


CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Claude Miller 
Director of Procurement

DATE: October 27, 2015

RE: Award of Contract for
Design-Build Services for Backup Data Center
Contract No. 001122

In accordance with the approved Procurement Policy and Procedures for design-build services, the Procurement Department opened sealed bids on October 21, 2015, for the referenced project. Bid results were as follows:

| | <u>Bidder</u> | <u>Bid Amount</u> |
|----|--------------------------------|--------------------------|
| 1. | Gomez Construction Company | \$1,947,162.00 |
| 2. | Johnson-Laux Construction, LLC | \$1,958,574.00 |
| 3. | Welbro Building Corporation | \$2,225,000.00 |

The Engineer's Estimate for this project is \$1,609,000.00.

The Procurement Department has evaluated all bids and has determined the bid from Gomez Construction Company to be responsible and responsive to the bidding requirements. Award of the contract to Gomez in the amount of \$1,947,162.00 is recommended contingent upon final execution of the contract by both parties.

AGREEMENT

THIS AGREEMENT is dated as of the 12th day of November 2015 by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY (hereinafter called CFX) and GOMEZ CONSTRUCTION COMPANY, (hereinafter called DESIGN/BUILDER).

CFX and DESIGN/BUILDER, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

1.01 DESIGN/BUILDER shall, consistent with applicable state licensing laws, provide design/build services as specified in the Contract Documents. The Work is generally described as follows: provide design-build services to complete the design and construct a backup data center which will include a computer room to house redundant computer hardware for toll operations. The new center will be constructed at the Hiawassee Mainline Toll Plaza. The DESIGN/BUILDER shall make available the necessary personnel, facilities, supplies, materials and resources to perform the required services.

Contract No. 001122, Backup Data Center

Article 2. CONTRACT TIMES AND LIQUIDATED DAMAGES.

2.01 Substantial and Final Completion

A. After the charging of Contract time begins, the Work related to the design and construction of the backup data center shall reach Substantial Completion within 210 calendar days of the scheduled Final Completion date plus such additional time as may have been granted by the CFX. The Work shall be completed and ready for Final Acceptance by CFX within 240 calendar days (or within such additional time as may have been granted by the Authority) after the charging of Contract Time begins.

2.02 Liquidated Damages

A. CFX and the DESIGN/BUILDER recognize that time is of the essence of the Contract and that the CFX will suffer financial loss if the Work is not completed within the times specified above or within such additional time as may have been granted by CFX. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by CFX if the Work is not completed on time. Accordingly, instead of requiring such proof, CFX and the DESIGN/BUILDER agree that as liquidated damages for delay (but not as a penalty) the DESIGN/BUILDER shall pay CFX One Thousand Five Hundred Dollars (\$1,500.00) for each calendar day that expires after the time specified above for Substantial Completion until the Work achieves Substantial Completion or until the scheduled Final Completion date, whichever occurs first.

If the DESIGN/BUILDER shall neglect, refuse, or fail to complete the Work within the time specified above for Final Completion (plus such additional time as may have been granted by CFX), the DESIGN/BUILDER shall pay CFX Seven Hundred Fifty Dollars (\$750.00) for each calendar day that expires after the time specified above for Final Completion.

Article 3. CONTRACT PRICE.

3.01 CFX shall pay DESIGN/BUILDER the following sum for completion of the Work in accordance with the Contract Documents.

A. For all Work, a Lump Sum of \$1,947,162.00.

Article 4. PAYMENT PROCEDURES

4.01 DESIGN/BUILDER shall submit and CFX will process Applications for Payment in accordance with Article 13 of the General Conditions.

A. *Progress Payments; Retainage.* DESIGN/BUILDER will receive partial payments on monthly estimates, based on the amount of work done or completed (including delivery of certain materials as specified below). The monthly payments shall be approximate only and all partial estimates and payments will be subject to correction in the subsequent estimates and the final estimate and payment.

All such payments will be measured by the acceptable Schedule of Values established in paragraph 2.04.A of the General Conditions less an amount retained and less payments previously made. The amount retained shall be five percent (5%) of the value of the work completed.

B. *Progress Payments; Stored Materials:* Progress payments will be allowed for materials stockpiled in approved locations in the vicinity of the project. Where off-site fabrication is required, the term "in the vicinity of the project" will be interpreted to include a site remote from the project provided that condition "1" listed below is satisfied.

The following conditions shall apply to all payments for stockpiled materials:

1. There must be reasonable assurance that the materials on which partial payment is to be made will be incorporated into the Project.
2. Delivery charges will be included in partial payments if properly documented.
3. Partial payments will not be made for materials that were stockpiled prior to award of the Contract for the project.
4. In no case will partial payments for materials (including partial payments for delivery) exceed 50% of the value of the item.

C. *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 13.08 of the General Conditions, CFX will pay the remainder of the Contract Price.

Article 5. DESIGN/BUILDER'S REPRESENTATIONS.

5.01 DESIGN/BUILDER makes the following representations:

A. DESIGN/BUILDER has examined and carefully studied the Contract Documents (including the Addenda) listed in paragraphs 6.01.A through I but excluding the documents and other related data identified in the Request for Proposals.

B. DESIGN/BUILDER has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, performance or furnishing of the Work.

C. DESIGN/BUILDER is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, performance or furnishing of the Work.

D. DESIGN/BUILDER is aware of the general nature of work to be performed by CFX and others at the Site that relates to the Work as indicated in the Contract Documents.

E. DESIGN/BUILDER has correlated the information known to DESIGN/BUILDER, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

F. DESIGN/BUILDER has given CFX written notice of all conflicts, errors, ambiguities or discrepancies that DESIGN/BUILDER has discovered in the Contract Documents and the written resolution thereof by CFX is acceptable to DESIGN/BUILDER, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 6. CONTRACT DOCUMENTS.

6.01 The Contract Documents which comprise the entire agreement between CFX and DESIGN/BUILDER concerning the Work consist of the following:

- A. This Agreement (pages 1 to 5, inclusive).
- B. The Scope of Services and Method of Compensation.
- C. Design Criteria including the Technical Specifications and Drawings.
- D. DESIGN/BUILDER's Price Proposal.
- E. Notice to Proceed.

- F. Performance and Payment Bond, consisting of pages PPB-1 through PPB-4.
- G. General Conditions of the Contract Between Authority and Design/Builder (pages GC-1 to GC-45, inclusive) including Appendix A, Disputes Review Board Three Party Agreement.
- H. Addenda numbers 1 through 2 inclusive.
- I. The following which may be delivered, prepared, or issued after the Effective Date of this Agreement and are not attached hereto.
 - 1. All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.03.A of the General Conditions.
 - 2. Specifications as defined in Paragraph 1.01.A.38 of the General Conditions.
 - 3. Drawings as defined in Paragraph 1.01.A.18 of the General Conditions.

6.02 The documents listed in paragraph 6.01 above are attached to this Agreement (except as expressly noted otherwise above).

6.03 There are no Contract Documents other than those listed above in this Article 6. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.03.A of the General Conditions.

Article 7. MISCELLANEOUS.

7.01 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated therein.

7.02 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

7.03 CFX and DESIGN/BUILDER each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

7.04 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CFX and DESIGN/BUILDER, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, CFX and DESIGN/BUILDER have signed this Agreement in five (5) counterparts on the date set forth below. Two (2) counterparts each have been delivered to CFX and DESIGN/BUILDER. All portions of the Contract Documents have been signed, initialed or identified by CFX and DESIGN/BUILDER.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: _____
Director of Procurement

DATE: _____

GOMEZ CONSTRUCTION COMPANY

By: _____

Title

DATE: _____

ATTEST:

_____(Seal)

DATE: _____

Approved as to form and execution, only.

General Counsel for CFX