



**RFP 22-007 CDBG-MIT GRANT ADMINISTRATOR
(RE-BID)**

**JAMEE COOK, PURCHASING AGENT
368 SOUTH COMMERCE AVENUE
SEBRING, FL 33870**

Email: purchasing@mysebring.com

RFP 22-007
CITY OF SEBRING CDBG-MIT PROJECTS 1 – 9
GRANT ADMINISTRATION
REBID
COMMODITY CODE: 94652

The City of Sebring, Florida is requesting proposals from qualified individuals or firms to provide grant administration services for HUD's Community Development Block Grant – Mitigation (CDBG-MIT) program for the following projects:

- (1) Fire Station No. 15 – Structural and Architectural improvements and Generator demolition and installation \$261,034.00
- (2) Fire Station No. 14 – Structural, Architectural, and Mechanical improvements and Generator demolition and installation \$867,110.00
- (3) Police Station – Structural and Architectural improvements \$363,234.00
- (4) Veteran's Beach Water Plant – Generator demolition and installation \$159,347.00
- (5) Park Street Water Plant – Generator demolition and installation \$157,395.00
- (6) Fireman's Field Water Plant – Generator demolition and installation \$143,810.00
- (7) Airport Road Water Plant – Generator demolition and installation \$248,210.00
- (8) Water Distribution System Upgrades – Highlands Homes – Replacement cast iron waterlines and the replacement of fire hydrants, cut off valves and water services \$2,605,428.00
- (9) Sanitary Sewer System Infrastructure Plan Hardening – Replacement of terracotta clay sanitary sewer pipe and the replacement of 79 sanitary sewer manholes \$3,515,280.00

Specifications & General Terms and Conditions may be obtained at **VendorRegistry.com**. Any questions regarding the specifications, terms and conditions, and/or the bidding process should be submitted to **purchasing@mysebring.com**.

Sealed proposals must be marked with the RFP number and delivered to the **City of Sebring Purchasing Office Attn: Jamee Cook, Purchasing Agent, 368 S. Commerce Ave., Sebring, FL 33870** so as to reach the said office no later than **3:00 p.m., Thursday, August 25, 2022**, of the official time clock in the purchasing office, at which time they will be opened. Bids received later than the date and time specified will be rejected. The City will not be responsible for the late delivery of any bids that are incorrectly addressed, delivered in person, by mail, or any other type of delivery service. The Sebring City Council reserves the right to accept or reject any or all bids or any parts thereof; and the award; if an award is made, will be made to the most responsible bidder/proposer whose bid and qualifications indicate that the award will be in the best interest of the City of Sebring. The council reserves the right to waive irregularities in the bid.

Fair Housing / Equal Opportunity Employer

Jamee Cook, Purchasing Agent

Official Publication: VendorRegistry.com
Dates: July 27, 2022 – August 25, 2022
Publication: Tampa Bay Times (July 27, 2022)

SECTION 1 – PURPOSE OF PROJECT

The City of Sebring is requesting proposals from qualified individuals or firms to provide grant administration services for a Community Development Block Grant-Mitigation (CDBG-MIT) program to support long-term mitigation efforts following declared disasters in 2016 and 2017. These awards were granted under the Critical Facility Hardening Program and were distributed on a competitive basis targeting HUD designated most impacted and distressed areas.

The City has been notified they have been selected to receive Community Development Block Grant-Mitigation (CDBG-MIT) funds for the following projects and awards:

- (1) Fire Station No. 15 – Structural and Architectural improvements and Generator demolition and installation \$261,034.00
- (2) Fire Station No. 14 – Structural, Architectural, and Mechanical improvements and Generator demolition and installation \$867,110.00
- (3) Police Station – Structural and Architectural improvements \$363,234.00
- (4) Veteran’s Beach Water Plant – Generator demolition and installation \$159,347.00
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- (9) Sanitary Sewer System Infrastructure Plan Hardening – Replacement of terracotta clay sanitary sewer pipe and the replacement of 79 sanitary sewer manholes \$3,515,280.00

Grant administration services shall include, but not be limited to: reviewing existing policies to insure grant compliance, developing new policies that are required as part of the grant contracting process, preparing environmental review(s), coordination with all funding agencies, coordination with all agency contact(s), coordinating the drawdown of program funds, tracking and managing program funds in compliance with program guidelines and acceptable accounting practices, providing all required reports monthly, quarterly, and annually, provide progress photographs, and technical assistance, coordinating and attending all DEO monitoring visits, preparing all desktop monitoring packages for review and approval by the City prior to submission to DEO, preparing the grant closeout package, insuring Davis Bacon and other federal and state record-keeping requirements are met, reviewing change orders and pay requests for compliance with grant requirements, attendance at all pre-bid and pre-construction conferences and providing the engineer and/or architect managing the project with developmental support for the project. Developmental support shall include but not be limited to, providing the project engineer and/or architect, just prior to bidding, with a current list of state approved WBE/MBE firms and the wage decision(s) for the project.

Procurement and contracting for all services shall conform to CDBG guidelines as well as the state and federal regulation including 2 CFR, Part 200. All records shall be maintained in accordance with state and federal CDBG requirements.

SECTION 2 – PROPOSAL REQUIREMENTS

Proposers shall submit one (1) signed original and three (3) complete copies of the package. One (1) digital/electronic copy will be submitted on a CD-ROM or other electronic media in Adobe Acrobat PDF readable format replicating the content of the paper version of the submission. The digital copy will be an exact duplicate of the paper response submitted. All submissions shall be sealed and delivered to the City of Sebring, Purchasing Department, 368 S. Commerce Avenue, Sebring, Florida 33870 no later than the official RFP due date and time, or as amended by addenda to the RFP. Proposals must be clear, concise, and specific. To facilitate effective evaluation by the City, proposals shall be limited to 70 pages, excluding sectional dividers, and front and back covers. Proposals which exceed this length will be considered non-responsive and will not be evaluated. The following information shall be submitted in all responses in the format as specified herein. Failure to submit the requested information in this format may result in a reduction of the evaluation points assigned to your proposal and possibly rejection of the entire submittal.

COVER LETTER/LETTER OF INTEREST

Letter of interest including reference to this solicitation. (2 pages maximum)

SECTION A

Company Information and Experience:

The Proposer shall provide the following information about their firm and any proposed sub-contractors:

- 1) Name of firm and parent company, if any.
- 2) Name of firm's principal business.
- 3) Name, address, phone number of person to receive notification and to reply to City inquiries.
- 4) CDBG Experience – The Contractor shall provide the total number of years of experience with administering projects through the Community Development Block Grant (CDBG) Program, as well as a list of CDBG grants successfully administered by the firm.
- 5) Staff Experience – The Contractor shall provide a one (1) page resume of each of the key personnel that may perform work under this contract, including educational background, academic degrees, professional associations, job title, responsibilities, type of work performed, years of experience, and experience on similar projects to that requested herein.

SECTION B

References

The Proposer shall submit a minimum of five (5) references from other client communities (which the City will evaluate for the degree of performance quality) of CDBG contracts awarded to your firm during the last five (5) years to include the awarding entity and contact information; amount of grant; grant category; grant work description; administration responsibilities; completion period; and whether work was completed satisfactorily and on time. Proposer shall include the client community name,

current contact person, email, and phone number. The City anticipates contacting each reference provided. **If the current contact person is not provided, the reference will not be considered.**

SECTION C (MUST BE PROVIDED FOR EACH PROJECT SEPARATELY)

Proposer Project Approach and Project Management (Specify Project #)

The Proposer shall provide a comprehensive narrative statement of each project to include:

- 1) The anticipated project timeline;
- 2) Tasks to be performed including the staff member responsible for the tasks;
- 3) Project management and quality control methods including scheduling, monitoring, and reporting;
- 4) The firm’s capability to commit staff to the project, staff availability for the project, and the ability to complete the required services in a timely manner;
- 5) The maximum number of staff hours to be expended for the project including total cost.

SECTION D

Fee Schedule

The fee schedule should include the charge rates of staff including senior staff, professional staff, and clerical staff who would perform the work, and a standard hourly rate schedule. Fees proposed shall be inclusive of all costs related to grant administration including, but not limited to, personnel, overhead, profit, operating cost, reproduction, advertising, communication costs, travel costs, and legal fees. **The total cost will be calculated based on the staff hourly rates and maximum number of hours to be expended for all nine (9) projects combined.**

SECTION E

Forms (attached)

Non-Collusion Affidavit of Prime Proposer Certification, Drug-Free Workplace Certification, Insurance Certification, Indemnification, and Public Entities Crime Statement. In addition, provide respondent’s licenses (if applicable), W9, insurance certificates, and MBE/WBE certificate (if applicable). MBE/WBE certification will not be considered if a copy of the official certificate is not included.

SECTION 3 – EVALUATION CRITERIA

EVALUATION METHOD AND CRITERIA

EVALUATION	Score 1-5	Weighted Score
COMPANY INFORMATION AND EXPERIENCE		x20/
STAFF QUALIFICATIONS AND EXPERIENCE		x20/
REFERENCES		x20/
PROJECT APPROACH AND PROJECT MANAGEMENT		x25/
FEE SCHEDULE/TOTAL COST (LOWEST FEE – 5 / NEXT LOWEST – 4 / etc.)		x10/
MBE/WBE CERTIFICATION (score 0 or 5)		x5/

CERTIFICATION FORMS (no point value)		
Total Points Possible (Ranking 0-5 multiplied by weight) 500 points		
TOTAL SCORE		

Proposals for grant administration services will be evaluated by a selection committee. The following criteria will be used in the selection process:

The City shall be the sole judge of the best interests of the City, the submission and the resulting negotiated agreement.

SELECTION PROCESS

The evaluation committee will be comprised of three (3) City of Sebring staff members and will be responsible for evaluating and ranking the proposals submitted by all of the respondents regarding this proposal in accordance with the criteria contained in this RFP. The evaluation committee will evaluate the proposals and may require some or all of the respondents to provide additional information at a later date in the form of an interview/presentation. The evaluation committee will make its recommendation to City Council for award and execution of a contract. The City of Sebring reserves the right to reject any and all responses, or portions thereof, received as a result of this request, as may be deemed to be in the best interest of City of Sebring. The City of Sebring further retains the right to waive any irregularities of any submission. The City shall make its selection in accordance with Florida laws and the Sebring Code.

CONTRACT AWARDS

The City anticipates awarding one (1) contract for all seven (7) projects listed in this solicitation. Any contract, if awarded pursuant to this RFP, shall be subject to the limitations and restrictions described therein. The proposer understands that this RFP does not constitute an agreement or a contract with the City. An official contract or agreement is not binding until the submission is reviewed and accepted by the City Council and executed by all parties.

ANTICIPATED TIMELINE

Proposals due:	August 25, 2022 @ 3:00 p.m.
Evaluation and ranking of firms:	Week of August 29 th , 2022
Interviews/Presentations (if necessary):	Week of September 5 th , 2022
Approval by City Council:	TBD

SECTION 3—ADDITIONAL TERMS AND CONDITIONS

1) Information or Clarification

Bidders/proposers are urged to promptly review the Solicitation Definitions Addendum as well as the requirements of all solicitation specifications and submit questions to the Purchasing Agent at purchasing@mysebring.com for resolutions as early as possible during the bid period. All questions will be answered up to three (3) business days prior to the bid opening and posted on the official solicitation website, VendorRegistry.com. Otherwise, this will be construed as acceptance by the bidders/proposers that the intent of the specifications is clear and that competitive bids may be obtained as specified herein. Protests with regard to specification documents shall not be considered after bids are opened.

2) Development Costs

Neither the City nor its representatives shall be liable for any expenses incurred in connection with the preparation of a response this solicitation. Respondents should prepare their submittals simply and economically, providing a straightforward and concise description of the respondent's ability to meet the requirements of the solicitation.

3) Solicitation Response

All responses shall become the property of the City of Sebring. The City, at its discretion, reserves the right to waive minor informalities or irregularities in any response, to reject any and all responses, in whole or in part, with or without cause, and to accept that response, if any, which in its judgment will be in its best interest.

4) Equal Opportunity

The City recognizes fair and open competition as a basic tenet of public procurement and encourages participation by minority and women business enterprises.

5) Public Records Requirement

The contractor is required to keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service sought herein. The Contractor is required to provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Ch. 119.07 et seq, Fla. Stat. or as otherwise provided by law. The contractor must ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and must meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 863-471-5100, 368 S. Commerce Ave., Sebring FL 33870, or kathyhaley@mysebring.com.

6) Legal Requirements

Federal, State, County, and local laws ordinances, rules and regulations that in any manner affect the item(s) covered herein are applicable to this solicitation, which may include the City Legal Provisions Addendum. Lack of knowledge by the respondent will in no way be cause for relief from responsibility.

SECTION 4 - GENERAL TERMS AND CONDITIONS (Rev 5/2022)

Successful bidder/proposer shall comply with all laws, ordinances, rules, orders, and regulations relating to the performance of the services and the protection of persons and property, including but not limited to those found in the City Legal Provision Addendum, made part hereto by reference.

ACCEPTANCE AND WARRANTY: Neither the final certificate of payment nor any provision in this document, or partial or complete use of the project by the City shall constitute an acceptance of work not done in accordance with the contract document or relieve the Contractor of liability in respect to any expressed or implied warranties or responsibilities for faulty material or workmanship. Contractor shall remedy any defects and pay for any damages resulting there from which appear within a period of one year after final acceptance of the work unless otherwise stated in the specifications herein.

ADDENDUMS: If it becomes necessary to revise or amend any part of this document, an addendum will be issued and will be posted on VendorRegistry.com. **It shall be the sole responsibility of the bidders/proposers to check the website to ensure that all available information has been received prior to submitting a bid.**

ADDITIONAL WORK: Not applicable to this solicitation.

ASSIGNMENT: Awarded Contractor shall not assign this contract, in whole or in part, or any monies due hereunder, without the written consent of the City.

BONDING: Not applicable to this solicitation.

CHANGE ORDERS: The signed contract serves to define the terms and conditions for the services, work or project as described in the bid and contract documents. A Change Order shall be considered a written order to the Contractor signed by the City, after execution of the contract, authorizing a change in the work or an adjustment in the contract price or the contract time.

CITY EMPLOYEES AND FAMILY MEMBERS are eligible to submit a bid for this contract, but in doing so they must file Form 3A "Interest in Competitive Bid for Public Business" with the Highlands County Supervisor of Elections and submit a copy of the form with their submittal. Under Florida Statute 112.313 this includes "...public officers and employees, their spouses, and their children..."

CONTACT INFORMATION: Jamee Cook, Purchasing Agent, purchasing@mysebring.com. Any interpretation, clarification, correction or change to this document will be made by written addendum issued by the City Purchasing Department and posted on VendorRegistry.com. **Any oral or other type of communication concerning this document shall not be binding.**

Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the City posting the notice of staff recommendation, excluding Saturdays, Sundays, and state holidays, any employee or

official of the City concerning any aspect of this solicitation, except in writing to the purchasing agent or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

COPYRIGHTS:

1) If awarded a contract, the contractor agrees that the work requested herein is “work for hire” and shall irrevocably transfer, assign, set over, and convey to the City all right, title, and interest, including sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to the contract. The contractor further agrees to execute such documents as the City may request to effect such transfer or assignment.

2) Further, the Contractor agrees that the rights granted to the City by this section are irrevocable. Notwithstanding anything else in this invitation, the contractor’s remedy in the event of termination of or dispute over any agreement entered into as a result of this invitation shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred in this section. Similarly, no termination of any agreement entered into as a result of this invitation shall have the effect of rescinding, terminating, or otherwise invalidating the rights acquired pursuant to the provisions of this “Copyright” section.

3) The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as part of any agreement entered into as a result of this invitation is prohibited unless the City approves the use of subcontractors or third parties in writing in advance and such subcontractors or third parties agree to include the provision of this section as part of any contract they enter into with the contractor for work related to this contract.

4) If anything included in a deliverable limit the rights of the City to use the information for its own internal use, the deliverable shall be considered defective and not acceptable.

DEFAULT: In any action brought by either party for the interpretation or enforcement of obligations of either party, including appeals, the prevailing party shall be entitled to recover reasonable attorney fees, court and other costs from the non-prevailing party, whether incurred before or at trial, on appeal, in bankruptcy, or in post judgment collections.

DOCUMENT DEEMED AS A CONTRACT: In the event that the Sebring City Council awards the project described herein to a Contractor(s), and/or a purchase order is processed then this document shall become a legally binding contract unless a separate document is drawn up by the City Attorney in which case the Attorney’s contract is primary and this document is secondary.

DUE CARE AND DILIGENCE has been exercised in the preparation of this document and all information contained herein is believed to be substantially correct; however, the responsibility for determining the full extent of the service required rest solely with those making response. Neither the City nor its representative shall be responsible for any error or omission in the responses submitted, nor for the failure on the part of the respondents to determine the full extent of the exposures.

EARLY TERMINATION: City may, by written notice, terminate the contract in whole or in part at any time, either for City’s convenience or because of failure of Contractor to perform any material provision or portion of the services or project, including a failure to pay vendors, suppliers, or sub-subcontractors as required and failure to undertake adequate safety measures during the performance of the services or project. Upon receipt of such notice, services shall be

immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performance of the contract, whether completed or in process, shall be delivered to City. If the termination is for the convenience of the City, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services. If the termination is due to failure to fulfill the Contractor's obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Contractor shall be liable to the City for any additional cost occasioned to the City thereby. If, after notice of termination for failure to fulfill contract obligations, it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, adjustment in the contract price shall be made as described in the first sentence of this paragraph.

EQUIPMENT: Contractor will provide, at Contractor's expense, all machinery, equipment, tools, superintendence, labor, insurance, and all other accessories necessary to provide the product(s) or service(s) in accordance with the description of the work described herein.

INDEPENDENT CONTRACTOR: The parties expressly recognize that the relationship between the City and the Contractor is that of independent contractors, and that neither Contractor nor any of its servants, agents, or employees shall ever be considered as an agent, servant, or employee of the City.

INSPECTION & CORRECTION OF WORK: All work done by the awarded Contractor will be monitored by an authorized designated City employee. Contractor shall notify the designated person of completion of each cycle within twenty-four hours of such completion. The designated contact person will then inspect the work and if they find it has not been done satisfactorily, said work shall be promptly corrected by the Contractor at the Contractor's expense.

INSURANCE REQUIREMENTS: Unless otherwise stated in the specifications, the following insurance requirements must be met before delivery of goods and services:

Contractor, upon its part, agrees to protect, indemnify, save harmless, and insure the City from any liability to any persons for injuries to the person, including homicide, or damage to property, resulting from the acts or omissions of the Contractor for performing its obligations under this contract. The parties expressly recognize that the relationship between the City and the Contractor is that of independent contractors, and that neither Contractor, nor any of its servants, agents, or employees shall ever be considered to be an agent, servant, or employee of the City. Contractor shall obtain and maintain, at Contractor's expense, the following insurance and shall not commence work hereunder until such insurance is obtained and approved by the City:

1) The respondent shall purchase and maintain Errors and Omissions insurance with minimum limits of \$2,000,000 per occurrence. If a claims-made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.

2) The respondent shall maintain, during the life of the contract, commercial general liability insurance in the amount of at least \$1,000,000 combined single limit. If such CGL

contains a general aggregate limit, it shall apply separately to this project in the amount of \$2,000,000. CGL insurance shall include broad form contractual liability insurance and coverage for independent contractors, bodily injury, property damage liability for premises, products, and completed operations, and personal injury.

3) The respondent shall maintain, during the life of the contract, comprehensive automobile liability insurance in the amounts of \$500,000 combined single limit for bodily injury and property damage to protect the respondent from claims for damages for bodily injury, including wrongful death, as well as from claims from property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the respondent or by anyone directly or indirectly employed by the respondent.

4) Worker's Compensation coverage is to apply to all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a limit of \$500,000 each accident, \$500,000 each employee, \$500,000 policy limit for disease.

5) Umbrella or Excess Liability Insurance of at least \$5,000,000 per occurrence.

Evidence of Insurance shall be furnished by the vendor to the City of Sebring. Certificates of insurance are to be signed by a person authorized by the insurer to bind coverage on its behalf. The City of Sebring is to be specifically included as additional insured on all policies except workers' compensation and Errors and Omissions insurance. If the vendor is exempt from workers' compensation requirements they are to submit a DWC-252 Certificate of Exemption Form. In the event the insurance coverage expires prior to the completion of this contract, a renewal certificate shall be issued 30-days prior to the expiration date. The policy shall provide a 30-day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the City of Sebring before the commencement of work activities.

LICENSING: If required, bidders/proposers shall be fully licensed in the State of Florida and shall comply with all applicable laws, regulations, rules, and ordinances of local, state, and federal authorities having jurisdiction. Failure or inability on the part of the respondent to have complete knowledge and intent to comply with such laws, rules and regulations shall not relieve any respondent from its obligation to honor its response and to perform completely in accordance with its response. Proof of all relevant licenses is required as part of your submittal.

LIQUIDATED DAMAGES: Not applicable to this solicitation.

LOCAL PREFERENCE: Not applicable to this solicitation.

MULTIPLE RESPONSES: If submitting a response for more than one solicitation, each response must be in a separate envelope and correctly marked.

NOTICES: All notices provided under or pursuant to this contract shall be in writing, either by hand delivery, email, or first class certified mail – return receipt requested.

PAYMENTS: All payments must be approved by Sebring City Council, which meets the first and third Tuesday of each month. To be considered for payment at any meeting, the invoice must be received and be fully approved by City personnel one week prior to a City Council meeting.

PERFORMANCE & WORKMANSHIP: Contractor shall, in good workmanlike manner, perform all services pursuant to the specifications. Should the Contractor fail to provide prudent and competent professional service, the City may notify the Contractor in writing stating the City's intention to terminate the contract and stating the reasons therefore. Unless Contractor remedies such default or has made satisfactory arrangements with the City for such remedy within five (5) business days after service of said notice upon Contractor, this contract may be terminated by the City. In the event of such termination, the City may take over and complete the work at the expense of the Contractor. The Contractor shall be liable to the City for any excess costs the City incurs.

PRE-BID MEETING: Not applicable to this solicitation.

PRICE: Pricing is included as an evaluated criterion for this solicitation. Any payments made by the City would be based on a contractual agreement resulting from this solicitation.

PROVISIONS REQUIRED BY LAW DEEMED INSERTED: Each and every provision of law and clause required by law to be inserted herein and the contract shall be read and enforced as though it were included, and if, through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon application of either party, the contract shall forthwith be physically amended to make such insertion or correction.

PURCHASING AGREEMENT WITH OTHER PUBLIC AGENCIES: Not applicable to this solicitation.

PURCHASE CARDS: When accepted by the vendor, transactions totaling \$5,000.00 or less may be paid by purchase card. Purchase cards can be used as an alternate form of payment for contracted services which are a result of the competitive bidding process. The Contractor shall not charge a convenience fee or surcharge to the City for transactions paid by purchase card.

PURCHASE ORDERS are required by the City of Sebring when a contract/agreement is established as a result of the competitive bidding process. Once the contract/agreement is in effect, it will be the responsibility of the department to submit a request for a purchase order. The purchasing office will generate the purchase order, which is then emailed to the vendor at the email address provided by the vendor, as well as the department initiating the request.

RENEWAL: Not applicable to this solicitation.

RESTRICTIONS: Time restrictions are not permissible. Bids offered which include such restrictions will be rejected. Any variations from this specification shall be indicated on the bid and explained in detail on a separate attachment to the bid.

RESPONSES/BIDS are due and must be received in accordance with the instructions given in the announcement page. Responses/bids received later than the time designated will be deemed as non-responsive and will not be considered. Responses/bids must be signed by an individual of the respondent's organization legally authorized to commit the respondent's organization to the performance of the product(s) and/or service(s) contemplated by this document.

STATEMENT OF INDEMNIFICATION – The Contractor/Consultant hereby acknowledges and confirms that the contract price includes the consideration for this indemnification / hold harmless. The Contractor/Consultant shall, in addition to any other obligation to indemnify the City and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the City, its elected officials, employees, agents, and volunteers from and against all claims, actions, liabilities, losses, (including economic losses), costs, including attorney fees and all costs of litigation, and judgments of every name and description arising out of, or incidental to the

performance of this contract, unless caused by the sole negligence of the City, its elected officials, employees, agents, or volunteers. Any cost or expenses, including attorney fees (including appellate, bankruptcy, or patent council fees), incurred by the City to enforce this agreement shall be borne by the Contractor. This indemnification shall also cover all claims brought against the City, its elected officials, employees, agents, or volunteers by any employee of the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them. The Contractor's obligation under this article shall be limited to \$10,000,000 and shall not be limited in any way to the agreed upon contract price as shown in this contract or the Contractor's limit of all services, obligations, and duties provided for in this contract, or in the event of termination of this contract for any reason, the terms and conditions of this article shall survive indefinitely.

SUBCONTRACTOR: If subcontracting has been agreed upon by the parties herein and made a part of the terms of this contract, the Contractor shall be responsible for monitoring all subcontractors to make sure all conditions of the contract are being executed. Furthermore, the City has the right to refuse subcontractors work on the project.

TERM: Until completed.

TERMINATION: Should Contractor violate any provision in this document, City may notify Contractor, in writing, stating the City's intention to terminate the contract and stating the reasons thereof. Unless Contractor remedies such default or has made satisfactory arrangements with the City for such remedy within five (5) business days after service of said notice upon Contractor, this Contractor may be terminated by the City.

TIME: Time is of the essence of this agreement.

PROTEST: Failure to file a protest within the time prescribed in the City of Sebring's Purchasing Policy shall constitute a waiver of the bidder/proposer's right to protest.

CERTIFICATION FORMS

**NON-COLLUSION AFFIDAVIT OF PRIME PROPOSER
(SUBMITTAL PAGE)**

State of _____

County of _____

_____, being first duly sworn, deposes and says that:

1. he/she is _____ of _____, the Proposer that has submitted the attached Proposal;
2. he/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
3. Such Proposal is genuine and is not a collusive or sham Proposal;
4. Neither the said Proposers nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiliate has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Proposer, firm or person to submit a collusive or sham Proposal in connection with such Contract or has in any manner, directly or indirectly, sought by agreement or collusion of communication or conference with any other Proposer, firm or person to fix the price or prices in the attached proposal of any other Proposer, or to fix any overhead, profit or cost element of the Proposal Price or the Proposal Price of any other Proposer, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City or any person interested in the proposed Contract; and
5. The price or prices quoted in the attached Proposals are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees or parties in interest, including this affiliate.

Signed: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20__

Notary Public

My Commission Expires: _____

DRUG-FREE WORKPLACE FORM
(SUBMITTAL PAGE)

The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies

That _____ does:
(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employee for violations of such prohibition
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation programs, employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under proposal a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employee that, as a condition of working on the commodities or contractual services that are under proposal, the employee will abide by the Terms of the statement and will notify the employer of any conviction of, plea of guilty or nolo contendere to, any violation of Chapter 1893 or of any controlled substance law of United States any state, for a violation occurring in the workplace no later than five (5) days after such Conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program, if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Proposer's Signature

Date

INSURANCE
(SUBMITTAL PAGE)

By signing below the Proposer is stating that they fully understand the insurance requirements for the project and if awarded the proposal will provide all insurance coverage as required in RFP #_____.

The requirements are as follows:

- Proposer is insured with a company licensed to do business in the State of Florida
- The insurance company is rated A VIII or better by A.M. Best Rating Company (Workers Compensation, General and Automobile policies)
- The City will be named as an additional insured for general and automobile liability
- The certificate will contain a 30-day written notice of cancellation and a 10-day written notice of non-payment
- The General Liability and Worker's Compensation policies will contain waiver of subrogation in favor of the City

Company Name

Proposer (signature)

INDEMNIFICATION

To the fullest extent permitted by laws and regulations, and in consideration of the amount stated on any Purchase Order, the Contractor shall defend, indemnify, and hold harmless the City, its officers, directors, agents, guests, invitees, and employees from and against all liabilities, damages, losses, and costs, direct, indirect, or consequential (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) to the extent arising out of or resulting from any acts of negligence, recklessness or intentional wrongful misconduct in the performance of the work by the Contractor, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable.

In any and all claims against the City, or any of its officers, directors, agents, or employees by any employee of the Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the City, the Contractor, or any of his Subcontractors. To the extent this Indemnification conflicts with any provision of Florida Law or Statute, this indemnification shall be deemed to be amended in such manner as to be consistent with such Law or Statute.

Subrogation: The Contractor and his Subcontractors agree by entering into this contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Contractor or Subcontractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor or Subcontractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor or Subcontractor enter into such an agreement on a pre-loss basis.

Release of Liability: Acceptance of the Contractor of the last payment shall be a release to the City and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, or relating to the work, or for any act or neglect of the City or of any person relating to or affecting the work.

Savings Clause: The parties agree that to the extent the written terms of this Indemnification conflict with any provisions of Florida laws or statutes, in particular Sections 725.06 and 725.08 of the Florida Statutes, the written terms of this indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in full and complete compliance with all such laws or statutes and to contain such limiting conditions, or limitations of liability, or to not contain any unenforceable, or prohibited term or terms, such that this Indemnification shall be enforceable in accordance with and to the greatest extent permitted by Florida Law.

BY: _____
Signature of Owner or Officer

DATE: _____ ATTEST: _____
Corporate Secretary or Witness

Organization Phone Number

STATE OF: _____

COUNTY OF: _____

The foregoing instrument was acknowledged before me this ____ day _____
of 20____ by _____, of
_____(Company Name).

He/She is personally known to me or has produced _____
as identification, and did ____/did not ____ take an oath.

Signature of Notary

Printed Name of Notary

(Seal)

My Commission Expires: _____

**SWORN STATEMENT PURSUANT TO
FLORIDA STATUTES SECTION 287.133(3)(a) ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to _____
[print name of the public entity]
by _____ for _____
[print individual's name and title]

[print name of entity submitting sworn statement]

whose business address is _____

and its Federal Employer Identification Number (FEIN) or Social Security Number (SSN)

of the individual signing this sworn statement is _____.

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

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

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

- A predecessor or successor of a person convicted of a public entity crime; or
- An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" included those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate.

The ownership by one person of shares constituting a controlling interest in another

person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

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

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. [indicate which statement applies]

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

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

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

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[signature]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me on this ____ day of

_____, 20____ by _____

who is personally known to me and who _____ did / _____ did not take an oath.

Signature of Notary

Printed Name of Notary

(Seal)

My Commission Expires: _____

SOLICITATION DEFINITIONS ADDENDUM

ADDENDA - Written and graphic documents issued prior to the receipt of bids to modify or interpret the bid documents.

AGREEMENT - The written instrument which is evidence of the agreement between City and Contractor covering the work.

BID BOND - A bond or other form of security offered by a bidder to the City soliciting the bid which guarantees that the bidder, if awarded the bid, will enter into a contract within a specified period of time and will furnish any required payment and performance bonds. If the bidder or proposer refuses to honor its bid, the bidder or proposer and bond surety or guarantor are liable on the bond for any additional costs the City incurs in hiring others to fulfill the contract, not to exceed the amount of the bid bond. A cashier's check or irrevocable line of credit on an acceptable bank, issued in the name of the City and in the required amount of the bid bond, may be substituted for a bid bond.

BID DOCUMENTS - The bid requirements, the Official Bid Form, instructions to bidders, the standard terms and conditions, plans and specifications, and the proposed contract documents. Include the "Public Notice of Request for bids," "General Information and Instructions for Bidders," "Standard Terms and Conditions," "Drug Free Workplace," "Agreement," "Specifications," and any Acknowledgement of Addenda issued prior to receipt of bids.

BID or PROPOSAL - The offer or bid of a bidder or proposer submitted on the prescribed form setting forth the prices for the work to be performed.

BIDDER, PROPOSER, OR OFFEROR – Bidder, proposer, or offeror shall have the same meaning; the individual or entity who submits a bid in response to an Invitation to Bid or Request for Proposal by the City.

BIDDING REQUIREMENTS - The Advertisement or Invitation to Bid or Request for Bids, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

CHANGE ORDER - The signed contract serves to define the terms and conditions for the services, work, or project as described in the bid and contract documents. A Change Order shall be considered a written order to the Contractor signed by the City, after execution of the contract, authorizing a change in the work or an adjustment in the contract price or the contract time.

CITY OR OWNER - The City of Sebring, a Florida municipal corporation - The entity for whom the work is to be

performed. City Hall, 368 South Commerce Avenue, Sebring, Florida 33870, phone 863-471-5100.

CONTRACT - The entire and integrated agreement between the Contractor and the City, defining its terms and conditions, which supersedes all prior negotiations, representations or agreements, either written or oral.

CONTRACTOR - Any person having a contract, agreement or purchase order with the City.

CONTRACT DOCUMENTS - Those items so designated in the agreement. Only printed or hard copies of the items listed in the agreement are contract documents.

LOCAL BUSINESS - Having a fixed office or distribution point located in and having a street address within the City of Sebring first, then Highlands County, Florida second, for a least six (6) months immediately prior to the issuance of the competitive bid, request for quotation, or invitation for bid by the City of Sebring; and holds a business license required by the City of Sebring.

LUMP SUM BID PRICE - The amount stated on the "Bid Form" for which the Proposer offers to provide a service as described in the bid documents.

NOTICE OF AWARD - The written notice by the City to the successful bidder or proposer, including instructions and conditions which are to be complied with in a designated time and stating that upon that timely compliance with all conditions listed therein, the City will execute the agreement and contract documents and provide the Contractor with a notice to proceed.

NOTICE TO PROCEED OR PURCHASE ORDER - A written notice given by the City stating the date on which the contract time will commence and when the Contractor shall start to perform the work under the contract documents.

PAYMENT BOND - A payment bond guarantees that the Contractor will pay suppliers, laborers, and subcontractors (subject to contract terms) for labor and materials. Generally, payment and performance bonds are issued together as one bond, termed a "Performance and Payment Bond." The bond shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the contract documents.

PERFORMANCE BOND - A performance bond guarantees the City that the Contractor will complete the contract according to its terms including price and time. Generally, payment and performance bonds are issued together as one bond, termed a "Performance and Payment Bond." The bond shall remain in effect at least until one year after the date when final payment becomes due, except as

provided otherwise by Laws or Regulations or by the contract documents.

PROJECT - The total construction/completion of which the work to be performed under the contract documents may be the whole, or a part.

RESPONSIBLE VENDOR – A vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.

RESPONSIVE VENDOR - A vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.

SITE - Lands or areas indicated in the contract documents as being furnished by City upon which the work or project is to be performed, including right-of-ways and easements for access thereto, and such other lands furnished by the City which are designated for the use of Contractor.

SPECIFICATIONS - The written requirements for materials, equipment, construction systems, standards, and workmanship for the work, and performance of related services.

SUBCONTRACTOR - An individual or entity having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the work at the site.

SUBSTANTIAL COMPLETION - The time at which the work (or a specified part thereof) has progressed to the point where the work (or a specified part thereof) is sufficiently complete, in accordance with the contract documents, so that the work (or a specified part thereof) can be utilized for the purposes for which it is intended.

SUCCESSFUL BIDDER OR PROPOSER - The bidder or proposer to whom the City provides written notice of award.

UNIT PRICE BID - The amount stated on the "Bid Forms" as a price per unit of measurement for services as described in the bid documents.

WORK - Construction and services required by the contract, whether completed or partially completed and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

CITY OF SEBRING - LEGAL PROVISIONS ADDENDUM

Miscellaneous

Licensing: Contractor shall procure and keep in force during the term of this contract all necessary licenses, registrations, certificates, permits and other authorizations as are required by law in order for Contractor to render its services hereunder. Contractor shall require all of its subcontractors to comply with the provisions of this paragraph.

Contractor grants Owner an irrevocable license to utilize the plans and specifications generated by Contractor for this Project.

E-Verify:

1) Beginning January 1, 2021, every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

2) A) If a contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien.

B) The contractor shall maintain a copy of such affidavit for the duration of the contract.

3) A) A public employer, contractor, or subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated s. 448.09(1) shall terminate the contract with the person or entity.

B) A public employer that has a good faith belief that a subcontractor knowingly violated this subsection, but the contractor otherwise complied with this subsection, shall promptly notify the contractor and order the contractor to immediately terminate the contract with the subcontractor.

C) A contract terminated under subparagraph A or subparagraph B herein is not a breach of contract and may not be considered as such.

4) A public employer, contractor, or subcontractor may file an action with a circuit or county court to challenge a termination under paragraph (3) no later than 20 calendar days after the date on which the contract was terminated.

5) If a public employer terminates a contract with a contractor under paragraph (3), the contractor may not be awarded a public contract for at least 1 year after the date on which the contract was terminated.

6) A contractor is liable for any additional costs incurred by a public employer as a result of the termination of a contract.

LEGAL PROVISIONS AND CERTIFICATIONS

To the extent applicable to this Project, Engineer, Contractor, subcontractor, Architect, and/or Design/Builder (collectively "Contractor"):

Conflict: Contractor represents and warrants unto Owner that no officer, employee or agent of Owner has any interest, either directly or indirectly, in the business of Contractor to be conducted hereunder. Contractor further represents and warrants to Owner that it has not employed or retained any company person, other than a bona fide employee working solely

for Contractor, to solicit or secure this Contract, that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract, and that it has not agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out this Contract. Contractor assures that it will insert the above provision in each of its subcontractor agreements relating to the services to be performed hereunder.

Contractor and its employees shall promptly observe and comply with the applicable provisions of all Federal, State and local laws, rules and regulations which govern or apply to the goods and services rendered by Contractor hereunder, or to the wages paid by Contractor to its employees. Contractor shall require all of its subcontractors to comply with the provisions of this paragraph.

CIVIL RIGHTS ACT OF 1964, TITLE VI – CONTRACTOR CONTRACTUAL REQUIREMENTS

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Owner to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Owner, as appropriate, and shall set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Owner shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

- 1) Withholding of payments to the contractor under the contract until the contractor complies, and/or
- 2) Cancellation, termination, or suspension of the contract, in whole or in part.

Incorporation of Provisions: The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Owner may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Owner to enter into such litigation to protect the interests of the Owner and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contractor for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) in the furnishing of services to Owner hereunder, no person on the grounds of race, color, national origin, sex, age, disability, religion, or familial status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (2) Contractor shall comply with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation – effectuation of Title VI and Title VIII of the Civil Rights Act of 1964, as said Regulations may be amended. Should Contractor authorize another person, with Owner's prior written consent, to provide services to Owner hereunder, Contractor shall obtain from such person a written agreement pursuant to which such person shall, with respect to the services which he or she is authorized to provide, undertake for such person the obligations contained in this section. Contractor shall furnish an original agreement to Owner.

Further, Contractor assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, color, national origin, sex, age, disability, religion, or familial status be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Such activities shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor assures that no person shall be excluded on these grounds from participating in or receiving the services of any program or activity covered by this subpart. Contractor assures that it shall not discriminate on the grounds of race, color, national origin, sex, age, disability, religion, or familial status in the selection or retention of subcontractors. Contractor assures that it will require that its covered subcontractors provide assurances to

Contractor that they similarly require assurances from their subcontractors, as required by CFR Part 152, Subpart E, to the same effect.

Owner may, from time to time, adopt additional or amended and nondiscrimination provisions concerning the furnishing of services to the Owner, and Contractor agrees that it will adopt any such requirements as a part of this Contract.

Non-Discrimination: Contractor for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

- 1) No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
- 2) That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination;
- 3) That Contractor shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968, and as said Regulations may be amended.

That in the event of a breach of any of the above nondiscrimination covenants, Owner shall have the right to terminate this Contract. This provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor 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, or national origin. such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment,

notices to be provided setting forth the provisions of this nondiscrimination clause.

2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4) The contractor 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.

5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction 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.

7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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 subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

EEO COMPLIANCE

Requirements for prime contractors and subcontractors:

1) Each prime contractor and subcontractor shall file annually, on or before the September 30, complete and accurate reports on Standard Form 100 (EEO-1) promulgated jointly by the Office of Federal Contract Compliance Programs, the Equal Employment Opportunity Commission and Plans for Progress or

such form as may hereafter be promulgated in its place if such prime contractor or subcontractor (i) is not exempt from the provisions of these regulations in accordance with Sec. 60-1.5; (ii) has 50 or more employees; (iii) is a prime contractor or first tier subcontractor; and (iv) has a contract, subcontract or purchase order amounting to \$50,000 or more or serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: Provided, That any subcontractor below the first tier which performs construction work at the site of construction shall be required to file such a report if it meets requirements of paragraphs (a)(1) (i), (ii), and (iv) of this section.

2) Each person required by Sec. 60-1.7(a)(1) to submit reports shall file such a report with the contracting or administering agency within 30 days after the award to him of a contract or subcontract, unless such person has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually in accordance with Sec. 60-1.7(a)(1), or at such other intervals as the Deputy Assistant Secretary may require. The Deputy Assistant Secretary may extend the time for filing any report.

3) Failure to file timely, complete and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the equal opportunity clause and this contract.

Requirements for bidders or prospective contractors:

1) Certification of compliance with Part 60-2: Affirmative Action Programs. Each agency shall require each bidder or prospective prime contractor and proposed subcontractor, where appropriate, to state in the bid or in writing at the outset of negotiations for the contract: (i) Whether it has developed and has on file at each establishment affirmative action programs pursuant to Part 60-2 of this chapter; (ii) whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; (iii) whether it has filed with the Joint Reporting Committee, the Deputy Assistant Secretary or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

2) Additional information. A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information as the Deputy Assistant Secretary requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to award, or after the award, or both, to furnish such other information as the applicant or the Deputy Assistant Secretary requests.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS - 41 CFR Part 60.4.3

1) As used in these specifications:

A) "Covered area" means the geographical area described in the solicitation from which this contract resulted;

B) "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;

C) "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal

Tax Return, U.S. Treasury Department Form 941;

D) "Minority" includes:

(1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2) Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3) If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4) The contractor shall implement the specific affirmative action standards provided within these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5) Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women, shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6) In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period and the contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7) The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

A) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

B) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

C) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the contractor may have taken.

D) Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

E) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or

approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

F) Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

G) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

H) Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

I) Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

J) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

K) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

L) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

M) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

N) Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

O) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

P) Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8) Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations. The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9) A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally,) the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10) The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11) The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12) The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13) The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph

18.7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14) The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

CERTIFICATION OF NONSEGREGATED FACILITIES - 41 CFR PART 60-1.8

Notice to Prospective Federally Assisted Construction Contractors:

1) A Certification of Non-segregated Facilities shall be submitted prior to the award of a federally-assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

2) Contractors receiving federally-assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Notice to Prospective Subcontractors of Requirements for Certification of Non-Segregated Facilities:

1) A Certification of Non-segregated Facilities shall be submitted prior to the award of a subcontract exceeding \$10,000, which is not exempt from the provisions of the Equal Opportunity Clause.

2) Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

CERTIFICATION OF NONSEGREGATED FACILITIES

The federally-assisted construction contractor certifies that she or he does not maintain or provide, for his employees, any segregated facilities at any of his establishments and that she or he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor certifies that she or he will not maintain or provide, for his employees, segregated facilities at any of his establishments and that she or he will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The federally-assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms, and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directives or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason. The federally-assisted construction contractor agrees that (except where she or he has obtained identical certifications from proposed subcontractors for specific time periods) she or he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that she or he will retain such certifications in his files.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION - 41 CFR PART 60-2

The Contractor's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

1) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must 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 must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

2) No Federal appropriated funds shall be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

3) If any funds other than Federal appropriated funds have

been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

Accounting/Records: Contractor will provide all information and reports required by said Regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Owner or other governmental agency to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of Contractor is in the exclusive possession of another who fails or refused to furnish this information, Contractor shall so certify and shall set forth what efforts it has made to obtain the information. Contractor shall remain obligated under this paragraph until the expiration of three (3) years after the termination of the Contract. In the event of breach of any of the above nondiscrimination covenants, Owner shall have the right to impose such contract sanctions as it or other applicable government entity may determine to be appropriate, including with-holding payments to Contractor under this Contract or canceling, terminating, or suspending this Contract in whole or in part. The rights granted to Owner by the foregoing sentence shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT
REQUIREMENTS 29 CFR PART 5

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, including watchmen and guards, 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.

2) Violation; Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3) Withholding for Unpaid Wages and Liquidated Damages: The Owner shall upon its own action or upon written request of an authorized representative of the Department of

Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4) Subcontractors: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

ACCESS TO RECORDS AND REPORTS

The Owner, as well as the public pursuant to Florida Statutes Chapter 119, shall have access to any books, documents, paper, and records including payroll records and associated basic data of the Contractor, which are directly pertinent to the specific Contract for the purposes of making an audit, examination, excerpts, and transcriptions.

The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than six years after final payment is made and all pending matters are closed.

FEDERALLY FUNDED PROJECT REQUIREMENTS

If required by the Federal program legislation, Contractor covenants and agrees that all laborers and mechanics employed by Contractor and its subcontractors on this project will be paid in compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, Contractor is required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor is required to pay wages not less than once a week.

Wage rates for laborers, mechanics and apprentices shall not be less than those established by the Florida Department of Labor and Employment Security and/or the United States Department of Labor for the work herein. The Contractor must insure Equal Employment Opportunity as part of the awarded contract and also subcontracts awarded by the contractor.

The Contractor must comply with the Copeland "Anti-Kickback" Act, 18 USC 874 as supplemented in Department of Labor regulations, 29 CFR Part 3, prohibiting employers from inducing any person employed to give up any part of the compensation to which he or she is otherwise entitled.

Pursuant to § 287.133(2)(a), Fla. Stat., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in § 287.017, Florida Statutes, for CATEGORY TWO purchases for a period of 36 months following the date of being placed on the convicted vendor list.

Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR §200.216) – Contractor represents and warrants that no part of the equipment, services or systems provided hereunder uses or consists of covered telecommunications equipment or services (as defined by 2 CFR §200.216) as a substantial or essential component of any equipment, service or system provided, or as a critical technology as part of any system provided.

Rights to Inventions Made Under a Contract or Agreement – If the contract includes the performance of experimental, developmental, or research work, Contractor shall provide for the rights of the Federal Government and the City in any resulting invention in accordance with 37 CFR 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 awarding agency.

Procurement of Recovered Materials – In the performance of the contract, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1) Competitively within a timeframe providing for compliance with the contract performance schedule; (2) Meeting contract performance requirements; or (3) At a reasonable price. Contractor will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the provisions of the state Energy Conservation Plan adopted pursuant thereto.

Waste Disposal Act – Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Lead Based Poisoning Prevention Act (42 U.S.C. 4821-4846 as implemented by 24 CFR Part 35). The mention herein of any law, directive, statute or executive order is not an indication that

such law, directive, statute or executive order is necessarily applicable nor is the failure to mention any statute or executive order intended as an indication that such statute or executive order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in an agreement, shall be deemed to have been inserted herein, and an agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, the agreement and/or contract shall forthwith be physically amended to make such insertion or correction upon the application of either party.

The Contractor must comply with the Copeland "Anti-Kickback" Act, 18 USC 874 as supplemented in Department of Labor regulations, 29 CFR Part 3, prohibiting employers from inducing any person employed to give up any part of the compensation to which he or she is otherwise entitled.

FAIR HOUSING ACT Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and disability.

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT
OF 1968

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by the U.S. Department of Housing and Urban Development (HUD) assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

Section 3 of the Housing and Urban Development Act of 1968:

1) Low-Income Person Definition A low-income person, as this term is defined in Section 3 (b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher and or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low—income families; or A very low income person, as this term is defined in Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437 a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

2) Compliance: Sub-recipient shall comply with the provisions of Section 3 of the Housing Urban Development Act of 1968, as amended, 12 USC 1701u, and implementing its implementing regulations at 24 CFR part 75 (formerly 24 CFR part 135). Compliance with Section 3 shall be achieved, to the greatest extent feasible, consistent with existing Federal, state and local laws and regulations. Accordingly, a sub-recipient of Section 3-covered assistance is required to develop strategies for meeting both the regulatory requirements at 24 CFR part 75 and any other applicable statutes or regulations. Sub-recipient and any of its contractors and subcontractors shall include the following "Section 3 clause" in every "Section 3-covered contract":

A) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.

C) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.

E) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.

F) Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

3) Section 3 Benchmarks and Reporting:

A) Benchmarks. Contracts over \$200,000 trigger Section 3 Benchmark requirements. When triggered, best efforts must be made to extend Section 3 opportunities to verified Section 3 workers and business concerns to meet these minimum numeric goals:

(1) Twenty-five percent (25%) of the total hours on a Section 3 project must be worked by Section 3 workers; and

(2) Five percent (5%) of the total hours on a Section 3 project must be worked by Targeted Section 3 workers.

B) Reporting. If the subrecipient's reporting indicates that the subrecipient has not met the Section 3 benchmarks described in 24 CFR § 75.23, pursuant to 24 CFR § 75.25(b), the subrecipient must report in a form prescribed by HUD on the qualitative nature of its activities and those its contractors and subcontractors pursued.

C) Recipient will comply with any Section 3 Project Implementation Plan documents provided by HUD or DEO which may be amended from time to time for HUD reporting purposes.

DISADVANTAGED BUSINESS ENTERPRISES

Policy: It is the policy of the Owner and the United States or State of Florida Department of Transportation that disadvantaged business enterprises, as defined in the Owner's Disadvantaged Business Enterprises ("DBE") Participation Policy for services as defined in 49 CFR Part 26 shall have equal opportunity to participate in the performance of services contracts awarded by the Owner, including, but not limited to, contracts financed in whole or in part with federal or State funds under this Contract. Consequently, the requirements of the Owner's DBE Participation Policy apply to this Contract.

Contract Assurance (§26.13): The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment: The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than fourteen (14) days from the receipt of each payment, including retainage that the prime contractor receives from City of Sebring. Payments not made to subcontractors within fourteen (14) days of the prime contractor's receipt of payment shall bear interest at the rate of ten percent (10%) per annum, computed beginning on the 14th day after payment is due. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Sebring. The right to receive interest on a payment under this section is not an exclusive remedy, and this section does not modify any remedies available to any person under the terms of a contract or under any other statute. City of Sebring shall have the right to terminate the services of any obligor who fails to make prompt payment to any obligee. This clause applies to both DBE and non-DBE subcontractors.

DBE Obligation: The Contractor agrees to ensure that DBE/MWBE firms shall have the maximum opportunity to participate in the performance of contracts for subcontractor services, including, but not limited to, those projects financed in whole or in part with federal or state funds provided under this Contract. In this regard, the Contractor and all subcontractors shall take all necessary and reasonable steps in accordance with the Owner's DBE/MWBE Participation Policies to ensure that DBE/MWBE firms have the maximum opportunity to compete for and perform contracts. The Contractor and any subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of Owner contracts.

DBE Administration:

1) Eligibility of DBE's - Those firms currently certified as DBE's by the Florida Department of Transportation are eligible to participate as DBE's on this contract. A list of these firms can be obtained from the State, the consulting engineer, or the Owner. Firms certified as DBE's by other states, or other U.S. DOT recipients are subject to the owner's acceptance. A bidder may request a review of a potential DBE prior to the bid opening. The bidder should allow ten working days for the owner's determination regarding certification of the potential DBE. Previous acceptance of a DBE by the State or Owner does not ensure acceptance on this project.

2) Counting DBE Participation Towards DBE Goals: DBE participation toward attainment of the goal will be computed on the basis of the subcontract prices agreed to between the contractor and subcontractors for the contract items or portions of items being sublet, as shown on the DBE Participation Form and attachments. Credit will only be given for use of DBE's that are certified or accepted according to this specification. DBE participation shall be counted toward meeting the DBE goal in accordance with the following:

A) Commercially Useful Function: The Owner shall count toward the DBE goal only those expenditures to DBE's that perform a commercially useful function in the work of the contract. A DBE performs a commercially useful function when it is responsible for execution of a distinct element of work by actually performing, managing, and supervising that work. To determine if a DBE is performing a commercially useful function, the amount of work subcontracted, industry practices, and other

relevant factors will be evaluated. If consistent with industry practices, a DBE shall enter into a subcontract or other contractual written agreement. A DBE Contractor may subcontract a portion of the work up to the amount allowed under standard subcontracting contract provisions of normal industry practices. A DBE is presumed not to be performing a commercially useful function if the DBE is performing outside these guidelines.

B) Materials and Supplies: The Owner shall count toward the DBE goal the expenditures for materials and supplies obtained from DBE suppliers and manufacturers as described below. The DBE's must assume the actual and contractual responsibility for the provision of the materials and supplies:

(1) The entire expenditure to a DBE manufacturer will be counted toward the DBE goal. A manufacturer must operate or maintain a factory or establishment that produces on the premises the materials or supplies that are obtained by the contractor.

(2) Sixty percent of expenditures to a DBE regular dealer will be counted toward the DBE goal. A regular dealer must perform a commercially useful function in the supply process including buying the materials or supplies, maintaining an inventory and regularly selling materials to the public. Bulk items such as steel, cement, gravel, stone and petroleum products need not be kept in stock, but the dealer must own or operate distribution equipment.

(3) No credit will be given toward the DBE goal, if the prime contractor makes a direct payment to a non-DBE material supplier. However, it will be permissible for a material supplier to invoice the prime contractor and the DBE jointly and be paid by the prime contractor making remittance to the DBE firm and material supplier jointly.

(4) No credit, toward the DBE goal, will be given for the cost of materials or equipment used in a DBE firm's work when those costs are paid by a deduction from the prime contractor's payment(s) to the DBE firm.

C) Owner-Operator Trucking: The Owner shall count toward the DBE goal, the entire delivery fee paid to DBE owner-operators performing trucking for the contractor, if they appear on the contractor's payroll and separate records are furnished to the Owner documenting the expenditures. The records shall include for each owner-operator; their social security number; driver's license number; vehicle registration number; current vehicle license number; truck number; and a complete record of the contract fees paid to them.

D) Joint Venture: When a joint venture contract is involved, the Owner shall count towards the DBE goal that portion of the contract total dollar value equal to the percentage of ownership and control of each DBE firm within the joint venture. Such crediting is subject to the owner's acceptance of the joint venture agreement. The Bidder must furnish the joint venture agreement with the DBE Participation Form. The joint venture agreement must include a detailed breakdown of the following:

(1) Contract responsibility of the DBE for specific contract items of work,

- (2) Capital participation by the DBE,
- (3) Specific equipment to be provided by the DBE,
- (4) Specific responsibilities of the DBE regarding control of the joint venture,
- (5) Specific workers and skills to be provided by the DBE, and
- (6) Percentage distribution to the DBE of the projected profit or loss incurred by the joint venture.

The joint venture must be certified by the City.

3) Award Documentation and Procedure: All bidders shall certify in the bid proposal their intent to meet or exceed the established goal or to demonstrate good faith efforts to meet the goal. Failure to make such certification or failure to demonstrate good faith efforts will render a bid non responsive.

A) DBE Participation Form: The apparent successful bidder must submit with the bid the following information on the proposed DBE Participation Form attached to the Proposal. The information shall demonstrate the contractor's intended participation by certified DBE's. When the required information is not provided by the apparent low bidder the bid will be ruled non responsive and will not be considered. The information furnished shall consist of:

- (1) The names, addresses, contact persons, phone numbers, and category of DBE firms to be used on the contract;
- (2) A list of the bid items of work to be performed by the DBE and the percent to be credited toward the DBE goal;
- (3) The dollar value of each of the DBE work items; and
- (4) If the DBE goal is not met, a statement of why the goal could not be met and a demonstration of the good faith efforts taken to meet the DBE goal.

B) Owner Evaluation: In selecting the lowest responsible bidder, the Owner will evaluate the DBE information provided with the bid. The Owner may request additional DBE information and may allow the bidders, up to 7 calendar days after bid submittal to supplement or resubmit information concerning their proposed DBE participation. Prior to awarding the contract the Owner will verify verbally and/or in writing that the information submitted by the apparent successful bidder is accurate and complete.

C) Good Faith Efforts: If the bidder is unable to meet the DBE goal, the bidder must submit evidence of good faith efforts taken to meet the goal. Good faith efforts conducted after the bid opening will not be considered adequate to fulfill these bid requirements. Good faith efforts may include but are not limited to:

- (1) Efforts to select portions of the work for performance by DBE's, in order to increase the likelihood of achieving the DBE goal. This can include, but is not limited to, breaking down contracts into economically feasible units to facilitate DBE participation. Selection of portions of work shall be

at least equal to the DBE goal.

(2) Written notification to individual DBE's likely to participate in the contract sent at least 7 calendar days prior to the bid opening. The notification shall list specific items or types of work and shall be sent to a reasonable number of DBE's qualified to participate in the contract.

(3) Efforts to negotiate with DBE's for specific items of work including:

- a. Names, addresses, and telephone numbers of DBE's who were contacted, the dates of initial contact and information on further contacts made to determine with certainty if the DBE's were interested. Personal or phone contacts are expected;
- b. Description of the information provided to the DBE's regarding the plans, specifications and estimated quantities for portions of the work to be performed;
- c. Individual statements as to why agreements with DBE's were not reached; and
- d. Information on each DBE contacted but rejected and the reasons for the rejection.

(4) Efforts to assist the DBE's that need assistance in obtaining bonding, insurance, or lines of credit required by the contractor.

(5) Documentation that qualified DBE's are not available or not interested.

(6) Advertisements in general circulation media, trade association publications and disadvantaged-focus media concerning subcontracting opportunities.

(7) Efforts to use the services of available disadvantaged community organizations; disadvantaged contractor's groups; local, state and federal disadvantaged business assistance offices; and other organizations that provide assistance in recruitment and placement of DBE's.

The demonstration of good faith efforts by the contractor must prove the contractor actively and aggressively sought out DBE's to participate in the project. The following actions would not be considered acceptable reasons for failure to meet the DBE goal and would not constitute a good faith effort:

- (1) The DBE was unable to provide adequate performance and/or payment bonds.
- (2) A reasonable DBE bid was rejected based on price.
- (3) The DBE would not agree to perform the subcontract work at the prime contractors unit bid price.
- (4) Union versus non-union status of the DBE firm.
- (5) The prime contractor would normally perform all or most of the work included in this contract.
- (6) The prime contractor solicited DBE participation

by mail only.

4) **Post Award Compliance:** If the contract is awarded on less than full DBE goal participation, the contractor is not relieved of the responsibility to make a determined effort to meet the full goal amount during the life of the contract. In such a case, the contractor shall continue good faith efforts throughout the life of the contract to increase the DBE participation to meet the contract goal.

If a DBE is unwilling or unable to perform the work specified, the contractor shall request from the Owner, relief from the obligation to use that DBE. Efforts will be made by the contractor to acquire from the DBE a letter which states the reason the DBE is unwilling or unable to complete its obligations under the project. If this results in a DBE contract shortfall, the contractor shall immediately take steps to obtain another certified DBE to perform an equal dollar value of allowable credit. If a new DBE cannot be found, the contractor shall submit evidence of good faith efforts within 15 calendar days of the request for relief. The contractor shall submit the new DBE's name, address, work items and the dollar amount of each item. The owner shall approve the new DBE before the DBE starts work.

If the contractor fails to conform to the approved DBE participation or if it becomes evident that the remaining work will not meet the approved participation, then the contractor shall submit evidence showing either how the contractor intends to meet the DBE participation, or what circumstances have changed affecting the DBE participation. If the owner is not satisfied with the evidence, then liquidated damages may be assessed for the difference between the approved and actual DBE participation.

5) **Records and Reports:** The contractor shall keep records as necessary to determine compliance with the DBE obligations. The records shall include but are not limited to:

A) **Record of DBE Participation:** The names of disadvantaged and non-disadvantaged subcontractors, regular dealers, manufacturers, consultant and service agencies; the type of work or materials or services performed on or incorporated in the project; and the actual value of such work.

B) **Efforts to Utilize DBE Firms:** Documentation of all efforts made to seek out disadvantaged contractor organizations and individual disadvantaged contractors for work on this project. All correspondence, personal contacts, telephone calls, etc., to obtain the services of DBE's should be documented.

C) **Final DBE Certification:** Upon completion of the individual DBE firm's work, the prime contractor shall submit a certification attesting to the actual work performed by the DBE firm and the amount paid the DBE firm. This certification shall be signed by both the prime contractor and the DBE firm.

Energy Conservation Requirements: The contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

Rights To Inventions: All rights to inventions and materials generated under this contract are subject to regulations issued by the Owner of the Federal grant under which this contract is executed.

Contract Time: If the Contractor persistently refuses or fails to recover lost time, to the extent that it becomes apparent that the Project shall not be completed within the Contract Time, the Owner may take such actions to terminate the Contract for default on the part of the Contractor, or to assign portions of the Work to other contractors or to require Contractor to hire sufficient skilled workers for Contractor to recover lost time and complete the Project on time. Any additional costs associated with this will be borne by original Contractor.

Owner has the right to refuse a subcontractor for good faith concern about the subcontractor's competence, solvency or fitness to perform timely.

Owner's Recourse: Written warranties made to the Owner are in addition to manufacturer's warranties, implied warranties, and shall not limit the duties, obligations, rights and remedies otherwise available under the law, nor shall warranty periods be interpreted as limitations on time in which the Owner can enforce such other duties, obligations, rights, or remedies.

The Owner reserves the right to refuse to accept Work for the Project where a special warranty, certification, or similar commitment is required on such Work or part of the Work, until evidence is presented that entities required to countersign such commitments have done so."

Pursuant to §403.7065, *Fla. Stat.*, Contractor shall procure products or materials with recycled content when the Florida Department of Management Services determines that those products or materials are available.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION

The Contractor certifies, by submission of the proposal or acceptance of this contract, that it is not subject to a System for Award Management (SAM) exclusion and neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the Contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

CLEAN AIR AND WATER POLLUTION CONTROL

Contractors and subcontractors agree:

1) That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

2) To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;

3) That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the

receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;

4) To include or cause to be included in any construction contract or subcontract which exceeds \$ 100,000 the aforementioned criteria and requirements.

ASSURANCE OF COMPLIANCE

The Contractor hereby agrees that it will comply with:

Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80), to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department.

Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 84), to the end that, in accordance with Section 504 of that Act and the Regulation, no otherwise qualified individual with a disability in the United States shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department.

The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 91), to the end that, in accordance with the Act and the Regulation, no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department.

49 CFR SUBTITLE A (10-1-03 EDITION)

Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5).

Compliance with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S. C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

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 (Pub. L. 94-163, 89 Stat. 871).

46 U.S. C. 1241(b)(1) and 46 CFR part 381 impose cargo preference requirements on the shipment of foreign made goods.

Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1061, section 337 of the Surface Transportation and

Uniform Relocation Assistance Act of 1987, and 49 CFR parts 660 and 661 impose Buy America provisions on the procurement of foreign products and materials.

Section 105(f) of the Surface Transportation Assistance Act of 1982, section 106(c), of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR part 23 impose requirements for the participation of disadvantaged business enterprises.

Section 308 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1068(b)(2), authorizes the use of competitive negotiation for the purchase of rolling stock as appropriate.

A breach by Contractor or any subcontractor, vendor or supplier of any of the federal or state laws or regulations applicable to this Project may be grounds for termination of the contract, and possibly debarment as a contractor or subcontractor.

The provisions of these Additional Special Provisions shall control over any contrary provision in the Special Provisions or any other Contract Document.

Contractor waives any right of subrogation against Owner or Owner's agents.

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages up to \$10,000,000 (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Construction), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission or reckless or intentional wrongdoing of Contractor or Contractor's officers, directors, partners, employees, or subcontractors. The parties agree that this limit on indemnification amount bears a reasonable commercial relationship to the contract. In any action construing the scope or nature of this indemnification, the court shall construe this provision to comply with Section 725.06, Florida Statutes, as amended.

State Residents Preference:

1) If state funds are utilized on this project, the Contractor shall give preference to the employment of state residents in the performance of the work on the project if state residents have substantially equal qualifications to those of nonresidents. A contract for construction funded by local funds may contain such a provision.

A) As used in this section, the term "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.

B) A contractor required to employ state residents must contact the Agency for Workforce Innovation to post the contractor's employment needs in the state's job bank system.

2) No contract shall be let to any person refusing to execute an agreement containing this provision. However, in work involving the expenditure of federal aid funds, this section may not be enforced in such a manner as to conflict with or be contrary to federal law prescribing a labor preference to honorably discharged soldiers, sailors, or marines, or prohibiting as unlawful any other preference or discrimination among the citizens of the United States.

Punch List.

If the contract is for the provision of construction services, Owner shall provide for a single list of items required to render the construction services complete, satisfactory, and acceptable ("punch list"). For construction projects having an estimated cost of less than \$10,000,000, the punch list shall be developed within thirty days after Contractor and Owner agree that the project has achieved substantial completion. For construction projects having an estimated cost of \$10,000,000 or more, the punch list shall be created within sixty calendar days after Owner and Contractor agree that the Contractor has achieved substantial completion. Owner shall provide the punch list to Contractor not more than five days after the punch list is completed.

The final contract completion date must be at least thirty days after the delivery of the punch list. If the punch list is not provided to the Contractor by the agreed upon date for delivery, the contract time for completion must be extended by the number of days that Owner exceeded the delivery date.

Payment for Purchases of Construction Services.

Owner hereby identifies the City Administrator as the agent to whom the Contractor may submit its payment request or invoice or anyone that this agent designates in writing. A contractor's submission of a payment request or invoice to the identified agent of Owner shall be stamped as received as provided in F.S. 218.74(1) and shall commence the time periods for payment or rejection of a payment request or invoice as provided herein. If a payment request or invoice does not meet the contract requirements, Owner must reject the payment request or invoice within twenty business days after the date on which the payment request or invoice is stamped as received as provided in F.S. 218.74(1). The rejection must be written and must specify the deficiency and the action necessary to make the payment request or invoice proper.

Attorneys' Fees and Costs. In any judicial or alternative dispute resolution technique action to interpret or enforce any of the terms of this agreement, including any action by Owner to establish the right to indemnification, the parties agree that the prevailing party shall be entitled to an award of attorneys' fees and costs payable by the non-prevailing party, whether such fees and costs are incurred before, during or after trial, appellate proceeding or post-judgment collections.