

**TOWN OF CUTLER BAY
REQUEST FOR QUALIFICATIONS
10-01**



**PROFESSIONAL DESIGN-BUILD SERVICES FOR
LAKES BY THE BAY PARK IMPROVEMENTS**

SUBMITTAL DATE: FEBRUARY 9, 2010 3:00 P.M.

**REQUEST FOR QUALIFICATIONS
RFQ # 10-01 PROFESSIONAL DESIGN-BUILD SERVICES
TOWN OF CUTLER BAY**

Pursuant to Section 255.20 and 287.055 Florida Statutes, the Town of Cutler Bay (the "Town"), a municipality located in Miami-Dade County, Florida, desires to receive qualifications for the selection of a firm or a team of firms (the "Consultant") to provide Professional Design-Build Services (the "Services") to the Town for the Lakes By the Bay Park Improvements project.

The Town intends to execute an agreement with selected Consultant for providing these services. **Interested firms should visit the Town's website at info@cutlerbay-fl.gov to obtain the Request for Qualifications package. Packages may also be picked up at the following location:**

**Town of Cutler Bay
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189**

Sealed submittals must be received no later than 3:00 p.m. on February 9, 2010 and be clearly marked on the outside, "**RFQ # 10-01 Design-Build Services**". Late submittals and electronic submittals will **not** be accepted.

Pursuant to Town Code, public notice is hereby given that a "Cone of Silence" is imposed concerning this Town's' competitive purchasing process, which generally prohibits communications concerning the RFQ from the time of advertisement of the RFQ until such time as the Town Manager makes a written recommendation to the Town Council concerning the competitive purchase transaction. Please see the detailed specifications for the public solicitation for services for a statement fully disclosing the requirements of the "Cone of Silence".

Pursuant to Ordinance 06-11; Town Code Chapter 8A; Section 7.6 of the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Town Clerk, and each vendor must do so prior to and as a condition of the award of any Town contract to the vendor. Please see the detailed specifications of this solicitation for further details.

The Town reserves the right to accept or reject any and/or all proposals or parts of proposals, to workshop or negotiate any and all proposals, to waive irregularities, and to request re-proposals on the required materials or services.

Steven J. Alexander
Town Manager

Request For Qualifications

SUBJECT: Professional Design-Build Services for the Lakes By the Bay Park Improvements

PROPOSAL DUE DATE: On or before February 9, 2010 @ 3:00 P.M.

SUBMIT TO: **Office of the Town Clerk
Town of Cutler Bay
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189**

RFQ NUMBER: 10-01

1.0 INTRODUCTION:

1.1 INTENT:

The purpose of this document is to provide information on the Services required by the Town for the Lakes By the Bay Park Improvements project, the requirements and guidelines for submitting a response to this RFQ (the Response or the Qualifications package), the Consultant selection process and the schedule.

1.2 BACKGROUND:

The Town of Cutler Bay has a diverse population of over 41,000, and desires to engage the services of qualified firms to provide Design-Build services as needed for various Public Works and Parks and Recreation department projects. The Town is located in the southeast corner of Miami-Dade County and is approximately 10 square miles in size. The Town delivers a majority of its public and community services by utilizing firms employing sound business practices with an emphasis on excellence and effective customer service principles.

1.3 SERVICES SOUGHT:

The Town is seeking qualified firms to provide Professional Design-Build services for the Lakes By the Bay Park Improvements project (the "Services"). It is estimated that the initial construction cost for the project will be \$4,100,000.00, and that the second phase of the project will have a construction cost of \$4,500,000.00. The project will likely include, but not be limited to, the following components:

- Various athletic fields, including two lighted baseball fields and three lighted soccer fields
- Restroom facilities consisting of a single structure
- Lighted parking lots
- All necessary site development work, including drainage and utilities

The successful firm(s) will provide all Design-Build services including, but not limited to: project design, completion of construction documents, permitting, construction and construction management.

The successful firm(s) may supplement in-house resources with private individuals or companies, subject to prior Town approval. The successful firm(s) shall have the necessary financial resources to assume extensive and large expenditures.

All information and references submitted will be considered in the selection process. The Town reserves the right to request clarification of information submitted, to interview respondents and to request additional information of one or more respondents to assist in the evaluation of submittals and to establish, to the Town's satisfaction, the responsibility, qualifications, and financial ability of any proposer.

1.4 RFQ SCHEDULE:

Event	Date*	Time* (EST)
Advertisement/ Distribution of RFQ & Cone of Silence begins	01/22/2010	9:00 AM
Deadline to submit requests for clarification	01/29/2010	5:00 PM
Deadline to Submit RFQ-Response	02/09/2010	3:00 PM
Announcement of short-listed Consultants	02/12/2010	4:00 PM
Oral presentations (if necessary)	02/22/2010	9:00 AM – 4:00 PM
Announcement of selected Consultants/ Cone of Silence ends	02/24/2010	9:00 AM

*The Town reserves the right to change the scheduled dates and time.

1.5 EVIDENCE:

The submission of a Proposal shall be prima facie evidence that the Consultant is familiar with and agrees to comply with the contents of this RFQ.

1.6 CLARIFICATION AND ADDENDA TO RFQ SPECIFICATIONS:

If any person contemplating submitting a Proposal under this RFQ is in doubt as to the true meaning of the specifications or other RFQ documents or any part thereof, the Proposer must submit to the Town, by no later than January 29, 2010, a request for clarifications. All such requests for clarification must be made in writing and the person submitting the request will be responsible for its timely delivery.

Any interpretations of the RFQ, if made, will be made only by Addendum duly issued by the Town. The Town shall issue an Informational Addendum if clarification or minimal changes are required. The Town shall issue a formal Addendum if substantial changes, which impact the technical submission of Proposals, are required. A copy of such Addendum will be delivered to each Proposer receiving the RFQ. In the event of conflict with the original Contract Documents, Addendum shall govern all other contract documents to the extent specified. Subsequent Addenda shall govern over prior addenda only to the extent specified.

The Proposer shall be required to acknowledge receipt of the Formal Addendum by signing the Addendum and including it with the Proposal. Failure of a proposer to include a signed formal Addendum in its Proposal shall deem its Proposal non-responsive; provided, however, that the Town may waive this requirement in its best interest. The Town will not be responsible for any other explanation or interpretation made verbally or in writing by any other Town representative.

1.7 QUESTIONS:

Questions concerning this RFQ should be directed in writing to:

Erika Santamaria, Town Clerk
Town of Cutler Bay
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189

Issues of substance that are brought to the attention of the Town will be responded to in writing, and copies provided to all firms who have received copies of the RFQ.

1.8 TOWN'S RIGHTS:

The Town reserves the right to accept or reject any and/or all proposals or parts of proposals, to workshop or negotiate any and all proposals, to waive irregularities, and to request re-proposals on the required materials or services. The Town Manager shall make a recommendation to the Town Council who shall make a final determination and award of proposal(s).

All materials submitted in response to the RFQ become the property of the Town and will be returned only at the option of the Town. The Town has the right to use any or all ideas presented in any response to the RFQ, whether amended or not, and selection or rejection of the Proposal does not affect this right, provided however, that any submittal that has been submitted to the Town Manager's Office may be withdrawn prior to submittal opening time stated herein, upon proper identification and signature releasing submittal documents back to the proposing firm.

1.9 DEMONSTRATION OF COMPETENCY:

1. Pre-award inspection of the Proposer's facility may be made prior to the award of contract. Proposals will only be considered from firms which are regularly engaged in the business of providing the Services as described in this RFQ. Proposers must be able to demonstrate a good record of performance for a reasonable period of time, and have sufficient financial support, equipment and organization to ensure that they can satisfactorily execute the Services if awarded a contract under the terms and conditions herein stated. The terms "equipment and organization" as used herein shall be construed to mean a fully equipped and well-established company in line with the best business practices in the industry and as determined by the Town.
2. The Town may, during the period that the contract between the Town and the successful Proposer is in force, review the successful Proposer's record of performance to ensure that the Proposer is continuing to provide sufficient financial support, equipment and organization as prescribed in this RFQ. Irrespective of the Proposer's performance on contracts awarded to it by the Town, the Town may place said contracts on probationary status and implement termination procedures if the Town determines that the successful Proposer no longer possesses the financial support, equipment and organization which would have been necessary during the Proposal evaluation period in order to comply with this demonstration of competency section.

2.0 CONTENTS OF PROPOSAL:

The Proposal shall include the following information at a minimum:

1. Qualifications of firm and principals, including but not limited to: firm's history; number of years in business; local availability of key personnel; demonstrated ability to comply with all applicable laws and regulations; ability to plan, coordinate and construct a variety of public works and/or parks and recreation facilities of various size, scope and complexity. All Proposals shall be written in sufficient detail (on 8 1/2" X 11" paper) to permit the Town to conduct a meaningful evaluation of the Proposal, **but under no circumstances should the total length of the proposal exceed 30 pages.** The Proposal must include the following information:

I) Cover Page

The attached Proposal Form (Section 5) is to be used as the cover page for the Proposal. This form must be fully completed and signed by an authorized officer of the Proposer submitting the Proposal.

II) Table of Contents

The table of contents should outline in sequential order the major areas of the Proposal. All pages of the Proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the table of contents.

III) Executive Summary

Provide a brief summary describing the Proposer's ability to perform the Services requested in this RFQ; a history of the Proposer's background and experience in providing similar services; a list of the Proposer's personnel to be assigned to this project; the subcontractors or subconsultants and a brief history of their background and experience; and, any other information called for by this RFQ which the Proposer deems relevant, including any exceptions to this RFQ. This summary should be brief and concise to advise the reader of the basic services offered, experience and qualifications of the Proposer, staff, subcontractors or subconsultants and any other relevant information.

IV) Work Plan

The Town is seeking proposals for design-build firms to construct the Lakes By the Bay Park Improvements project. The Services required to complete this work are more specifically defined in the following Work Plan. The following is to be used as a **guideline only**, creativity and innovative concepts are welcome.

A. Overview & Resources

1. Design-build Services including, but not limited to: project design, completion of construction documents, permitting, construction and construction management.
2. Coordination with government agencies as may be required to complete and implement the stated tasks is the responsibility of the Consultant.

B. Summary

The Proposal for design-build services should include at a minimum, the following information on how the prospective consultant will achieve the defined project deliverables.

1. The overall approach to the Plan, including project management and methodology.
2. A work plan detailing tasks needed to complete the project.
3. Competence of Firm, including experience with Design-Build projects
4. Experience of Personnel
5. Capacity to commence the project quickly/ experience with fast-tracked projects

V) Proposer's Experience and Past Performance

a) Describe the Proposer's organization; history and background; tax status; principals; officers; owners; board of directors and/or board of trustees; the primary markets served; the total current number of employees; the current number of professional employees by classification; and state the number of years that the Proposer has been in existence.

b) Provide a detailed description of a minimum of three (3) contracts (of varying scopes of service) which the Proposer has either ongoing or completed within the past three (3) years. The description should identify for each project: (i) the client, (ii) description of work, (iii) total dollar value of the contract, (iv) contract duration, (v) customer contact person and phone number for reference, (vi) statement or notation of whether Proposer is/was the prime contractor or subcontractor or subconsultant, and (vii) the results of the project. Where possible, list and describe those projects performed for government clients or similar size private entities.

c) Describe any other experiences related to the work or services described in the Scope of Services, and any other information which may be specific to the required services to be provided (e.g. software/hardware information, training. etc.). Of particular interest is your experience with Green or sustainable projects, given that this project will incorporate a number of sustainable components.

VI) Key Personnel and Subcontractors Performing Services

(a) Provide an organization chart showing all individuals, including their titles, to be assigned to this project. This chart must clearly identify the Proposer's employees and those of the subcontractors or subconsultants.

(b) List the names and addresses of all major first-tier subcontractors or subconsultants, and describe the extent of work to be performed by each first-tier subcontractor or subconsultant.

(c) Provide resumes with job descriptions and other detailed qualification information on all key personnel who will be assigned to this project, including any subcontractors or subconsultants. All key personnel shall include all partners, managers, seniors and other professional staff that will perform work and/or services on this project.

d) Please describe your capacity for beginning this project quickly, including the availability of key personnel for pre-construction and construction services. Also describe the experience of your proposed team with similar fast-tracked projects.

VII) Licenses, Permits and Insurance

Provide all necessary Federal State, County, and local licenses and permits relating to providing the Services; and copies of insurance certificates indicating proof of insurance and extent of coverage as described in Section 4.6 herein.

Proposers must submit five (5) copies of the Proposal, one of which shall be an unbound original. All costs associated with the response to this RFQ shall be borne solely by the Proposer.

In accordance with Chapter 119, Florida Statutes (Public Records Law), and except as may be provided by other applicable state and federal law, the RFQ and the responses thereto shall be public records. However, the Proposers are requested to identify specifically any information contained in their Proposals which they consider confidential and/or proprietary and which they believe to be exempt from disclosure, citing specifically the applicable exempting state or federal law.

3.0 EVALUATION OF PROPOSALS:

1. A Selection Committee consisting of the Town Manager or his designee, Parks and Recreation Director, Public Works Director and Town Consultant will evaluate written Proposals. Evaluation will include the following criteria:

<u>Criteria</u>	<u>Potential Points</u>
1. Work Plan	25
2. Experience & Past Performance	25
3. Capacity to Commence Work Quickly	25
4. Quality of Similar Projects	10
5. Personnel Expertise	10
6. Compliance With Submission Requirements	5
Total Points Available	100

2. The highest ranked Proposals will be identified and those firms may be requested to make a formal presentation before the Selection Committee (Tentative Date: February 22, 2010) Location: Town Hall, 10720 Caribbean Boulevard, Suite 105, Conference Room. The selected firms will then be ranked according to the content of their Proposals, presentations and any other relevant information. The Town Manager will then execute an agreement with the selected firms to provide the Services for the Town.

3.1 PROPOSAL TABULATIONS:

Proposers desiring a copy of the Proposal tabulation may request same by enclosing a self-addressed stamped enveloped with the Proposal.

3.2 PROTESTS, APPEALS AND DISPUTES:

All protests, appeals and disputes with respect to this RFQ shall be governed by the protest or procedures of the Town purchasing ordinance which shall be strictly construed. In the event of a protest, the decision of the Town Council shall be final and conclusive.

3.3 AWARD OF CONTRACT:

A contract may be awarded to the Proposer(s) whose Proposal(s), conforming to the RFQ, are most advantageous to the Town. The Town reserves the right to award to one or more than one Proposer(s), make no award based on this RFQ, or reject all Proposals and such decision shall not give rise to any claim by any person for any damages including but not limited to the costs of preparation of a Proposal.

3.4 NEGOTIATIONS:

The Town reserves the right to enter into negotiations with the selected respondent, and if the Town and the selected respondent cannot negotiate a mutually acceptable contract, the Town may terminate the negotiations and begin negotiations with the next selected respondent and this process may continue until a contract has been executed or all responses have been rejected.

4.0 OTHER CONDITIONS:

4.1 PURCHASING ORDINANCE:

Firms are specifically advised that the Town's purchasing ordinance (06-22) and the Town ordinance revising the Cone of Silence (09-12) apply to this RFQ and to all RFQ and are incorporated herein by reference. Firms are advised to familiarize themselves with their requirements.

4.2 CONE OF SILENCE

Notwithstanding any other provision of these specifications, the provisions of Town "Cone of Silence" are applicable to this transaction. The entirety of these provisions can be found in the Town's Purchasing Ordinance, Town Ordinance 06-22, and Town Ordinance 09-12. The "Cone of Silence," as used herein, means a prohibition on any communication regarding a particular Request for Proposal ("RFP"), Request for Qualification ("RFQ") or bid, between:

A potential vendor, service provider, proposer, bidder, lobbyist, or consultant; and

The Town Council, Town's professional staff including, but not limited to, the Town Manager and his or her staff, any member of the Town's selection or evaluation committee.

The Cone of Silence shall be imposed upon each RFQ, RFP and bid after the advertisement of said RFQ, RFP, or bid. The Cone of Silence shall terminate at the beginning of the Town Council meeting at which time the Town Manager makes his or her written recommendation to the Town Council. However, if the Town Council refers the Manager's recommendation back to the Manager or staff for further review, the Cone of Silence shall be re-imposed until such time as the Manager makes a subsequent written recommendation.

The Cone of Silence shall not apply to:

- (1) oral communications at pre-bid conferences;

- (2) oral presentations before selection or evaluation committees;
- (3) public presentations made to the Town Council during any duly noticed public meeting;
- (4) communication in writing at any time with any Town employee, unless specifically prohibited by the applicable RFQ, RFP or bid documents. The bidder or proposer shall file a copy of any written communication with the Town Clerk. The Town Clerk shall make copies available to any person upon request;
- (5) communications regarding a particular RFQ, RFP or bid between a potential vendor, service provider, proposer, bidder, lobbyist or consultant and the Town's Purchasing Agent or Town employee designated responsible for administering the procurement process for such RFQ, RFP or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;
- (6) communications with the Town Attorney and his or her staff;
- (7) duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the Town Manager makes his or her written recommendation;
- (8) any emergency procurement of goods or services pursuant to Town Code;
- (9) responses to the Town's request for clarification or additional information;
- (10) contract negotiations during any duly noticed public meeting;
- (11) communications to enable Town staff to seek and obtain industry comment or perform market research, provided all communications related thereto between a potential vendor, service provider, proposer, bidder, lobbyist, or consultant and any member of the Town's professional staff including, but not limited to, the Town Manager and his or her staff are in writing or are made at a duly noticed public meeting.
- (12) Communications to enable Town Manager to answer specific questions from the Town Council at any time regarding any RFP, RFQ or bid process or award.

Please contact the Town Attorney for any questions concerning Cone of Silence compliance. Violation of the Cone of Silence by a particular bidder or proposer shall render any RFQ award, RFP award or bid award to said bidder or proposer voidable by the Town Council and/or Town Manager.

4.3 LOBBYIST REGISTRATION

Proposers must also comply with all Town Charter sections and Code provisions that pertain to lobbyists, including Section 7.6 of the Town Charter and implementing ordinance(s), including Sec. 2-11(s) of the Town Code and Ordinance 07-02. Please contact the Town Clerk at (305) 234-4262 for additional information.

4.4 PROTEST PROCEDURES

With respect to a protest of the terms, conditions, and specifications contained in a solicitation (RFP, RFQ, or Bid), including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in accordance with Town Ordinance 06-22.

4.5 CAMPAIGN FINANCE RESTRICTIONS ON VENDORS

Ordinance 06-11; Town Code Chapter 8A. Pursuant to Ordinance 06-11; Town Code Chapter 8A; Section 7.6 of the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Town Clerk, and each vendor must do so prior to and as a condition of the award of any Town contract to the vendor.

Vendors' Campaign Contribution Disclosure:

1. General requirements:

(A) Any vendor required to disclose campaign contributions pursuant to the Charter of the Town of Cutler Bay, as may be amended, shall file a written disclosure with the Town Clerk, stating all contributions made that were accepted by an elected official of the Town, the official to whom they were made and the date they were made. The Town Clerk may develop a form to be used by vendors for such disclosure.

(B) The disclosure shall be filed prior to and as a condition of the award of any Town contract to the Vendor.

(C) The Town Clerk shall inform the Council of any disclosures which were made in relation to any items before the Council prior to the hearing on the item or prior to the award of the contract.

(D) If an existing vendor makes a contribution the vendor must report the same to the clerk within ten days of its acceptance or prior to being awarded any additional contract or renewal, whichever occurs first.

(E) The Town Clerk shall file a quarterly report with the Council, which lists all the vendor disclosures in the quarter.

2. Disqualification

(A) As per Section 7.6 of the Town Charter, if a Vendor of products or services who directly or through a member of the person's immediate family or through a political action committee or through any other person makes a campaign contribution to a Town candidate and fails to disclose it then he/she/it shall be barred from selling any product or service to the town for a period of two years following the swearing in of the subject elected official.

4.6 ADDITIONS/DELETIONS OF FACILITIES:

It is hereby agreed and understood that additional Design-Build projects and/or additional scope of services related to the project described herein may be added/deleted to/from the contract at the option of the Town.

4.7 INSURANCE:

Proposers must submit with their Proposal, proof of insurance meeting or exceeding the following requirements:

1. Workmen’s Compensation Insurance – statutory requirement.
2. Employer’s Liability Insurance - \$1,000,000.
3. Comprehensive General Liability Insurance – This coverage must be written on the comprehensive form of policy. The basic policy form is not acceptable. The policy must contain minimum limits of liability as follows or \$1,000,000 Combined Single Limit.
 - a. Bodily Injury: \$1,000,000;
 - b. Property Damage: \$500,000 each occurrence.
4. Comprehensive Automobile Liability Insurance – This coverage must be written on the comprehensive form of policy. The basic form is not acceptable. The policy must contain minimum limits of liability as follows or \$1,000,000 Combined Single Limit.
 - a. \$1,000,000 each person;
 - b. \$1,000,000 each occurrence bodily injury;
 - c. \$500,000 each occurrence property damage;
 The policy must provide coverage for non-owned and hired automobiles.

All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida. The companies must be rated no less than “B+” as to management and no less than “Class V” as to strength by the latest edition of Best’s Insurance guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, or the companies must hold a valid Florida Certificate of Authority as shown in the latest “List of All Insurance Companies Authorized or Approved to do Business in Florida,” issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

The successful proposer must submit, prior to commencement of any work, a Certificate of Insurance showing the Town as an additional insured. Contractor’s insurance certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to the Town.

4.8 INDEMNIFICATION:

The Proposer shall agree to indemnify and hold harmless the Town, its officers, agents, and employees, from and against any and all liability, claims, demands, or damages, caused by a negligent act or omission, misfeasance, or malfeasance of the proposer, its agents, servants, or employees, including fines, fees, expenses, penalties, or suit proceedings, actions and costs of action, and attorney’s fees for trial and on appeal, and any kind and nature arising or growing out of the actions of the Proposer connected with the performance of the agreement, whether by act or omission of the Proposer, its agents, servants, employees or others; unless said claim for liability is caused by the negligence, misfeasance or malfeasance of the Town or its agents or employees.

4.9 LIABILITY, INSURANCE, LICENSES AND PERMITS:

Where Proposers are required to enter or go onto Town property to deliver materials or perform work or services as a result of a proposal award, the successful Proposer will assume the full duty, obligation and expense of obtaining all necessary licenses, permits and insurance and assure all work complies with all applicable Miami-Dade County and Town requirements.

The Proposer shall be liable for any damages or loss to the Town occasioned by negligence of the Proposer (or agent) or any person the proposer has designated in the completion of the contract as a result of his or her Proposal.

4.10 PAYMENT AND PERFORMANCE BOND:

Within ten (10) working days following notice of award of a specific project by the Town, the successful Proposer shall furnish to the Town, a Payment and Performance Bond in the total amount of the Cost to the Town for the specified project (to be determined at the time of award). The Payment and Performance Bond can be in the form of a Cashier's Check, made payable to the Town of Cutler Bay; a bond written by a surety company authorized to do business in the State of Florida that shall comply with State Statute 287.0935; or an Irrevocable Letter of Credit. If the latter is chosen, it must be written on a bank located in Miami-Dade County, be in the amount of the contract, and should clearly and expressly state that it cannot be revoked until express written approval has been given to the Town. The Town, to draw on same, would merely have to give written notice to the bank with a copy to the successful contractor.

As a part of their Proposal, Proposer must submit exhibits in the form of letter(s) of reference from bank(s) and a letter from a bonding agent confirming financial ability and bonding capacity of the Applicant. The surety company must also provide a copy of their current license. The firm shall be required to hold a 100% Performance and Payment Bond on the basis of the Guaranteed Maximum Price furnished pursuant to Section 255.05 F.S.

4.11 LIQUIDATED DAMAGES:

Substantial completion times will be mutually agreed upon between the successful contractor and the Town as part of the project agreement. Liquidated damages in an amount as yet to be determined will be deducted from the contract sum for each calendar day elapsing beyond the specified time for completion.

4.12 TERMINATION FOR DEFAULT:

If Consultant defaults in its performance under a Contract and does not cure the default within 30 days after written notice of default, the Town Manager may terminate the contract, in whole or in part, upon written notice without penalty to the Town. In such event the Consultant shall be liable for damages including the excess cost of procuring similar supplies or services: provided that if, (1) it is determined for any reason that the Consultant was not in default or (2) the Consultant's failure to perform is without his or his subcontractor's control, fault or negligence, the termination will be deemed to be a termination for the convenience of the Town under Section 4.11.

4.13 TERMINATION FOR CONVENIENCE:

The Town Manager may terminate a contract, in whole or in part, upon 30 days prior written notice. If the Contract is so terminated, the Town shall be liable only for payment in accordance with the payment provisions of the contract for those services rendered prior to termination.

4.14 GOVERNING LAW AND VENUE:

The validity and effect of the contract shall be governed by the laws of the State of Florida. The parties agree that any action, mediation or arbitration arising out of the contract shall take place in Miami-Dade County, Florida.

4.15 ATTORNEY'S FEES:

In connection with any litigation, mediation and arbitration arising out of the contract, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees through and including appellate litigation and any post-judgment proceedings.

4.16 NO PARTNERSHIP OR JOINT VENTURE:

Nothing contained in the contract will be deemed or construed to create a partnership or joint venture between the Town and Contractor, or to create any other similar relationship between the parties.

4.17 PARTIAL INVALIDITY:

If any provision of the contract or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of the contract or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of the contract shall be valid and enforced to the fullest extent permitted by law.

4.18 SECTION HEADINGS:

The headings to the various paragraphs of the contract have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending or affecting in any way the expressed terms and provisions thereof.

4.19 ENTIRE AGREEMENT:

The contract shall consist of this Town RFQ, Contractor's Response and any written project agreement entered into by the Town and Contractor, and shall represent the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all other negotiations, understanding and representations, if any, made by and between the parties. To the extent that the project agreement conflicts with, modifies, alters or changes any of the terms and conditions contained in the RFQ and/or response, first the project agreement, then the RFQ, and then the response shall control. The contract may be modified only by a written agreement signed by the Town and Contractor.

4.20 ASSIGNMENT:

The contractor shall not assign, transfer, convey, sublet or otherwise dispose of the contract, including any or all of its right, title or interest therein, or his or its power to execute such contract to any person, company or corporation without prior written consent of the Town.

5.0 Proposal Form

**TOWN OF CUTLER BAY
PROPOSAL FORM**

Deliver proposal to:

TOWN OF CUTLER BAY
Town Clerk
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189

**Design-Build Services
RFQ # 10-01**

Due on or before February 9, 2010 at 3:00 p.m. @ above address.

VENDOR NAME:

PHONE NUMBER:

()

VENDOR MAILING ADDRESS:

FAX NUMBER :

()

CITY, STATE AND ZIP CODE :

TOLL FREE NUMBER:

(800)

PROPOSAL CONTACT PERSON (PLEASE PRINT CLEARLY)

EMAIL ADDRESS:

F.E.I.D. NUMBER:

Proposer's Organizational Structure:

____ Corporation ____ Partnership ____ Proprietorship ____ Joint Venture

____ Other (Please Explain): _____

If a Corporation:

Date Incorporated/Organized: _____

State Incorporated/Organized In: _____

State(s) Registered in as Foreign Corporation: _____

Proposer's Additional business activities other than Design-Build services:

List names of proposer's subcontractors or subconsultants on this project:

Printed Name & Title of Authorized Representative

Signature of Authorized Representative::

Date:

APPENDIX A

ACKNOWLEDGEMENT, WARRANTY AND ACCEPTANCE

A. Consultant warrants that it is willing and able to comply with all applicable State of Florida laws, rules and regulations.

B. Consultant warrants that it has read, understand and is willing to comply with all of the requirements of the RFQ and the addendum/ addenda nos.

C. Consultant warrants that it will not delegate or subcontract its responsibilities under an agreement without the prior written permission of the Council.

D. Consultant warrants that all information provided by it in connection with this proposal is true and accurate.

E. CONTINGENCY FEE AND CODE OF ETHICS WARRANTY:

Consultant warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and Consultant has not, and will not; pay a fee the amount of which is contingent upon the Town of Cutler Bay awarding this contract. Consultant warrants that neither it, nor any principal, employee, agent, representative has procured, or attempted to procure, this contract in violation of any of the provisions of the Miami-Dade County conflict of interest and code of ethics ordinances. Further, Consultant acknowledges that a violation of this warranty will result in the termination of the contract and forfeiture of funds paid, or to be paid, to the Consultant, if the Consultant is chosen for performance of the contract.

Signature of Official: _____

Name (typed or printed): _____

Title: _____

Consultant: _____

Date: _____

APPENDIX B

NON-COLLUSION AFFIDAVIT

State of _____

SS:

County of _____

_____being first duly sworn, deposes and says that:

(1) He/she is the, (Owner, Partner, Officer, Representative or Agent) of:

_____,the Consultant that has submitted the attached Proposal;

(2) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;

(3) Such Proposal is genuine and is not a collusive or a sham Proposal;

(4) Neither the said Consultant nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Consultant or person to submit a collusive or sham response in connection with the work for which the attached Proposal has been submitted, or to refrain from responding in connection with such work, or have in any manner, directly or indirectly, sought by agreement or collusion, communication, or conference with any Consultant or person to fix this Proposal or to secure through any collusion, conspiracy, connivance, or unlawful agreement, any advantage against the Town of Cutler Bay, or any person interested in the proposed Work;

Signed, sealed and delivered In the presence of

_____ By: _____

(Printed Name)

(Title)

ACKNOWLEDGMENT

State of Florida

County of _____

On this _____ day of _____, 200__, before me, the undersigned Notary Public of the State of Florida, personally appeared

and whose name(s) is/are subscribed to the within instrument, and he/she/they acknowledge that he/she/they executed it.

WITNESS my hand
and official seal

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Notary Public: Print, Stamp or type as commissioned.)

- Personally known to me, or
- Produced identification:

(Type of Identification Produced)

- Did take an oath. or
- Did not take an oath.

APPENDIX C

**SWORN STATEMENT PURSUANT TO
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 OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to the TOWN OF CUTLER BAY, FLORIDA

By _____

For _____

Whose business address is:

And (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 - S.S. # _____)

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 any agency or political subdivision of any other State or of the United States, including, but not limited to, any Proposal or contract for goods or services to be provided to any public entity or an agency or any political subdivision of any other state or of the United Sates 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 or a jury verdict, non jury trial, or entry of a plea or guilty or nab contenders.

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, and means:

A. A predecessor or successor of a person convicted of a public entity crime; or

B. 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 officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling Interest in another person, or pooling

of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima 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 preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws or any state or of the United States with the legal power to enter into a binding contract and which Proposals or applies to Proposal 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 any entity.

Signed, sealed and delivered In the presence of

_____ By: _____

(Printed Name)

(Title)

ACKNOWLEDGMENT

State of Florida

County of _____

On this _____ day of _____, 200__, before me, the undersigned Notary Public of the State of Florida, personally appeared

and whose name(s) is/are subscribed to the within instrument, and he/she/they acknowledge that he/she/they executed it.

WITNESS my hand
and official seal

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Notary Public: Print, Stamp or type as commissioned.)

- Personally known to me, or
- Produced identification:

(Type of Identification Produced)

- Did take an oath. or
- Did not take an oath.

Appendix-D

DRUG-FREE WORKPLACE FORM

The undersigned vendor in accordance with Section 287.087, Florida Statutes, hereby certifies that _____
does: (Name of Business)

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Proposers Signature

Date