

CONSTRUCTION DOCUMENTS

DIVISION 1 – GENERAL REQUIREMENTS

SECTION 01000 – SPECIAL CONDITIONS

PART 1 – GENERAL

1.01 RELATED DOCUMENTS:

Drawings and general provisions of Contract, including Uniform General and Supplementary General Conditions and other Division 1 specification sections, apply to work of this section.

1.02 DESCRIPTION OF WORK:

Furnish all labor, materials, tools, equipment and incidentals necessary for performance of all work associated with Project Number MR8555 L.E. Modular Office Building Utilities for Lost Maples State Park, Real/Bandera County, Texas, such work being as more particularly described in these Special Conditions, the drawings, and elsewhere in these Invitation for Bids and Contract Documents.

1.03 INQUIRIES:

All inquiries regarding the Invitation for Bids and Contract Documents, including any apparent discrepancies thereto and administration of the contract, shall be directed to the Texas Parks and Wildlife Department, Infrastructure Division, 4200 Smith School Road, Austin, Texas 78744, **JoAnn Hernandez**, Contract Manager, 512/389-4347 or joann.hernandez@tpwd.texas.gov.

1.04 EXAMINATION OF SITE:

Bidders should visit the site and be thoroughly familiar with job conditions such as the location, accessibility, and general character of the site and/or building prior to submitting a bid. Visits shall be scheduled with **Lisa Fitzsimmons Site Manager, 830-966-3413 for Lost Maples State Park**. Failure to give proper consideration to site conditions when preparing bids will not constitute grounds for additional compensation. **(See UGC, Article 3).**

1.05 INTENT OF THE CONTRACT DOCUMENTS: (See also UGC, Article 6)

- A. The intent of the Contract Documents is to include all of the work for the contract price and within the contract time. Contract Documents are to be considered as cooperative. All work not specified and/or not shown on the drawings but which is necessary for the completion and/or functioning and operation of the project, shall be understood and implied as part of the contract to be performed by the Contractor for the contract price. Such work shall be executed by the Contractor in the same manner and with the same character of material as other portions of the contract without extra compensation.
- B. It is the intention of the Contract Documents to call for finished work, tested, and ready for operation.
 - 1. Any apparatus, material or work described in the Contract Documents and any incidental accessories necessary to make the work complete in all respects and ready for operation

(even though not particularly specified) shall be furnished, delivered, and installed by the Contractor without additional expense to the Owner.

2. Minor details not usually shown or specified but necessary for proper installation and operation are included in the work just as if herein specified or shown.

- C. All work shall be performed and furnished by the Contractor in accordance with accepted construction industry practices.
- D. A duplication of work is not intended by the Contract Documents and any duplication shall not become a basis for extra cost to the Owner.
- E. Explanatory notes on the drawings shall take precedence over conflicting drawn-out indications. Figured dimensions on drawings shall take precedence over scale measurements. Where figures are lacking, scale measurements may be followed, but in all cases the measurements are to be checked from the work in place and those measured dimensions taken at the site shall take precedence over scale dimensions in drawings.
- F. Upon discovery by Contractor of errors, omissions or inconsistencies in the Contract Documents, Contractor shall promptly report them to the Owner and shall wait for instruction from Owner prior to proceeding with the work.
- G. In the event of conflict between the Special Conditions, the Supplementary Conditions, and the Uniform General Conditions, the following priority order shall apply in resolving such conflicts: Special Conditions, Supplementary Conditions, and then Uniform General Conditions.
- H. The drawings consist of all project drawings and any drawings issued by addenda.

1.06 ADDENDA:

Any addenda issued in writing by the Owner during the period of bidding shall be included in the bid and Bidder's receipt of addenda shall be acknowledged in the bid form. Such addenda shall become a part of the contract and shall modify the Contract Documents accordingly. Oral changes in the work made during the period of bidding will not be binding. **BIDDER'S FAILURE TO ACKNOWLEDGE RECEIPT OF ADDENDA MAY RESULT IN REJECTION OF BID.**

1.07 PERMITS AND LAWS (See also UGC Article 3):

Contractor shall comply with all laws, ordinances, statutes, rules and regulations applicable to the project, including but not limited to those pertaining to the collection, transportation and disposal of trash and refuse and shall obtain such permits, licenses or other authorizations as may be required.

If applicable governmental laws, rules, regulations or ordinances conflict with the Contract Documents, then such laws, rules, regulations, or ordinances shall govern instead of the Contract Documents, except in such cases where the Contract Documents exceed them in quality of materials or labor, then the Contract Documents shall be followed.

1.08 PRECONSTRUCTION CONFERENCE AND PROGRESS MEETINGS: (See also UGC Article 3)

After issuance of the Notice to Proceed letter, approval of Pre-Construction (PR) submittals and prior to start of work, a conference between the Owner and the Contractor will be held to discuss provisions of the Contract Documents and to coordinate the work effort. Attendance by Contractor and Contractor's

superintendent(s) is required, along with major trades if requested by Owner. Construction progress meetings may be called at any time by the Owner's Project Manager, On-Site ODR, or the Contractor to review job progress or problems.

1.09 SUBMITTALS:

A. GENERAL (See also UGC Article 8):

1. A TPWD standard *Submittal Cover Sheet* must accompany each numbered submittal set. **One Submittal per Submittal Cover Sheet.**
2. The number of copies of submittals required for each item shall be not less than one (1) electronic copy, unless specified otherwise, for Owner's use, plus the number of additional copies that the Contractor desires for his own use.
3. The Contractor must double-check and sign all submittals before forwarding them to the Owner for review and action.
4. The Architect/Engineer and the Owner will review the submittal data. If there are no exceptions taken to the submittal, the original and three copies will be retained by the Owner. All remaining copies will be returned to the Contractor. The Contractor must keep one copy at the jobsite at all times.
5. If further action is required by the Contractor, Owner will retain three copies of the submittal data for the Owner's use and return all remaining copies to the Contractor.
6. Any and all costs, direct or indirect, incurred by Owner in reviewing submittals in excess of two (2) times will be charged to the Contractor and deducted from the total price for the work.
7. Owner's approval of shop drawings and/or any aspects of the work shall not act to transfer Contractor's responsibility for, nor relieve Contractor from the performance of any of Contractor's duties set forth in the contract documents.

B. PRE-CONSTRUCTION SUBMITTALS: **The following PR Submittals shall be submitted by the Contractor for the Owner's review and approval. Contractor's failure to obtain approval of PR submittals will not constitute grounds for additional time.** Owner will provide more specific clarification regarding the requirements for each PR Submittal.

1. Submittal PR-1 – **To be submitted by the Contractor for the Owner's review and approval within twenty-one (21) calendar days from receipt of *Notice to Proceed*. Owner's Approval of PR 1 submittals is a prerequisite to the scheduling of the pre-construction meeting and start of construction activities.** Contractor's failure to obtain approval of PR submittals will not constitute grounds for additional time (**See also UGC Article 3**)
 - a. Contractor's Superintendent: List of name and qualifications of the person designated as project superintendent.
 - b. Subcontractors/Materials Suppliers: List of all subcontractors and major material/equipment suppliers that Contractor and Contractor's major subcontractors propose to use. This list shall include correct names, mailing addresses and phone numbers.
 - c. Contractor's Authorized Representatives: List of names and titles of Contractor's representatives authorized to sign contractual documents and construction vouchers.
 - d. Licensed Craftspersons: List of names, qualifications and licenses of all licensed crafts required by the contract documents.

2. Submittal PR-2 – **To be submitted by the Contractor for the Owner’s review and approval within twenty-one (21) calendar days from receipt of *Notice to Proceed* or as otherwise stated herein. Owner’s Approval of PR 2 submittals is required prior to requesting first payment.** Contractor’s failure to obtain approval of PR submittals will not constitute grounds for additional time. **(See also UGC Article 3)**
 - a. Schedule of Values, itemizing material and labor for each classification of work. **(See also UGC, Article 10).**
 1. Owner will provide forms entitled “*Schedule of Values*” for the Contractor’s use in preparing the breakdown. After contract award, the Owner will also provide further clarification including an example.
 2. Itemization of material and labor costs is required so the Owner may make progress payments on materials delivered. For each bid item or classification of work to be listed in the “Type of Work” column on the *Schedule of Values*, the Contractor shall multiply the unit bid price by the estimated quantity for each bid item to arrive at the “Contract Cost” for each such bid item. Contractor shall separately itemize material and labor costs for each such bid item in the “Type of Work” column.
 - b. Work Progress Schedule (in duplicate) of *Contractor’s Proposed Construction Schedule* for work tasks in relation to the entire project. **(See also UGC, Article 9)** Owner will provide a schedule bar chart form to aid the Contractor in preparing a schedule. The Contractor shall follow this format and must indicate all work tasks as well as differentiate critical path work tasks from non-critical path tasks showing the beginning and ending dates for each critical and non-critical path work task.
 - c. Submittal Register: Submittal Register shall be organized by specification section, listing all items to be furnished for review and approval by the A/E and the Owner, including anticipated sequence and submittal dates. (Refer to Article 8, specifically 8.3.1.3, of the Uniform General Conditions.)
- C. **MATERIAL SUBMITTALS: To be submitted to Owner prior to the installation of any materials. It is the Contractor’s responsibility to incorporate lead time required for review, resubmittal, ordering, manufacturing, fabrication and delivery. Contractor is responsible if a delay in lead time planning affects the critical path.**
 1. Contractor shall submit manufacturer’s information on all materials and equipment, regardless of whether substitutions are being requested.
 2. Substitution requests must be submitted early enough to allow time for evaluation by the Owner and for re-submittal, if required. Contractor’s substitution requests shall address the following factors which will be considered in evaluating the proposed substitution:
 - a. Whether the evaluation and acceptance of the proposed substitution will prejudice the Contractor’s achievement of Substantial Completion on time;

- b. Whether acceptance of the substitution for use in the work will require a change in any of the Contract Documents to adapt the design to the proposed substitution.
 - c. Whether incorporation or use of the substitution in connection with the work is subject to payment of any license fee or royalty.
 - d. Whether all variations of the proposed substitution from the items originally specified are identified.
 - e. Whether available maintenance, repair, and replacement service are indicated. The manufacturer shall have a local service agency (within 50 miles of the site) which maintains properly trained personnel and adequate spare parts and is able to respond and complete repairs within 24 hours.
 - f. Whether an itemized estimate is included of all costs that will result directly or indirectly from acceptance of such substitution, including cost of redesign and claims of other contractors affected by the resulting change.
 - g. Whether the proposed substitute item meets or exceeds the experience and/or equivalency requirements listed in the appropriate technical specifications.
3. No materials shall be ordered or installed until submittals for such materials have been received and acted upon by the Owner.

1.10 QUALITY ASSURANCE (See also UGC Article 8):

- A. The Owner's On-Site ODR will periodically inspect and observe the construction progress, procedures, and materials of the Contractor. The Contractor shall coordinate all efforts with the On-Site ODR, offer full cooperation to facilitate such observations, and shall be responsive to questions from such On-Site ODR regarding methods, equipment, materials, and intentions in pursuing the work or any particular thereof. Such observation by the Owner shall not be construed as construction supervision nor indication of approval of the manner or location in which the work is being performed as being a safe practice or place.
- B. The On-Site ODR's responsibilities include but are not limited to:
 1. Providing quality assurance for the Owner.
 2. Submitting written reports concerning the current status of the work.
 3. Reviewing, and verifying to the Owner the amounts shown on the Contractor's monthly *Construction Voucher*.
 4. Requesting and receiving payroll and materials invoice amounts from the Contractor.
 5. Witnessing testing and confirming in writing to the Owner the results of all tests.
- C. Inspections, Notification, and Scheduling:
 1. The Contractor shall notify the On-Site ODR when work is ready for inspection or testing. The Contractor shall give such notifications sufficiently in advance of other work to prevent delays. A minimum of five (5) working days advance notice is required, and Contractor shall include in his work schedule such notice periods for inspections and/or testing.

2. Tests cannot be conducted and work cannot be covered-up until the On-Site ODR observes and authorizes continuation of work. The Contractor shall bear all costs for re-tests and for removal and replacement of construction resulting from unauthorized continuation.
 3. Should ODR fail to make the necessary inspection within the agreed period, Contractor may proceed with cover-up Work after making every reasonable effort to contact the ODR and after documenting the Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.
- D. All permanent utilities shall be connected before final tests are conducted for equipment and systems. Final operational tests shall be conducted prior to project acceptance by the Owner. The Contractor shall provide the materials, energy, equipment and personnel to conduct the tests required in the contract.
- E. Contractor's failure to provide notification to Owner of inspection or testing requirements shall void any certifications of testing and shall require the Contractor to re-test at the Owner's request. All expenses for re-testing shall be paid by the Contractor.
- F. The Owner (including Owner's On-Site ODR) may reject work not conforming to the contract documents. If the Owner rejects work and/or materials incorporated into the project, Contractor shall bear all expenses associated with testing to prove compliance with the Contract Documents, including but not limited to engineering/architectural expenses associated with such testing. Any and all such expenses that are paid directly by Owner shall be deducted or withheld from subsequent payment(s) to the Contractor.

1.11 INVOICES/PAY REQUESTS AND CHANGE ORDERS:

- A. All work items for which Contractor requests payment shall reflect the project number with which those work items are associated. **Change Order pricing for items that are already priced in the contractor's bid shall be limited to such price(s) set forth in such bid and shall not be entitled to additional mark-up for overhead and profit.**
- B. Contractor is required to submit an **original** Progress Assessment Report (PAR) to TPWD HUB Administration no later than the 5th day of the month. Contractor shall submit a **copy** of the current month's PAR to the Owner with the application for payment (construction voucher). The PAR is the monthly compliance report verifying Contractor's compliance with the HUB Subcontracting Plan (HSP) including the expenditures the Contractor has made to Subcontractors during the prior month.

1.12 CONTRACT COMPLETION: (See also UGC, Article 9)

- A. Contract Period: This contract must be completed within the specified number of days commencing on the date cited in the Notice to Proceed letter.
1. Unless specifically stated as "working day," the term "day" or "calendar day" shall mean every day of the calendar year. Along with the Work Progress Schedule, the Contractor shall submit his schedule for normal working days.
 2. Claims for extension of time shall be made in accordance with the provisions of Article 9 of the Uniform General Conditions.
- B. **Liquidated Damages:** The Owner has determined that the completion of the work in this contract is critical to the proper operation of the facility, and the Contractor's failure to complete the work

within such time will cause damage to the Owner. Since exact damages are difficult to determine or forecast, the sum of **\$339.22** per calendar day is hereby established by the parties as a reasonable estimate of just compensation to the Owner for the failure of the Contractor to complete the work by the time set forth in the contract or authorized extension thereto. Said sum will be deducted from the money due or to become due to the Contractor, not as a penalty but as liquidated damages from added expense, including administrative and inspection costs, for each and every calendar day the work or any portion thereof remains incomplete after the expiration of the time limit set in the contract or authorized extension.

- C. Charges for liquidated damages will begin accumulating on the first calendar day following the final contract completion date and continue until the date of final acceptance as established by the Owner. Final acceptance will not be issued until all punch list items have been completed.

1.13 CONTRACT CLOSE-OUT: (See also UGC Article 12)

- A. Notification: The Contractor shall provide Owner 15-days' written notice requesting final inspection.
- B. Final Submittals: At the time of the Contractor's request for final inspection, Contractor shall provide to Owner the following material (in addition to final payment documents also required by UGC Article 12 and set forth below in subsection D) which the Contractor shall have accumulated and retained during the course of the project:
 - 1. One (1) hard copy and one (1) electronic set of all project submittals and all equipment and material warranties/guarantees as provided by all appropriate suppliers or manufacturers.
 - 2. One set of "as-built documents" showing all revisions to the original Contract Documents. Drawings shall also show routing of underground outside utilities and conduits with actual dimensions from buildings or other known landmarks.
 - 3. Any and all other documents, keys, manuals, etc. required by the Contract Documents.
- C. Clean-up: At completion of the job, the Contractor shall remove all waste products, dust, dirt, debris, packaging, trash, fingerprints, grease containers, and other deleterious materials and marks from the site. Refer to individual specification sections for special cleaning required by that section. Contractor is expected to leave the project in spotless, "like new" condition.
- D. Final Payment: Submit final construction voucher, *Consent of Surety Company to Final Payment*, and the *Contractor's Final Payment Affidavit*.

1.14 CONTRACTOR'S RESPONSIBILITY DURING THE WARRANTY PERIOD (See also UGC, Article 13):

- A. Warranties: The Contractor shall guarantee all work against defects in materials, equipment, or workmanship for a period of one year from the date of final acceptance. The Contractor shall also provide any additional warranties and guarantees of work items and components as hereinafter specified.
- B. Service: All necessary service to each electrical and mechanical system and other work requiring specialized training shall be furnished by the Contractor at no cost to the Owner for a period running concurrently with the one year warranty period specified above. Such service shall not

include repair of damage due to storm, vandalism or other factors entirely beyond the control of the Contractor.

- C. The Contractor will receive no additional compensation for work performed during the one-year warranty period.

1.15. REFERENCES AND STANDARDS:

All contractors, including sub-contractors shall ensure all personnel follow the adopted Standardized Building Codes in all design and construction work.

1.16 NON-APPROPRIATION OF FUNDS:

Any contract resulting from this solicitation is subject to termination or cancellation, without penalty to TPWD, either in whole or in part, subject to the availability of state funds. TPWD is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TPWD becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TPWD's or contractor's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, TPWD will not be liable to contractor for any damages, which are caused or associated with such termination, or cancellation and TPWD will not be required to give prior notice.

1.17 ANTIQUITIES:

Contractor shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of Owner and the Texas Historical Commission. When such objects are uncovered unexpectedly, the Contractor shall stop all Work in close proximity and notify the ODR and the Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities, as defined in Chapter 191, Texas Natural Resource Code, discovered on the Owner's property shall remain property of State of Texas, the Texas Historical Commission. It is determined by Owner, in consultation with the Texas Historical Commission that exploration or excavation of primitive records or antiquities on Project Site is necessary to avoid loss, Contractor shall cooperate in salvage work attendant to preservation.

1.18 PROPRIETARY OR CONFIDENTIAL INFORMATION; TEXAS PUBLIC INFORMATION ACT:

- A. Any proprietary, trade secret or otherwise confidential information Bidder includes in its Bid must be clearly labeled as proprietary or confidential information, and Bidder must identify the specific exception to disclosure in the Public Information Act (PIA). Merely making a blanket claim the entire Bid is protected from disclosure because it contains some proprietary information is not acceptable and shall make the entire Bid subject to release under the PIA. In order for the Owner to initial the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Bid that are considered by the Bidder to be proprietary or confidential must be clearly labeled as described herein. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA.
- B. Information the Bidder provides to the Owner in response to this solicitation will be considered public and subject to disclosure under the Texas Public Information Act.
- C. Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act,

available in a format that is accessible by the public at no charge to the state. Contractor will make sure information not excepted from disclosure available in an electronic format that is accessible to the public unless Contractor receives written approval from Owner to provide information in a different format, and such approval becomes a part of this Contract.

1.19 RIGHT TO AUDIT/RECORDS RETENTION:

Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, TPWD or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing all records requested. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the work of this Contract. Contractor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TPWD and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor. Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Contractor's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize TPWD and the State of Texas to immediately assess appropriate damages for such failure.

1.20 IMMIGRATION REFORM:

The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996.

1.21 CIVIL RIGHTS:

The Contractor agrees that no person shall, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Contract shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

1.22 FEDERAL, STATE AND LOCAL REQUIREMENTS:

Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any Unemployment or Worker's Compensation coverage or federal or State withholding requirements. **Contractor shall indemnify the State of Texas and shall pay all costs, penalties or losses resulting from Contractor's omission or breach of this Section.**

1.23 SEVERABILITY CLAUSE:

If any provision of this Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will remain in full force and effect.

1.24 NO WAIVER:

Nothing in this Contract shall be construed as a waiver of the state's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies or immunities available to the State of Texas. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. The Owner does not waive any privileges, rights, defenses or immunities available to the Owner by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

1.25 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES:

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com Code, Chapter 17 or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.

1.26 FELONY CRIMINAL CONVICTIONS:

Contractor represents and warrants that Contractor has not and Contractor's employees have not been convicted of a felony criminal offense or that if such a conviction has occurred, Contractor has fully advised the Owner as to the facts and circumstances surrounding the conviction.

1.27 ASSIGNMENTS:

The Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the Owner.

1.28 INDEPENDENT CONTRACTOR:

The Contractor shall not render the Contractor to an employee, officer or agent of the Owner for any purpose. The Contractor is and shall remain an independent contractor in relationship to the Owner. The Owner shall not be responsible for withholding taxes from payments made under the Contract. The Contractor shall have no claim against the Owner for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

1.29 PATENTS, TRADEMARKS OR COPYRIGHTS:

Contract agrees to defend and indemnify the Owner and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the Owner's or the State's use of any good or service provided by the Contractor as a result of this solicitation.

1.30 FORCE MAJEURE:

The Owner may grant relief from performance of contract if the Contractor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of Contractor. The burden of proof for the need of such relief shall rest upon the Contractor. To obtain release based on force majeure, the Contractor shall file a written request with the Owner.

1.31 U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM:

By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- A. All persons employed to perform duties within Texas, during the term of the Contract; and
- B. All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of Texas Parks and Wildlife Department, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.

1.32 NAME CHANGES AND SALES:

If the Contractor changes its name or is sold to another entity, it must provide written notification to TPWD. The Contractor, in its notice, shall describe the circumstances of the name change or sale, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for the Contractor, the Contractor shall identify the new personnel and

provide resumes to TPWD, if resumes were originally required by the Solicitation. TPWD may request other information about the change and its impact on the Contract and the Contractor shall supply the requested information within five (5) working days of receipt of the request.

TPWD may terminate the Contract due to a sale of or change to the Respondent that materially alters the Respondent's ability to perform under the Contract. The TPWD has the sole discretion to determine if termination is appropriate.

1.33 MINIMUM EXPERIENCE REQUIREMENTS:

CONTRACTOR MUST SHOW EVIDENCE OF TWO (2) SUCCESSFUL CONSTRUCTION PROJECTS SIMILAR TO THIS PROJECT (AS JUDGED BY OWNER) TO BE ELIGIBLE FOR AWARD OF THIS CONTRACT. THIS EXPERIENCE MUST HAVE OCCURRED WITHIN THE PAST FIVE (5) YEARS, MEASURED BACKWARDS FROM THE ISSUE DATE OF THIS SOLICITATION.

PART 2 – PRODUCTS

2.01 CONSTRUCTION MATERIALS:

A. Materials:

1. All materials shall be new and of the quality specified. Materials shall be free from defects. Where manufacturer's names are mentioned in the specifications, it has been done in order to establish a standard of quality and construction, not to preclude the use of equal or superior materials or products of other manufacturers. However, substitutions must have Owner's prior approval.
2. Unless otherwise indicated in the specifications or drawings, equipment and material shall be installed in accordance with the manufacturer's recommendations and shall include such tests as manufacturer recommends.

B. Storage and Protection of Materials:

1. All materials shall be suitably stored to be protected from damage. Water-tight storage facilities of suitable size with floors raised above the ground shall be provided for all materials subject to damage from exposure to the weather. Other materials shall be stored on blocks off the ground. Materials shall be stored to permit easy access for inspection and identification. Any material which has deteriorated, become damaged or otherwise unfit for use shall not be used in the work (as judged by Owner). Upon completion of all work, or when directed, the Contractor shall remove storage facilities from the site.
2. During construction, open ends of all drains, piping and conduit, and all openings in equipment, shall be closed before leaving the work at any time so as to prevent the entrance of all foreign matter.

PART 3 – EXECUTION

3.01 CONSTRUCTION SITE AND JOB CONDITIONS:

- ##### A.
- The Contractor's Superintendent shall be on site at all times that work is in progress.

- B. The Contractor will be provided with designated space in the immediate vicinity of the job site for his use during construction. Unauthorized damage to any existing utilities, building facilities, structures, or plant life shall be repaired by the Contractor at no expense to the Owner. The Contractor shall not allow any unsafe or unsanitary conditions to develop as a result of Contractor's operations.
- C. The Contractor shall not allow trash or debris to accumulate on the site. At the end of the contract Contractor shall clean the entire area of any litter resulting from Contractor's operations. The Contractor shall maintain the premises as clean and presentable as good construction practices will allow at all times.
- D. Utilities: Water and electrical power **are** available and **will** be furnished by the Owner at no charge to the Contractor. However, any temporary connections, appurtenances or extensions shall be provided by the Contractor at no cost to the Owner and removed from the premises at the conclusion of the contract. Contractor shall provide cellular telephone service at all times and shall keep Owner informed of telephone number.
- E. Field Office: **The Owner will provide the Contractor with a site on which the Contractor may place a small, temporary office structure.**
- F. Temporary Toilets: The Contractor shall provide and maintain in neat, sanitary condition toilets and other necessary accommodations for employees' use to comply with the regulations of the State Department of Health or other jurisdictions.
- G. Project Identification: There shall be no project signs of any size or type allowed on the project site or surrounding Texas Parks and Wildlife Department property at any time.
- H. Fire Protection: The Contractor shall take stringent precautions against fire. Open fires are not allowed unless approved in writing by Owner.

3.02 OCCUPATIONAL SAFETY AND HEALTH STANDARDS (See also UGC Article 7):

Prior to trenching below a depth of four (4) feet (if applicable), a Contractor must submit separate pay items for: (i) trench safety to be determined by the linear feet of trench excavated, and (ii) special shoring requirements, if any, to be determined by the square feet of shoring used, pursuant to Texas Government Code, Title 10, Chapter 2166, Section 2166.303. Such pay item(s), following calculation as required above, shall be quoted on the basis of a total lump sum price.

3.03 LAYOUT OF WORK:

The Contractor, at Contractor's expense, shall be responsible for establishing base lines, and bench marks if applicable, for the limits of the project. The Contractor shall also be responsible for all measurements that may be required for the execution of the work to the location and limit marks prescribed in the specifications or on the drawings, subject to such modifications as the Owner may require to meet changed conditions or as a result of necessary modifications to the work.

3.04 SITE OPERATIONS:

During construction of this project the site will remain open to public visitation. It is the responsibility of the Contractor to maintain convenient access and egress to park facilities in a manner to be approved by the Owner. The Contractor shall also be responsible for public safety at the construction site. All

temporary fencing, barricades, warning lights, signs, and flagmen shall be provided and maintained by Contractor as needed. The Contractor shall maintain security of construction sites.

3.05 CUTTING AND PATCHING:

- A. Where indicated in the Contract Documents, this project requires cutting into existing construction for the performance of the work and requires subsequent fitting and patching to restore the existing work to original condition.
- B. Utilities:
 - 1. Contractor shall not cut or patch utilities until all necessary approvals and coordination requirements are accomplished.
 - 2. Before cutting services that are to remain permanently or temporarily in service, Contractor shall provide by-pass system as necessary to maintain service.
 - 3. After by-pass and cutting, Contractor shall cap, valve or plug and tightly seal remaining portion of service piping or conduit to prevent entrance of moisture and foreign matter.
- C. Structural Work: Contractor shall not cut or patch structural work in a manner that would result in a reduction of load-carrying capacity or of load-deflection ratio.
- D. Inspection:
 - 1. Before cutting, Contractor shall examine items to be cut and patched and the conditions under which the work is to be performed. If unsafe or otherwise unsatisfactory conditions are encountered, Contractor shall take corrective action before proceeding with the work.
 - 2. Contractor shall meet at the work site with all trades involved in cutting and patching. Contractor shall review areas of potential interference and conflict between the various trades and shall coordinate layout of the work and resolve potential conflicts before proceeding with the work.

3.06. AS-BUILT DOCUMENTS (See also UGC Article 6):

The Contractor shall maintain on a separate set of the Contract Documents a record of all changes made during construction (As-Built Documents). The Contractor shall be responsible for keeping these records and neatly noting with colored pencil or ink all changes. Progress payments will not be made to the Contractor unless such records are maintained. Verification by the On-Site ODR of such records is solely for assurance that the records are being maintained. Such inspections shall not constitute review or approval of the as-built documents for accuracy or completeness.

END OF SECTION