



Advertise Date: Friday, May 08, 2020

Lee County Board of County Commissioners
DEPARTMENT OF PROCUREMENT MANAGEMENT

Invitation to Bid (B)
DOT Construction Only

Solicitation No.: **B200299MIF**

Solicitation Name: **Sunshine Blvd. at 8th St. SW Intersection Improvements**

Open Date/Time: **Wednesday, June 10, 2020** Time: **2:30 PM**

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

Procurement Contact: **Miguel Flores** Title **Procurement Analyst**

Phone: **(239) 533-8835** Email: **mflores@leegov.com**

Requesting Dept. **Transportation**

Pre-Bid Conference:	
Type:	No meeting scheduled at this time
Date/Time:	
Location:	

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



Advertisement Date: Friday, May 08, 2020

INTRODUCTIONS AND BACKGROUND

Notice to Bidder

Invitation to Bid (B) Construction

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

B200299MIF – Sunshine Blvd. at 8th St. SW Intersection Improvements

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

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

2:30 PM Wednesday, June 10, 2020

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

The Scope of Work/Specifications for this solicitation is available from www.leegov.com/procurement. 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.

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

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

Miguel Flores, mflores@leegov.com

Sincerely,

Lindsay Cepero, CPPB
Procurement Manager

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

Terms and Conditions**INVITATION TO BID (B)
CONSTRUCTION**

1. DEFINITIONS. Additional definitions may be found in the Draft Construction Agreement attached hereto.
- 1.1. **Addendum/Addenda:** A written document used to modify the terms of a procurement instrument (such as an Invitation to Bid or Request for Proposals). An addendum is not to be confused with a contract "amendment."
 - 1.2. **Approved Alternate:** Solicitation documents may make reference of specific manufacturer(s) or product(s). These references serve only as a recommendation and a guide to minimum quality and performance. The references are not intended to exclude Approved Alternatives of other manufacturer(s) or product(s).
 - 1.3. **Award:** The determination of a successful Bidder(s) in response to this Solicitation.
 - 1.4. **Bid/Proposal Package:** An offer specifically given to the County in response to an informal or competitive procurement invitation issued by the County. This is also referred to as a "Response."
 - 1.5. **Bid Bond/Security:** Security in the form and amount required by the County pledging that the Bidder shall enter into a Contract with the County in accordance with the terms stated in its Bid.
 - 1.6. **Bidder:** Any individual, firm, partnership, joint venture, or corporation submitting a Bid for this project, acting directly or through an authorized representative.
 - 1.7. **County:** The Board of County Commissioners of Lee County, Florida, a political subdivision of the State of Florida, its successors and assigns.
 - 1.8. **Contract/Agreement:** The written contract between the County and a successful Bidder pursuant to this Solicitation, a draft copy of which is attached hereto.
 - 1.9. **Contract Documents:** The documents listed in Section 1 of the attached draft Agreement.
 - 1.10. **Department of Procurement Management:** Shall mean the Lee County Department of Procurement Management.
 - 1.11. **Due Date and Time/Opening:** The date and time upon which a Bid or Proposal shall be submitted to, and actually received by, the Lee County Department of Procurement Management. Only Bids or Proposals received prior to the established date and time shall be considered.
 - 1.12. **Liquidated Damages:** Damages, usually in the form of monetary payment, agreed to by the parties to a contract which are due and payable as damages in the event of a breach of all or part of such contract. Liquidated Damages may be applied on a daily basis for as long as the breach is in effect.
 - 1.13. **Local Bidder:** Any person, firm, partnership, company or corporation whose principal place of business, in the sole opinion of the County, is located within the boundaries of Lee County, Florida; or (b) any person, firm, partnership, company or corporation that has provided goods or services to Lee County on a regular basis for the preceding consecutive three (3) years, and that has the personnel, equipment and materials located within the boundaries of Lee County sufficient to constitute a present ability to perform the service or provide the goods; or (c) any person, firm, partnership, company or corporation that qualifies as a "local business" under the terms of the Collier County Local Vendor Preference Program on or after the date Lee and Collier County enter an agreement extending reciprocity under their respective local vendor preference programs to the firms eligible for those programs in the adjoining county; or (d) any person, firm, partnership, company or corporation that qualifies as a "local bidder" or similar term under the local bidder preference program of any county adjoining Lee County on or after the date Lee County and the adjoining county enter a reciprocity agreement that is substantially similar to any such agreement between Lee and Collier County.
 - 1.14. **Responsible Bidder:** A Bidder submitting a Response who has the capability in all respects to perform fully the Contract requirements and the experience, capacity, facilities, equipment, credit, sufficient qualified personnel, and having the integrity and reliability with a record of timely and acceptable past performance that will ensure good faith performance.
 - 1.15. **Responsive Bidder:** A Bidder submitting a Response that substantially conforms with all material respects to the requirements and criteria set forth in this Solicitation.
 - 1.16. **Solicitation/Solicitation Documents:** This document, its attachments, and any document hereinafter incorporated by reference.

- 1.17. Work:** All labor, materials, equipment and incidentals required to fully, finally and properly complete the construction project described herein and otherwise fully, finally and properly comply with all terms and conditions of the Contract Documents.
2. ORDER OF PRECEDENCE
- 2.1.** In resolving conflicts, errors, and discrepancies among the provisions of the Contract Documents, the order of precedence shall be as follows
- 2.1.1.** Florida State Law as applied to County Purchasing
 - 2.1.2.** Lee County Procurement Ordinance 18-22
 - 2.1.3.** Change Orders
 - 2.1.4.** Contract/Agreement including amendments and Exhibits
 - 2.1.5.** Field Directive Change Orders
 - 2.1.6.** The Solicitation Documents, including any Addenda
3. RULES, REGULATIONS, LAWS, ORDINANCES AND LICENSES
- 3.1.** It shall be the responsibility of the Bidder to ensure compliance with all federal, state, or county codes, rules, regulations, or other requirements, as each may apply.
- 3.2. Local Business Tax Account:** As applicable, anyone providing merchandise or services to the public within the jurisdiction of Lee County must obtain a Lee County business tax account to operate unless specifically exempted.
- 3.3. License(s):** Bidder should provide, at the time of the opening of the Bid, licenses required for this product and/or service.
4. PREPARATION OF SUBMITTAL
- 4.1. Sealed Bid:** Submission must be in a sealed envelope/box, and the outside of the submission should be marked with the following information (Sealed Bid Label Form is attached for your use):
- 4.1.1.** “Sealed Bid”
 - 4.1.2.** Bid number
 - 4.1.3.** Bid title
 - 4.1.4.** Bid due date
 - 4.1.5.** Name of the Bidder submitting the Bid
 - 4.1.6.** Bidder’s Contact e-mail and telephone number
- 4.2. Bid submission shall:**
- 4.2.1.** Provide two (2) hard copies. Mark one “Original,” one “Copy.”
 - 4.2.2.** Provide one (1) electronic flash drive set of the entire submission documents.
 - 4.2.3.** Provide that the electronic submission document is one single Adobe PDF file in the same order as the original hard copy.
 - 4.2.4.** Limit the color and number of images to avoid unmanageable file sizes.
 - 4.2.5.** Not lock files.
- 4.3. Submission Format:**
- 4.3.1.** Required Forms: complete and return **all** required forms. If the form is not applicable, please return with “Not Applicable” or “N/A” in large letters across the form.
 - 4.3.2.** Failure to submit required or requested information may result in the Bidder being considered non-responsive.
 - 4.3.3.** Execution of Bid: All documents must be signed by a corporate authorized representative, witnessed, and corporate and/or notary seals affixed, where applicable. All Bids shall be typed or printed in ink. The Bidder may not use erasable ink. All corrections made to the Bids shall be initialed.
 - 4.3.4.** The County may request specific files be submitted in specialty format (i.e. Microsoft Excel, PowerPoint etc.). Vendor shall accommodate such specialty requests as stated or described herein. Should files not be provide in the format or quantity as requested Bidder may be deemed Non-Responsive and therefore ineligible for award.
 - 4.3.5.** The submission should not contain links to other web pages.

4.3.6. Include any information requested by the County necessary to analyze your Bid, i.e., required submittals, literature, technical data, or financial statements.

4.3.7. Bid Security/Bond(s), as applicable.

4.4. Preparation Cost: The Bidder is solely responsible for any and all costs associated with responding to this Solicitation. No reimbursement shall be made for any costs associated with the preparation and submittal of any Bid, or for any travel and per diem costs that are incurred by any Bidder.

5. RESPONSES RECEIVED LATE

5.1. It shall be the Bidder's sole responsibility to deliver the Bid submission to the Lee County Department of Procurement Management prior to or on the time and date required. All references to date and time herein reference Lee County, FL local time.

5.2. Any Bids received after the stated time and date shall not be considered. Late Bids shall not be opened at the public opening.

5.3. The Lee County Department of Procurement Management shall not be responsible for delays caused by the method of delivery such as, but not limited to: internet, United States Postal Service, overnight express mail service(s), or delays caused by any other occurrence.

6. BIDDER REQUIREMENTS (unless otherwise noted)

6.1. Responsive and Responsible Bidders: Only Bids received from Responsive and Responsible Bidders shall be considered. The County reserves the right, before recommending any Award, to inspect the facilities and organization; or to take any other necessary action, such as background checks, to determine if the Bidder is satisfactorily able to perform, and reserves the right to reject submission packages where evidence submitted or investigation and evaluation indicates an inability for the Bidder to perform.

6.1.1. Additional sources may be utilized to determine credit worthiness and ability to perform.

6.1.2. Any Bidder or sub-contractor that will have access to County facilities or property may be required to be screened to a level that may include, but is not limited to fingerprinting and a statewide criminal background check. There may be fees associated with these procedures. These costs are the responsibility of the Bidder or sub-contractor.

6.1.3. Bidders are responsible for ensuring that any required background screening are conducted in accordance with Chapter 435. Bidders shall be aware, understand, and ensure compliance with the statutory requirements regarding background checks. FL Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Bidder who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law. Such requirements shall flow down to sub-contractors/consultants of the prime Bidder and prime Bidder shall ensure compliance with Chapter 435 of such parties.

6.1.3.1. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

6.2. Past Performance: A Bidder's past performance and prior dealings with Lee County (i.e., failure to meet specifications, poor workmanship, late delivery, etc.) may be reviewed. Poor or unacceptable past performance may result in Bidder disqualification.

7. PRE-BID CONFERENCE

7.1. A pre-bid conference will be held in the location, date, and time specified on the cover of this Solicitation. The cover will also note if the pre-bid conference is non-mandatory or mandatory. All prospective Bidders are encouraged to obtain and review the Solicitation Documents prior to the pre-bid conference so they may be prepared to discuss any questions or concerns they have concerning this project. All questions must be submitted formally in writing to the procurement staff noted on the first page of the Solicitation Documents. A formal response will be provided in the form of an Addendum (see "County Interpretation/Addendums" for additional information). If appropriate, a site visit may follow the pre-bid conference.

7.2. Non-Mandatory: Pre-bid conferences are generally non-mandatory, but it is highly recommended that prospective Bidders participate.

- 7.3. Mandatory:** In the event a mandatory pre-bid conference is held, no Bids shall be considered by Bidders that fail to attend, and a Bid submitted by any such Bidder shall be considered **non-responsive**.
8. COUNTY INTERPRETATION/ADDENDUMS
- 8.1.** Each Bidder shall examine the Solicitation Documents and shall judge all matters relating to the adequacy and accuracy of such documents. Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the Bid shall be made **in writing, submitted at least eight (8) calendar days prior to the date when the Bid is due**.
- 8.2.** Response(s) will be in the form of an Addendum posted on www.lee.gov/procurement. It is solely the Bidder's responsibility to check the website for information. The Lee County Department of Procurement Management will send no notifications regarding postings associated with this solicitation.
- 8.3.** All Addenda shall be incorporated into the Contract Documents.
- 8.4.** The County shall not be responsible for oral interpretations given by any County employee, representative, agent, or other person. Interpretation of the meaning of the plans, Specifications or any other Contract Document, or for correction of any apparent ambiguity, inconsistency or error there in, shall be in writing. Issuance of a written Addendum by the County's Department of Procurement Management is the only official method whereby interpretation, clarification or additional information may be given.
9. QUALITY GUARANTEE/WARRANTY (as applicable)
- 9.1.** Bidder will guarantee their work without disclaimers, unless otherwise specifically approved by the County, for a minimum of twelve (12) months from the date of final completion.
- 9.2.** Unless otherwise specifically provided in the specifications, all equipment and materials and articles incorporated in the work covered by this contract shall be new, unused and of the most suitable grade for the purpose intended. Refurbished parts or equipment are not acceptable unless otherwise specified in the specifications. All warranties will begin from the date of final completion.
- 9.3.** Unless otherwise specifically provided in the specifications, the equipment must be warranted for twelve (12) months, shipping, parts and labor. Should the equipment be taken out of service for more than forty-eight (48) hours to have warranty work performed, a loaner machine of equal capability or better shall be provided for use until the repaired equipment is returned to service at no additional charge to the County.
- 9.4.** If any product does not meet performance representation or other quality assurance representations as published by manufacturers, producers or distributors of such products or the specifications listed, the vendor shall pick up the product from the County at no expense to the County. The County reserves the right to reject any or all materials, if in its judgment the item reflects unsatisfactory workmanship or manufacturing or shipping damage. The vendor shall refund, to the County, any money which has been paid for same.
10. SUBSTITUTION(S)/APPROVED ALTERNATE(S)
- 10.1.** Unless otherwise specifically provided in the Specifications, reference to any equipment, material, article or patented process, by trade name, brand name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. If a Bidder wishes to make a substitution in the Specifications, the Bidder shall furnish to the County, **no later than ten (10) business days prior to the Bid opening date**, the name of the manufacturer, the model number, and other identifying data and information necessary to aid the County in evaluating the substitution. Such information is submitted through the Department of Procurement Management. Any such substitution shall be subject to County approval through the issuance of a written Addendum by the County's Department of Procurement Management. Substitutions shall be approved only if determined by the County to be an **Approved Alternate** to the prescribed Specifications.
- 10.2.** A Bid containing a substitution is subject to disqualification if the substitution is not approved by the County. Items Bid must be identified by brand name, number, manufacturer and model, and shall include full descriptive information, brochures, and appropriate attachments. Brand names are used for descriptive purposes only. An **Approved Alternate** product or service may be used.

11. ADDITIONS, REVISIONS AND DELETIONS

- 11.1.** Additions, revisions, or deletions to the Terms and Conditions, specifications that change the intent of the solicitation will cause the solicitation to be non-responsive and the proposal will not be considered. The Procurement Management Director shall be the sole judge as to whether or not any addition, revision, or deletion changes the intent of the solicitation.

12. NEGOTIATED ITEMS

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

13. CALCULATION ERRORS

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

14. CONFIDENTIALITY

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

15. CONFLICT OF INTEREST

- 15.1. Business Relationship Disclosure Requirement:** The Award hereunder is subject to the provisions of Chapter 112, F.S. All Bidders must disclose with their submission the name of any officer, director or agent who is also an officer or employee of Lee County or any of its agencies or a spouse or child of such officers or employees. Furthermore, all Bidders must disclose the name of any County officers, employees, or spouses or children thereof who own directly or indirectly, an interest of five percent (5%) or more in the Bidder’s firm or any of its branches.

16. ANTI-LOBBYING CLAUSE (Cone of Silence)

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

17. DRUG FREE WORKPLACE

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

18. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- 18.1.** The County encourages the use of Disadvantaged Business Enterprise Proposer(s) as defined and certified by the Florida Department of Transportation.
- 18.2.** Bidder/Proposer is requested to indicate whether the Firm and/or any proposed sub-consultants are Disadvantaged Business Enterprises (DBE). Lee County encourages the utilization and participation of DBEs 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, at its own expense, with all federal, state, and local laws and regulations, including federal, state and local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to the Work, including but not limited to those dealing with taxation, workers' compensation, equal employment and safety. Bidder acknowledges and agrees, in accordance with § 287.134, F.S., the Rehabilitation Act of 1973 as amended, the Americans with Disabilities Act of 1990 (ADA), and the ADA Amendments Act of 2008 (ADAAA), that in performing the Work hereunder, no person on the grounds of race, religion, color, age, sex, national origin, disability or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- 19.2.** The Bidder shall not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, disability or marital status. The Bidder shall make affirmative efforts to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, disability or marital status.
- 19.3.** The Bidder shall include the provisions of this section in every sub-contract under this Contract to ensure its provisions will be binding upon each sub-contractor. The Bidder shall take such actions in respect to any sub-contractor, as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance.
- 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-CONTRACTORS

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

21. PROJECT GUIDELINES (as applicable)

- 21.1.** The County has established the following guidelines, criteria, goals, objectives, constraints, schedule, budget and or requirements which shall serve as a guide to the Bidder(s) in performing the Work provided for pursuant to this Contract:
 - 21.1.1.** No amount of Work is guaranteed upon the execution of a Contract.
 - 21.1.2.** Rates and all other negotiated expenses shall remain in effect throughout the duration of the Contract period inclusive of any renewals unless otherwise specified herein.
 - 21.1.3.** This Contract does not entitle any Bidder to exclusive rights to County contracts. The County reserves the right to perform any and all available required Work in-house or by any other means it so desires.
 - 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, any or all material, tasks or services associated with this 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.

21.1.7. Background Check(s): The County is committed to maintaining a safe and secure environment. The following shall apply to the contractor, contractor employees, employees hired through a third party staffing vendor, subcontractors and any other staffing that may be working in or around a County Facility, School, Library and other locations as deemed necessary.

Upon written request by Lee County Procurement Management, the contractor at its expense must conduct a background check for each of its employees, as well as for the employees of its subcontractors, who will provide services to the County or have access to the County computer systems, through either onsite or remote access. Contractor employees, for the purpose of this requirement, include such temporary staff as office support, custodial service and any third party vendor. Background checks shall be conducted through the Florida Department of Law Enforcement and provided to Lee County Procurement Management Department at procurement@leegov.com. Background checks must be conducted prior to commencement of said project(s).

22. 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. 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:

23.2.1. The Bidder acted in good faith in submitting the Bid;

23.2.2. The mistake in Bid preparation was of such magnitude that to enforce compliance by the Bidder would cause a severe hardship on the Bidder;

23.2.3. The mistake was not the result of gross negligence or willful inattention by the Bidder; and

23.2.4. The mistake was discovered and was communicated to the County prior to the County Commission having formally Awarded the 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 18-22 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.**
 - 24.4.1. The notice shall clearly indicate all grounds being claimed for the protest.
 - 24.4.2. The notice must be physically received by the Procurement Management Director within the required time frame described above. No additional time will be granted for mailing.
- 24.5. Following receipt of the Notice of Intent to File a Protest, a **“Protest Bond”** and **“Formal Written Protest”** must be filed **within ten (10) business days** of Posting of the Notice of Intended Decision.
- 24.6. **Failure to follow the protest procedures requirement within the time frames as prescribed herein and in the Lee County Procurement Ordinance 18-22 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 procurement opportunity is also made available to any government entity. Pursuant to their own governing laws, and subject to the Agreement/Contract of the Bidder, other entities may be permitted to make purchases at the terms and conditions contained herein. The Lee County Board of County Commissioners shall not be financially responsible for the purchases of other entities from this Solicitation.

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 their designee shall be readily available during normal working hours by phone or in person, and shall be knowledgeable of the terms and procedures involved.
- 26.1.2. Lee County requires that the Awarded Bidder provide the name of a contact person(s) and phone number(s) which will afford Lee County access twenty-four (24) hours per day, 365 days per year, in the event of major breakdowns or natural disasters.

26.2. Basis of Award:

- 26.2.1. The County shall issue a Notice of Intended Decision to the lowest Responsive and Responsible Bidder who submits a Bid.
- 26.2.2. In the event the lowest Responsive and Responsible Bid exceeds the architectural or engineering cost estimates or the amount of available funds, the County Administrator or designee may, when time or economic considerations preclude re-bidding of Work of a reduced scope, negotiate an adjustment of the Scope of Work with the lowest Responsive and Responsible Bidder, in order to bring the Bid within the amount of available funds.
- 26.2.3. The County reserves the right to make Award(s) by individual item, group of items, all or none, or a combination thereof. The County reserves the right to reject any and all Bids or to waive any minor irregularity or technicality in the Bids received. Award shall be made to the lowest Responsive and Responsible Bidder(s) within the category chosen for basis of Award.
- 26.2.4. The County reserves the right to Award to one or multiple Bidders at the discretion of the requesting authority and approval of the Procurement Management Director.

26.3. Contract:

- 26.3.1. The Awarded Bidder will be required to enter into the Contract with the County and will be required to perform the Work in accordance with the Contract terms and conditions. The draft Contract is

attached to this Solicitation and incorporated herein by reference. The Contract may be viewed on-line at <http://www.leegov.com/procurement/forms>.

26.4. Records:

- 26.4.1. Retention:** The Bidder shall maintain such financial records and other records as may be prescribed by Lee County or by applicable federal and state laws, rules and regulations. Unless otherwise stated in the Specifications, the Bidder shall retain these records for a period of ten (10) years after final payment, or until they are audited by Lee County, whichever event occurs first.
- 26.4.2. Right to Audit/Disclosure:** These records shall be made available during the term of the Contract as well as the retention period. These records shall be made readily available to County personnel with reasonable notice and other persons in accordance with the Florida General Records Schedule. Awarded Bidder(s) are hereby informed of their requirement to comply with Chapter 119, F.S., specifically to:
- 26.4.2.1. Keep and maintain public records required by the County to perform the service.
 - 26.4.2.2. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided or as otherwise provided by law.
 - 26.4.2.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the contractor does not transfer the records to the County.
 - 26.4.2.4. Upon completion of the Contract, transfer, at no cost, to the County all public records in possession of the Bidder or keep and maintain public records required by the County to perform the service. If the Bidder transfers all public records to the County upon completion of the Contract, the Bidder shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Bidder keeps and maintains public records upon completion of the Contract, the Bidder shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.
- 26.4.3. Public Records: IF THE BIDDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BIDDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, Email at PRRCustodian@leegov.com or Visit <http://www.leegov.com/publicrecords>.**
- 26.4.4. Ownership:** It is understood and agreed that all documents, including detailed reports, plans, original tracings, specifications and all data prepared or obtained by the successful Bidder in connection with its services hereunder, including any documents bearing the professional seal of the successful Bidder, shall be delivered to and become the property of Lee County, prior to final payment to the successful Bidder or the termination of the Contract. This includes any electronic versions, such as CAD or other computer aided drafting programs.

26.5. Termination:

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

- 26.5.2.** The Procurement Management Director may immediately terminate any Award resulting from this Solicitation for emergency purposes, as defined by the Lee County Procurement Ordinance 18-22.
- 26.5.3.** Any Bidder who has voluntarily withdrawn from a Solicitation without the County's mutual consent during the Contract period shall be barred from further County procurement for a **period of 180 calendar days**. The Bidder may apply to the Board for a waiver of this debarment. Such application for waiver of debarment must be coordinated with and processed by the Procurement Management Department.
- 26.5.4.** For a Contract over \$1,000,000, the County reserves the right to terminate an award of such contract upon information or belief of any of the following, when, applicable:
- 26.5.4.1. Bidder is found to have submitted a false certification as provided under § 287.135 (5), F.S.;
 - 26.5.4.2. Bidder has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (§ 215.473, F.S.);
 - 26.5.4.3. Bidder has engaged in business operations in Cuba or Syria (§ 215.471, F.S.);
 - 26.5.4.4. Bidder has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel (§ 215.4725, F.S.).
 - 26.5.4.5. The County reserves the right to review, on a case-by-case basis, and waive this stipulation if it is deemed to be advantageous to the County.

26.6 Termination for Convenience:

- 26.6.1.** The County may terminate the entire Contract or any portion thereof, if the Director determines that a termination is in the County's interest. The Director will deliver to the Contractor a Written Notice of Termination specifying the extent of termination and the effective date.
- 26.6.1.1. When the County terminates the entire Contract, or any portion thereof, before the Contractor completes all items of work in the Contract, the County will make payment for the actual number of units or items of work that the Contractor has completed, at the Contract unit price, and according to the formulas and provisions set forth in the contract documents for work partially completed, and such payments will constitute full and complete compensation for such work or items. No payment of any kind or amount will be made for items of work not started. The County will not consider any claim for loss of anticipated profits, or overhead of any kind (including home office and jobsite overhead or other indirect impacts) except as provided for within the contract documents for partially completed work.
 - 26.6.1.2. The County will consider reimbursing the Contractor for actual cost of mobilization (when not otherwise included in the Contract) including moving equipment to the job where the volume of the work that the Contractor has completed is too small to compensate the Contractor for these expenses under the Contract unit prices.
 - 26.6.1.3. The County may purchase at actual cost acceptable materials and supplies procured for the work, that the County has inspected, tested, and approved and that the Contractor has not incorporated in the work. Submit the proof of actual cost, as shown by receipted bills and actual cost records, at such points of delivery as the Director may designate.
 - 26.6.1.4. Termination of a contract or a portion thereof, does not relieve the Contractor or the surety of its responsibilities for the completed portion of the contract or its obligations for and concerning any just claims arising out of the work performed.
 - 26.6.1.5. All Contractor claims for additional payment, due to the County's termination of the entire Contract or any portion thereof, must meet the requirements as stated within the contract documents.

27. WAIVER OF CLAIMS

- 27.1. Once the Contract associated with this Solicitation expires, or final payment has been requested and made, the Awarded Bidder shall have waived any claims against the County concerning such Contract, except those previously made in writing and identified by the Awarded Bidder as unsettled at the time of the final application for payment.
28. LEE COUNTY PAYMENT PROCEDURES
- 28.1. Unless otherwise noted, all Awarded Bidders are requested to mail an original invoice to:
Lee County Finance Department
Post Office Box 2238
Fort Myers, FL 33902-2238
- 28.2. All invoices shall be paid as directed by the Lee County payment procedure, unless otherwise stated in the Contract or detailed Specifications for this project.
- 28.3. Lee County shall not be liable for requests for payment deriving from aid, assistance, or help by any individual, vendor, proposer, or Bidder for the preparation of these Specifications.
29. SAFETY DATA SHEETS (SDS) (as applicable)
- 29.1. It is the Bidder's responsibility to provide Lee County with Safety Data Sheets on Bid materials, as may apply to this procurement.
30. BOND/SURETY
- 30.1. Bonding/Surety is required in accordance with the Lee County Procurement Ordinance 18-22.
- 30.2. **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:
- 30.2.1. **A Certified Check or a Cashier's Check** in the amount of not less than five percent (5%) of the proposed dollar amount. Any Certified Check or Cashier's Check submitted in lieu of a Bid Bond shall be drawn on a solvent bank or trust company, made payable to Lee County Board of County Commissioners and shall have all necessary documentary revenue stamps attached (if required by law); or
- 30.2.2. **A Bid Bond** may be submitted on a Lee County paper Bid Bond Form. Such Bid Bond must be signed by all required parties, must be in the amount of not less than five percent (5%) of the proposed dollar amount (including Alternate(s) as applicable), and shall accompany each submission. The Bid Bond shall be issued by a surety authorized to do business and in good standing with the Florida Department of State.
- 30.3. **Performance and Payment Bond:** As further described in the Contract, the successful Bidder shall provide Performance and Payment Bonds in the amount of one hundred percent (100%) of the total Awarded Contract amount within **seven (7) calendar days** after notification by the County of the approval to award the Contract, the costs of which are to be paid by the successful Bidder. Such Performance and Payment Bonds shall be in the form prescribed by the Exhibits to the attached Contract. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to the County; provided, however, the surety shall be rated as "B" or better as reported in the most current Best's Key Rating Guide, published by A.M. Best Company, Inc. The successful Bidder shall record the Performance and Payment Bond with the Lee County Clerk of Courts, at its sole expense, and provide the original, recorded bond document to the County.
- 30.4. **A Clean Irrevocable Letter of Credit or Cash Bond** may be accepted by the County in lieu of the Public Payment and Performance Bond.
- 30.5. **Personal Checks are not acceptable to Lee County as a Bid Security.**

31. INSURANCE (AS APPLICABLE)

- 31.1.** Insurance shall be provided by the Awarded Bidder pursuant to the Specifications provided herein and/or in the Contract. Prior to execution of the Contract, a certificate of insurance (COI) complying with the Solicitation Documents shall be provided by the Bidder.

End of Terms and Conditions Section