

# **CITY OF CAPE CORAL**

## **REQUEST FOR PROPOSAL**

### **Design/Build Services for the Oasis Charter Schools Campus Expansion**

**RFP CS10-38/PB**



**The City of Cape Coral  
Financial Services Department  
PO Box 150027  
Cape Coral, FL 33915-0027  
239-574-0831**

**PROPOSALS ARE DUE NOT LATER THAN 3:30 P.M.**

**Wednesday, July 14, 2010**

# **CITY OF CAPE CORAL**

## **REQUEST FOR PROPOSALS**

The City of Cape Coral, Florida utilizing a qualifications-based solicitation is seeking proposals from firms with specialized skills and interest in providing professional services for Design/Build Services for the Oasis Campus Expansion. A copy of the scope of services may be obtained from the City of Cape Coral Procurement Division, 1015 Cultural Park Blvd., Second Floor, Cape Coral, Florida 33990; by telephone, (239) 574-0831; by mail request, P.O. Box 150027, Cape Coral, Florida 33915-0027 or online at [www.demandstar.com](http://www.demandstar.com)

One original hard copy, eleven (11) photocopies, and one readable/reproducible disc (CD) of the proposal completely duplicating the hard copy must be returned in a sealed envelope to the attention of the Procurement Division, no later than 3:30 p.m., Wednesday, July 14, 2010 either in person or by mail to the address listed above.

Proposals shall not be presented at any other location. Proposals presented after the time and date indicated above shall be refused. The time indicated on the date stamp machine located in the Procurement Division is considered the official time.

### **SEALED ENVELOPES MUST BE MARKED:**

## **Design/Build Services for the Oasis Charter School Campus Expansion**

**RFP CS10-38/PB**

Any questions concerning this request shall be addressed to the City of Cape Coral Procurement Division at (239) 574-0831.

By Order of the City Manager

Rebecca van Deutekom, City Clerk

# Design/Build Services for the Oasis Charter School Campus Expansion

## PART I: PROJECT INFORMATION

### 1. INTRODUCTION

In 1970, by referendum of the people of the City, a Council/City Manager form of government was adopted, and the City of Cape Coral was incorporated. The policy-making body of the City is a City Council composed of eight (8) members, seven (7) members elected at large on a nonpartisan basis from districts and the Mayor (the eighth member). A Mayor is elected at-large on a nonpartisan basis and has one (1) vote and no veto authority. All terms run for a four (4) year period with the Mayor and three (3) council members being elected at one election and two years later the remaining four (4) council members are elected. The 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. The City provides a comprehensive range of municipal services including general government, public safety, community development, public works, planning, utilities, and parks and recreation.

On July 21, 2003, City Council directed the City Manager to begin the effort to create a Municipal Charter School System in the City of Cape Coral comprised of two (2) K-5 Elementary Schools, one (1) 6-8 Middle School, and one (1) 9-12 High School.

The City of Cape Coral Charter Schools began operation in August of 2005 with the opening of Oasis Charter Elementary School. In August of 2006 Christa McAuliffe Elementary and Oasis Middle School opened their doors. For the 2007-2008 School Year, the Academy was added to accommodate graduating 8th graders. The Academy is currently housed in the middle school and will include 10<sup>th</sup> Grade as well in the upcoming 2008-2009 school year. The Charter High School was recently added for the 2009-2010 school year and has just completed its first year of operation.

Currently, 2500 students attend the four schools on three campuses comprising the City of Cape Coral Charter School System. All four schools have been recognized by the state for their exemplary student achievement. Recently, we were recognized in the Fort Myers News-Press for having the greatest student achievement increases at every grade level in every tested area in Cape Coral. The schools emphasize a safe and orderly environment with the latest security measures.

The system is comprised of three state-of-the-art campuses. The buildings are designed with safety being the top priority. Each classroom is equipped with the latest technology. The buildings are also class II hurricane shelters and back-up power is provided by diesel generators. The Oasis campus features a large gymnasium while the Christa McAuliffe campus is adjacent to the newly developed Jim Jeffers Park. Each building has a large media center, cafeteria and administrative wing.

The goal of the Authority is to continue to expand the grades and facilities until the system becomes sufficient to support K-12 as the Charter intended. In the current alignment there are two (2) K-5 elementary schools, one (1) 6-8 middle school, and the 9<sup>th</sup> thru 12<sup>th</sup> grades housed in the 700 student High School located on city land south of Oasis Middle School.

**PART II: SCOPE AND PURPOSE****Scope**

The City of Cape Coral (CITY) is requesting Letters of Interest/Statements of Qualifications from interested firms to provide Design/Build Services for the construction of a 24 classroom building of approximately 26,000 square feet directly behind the existing Oasis Middle School Gymnasium (3507 Oasis Boulevard, Cape Coral, FL 33914) and the addition of an approximate 23,000 square feet two story standard gymnasium to be located directly behind the existing High School and possibly attached via second floor walkway. The gymnasium should also include six (6) classrooms, five (5) office spaces for charter school administration, equipment storage, and an auxiliary multipurpose room.

This scope will also include property and site improvements behind the current Elementary/Middle School to improve traffic flow during student pickup, add additional parking capacity, expand the current recreation area by providing a covered outside play area (air-nasium), a High School cafeteria remodel to increase the current student seating capacity. In addition the school system would like the ability to secure the Oasis Campus to foot and auto traffic as needed.

**Budget**

A \$6,000,000.00 budget for this project includes all fixtures and equipment (F&E).

**Design Build Services**

The selected Firm will be expected to provide:

1. Design Services
2. Design Review and Recommendations including cost estimates
3. Cost plus Fixed Fee Guaranteed Maximum Price with Saving Incentive
4. Permitting
5. Construction Services
6. Project Management Information
7. Completion August 1, 2011

**Tentative Schedule**

June 22, 2010	Request for Proposals Issued
July 14, 2010	Proposals due
August 10, 2010	Firms "short-listed" for Presentation
August 24, 2010	Firms make presentations to Council and ranked by the Selection Advisory Committee (SAC)
September 14, 2010	Ranking presented to the Charter School Board
September 27, 2010	SAC Ranking Presented to City Council
September 28, 2010	Contract Negotiations begin
December 13, 2010	Contract presented to City Council for Approval
December 30, 2010	Notice to Proceed (NTP) issued

**PART III: GENERAL CONDITIONS & INFORMATION****1. Submission of Proposals**

Firms shall submit one (1) original hard copy, eleven (11) photocopies, and one electronic version (CD) of the proposal.

Proposals must be in conformance with the detailed submittal instructions and must be delivered by mail or courier personal delivery by the time and date indicated in the legal notice. **PROPOSALS NOT SUBMITTED BY THE DATE AND TIME SPECIFIED WILL BE REFUSED.** The time indicated by the time clock in the Procurement office is considered the official time of receipt. No faxed or email proposals will be accepted.

Proposals may be submitted in person or by mail to the following address:

**In person/Courier/Overnight:**      **Cape Coral City Hall Building**  
**1015 Cultural Park Blvd., 2nd Floor**  
**Cape Coral, FL 33990**  
**ATTN: PROCUREMENT MANAGER**

**By Mail:**      **City of Cape Coral**  
**PO Box 150027**  
**Cape Coral, FL 33915-0027**  
**ATTN: PROCUREMENT MANAGER**

Upon submission, all documents become the property of the City of Cape Coral and are subject to public records laws.

**2. Rules, Regulations, Laws, Ordinances, & Licenses**

The awarded firm shall observe and obey all laws, ordinances, rules, and regulations of the federal, state, and local municipality, which may be applicable to the service being provided. The awarded firm shall have or be responsible for obtaining all necessary permits or licenses required in order to provide this service.

**3. Requests for Additional Information or Questions**

Any requests for additional information or clarification should be submitted in writing to the attention of Procurement Manager.

City of Cape Coral	Telephone (239) 574-0833
Procurement Division	Fax (239) 574-0837
PO Box 150027	
Cape Coral, FL 33915-0027	

Each Firm shall examine all requests for proposal documents and judge all matters relating to the adequacy and accuracy of such documents.

The issuance of a written addendum is the only official method whereby interpretation and/or clarification of information can be given. If any addenda are issued to this request for proposal, the City

will attempt to notify all prospective Firms who have secured same. No addenda shall be issued five business days prior to the proposal due date, without extending the due date.

It shall be the responsibility of each Firm, prior to submitting the proposal, to contact the Procurement Division to determine if addenda were issued and to make such addenda a part of the proposal.

#### **4. Lobbying**

All firms and their agents who intend to submit, or who 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.

Contact should only be made through regularly scheduled Council meetings, SAC meetings scheduled for interviews and/or negotiations, or meetings scheduled through the Purchasing Division, which are for the purposes of obtaining additional, or clarifying information.

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 an immediate disqualification from further consideration in this project.

#### **5. Reserves the Right**

The City anticipates awarding one or more contract(s) for services as a result of this Request for Proposal. The City, however, reserves the right to reject any and all submitted proposals and to limit the scope of the award.

The City reserves the right to request additional information from Firms as deemed necessary. Notice is also given of the possibility that an award may be made without discussion or after limited negotiations. It is, therefore, important that all proposals are complete in all respects.

The City reserves the right to negotiate modifications to proposals that it deems acceptable, reject any and all proposals in its sole discretion, and to waive minor irregularities in the procedures.

#### **6. Contract Cancellation**

The resulting contract may be canceled at any time by the City of Cape Coral for any reason, upon a thirty (30) day written cancellation notice.

#### **7. Ownership of Preliminary and Final Records**

All preliminary and final documentation and records shall become and remain the sole property of the City. The awarded firm shall maintain original documents thereof for its records and for its future professional endeavors and provide reproducible copies to the City. In the event of termination of the agreement the proposing firm shall cease work and deliver to the City all documents (including reports and all other data and material prepared or obtained by the awarded firm in connection with the project), including all documents bearing the professional seal of the firm. The City shall, upon delivery of the aforesaid documents, pay the firm and the firm shall accept as full payment for its services thereunder, a sum of money equal to the percentage of the work done by the firm and accepted as satisfactory to the City.

## 8. Electronic Media

The City may require that machine readable information and data, including computer assisted drafting designs (AutoCAD files) be provided by the proposing firm. The proposing firm shall not be liable for claims or losses arising out of, or connected with, modification by the City, or anyone authorized by the City, decline of accuracy or readability of data due to storage or obsolescence of equipment or software, any use by the City or anyone authorized by the City, of such data for additions to projects except as authorized in writing by the proposing firm.

## 9. Indemnification

To the extent permitted by law (F.S. 768.28) the proposing firm 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 proposing firm and any persons employed or utilized by proposing firm in the performance of this contract.

## 10. Equal Employment

In accordance with Federal, State and Local law, the proposing firm will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or handicap. The proposing firm will be required to comply with all aspects of the Americans with disabilities Act (ADA) during the performance of this contract.

## 11. Insurance

11.1 Without limiting its liability, the proposing firm shall be required to procure and maintain at its own expense during the life of the Contract, insurance of the types and in the minimum amounts stated below as will protect the proposing firm, from claims which may arise out of or result from the proposing firm execution of the project, whether such execution by himself or by any sub-consultant, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Any questions regarding the insurance requirements should be directed to the Risk Manager, (239) 574- 0529.

11.1.1 **Worker's Compensation Insurance** covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws. The policy must include Employer's Liability with a minimum limit of \$1,000,000.00 for each accident.

11.1.2 **Comprehensive General Liability** coverage shall have minimum limits of \$1,000,000.00 per occurrence, combined single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and/or Operations; Independent Contractors and Products and/or Completed Operations; Broad Form Property Damage; and Contractual Liability Endorsement.

11.1.4 **Business Vehicular Liability** coverage shall have minimum limits of \$1,000,000.00 per occurrence. Combined Single Limit for Bodily Injury Liability, and Property Damage Liability: This shall include Owned Vehicles, Hired and non-Owned Vehicles and Employees Non-Ownership.

11.1.5 **Professional Liability** (errors and omissions) coverage shall have minimum limits of \$1,000,000.00 per occurrence with respect to negligent acts, errors or omissions in connection with the professional services to be provided and any deductible not to exceed \$50,000.00 each claim.

- 11.2 **The City shall be listed as an Additional Insured on the General Liability policy.** In the event the insurance coverage expires prior to completion of the project, a renewal certificate shall be issued 30 days prior to said expiration date. The policy shall provide a 30-day notification clause in the event of cancellation or modification to the policy.
- 11.3 Unless otherwise specified, it shall be the responsibility of the proposing firm to insure that all sub-consultants comply with the same insurance requirements herein. All proposer certificates of insurance must be on file with and approved by the City before the commencement of work activities. Waivers of subrogation shall also be provided upon approval of the applicable insurers.
- 11.4 The proposing firm shall “flow down” the requirements of this provision to all sub-consultants.
- 11.5 The limits of insurance required above must be retained throughout the term of the contract. The proposing firm must notify the City immediately if any of the required coverage limits are reduced due to claim activity or for any other reason.
- 11.6 Policies should be written on an “occurrence” basis.

## **12. Opening of Proposals**

Proposals will be opened and evaluated after the final date and time set for receipt. The City may request proposing firm(s) considered for award to make an oral presentation to a selection board or to submit additional data.

## **13. Rejection of Proposals**

The City reserves the right to reject any and all proposals. It also reserves the right to waive any formalities in connection with proposals.

## **14. Acceptance of Proposal**

Within ninety (90) days after the final submission date for proposals, the City will act upon them. The successful Firm will be requested to enter into negotiations to produce a contract for the project. The City reserves the right to terminate negotiations in the event it deems progress toward a contract to be insufficient.

## **15. Applicable Law**

All applicable laws and regulations of the State of Florida and ordinances and regulations of the City of Cape Coral will apply to any resulting agreement and venue for any action arising out of any agreement shall lie solely in Lee County.

NOTE: The filing of “NOTICE TO OWNER” statements are not required for Public Projects.

## **16. Qualification of Proposing Firm**

Proposals will be considered from firms normally engaged in providing the service requested. The proposing Firm must demonstrate adequate experience, organization, facilities, equipment and personnel to ensure prompt and efficient service to the City of Cape Coral. 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.



The City of Cape Coral will determine whether the evidence of ability to perform is satisfactory and reserves the right to reject proposals where evidence submitted, or investigation and evaluation, indicates inability of a firm to perform.

**17. Designated Contact**

The awarded firm(s) shall appoint a person to act as a primary contact with the City of Cape Coral. This person or back-up shall be readily available during normal work hours by phone or in person, and shall be knowledgeable of the terms of the contract.

**18. Deviations from Specifications**

The awarded Firm shall clearly indicate, as applicable, all areas in which the services proposed do not fully comply with the requirements of this Request for Proposal. The decision as to whether an item fully complies with the stated requirements rests solely with the City of Cape Coral.

**19. Precedence of Conditions**

The proposing Firm, by virtue of submitting a proposal, agrees that City General Provisions and Terms and Conditions herein will take precedence over any terms and conditions submitted with the proposal, either appearing separately or included.

**20. Proposal Withdrawal**

After proposals are opened, corrections or modifications to proposals are not permitted, but the proposing firm may be permitted to withdraw an erroneous proposal prior to the proposal award by City Council, if the following is established:

1. That the proposing firm acted in good faith in submitting the proposal;
2. That in preparing the proposal there was an error of such magnitude that enforcement of the proposal would work severe hardship upon the firm;
3. That the error was not the result of gross negligence or willful inattention on the part of the firm;
4. That the error was discovered and communicated to the City within twenty-four (24) hours of proposal opening, along with a request for permission to withdraw the proposal; or
5. The firm submits documentation and an explanation of how the proposal error was made.

**21. Public Entity Crimes**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on a contract to provide any services to a public entity may not submit proposals on leases of real property to a public entity and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**22. Contingent Fees Prohibited**

The proposing firm must warrant that it has not employed or retained a company or person, other than a bona fide employee, contractor or subcontractor, working in its employ, to solicit or secure a contract with the CITY and that it has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee, contractor or sub-consultant, working in its employ any fee,

commission, percentage, gift or other consideration contingent upon or resulting from the award or making of a contract with the City.

**23. Project Records**

All records in any manner whatsoever to the assigned project, or any designated portion thereof, which are in the possession of the proposing firm or proposing firm's sub-consultants, shall be made available, upon request by the CITY, for inspection and copying upon written request of the CITY. Additionally, said records shall be made available, upon request by the CITY to any state, federal or other regulatory authorities and any such authority may review. Said records include, but are not limited to, all submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings which document the project. Said records expressly include those documents reflecting the time expended by the proposing firm and its personnel in performing the obligations of this Contract and the records of expenses incurred by the proposing firm in its performance under said contract.

The proposing firm shall maintain and protect those records for no less than five (5) years after final completion of the Contract, or for any longer period of time as may be required by applicable law.

**24. Auditable Records**

The proposing firm 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 reserves the right to determine record-keeping method in the event of non-conformity. These records shall be maintained for five (5) years after final payment has been made and shall be readily available to City personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.

**25. Vendor Registration**

In accordance with Article VII Division 1 Section 2-148 of the City of Cape Coral Ordinance, passed 7-23-07, prior to proposal award, proposing firm must complete the vendor registration process. Application forms may be obtained by contacting the Procurement Division at (239) 574-0831 or on the City of Cape Coral website at [www.capecoral.net](http://www.capecoral.net). Once in the website, you must scroll to "Quick Links" then "Request for Bids". This will take you to the "Procurement" Page from where you may access the Vendor Registration Page and print out the Vendor Registration Form.

**26. Unauthorized Aliens**

The employment of unauthorized aliens by any Contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of any contract resulting from this RFP. This applies to any sub-contractors used by the Contractor as well.

**27. Waiver**

Failure of the City to take any action with respect to any breach of any term, covenant, provision or condition contained in the agreement, or any instance of default thereunder by the awarded firm should not be deemed to be a waiver of any default or breach by the City.

## 28. Attorney's Fees

Should it become necessary for the City to bring any action against the awarded firm to enforce any of the covenants, provisions, terms or conditions of the agreement, the awarded firm will pay all costs attendant thereto, including reasonable attorney's fees to the attorney representing the City, and said obligation shall apply to declaratory relief, if necessary, to interpret any of the items thereof.

## PART III: PROPOSAL SUBMISSION REQUIREMENTS

It is imperative that the information submitted is precise, clear, and complete. All submittals must be presented in an 8 1/2" x 11" bound document, tabbed for the following format (submittals not conforming to this format may be disqualified from further consideration).

Proposals should include the requirements listed below. Proposals submitted without meeting ALL the requirements may be considered non-responsive.

### 1. Proposal Format

Sections and subsections should correspond in sequence with those identified below. All additional information that the Consultant believes is unique to a section and does not fit the established outline may be included at the end of each section under a subheading "Additional Information."

The following information shall be provided in the order detailed: **failure to provide any one part of this section without appropriate explanation may result in disqualification of your proposal.**

- a. **Title Page** – List the RFP subject, the name of the firm, address, telephone number, email address, contact person and date.
- b. **Table of contents** – Include a clear identification of the material included in the proposal by page number.
- c. **Letter of Interest** – Limit two (2) pages. Make a positive commitment to perform the required work within a specified timeline. Give the name(s) of the person(s) who will be authorized to make representation for your firm, their title, phone number and email address. Specifically address the firm's green and sustainable strategies during the design and construction of a project
- d. Provide a brief discussion of the firm's understanding and approach to the work described herein.
- e. Provide five **(5) projects** (completed since 2000), including any unique design of an educational facility, your firm performed that involved design/build services similar to those detailed herein. Provide the schedule, cost and scope of work. Provide references for these projects.
- f. Provide **resumes** of staff that will be performing work. Including experience with the design standards of the Florida Green Building Coalition (FGBC).
- g. Standard Form 330 or form A305.
- h. **Proposer's Certification**, acknowledgement of receipt of addenda.
- i. **Sworn Statement Under Section 287.133(3)(A), Florida Statutes, On Public Entity Crimes**

**PART IV: EVALUATION AND SELECTION OF CONSULTANT**

Evaluation of proposals shall be in accordance with the requirements of Florida Statutes 287.055, Section (4)(b), which states:

The agency shall select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is qualified, the agency shall consider such factors as the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. The agency may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations under subsection (5).

The evaluation and selection of a Consultant will be a multi-step process. The steps that comprise the selection process are summarized below.

1. Qualifications shall be reviewed by the City's Selection Advisory Committee (SAC). The SAC determines and prepares a "shortlist" of the highest ranked firms. The short-listing of firms shall be based on the SAC's ability to differentiate qualifications applicable to the scope and nature of the services required by this request.

Determination shall be based on but not necessarily limited to:

- A. The proposer's demonstrated understanding of the City's requirements and plans for meeting them;
  - B. The professional qualifications and related experience of the persons assigned to this contract;
  - C. The prior experience and references of the proposer;
  - D. The size and organizational structure of the proposer.
2. The SAC may request that each short-listed firm make a presentation and be available for an interview. All expenses, including travel expenses for interviews, incurred in the preparation of the proposal shall be borne by the proposer. After presentations and interviews have been completed, the consultants shall be ranked by the Selection Advisory Committee.
  3. The SAC will present the ranking to City Council for approval.
  4. The City will negotiate a Contract with the top ranked firm. Should the City be unable to negotiate a satisfactory contract which is competitive, reasonable, and adequate, negotiations with that firm shall be terminated and the City shall proceed to negotiate a contract with the number two ranked firm, and so on.
  5. The negotiated contract is presented to City Council for final approval.

## PROTEST PROCEDURES

1. **Right to Protest.** Any person or firm who is affected adversely by the City's decision or intended decision may protest to the City Council.

2. **Time Limits and Form of Protest.** A protest with respect to an Invitation for Bid or Request for Proposal shall be submitted in writing to the Procurement Division Manager prior to the opening of bids or the closing date of proposals. A protest of a bid shall be filed with the City Procurement Division Manager within five (5) business days (excluding Saturdays, Sundays, and Legal Holidays) after the date of mailing of the notice of intent to award the contract. Only those persons or firms who have been interviewed and ranked shall be permitted to file a protest.

A formal written protest shall be filed within ten (10) days after the filing of the initial written notice of protest. The formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a notice of protest or failure to file a formal written protest within the time limits prescribed herein shall constitute a waiver of the right to protest. Upon the filing of a formal written protest the contractor or vendor shall post a bond, payable to the City of Cape Coral, in an amount equal to five percent of the total bid or estimated contract amount, or five thousand dollars (\$5,000.00), whichever is less. Said bond shall be conditioned upon the payment of all costs which may be adjudged against the protesting contractor or vendor in the event the protest is resolved adversely to the protester. An Irrevocable Letter of Credit or other form of approved security, payable to the City, will be accepted. Failure to submit a bond simultaneously with the formal written protest shall invalidate the protest and the City may proceed to award the contract as if the protest had never been filed.

3. **Hearing.** If the subject of a protest is not resolved by mutual agreement within seven (7) days after receipt of a formal written protest, the matter may, at the option of the City Council, be referred to a hearing officer who shall conduct a hearing within 15 days of receipt of the formal written protest. The hearing officer shall render a recommended order within 30 days after the hearing. The recommended order shall be scheduled on the next Council agenda for final action. If Council so elects; the protest may be heard directly by the City Council.

4. **Stay of Action.** Upon receipt of a formal written protest which has been timely filed, the City shall stop the bid solicitation process or the contract award process until the subject of the protest is resolved either informally or by formal City Council action, unless the City manager sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

5. **Decision; Entitlement to Costs.** If a protest is sustained and it is determined that the protesting bidder or Architect should have been awarded the contract under the solicitation but is not, then the protesting bidder or Architect shall be entitled to recover from the City the reasonable costs incurred in connection with preparing its bid, but shall not be entitled to recover lost profits or attorneys fees. If a protest is denied, the bidder or Architect shall have ten (10) days to file for a writ of certiorari in Circuit Court in Lee County, Florida.

### PROPOSER'S CERTIFICATION

I have carefully **examined** this Request for Proposal CS10-XX/PB, which includes scope, requirements for submission, general information and the evaluation and award process.

I acknowledge receipt of the following **addenda**, and the cost, if any, of such revisions has been included in the price of the proposal:

Addendum # _____	Date: _____	Addendum # _____	Date: _____
Addendum # _____	Date: _____	Addendum # _____	Date: _____
Addendum # _____	Date: _____	Addendum # _____	Date: _____

I hereby propose to provide the services requested in this proposal. I agree that the proposal will remain **firm** for a period of up to one hundred twenty (120) days from the date qualifications are opened in order to allow the City adequate time to evaluate the qualifications.

I agree that the City terms and conditions herein shall take precedence over any conflicting terms and conditions submitted with the proposal and **agree to abide** by all conditions of this proposal.

I certify that all information contained in the proposal is truthful to the best of my knowledge and belief. I further certify that I am duly **authorized to submit** this proposal on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I further certify, under oath, that this proposal or bid is genuine and **not collusive** or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, or to fix overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the City of Cape Coral of any person interested in the proposed contract, **or for an employee of the City** of Cape Coral; and that all statements in said proposal or bid are true. The undersigned executed this Proposer's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

\_\_\_\_\_  
NAME OF BUSINESS

\_\_\_\_\_  
MAILING ADDRESS

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
CITY, STATE & ZIP CODE

\_\_\_\_\_  
NAME, TITLE, TYPED

\_\_\_\_\_  
TELEPHONE NUMBER/FAX NUMBER

\_\_\_\_\_  
E-MAIL ADDRESS

State of \_\_\_\_\_

County of \_\_\_\_\_

This foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by \_\_\_\_\_, who is personally known to me or produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary

## SWORN STATEMENT UNDER SECTION 287.133(3)(a), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

**This form must be signed and sworn to in the presence of a notary public or other officer authorized to administer oaths.**

1. This sworn statement is submitted to \_\_\_\_\_  
(Print name of the public entity)

by \_\_\_\_\_  
(Print individual's name and title)

for \_\_\_\_\_  
(Print name of entity submitting sworn statement)

whose business address is \_\_\_\_\_

(If applicable) its Federal Employer Identification Number (**FEIN**) is \_\_\_\_\_

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: On the attached sheet.) Required as per IRS Form W-9. Social Security Number required for one or more of the following purposes: identification and verification; credit worthiness; billing and payment; data collection, reconciliation, tracking, benefit processing and tax reporting. Social Security Numbers are also used as a unique numeric identifier and may be used for such purposes.

2. I understand that a "public entity crime" as **defined** in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including but not limited to, and bid or contract for goods or services to be provided to any public entity or agency or political subdivision or any other state or of the United States, and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "**conviction**" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that "**affiliate**" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
  1. A predecessor or successor of a person convicted of a public entity crime, or;
  2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those offices, directors, executives, partners, shareholders, employees, members and agents who are active in the management of the affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not fair market value under an arm's length agreement, shall be a facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the proceeding 36 months shall be considered an affiliate.
5. I understand that a "**person**" as defined in Paragraph 287.133(1)(c), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of the entity.

**SWORN STATEMENT UNDER SECTION 287.133(3)(a),  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES (page 2)**

6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting those sworn statements. *(Please indicate which statement applies.)*

\_\_\_\_\_ Neither the entity submitted this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity nor affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity have been charged with and **convicted** of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been subsequent **proceeding** before a Hearing Officer of the State of Florida, Division of Administrative Hearing and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

**I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OR ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Date)*

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME, the undersigned authority, \_\_\_\_\_  
*(Name of individual signing)*

who, after first being sworn by me, affixed his/her signature in the space provided above on this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
(Notary Public)

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_