <input checked="" type="checkbox"/> Prime <input type="checkbox"/> SubAwardee * Name: _____ * Street 1: _____ Street 2: _____ * City: _____ State: _____ Zip: _____ Congressional District, if known: _____		
<b>5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:</b>   		
<b>6. * Federal Department/Agency:</b> _____	<b>7. * Federal Program Name/Description:</b> _____ <small>CFDA Number, if applicable:</small> _____	
<b>8. Federal Action Number, if known:</b> _____	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant:</b> Prefix: _____ * First Name: _____ Middle Name: _____ * Last Name: _____ Suffix: _____ * Street 1: _____ Street 2: _____ * City: _____ State: _____ Zip: _____		
<b>b. Individual Performing Services (including address if different from No. 10a)</b> Prefix: _____ * First Name: _____ Middle Name: _____ * Last Name: _____ Suffix: _____ * Street 1: _____ Street 2: _____ * City: _____ State: _____ Zip: _____		
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the ter above when the transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		
* Signature: _____ *Name: Prefix: _____ * First Name: _____ Middle Name: _____ * Last Name: _____ Suffix: _____ Title: _____ Telephone No.: _____ Date: _____		
<b>Federal Use Only:</b>		<small>Authorized for Local Reproduction Standard Form - LLL (Rev. 7-87)</small>

*Form 11: E-Verify Affidavit*

**Attachment: Immigration Law Affidavit Certification**

This Affidavit is required and should be signed by an authorized principal of the firm, notarized and submitted with County Procurements where applicable. Further, Vendors / Bidders are required to enroll in the E-Verify program, and provide acceptable evidence of their enrollment, upon request by County personnel. Acceptable evidence consists of a copy of the properly completed E-Verify Company Profile page or a copy of the fully executed E-Verify Memorandum of Understanding for the company.

Lee County will not intentionally award County contracts to any vendor who knowingly employs unauthorized alien workers, constituting a violation of the employment provision 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 vendor 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 termination of the contract by Lee County.

Vendor attests that they are fully compliant with all applicable immigration laws (specifically to the 1986 Immigration Act and subsequent Amendment(s)) and agrees to comply with the provisions of the Memorandum of Understanding with E-Verify and to provide proof of enrollment in The Employment Eligibility Verification System (E-Verify), operated by the Department of Homeland Security in partnership with the Social Security Administration at any time upon request by the County.

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

Print Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ 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 \_\_\_\_\_ as identification.  
(Print or Type Name) (Type of Identification)

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

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

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

The signee of these Affidavit guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made.

**AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES,  
CONTRACTING WITH FOREIGN ENTITIES OF CONCERN**

Before me, the undersigned authority, personally appeared **(Name of affiant)** \_\_\_\_\_, who, after being first duly sworn, deposes and says of his or her personal knowledge the following:

1. Affiant is the **(Title)** \_\_\_\_\_ of **(Business Name)** \_\_\_\_\_ which does business in the State of Florida, hereinafter called the “Vendor.”
2. Vendor, pursuant to Section 287.138, Florida Statutes, certifies that (1) Vendor is not owned by a government of a foreign country of concern; (2) a government of a foreign country of concern does not have a “controlling interest” in Vendor, as defined by Section 287.138(1)(a), Florida Statutes; and (3) Vendor is not organized under the law of nor has its principal place of business in a foreign country of concern. For the purposes of this affidavit, foreign country of concern means the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern, as defined in Section 287.138(1)(c), Florida Statutes, as amended from time to time.
3. This Affidavit is executed by the Vendor in accordance with Section 287.138, Florida Statutes, for the purposes of preventing the County from entering contracts with foreign entities of concern which would provide Vendor access to an individual’s personal identifying information.

\_\_\_\_\_  
*(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

*Sealed Proposal Label*

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

<b>PROPOSAL DOCUMENTS • DO NOT OPEN</b>	
SOLICITATION No.:	<b>DB240380DWJ</b>
SOLICITATION TITLE:	<b>Lift Station Replacements – Phase 1</b>
DATE DUE:	<b>Thursday, July 11, 2024</b>
TIME DUE:	<b>Prior to: 2:30 PM</b>
SUBMITTED BY:	_____
	<small>(Name of Company)</small>
<small>e-mail address</small>	<small>Telephone</small>
<b>DELIVER TO:</b>	Lee County Procurement Management 2115 Second Street, 1st Floor Fort Myers FL 33901
<i>Note: proposals received after the time and date above will not be accepted.</i>	



**\*Notice:** the Date Due/Submission Deadline 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/Vendor to monitor the County project webpage for any updates to the Date Due/Submission Deadline Date/Opening Date via Addenda. This label nor other original forms may not be updated. Contractor/Vendor may strike through and update Date Due/Submission Deadline 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/Submission Deadline Date/Opening Date will not be accepted at the sole discretion of the County.

**PLEASE PRINT CLEARLY**