



## **INVITATION TO BID**

### **INTRODUCTION, GENERAL CONDITIONS & SPECIAL CONDITIONS**

#### **SERVICE SOLICITATIONS**

##### **INTRODUCTION**

The City of Cape Coral was incorporated in 1970 and operates under the Council/City Manager form of government. The City Council has eight members consisting of the mayor and seven members all elected at large on a nonpartisan basis. City Council is responsible for all policy-making functions of the government and retains the services of a City Attorney, City Auditor and City Manager. The City Manager is responsible for all administration of the City, which provides a comprehensive range of municipal services including general government, public safety, community services, public works, planning, utilities, and parks and recreation.

Cape Coral is the 8th largest city by population and the 3rd largest by land mass in Florida. Cape Coral currently has a population of more than 200,000 residents and is experiencing high growth. As a pre-platted community, Cape Coral could have more than 360,000 residents at buildout. The city has a sub-tropical lifestyle with thousands of waterfront residential properties on almost 400 miles of canals. About two-thirds of these canals provide boaters with direct access to the Gulf of Mexico.

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**The Legal Entity Name of proposer must be provided on the proposal submittal and all proposal form documents that are being submitted for the proposed goods or services requested in this solicitation. The Legal Entity Name will be used when creating the proposed goods or services contract between the Awarded Firm and the City.**

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## **2.0 GENERAL CONDITIONS**

### **2.1 DEFINITIONS**

- 2.1.1 **Addenda** are issued electronically via the e-bid platform, prior to the opening of Bids which clarify, correct, or change the Bidding Requirements of the Contract Documents.
- 2.1.2 **Agreement:** The written contract between City and Contractor covering the work to be performed or goods to be purchased; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
- 2.1.3 **Bid:** The offer or proposal of the bidder setting forth the prices for the work to be performed or goods to be purchased. Also referred to as "e-bid" or electronic bid.
- 2.1.4 **City:** Shall be understood as referring to the City of Cape Coral, Florida.
- 2.1.5 **Contract Documents** are the agreement, Addenda, Contractor's Bid, except when it conflicts with any other contractual provision, the Notice to Proceed, the Bonds, this Bid Package, these General Conditions, the Specification and Drawings, any Special Conditions, together with all Written Amendments.
- 2.1.6 **Contract Price** is the monies payable by the City to the Contractor for completion of the work in accordance with the Contract Documents as stated in the Agreement.
- 2.1.7 **Contract Time** is the number of days or the dates stated in the Agreement.
- 2.1.8 **Contractor:** Shall be understood as referring to the individual, corporation, or partnership whose name appears on the Contract.
- 2.1.9 **Effective Date of the Agreement** is the date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed by the last of the parties.

### **2.2 INVITATION TO BID**

- 2.2.1 **NOTICE IS HEREBY GIVEN** that the City of Cape Coral, Florida is advertising for sealed bids. All items included in the electronic bid are a part of this bid and by reference are made a part thereof
- 2.2.2 In the event of any conflict between this Invitation to Bid and City of Cape Coral Ordinance, the provisions of the Ordinance shall prevail.

### **2.3 SUBMISSION OF BIDS**

- 2.3.1 Firms shall submit their responses to this Invitation to Bid (ITB) via the electronic procurement portal, Ion Wave. Responses must be submitted electronically by the time and date indicated on the ITB.



- 2.3.2 Failure to return all the required items with a bid/proposal MAY result in your bid being considered non-responsive and may not be considered for award.
- 2.3.3 The person submitting this bid or proposal represents and warrants that he or she is duly authorized and has legal capacity to do so on the company's behalf.
- 2.3.4 A bidder responding to this Invitation to Bid (ITB) as a joint venture is required to obtain bid authority under Rule 61G4-15.0022, Florida Administrative Code and include evidence of such bid authority in its response to this ITB.

## 2.4 QUALIFICATIONS OF BIDDERS

- 2.4.1 Only one proposal from an individual, firm or partnership, or corporation under the same or different names will be considered. Should it appear to the City that any Bidder is interested in more than one proposal for the work contemplated, all proposals in which such Bidder is interested will be rejected. Should there be any reasonable grounds for the City to believe that a collusion or combination exists between Bidders, all proposals may be rejected and all such Bidders or participants in such combination or collusion will be disqualified from any future bidding for the same project.
- 2.4.2 Bids will be considered only from firms normally engaged in the sale and distribution of the items specified herein. Vendors must have adequate organization, facilities, equipment, and personnel to ensure prompt and efficient service to the City of Cape Coral.
- 2.4.3 The City reserves the right before recommending any award to inspect the facilities and organization or to take any other action necessary to determine ability to perform in accordance with the specifications, terms, and conditions.
- 2.4.4 The City of Cape Coral will determine whether the evidence of ability to perform is satisfactory and will make awards only when such evidence is deemed satisfactory and reserves the right to reject bids where evidence is submitted, or investigation and evaluation, indicates inability of the bidder to perform.

## 2.5 EXAMINATION OF BIDDING DOCUMENTS AND SITE – (AS APPLICABLE)

- 2.5.1 Before submitting a Bid each bidder must (a) examine the Bidding Documents thoroughly, (b) visit the site to familiarize himself with local conditions that may in any manner affect cost, progress, or performance of the Work, (c) familiarize himself with federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the Work; and (d) study and carefully correlate observations with the Bidding Documents.
- 2.5.2 Reference is made to the Special Conditions (if applicable) for the identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or conditions otherwise affecting cost, progress or performance of the Work which have been relied upon by A/E in preparing the Drawings and Specifications. City will make copies of such reports available to any Bidder requesting them. These reports are not guaranteed as to accuracy. For his



bid each Bidder will, at his own expense, make such additional investigations and tests as the Bidder may deem necessary to determine his Bid for performance of the Work in accordance with the time, price and other terms and conditions of the Bidding Documents.

2.5.3 The lands upon which the Work is to be performed, rights-of-way for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Special Conditions (if applicable), General Conditions or Drawings.

2.5.4 The submission of a Bid will constitute an incontrovertible representation by the Bidder that he has complied with every requirement of this paragraph 1.6 and that the Bidding Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

## 2.6 INTERPRETATIONS/QUESTIONS

2.6.1 All questions about the meaning or intent of the Bidding Documents shall be submitted via the Electronic Procurement (E-Procurement) platform by the date and time stated in the Events Tab of the E-Procurement. Questions shall be submitted through the Questions Tab and selecting Add Question.

2.6.2 Interpretations of the Bid or additional information as to its requirements, where necessary, shall be communicated to all prospective bidders by addendum only. All addendums will be posted through the electronic bid platform. By submitting a bid, the firm is acknowledging it has reviewed all addenda related to the bid.

**NO ADDENDA WILL BE ISSUED WITHIN FIVE (5) BUSINESS DAYS PRIOR TO THE SUBMISSION DEADLINE, UNLESS AN ADDENDUM HAS BEEN ISSUED EXTENDING THE DEADLINE.**

## 2.7 MODIFICATION AND/OR WITHDRAWAL OF BIDS PRIOR TO BID OPENING

Mistakes discovered before the Bids are opened may be modified or withdrawn by the bidder through the electronic bid platform, prior to the time set for the bid submittal.

## 2.8 BID SECURITY, IF REQUIRED

If a bid security is required, a copy must be attached within the e-bid submittal and the original document to be submitted via hard copy in a sealed envelope to the City. The sealed envelope should include the bid #, bid title, and company name. The sealed envelope is to be delivered to the City of Cape Coral at 1015 Cultural Park Blvd, 2nd Floor – Procurement Division, Cape Coral, FL 33990 by the bid closing date and time stated in the e-bid.

It is the responsibility of the Vendor to ensure the bid security is received by the Procurement Division by the submission deadline. Procurement is not responsible for late mail or deliveries.



## 2.9 OPENING OF BIDS

- 2.9.1 Bids are to be submitted in accordance with the instructions provided herein. Per Florida State Statute 255.0518, the names of bidder and price submitted will be read aloud and recorded.
- 2.9.2 Pursuant to Florida State Statute 119.071(2), sealed bids, proposals or replies received by an agency pursuant to a competitive solicitation are exempt from s.119.071(1) and s.24(a), Art. I of the State Constitution until such time as the agency provides notice of intended decision or until thirty (30) days after opening the bids, proposals, or final replies, whichever is earlier.

## 2.10 WITHDRAWAL OF BIDS AFTER BID OPENING

After bids are opened, corrections or modifications to bids are not permitted, but a bidder may be permitted to withdraw an erroneous bid, prior to the bid award by City Council, if the following is established:

- 2.10.1 That the bidder acted in good faith in submitting the bid;
- 2.10.2 That in preparing the bid there was an error of such magnitude that enforcement of the bid would work severe hardship upon the bidder;
- 2.10.3 That the error was not the result of gross negligence or willful inattention on the part of the bidder;
- 2.10.4 That the error was discovered and communicated to the City within twenty-four (24) hours of bid opening, along with a request for permission to withdraw the bid; and
- 2.10.5 The bidder submits documentation and an explanation of how the bidding error was made.

## 2.11 BID PROTEST PROCEDURE

Protests must be filed in accordance with Article VII Division 1 Section 2-150 of the City of Cape Coral Ordinance. Refer to Protest Procedures included with this solicitation for specific information.

## 2.12 AWARD OF CONTRACT

- 2.12.1 The City reserves the right to reject any and all Bids, to waive any and all informalities and to negotiate contract terms with the successful Bidder, and the right to disregard all nonconforming, nonresponsive or conditional bids.
- 2.12.2 The Successful Bidder will be awarded the amount indicated in the electronic bid submittal. In evaluating bids, the City shall consider the qualifications of the bidders, whether or not the bids comply with the prescribed requirements, and alternates and unit prices, if requested, in the electronic bid.
- 2.12.3 The City intends to award to the lowest responsive, responsible bidder. In determining the lowest responsive responsible bidder, in addition to price, the following shall be considered:



- 2.12.3.1 The ability, capacity, skill and sufficiency of resources of the bidder to perform the contract.
  - 2.12.3.2 The bidder's ability to perform the contract within the time specified.
  - 2.12.3.3 The character, integrity, reputation, judgment, experience and efficiency of the bidder.
  - 2.12.3.4 The quality of performance of the bidder on previous City contracts.
  - 2.12.3.5 The previous and existing compliance by the bidder with laws and ordinances relating to the contract.
  - 2.12.3.6 The quality, availability and adaptability of the supplies or professional or contractual services to the particular use required.
  - 2.12.3.7 The ability of the bidder to provide future maintenance, service or warranty work.
  - 2.12.4 They City reserves the right to award by group or split the award between vendors as best serves the requirements of the City of Cape Coral.
  - 2.12.5 The City Council reserves the right to waive minor variations to specifications, informalities, irregularities and technicalities in any bids; to reject any and all bids in whole or in part with or without cause, and/or to accept bids that in its judgment will be in the best interest of the City. Following complete investigation of each bid received by the City, the City Council reserves the right to make awards on a multiple, lump sum, or individual item basis or in combination as shall best serve the interest of the City.
- 2.13 CONTRACT TIME
- The number of calendar days after the stipulated date of commencement in the Notice to Proceed or after the purchase order is received by the vendor.
- 2.14 WORK HOURS
- Regular working hours are defined as up to eight (8) hours per day, Monday through Friday, beginning no earlier than 7:00 AM and ending no later than 7:00 PM, excluding City recognized holidays. The City observes the following holidays: New Year's Day, Martin Luther King Jr., President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and the day after, and Christmas Day.
- 2.15 ADDITIONS/DELETIONS
- The City reserves the right to request additional goods that are not listed on the bid sheets.
- 2.16 VENDOR REGISTRATION
- All vendors must be registered with the City of Cape Coral electronic procurement portal at <https://capecoral.ionwave.net> in order to submit a response to a solicitation.



Upon award of a contract, the vendor will also need to register with the City of Cape Coral vendor portal. Registration can be done online from the City of Cape Coral website, [www.capecoral.gov](http://www.capecoral.gov). Once on the website, under "I WANT TO," click on "Register" then "City Vendor." That will take you to the "Vendor Portal" page from where you may register online.

## 2.17 TAX EXEMPTION

The City of Cape Coral, Florida as a political subdivision of the State of Florida, is exempt from the payment of Florida sales tax to its vendors under Chapter 212, Florida Statutes. The awarded vendor will be provided a copy of the City of Cape Coral's Certificate of Exemption (85-8012589883C-5) upon request.

## 2.18 PERMITS, LICENSES AND REGULATIONS – (AS APPLICABLE)

The awarded bidder shall comply with all Federal, State, and Local laws, rules and regulations.

Permits and licenses necessary for the performance of this work shall be secured and paid for by the awarded vendor(s) prior to execution of the contract or purchase order. Prior to starting any work within the City Right-of-Ways, a Right-of-Way permit and a Maintenance of Traffic, "MOT" Plan must be acquired by contacting the Public Works Department, Construction Inspector at (239) 242-3295. Owner shall notify the contractor of permits required and reimburse contractor for the applicable fees. Any City permits and fees not disclosed but found to be required, can be billed separately.

A complete list of Permits fees can be obtained from the Department of Community Development located at Cape Coral City Hall or on the web:

[https://www.capecoral.gov/departments/community\\_development/fees.php](https://www.capecoral.gov/departments/community_development/fees.php)

If the Bidder has a valid state certified contractor's license, they are required to register with the City of Cape Coral, Licensing/Business Tax Division in order to work in Cape Coral. If the Bidder currently possesses a state certified contractor's license, a **City Competency License** is also required.

If the Bidder has a permanent business location within the City of Cape Coral (including branch offices and storage or warehouse facilities), then a **City Certificate of Use and Business Tax Receipt** are required. If the Bidder has a permanent business location within the City of Cape Coral (including branch offices and storage or warehouse facilities), then a **City occupation license** is required.

It is required that each Bidder submit with their bid, copies of their occupational and/or competency licenses. If the Bidder does not hold a current license with the City of Cape Coral, the Bidder is required to register with the Licensing Division of the Department of Community Development upon contract award.

Specific information on licensing requirements may be obtained by calling (239) 574-0430.

Failure to provide evidence of any required occupational or competency licenses may be cause for rejection of bid.





## 2.19 COMPLIANCE WITH GOVERNMENT STANDARDS – (AS APPLICABLE)

All services to be purchased under this solicitation shall be performed in accordance with all governmental standards, to include, but not be limited to, those issued by the American National Standards Institute (ANSI), the American Society for Testing Materials (ASTM), the Environmental Protection Agency (EPA), the Instrument Society of America (ISA), the International Standards Organization (ISO), the National Institute of Occupational Safety and Health (NIOSH), the National Sanitation Foundation (NSF), the National Fire Protection Association (NFPA), and the Occupational Safety and Health Administration (OSHA). Special attention is made to OSHA's 29CFR 1910 regulations relating to hazardous atmospheres in confined spaces.

It shall be the responsibility of all bidders to follow current standards and be regularly informed and to conform to any changes in standards issued by any regulatory agencies during the term of this contract.

## 2.20 LOBBYING

2.20.1 All firms and their agents who intend to, or have, submitted bids or responses for this project are hereby placed on formal notice that neither City Council Members, candidates for City Council, members of the Selection Advisory Committee (SAC), nor any employee of the City of Cape Coral are to be lobbied either individually or collectively concerning this project.

2.20.2 Contact should only be made through regularly scheduled Council meetings, or meetings scheduled through the Procurement Division, which are for the purposes of obtaining additional or clarifying information.

2.20.3 Any action, to include dinner or lunch invitations, by a submitting firm that may be interpreted as being within the purview of this requirement shall result in the immediate disqualification from further consideration in this project.

## 2.21 AUTHORITY TO PIGGYBACK

It is hereby made a precondition of any bid and part of these specifications that the submission of any bid in response to this request constitutes a bid made under the same conditions, for the same price, and for the same effective period as this bid, to any other governmental entity.

## 2.22 COOPERATIVE PURCHASING

The City of Cape Coral participates in cooperative purchasing agreements; it is hereby made a part of this Invitation to Bid that the submission of any bid in response to this advertised request constitutes a bid made under the same conditions, for the same contract price, to other governmental entities in Florida.

Each government agency desiring to accept these bids, and make an award thereof, shall do so independently of any other governmental agency. Each agency shall be responsible for its own purchases, and each shall be liable only for services ordered and received by it, and no agency assumes any liability by virtue of this bid.





## 2.23 ANNUAL APPROPRIATION

The City's performance and obligation to pay under this contract is contingent upon annual an appropriation by the City Council.

## 2.24 INDEMNIFICATION

The awarded bidder shall indemnify and hold harmless the City, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the awarded bidder and any persons employed or utilized by the awarded bidder in the performance of the resulting contract.

## 2.25 PAYMENTS

2.25.1 City shall make payment and Contractor shall be in receipt of all sums properly invoiced within thirty (30) days of the City's receipt of such invoice unless, within a fifteen (15) day period, City notifies Contractor in writing of its objection to the amount of such invoice, together with City's determination of the proper amount of such invoice. City shall pay any undisputed portion of such invoice within such thirty (30) day period.

2.25.2 If City shall give such notice to the Contractor within such fifteen (15) day period, such dispute over the proper amount of such invoice shall be resolved, and after final resolution of such dispute, City shall promptly pay the Contractor the amount so determined, less any amounts previously paid by City with respect to such invoice. In the event it is determined that City overpaid such invoice, the Contractor shall promptly refund to the City the amount of such overpayment.

2.25.3 The City of Cape Coral has implemented a P-Card Program. The awarded Contractor may take advantage of this program and receive payments within days of delivery in lieu of standard invoicing by accepting a City of Cape Coral VISA Purchasing Card. However, no additional costs will be covered by the City of Cape Coral for the awarded Contractor Merchant Service fees and/or interchange rate.

2.25.4 **Payments by Electronic Funds Transfer:** All payments made by the City of Cape Coral will be made by Direct Deposit (ACH) via electronic funds transfer. Paper checks will no longer be issued to new vendors. Every new vendor must register for direct deposit with the City by providing a "Vendor Authorization Agreement for Electronic Funds Transfer" form (ACH Form) to the City's Financial Services Accounting Division. It is strongly encouraged for current vendors to register for direct deposit with the City via Direct Deposit (ACH) Electronic Funds Transfer form. The form may be accessed on the City of Cape Coral website at:

<https://www.capecoral.gov/Procurement/ACH%20Authorization%20Form.pdf>

Please contact the Procurement Division at the number shown on this solicitation document herein as the first point of contact for more information.



The link below will take you to the City of Cape Coral vendor Registration page:

[https://www.capecoral.gov/departments/financial\\_services/procurement/vendor\\_registration.php](https://www.capecoral.gov/departments/financial_services/procurement/vendor_registration.php)

Suppliers submitting a response to any solicitation are not required to be registered vendors or set up EFT payment prior to submitting their response. Suppliers do need to become registered vendors and have the EFT payment form in place prior to the award of any contract.

## 2.26 OTHER CONTRACTS

The City of Cape Coral reserves the right to purchase off State Contracts or any other available contracts if deemed to be in the best interest of the City.

## 2.27 RECORD KEEPING

The awarded bidder shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting principles, and the City of Cape Coral reserves the right to determine the record-keeping method in the event of non-conformity.

Records of the Contractor's personnel, sub-consultants, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices.

Contractor shall keep full and detailed accounts and financial records pertaining to the provision of services for the City. Prior to commencing work, Contractor shall review with and obtain the City's approval of the accounting procedures and records to be utilized by the Contractor on the Project. Contractor shall preserve the aforementioned Project records for a period of ten (10) years after final payment, or for such longer period as may be required by law.

## 2.28 PUBLIC RECORDS

Pursuant to Florida Statute §287.058 (1) (c), this contract may be unilaterally cancelled by the City if the Contractor, refuses to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with this contract, unless the records are exempt from disclosure.

## 2.29 SUBSTITUTE MATERIAL AND EQUIPMENT – (AS APPLICABLE)

The Contract, if awarded, will be on the basis of material and equipment described in the Drawings or specified in the Specifications. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or equal" item of material or equipment may be furnished or used by Contractor is acceptable to A/E, application for such acceptance will not be considered by A/E until after the "effective date of the Agreement."

Contractor submittal is to be based on the specifications outlined in the Invitation to Bid.



## 2.30 SAFETY OSHA COMPLIANCE – (AS APPLICABLE)

2.30.1 The Contractor shall comply in all respects with all Federal, State and Local safety and health regulations. Copies of the Federal regulations may be obtained from the U.S. Department of Labor, Occupation Safety and Health Administration (OSHA), Washington, DC 20210 or their regional offices.

2.30.2 The Contractor shall comply in all respects with the applicable Workman's Compensation Laws.

## 2.31 TERMINATION

The resulting contract may be canceled by the City at any time and for any reason, upon giving thirty (30) days written notice to the Contractor.

The awarded bidder may cancel the contract on its anniversary provided a written notice has been received by the City's Procurement Manager ninety (90) days prior to the end of the initial term and subsequent renewal date.

## 2.32 FINANCIAL DOCUMENTS

The City of Cape Coral may request additional information related to financial documents required from bidders/proposers. Those requests may include submittal of financial statements, financial records, bonds, or insurance or other documents necessary to ascertain the viability of the bidder/proposer for the bid or service requested. The failure to submit the requested documents may deem the bidder/proposer as non-responsive/non-responsible and therefore ineligible for award of the bid or service proposed.

## 2.33 SIGNING OF AGREEMENT (AS APPLICABLE)

When Owner issues a Notice of Intent to Award to the Successful Bidder, the Owner will request the successful bidder to provide a signed agreement (using blue ink), which has been partially signed by Owner staff. Once the intent to award has been approved by City Council, authorized Owner staff will complete the signing of the contract documents. The contract will then become fully executed. Owner will deliver one fully executed agreement to the Successful Bidder. Within fifteen (15) calendar days thereafter, the awarded Bidder shall deliver the Certificate of Insurance providing coverage as outlined in the bid documents, with the Owner being named as additional insured, original payment and performance bonds (when applicable) that have been recorded in Lee County Clerk of Courts, and any additional documentation required to be delivered by the Contract Documents to Owner. No work is to begin on the project, prior to issuance of the Notice to Proceed and issuance of a fully executed Purchase Order.

## 2.34 COUNTERPARTS

The Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.



## 2.35 FEMA COMPLIANCE, IF APPLICABLE

If made applicable by the use of Federal Grant funds in the Project, or any other requirement, Bidders and any Sub-contractors included as part of project team shall comply with the most recent enactments, rules, regulations, orders, and statutes as shown at the link below:

[Resource Library: Purchasing Under a FEMA Award | FEMA.gov](#)

## 2.36 E-VERIFY VALIDATION

As a condition precedent to entering into this CONTRACT and in compliance with The Immigration and Nationality Act (INA), 8 U.S.C. Section 1324a(e) Section 274A(e) and Florida Statute State Section §448.095, Contractor or Consultant and their subcontractors shall register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021. The Employment Verification System (E-Verify) is operated by the Department of Homeland Security in partnership with the Social Security Administration.

The following conditions must be met by all Contractors, Consultants and Subcontractors:

- a. Contractor or Consultant shall require each of its subcontractors to provide them with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor, Consultant or Bidder shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this AGREEMENT.
- b. The CITY, Contractor, Consultant, Bidder or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated The Immigration and Nationality Act (INA) contained in 8 U.S.C. Section 1324 a(e) Section 274A(e) Section §448.09(1), Florida Statute or the provisions of this section shall terminate the contract with the person or entity.
- c. The CITY, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor or Consultant otherwise complied, shall promptly notify Contractor or Consultant and they shall immediately terminate the contract with the subcontractor.
- d. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section §448.095(2)(d), Florida Statute. Contractor or Consultant acknowledges that upon termination of this AGREEMENT by the CITY for a violation of this section by Contractor or Consultant, that the Contractor or Consultant may not be awarded a public contract for at least one (1) year. Contractor or Consultant further acknowledges that Contractor or Consultant is liable for any additional costs incurred by the CITY as a result of termination of any contract for a violation of this section.
- e. **Subcontracts:** Contractor, Consultant or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring



the subcontractors to include these clauses in any lower tier subcontracts. Contractor or Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

## 2.37 SPECIAL RESPONSIBILITIES

Burrowing Owls are classified as “**Threatened**” and are protected under the Florida Administrative Code, the Migratory Bird Treaty Act, and City Ordinance 20-19. In accordance with the Florida Fish and Wildlife Conservation Commission, the City of Cape Coral is mandating that appropriate protective techniques must be initiated.

2.37.1 It is hereby acknowledged and accepted by all contractors that the Burrowing Owls are protected by State and Federal law. Any malicious harassing of an owl, causing injury or death, or unlawful taking of their nesting sites can result in a fine up to five thousand (\$5,000) dollars and/or imprisonment to the contractor.

2.37.2 Therefore, the contractor shall through the execution of his/her contract, acknowledge that they have been made aware of applicable laws concerning Burrowing Owls and their burrow.

2.37.3 The proper methods for identifying and protecting owls and burrows are as follows:

2.37.3.1 Pre-inspection of the project limits prior to the commencement of construction and staking each owl's nest so as to prevent destruction during the construction operations; and the contractor, to the best of his ability, shall be required to submit the list of all owls' nests to the A/E. Nests should be staked and roped off with a minimum ten (10) foot radius buffer. This buffer shall be increased to thirty-three (33) feet from Feb 15<sup>th</sup> – July 10<sup>th</sup>.

2.37.3.2 The Contractor shall do no construction within a ten (10) foot radius of each nest, identified by four (4) stakes, between July 11<sup>th</sup> and February 14<sup>th</sup> or within a thirty-three (33) foot radius between February 15<sup>th</sup> and July 10<sup>th</sup>. Stakes shall be 1" x 2" x 36" above ground level, topped by red surveying ribbon supplied by the Contractor. Stakes should be placed in a square pattern ten (10) feet from the burrow entrance July 11<sup>th</sup> – February 14<sup>th</sup> and thirty-three (33) feet from the burrow entrance February 15<sup>th</sup> – July 10<sup>th</sup>.

2.37.3.3 The Contractor shall accept full responsibility for the actions of his employees and subcontractors to ensure that all laws protecting the owls are adhered to. It shall be clearly understood by each Contractor that City staff will monitor their activities and will take action if a burrow is maliciously/unlawfully destroyed, or if injury/death occurs as a direct result of his actions.

**Gopher Tortoises** - By submitting a bid for these services, it is hereby acknowledged and accepted by each Bidder that **Gopher Tortoises** are protected by Ordinance 20-19



and State Laws which prohibit the harming of Gopher Tortoises and their burrows. Harming of Gopher Tortoises and their burrows will be reported to State authorities. The City marks the half-moon shaped burrows with a single white PVC stake. The Contractor should be on careful watch for any unmarked burrows/nest and maintain a minimum twenty-five (25) feet buffer from the burrow/nest. Burrows shall be roped off with a 25-foot buffer prior to commencement of any construction activities. Units 33, 35, 37, 51, 53, 80, 91, and 97 have heavy Gopher Tortoise Populations. Gopher Tortoises are typically active during daylight hours and due care should be taken by the awarded Contractor(s) during that time.

**Bald Eagles** - Be advised that specific areas of this project may lie within a protective zone of a Bald Eagle nesting site, which are protected by City Ordinance 165-06, and Federal and State laws.

The Contractor shall accept full responsibility for the actions of their employees and subcontractors to ensure that all laws protecting endangered species, including but not limited to, Burrowing Owls, Gopher Tortoises, Bald Eagles, Eastern Indigo Snakes, Florida Bonneted Bats, and Small Tooth Sawfish are adhered to. It shall be clearly understood by each Contractor that City staff will monitor their activities and will take action.

### **3.0 SPECIAL CONDITIONS**

3.1 **INSURANCE** – See attached Minimum Insurance Requirements form in the “Attachments” tab for information relative to insurance requirements.

3.1.1 By submitting a response to the solicitation, respondent is agreeing to meet the insurance requirements of the project.

3.1.2 Without limiting its liability under this Invitation to Bid, the awarded bidder(s) shall procure and continuously maintain, without interruption, at its own expense, insurance specified on the enclosed exhibit.

3.1.3 Neither approval nor failure to disapprove the insurance furnished by awarded bidder to the City shall relieve the awarded bidder of the awarded bidder's full responsibility to provide insurance, as required by this contract. The awarded bidder shall be responsible for assuring that the insurance remains in force for the duration of the contractual period; included any and all option years that may be granted to that awarded bidder. The certificate of insurance shall contain the provision that the City be given no less than thirty (30) days written notice of cancellation. If the insurance is scheduled to expire during the contractual period, the awarded bidder shall be responsible for submitting new or renewed certificates of insurance to the City at a minimum of fifteen (15) calendar days in advance of such expiration.

3.1.4 **Deductibles:** The City is exempt from, and is no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the firm providing such insurance.



3.1.5 Any questions regarding these insurance requirements should be directed to the City's Risk Manager at 239-573-3138.

3.2 BID PRICE

Bid price shall be all inclusive of product, transportation charges, freight, unloading charges or any other charges incurred in delivery. The City does not provide financial deposits.

3.3 METHOD OF ORDERING

It is anticipated that the City will utilize purchase orders or blanket purchase orders. Orders will be placed on an as needed basis.

3.4 INSPECTION

Upon receipt, a City representative prior to acceptance shall inspect each shipment for condition and specification compliance. If the shipment must be rejected for any reason, the seller shall be required to pick up the shipment at point of delivery at no charge to the City.

3.5 INVOICES

Invoices must include full item description, unit and extended prices, P.O. number, ordering division, delivery location, quantities delivered and backorder status.

3.6 SUMMARY REPORTS

Awarded bidder(s) shall be responsible for furnishing summary reports to the Procurement Division upon request. These reports shall be for time period specified and contain quantity and dollars spent for each item purchased.

END OF SECTION