***Note to developer of the RFP: An electronic copy of the RFP, with changes clearly identified, shall be submitted to the State Construction Office for review and approval prior to advertisement of the project. All Build-Finance RFP’s shall be reviewed and approved by the State Construction Office, Comptroller’s Office, Financial Management Office and Contracts Administration Office. In addition, any major revisions to the RFP, innovative concepts used or RFP’s for unique projects shall be reviewed by Central Office Legal. Developmental Specifications DEV003BF and DEV005BF are to be used (after obtaining approval of the State Specifications Office) in conjunction with this RFP. Developmental Specifications DEV003BF and DEV005BF may be accessed at the following link:*** [***http://www.dot.state.fl.us/specificationsoffice/OtherFDOTLinks/Developmental/Default.shtm***](http://www.dot.state.fl.us/specificationsoffice/OtherFDOTLinks/Developmental/Default.shtm)

***NOTE: When submitting a RFP for review, edits to this boilerplate document shall be clearly identifiable. Deletions shall be stricken through (~~delete~~) and inserted language shall be underlined in color (underline). Submitted RFPs with the changes made as indicated above will help shorten the review time for everyone involved.***



Florida Department of Transportation

**District XX**

BUILD-FINANCE

REQUEST FOR PROPOSALS

For

<PROJECT DESCRIPTION, COUNTY>

**Financial Project Number(s):**

**Federal Aid Project Numbers(s):**

Contract Number:

|  |
| --- |
| Mail or Deliver Proposals To: |
| Juanita MooreContracts Administration OfficeFlorida Department of Transportation605 Suwannee Street, MS – 55Tallahassee, FL 32399Phone: 850-414-4000 Fax: 850-414-4947Email: contracts.admin@dot.state.fl.us |

**Table of Contents**

**I.** Introduction **1**

**II. Schedule of Events 1**

**III. Threshold Requirements 2**

 **A. Technical Qualifications 2**

 **B. Joint Venture Firm 2**

 **C. Financial Qualifications and Project Financial Plan (“Financial Proposal”) 2**

 **D. Mandatory Pre-Bid Meeting 5**

**IV. Build-Finance Contract Method of Compensation and Funding 5**

 **A. Subarticle 9-5.1, Partial Payment 5**

 **B. Article 9-8, Acceptance and Final Payment 9**

 **C. Article 9-10, Offsetting Final Payments 10**

**V. Disadvantaged Business Enterprise (DBE) Availability Goal Percentage 10**

 **A. DBE Availability Goal Percentage 10**

 **B. Anticipated DBE Participation Statement 11**

1. Introduction

The Florida Department of Transportation (Department) has issued this Request for Proposals (RFP) to solicit Proposals consisting of (a) competitive Bid Prices and (b) Financial Qualifications and Project Financial Plans from interested Proposers (Contractors) for the construction of

The Department has prepared and assembled a complete signed and sealed set of project plans and specifications for this project that include estimated quantities. The Standard Specifications for Road and Bridge Construction dated 2010, as amended by contract documents, govern.

A unique aspect of this project is the timetable for the availability of funds the Department has to complete this project. In order to develop a Project Financial Plan, the Contractor must consider the Department’s availability of funds as noted in Section IV of this RFP.

Each Contractor is required to submit certification of both its Financial Proposal as defined in Section III.C. and its Bid Price for the project.

**Description of Work**

1. Schedule of Events

The schedule of the remaining events that will take place in the contract award process is shown below. The Department reserves the right to make changes or alterations to the schedule as the Department determines are in the best interests of the public. Contractors will be notified sufficiently in advance of any changes or alterations in the schedule. Unless otherwise notified in writing by the Department, the dates indicated below for submission of items or for other actions on the part of a Contractor shall constitute absolute deadlines for those activities and failure to fully comply by the time stated shall cause a Contractor to be disqualified.

|  |  |
| --- | --- |
| **Date** | **Event** |
|  | Contractor Information Forum  |
|  | Advertisement Date |
|  | Mandatory Pre-Bid Meeting XX:XX am/pm local time at District X Headquarters, (Insert Address). |
|  | Deadline for submission of questions XX:XX am/pm local time. The Department will review timely submitted questions and determine if a written response is warranted and provide such responses to all Proposers in due course. Responses will be posted at Department’s bid question website at: <http://www2.dot.state.fl.us/construction/bidquestionmain.asp>  |
|  | Financial Proposal and Bid Price Proposal are both due by XX:XX am/pm local time. Note that **the Financial Proposal must be timely submitted to Juanita Moore,** Contracts Administration Office, Florida Department of Transportation, 605 Suwannee Street, MS 55, Tallahassee, FL 32399. **However, the Bid Price Proposal must be timely submitted to the Department using the Expedite Proposal** file by using the internet (Bid Express). |
|  | Final Letter of Commitment or Credit/Statement of No Change or updated firm commitment letter due in the District Office by XX:XX am/pm local time (no later than 48 hours before the posting of the Department’s intended decision to award). |
|  | Anticipated Posting Date |
|  | Anticipated Award Date |
|  | Anticipated Execution Date |

# Threshold Requirements

1. **Technical Qualifications**

Proposers are required to be pre-qualified in all work types required for the Project. All qualification requirements of Rule 14-22, F.A.C. must be satisfied.

1. **Joint Venture Firm**

If a Contractor is a joint venture, the parties to the joint venture must execute a Declaration of Joint Venture and Power of Attorney Form (Form 375-020-18) and submit the form to the Department prior to receipt of the bidding document. The form is available at: <http://www.dot.state.fl.us/cc-admin/forms/37502018.pdf>. The proposal shall clearly identify who will be responsible for the individual portions of construction and finance of the work.

1. **Financial Qualifications and Project Financial Plan (Financial Proposal)**
2. On the due date for Price Proposals and Financial Proposals as shown in the Schedule of Events in Section II of this RFP, each Contractor will deliver to the Department five (5) hard copies, and five (5) digital copies of its Financial Proposal, including the Project Financial Plan in Microsoft Excel. The Financial Proposal is required so the Department can be assured that the Contractor has sufficient financial resources to construct the Project within the allotted Contract Time, based on the Cash Availability Schedule set forth in the “Build-Finance Contract Method of Compensation and Funding” in Section IV of this RFP.
3. The minimum required documents the Contractor must submit to the Department as part of the Contractor’s Financial Proposal shall include, but may not be limited to, the following:

1. Project Financial Plan, including at a minimum:
2. A narrative describing all financial elements to finance the Project as proposed.
3. Provision for total projected costs that equal the Price Proposal amount.
4. Project Sources and Uses of Funds. A statement sufficient to serve as a cash flow needs analysis for the Project.
5. Financial Statements of the Contractor or any partners of the joint venture that make up the Contractor that will be responsible for the repayment of financial support related to the Project or directly provide financial support related to the Project. Lenders that are not partners of the joint venture that make up the Contractor are not required to provide financial statements. Financial Statements shall include:
	1. For the most recent two (2) fiscal years in which audited Financial Statements are available, audited Financial Statements prepared in accordance with U.S. Generally Accepted Accounting Principles. Required Financial Statements shall include:
		* 1. Opinion Letter (Auditor’s Report);
			2. Balance Sheet;
			3. Income Statement;
			4. Statement of Retained Earnings or Changes in Stockholders Equity;
			5. Statement of Cash Flows; and
			6. Notes to Financial Statements (Footnotes)
	2. If audited Financial Statements are unavailable for the most recently completed fiscal year, unaudited Financial Statements, prepared in accordance with U.S. Generally Accepted Accounting Principles shall be provided for such fiscal year. An affirmative statement shall be provided indicating that the Financial Statements for the most recently completed fiscal year are still being audited. These unaudited Financial Statements shall be certified as true, correct and complete by the Chief Financial Officer. Requirements for unaudited Financial Statements are the same as for audited Financial Statements, except an Opinion Letter (Auditor’s Report) is not required.
	3. If the fiscal year end of the most current annual audited or unaudited Financial Statements is more than four (4) months prior to the date of the submission of the Financial Proposal, then Interim Financial Statements through the most recently completed quarter shall be submitted. Interim Financial Statements do not have to be submitted for a quarter if the completion of that quarter is within thirty (30) days prior to the submission of the Financial Proposal. Interim Financial Statements shall be prepared in accordance with U.S. Generally Accepted Accounting Principles. Interim Financial Statements may be audited or unaudited. Unaudited Interim Financial Statements shall be certified as true, correct and complete by the Chief Financial Officer. Requirements for unaudited Financial Statements are the same as for audited Financial Statements except an Opinion Letter (Auditor’s Report) is not required.
	4. If Financial Statements are prepared in accordance with principles other than U.S. Generally Accepted Accounting Principles, a letter from a Certified Public Accountant must be included addressing in detail the areas of the Financial Statements that would be impacted by a conversion to U.S. Generally Accepted Accounting Principles and the financial impact thereof.
6. Preliminary Letter(s) of Commitment and/or a Demonstration of Line(s) of Credit shall be submitted, if the Financial Proposal requires debt financing as a source of funds or guarantee.
	1. Each Letter(s) of Commitment from a Lender submitted with the Financial Proposal shall contain, at a minimum:
7. An interest in providing financial support for the Project;
8. Indication that the Lender has reviewed the financial elements associated with the Project;
9. The amount the Lender intends to lend; and
10. Any conditions the Letter of Commitment is subject to.
	1. Demonstration of Line(s) of Credit from Lenders submitted with the Financial Proposal shall contain, at a minimum:
11. An interest in providing financial support for the Project;
12. Indication that the Lender has reviewed the financial elements associated with the Project;
13. The amount of the Line of Credit;
14. The outstanding balance on the Line of Credit, if any;
15. Any conditions the Line of Credit is subject to that may impede the Contractor’s ability to use the Line of Credit;
16. Whether the Line of Credit will only be used for the Project or if the Line of Credit is used to finance working capital; and
17. The expiration of the Line of Credit and any renewal clauses.

The Letter(s) of Commitment and/or Demonstration of Line(s) of Credit should meet the required amount identified in the Project Financial Plan.

1. Attestation by the Chief Financial Officer as to accuracy and completeness of all financial information provided.
2. Ownership and Organizational structure of all entities involved in the Project, including financial relationships with other entities included or involved in the delivery of this Project.
3. An affidavit from a bonding company that certifies the Contractor has the financial means and capacity to bond 100% payment and performance for the face amount of $ XX,XXX,XXX.XX for the Project.
4. Any and all financial warranties, bonds, sureties, certifications and other commitments for the financial security of the Project, as may be appropriate.
5. The Department’s review of the Financial Proposal shall neither create, modify nor activate any legal rights or obligations of the Department. The Department’s evaluation of a Financial Proposal is solely for the benefit of the Department and not for the benefit of the Contractor, any entity related thereto, the public or any member thereof, nor create any third party rights. A claim for damages may not be maintained against the Department based on or arising out of the Department’s review of the Financial Proposal. The Department’s evaluation of each Financial Proposal will be on a pass/fail basis. Analysis of the Contractor’s Financial Proposal by the Department will include, but not be limited to, the following:
6. Review of the Contractor’s Project Financial Plan to determine if the Plan includes all financial elements to finance the Project as proposed;
7. Review and determination if the Contractor’s Project Financial Plan demonstrates the Contractor’s ability to meet the cash flow needs of the Project consistent with the Department’s Cash Availability Schedule;
8. Review of the Financial Statements and Interim Financial Statements;
9. Review of the Lender Letter(s) of Commitment or Demonstration of Line(s) of Credit to determine if it meets the financing needs established in the Project Financial Plan;
10. Review of the attestation by the Contractor’s Chief Financial Officer as to accuracy and completeness of all financial information provided;
11. Review of the financial relationships and responsibilities of Ownership and Organizational Structure of all of the entities involved;
12. Review of bonding company certification of Contractor’s capacity for $XX,XXX,XXX.XX payment and performance bond; and
13. Review of any and all financial warranties, bonds, sureties, certifications and other commitments for the financial security of the Project, as may be appropriate.

The Department reserves the right to request any additional information or pursue other actions required to meet its obligation to complete the financial due diligence.

1. No later than fourteen (14) days following the Posting Date, the Contractor shall submit:
2. Final Letter(s )of Commitment, each of which shall contain at a minimum:
	1. A statement from the Lender stating that the Lender is providing financial support for the Project;
	2. The amount the Lender intends to lend; and
	3. Any conditions the Final Letter of Commitment is subject to.
3. Final Demonstration of Line(s) of Credit, which shall contain at a minimum:
	1. The amount of the Line of Credit;
	2. The outstanding balance on the Line of Credit, if any;
	3. Any conditions the Line of Credit is subject to that may impede the ability to use the Line of Credit;
	4. Whether the Line of Credit will only be used for the Project or if the Line of Credit is used to finance working capital; and
	5. The expiration of the Line of Credit and any renewal clauses.
4. Statement indicating there has been no changes with the letters submitted with the Financial Proposal.

## Mandatory Pre-Bid Meeting

There is a Mandatory Pre-Bid Meeting (see “Schedule of Events,” in Section II of this RFP) and any proposal submitted by a Contractor that failed to attend the Mandatory Pre-Bid Meeting will be deemed non-responsive. The purpose of this Mandatory Pre-Bid Meeting is to explain the procurement process, the method of compensation, discuss the proposed project, and answer any relevant questions a Contractor may have on this solicitation. Any oral representations or discussions that take place at this Mandatory Pre-Bid Meeting will not be binding on the Department. The Federal Highway Administration (FHWA) will be invited to participate on this Federal Aid Oversight Project.

# Build-Finance Contract Method of Compensation

The Department will enter into a unit price contract with the successful Contractor. The terms and conditions of the Contract will be based on the unit prices and fixed time bid, with actual payment by the Department for work performed to be made over time and based on the applicable Cash Availability Schedule.

**Special Provisions as to Method of Compensation.**

 **A. Subarticle 9-5.1, Partial Payments, General, of the XXXX Standard Specifications for Road and Bridge Construction is deleted and the following is substituted:**

9-5.1 General: The Contractor may invoice the Department as frequently as monthly for actual work completed and the delivery of certain materials as authorized by this Contract and per the monthly progress estimate, but only up to the amount established and remaining available for the then-current quarter in the applicable Cash Availability Schedule (Fiscal Year is July-June). The monthly progress estimates cut-off date will be the first Sunday of the month.

Partial payments will be made on monthly invoices submitted by the Contractor and accepted by the Engineer, subject to the Cash Availability Schedules. The monthly invoice period shall coincide with the Department’s monthly estimate period. The invoice amount shall be a summation of the contract pay item quantities performed over the invoice period multiplied by the corresponding contract pay item unit prices; up to, but not exceeding, the cash available per the appropriate Cash Availability Schedule. The invoices shall be by the appropriate Cash Availability Schedule and based on the lesser of the amount of work the Contractor completes per the monthly estimate and the applicable cash available during the month. The cash available for partial payments will be contingent upon annual legislative appropriation and in accordance with the Cash Availability Schedules shown below.

The cash available for partial payments shown in the Cash Availability Schedules is subject to the availability of funds appropriated annually by the State Legislature and approved by the Governor.  The Department shall include partial payments for this project in its tentative five year work program and legislative budget request prepared annually in accordance with Florida Statutes.   If the total cash available for partial payments in the Cash Availability Schedules programmed and appropriated in any one fiscal year is not fully paid out during that fiscal year the Department shall include the fund balance in its certified forward request to the State Legislature in order to maintain the availability of those funds. The Department shall ensure that funds for partial payments shown in the Cash Availability Schedules are prioritized ahead of funding for new capacity projects in developing and updating its tentative work program, and that no more than 15% of the total amount of federal and state funds in any fiscal year are obligated for projects administered under Section 334.30, Florida Statutes.

The Contractor shall have the right to terminate the Contract in the event the Department fails to make a scheduled and due partial payment due solely to the lack of an annual appropriation to provide the funds shown in the Cash Availability Schedules.

The Department will base the amount of such payments on the total value of the work that the Contractor has performed to the date of the invoice, based on the quantities completed and the Contract prices, less payments previously made and less any retainage withheld, limited to the cash available per the applicable Cash Availability Schedule. The Cash Availability Tables exclude funding for any payments that may be payable in accordance with the provisions of Subarticle 8-13.1, Incentive-Disincentive for A+B, as such payments earned will be processed for payment consistent with the normal monthly and final estimate process. The Cash Availability Schedules also exclude funding for any payments that may be payable in accordance with the provisions of Subarticle(s) 9-2.1.1 Fuels, 9-2.1.2 Bituminous Material, and 9-2.2 Non-Duplication of Payment of the XXXX Standard Specifications for Road and Bridge Construction, as such payments will be processed consistent with the normal monthly and final estimate process. Any reduction in payment due to insufficient cash available shall be included on the next monthly invoice.

The Cash Availability Schedules are based on the funding as originally programmed. If the bid is lower than the total amount of funds available for payment, the appropriate schedule will be modified with the last available funds being reduced.

|  |
| --- |
| **Cash Availability Schedule: Project Number: XXXXXX-X-XX-XX** |
| Fiscal Year (July 1 – June 30) | (Insert Month) 1 | (Insert Month) 1 | (Insert Month) 1 | (Insert Month) 1 | Total |
| 2011/2012 |  |  |  |  |  |
| 2012/2013 |  |  |  |  |  |
| 2013/2014 |  |  |  |  |  |
| 2014/2015 |  |  |  |  |  |
| 2015/2016 |  |  |  |  |  |
| 2016/2017 |  |  |  |  |  |
| 2017/2018 |  |  |  |  |  |
| 2018/2019 |  |  |  |  |  |
| 2019/2020 |  |  |  |  |  |
| 2020/2021 |  |  |  |  |  |
| **Total** |  |  |  |  |  |
|  |  |  |  |  |  |
| **Cash Availability Schedule: Project Number: XXXXXX-X-XX-XX** |
| Fiscal Year (July 1 – June 30) | (Insert Month) 1 | (Insert Month) 1 | (Insert Month) 1 | (Insert Month) 1 | Total |
| 2011/2012 |  |  |  |  |  |
| 2012/2013 |  |  |  |  |  |
| 2013/2014 |  |  |  |  |  |
| 2014/2015 |  |  |  |  |  |
| 2015/2016 |  |  |  |  |  |
| 2016/2017 |  |  |  |  |  |
| 2017/2018 |  |  |  |  |  |
| 2018/2019 |  |  |  |  |  |
| 2019/2020 |  |  |  |  |  |
| 2020/2021 |  |  |  |  |  |
| **Total** |  |  |  |  |  |
| **Grand Total**  |  |  |  | **$XXX,XXX,XXX** |

Reimbursement shall be made to the Contractor by warrant mailed to the Project Specific Escrow Account using a unique vendor number sequence. The Contractor shall complete form number 700-011-16 “Request for Project Specific Escrow Account And Unique Vendor Number Sequence” and submit it to the Department Comptroller at 605 Suwannee Street, MS 24, Tallahassee, FL 32399-0424 to set up the unique vendor number sequence. Note: The unique vendor sequence number must be established through the Department’s Comptroller, in coordination with MyFloridaMarketplace/Department of Financial Services, and the Contractor should not contact MyFloridaMarketplace/Department of Financial Services to do so. This Project Specific Escrow Account payment process shall be irrevocable unless a mutual written request to the Department (using Form Number 700-011-17B, “Request for Direct Payment to Firm’s Primary Vendor”) is made by the Contractor, its Surety and its Lender, and thereafter approved by the Department.

Retainage will not be withheld until the percent of allowable Contract time used exceeds 75%. From that time forward, the Department will withhold retainage of 10% of the amount due on the current estimate as retainage when the percent of allowable Contract time used exceeds the percent of Contract amount earned by more than 15%. Contract amount is defined as the original Contract amount adjusted by approved supplemental agreements. Contract time is defined as the original Contract time adjusted by approved Contract time extensions.

Retainage will be determined for each FPID (job) on multiple job Contracts. The Department will not accept Securities, Certificates of Deposit or Letters of Credit as a replacement for retainage. Amounts withheld will be paid after final acceptance and in accordance with the Cash Availability Schedule.

Invoicing the Department:

1. Each month, on a predetermined schedule of monthly cut-off dates, the Department shall determine the Contractor’s monthly progress and certify the value of Contract work that the Contractor has completed.

The amount established by each approved and certified monthly progress estimate of the Department shall not be subject to set-off, deduction, reduction, or withholding for any reason by the Department, including but not limited to defective work, liquidated damages, default, termination, latent defects, or warranty claims. Rather, any set-off, deduction, reduction or withholding of payment shall be applied only to subsequent monthly progress estimates or the final estimate, as such may not yet be certified by the Department. The amount established by the approved and certified final estimate of the Department shall not be subject to set-off, deduction, reduction, or withholding for any reason by the Department, including but not limited to defective work, liquidated damages, default, termination, latent defects, or warranty claims.

1. Nothing contained in this provision constitutes a waiver or release of the Contractor’s responsibility to properly perform all of its obligations under this Contract.

Extra Work Costs and Delay Costs:

The Department shall compensate the Contractor for amounts due for Extra Work Costs or Delay Costs through either (a) monthly progress payments invoiced as the Extra Work is completed or Delay Costs incurred and also acknowledged by the Department, (b) as periodic payments pursuant to a separate Cash Availability Schedule for such Extra Work Costs or Delay Costs, or (c) a combination of the above, in each instance as may be determined in the Department’s sole discretion. For this Contract, it is the Department’s desire to look first to funding any such Extra Work Costs or Delay Costs compensation obligations through monthly progress payments invoices as the Extra Work is completed or Delay Costs incurred and also acknowledged by the Department. If the Department chooses to pay such Extra Work Costs or Delay Costs pursuant to a separate Cash Availability Schedule, the reasonable and actual cost of financing incurred by the Contractor due to such delayed payment shall be compensated for by the Department in addition to the compensation for such Extra Work Costs or Delay Costs as otherwise provided pursuant to the Contract.

**9-5.1.1 Prompt Payment Law**

Participants of goods and services to the Department should be aware of the following timeframes. The Department has 10 working days from the date the monthly progress invoice or quarterly invoice is received by the Department to inspect the work. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the date the invoice is received and the work is inspected and approved.

**Invoices will be reduced for amounts invoiced in excess of the amounts earned per the monthly progress estimates as outlined in 9-5.1. Invoices will also be reduced for amounts invoiced in excess of the cash available per the Cash Availability Schedules as outlined in 9-5.1.**

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), F.S., will be due and payable, in addition to the invoice amount, to the Contractor. Interest penalties of less than one (1) dollar will not be enforced unless the Contractor requests payment. Invoices that have been returned to the Contractor because of Contractor preparation errors may result in a delay in payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Department of Financial Services Division of Consumer Services, 1-877-693-5236.

 **B. Article 9-8, Acceptance and Final Payment, of the Supplemental Specifications, XXXX Standard Specifications for Road and Bridge Construction, is deleted and the following is substituted:**

9-8 Payment after Final Acceptance.

 9-8.1 Required Documents: Whenever the Contractor has completely performed the work provided for under the Contract and the Engineer has performed a final inspection and made final acceptance (as provided in 5‑10 and 5‑11), and subject to the terms of 8‑11, the Engineer will prepare a final estimate showing the value of the work as soon as the Engineer makes the necessary measurements and computations. The Engineer will correct all prior estimates in the final estimate. Following final acceptance (in accordance with 5-10 and 5-11), payment will be made based on quarterly invoices submitted by the Contractor at the beginning of the quarter for an amount equal to that quarter’s cash available shown in the Cash Availability Schedule(s), plus any prior quarter’s cash not previously paid. The Department will pay the invoice, less any sums that the Department may have deducted or retained under the provisions of the Contract, as soon as practicable after final acceptance of the work along with all executed supplemental agreements received after final acceptance, subject to the cash available per the Cash Availability Schedule(s). The Contractor may only continue to provide the Department with quarterly invoices until the cash available in the Cash Availability Schedule is paid in full.

 If the Contractor fails to furnish all required Contract Documents as listed in (a) through (g) below within 90 days of the Department’s offer of final payment subject to the Cash Availability Schedule(s), or request for refund of overpayment, the Department may suspend the Contractor’s Certificate of Qualification under the provisions of Florida Administrative Code 14‑22.

* 1. The Contractor has agreed in writing to accept the balance due or refund the overpayment, as determined by the Department, as full settlement of his account under the Contract and of all claims in connection therewith, or the Contractor has, through the use of the Qualified Acceptance Letter, accepted the balance due or refunded the overpayment, as determined by the Department, with the stipulation that his acceptance of such payment or the making of such refund does not constitute any bar, admission, or estoppel, or have any effect as to those payments in dispute or the subject of a pending claim between the Contractor and the Department. To receive payment based on a Qualified Acceptance Letter, define in writing the dispute or pending claim with full particulars of all items of all issues in dispute, including itemized amounts claimed for all particulars of all items, and submit it as part of the Qualified Acceptance Letter. The Contractor further agrees, by submitting a Qualified Acceptance Letter that any pending or future arbitration claim or suit is limited to those particulars, including the itemized amounts, defined in the original Qualified Acceptance Letter, and that he will commence with any such arbitration claim or suit within 820 calendar days from and after the time of final acceptance of the work and that his failure to file a formal claim within this period constitutes his full acceptance of the Engineer’s final estimate and offer of final payment subject to the Cash Availability Schedule. The overpayment refund check from the Contractor, if required, will be considered a part of any Acceptance Letter executed.
	2. The Contractor has properly maintained the Project, as specified hereinbefore.
	3. The Contractor has furnished a sworn affidavit to the effect that the Contractor has paid all bills and no suits are pending (other than those exceptions listed, if any) in connection with work performed under the Contract and that the Contractor has not offered or made any gift or gratuity to, or made any financial transaction of any nature with, any employee of the Department in the performance of the Contract. Include with the listed tort liability exceptions, if any, evidence of adequate insurance coverage as required in 7‑13.
	4. The surety on the Contract bond consents, by completion of their portion of the affidavit and surety release subsequent to the Contractor’s completion of his portion, to final payment to the Contractor and agrees that the making of such payment does not relieve the surety of any of its obligations under the bond.
	5. The Contractor has complied with and settled all requirements pertaining to any wage-rate provisions.
	6. The Contractor has furnished all required mill tests and analysis reports to the Engineer.
	7. The Contractor has furnished the Construction Compliance with Specifications and Plans Certification. Provide the Engineer with a notarized final certification of compliance with the requirements of Section 105 to accompany the final estimate. Certification must be on a form provided by the Engineer.

**9-8.2 Review of Engineer’s Final Estimate:** The Department may review the Engineer’s final estimate and make changes as necessary. If changes are made, the Contractor will be so notified in writing in the “Notification of Findings Due to Additional Review”. This notification letter will detail the changes made as a result of the review, and will stipulate the actions to be taken by the Department and those required by the Contractor. The issuance of a “Notification of Findings Due to Additional Review” will not impact the requirements of 9-8.1, above.

Complete the required actions and return the signed notification to the Department within the timeframe specified in 9-8.1. If the notification is received after the time specified in 9-8.1 has expired, return to the Department within 30 days signifying agreement or disagreement with the findings. For disagreement items, provide a full explanation including the item(s) and amount. For any claim or part of a claim that pertains solely to the “Notification of Findings Due to Additional Review” disputes, submit full and complete claim documentation as described in 5-12.3 as to such claim dispute issues within 90 days of receipt of the notification. Failure to return the signed notification or to furnish such claim documentation within the time frames specified may result in suspension of the Contractor’s Certificate of Qualification under the provisions of Florida Administrative Code 14-22.

**C. Article 9-10, Offsetting Payments, of the XXXX Standard Specifications for Road and Bridge Construction, is deleted. and the following is substituted:**

**9-10 Offsetting Payments.**

Section 337.145 of the Florida Statutes, providing for offsetting payments to the Contractor, is not applicable for this Contract.

**V. Disadvantaged Business Enterprise (DBE) Availability Goal Percentage**

 A. DBE Availability Goal Percentage

The Department has an overall eight and six tenths percent (8.6%) race-neutral DBE goal. This means that the Department’s goal is to spend at least 8.6% of the highway dollars with Certified DBEs as either prime contractors or subcontractors. Race-neutral means that the Department believes that the 8.6% overall goal can be achieved through the normal competitive procurement process. The Department has reviewed this project and assigned a DBE availability goal shown on the bid blank/contract front page under “% DBE Availability Goal”. Although not a contract requirement, the Department believes that this DBE percentage can realistically be achieved on this project based on the number of DBEs associated with the different types of work that will be required.

Under Section 49 Code of Federal Regulations Part 26, if the 8.6% goal is not achieved, the Department may be required to return to a race-conscious program where goals are imposed on individual contracts. The Department encourages all Contractors to actively pursue obtaining bids and quotes from Certified DBEs.

##  B. Anticipated DBE Participation Statement

The Department is reporting to the FHWA the planned commitments to use DBEs.  This information is being collected through the Anticipated DBE Participation Statement. This Statement shall be submitted to the District Procurement Officer who will then submit it electronically to the Equal Opportunity Office.  Although these statements will not become a mandatory part of the contract, they will assist the Department in tracking and reporting planned or estimated DBE utilization.