

Questions – 4/17/2023: Pt2

13. 5-12.11 (Exclusive Remedies) - The Contract does not contain an overall limitation of liability on behalf of Contractor/Design-Build Firm. In Proposer's experience, an overall limitation of liability is fairly standard on projects similar to this Project. Further, if there is no overall limitation of liability, Proposers will likely take the absence of such a clause into account, resulting in higher price proposals. Is the Authority willing to include an overall limitation of liability in the Agreement? If so, Proposer proposes the following language, with the Authority to insert what it considers to be appropriate for the overall limitation of liability: "IN NO EVENT SHALL CONTRACTOR'S TOTAL AGGREGATE LIABILITY UNDER, OR IN CONNECTION WITH, THE CONTRACT FOR ANY LOSS, DAMAGE, OR LIABILITY RELATIVE TO CONTRACTOR'S OBLIGATIONS, ACTIONS, OR INACTIONS EXCEED (TBD) PERCENT (TBD%) OF THE CONTRACT LUMP SUM PRICE. THIS LIMITATION OF LIABILITY COVERS ALL CLAIMS, REGARDLESS OF WHETHER THE CLAIMS ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE."

Answer: No

15. RFP & DIV 1 DB Specs - The indemnity is very broad. Proposer requests that the indemnity provisions contained in the Contract be revised to cover claims for bodily injury (including death) and third party tangible property damage and, then, only to the extent of Contractor's negligence. Is the Authority amenable in revising the indemnity provisions accordingly?

Answer: No

16. DIV 1 DB Specs Section 9-10 (Offsetting Payments) - The Authority's right to offset against payment should be limited to payments due Contractor/Design-Build Firm under this Contract and not any other contract with Contractor/Design-Build Firm. Is the Authority amenable in revising Section 9-10 to reflect the following: "After settlement, arbitration or final adjudication of any claim of Authority, Authority may setoff payments against any amount due Contractor under this Contract with Contractor if, upon demand, payment of the amount is not made within 60 days to the Authority.

Answer: This is currently not relevant. If the selected Design Build Firm has other contracts with the Authority this will be addressed in the contract for the South Selmon Capacity Project.

25. RFP, Article III, Section L (Payment/Performance Bond); RFP, Article IV, Section 3.C & DIVISION I DB SPECS, Section 3-5 (Contract Bond Required), Subsection 3-5.1 (General Requirements of the Contract Bond) - The RFP and Division I DB Specs makes reference to providing bonds. First, is the Authority providing the applicable bond forms for the bonds that are being requested? Is so, can the Authority provide copies of the forms for review?

Answer: The forms will be provided by the Authority and are attached. The security furnished by the Contractor and the surety as a guaranty that the Contractor shall fulfill the terms of the Contract and

pay all legal debts pertaining to the construction of the projects, sometimes referred to as the Payment Bond and Performance Bond.

Second, please clarify the requirement of providing both 100% Contract Bond/P & P Bonds for the life of the Contract as referenced in Division I DB Specs and providing a \$2 Million Maintenance/Warranty Bond through the "Establishment Period" as referenced in the RFP. Proposer needs further clarification on the terms of the warranty/maintenance bond as well as what is the "Establishment Period" as this does not appear to be defined.

Answer:

The \$2 Million Maintenance/Warranty Bond will cover the Landscaping for the 365 day Establishment period which has been added by amendment to the RFP.

**For Clerk of the Court
Recording Purposes**

Return to: Contracts Manager
Tampa Hillsborough Expressway Authority
1104 East Twiggs St., Suite 300
Tampa, FL 33602

BOND NO: _____

PERFORMANCE BOND

BY THIS BOND, We, _____, a _____ corporation, as **Principal**, and _____, a _____ corporation, as **Surety**, located at _____ are bound to the **TAMPA HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY**, herein called **Owner**, in the sum of \$_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated _____, 20____ between Principal and Owner for construction of the South Selmon Capacity Project at the Tampa-Hillsborough County Expressway Authority, Request for Proposals (RFP) Contract No. O-0622, at the times and in the manner prescribed in the contract, the contract being made a part of this bond by reference, and
2. Pays Owner all loss, damages including delay damages, including but not limited to liquidated damages, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
3. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract for construction and any applicable warranty period, then this bond is void; otherwise it remains in full force.

The Surety, for value received, agrees that any changes, extensions of time, or additions to the Terms of the Contract Documents, and neither compliance nor noncompliance with any formalities connected with the contract or the changes shall not affect Surety's obligation under this bond. Surety hereby waives notice of any such changes.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

DATED ON: _____, 20_____.

Name of Principal (Contractor):

Name of Surety:

By: _____

By: _____
Attorney in Fact

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Telephone No. _____

Telephone No. _____

Fax No. _____

Fax No. _____

(Attach "Certificate & Affidavit Form Surety Bond Insurer" and
"Power of Attorney" from Surety)

STATE OF _____ :

:

COUNTY OF _____ :

:

THE FOREGOING INSTRUMENT was acknowledged before me this ____ day of _____, 20____ by _____, who ____ is personally known to me or ____ has produced _____ as identification and did not take an oath. [Notary, check appropriate blank; and, if obtaining identification, fill in appropriate identification number.]

My Commission Expires:

Notary Public

(Printed Name of Notary)

(Serial Number, if any)

This form complies with
Section 255.05, Florida Statutes

CERTIFICATE AND AFFIDAVIT FOR SURETY BOND INSURER

TO: TAMPA HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY (THEA)

RE: South Selmon Capacity Project, THEA Project RFP No. O-0622

PROPOSER:

Name: _____

Address: _____

Telephone: _____

AMOUNT OF BOND: _____

SURETY BOND INSURER:

Name: _____

Address: _____

Telephone: _____

Before me, the undersigned authority, personally appeared, _____ on this ____ day of _____ 20____ who hereby certifies that, the insurer named above:

1. Is licensed to do business in the State of Florida;
2. Holds a certificate of authority authorizing it to write surety bonds in Florida;
3. Has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued;
4. Is otherwise in compliance with the provisions of the Florida Insurance Code; and,
5. Holds a currently valid certificate of authority issued by the United States Department of the Treasury under Section 9304 to 9308 of Title 31 of the United States Code.

Signature of Officer of Surety Insurer

STATE OF _____ :

:

COUNTY OF _____ :

THE FOREGOING INSTRUMENT was sworn to, subscribed and acknowledged before me this _____ day of _____, 20____ by _____, who ____ is personally known to me or ____ has produced _____ as identification and did take an oath.

[Notary, check appropriate blank; and, if obtaining identification, fill in appropriate identification number.]

Notary Public

Printed Name of Notary

My Commission Expires:

(Serial Number, if any)

**For Clerk of the Court
Recording Purposes**

Return to: Contracts Manager
Tampa Hillsborough Expressway Authority
1104 East Twiggs St., Suite 300
Tampa, FL 33602

BOND NO: _____

PAYMENT BOND

BY THIS BOND, We, _____, a _____ corporation, as **Principal**, and _____, a _____ corporation, as **Surety**, located at _____ are bound to the **TAMPA HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY**, herein called **Owner**, in the sum of \$_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Promptly makes payment to all claimants, as defined in Section 233.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract dated _____, 20 _____ between Principal and Owner for construction of _____ (RFP No. O-0622), the Contract being made a part of this bond by reference; and
2. Pays Owner all loss, damages expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract related to payment for such labor, materials, or supplies furnished to the Principal, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

Certain claimants seeking the protection of this Bond must timely comply with the strict requirements set forth in Section 255.05, Florida Statutes, and as otherwise provided by law.

DATED ON: _____, 20_____.

Name of Principal (Contractor):

Name of Surety:

By: _____

By: _____
Attorney in Fact

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Telephone No. _____

Telephone No. _____

Fax No. _____

Fax No. _____

(Attach "Certificate & Affidavit Form Surety Bond Insurer" and
"Power of Attorney" from Surety)

STATE OF _____ :

:

COUNTY OF _____ :

:

THE FOREGOING INSTRUMENT was acknowledged before me this _____ day of _____, 20_____ by _____, who _____ is personally known to me or _____ has produced _____ as identification and did not take an oath. [Notary, check appropriate blank; and, if obtaining identification, fill in appropriate identification number.]

My Commission Expires:

Notary Public

(Printed Name of Notary)

(Serial Number, if any)

This form complies with
Section 255.05, Florida Statutes

CERTIFICATE AND AFFIDAVIT FOR SURETY BOND INSURER

TO: TAMPA HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY (THEA)

RE: South Selmon Capacity Project, THEA Project RFP No. O-0622

PROPOSER:

Name: _____

Address: _____

Telephone: _____

AMOUNT OF BOND: _____

SURETY BOND INSURER:

Name: _____

Address: _____

Telephone: _____

Before me, the undersigned authority, personally appeared, _____ on this _____ day of _____ 20____ who hereby certifies that, the insurer named above:

1. Is licensed to do business in the State of Florida;
2. Holds a certificate of authority authorizing it to write surety bonds in Florida;
3. Has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued;
4. Is otherwise in compliance with the provisions of the Florida Insurance Code; and,
5. Holds a currently valid certificate of authority issued by the United States Department of the Treasury under Section 9304 to 9308 of Title 31 of the United States Code.

Signature of Officer of Surety Insurer

STATE OF _____ :

COUNTY OF _____ :

THE FOREGOING INSTRUMENT was sworn to, subscribed and acknowledged before me this _____ day of _____, 20____ by _____, who _____ is personally known to me or _____ has produced _____ as identification and did take an oath.

[Notary, check appropriate blank; and, if obtaining identification, fill in appropriate identification number.]

Notary Public

Printed Name of Notary

My Commission Expires:

(Serial Number, if any)