

LEE COUNTY CONSTRUCTION CONTRACT
AGREEMENT FORM

AGREEMENT

THIS AGREEMENT (“Agreement”), effective the date the Lee County Board of County Commissioners awarded the Solicitation to the Contractor, is made and entered into by both parties, by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "OWNER" or the “COUNTY” and Thomas Marine Construction, Inc., a Florida corporation, whose address is 8999 High Cotton Lane, Fort Myers, Florida 33905, and whose Federal tax identification number is 59-2163377, hereinafter referred to as “CONTRACTOR”.

In consideration of the mutual covenants herein set forth, the COUNTY and the CONTRACTOR do hereby agree as follows:

ARTICLE 1. WORK

The CONTRACTOR shall perform all the Work required by the Contract Documents (the “Work”).

Scope of Work:

In full accordance with the drawings and as further elaborated in the specifications of Lee County Invitation to Bid No. B240003BAG (the “Solicitation”), a copy of which is on file with the Lee County Department of Procurement Management and is deemed incorporated into this Agreement, the CONTRACTOR shall perform construction and installation services for the Sunniland / Nine Mile Run Drainage Improvement Project.

PROJECT NAME: SUNNILAND / NINE MILE RUN DRAINAGE IMPROVEMENT PROJECT

LOCATION: Lee County, Florida

ARTICLE 2. AMOUNT OF CONTRACT

2.1 The COUNTY shall pay the CONTRACTOR in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the sum of: \$1,488,981.00 One Million Four Hundred Eighty-Eight Thousand Nine Hundred Eighty-One Dollars And Zero Cents.

2.2 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 nonappropriation 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 CONTRACTOR on thirty (30) calendar 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.

ARTICLE 3. PROGRESS PAYMENTS

Based upon Applications for payment submitted to the OWNER'S Representative by the CONTRACTOR, and Certificates for Payment issued by the OWNER'S Representative, the COUNTY shall make progress payments on account of the Contract Price to the CONTRACTOR as provided in the Contract Documents as follows:

3.1 Not later than fifteen (15) calendar days following the approval of an Application for payment, up to ninety-five percent (95%) of the portion of the Contract Price properly allocated to the aggregate of labor, materials, and equipment costs collectively incorporated in the Work and up to ninety-five percent (95%) of the portion of the Contract Price properly allocated to materials and equipment suitably stored at the site or some other location agreed upon in writing, for the period covered by the application for payment, less the aggregate of previous payments made by the COUNTY. In the event day fifteen (15) falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline shall fall to the next Monday or non-Lee County recognized holiday.

3.1.1 The amount of retainage withheld from each subsequent progress payment made to the CONTRACTOR may not exceed 5%.

3.2 Upon final completion of the work and acceptance of the project, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Price, less such amounts as the COUNTY shall determine for all incomplete Work, unsettled claims, or unused units as provided in the Contract Documents.

ARTICLE 4. CONTRACT DOCUMENTS

This Contract executed this date by the Lee County Board of County Commissioners and the CONTRACTOR. WITNESSETH that the parties hereto do mutually agree as follows:

4.1 The CONTRACTOR shall furnish all labor, equipment, and materials and perform the Work above described for the amount stated above in strict accordance with the General Conditions, Supplementary Information, Plans and Specifications, and other Contract Documents, all of which are made a part hereof as if attached and enumerated as follows:

4.1.1 Lee County Invitation to Bid/Project Manual titled: B240003BAG Sunniland / Nine

Mile Run Drainage Improvement Project dated October 3, 2023.

4.1.2 Addendum Number 1 dated October 31, 2023.

4.1.3 Addendum Number 2 dated November 7, 2023.

4.1.4 CONTRACTOR's Bid Proposal dated November 13, 2023.

4.1.5 Sunniland / Nine Mile Run Drainage Improvement Project dated October 26, 2023.

4.1.6 Gopher Tortoise Management Plan dated August 17, 2021.

4.1.7 GT Survey Map dated September 27, 2021.

4.2 The COUNTY shall pay the CONTRACTOR in accordance with the Exhibit A, Price Proposal, attached hereto and incorporated herein.

4.3 Public Payment and Performance Bond

4.4 Certificate of Insurance

4.5 Notice of Award

4.6 Documentation submitted by the CONTRACTOR prior to the Notice of Award: None.

4.7 CONTRACTOR's Background Screening Affidavit attached hereto and incorporated herein as Exhibit B.

4.8 The following, which may be delivered or issued after the effective date of the Agreement and are not attached hereto: All written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

5.1 Work to be started on the date specified in the Official Notice to Proceed.

5.2 Substantial completion shall be achieved not later than the number of days specified in the Special Conditions.

5.3 Final completion shall be achieved not later than the number of days specified in the Special Conditions.

Liquidated Damages:

5.4 The COUNTY and CONTRACTOR recognize that time is of the essence of this Agreement and that the COUNTY will suffer financial loss if the

work is not completed within the times specified in 5.2 and 5.3 above, plus any extensions thereof allowed by Change Order. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the COUNTY if the work is not completed on time. Accordingly, instead of requiring any such proof, COUNTY and CONTRACTOR agree that as Liquidated Damages for delay (but not as a penalty), the sum of \$970.00 per calendar day shall be deducted from monies due to the CONTRACTOR or paid by the CONTRACTOR to the COUNTY for each calendar day that expires after the time specified for Substantial Completion and the project fails to reach Substantial Completion. The COUNTY shall have the right to deduct all damages due from the final payment request as well as retainage. However, prior to deducting liquidated damages, the COUNTY shall give the CONTRACTOR seven (7) calendar days' notice prior to submitting the adjusted amount due to the Clerk for payment.

ARTICLE 6. DISPUTE RESOLUTION

6.1 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.

6.2 In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.

6.3 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.

6.4 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.

6.5 Unless otherwise agreed in writing, the Contractor will be required to continue all obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual periods of mediation or judicial proceedings.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 Final payments, constituting the entire unpaid balance of the Contract Price shall be paid by the COUNTY to the CONTRACTOR when the work has been completed, the Contract fully performed, and a final Certificate for Payment, form No. CMO:013, has been approved by the COUNTY.

7.2 Terms used in the Agreement which are defined in the General Conditions of the Contract

shall have the meaning designated in those conditions.

7.3 The COUNTY and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

7.4 The CONTRACTOR shall not assign or transfer any of its rights, benefits, or obligations, except for transfer that results from transfer or consolidation with a third party, without the prior written approval of the COUNTY. The CONTRACTOR shall have the right to employ other persons and/or firms to serve as sub-contractors in connection with the requirements of the Contract Documents.

7.5 The CONTRACTOR agrees through the signing of this agreement by an authorized party or agent that he shall hold harmless and defend the County of Lee and its agents and employees from all suits and action, including attorney's fees, and all cost of litigation and judgments of every name and description arising out of and incidental to the performance of this Contract Document or work performed thereunder, whether or not due to or caused by negligence of the COUNTY, excluding only the sole negligence of the COUNTY. This provision shall also pertain to any claims brought against the COUNTY by any employee of the CONTRACTOR, or sub-contractor(s), or anyone directly or indirectly employed by any of them. The CONTRACTOR'S obligation under this provision shall not be limited in any way to the agreed upon Contract Price as shown in this agreement or the CONTRACTOR'S limit of or lack of sufficient insurance protection.

[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:

**THOMAS MARINE
CONSTRUCTION, INC.**

Signed By: Linda Solich

Signed By: [Signature]

Print Name: Linda Solich

Print Name: Kevin C. Shimp

Title: President

Date: 1/11/2024

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
CHAIR

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

PRICE PROPOSAL

	PROCUREMENT MANAGEMENT DEPARTMENT BID PROPOSAL FORM				
B220405BAG Sunniland / Nine Mile Run Drainage Improvement Project					
EARTHWORK AND DRAINAGE			Thomas Marine		
Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Amount
1	Survey & Construction Layout	LS	1.000	\$ 25,500.00	\$ 25,500.00
2	Mobilization/Demobilization	LS	1.000	\$ 274,880.00	\$ 274,880.00
3	Erosion & Sedimentation Control Devices	LS	1.000	\$ 29,500.00	\$ 29,500.00
4	NPDES Permit (Includes Inspection & Reporting)	LS	1.000	\$ 1,000.00	\$ 1,000.00
5	Gopher Tortoise Burrow Protection	EA	10.000	\$ 370.00	\$ 3,700.00
6	Clearing & Grubbing	AC	7.900	\$ 18,250.00	\$ 144,175.00
7	Weir #1	LS	1.000	\$ 27,250.00	\$ 27,250.00
8	Weir #1 Gates & Appurtances	LS	1.000	\$ 32,250.00	\$ 32,250.00
9	Weir #1 FDOT Type 'H' Structure	EA	1.000	\$ 15,000.00	\$ 15,000.00
10	Weir #2	LS	1.000	\$ 21,500.00	\$ 21,500.00
11	Weir #2 Gates & Appurtances	LS	1.000	\$ 22,000.00	\$ 22,000.00
12	Weir #2 FDOT Type 'H' Structure	EA	1.000	\$ 15,000.00	\$ 15,000.00
13	Modified FDOT Type 'D' Structure	EA	3.000	\$ 7,000.00	\$ 21,000.00
14	Calibrated Staff Guages	EA	4.000	\$ 1,860.00	\$ 7,440.00
15	24" RCP	LF	105.000	\$ 180.00	\$ 18,900.00
16	30" RCP	LF	198.000	\$ 200.00	\$ 39,600.00
17	60" RCP Culvert Pipe	LF	360.000	\$ 560.00	\$ 201,600.00
18	30" MES	EA	3.000	\$ 4,500.00	\$ 13,500.00
19	14-ft gate	EA	1.000	\$ 10,000.00	\$ 10,000.00
20	Regrade canal (all excess fill material/spoil to be stockpiled onsite)	LF	3,500.000	\$ 80.00	\$ 280,000.00
21	Sod	SY	17,189.000	\$ 4.00	\$ 68,756.00
22	Record Survey w/ Benchmarks on drainage structures (2 weirs & 3 type D structures)	LS	1.000	\$ 7,500.00	\$ 7,500.00
23	Flat bladed excavator w/ operator to assist with the relocation of up to ten (10) gopher tortoises	HR	40.000	\$ 203.00	\$ 8,120.00
24	Rip Rap at base of weirs	CY	875.000	\$ 194.00	\$ 169,750.00
25	RIP RAP up and downstream of 60" RCP culverts	CY	40.000	\$ 194.00	\$ 7,760.00
26	Demolition and removal of existing weirs	LS	1.000	\$ 23,300.00	\$ 23,300.00
BID SUMMARY					
PROJECT TOTAL				\$1,488,981.00	
<small>**Quantities are not guaranteed. Final payment will be based on actual quantities.</small>					
PROJECT TOTAL: One Million Four Hundred Eighty-Eight Thousand Nine Hundred Eighty-One Dollars And Zero Cents.					
<small>(Use Words to Write Total)</small>					

*Please provide a list of job titles and hourly rate for any positions you feel may fall under the duties of this solicitation package.

*The hourly rate should include pay and all costs associated with this position. IE: direct pay, benefits, indirect personnel costs, general administrative costs, overhead, profit, multiplier, etc...)

EXHIBIT B

CONTRACTOR'S BACKGROUND SCREENING AFFIDAVIT



CONTRACTOR BACKGROUND SCREENING AFFIDAVIT

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

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

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

Date: 1/11/2024

Signature

STATE OF Florida
COUNTY OF Lee

Kevin C. Sh... President
Name/Title

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of [X] physical presence or [] online notarization, this 11th day of January, 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:

Type of Identification
LINDA SOLICH
Commission # HH 348132
Expires February 5, 2027
[Stamp/seal required]

Linda Solich
Signature, Notary Public



Advertise Date: Tuesday, October 03, 2023

Lee County Board of County Commissioners
DIVISION OF PROCUREMENT MANAGEMENT

Invitation to Bid (B)
Construction

Solicitation No.: **B240003BAG**

Solicitation Name: **Sunniland / Nine Mile Run Drainage Improvement Project**

Open Date/Time: **Monday, November 06, 2023** Time: **2:30 PM**

Location: Lee County Procurement Management
2115 Second Street, 1st Floor
Fort Myers, FL 33901

Procurement Contact: **Brooke Green, CPPB** Title **Grants Procurement Analyst**
Phone: **(239) 533-8848** Email: **BGreen@leegov.com**

Requesting Dept. Natural Resources

Pre-Bid Conference:

Type: NON-Mandatory

Date/Time: **10/17/2023 10:00 AM**

Location: 13191 Strauss Street, Fort Myers, Florida 33905

All solicitation documents are available for download at
www.leegov.com/procurement

F FUNDED IN PART OR IN WHOLE BY:
Federal Emergency Management Agency
Hazard Mitigation Grant Program
Through the
Florida Division of Emergency Management



Advertise Date: Tuesday, October 03, 2023

Notice to Bidder

Invitation to Bid (B) Construction

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

B240003BAG Sunniland / Nine Mile Run Drainage Improvement Project

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

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

2:30 PM Monday, November 6, 2023

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

The Scope of Work/Specifications for this solicitation is available from www.leegov.com/procurement. Bidders who obtain Scope of Work/Specifications from sources other than 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. It is the bidder's responsibility to check for posted information. The County may not accept incomplete Bids.

**A Non-Mandatory Pre-Bid Conference has been scheduled for the following time and location:
10:00 AM October 17, 2023 13191 Strauss Street, Fort Myers, Florida 33905**

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

Brooke Green, CPPB BGreen@leegov.com

Sincerely,

A handwritten signature in blue ink, appearing to read "Robin Dennard", with a long horizontal line extending to the right.

Robin Dennard, CPPB
Procurement Manager

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

Terms and Conditions
INVITATION TO BID (B)
CONSTRUCTION

1 DEFINITIONS

- 1.1 **Addendum/Addenda:** A written change, addition, alteration, correction or revision to a bid, proposal or contract Agreement/Contract. 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 **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.
- 1.4 **Bidder/Responder/Proposer:** One who submits a response to a solicitation.
- 1.5 **County:** Refers to Lee County Board of County Commissioners.
- 1.6 **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 Division. Only bids or proposals received prior to the established date and time will be considered.
- 1.7 **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.
- 1.8 **Procurement Management:** shall mean the Director of Lee County's Procurement Management Department or designee.
- 1.9 **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.
- 1.10 **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.
- 1.11 **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.

2 ORDER OF PRECEDENCE

- 2.1 In resolving conflicts, errors, and discrepancies, the order of precedence of the bid document is as follows
 - 2.1.1 Florida State Law as applied to Municipal Purchasing in accordance with Title XIX, "Public Business", Chapter 287 "Procurement of Personal Property and Services."
 - 2.1.2 Lee County Procurement Management Ordinance 22-06
 - 2.1.3 Change Order
 - 2.1.4 Agreement
 - 2.1.5 Addenda
 - 2.1.6 Special Conditions
 - 2.1.7 General Conditions, if any
 - 2.1.8 Specifications
 - 2.1.9 Supplemental Information
 - 2.1.10 Drawings/Plans, if any
 - 2.1.11 Figure Dimensions, if any
 - 2.1.12 Scale Dimensions (Large Scale Drawings supersede Small Scale Drawings)
 - 2.1.13 Terms and Conditions

3 RULES, REGULATIONS, LAWS, ORDINANCES AND LICENSES

- 3.1 It shall be the responsibility of the bidder to assure compliance with all other federal, state, or county codes, rules, regulations, or other requirements, as each may apply. Any involvement with the Lee County shall be in accordance with but not limited to:
 - 3.1.1 Lee County Procurement Management Ordinance 22-06

- 3.1.2 Pursuant to FL § Section 119.071, Public Records, General exemptions from inspection or copying of public records. Sealed bids, proposals or replies received by the agency pursuant to a solicitation are exempt from public records request (s. 119.07(1) and s. 24(a), Art. I, of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.
 - 3.1.3 FL § 215 regarding scrutinized companies and business operations.
 - 3.1.4 FL § 218 Public Bid Disclosure Act.
 - 3.1.5 Florida State Law as applied to Municipal Purchasing in accordance with Title XIX, “Public Business”, Chapter 287 “Procurement of Personal Property and Services.”
 - 3.1.6 FL § 337.168 Confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring system.
 - 3.1.7 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 Account:** As applicable, anyone providing merchandise or services to the public within the jurisdiction of Lee County must obtain a Lee County business tax account to operate unless specifically exempted.
 - 3.3 **License(s):** Bidder should provide, at the time of the opening of the bid, licenses required for this product and/or service.
- 4 BID – PREPARATION OF SUBMITTAL**
- 4.1 **Sealed Bid:** Submission must be in a sealed envelope/box, and the outside of the submission must be marked with the following information (Sealed Bid Label Form is attached for your use):
 - 4.1.1 Marked with the words “Sealed Bid”
 - 4.1.2 Bid Number
 - 4.1.3 Bid Title
 - 4.1.4 Bid Due Date
 - 4.1.5 Name of the firm submitting the bid
 - 4.1.6 Contact e-mail and telephone number
 - 4.2 **Bid submission shall include:**
 - 4.2.1 Provide two (2) hard copies. Mark each: one “Original”, one “Copy”
 - 4.2.2 Provide one (1) electronic flash drive set of the entire submission documents.
 - 4.2.3 Electronic submission document is to be one single Adobe PDF file in the same order as the original hard copy.
 - 4.2.4 Limit the color and number of images to avoid unmanageable file sizes.
 - 4.3 **Submission Format:**
 - 4.3.1 Required Forms: complete and return **all** required forms. If the form is not applicable, please return with “Not Applicable” or “N/A” in large letters across the form.
 - 4.3.2 Failure to submit required or requested information may result in the bidder being found non-responsive.
 - 4.3.3 Execution of Bid: All documents must be properly signed by corporate authorized representative, witnessed, and where applicable corporate and/or notary seals affixed. All Bids shall be typed or printed in ink. The bidder may not use erasable ink. All corrections made to the bids shall be initialed.
 - 4.3.4 If a cost/bid schedule was provided in Microsoft Excel format, the returned completed schedule should be included as a Microsoft Excel File on the Flash drive.
 - 4.3.5 The submission should not contain links to other web pages.
 - 4.3.6 Include any information requested by the County necessary to analyze your bid, i.e., required submittals, literature, technical data, financial statements.
 - 4.3.7 Bid Security/Bond(s), as applicable (Construction projects)
 - 4.4 **Preparation Cost:** The Bidder 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 bid, or for any travel and per diem costs that are incurred by any Bidder.

5 RESPONSES RECEIVED LATE

- 5.1 It shall be the Bidder's sole responsibility to deliver the bid submission to the Lee County Procurement Management Division prior to or on the time and date stated. All references to date and time herein reference Lee County, FL local time.
- 5.2 Any bids received after the stated time and date will not be considered. The bid shall not be opened at the public opening. Arrangements may be made for the unopened bid to be returned at the bidder's request and expense.
- 5.3 The Lee County Procurement Management Division shall not be responsible for delays caused by the method of delivery such as, but not limited to; internet, United States Postal Service, overnight express mail service(s), or delays caused by any other occurrence.

6 BIDDER REQUIREMENTS (unless otherwise noted)

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

- 7.1 A pre-bid conference will be held in the location, date, and time specified on the cover of this solicitation. The cover will also note if the pre-bid conference is Non-Mandatory or Mandatory. All questions and answers are considered informal. All prospective bidders are encouraged to obtain and review the solicitation documents prior to the pre-bid conference so they may be prepared to discuss any questions or concerns they have concerning this project. All questions must be submitted formally in writing to the procurement staff noted on the first page of the bid 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-bid conference, as applicable.

- 7.2 **Non-Mandatory:** Pre-bid conferences are generally non-mandatory, but it is highly recommended that prospective bidders participate.
- 7.3 **Mandatory:** Failure to attend a mandatory pre-bid conference will result in the bid being considered **non-responsive**.

8 COUNTY INTERPRETATION/ADDENDUMS

- 8.1 Each Bidder shall examine the solicitation documents and shall judge all matters relating to the adequacy and accuracy of such documents. Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the 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. It is solely the bidder’s responsibility to check the website for information. No notifications will be sent by Lee County Procurement Management Division.
- 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 Division is the only official method whereby interpretation, clarification or additional information can be given.

9 QUALITY GUARANTEE/WARRANTY (as applicable)

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

10 SUBSTITUTION(S)/APPROVED ALTERNATE(S)

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

11 NEGOTIATED ITEMS

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

12 ERRORS, OMISSIONS, CALCULATION ERRORS (as applicable)

- 12.1 **Calculation Errors:** In the event of multiplication/addition error(s), the unit price shall prevail. Written prices shall prevail over figures where applicable. All bids will be reviewed mathematically and corrected, if necessary, using these standards, prior to further evaluation.

13 CONFIDENTIALITY

- 13.1 Bidders should be aware that all submissions provided are subject to public disclosure and will **not** be afforded confidentiality, unless provided by Chapter 119 FL §.
- 13.2 If information is submitted with a bid that is deemed “Confidential” the bidder must stamp those pages of the submission that are considered confidential. The bidder must provide documentation as to validate why these documents should be declared confidential in accordance with Chapter 119, “Public Records,” exemptions.
- 13.3 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 FL § 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.

14 BID -- CONFLICT OF INTEREST

- 14.1 **Business Relationship Disclosure Requirement:** The award hereunder is subject to the provisions of Chapter 112, Public Officers and Employees: General Provisions, Florida Statutes. All bidders must disclose with their submission the name of any officer, director or agent who is also an employee of the Lee County or any of its agencies. Further, all bidders must disclose the name of any County employee who owns directly or indirectly, an interest of five percent (5%) or more in the bidder’s firm or any of its branches.

15 ANTI-LOBBYING CLAUSE (Cone of Silence)

- 15.1 Following FL § Section 287.057(23), Upon the issuance of the solicitation, prospective proposers/bidders or any agent, representative or person acting at the request of such proposer/bidder shall not have any contact, communicate with or discuss any matter relating in any way to the solicitation with any Commissioner, Evaluation Review Committee, agent or employee of the County other than the Procurement Management Director or their designee. This prohibition begins with the issuance of any solicitation and ends upon execution of the final contract or when the solicitation has been cancelled. **If it is determined that improper communications were conducted, the Bidder/Proposer may be declared non-responsible.**

16 ANTITRUST VIOLATION

- 16.1 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.

17 DRUG FREE WORKPLACE

- 17.1 Lee County Board of County Commissioners encourages Drug Free Workplace programs.
- 18 FLORIDA CERTIFIED ENTERPRISES**
- 18.1 The County encourages the use of Florida Certified Enterprises such as such as Disadvantaged, Minority, Women, Veterans Business Enterprise (DBE, MBE, WBE, VBE) firms.
- 18.2 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.
- 19 ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY**
- 19.1 The bidder agrees to comply, in accordance with FL § 287.134, 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.
- 19.2 The bidder will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, disability, or marital status. The bidder 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.
- 19.3 The bidder 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 bidder 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.
- 19.4 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.
- 20 SUB-CONTRACTOR**
- 20.1 The use of sub-contractors under this solicitation requires prior written authorization from the County representative.
- 21 BID - PROJECT GUIDELINES (as applicable)**
- 21.1 The County has established the following Guidelines, Criteria, Goals, Objectives, Constraints, Schedule, Budget and or Requirements which shall service as a guide to the bidder(s) in conforming to the provision of goods and/or services to be provided pursuant to this Agreement/Contract:
- 21.1.1 No amount of work is guaranteed upon the execution of an Agreement/Contract.
- 21.1.2 Rates and all other negotiated expenses will remain in effect throughout the duration of the Agreement/Contract period.
- 21.1.3 This contract does not entitle any bidder to exclusive rights to County Agreement/Contracts. The County reserves the right to perform any and all available required work in-house or by any other means it so desires.
- 21.1.4 In reference to vehicle travel, mileage and man-hours spent in travel time, is considered incidental to the work and not an extra compensable expense.
- 21.1.5 Lee County reserves the right to add or delete, at any time, and or all material, tasks or services associated with this Agreement/Contract.
- 21.1.6 Any Single Large Project: The County, in its sole discretion, reserves the right to separately solicit any project that is outside the scope of this solicitation, whether through size, complexity or the dollar value.

22 BID – TIEBREAKER

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

23 WITHDRAWAL OF BID

- 23.1 No bid may be withdrawn for a period of **180 calendar days** after the scheduled time for receiving submissions. A bid may be withdrawn prior to the solicitation opening date and time. Withdrawal requests must be made in writing to the Procurement Management Director, who will approve or disapprove the request.
- 23.2 A bidder may withdraw a submission any time prior to the opening of the solicitation.
- 23.3 After submissions are opened, but prior to award of the contract by the County Commission, the Procurement Management Director may allow the withdrawal of a bid because of the mistake of the bidder in the preparation of the submission document. In such circumstance, the decision of the Procurement Management Director to allow the submission withdrawal, although discretionary, shall be based upon a finding that the bidder, by clear and convincing evidence, has met each of the following four tests:
- 23.3.1 The bidder acted in good faith in submitting the bid,
- 23.3.2 The mistake in bid preparation that was of such magnitude that to enforce compliance by the bidder would cause a severe hardship on the bidder,
- 23.3.3 The mistake was not the result of gross negligence or willful inattention by the bidder; and
- 23.3.4 The mistake was discovered and was communicated to the County prior to the County Commission having formally awarded the Agreement/Contract.

24 PROTEST RIGHTS

- 24.1 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.
- 24.2 Notice of Intended Decision is posted on the Lee County Department of Procurement Management website (www.leegov.com/procurement). Bidders are solely responsible to check for information regarding the Solicitation.
- 24.3 Refer to the “Procurement Protest” section of the Lee County Procurement Ordinance 22-06 for a complete description of the protest process and associated requirements. The ordinance is posted on the Lee County website or may be obtained by contacting the Procurement Management Director.
- 24.4 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.**
- 24.5 The notice shall clearly indicate all grounds being claimed for the protest.
- 24.6 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.

- 24.7 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.
- 24.8 **Failure to follow the protest procedures requirement within the time frames as prescribed herein and in the Lee County Procurement Ordinance 22-06 shall constitute a waiver of the right to protest and shall bar any resulting claims.**

25 AUTHORITY TO UTILIZE BY OTHER GOVERNMENT ENTITIES

- 25.1 This opportunity is also made available to any government entity. Pursuant to their own governing laws, and subject to the Agreement/Contract 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.

26 CONTRACT ADMINISTRATION

26.1 Designated Contact:

- 26.1.1 The awarded bidder 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.
- 26.1.2 Lee County requires the awarded bidder 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.

26.2 BID – Term: (unless otherwise stated in the Scope of Work or Detailed Specifications)

- 26.2.1 Unless otherwise stated in the scope of work, specifications, or special conditions the default **contract term shall be for one (1) three-year (3) 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 the initial Agreement term of three (3) years. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest.**
- 26.2.2 The County reserves the right to renew this Agreement/Contract (or any portion thereof) and to negotiate pricing as a condition for each.
- 26.2.3 The County’s performance and obligation to pay under this contract, and any applicable renewal options, is contingent upon annual appropriation of funds.

26.3 BID – Basis of Award:

- 26.3.1 The bid is awarded under a system of sealed, competitive bidding to the lowest responsive and responsible bidder.
- 26.3.2 In the event the lowest responsible and responsive bid for a project exceeds the available funds the County may negotiate an adjustment of the bid price with the lowest responsible and responsive bidder, in order to bring the total cost of the project within the amount of available funds.
- 26.3.3 The County reserves the right to make award(s) by individual item, group of items, all or none, or a combination thereof. The County reserves the right to reject any and all bids or to waive any minor irregularity or technicality in the bids received. Award will be made to the lowest responsive and responsive bidder(s) within the category chosen for basis of award.
- 26.3.4 The County reserves the right to award to one or multiple bidders at the discretion of the requesting authority and approval of the Procurement Management Director.

26.4 Agreement/Contracts:

- 26.4.1 The awarded bidder will be required to execute an Agreement/Contract as a condition of award. A sample of this document may be viewed on-line at <http://www.leegov.com/procurement/forms>.

26.5 Records:

- 26.5.1 Retention: The bidder shall maintain such financial records and other records as may be prescribed by Lee County or by applicable federal and state laws, rules, and regulations. Unless otherwise stated in the specifications, the bidder shall retain these records for a period of five years after final payment, or until they are audited by Lee County, whichever event occurs first.
- 26.5.2 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:

- 26.5.2.1 Keep and maintain public records required by the County to perform the service.
- 26.5.2.2 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.
- 26.5.2.3 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.
- 26.5.2.4 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.

26.5.3 **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 or Visit <http://www.leegov.com/publicrecords>.**

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

26.6 **Termination:**

26.6.1 Any Agreement/Contract as a result of this solicitation may be terminated by either party giving **thirty (30) calendar days advance written notice**. The County reserves the right to accept or not accept a termination notice submitted by the vendor, and no such termination notice submitted by the vendor shall become effective unless and until the vendor is notified in writing by the County of its acceptance.

26.6.2 The Procurement Management Director may immediately terminate any Agreement/Contract as a result of this solicitation for emergency purposes, as defined by the Lee County Procurement Ordinance 22-06.

26.6.3 Any bidder who has voluntarily withdrawn from a solicitation without the County's mutual consent during the contract period shall be barred from further County procurement for a **period of 180 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.

26.6.4 The County reserves the right to terminate award or contract following any of the below for goods or services over \$1,000,000:

- 26.6.4.1 Contractor is found to have submitted a false certification as provided under FL § 287.135 (5);
- 26.6.4.2 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 (FL §215.473);
- 26.6.4.3 Contractor has engaged in business operations in Cuba or Syria (FL § 215.471);

- 26.6.4.4 Contractor has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel. (FL § 215.4725);
- 26.6.4.5 The County reserves the right to review, on a case-by-case basis, and waive this stipulation if it is deemed to advantageous to the County.

27 WAIVER OF CLAIMS

- 27.1 Once this contract expires, or final payment has been requested and made, the awarded bidder shall have waived any claims against the County concerning this contract. After that period, the County will consider the bidder to have waived any right to claims against the County concerning this Agreement/Contract.

28 LEE COUNTY PAYMENT PROCEDURES

- 28.1 Unless otherwise noted, all vendors are requested to mail an original invoice to:
Lee County Finance Department
Post Office Box 2238
Fort Myers, FL 33902-2238
- 28.2 All invoices will be paid as directed by the Lee County payment procedure unless otherwise stated in the detailed specifications for this project.
- 28.3 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.
- 28.4 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 bidders should include in their bids, all sales or use taxes, which they will pay when making purchases of material or sub-contractor's services.

29 SAFETY DATA SHEETS (SDS) (as applicable)

- 29.1 In accordance with Chapter 443 of the FL §, it is the vendor's responsibility to provide Lee County with Safety Data Sheets on bid materials, as may apply to this procurement.

30 DEBRIS DISPOSAL (as applicable)

- 30.1 Unless otherwise stated, the bidder 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.

31 SHIPPING (as applicable)

- 31.1 Cost of all shipping to the site, including any inside delivery charges and all unusual storage requirements shall be borne by the bidder unless otherwise agreed upon in writing prior to service. It shall be the bidder'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.
- 31.2 The materials and/or services delivered under the bid 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.

32 BOND/SURETY (CONSTRUCTION)

- 32.1 Bonding/Surety is required in accordance with the Lee County Procurement Ordinance 22-06.
- 32.2 Bid Bond/Security: The Procurement Management Department shall determine if a Bid Bond shall be required for any Competitive Procurement. Each Bidder shall submit not less than five percent (5%) of the proposed dollar amount (including applicable Alternates) as Bid Bond/Security. One ORIGINAL Bid Bond/Security shall be submitted to the County with each Bid submission. The Bid Bond/Security of the Bidder will be retained until the Bidder and the County have entered into the Contract, whereupon the Bid Bond/Security may be returned. The Bid Bond/Security of a Bidder whom the County believes to have a reasonable chance of receiving the Award may be retained by the County until the effective date of the Contract, whereupon any Bid Bonds/Securities furnished by a Bidder may be returned. The following types of Bid Security shall be accepted:

- 32.2.1 **A Certified Check or a Cashier's Check** in the stated dollar amount of not less than 5% of proposed dollar amount. Any Certified Check or Cashier Check submitted in lieu of a Bid Bond Shall be drawn on a solvent bank or trust company, made payable to Lee County Board of County Commissioners and shall have all necessary documentary revenue stamps attached (if required by law); or
- 32.2.2 **A Bid Bond** may be submitted on a Lee County paper Bid Bond Form. Must be signed by all required parties, of not less than 5% of proposed dollar amount (including Alternate(s) as applicable) shall accompany each submission. The Bid Bond shall be issued by a duly authorized surety authorized to do business and in good standing with the Florida Department of state.
- 32.3 **Payment and Performance Bond:** In accordance with F.S. 255.05 and Lee County Ordinance 22-06, 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 bidder/vendor. 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 bidder/vendor performance under such Contract.
- 32.3.1 A public Payment and Performance bond must be properly executed, by the Surety Company and successful bidder/vendor, 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.
- 32.3.2 A **Clean Irrevocable Letter of Credit or Cash Bond** may be accepted by the County in lieu of the Public Payment and Performance Bond.
- 32.4 Only Lee County form(s) may be accepted. Forms are available at <https://www.leegov.com/procurement/forms>.
- 32.5 **Personal Checks are not acceptable to Lee County as a Bid Security.**
- 32.6 **Surety:** In order to be acceptable to the County, a Surety Company issuing Evidence of Bond ability, 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 an agent with satisfactory evidence of its authority to execute the bond being submitted.
- 33 LOCAL VENDOR PREFERENCE**
- 33.1 The Procurement Management Department will adhere to the Lee County Ordinance No. 22-06 and as may be amended from time to time (the County's "Local Vendor Preference"). It shall be at the discretion of the County Manager or Designee whether to apply Local Vendor Preference to any particular Solicitation.
- 33.2 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.
- 33.3 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.
- 34 INSURANCE (AS APPLICABLE)**
- 34.1 Insurance shall be provided by the awarded bidder/vendor. Prior to execution of the Agreement/Contract a certificate of insurance (COI) complying with the bid documents shall be provided by the bidder/vendor.
- 34.2 Insurance carriers providing coverage required herein shall be licensed to conduct business in the State of Florida and shall possess a current A.M. Best's Financial Strength Rating of "B or better."

End of Terms and Conditions Section

INSURANCE GUIDE



Lee County Insurance Requirements

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

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

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



Lee County Insurance Requirements

Verification of Coverage:

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

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

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

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

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

Special Requirements:

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

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End of Insurance Guide Section

SPECIAL CONDITIONS

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

1. TERM

1.1 From the Notice to Proceed or the Purchase Order date, whichever applies: 210 calendar days to substantial completion, 60 calendar days from substantial completion to final completion (total days 270).

2. LIQUIDATED DAMAGES (CONSTRUCTION)

2.1 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 \$970.00 per calendar day.

3. BASIS OF AWARD

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

4. PROJECT FUNDING NOTICE

4.1 As notice to all CONTRACTORS, this project is funded in whole or in part by the Federal Emergency Management Agency, Hazard Mitigation Grant Program through the Florida Division of Emergency Management. The CONTRACTOR agrees to abide by and comply with all terms, conditions, provisions, certifications, affidavits, or otherwise as applicable and stated within this solicitation package. It shall be further understood that these provisions and terms shall be incorporated into any related Agreements/Contracts executed between the prime CONTRACTOR and SUB-CONTRACTORS.

4.1.1 By participating in this solicitation, the CONTRACTOR shall comply with all federal, state, and local regulations, including, but not limited to, nondiscrimination, wages, social security, worker's compensation, licenses, and registration requirements.

4.1.2 No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.

4.1.3 This solicitation shall be governed by and construed in accordance with all applicable State and Federal laws, rules, and regulations, included those identified in the solicitation package. Any express reference in this solicitation and any related Agreements/Contracts executed between the prime CONTRACTOR and SUB-CONTRACTORS to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

4.2 RECORDS

4.2.1 As required by Florida Department of State's record retention requirements (Chapter 119, Florida Statutes) and by 2 C.F.R. §20.333, the CONTRACTORS and/or SUB-CONTRACTORS shall retain sufficient records to show its compliance with the terms of this solicitation for a period of five (5) fiscal years from the date of completion of project. The following are the only exceptions to the five (5) year requirement:

4.2.1.1 If any litigation, claim, or audit is started before the expiration of the five (5) year period, then the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

4.2.1.2 When notified by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

4.3 The CONTRACTOR shall be bound by the terms as stated within this solicitation package by all applicable state and federal laws and regulations, and the CONTRACTOR shall hold the Florida Division of Emergency Management and Lee County harmless against all claims of whatever nature arising out of the CONTRACTOR'S performance of work under this solicitation, to the extent allowed and required by law.

5. APPLICABLE & MISC. PROJECT PROVISIONS

7.1 In the event of a conflict between the Contract Document terms, Federal Guidelines, State, Local, or other applicable requirements associated with this project that is unable to be resolved through the Order of Precedence as defined herein, the CONTRACTOR should provide a written description of such conflict to the County Project Manager in order to receive final guidance on proceeding with conflicted items.

6. MINIMUM QUALIFICATION REQUIREMENTS/CERTIFICATIONS

8.1 CONTRACTOR must meet the minimum qualification criterion as specified in Form 13 – Minimum Qualification Requirements provided within this solicitation package to qualify for consideration of award. Form 13 – Minimum Qualifications Requirements shall be completed and returned with bid submittal along with any supporting documentation where requested and/or indicated herein.

8.2 The determination shall be based upon the examination of Form 13 – Minimum Qualification Requirements and the associated supportive documentation (if any requested). Failure to meet the minimum qualification as listed, at the sole discretion of the COUNTY, may result in CONTRACTOR being deemed Non-Responsive.

End of Special Conditions Section

FEDERAL PROCUREMENT SUPPLEMENTAL CLAUSES TO INCLUDE APPENDIX II

NOTICE TO CONSULTANT/CONTRACTOR/VENDOR REGARDING FEDERAL FUNDING

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 200.317 through 200.327.

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 CONSULTANT/CONTRACTOR/VENDOR, the CONSULTANTS/CONTRACTORS/VENDORS investment, the amount of subcontracting necessary, the quality of the CONSULTANTS/CONTRACTORS/VENDOR’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.

1. EQUAL EMPLOYMENT OPPORTUNITY:

1.1. During the performance of this contract, the CONSULTANT/CONTRACTOR/VENDOR agrees as follows:

- 1.1.1. 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, 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.

- 1.1.2. 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.
- 1.1.3. 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.
- 1.1.4. 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.
- 1.1.5. 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.
- 1.1.6. 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.
- 1.1.7. 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, terminated or suspended 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.
- 1.1.8. 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.

2. MAINTENANCE OF RECORDS:

- 2.1. 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.
- 2.2. 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.
- 2.3. 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.
- 2.4. 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.
- 2.5. 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.
- 2.6. 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 outlined 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.

3. DHS SEAL, LOGO, AND FLAGS:

- 3.1. 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. The CONSULTANT/CONTRACTOR/VENDOR shall include this provision in any subcontracts.

4. LOCAL VENDOR PREFERENCE EXCLUSION:

- 4.1. 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).

5. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, and EXECUTIVE ORDERS:

5.1. This is an acknowledgment that GRANT AGENCY financial assistance will be used to fund all or a portion of the contract. The CONSULTANT/CONTRACTOR/VENDOR will comply with all applicable federal law, regulations, executive orders, GRANT AGENCY policies, procedures, and directives.

6. NO OBLIGATION BY THE FEDERAL GOVERNMENT:

6.1. The Federal Government is not a party to this solicitation and/or contract 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.

7. FRAUD and FALSE OR FRAUDULENT OR RELATED ACTS:

7.1. 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 and/or contract.

8. SUBCONTRACTS:

8.1. 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.

9. CONFLICT OF INTEREST:

9.1. 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 that 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.

10. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (E-VERIFY):

10.1. 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 the employment eligibility of workers in the United States; it is not a substitute for any other employment eligibility verification requirements.

10.2. 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.

10.3. It shall be the vendor's responsibility to familiarize themselves with all rules and regulations

governing this program.

- 10.4. For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the following website: <http://www.dhs.gov/E-Verify>.

11. ENERGY POLICY AND CONSERVATION ACT:

- 11.1. 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).

12. SMALL AND MINORITY BUSINESS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS:

- 12.1. If subcontracts are to be let, the prime CONSULTANT/CONTRACTOR/VENDOR is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- a) Place qualified small and minority businesses and women's business enterprises on solicitation lists.
 - b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
 - c) 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.
 - d) 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.
 - e) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

13. DOMESTIC PREFERENCES FOR PROCUREMENT (2 C.F.R. § 200.322):

- 13.1. As appropriate and to the greatest extent consistent with law, the CONSULTANT/CONTRACTOR/VENDOR should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use 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 sub-awards 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.
- 13.1.1. Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - 13.1.2. Manufactured products means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

14. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS OR SERVICES (2 C.F.R. § 200.216):

- 14.1 The Contractor shall comply with 2 C.F.R. § 200.216, Prohibition on Contracting for Covered Telecommunications Equipment or Services:
- (a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—
- (b) Prohibitions.
- (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 - (2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- (c) Exceptions.
- (1) This clause does not prohibit contractors from providing—
 - (i) A service that connects to the facilities of a third party, such as backhaul, roaming, or interconnection arrangements; or
 - (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
 - (2) By necessary implication and regulation, the prohibitions also do not apply to:
 - (i) Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
 - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- (d) Reporting requirement.
- (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or sub-recipient unless elsewhere in this contract are established procedures for reporting the information.
 - (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
 - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent the use or submission of covered telecommunications equipment or services and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- (e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.”

15. TERMINATION FOR CAUSE AND/OR CONVENIENCE

- 15.1. The County, by written notice to the CONSULTANT/CONTRACTOR/VENDOR, may terminate this Agreement with or without cause, in whole or in part, when the County determines in its sole discretion that it is in the County’s best interest to do so. In the event of termination, the CONSULTANT/CONTRACTOR/VENDOR will not incur any new obligations for the terminated portion of the Agreement after the CONSULTANT/CONTRACTOR/VENDOR has received notification of termination.
- 15.2. If the Agreement is terminated before performance is completed, the CONSULTANT/CONTRACTOR/VENDOR shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount that is the same percentage of the Agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the County and shall be turned over promptly by the CONSULTANT/CONTRACTOR/VENDOR.

16. CHANGES:

- 2.1. Changes to any federal grant or federally funded cooperative agreement shall be in writing, executed by change order and the costs of any change, modification, change order, or constructive change must be allowable, allocable, and within the original scope of the federal grant or federal cooperative agreement. Changes should be reasonable and necessary for the completion of the original project scope. Any changes must be permissible under state, local and federal laws. Any change recommended and accepted by both parties, in writing, will not be considered a contract breach. 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 is in writing and signed by both the CONSULTANT/CONTRACTOR/VENDOR and the County.

17. LICENSE AND DELIVERY OF WORKS SUBJECT TO COPYRIGHT AND DATA RIGHTS:

- 17.1. The CONSULTANT/CONTRACTOR/VENDOR grants 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 preparing derivative works, distributing 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.”

18. TIME & MATERIAL, TIME & EQUIPMENT, FIRM FIXED PRICE LUMP SUM CONTRACTS:

- 18.1. The following applies to purchases made or reimbursed with Federal funds as per 2 CFR 200.318(j) and other Federal Regulations. For a firm fixed price, lump sum, Time & Material (T&M), and/or Time & Equipment (T&E) procurements, a Purchase Order represents a CONSULTANT/CONTRACTOR/VENDOR’s Notice to Proceed (NTP). Line-item Extended Price(s) shall be considered Not to Exceed (NTE) ceiling value(s). Additionally, the Total Order value for a Purchase Order represents an NTE ceiling value. If the CONSULTANT/CONTRACTOR/VENDOR anticipates exceeding either of these NTE values, they should contact the Lee County Procurement Department for a change order. If a CONSULTANT/CONTRACTOR/VENDOR exceeds a Line Item or Total Order NTE value, it does so at its own risk.

19. SUSPENSION AND DEBARMENT

- 19.1. 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).
- 19.2. 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.
- 19.3. 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.
- 19.4. 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.

20. RECOVERED MATERIALS

- 20.1. In the performance of this contract, the CONSULTANT/CONTRACTOR/VENDOR shall make maximum use of products containing recovered materials 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.
- 20.2. Information about this requirement is available on the EPA'S Comprehensive Procurement Guidelines website, <http://www.epa.gov/cpg/> The list of EPA- designate items is available at <http://www.epa.gov/cpg/products/htm>
- 20.3. The CONSULTANT/CONTRACTOR/VENDOR also agrees to comply with all other applicable requirements of Section 6002 or the Solid Waste Disposal Act.

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

- 21.1. 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.
- 21.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause outlined 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 territory, to such District or 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 outlined 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 outlined in paragraph (1) of this section.
- 21.3. Withholding for unpaid wages and liquidated damages. The State of Florida Division of Emergency Management shall upon its action or written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any money 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 outlined in paragraph (2) of this section.
- 21.4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses outlined 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 outlined in paragraphs (1) through (4) of this section.

22. BYRD ANTI-LOBBYING AMENDMENT

- 22.1. 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.

23. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT:

- 23.1. If the Federal award meets the definition of “funding agreement” under 37C.F.R. § 401.2(a) and Lee County enters into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the County must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the Federal Awarding Agency. See 2 C.F.R. Part 200, Appendix II(F).

24. FLY AMERICA REQUIREMENTS:

- 24.1. The CONSULTANT/CONTRACTOR/VENDOR agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

25. AMERICANS WITH DISABILITIES ACT (ADA):

- 25.1. All design and construction must be accessible to individuals with disabilities pursuant to Titles II and III of the Americans with Disabilities Act.

26. CARGO PREFERENCE:

- 26.1. The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.
- 26.2. Use of United States – Flag Vessels:
- 26.3. The CONSULTANT/CONTRACTOR/VENDOR agrees to use privately owned United States- Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States- Flag commercial vessels.
- 26.4. Furnish within twenty (20) business days following the date of loading for shipments originating within the United States or within thirty (30) business days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding 6 paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to LCBOCC (through the Contractor in the case of a subcontractor's bill-of-lading.)
- 26.5. Include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

27. SEISMIC SAFETY REQUIREMENTS FOR THE CONSTRUCTION OF NEW BUILDINGS OR ADDITION TO EXISTING BUILDINGS:

- 27.1. CONSULTANT/CONTRACTOR/VENDOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify compliance to the extent required by the regulation. The CONSULTANT/CONTRACTOR/VENDOR also agrees to ensure that all Work performed under the Contract including Work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

28. ENERGY CONSERVATION:

- 28.1. CONSULTANT/CONTRACTOR/VENDOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the Florida energy conservation plan issued in compliance with the Energy Policy and Conservation Act, as amended, 42 USC § 6321 *et seq.*, and perform an energy assessment for any building constructed, reconstructed, or modified with Federal funds required under Federal regulations, "Requirements for Energy Assessment," 49 CFR part 622, subpart C.

29. DAVIS-BACON ACT:

- 29.1. All prime construction contracts in excess of \$2,000 awarded by non- Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II(D). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.

- 29.2. 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.

- 1.1. 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.
- 1.2. 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.

1.3. 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's 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.
- 1.4. 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.

- 1.5. 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 compliance by any sub-CONTRACTOR or lower-tier sub- CONTRACTOR with all the Contract clauses in 29 C.F.R. 5.5.
- 1.6. 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.
- 1.7. 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.
- 1.8. 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.
- 1.9. 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.

30. COPELAND ANTI-KICKBACK ACT:

- 30.1. Recipient and sub-recipient contracts must include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").
- 30.2. This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. It DOES NOT apply to the FEMA Public Assistance Program.
- 30.3. Compliance
 - 30.3.1. CONSULTANT/CONTRACTOR/VENDOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3, which are incorporated by reference into the Contract.

- 30.3.2. Subcontracts. The CONSULTANT/CONTRACTOR/VENDOR or subcontractor shall insert in any subcontracts the clause above and such other clauses as may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The prime CONSULTANT/CONTRACTOR/VENDOR shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with all of these contract clauses.
- 30.3.3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

End of Supplemental Conditions

GENERAL CONDITIONS

1. Administration

The Consultant is the initial interpreter of the Contract Documents but is not the Judge between the COUNTY and the CONTRACTOR. 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 CONTRACTOR 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 CONTRACTOR.

1.2. Before Starting Construction

Before undertaking each phase of the Work, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The CONTRACTOR shall promptly report in writing to the OWNER'S REPRESENTATIVE any conflict, error or discrepancy which the CONTRACTOR may discover, or other information known to the CONTRACTOR and shall obtain a written interpretation or clarification from the OWNER'S REPRESENTATIVE before proceeding with any Work affected thereby. If the CONTRACTOR 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 CONTRACTOR shall assume responsibility for such performance and shall share in costs associated with correction; however, the CONTRACTOR shall not be liable to the COUNTY for failure to report any conflict, error or discrepancy in the Contract Documents, unless the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR starts the Work at the site, a conference attended by the CONTRACTOR, 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 CONTRACTOR, 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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.

CONTRACTOR 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.