

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY'S GENERAL TERMS AND CONDITIONS**

**CONTRACTOR: To insure acceptance of the bid, follow these instructions.**

**The Order is subject to the terms and conditions below.**

1. **EXECUTION OF BID:** Bid must contain a manual signature of an authorized representative in the space provided.
2. **PRICES, TERMS, and PAYMENT:** All prices must be firm for the delivery schedule quoted herein. Bids stipulating "Price in effect at time of shipment" or other similar conditions will be considered not responsive to the bid invitation and will not be accepted. All prices shall be quoted F.O.B. delivered to any Central Florida Expressway Authority ("hereinafter "CFX") Department unless otherwise stipulated in the bid invitation. Contractor is requested to offer cash discount for prompt invoice payment. It is the intent of CFX to make payments of invoices in time to earn any offered cash discounts. Discount time will be computed from the date of satisfactory delivery at place of acceptance or from receipt of correct invoice at the Finance Department office, whichever is later.
  - a) **TAXES:** CFX does not pay Federal excise and State sales taxes. Our tax exemption number is 85-8015977726C-9 and is also stipulated on all our Purchase Orders.
  - b) **MISTAKES:** Contractors are expected to examine the specifications, delivery schedules, bid prices, and all instructions pertaining to supplies and services. Failure to do so will be a bidder's risk.
  - c) **SAFETY STANDARDS:** Unless otherwise stipulated in the bid, all manufactured items and fabricated assemblies shall comply with applicable requirements of Occupational Safety and Health Act and any standards there under.
  - d) **INVOICING and PAYMENT:** The Contractor shall be paid upon submission of invoices to: The Accounts Payable Section, Central Florida Expressway Authority, 4974 ORL Tower Road, Orlando, Florida 32807. Invoices are to be billed at the prices stipulated on the purchase order and as outlined in this bid. All invoices must show CFX's Purchase Order Number and/or solicitation number. Payment for construction services will be made in accordance with F.S. 255.0705-255.078 "Florida Prompt Payment Act". Payment for non-construction services will be made in accordance with F.S. 218 Part VII "Local Government Prompt Payment Act". Bills for travel expenses, if permitted, must be submitted in accordance Section 112.061, Florida Statutes.
  - e) **AVAILABILITY OF FUNDS.** CFX's performance and obligation to pay under this Purchase Order is contingent upon an annual appropriation for its purpose by CFX's Board.
3. **CONFLICT OF INTEREST:** The award hereunder is subject to the Code of Ethics in Chapter 112, Part III of the Florida Statutes. Per section 112.313(3), all Contractors must disclose with their bid the name of any officer, partner, director, or proprietor agent who is also an employee of CFX or a spouse or child of an employee of CFX. Further, all Contractors must disclose the name of any CFX employee or spouse or child of any CFX employee who owns, directly or indirectly, an interest of five percent (5%) or more of the Contractor's firm or any of its branches. § 112.512(15), Fla. Stat. In addition, per section 348.753, Contractors who hold or will hold positions that may influence CFX decisions, must disclose: (a) any relationship which affords a current or future financial benefit to it or a relative or business associate which a reasonable person would conclude has the potential to create a prohibited conflict of interest; (b) whether a relative is a registered lobbyist, and if so, the names of the lobbyist's clients, and (c) any and all interests in real property of it or a relative, principal, client, or business associate within one-half mile of any actual or prospective CFX roadway project.
4. **LEGAL REQUIREMENTS:** Federal, State, County and local laws, ordinances, rules and regulations that in any manner affect the item(s) covered herein apply. Lack of knowledge by the Contractor will in no way be cause for relief from responsibility. The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and authority. Violation of any laws, rules, codes, ordinances, or licensing requirements shall be grounds for termination or nonrenewal of the Purchase Order.
5. **EXCEPTIONS:** When completing your bid, do not attach any forms which may contain terms and conditions that conflict with those listed in CFX's bid document(s). Inclusion of additional terms and conditions such as those which may be on your company's standard forms may result in your bid being declared non-responsive.

6. **WARRANTY:** The Contractor warrants that the work including equipment and materials provided shall conform to professional standards of care and practice in effect at the time the work is performed, be of the highest quality, and be free from all faults, defects or errors. The Contractor further warrants that all equipment and materials provided shall be new. If the Contractor is notified in writing of a fault, deficiency or error in the work provided, including equipment and materials, within one (1) year, unless a longer period is specified in the solicitation, from completion of the work, the Contractor shall at CFX's option, either re-perform such portions of the work to correct such fault, defect or error, at no additional cost to CFX, or refund to CFX, the charge paid by CFX, which is attributable to such portions of the faulty, defective or erroneous work, including the costs for re-performance of the work provided by other Contractors.

**ALL EQUIPMENT AND MATERIALS PROVIDED BY THE CONTRACTOR, SHALL BE MERCHANTABILITY AND BE FIT FOR THE PURPOSE INTENDED.**

7. **LIABILITY:** The Contractor agrees to hold harmless, indemnify, and defend CFX and its agents, officers, and employees from any and all claims, suits, actions, damages, liabilities, expenditures, or causes of action of any kind, losses, penalties, interest, demands, judgments, and costs of suit, for any expense, damage, or liability incurred by any of them, whether for bodily or personal injury, death, property damage, direct or consequential damages, or economic loss, including environmental impairment, arising directly or indirectly, on account of or in connection with goods or services provided by Contractor or Contractor's negligent performance of this Agreement or by any person, firm, or corporation to whom any portion of the performance of this Agreement is subcontracted to or used by the Contractor, or by any other person for whom the Contractor is legally liable.
8. **PATENT/COPYRIGHT/TRADEMARK HOLD HARMLESS:** The Contractor shall pay all royalties and assume all costs arising from the use of any invention, design, process, materials, equipment, product or device which is the subject of patent rights, copyrights, trademark rights, or other intellectual property rights. Contractor shall, at its own expense, hold harmless and defend CFX against any claim, suit or proceeding brought against CFX which is based upon a claim whether rightful or otherwise, that the goods or services, or any part thereof, furnished under this Purchase Order, constitute an infringement of any patent or copyright of the United States. The Contractor shall pay all damages and cost awarded against CFX and, if necessary, provide replacement goods or services or refund the amount paid for such goods or services.
9. **INSURANCE REQUIREMENTS:** The Contractor shall provide, pay for and maintain in full force and effect insurance outlined below for coverage at not less than the prescribed minimum limits of liability, covering the Contractor's activities and those of any and all subcontractors (including officers, directors, employees or agents of each and their successors). All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable by CFX. Compliance with the insurance requirements below shall not relieve or limit the Contractor's liabilities and obligations under this Purchase Order. The Contractor hereby agrees to furnish CFX certificates of insurance upon request. Failure of CFX to demand such certificate or evidence of full compliance with these insurance requirements or failure of CFX to identify a deficiency from evidence provided will not be construed as a waiver of the Contractor's obligation to maintain such insurance. The acceptance of delivery by CFX of any certificate of insurance evidencing the required coverage and limits does not constitute approval or agreement by CFX that the insurance requirements have been met or the insurance policies shown in the certificates of insurance are in compliance with the requirements.

The Contractor shall require all Insurance policies in any way related to the work and secured and maintained by the Contractor to include clauses stating each underwriter shall waive all rights of recovery, under subrogation or otherwise, against CFX. The Contractor shall require of sub-contractors, by appropriate written Agreements, similar waivers each in favor of all parties enumerated in this section. When required by the insurer, or should a policy condition not permit an endorsement, the Contractor agrees to notify the insurer and request that the policy(ies) be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. At the Contractor's expense, all limits must be maintained. All insurance coverage required of the Contractor shall be primary over any insurance or self-insurance program carried by CFX.

10. **COMMERCIAL GENERAL LIABILITY:** Shall be on an occurrence form policy for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than One Million Dollars (\$1,000,000) per occurrence, Combined Single Limits (CSL) or its equivalent. CFX shall be listed as an additional insured utilizing an endorsement Form.

- 11. BUSINESS AUTOMOBILE LIABILITY:** Shall be on an occurrence form policy for all owned, non-owned and hired vehicles issued on ISO form CA 00 01 or its equivalent. The limits shall be not less than One Million Dollars (\$1,000,000) per occurrence, Combined Single Limits (CSL) or its equivalent. In the event the Contractor does not own automobiles the Contractor shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
- 12. WORKERS' COMPENSATION COVERAGE:** Workers' Compensation and Employer's Liability Insurance shall be provided as required by law or regulation (statutory requirements). Employer's Liability insurance shall be provided in amounts not less than \$100,000 per accident for bodily injury by accident, \$100,000 per employee for bodily injury by disease, and \$500,000 policy limit by disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of CFX for all work performed by the Contractor, its employees, agents and sub-contractors.
- 13. Information Security/Cyber Liability Insurance:** Information Security/Cyber Liability Insurance written on a "claims-made" basis covering Contractor, its employees, subcontractors and agents for expenses, claims and losses resulting from wrongful acts committed in the performance of, or failure to perform, all services under this Agreement, including, without limitation, claims, demand and any other payments related to electronic or physical security, breaches of confidentiality and invasion of or breaches of privacy.

Information Security/Cyber Liability Insurance to include Internet Media Liability including cloud computing and mobile devices, for protection of private or confidential information whether electronic or non-electronic, network security and privacy; privacy against liability for system attacks, digital asset loss, denial or loss of service, introduction, implantation or spread of malicious software code, security breach, unauthorized access and use; including regulatory action expenses; and notification and credit monitoring expenses with at least the minimum limits listed below.

- Each Occurrence – \$1,000,000
- Network Security / Privacy Liability –\$1,000,000
- Breach Response/ Notification Sublimit – A minimum limit of 50% of the policy aggregate
- Technology Products E&O – \$1,000,000 (**Only applicable for Contractors supplying technology related services and or products**)
- Coverage shall be maintained in effect during the period of the Agreement and for no less than two (2) years after termination/ completion of the Agreement.

- 14. TERMINATION:** The Procurement Director may terminate the Agreement for convenience with seven (7) calendar days advance written notice to the Contractor. In the event of such a termination by CFX, CFX shall be liable for the payment of all work properly performed prior to the effective date of termination and for all portions of materials, supplies, services, and facility orders which cannot be cancelled and were placed prior to the effective date of termination and other reasonable costs associated with the termination.

The performance of the Agreement may be terminated by the Procurement Director in accordance with this clause, in whole or in part, in writing whenever the Procurement Director shall determine that the Contractor has failed to meet the performance requirement(s) of the Agreement.

The Procurement Director has a right to terminate for default with ten (10) calendar days advance written notice if the Contractor fails to make delivery of the supplies, or if the Contractor fails to perform the service within the time specified in the Agreement, or if the Contractor fails to perform any other provisions of the Agreement.

Failure of a Contractor to deliver or perform the required services within the time specified, or within reasonable time as interpreted by the Procurement Director; or failure to make replacements of rejected articles when so requested, immediately or as directed by the Procurement Director; shall constitute authority for the Procurement Director to purchase in the open market articles or services of comparable grade to replace the articles or services rejected or not delivered. On all such purchases, the Contractor shall reimburse CFX, within a reasonable time specified by the Procurement Director, for any expense incurred in excess of Agreement prices.

Such open market purchases shall be deducted from Agreement quantities. Should public necessity demand it, CFX reserves the right to use or consume articles delivered which are substandard in quality, subject to an adjustment in price to be determined by the Procurement Director.

The Contractor shall not be liable for any excess costs if acceptable evidence has been submitted to CFX that failure to perform the Agreement terms and conditions was due solely by actions of CFX without the fault or negligence of the Contractor.

15. **SAFETY MEASURES:** The Contractor shall be solely responsible for safety. The Contractor shall take all necessary precautions for the safety of CFX's and Contractor's employees on the work site, and shall erect and properly maintain at all times all necessary safeguards for the protection of the workmen and public. The Contractor shall post signs warning against hazards in and around the work site.
16. **SITE CLEANLINESS:** The Contractor shall at all times, keep the area free from accumulation of waste materials or rubbish caused by his operations, and promptly remove any such materials into an area designated by the CFX, or remove to a waste site as directed by CFX. If the Contractor fails to clean in accordance with the Agreement, CFX will complete the task and charge the Contractor for such services.
17. **GOVERNING LAW AND VENUE:** This Agreement, and all claims, controversies, and causes of action arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, shall be governed by, and enforced in accordance with, the internal laws of the State of Florida, including its statutes of limitations, without giving effect to any conflict-of-laws or other rule that would result in the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The parties consent to the exclusive jurisdiction of the courts located in Orange County, Florida. The obligations in Section 1.0, Governing Law and Venue, shall survive the expiration or termination of this Agreement and continue in full force and effect.
18. **ORDER OF PRECEDENCE:** Conflicts between the CFX General Terms and Conditions provided herein and any Contractor documents attached hereto or referenced shall be settled in favor of the CFX General Terms and Conditions. Any and all Special Conditions agreed to by the parties in the Contractor's Proposal attached hereto which vary the General Terms and Conditions shall have precedence. Any terms and conditions in Contractor's invoices, delivery notices, website information, or other documentation are not part of this Purchase Order, unless and until each term is specifically reviewed and agreed to in writing by CFX
19. **ASSIGNMENT:** The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof or of Contractor's right, title or interest therein, without written consent of CFX. With CFX's written consent, the Contractor may be permitted to sublet a portion of the Work but shall perform, with its own organization, Work amounting to not less than 50% of the total Contract amount. The granting or denying of consent under this provision is at CFX's sole discretion. Contractor shall be responsible for all of its obligations under this Contract and CFX shall not be liable to any subcontractor in any way whatsoever. In the event that a subcontractor fails to perform, Contractor shall remain wholly responsible for its subcontractors. Invoices for all goods or services shall be submitted by Contractor, whether or not Contractor is the direct provider of any such goods or services. Contractor shall remain wholly responsible for payments to its subcontractors.
20. **ETHICS POLICY:** The Contractor covenants and agrees that it and its employees shall be bound by the standards of conduct provided in Florida Statutes 112.313 as it relates to work performed under the Contract, which standards will by reference be made a part of the Purchase Order as though set forth in full. The undersigned agrees to incorporate the provisions of this requirement in any subcontract into which it might enter with reference to the work performed or services provided.

The Contractor further acknowledges that it has read CFX's Code of Ethics, a copy of which is available on CFX's web site at [www.CFXway.com](http://www.CFXway.com) and, to the extent applicable to the undersigned, agrees to abide with such policy.
21. **PUBLIC RECORDS.** Contractor and its personnel shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law), if applicable.
22. **RECORDS RETENTION AND AUDITS.** The Contractor shall retain sufficient documentation for a period of six (6) years to substantiate claims for payment under the Purchase Order and all other records, electronic files, papers, and documents that were made in relation to this Purchase Order. CFX may conduct or have conducted performance and compliance audits of any and all areas of the Contractor and Subcontractors as determined by CFX. CFX may conduct an audit and review all the Contractor's (and Subcontractors') data and records that directly relate to the Purchase Order Services. To the extent necessary to verify the Contractor's fees and claims for payment under the Purchase Order, the Contractor's agreements or contracts with Subcontractors, partners or agents of the Contractor, pertaining to this Purchase Order, may be inspected by CFX upon fifteen (15) day notice, during normal working hours, and in accordance with the Contractor's facility access procedures where facility access is required. Contractor shall ensure that release statements from its subcontractors, partners or agents shall not be required for

CFX or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this Purchase Order.

23. **MONITORING BY CFX.** The Contractor shall permit all persons who are duly authorized by CFX to inspect and copy any records, papers, documents, facilities, goods, and services of the Contractor that are relevant to this Purchase Order, and to interview clients, employees, and subcontractor employees of the Contractor to assure CFX of satisfactory performance of the terms and conditions of this Purchase Order.
24. **INDEPENDENT CONTRACTOR.** The parties agree that the Contractor, its officers, agents and employees, in performance of this Contract, shall act in the capacity of an independent Contractor and not as an officer, employee or agent of CFX. Contractor shall not hold itself out as an employee, agent, or servant of CFX. Contractor has no power or authority to bind CFX in any settlement promise, agreement or representation.
25. **SEVERABILITY:** The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.
26. **SURVIVAL.** The terms and conditions in the paragraphs with the headings of Warranty and Records Retention and Audit shall survive the termination of this Purchase Order for the periods set forth therein.
27. **FOREIGN CORPORATION:** In accordance with F.S. 607.1501, and provided an exemption is not available, a foreign corporation may not transact business in Florida until it obtains a certificate of authority from the Florida Department of State. Foreign corporations may submit bids or Proposals prior to obtaining a certificate of authority from the Florida Department of State. A foreign corporation must be in compliance with F.S. 607.1501, prior to entering into a Contract with the Central Florida Expressway Authority.
28. **INSPECTOR GENERAL:** Contractor understands and shall comply with subsection 20.055(5), Florida Statutes.