Florida Department of Transportation

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GOVERNOR

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Lake City, Florida 32025

STEPHANIE C. KOPELO
SECRETARY

February 1, 2010

To: **Shortlisted proposers:**

Anderson Columbia Co., Inc. / HDR Engineering, Inc.
Archer Western Contractors / GAI Consultants
Johnson Brothers and Misener Marine / Wilbur Smith Associates
Kiewit Southern Company / HNTB Corporation

Addendum No.: 10

Project #: E2N35

Design Build for construction of SR 9B from US 1 to SR 9A in Duval County, a limited access concrete road construction project on a new alignment, Jacksonville, Florida.

Project #s: **209293-2 ARRA 550B and 209294-1 ARRA 549B**

The purpose of this addendum is to clean up some language in the Division 1 specifications concerning days for award and execution of contract. We are also correcting the Disputes Review Board language for a Regional Disputes Review Board.

The attachment is a five page PDF file.

Please sign, date and email a copy of this addendum back to me today to indicate receipt. Copies of all addendums are to be returned with your bid package.

_____

Company Name Date

_____

Signature

SUPPLEMENT NUMBER ONE TO DIVISION 1 SPECIFICATIONS PACKAGE

FOR
FINANCIAL PROJECT ID(S): 209293-2-52-01, 209294-1-52-01 & 209294-1-56-01

FEDERAL FUNDS

DISTRICT TWO
DUVAL COUNTY

The 2007 Edition of the Florida Department of Transportation Standard Specifications and the Division 1 Specifications Package for this Design Build project, are revised as follows:

SPECIAL PROVISION

ARTICLE 3-2 Award of Contract. Page(s) 15 of the Division 1 Specifications Package is deleted and the following substituted:

It is anticipated that the Contract award will be made within 30 days after the proposals are opened.

ARTICLE 3-6 Execution of Contract and Bond. Page(s) 15 of the Division 1 Specifications Package is deleted and the following substituted:

As an exception to the provisions of this Article, for this Contract, execute the Contract and file an acceptable bond and return to the Department within 7 days after the award

ARTICLE 3-7 Failure by Contractor to Execute Contract and Furnish Bond. Page(s) 16 of the Division 1 Specifications Package is deleted and the following substituted:

As an exception to the provisions of this Article, for this Contract, failure by the bidder to execute the awarded Contract and to file an acceptable bond, as prescribed in 3-5 and 3-6, within 7 days of Contract award, the Department may annul the award, causing the bidder to forfeit the proposal guaranty to the Department; not as a penalty but in liquidation of damages sustained. The Department may then award the Contract to the next lowest responsible bidder, re-advertise, or accomplish the work using day labor.

SUBARTICLE 8-3.7 Disputes Review Board. Page(s) 83-86 of the Division 1 Specifications Package is deleted and the following substituted:

8-3.7 Disputes Review Board: For this Contract, a Disputes Review Board will be available to assist in the resolution of disputes and claims arising out of the work on the Contract.

8-3.7.1 Purpose: The Board will provide special expertise to assist in and facilitate the timely and equitable resolution of disputes, claims, and controversies between the Department and the Contractor in an effort to avoid construction delay and future claims.

It is not intended that the Department or the Contractor default on their normal responsibility to cooperatively and fairly settle their differences by indiscriminately assigning them to the Board. It is intended that the Board encourage the Department and Contractor to resolve potential disputes without resorting to this alternative resolution procedure.

The Board will be used when normal Department-Contractor dispute resolution is unsuccessful. Either the Department or the Contractor may refer a dispute to the Board. Referral to the Board should be initiated as soon as it appears that the normal dispute resolution effort is not succeeding. It is a condition of this Contract that the parties shall use the Dispute Review Board. The Department and the Contractor agree that the submission of any unresolved dispute or claim to the Board is a condition precedent to the Department or the Contractor having the right to proceed to arbitration or litigation of such unresolved dispute or claim. The Department's Claim Review Committee will not entertain any issues on this project.

The recommendations of the Board will not be binding on either the Department or the Contractor.

The Board will fairly and impartially and without regard to how or by whom they may have been appointed, consider disputes referred to it and will provide written recommendations to the Department and Contractor to assist in the resolution of these disputes.

8-3.7.2 Continuance of Work During Dispute: During the course of the Disputes Review Board process, the Contractor will continue with the work as directed by the Engineer in a diligent manner and without delay or otherwise conform to the Engineer's decision or order, and will be governed by all applicable provisions of the Contract. Throughout any protested work, the Contractor will keep complete records of extra costs and time incurred. The Contractor will permit the Engineer and Board access to these and any other records needed for evaluating the dispute.

8-3.7.3 Membership: The Disputes Review Board will consist of members pre-selected by the Engineer and the President of the Florida Transportation Builders' Association (FTBA), and posted on the Department's Website.

If during the life of the contract, a Board member has a discussion regarding employment or entered into any agreement for employment after completion of the contract with the Department, the Contractor or any subcontractor or supplier on the project, he/she shall immediately disclose this to the Contractor and the Department and shall be disqualified from serving on the Board.

Once established, the Board will remain active and in full force and effect. If, after the Department has made final acceptance of the project, there are unresolved disputes and claims remaining, the Disputes Review Board shall remain active and in full force and effect until the project is otherwise administratively closed by the Department following final payment so that the Board may continue in operation until all unresolved disputes and claims are resolved.

8-3.7.4 Procedure and Schedules for Disputes Resolution: Disputes will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by the Department and the Contractor and the time periods stated below may be shortened in order to hasten resolution.

a. If the Contractor objects to any decision, action or order of the Engineer, the Contractor may file a written protest with the Engineer, stating clearly and in detail the basis for the objection, within 15 days after the event.

b. The Engineer will consider the written protest and make his decision on the basis of the pertinent contract provisions, together with the facts and circumstances involved in the dispute. The Engineer's decision will be furnished in writing to the Contractor within 15 days after receipt of the Contractor's written protest.

c. This decision will be final and conclusive on the subject, unless a written appeal to the Engineer is filed by the Contractor within 15 days of receiving the decision. Should the Contractor preserve its protest of the Engineer's decision, the matter can be referred to the Board by either the Department or the Contractor.

d. Upon receipt by the Board of a written duly preserved protest of a dispute, either from the Department or the Contractor, it will first be decided when to conduct the hearing.

e. Either party furnishing any written evidence or documentation to the Board will furnish copies of such information to the other party a minimum of 15 days prior to the date the Board sets to convene the hearing for the dispute. If the Board requests any additional documentation or evidence prior to, during, or after the hearing, the Department and/or Contractor will provide the requested information to the Board and to the other party.

f. The Contractor and the Department will each be afforded an opportunity to be heard by the Board and to offer evidence. Neither the Department nor the Contractor may present information at the hearing that was not previously distributed to both the Board and the other party.

g. The Board's recommendations for resolution of the dispute will be given in writing to both the Department and the Contractor, within 15 days of completion of the hearings. In cases of extreme complexity, both parties may agree to allow additional time for the Board to formulate its recommendations. The Board will focus its attention in the written report to matters of entitlement and allow the parties to determine the monetary damages. If both parties request, and sufficient documentation is available, the Board may make a recommendation of monetary damages.

h. Within 15 days of receiving the Board's recommendations, both the Department and the Contractor will respond to the other and to the Board in writing, signifying either acceptance or rejection of the Board's recommendations. The failure of either party to respond within the 15 day period will be deemed an acceptance of the Board's recommendations by that party. If the Department and the Contractor are able to resolve the dispute with or without the aid of the Board's recommendations, the Department will promptly process any required Contract changes.

i. Should the dispute remain unresolved, either party may seek reconsideration of the decision by the Board only when there is new evidence to present. No provisions in this Specification will abrogate the Contractor's responsibility for preserving a claim filed in accordance with 5-12.

Although both the Department and the Contractor should place great weight on the Board's recommendation, it is not binding. If the Board's recommendations do not resolve the dispute, all records and written recommendations of the Board will be admissible as evidence in any subsequent dispute resolution procedures.

8-3.7.5 Contractor Responsibility: The Contractor shall furnish to each Board member a set of all pertinent documents which are or may become necessary for the Board, except documents furnished by Department, to perform their function. Pertinent documents are any drawings or sketches, calculations, procedures, schedules, estimates, or other documents which are used in the performance of the work or in justifying or substantiating the Contractor's position. A copy of such pertinent documents must also be furnished to the Department.

Except for its participation in the Board's activities as provided in the construction Contract and in this Agreement, the Contractor will not solicit advice or consultation from the Board or any of its members on matters dealing in any way with the project, the conduct of the work or resolution of problems.

8-3.7.6 Department Responsibilities: Except for its participation in the Board's activities as provided in the construction Contract and in this Agreement, the Department will not solicit advice or consultation from the Board or any of its members on matters dealing in any way with the project, the conduct of the work or resolution of problems.

The Department shall furnish the following services and items:

a. Contract Related Documents: The Department shall furnish each Board member a copy of all Contract Documents, supplemental agreements, written instructions issued by the Department to the Contractor, or other documents pertinent to the performance of the Contract and necessary for the Board to perform their function. A copy of such pertinent documents must also be furnished to the Contractor.

b. Coordination and Services: The Department, in cooperation with the Contractor, will coordinate the operations of the Board. The Department, through the Project Engineer, will arrange or provide conference facilities at or near the Contract site and provide secretarial and copying services.

8-3.7.7 Basis of Payment: A per day cost of $3,300.00 has been established by the Department to reimburse the Contractor for providing compensation to the three members of the Disputes Review Board. This amount will be paid to the Contractor for each day of the Disputes Review Board. For each meeting, the Contractor shall compensate each Disputes Review Board member a sum of $1,100.00. Such payment will be full compensation to the Board member for salary and all travel expenses (air fare, rental or personal automobile, motel room, meals, etc.) related to membership on the Board. If an issue or set of issues requires additional time in meeting or in analyzing the issues, additional compensation on a per day basis can be made, if authorized in advance by the Engineer. Payment shall be made by issuing a work order against contingency funds set aside for this Contract.

The Department will pay all other non-salary and non-travel expenses related to operation of the Board. The Department will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services, and will bear the cost of these services. If the Board desires special services, such as legal consultation, accounting, data research, and the like, both parties must agree, and the costs will be shared by them as mutually agreed. Payment for non-salary and non-travel expenses and the Department's share of special services shall be made by the Engineer in accordance with Department policy outside of this Contract.

THIS COMPLETES THIS SUPPLEMENTAL SPECIFICATIONS PACKAGE