SOLICITATION INSTRUCTIONS AND CONDITIONS

1. Acknowledgment of Amendments

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation: (1) by signing and returning the amendment; (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid; or (3) Following the procedure instructed by the Subcontracts Manager. The **Contractor** must receive the acknowledgment by the time and at the place specified for receipt of bids.

2. Explanation to Bidders

Any explanation desired by a bidder regarding the meaning or interpretation of the solicitation, drawings, specifications, etc., must be requested in writing from the **Contractor**'s designated Point of Contact, and with sufficient time allowed for a reply to reach bidders before the submission of bids. Oral explanations or instructions given before the award of any contract, at any pre-proposal conferences or otherwise, will not be binding on the **Contractor**. Any information given to a bidder concerning an interpretation of the solicitation, will be furnished to all bidders as an amendment to the solicitation, if such information is necessary to bidders in submitting bids on the solicitation or if the lack of such information would be judicial to uninformed bidders.

All questions must be submitted in writing using the **Pre-Bid Question Form** included in this package, and directed by email to:

Anna Reyna, Procurement Manager, Flatiron / Dragados, LLC
Address: 1620 North Port Avenue, Corpus Christi, Texas 78401
Email: areyna@harborbridgeproject.com
Phone: 361-360-6549

3. Preparation of Bids

(a) Bidders are expected to examine the Pricing Schedule, Solicitation Instructions, all drawings, specifications, the statement of work, draft of the Agreement, **Prime Contact** and Technical Provisions, and all other provisions of, and exhibits to, the solicitation, whether incorporated by reference or otherwise, prior to the submission of bids. Failure to do so will be at the bidder's risk.

(b) Each bidder shall furnish the information required by the solicitation. Bidders shall sign and print or type their name on the form provided by the **Contractor** for submitting a bid and each continuation sheet on which they make an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent of the bidder (other than an officer or a partner of the bidder) are to be accompanied by evidence of the agent's **Contractor** (unless such evidence has been previously furnished to the **Contractor**).

(c) Pricing for the property or services proposed shall be provided by bidders in the format required by the **Contractor**. Where property is being bid, the prices bid shall include packing unless otherwise specified. In case of any discrepancy between a unit price and any extended or total price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Bids for property or services other than those specified in the Schedule will not be considered unless specifically authorized in the solicitation.

(e) The bidder must state a definite time for delivery of property or for performance of services unless otherwise specified in the solicitation. All measurements shall be in the system of weights and measures in common usage

SOLICITATION INSTRUCTIONS AND CONDITIONS

in the United States, and pricing shall be in U.S. dollars.

(f) In computing any period of time for the solicitation or any resulting contract, "days" means calendar days, and the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State of Texas holiday, in which event the period shall run to the end of the next business day.

4. Submission of Bids

(a) Bids and modifications thereof shall be submitted by email to the Procurement Manager/Buyer at the address specified in the solicitation. Bidders can also, as a secondary option, submit their proposals enclosed in sealed envelopes or sealed cartons to the address included in this solicitation. The Bidder shall show the hour and date specified in the solicitation for receipt of Bids, the solicitation number, and the Bidder's name, address, and telephone number on the face of the envelope or carton. **Electronic copy of the proposal must be included.**

(b) Telegraphic Bids will not be considered unless authorized by the solicitation; however, Bids may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt of Bids.

(c) Samples of items, when required, must be submitted within the time specified and, unless otherwise specified in the solicitation, at no expense to the Authority. If not destroyed by testing, samples will be returned at the Bidder's request and expense, unless otherwise specified in the solicitation.

(d) Each copy of the offer shall include the legal name of the Bidder and a statement whether the Bidder is a sole proprietorship, a corporation, or any other legal entity. An offer for a corporation shall further give the state of incorporation and have the corporate seal affixed to it.

5. Contractor-Furnished Property

No material, labor, or facilities will be furnished by the **Contractor** unless otherwise provided for in this solicitation.

6. Award of Contract

(a) The contract will be awarded to that responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the **Contractor**, price and other factors considered. A responsible bidder is one who affirmatively demonstrates to the **Contractor** that the bidder has adequate financial resources and the requisite capacity, capability, and facilities to perform the contract within the delivery period or period of performance, has a satisfactory record of performance on other comparable projects, has a satisfactory record of integrity and business ethics, and is otherwise qualified and eligible to receive award under the solicitation and laws or regulations applicable to the procurement.

(b) The **Contractor** reserves the right to accept other than the lowest bid, reject any or all bids in part or in total for any reason, to accept any bid if considered best for its interest, and to waive informalities and minor irregularities in bids received.

(c) The **Contractor** may accept any item or group of items of any bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the solicitation, bids may be submitted for any quantities less than those specified, and the **Contractor** reserves the right to make an award on any item for a unit quantity less than the quantity proposed at the unit prices proposed unless the bidder specifies otherwise in the bid.

SOLICITATION INSTRUCTIONS AND CONDITIONS

(d) A written award (or acceptance of bid) which is mailed, telegraphed, or otherwise furnished to the successful bidder within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract without further action by either party.

(e) The **Contractor** may, within the time specified therein, accept any bid or part thereof, as provided in (c) above, whether or not there are negotiations subsequent to its receipt, unless the bid is withdrawn by written notice received by the **Contractor** prior to award. If subsequent negotiations are conducted, they shall not constitute a rejection or counter bid on the part of the **Contractor**.

(f) The **Contractor** may award a contract, based on initial bids received, without discussion of such bids. Accordingly, each initial bid should be submitted on the most favorable terms from a price and technical standpoint which the bidder can submit to the **Contractor**.

(g) Any financial data submitted with any bid hereunder or any representation concerning facilities or financing will not form a part of any resulting contract; provided, however, that if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished hereunder is incomplete, inaccurate, or not current.

7. Buy America Provision

This solicitation and the resulting contract are subject to the Buy America requirements of 49 U.S.C. § 5323(j) and the Federal Transit Administration's implementing regulations found at 49 CFR § 661, the provisions of each of which are incorporated herein by reference. These regulations require, as a matter of responsiveness, that the bidder or bidder submit with its bid a completed certification in accordance with 49 CFR § 661.6 or § 661.12, as appropriate. These certifications are set forth in this solicitation.

8. Cancellation of Solicitation

This solicitation may be cancelled by the **Contractor** before or after receipt of bids (as applicable) in accordance with the provisions of **Contractor**'s Procurement Regulations.

9. Discounts

(a) Prompt payment discounts will not be considered in evaluating bids for award, unless otherwise specified in this solicitation. However, proposed discounts will be taken if payment is made within the discount period, even though not considered in the evaluation of bids.

(b) In connection with any discount proposed for prompt payment, time shall be computed from (1) the date of completion of performance of the services or delivery of the supplies to the carrier if acceptance is at a point of origin, or date of delivery at destination or port of embarkation if delivery and acceptance are at either of these points, or (2) the date the correct invoice or voucher is received in the office specified by the **Contractor**, if the latter is later than the date of performance or delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date of the **Contractor**'s check.

10. Late Submissions, Modifications and Withdrawals of Bids

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made, and:

(1) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified

SOLICITATION INSTRUCTIONS AND CONDITIONS

for receipt of bids (e.g., an bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier);

(2) it was sent by mail (or telegram if authorized) and it is determined by the **Contractor** that the late receipt was due solely to mishandling by the **Contractor** after receipt at the **Contractor**'s offices;

(3) it was sent by U. S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 P.M. at the place of mailing two (2) working days prior to the date specified for receipt of bids. The term "working days" excludes weekends and U. S. Federal holidays; or

(4) it is the only bid received.

(b) Any modification of an bid, except a modification resulting from the Contracting Officer's request for a "best and final" bid, is subject to the same conditions as in (a)(1) and (a)(2) of this provision.

(c) A modification resulting from the Contracting Officer's request for a "best and final" bid received after the time and date specified in the request will not be considered unless received before award, and the late receipt is due solely to mishandling by the **Contractor** after receipt at the **Contractor**'s offices.

(d) The only acceptable evidence to establish:

(1) the date of mailing of a late bid or modification sent either by registered or certified mail is the U.S. Postal Service postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the bid, modification or withdrawal shall be deemed to have been mailed late. The term "postmark" means a printed, stamped, or otherwise placed impression, exclusive of a postage meter machine impression, that is readily identifiable without further action as having been supplied and affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, bidders should request the postal clerk to place a hand cancellation bull's-eye "postmark" on both the receipt and the envelope or wrapper; and

(2) the time of receipt at the **Contractor** is the time-date stamp of the **Contractor** on the bid wrapper or other documentary evidence of receipt maintained by the **Contractor**.

(3) the date of mailing of a late bid, modification, or withdrawal sent by U. S. Postal Service Express Mail Next Day Service - Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service - Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U. S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d)(1) of this provision. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's-eye "postmark" on both the receipt and the envelope or wrapper.

(e) Notwithstanding (a), (b), and (c) of this provision, a late modification of an otherwise successful bid which makes its terms more favorable to the **Contractor** will be considered at any time it is received and may be accepted.

(f) Bids may be withdrawn by written or telegraphic notice received in accordance with (Modification or Withdrawal of Bids). A bid may be withdrawn in person by a bidder or the bidder’s authorized representative, provided the identity of the person requesting withdrawal is established and the person signs a receipt for the bid prior to award.

SOLICITATION INSTRUCTIONS AND CONDITIONS

11. <u>Order of Precedence</u>

In the event of any inconsistency between the provisions of the solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) the Pricing Schedule; (b) Solicitation Instructions and Conditions; (c) other provisions of the contract whether incorporated by reference or otherwise; and (g) the specifications or statement of work.