

AGREEMENT FOR THE PURCHASE OF BALLFIELD CLAY PRODUCTS & CONDITIONERS

THIS AGREEMENT ("Agreement") is made and entered into by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Ewing Irrigation Products, Inc., a Nevada corporation authorized to do business in the State of Florida, whose address is 3441 E. Harbour Drive, Phoenix, AZ 85034, and whose federal tax identification number is 94-1351799, hereinafter referred to as "Vendor."

WITNESSETH

WHEREAS, the County intends to purchase ballfield clay products and conditioners, and additional clay from the Vendor in connection with "Purchase of Ballfield Clay Products & Conditioners" (the "Purchase"); and,

WHEREAS, the County issued Solicitation No. B240216WCD on March 15, 2024 (the "Solicitation"); and,

WHEREAS, the County evaluated the responses received and found the Vendor qualified to provide the necessary products and services; and,

WHEREAS, the County posted a Notice of Intended Decision on April 30, 2024; and,

WHEREAS, the Vendor has reviewed the products and services to be supplied pursuant to this Agreement and is qualified, willing and able to provide all such products and services in accordance with its terms.

NOW, THEREFORE, the County and the Vendor, in consideration of the mutual covenants contained herein, do agree as follows:

I. PRODUCTS AND SERVICES

The Vendor agrees to diligently provide all products and services for the Purchase, a more specific description of the Project Scope of Services is set forth in Sections 1 through 6 of the Scope of Work and Specifications section of B240216WCD, a photocopy of said sections being attached hereto and incorporated by reference as Exhibit A. Vendor shall comply strictly with all of the terms and conditions of Solicitation No. B240216WCD, as modified by its addenda, copies of which are on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement to the extent that it does not conflict with the remainder of the Agreement.

II. TERM AND DELIVERY

A. This Agreement shall commence immediately upon the effective date and shall continue through one (1), three (3) year period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole

or in part, for a renewal term or terms not to exceed two (2) years. The increments shall be at the sole discretion of the County as deemed in its best interest. The effective date shall be the date the Lee County Board of County Commissioners awards the Solicitation to the Vendor.

- B. A purchase order must be issued by the County before commencement of any work or purchase of any goods related to this Agreement.

III. COMPENSATION AND PAYMENT

- A. The County shall pay the Vendor in accordance with the terms and conditions of this Agreement for providing all products and services as set forth in Exhibit A, and further described in Exhibit B, Fee Schedule, attached hereto and incorporated herein. Said total amount to be all inclusive of costs necessary to provide all products and services as outlined in this Agreement, and as supported by the Vendor's submittal in response to the Solicitation, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.
- B. Notwithstanding the preceding, Vendor shall not make any deliveries or perform any services under this Agreement until receipt of written authorization from the County. Vendor acknowledges and agrees that no minimum order or amount of product or service is guaranteed under this Agreement and County may elect to request no products or services. If the County authorizes delivery of products or performance of services, the County reserves the right to amend, reduce, or cancel the authorization in its sole discretion.
- C. All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of non-appropriation of funds by the County for the services provided under this Agreement, the County will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Vendor on thirty (30) days' prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Agreement beyond the date of termination.

IV. METHOD OF PAYMENT

- A. The County shall pay the Vendor in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes, upon receipt of the Vendor's invoice and written approval of same by the County indicating that the products and services have been provided in conformity with this Agreement.

- B. The Vendor shall submit an invoice for payment to the County on a monthly basis for those specific products and services as described in Exhibit A (and the corresponding fees as described in Exhibit B) that were provided during that invoicing period.
- C. For partial shipments or deliveries, progress payments shall be paid monthly in proportion to the percentage of products and services delivered on those specific line items as approved in writing by the County.

V. ADDITIONAL PURCHASES

- A. No changes to this Agreement or the performance contemplated hereunder shall be made unless the same are in writing and signed by both the Vendor and the County.
- B. If the County requires the Vendor to perform additional services or provide additional product(s) related to this Agreement, then the Vendor shall be entitled to additional compensation based on the Fee Schedule as amended to the extent necessary to accommodate such additional work or product(s). The additional compensation shall be agreed upon before commencement of any additional services or provision of additional product(s) and shall be incorporated into this Agreement by written amendment. The County shall not pay for any additional service, work performed or product provided before a written amendment to this Agreement.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Vendor, the Vendor shall not be entitled to additional compensation.

VI. LIABILITY OF VENDOR

- A. The Vendor shall save, defend, indemnify and hold harmless the County from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, error, omission or default of the Vendor arising out of or in any way connected with the Vendor or subcontractor's performance or failure to perform under the terms of this Agreement.
- B. This section shall survive the termination or expiration of this Agreement.

VII. VENDOR'S INSURANCE

- A. Vendor shall procure and maintain insurance as specified in Exhibit C Insurance Requirements, attached hereto and made a part of this Agreement.

B. Vendor shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Agreement, insurance coverage (including endorsements) and limits as described in Exhibit C. These requirements, as well as the County's review or acceptance of insurance maintained by Vendor, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Vendor under this Agreement. Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of "B or better." No changes are to be made to these specifications without prior written specific approval by County Risk Management. To the extent multiple insurance coverages and/or County's self-insured retention may apply, any and all insurance coverage purchased by Vendor and its subcontractors identifying the County as an additional named insured shall be primary.

VIII. RESPONSIBILITIES OF THE VENDOR

- A. The Vendor shall be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Vendor under this Agreement. The Vendor shall, without additional compensation, correct any errors or deficiencies in its products, or if directed by County, supply a comparable replacement product or service.
- B. The Vendor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Vendor), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- C. The Vendor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- D. Vendor specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:
- 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;
 - 2) upon request from the County, 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 in Chapter 119, Florida Statutes, or as otherwise provided by law;

- 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 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.

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, PRRCustodian@leegov.com; <http://www.leegov.com/publicrecords>.

- E. The Vendor is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor. Vendor is not an employee, agent or servant of the County and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Vendor's sole direction, supervision and control. The Vendor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Vendor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees of the County. The Vendor shall be solely responsible for providing benefits and insurance to its employees.
- F. The Vendor shall comply with the Vendor Background Screening Affidavit attached hereto and incorporated herein as Exhibit D.

IX. OWNERSHIP OF PRODUCTS

It is understood and agreed that all products provided under this Agreement shall become the property of the County upon acceptance by the County.

X. TIMELY DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES

- A. The Vendor shall ensure that all of its staff, contractors and suppliers involved in the production or delivery of the products are fully qualified and capable to perform their assigned tasks.

- B. The personnel assigned by the Vendor to perform the services pursuant to this Agreement shall comply with the terms set forth in this Agreement. If the services provided require use of specific key personnel, the personnel shall be agreed to by the County and Vendor. If the Vendor's key personnel have been predetermined and approved, through the Solicitation process or otherwise, any subsequent change or substitution to the personnel must receive the County's written approval before said changes or substitution can become effective.
- C. The Vendor specifically agrees that all products shall be delivered within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any unforeseeable and unavoidable cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the control of the parties.

XI. COMPLIANCE WITH APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Florida. Vendor shall promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations, and rules relating to the services to be performed hereunder and in effect at the time of performance. Vendor shall conduct no activity or provide any service that is unlawful or offensive.

XII. CONTRACT TERMINATION

- A. MATERIAL BREACH A Vendor 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. Vendor 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. Vendor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the Agreement; 3. Vendor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; 4. Vendor 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 Vendor's proper performance hereunder; 5. Appointment of any receiver, trustee, or similar official for Vendor or any of the Vendor's property and such appointment endangers the Vendor's proper performance hereunder; 6. A determination that the Vendor is in violation of federal, state, or local laws or regulations and that such determination renders the Vendor unable to perform any aspect of the Agreement.

- B. **OPPORTUNITY TO CURE** In the event that Vendor fails to perform a contractual requirement or materially breaches any term or condition, the County may issue a written cure notice. The Vendor may have a period of time in which to cure. The County is not required to allow the Vendor 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 Vendor's liability for damages, or otherwise affect any other remedies available against Vendor under the Agreement or by law. If the breach remains after Vendor 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 Vendor from receiving future solicitations or other opportunities; 6. Require Vendor 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.
- C. **TERMINATION FOR CAUSE** In the event the Procurement Management Director, in his/her sole discretion, determines that the Vendor 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. If corrective action is deemed acceptable by the County, the Procurement Management Director shall notify the Vendor in writing of the need to take corrective action and the date in which the corrective action must be completed. If corrective action is not completed as 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 Vendor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Vendor 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 Vendor 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 Vendor was not in material breach; or (2) failure to perform was outside of Vendor'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.

- D. 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 Vendor. 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 Vendor for such termination.
- E. The County's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or acceptance and are in addition to the Vendor's obligations under this Agreement.

XIII. DISPUTE RESOLUTION

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.
- B. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists, in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- D. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- E. Unless otherwise agreed in writing, the Vendor shall be required to continue all obligations under this Agreement during the pendency of a claim or dispute including, but not limited to, actual periods of mediation or judicial proceedings.

XIV. STOP WORK ORDER

The County may, at any time, by written order to the Vendor, require the Vendor to stop all or any part of the work called for by this Agreement. Any order shall be identified specifically as a stop work order issued pursuant to this clause. This order shall be effective as of the date the order is delivered to

the Vendor. Upon receipt of such an order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. The Vendor shall not resume work unless specifically so directed in writing by the County. The County may take one of the following actions:

1. Cancel the stop work order; or
2. Terminate the work covered by the order; or
3. Terminate the Agreement in accordance with provisions contained in Section XII.

In the event the County does not direct the Vendor to resume work, the stop work order may be converted into a notice of termination for convenience pursuant to Section XII. The notice period for such termination shall be deemed to commence on the date of issuance of the stop work order. In the event the County does not direct the Vendor to resume work within ninety (90) days, the Vendor may terminate this Agreement.

XV. VENDOR WARRANTY

- A. All products provided under this Agreement shall be new (unless specifically identified otherwise in Exhibit B) and of the most suitable grade for the purpose intended.
- B. If any product delivered does not meet performance representations or other quality assurance representations as published by manufacturers, producers or distributors of the products or the specifications listed in this Agreement, 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. In such case, the Vendor shall refund to the County any money which has been paid for same.

XVI. MISCELLANEOUS

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- B. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the parties hereto. A party to this Agreement shall not sell, transfer, assign, license, franchise, restructure, alter, or change its corporate structure or otherwise part with possession or mortgage, charge or encumber any right or obligation under

this Agreement without the proposed assignee and/or party restructuring, altering or changing its corporate structure agreeing in writing with the non-assigning party to observe and perform the terms, conditions and restrictions on the part of the assigning party to this Agreement, whether express or implied, as if the proposed assignee and/or party restructuring, altering or changing its corporate structure was an original contracting party to this Agreement. Notwithstanding the foregoing provision, the Vendor may assign its rights if given written authorization by the County and claims for the money due or to become due to the Vendor from the County under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the County. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the County.

- C. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.
- D. The failure of the County to enforce one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
- E. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
- F. Neither the County's review, approval or acceptance of, nor payment for, the products and services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- G. If the Vendor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- H. When any period of time is referred to by days herein, it shall be computed to exclude the first day and include the last day of such period. When the period of time is fewer than three (3) days, it shall mean business days as defined by Lee County. If the period of time is greater than three (3) days, then it shall mean calendar days. For any period of time greater than seven (7) days, where the deadline falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline will then fall to the next Monday or non-Lee County recognized holiday.
- I. Any notices of default or termination shall be sufficient if sent by the parties via email, United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

Vendor's Representative

Name: Douglas York
Title: President

Address: 3441 E. Harbour Drive,
Phoenix, AZ 85034
Telephone: (888) 881-4117
Facsimile: (602) 407-0446
Email: govsales@ewingos.com

County's Representative

Name: Mary Tucker
Title: Procurement
Management Director
Address: P.O. Box 398
Fort Myers, FL 33902
Telephone: (239) 533-8881
Facsimile: (239) 485-8383
Email: mtucker@leegov.com

- J. Any change in the County's or the Vendor's Representative will be promptly communicated by the party making the change.
- K. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- L. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:
 - 1. Agreement
 - 2. County's Purchase Order
 - 3. Solicitation
 - 4. Vendor's Submittal in Response to the Solicitation

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

Ewing Irrigation Products, Inc.

Signed By: 

Signed By: 

Print Name: Dennis J. Mitchell

Print Name: Cory D Meller

Title: Dir of Gov. Business

Date: 6/7/24

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

Signed By: _____

Print Name: _____

Title: _____

Date: _____

ATTEST:
CLERK OF THE CIRCUIT COURT

BY: _____
DEPUTY CLERK

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

BY: _____
OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A

SCOPE OF WORK AND SPECIFICATIONS

VER 01-24-24

SCOPE OF WORK AND SPECIFICATIONS

1. SCOPE OF WORK

- 1.1. The Lee County Board of County Commissioners seeks to contract with qualified Vendor(s) to provide Ballfield Clay Products, Conditioners, and additional clay products on an “as-needed” basis. The products listed on the Bid Form shall be delivered to County facilities by the requesting department as directed.

2. DELIVERY REQUIREMENTS

- 2.1. Lee County will pay, as a maximum, only for the established number of materials ordered by the County and which can be legally hauled in accordance with the material weight and gross weight of the vehicle.
- 2.2. Shipments shall be coordinated with County staff prior to delivery, Vendor(s) driver shall unload the product in the designated area outlined by County Staff with the appropriate equipment to complete the job.
- 2.3. County staff shall coordinate with the Vendor(s) the date and time where deliveries are to be made.
- 2.4. “Emergency” deliveries shall be within 24 hours from the time when the County places an order. An emergency delivery is defined as a delivery which is necessary in order to prevent the County from running out of clay products and conditioners listed in the scope in less than 24 hours. The County will endeavor to minimize the number of “emergency” deliveries.
- 2.5. The County reserves the right to refuse delivery if that delivery is not in the proper timeframe; the Vendor has improper equipment to offload the delivery; the Vendor is taking improper safety precautions; and/or the Vendor has malfunctioning equipment.
- 2.6. In the event a delivery ticket is not provided during the time the Vendor is on site, the delivery may be rejected, and the County will not incur and charges to rejected deliveries.
- 2.7. The Product Name, Unit Price bid by the Vendor, Unit of Measure, and Quantity delivered shall be clearly denoted on delivery documentation and invoicing to ensure efficient and effective product and price verification. Vendor(s) shall attach their freight receipt to the invoice for reimbursement. Failure to clearly indicate such details on delivery and invoice documentation may result in payment delays or non-payment.
- 2.8. The County reserves the right to add or delete delivery sites at its discretion at any time throughout the term of the Agreement.
- 2.9. The Vendor’s delivery driver shall present a photo I.D. upon delivery. The I.D. shall show that the driver is an employee of either the trucking company or the Vendor. All personnel making deliveries shall wear the appropriate personal protective equipment (PPE) as required by the Safety Data Sheet. Any order delivery is subject to inspection prior to acceptance by an authorized member of the County.
- 2.10. The Vendor shall be responsible for any spills as a result of equipment failure, employee negligence or subcontractor’s negligence.
- 2.11. Proper performance shall require attendant delivery personnel(s) constant inspection and observation of unloading operations and knowledgeable response to problems or emergencies, which would most commonly be expected to occur. The County reserves the right to refuse any and all deliveries made with equipment that is poorly maintained.
- 2.12. The trucks or trailers shall be clean and free of residue that may contaminate the Vendor’s product or impede the unloading process. The Vendor shall verify the cleanliness of the transporting equipment before loading.
- 2.13. If the spill is not cleaned up, the County will hire a certified hazardous material handling company to clean up the spill, and the cost of such service shall be charged to the Vendor and deducted from the amount due to

the Vendor for materials.

3. SAFETY DATA SHEETS (SDS)

- 3.1. The Vendor shall fully comply with all federal, state, and local regulations regarding product labeling, packaging, and safety including providing material safety data sheets with each shipment hereunder.

4. PRODUCT CATEGORIES

- 4.1. The County is requesting that Vendor(s) submit their pricing in accordance with price per ton and price per bag. Vendor(s) shall not change the Bid Tabulation for as this may deem the Vendor as non-responsive. It will be the Vendor(s) responsibility to convert their delivery method to meet the requirements as set forth in the solicitation.

- 4.1.1. Category 1 –DuraEdge Products - delivery method by ton.
- 4.1.2. Category 2 - DuraEdge Products - delivery method by bag.
- 4.1.3. Category 3 – Pro’s Choice - delivery method by ton.
- 4.1.4. Category 4 – Pro’s Choice - delivery method by bag
- 4.1.5. Category 5 – Diamond Pro Products - delivery method by ton.
- 4.1.6. Category 6 – Diamond Pro Products - delivery method by bag.

5. COMPARABLE UNITS

- 5.1. Vendor(s) recommending “Comparable Units” in response to any group line item set forth in the Bid Form shall provide Product Literature for each such item and its equivalency to the listed products in the solicitation documents. Vendor(s) shall outline to the County the recommended delivery method of the product that is equivalent to the listed products as outlined in the solicitation. These comparable units shall be approved by the County prior to deadline submission and may be rejected in their entirety.
- 5.2. Sample: The County, at its sole discretion and without cost to the County, may also require the Vendor(s) within ten (10) business days prior to the deadline to deliver samples to the County to allow for application analysis consideration as an acceptable “Comparable Unit.” This product may be rejected by the County at its own discretion.
- 5.3. Demonstration: The County, at its sole option and without cost to the County, may also require the Vendor(s) to provide a product demonstration of the “Comparable Unit” at the Vendor(s) sole expense at a location selected by the County with ten (10) business days prior to the submission deadline.

6. ADDITIONAL PRODUCTS

- 6.1. The County reserves the right to add or delete, at any time, and or all material, tasks or services associated with this Agreement/Contract and in the manner that is in the best interest of the County.

End of Scope of Work and Specifications Section



Procurement Management Department
 2115 Second Street, 1st Floor
 Fort Myers, FL 33901
 Main Line: (239) 533-8881
 Fax Line: (239) 485-8383
www.leegov.com/procurement

Posted Date: March 20, 2024

Solicitation No.: B240216WCD

Solicitation Name: Purchase of Ballfield Clay Products & Conditioners

Subject: Addendum Number 1

The following represents clarification, additions, deletions, and/or modifications to the above referenced bid. This addendum shall hereafter be regarded as part of the solicitation. Items not referenced herein remain unchanged, including the response date. Words, phrases or sentences with a strikethrough represent deletions to the original solicitation. Underlined words and bolded, phrases or sentences represent additions to the original solicitation.

1. **UPDATED BID SCHEDULE**

The Bid Schedule has been updated and a new Bid Schedule has been uploaded to the project webpage on the Lee County Procurement website.

Please ensure that your firm has downloaded the Bid Schedule and have been able to successfully use the Excel format. Any firm having compatibility issues or difficulty downloading the Bid Schedule needs to contact the Procurement Analyst for this project at their earliest convenience.

Do not wait until submission day to download! Procurement is not required to extend a closing due to Contractor delay or difficulty in receipt or download of documents.

Bidders MUST use the new Bid Schedule Excel form when submitting their bid. Failure to do so will result in Bidder being deemed non-responsive and therefore ineligible for award.

2. **ATTACHMENTS**

a. Addendum 1 Bid Proposal Form

3. **QUESTIONS/ANSWERS**

1.	The Bid Documents say that a freight receipt is to be provided to the county to determine freight to be paid by the county. Conversely, the Bid Proposal asks for freight to be included for DuraEdge products. Can you please clarify if pricing is to be included in the unit price for DuraEdge but not for Pro's Choice and Diamond Pro products.
Answer	Pricing shall not include freight in the unit price. Please refer to Section 5 of the Special Conditions, located on page 17 of the solicitation package. Additionally, the Bid Proposal Form has been updated. The language as written "Includes Materials and Delivery" has been removed from Category 1 DuraEdge Products and Category 2 DuraEdge Products.

BIDDER/PROPOSER IS ADVISED, YOU ARE REQUIRED TO ACKNOWLEDGE RECEIPT OF THIS ADDENDUM WHEN SUBMITTING A BID/PROPOSAL. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE BIDDER/PROPOSER BEING CONSIDERED NON-RESPONSIVE.

ALL OTHER TERMS AND CONDITIONS OF THE SOLICITATION DOCUMENTS ARE AND SHALL REMAIN THE SAME.

Willie Dennard

Willie Dennard
Procurement Analyst Direct Line: 239-533-88
Lee County Procurement Management



Procurement Management Department
 2115 Second Street, 1st Floor
 Fort Myers, FL 33901
 Main Line: (239) 533-8881
 Fax Line: (239) 485-8383
www.leegov.com/procurement

Posted Date: April 8, 2024

Solicitation No.: B240216WCD

Solicitation Name: Purchase of Ballfield Clay Products & Conditioners

Subject: Addendum Number 2

The following represents clarification, additions, deletions, and/or modifications to the above referenced bid. This addendum shall hereafter be regarded as part of the solicitation. Items not referenced herein remain unchanged, including the response date. Words, phrases or sentences with a strikethrough represent deletions to the original solicitation. Underlined words and bolded, phrases or sentences represent additions to the original solicitation.

1. QUESTIONS/ANSWERS

1.	I was just looking at this open solicitation and it seems to be the same as B230518WCD back in January. What were the results of this last time?
Answer	The submissions received from potential vendors were incomplete as the vendors did not follow the instructions under Section 2 Basis of Award, Item 2.3. “Vendors are not required to bid on all categories for the basis of award, however, Vendors are required to bid on <u>ALL</u> lines within a specific category in order to be eligible for award.” Vendors must bid on all line items within the category that they are submitting a bid on and Vendors cannot change or alter the Bid Proposal form as this was the case with the previous solicitation and was the reason for the cancellation.

BIDDER/PROPOSER IS ADVISED, YOU ARE REQUIRED TO ACKNOWLEDGE RECEIPT OF THIS ADDENDUM WHEN SUBMITTING A BID/PROPOSAL. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE BIDDER/PROPOSER BEING CONSIDERED NON-RESPONSIVE.

ALL OTHER TERMS AND CONDITIONS OF THE SOLICITATION DOCUMENTS ARE AND SHALL REMAIN THE SAME.

Willie Dennard

Analyst Name: Willie Dennard
 Procurement Analyst Direct Line: 239-533-8831
 Lee County Procurement Management

EXHIBIT B FEE SCHEDULE

The Vendor is the primary vendor for the line items listed below. The County shall contact the primary vendor first for orders. If the primary vendor is unable to fulfill the need or meet the timeline required, the County may contact the secondary vendor. Products are to be charged in accordance with the unit prices provided below.

PRIMARY VENDOR FOR THE FOLLOWING ITEMS

- Category 1-DuraEdge Products (Ton)
- Category 2-DuraEdge Products (Per bag)
- Category 3-Pro's Choice (Ton)
- Category 4-Pro's Choice (Per bag)

EWING IRRIGATION PRODUCTS, INC.			
Category 1 - DuraEdge Products (Includes materials and delivery)			
1	DuraEdge Fair Ball! Calcined Conditioner	Ton	\$325.00
2	DuraEdge Platinum Calcined Conditioner	Ton	\$391.00
3	DuraEdge Play Ball! Calcined Conditioner	Ton	\$360.00
4	DuraEdge ProSlide Engineered Top Dressing Red	Ton	\$550.00
5	DuraEdge ProSlide Engineered Top Dressing Brown	Ton	\$550.00
6	DuraEdge DuraPitch ProLoc Clay	Ton	\$442.00
7	DuraEdge BlackStick Gumbo Mound Clay	Ton	\$652.00
8	DuraEdge Classic Infield Mix	Ton	\$125.85
9	DuraEdge Collegite Infield Mix	Ton	\$135.85
10	DuraEdge DuraPitch Professional Mound Clay	Ton	\$562.80
11	DuraEdge DuraPitch Premium Mound Clay	Ton	\$435.20
12	DuraEdge Professional (Pro) Infield Mix	Ton	\$184.85
13	DuraEdge Pro Dry Calcined Clay	Ton	\$369.00
Category 2 - DuraEdge Products (Includes materials and delivery)			
1	DuraEdge Fair Ball! Calcined Conditioner	Per Bag	\$6.50
2	DuraEdge Platinum Calcined Conditioner	Per Bag	\$7.82
3	DuraEdge Play Ball! Calcined Conditioner	Per Bag	\$7.19
4	DuraEdge ProSlide Engineered Top Dressing Red	Per Bag	\$16.13
5	DuraEdge ProSlide Engineered Top Dressing Brown	Per Bag	\$16.13
6	DuraEdge DuraPitch ProLoc Clay	Per Bag	\$11.63
7	DuraEdge BlackStick Gumbo Mound Clay	Per Bag	\$16.50
8	DuraEdge Classic Infield Mix	Per Bag	\$7.25
9	DuraEdge Collegite Infield Mix	Per Bag	\$7.63
10	DuraEdge DuraPitch Professional Mound Clay	Per Bag	\$14.07
11	DuraEdge DuraPitch Premium Mound Clay	Per Bag	\$10.88
12	DuraEdge Professional (Pro) Infield Mix	Per Bag	\$8.00
13	DuraEdge Pro Dry Calcined Clay	Per Bag	\$7.83

Category 3 - Pro's Choice			
1	Pro's Choice Red Sports Infield Conditioner	Ton	\$373.20
2	Pro's Choice Select Sports Infield Conditioner	Ton	\$420.80
3	Pro's Choice Rapid Dry	Ton	\$373.20
4	Pro's Choice Professional Sports Field Conditioner	Ton	\$439.20
5	Pro's Choice Easy Mound Packing Clay	Ton	\$634.50
6	Pro's Choice Pro Mound Packing Clay	Ton	\$603.20
7	Pro's Choice Ceramic	Ton	\$528.00
8	Pro's Choice Pro Brown Infield Top Dressing	Ton	\$707.60
9	Pro's Choice Pro Red Infield Top Dressing	Ton	\$707.60
Category 4 - Pro's Choice			
11	Pro's Choice Red Sports Infield Conditioner	Per Bag	\$9.33
12	Pro's Choice Select Sports Infield Conditioner	Per Bag	\$10.52
13	Pro's Choice Rapid Dry	Per Bag	\$9.33
14	Pro's Choice Professional Sports Field Conditioner	Per Bag	\$10.98
15	Pro's Choice Easy Mound packing Clay	Per Bag	\$12.69
16	Pro's Choice Pro Mound Packing Clay	Per Bag	\$15.08
17	Pro's Choice Ceramic	Per Bag	\$13.20
18	Pro's Choice Pro Brown Infield Top Dressing	Per Bag	\$17.69
19	Pro's Choice Pro Red Infield Top Dressing	Per Bag	\$17.69

EXHIBIT C INSURANCE REQUIREMENTS



Lee County Insurance Requirements

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

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:
 - \$1,000,000 per occurrence
 - \$2,000,000 general aggregate
 - \$1,000,000 products and completed operations
 - \$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:
 - \$1,000,000 combined single limit (CSL); or
 - \$500,000 bodily injury per person
 - \$1,000,000 bodily injury per accident
 - \$500,000 property damage per accident

- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:
 - \$500,000 per accident
 - \$500,000 disease limit
 - \$500,000 disease – policy limit

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



Lee County Insurance Requirements

Verification of Coverage:

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

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

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

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

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

Special Requirements:

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

EXHIBIT D

VENDOR BACKGROUND SCREENING AFFIDAVIT



VENDOR BACKGROUND SCREENING AFFIDAVIT

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Vendor who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The Vendor is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit. I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Vendor will be solely responsible for complying with such legal requirements. Furthermore, the Vendor shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: 6/5/2024


Signature

STATE OF New York
COUNTY OF Saratoga

Cory D. Metler
Name/Title

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this 24 day of June, 2024, by the above-named person and in their stated capacity, and is either personally known to me or who has produced the following type of identification: NYS Driver License
Type of Identification




Signature, Notary Public