



**NICOLE "NIKKI" FRIED
COMMISSIONER**

Submit Reply to:

Florida Department of Agriculture and Consumer Services
407 South Calhoun Street
Mayo Building, Room SB-8
Tallahassee, FL 32399-0800
Telephone: (850) 617-7181

Page 1 of 43 Pages	ITN NO. ITN FNW 20 21 14
AGENCY ADVERTISEMENT DATE: JULY 22, 2020	REPLIES WILL BE OPENED: AUGUST 28, 2020 AT 3:00 PM
PROPOSAL TITLE: FNW LEARNING MANAGEMENT SYSTEM	

VENDOR NAME	AUTHORIZED SIGNATURE (MANUAL)
VENDOR MAILING ADDRESS	
CITY - STATE - ZIP	AUTHORIZED SIGNATURE (TYPED) TITLE
TELEPHONE: ()	

I certify that this Reply is made without prior understanding, agreement, or connection with any corporation firm, or person submitting a Reply for the same materials, supplies or equipment, and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this Reply and certify that I am authorized to sign this Reply for the Respondent and that the Respondent is in compliance with all requirements of the Invitation to Negotiate including but not limited to, certification requirements. In submitting a Reply to an agency for the State of Florida, the Respondent offers and agrees that if the Reply is accepted, the Respondent will convey, sell, assign or transfer to the State of Florida all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the State of Florida. At the State's discretion, such assignment shall be made and become effective at the time the purchasing agency tenders final payment to the Respondent.

GENERAL INSTRUCTIONS TO RESPONDENTS

1. **Definitions.** The definitions found in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:
 - (a) "Buyer" means the entity that has released the solicitation. The "Buyer" may also be the "Customer" as defined in the PUR 1000 if that entity meets the definition of both terms.
 - (b) "Procurement Officer" means the Buyer's contracting personnel, as identified in the Introductory Materials.
 - (c) "Respondent" means the entity that submits materials to the Buyer in accordance with these Instructions.
 - (d) "Response" means the material submitted by the respondent in answering the solicitation.
 - (e) "Timeline" means the list of critical dates and actions included in the Introductory Materials.
2. **General Instructions.** Potential respondents to the solicitation are encouraged to carefully review all the materials contained herein and prepare responses accordingly.
- *3. **Electronic Submission of Responses.** Respondents are required to submit responses electronically. For this purpose, all references herein to signatures, signing requirements, or other required acknowledgments hereby include electronic signature by means of clicking the "Submit Response" button (or other similar symbol or process) attached to or logically associated with the response created by the respondent within MyFloridaMarketPlace. The respondent agrees that the action of electronically submitting its response constitutes:
 - an electronic signature on the response, generally,
 - an electronic signature on any form or section specifically calling for a signature, and
 - an affirmative agreement to any statement contained in the solicitation that requires a definite confirmation or acknowledgement.
4. **Terms and Conditions.** All responses are subject to the terms of the following sections of this solicitation, which, in case of conflict, shall have the order of precedence listed:
 - Technical Specifications,
 - Special Conditions and Instructions,
 - Instructions to Respondents (PUR 1001),
 - General Conditions (PUR 1000), and
 - Introductory Materials.

The Buyer objects to and shall not consider any additional terms or conditions submitted by a respondent, including any appearing in documents attached as part of a respondent's response. In submitting its response, a respondent agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a response, shall be grounds for rejecting a response.
- ~~**5. Questions.~~ Respondents shall address all questions regarding this solicitation to the Procurement Officer. Questions must be submitted via the Q&A Board within MyFloridaMarketPlace and must be RECEIVED NO LATER THAN the time and date reflected on the Timeline. Questions shall be answered in accordance with the Timeline. All questions submitted shall be published and answered in a manner that all respondents will be able to view. Respondents shall not contact any other employee of the Buyer or the State for information with respect to this solicitation. Each respondent is responsible for monitoring the MyFloridaMarketPlace site for new or changing information. The Buyer shall not be bound by any verbal information or by any written information that is not contained within the solicitation documents or formally noticed and issued by the Buyer's contracting personnel. Questions to the Procurement Officer or to any Buyer personnel shall not constitute formal protest of the

specifications or of the solicitation, a process addressed in paragraph 19 of these Instructions.

6. **Conflict of Interest.** This solicitation is subject to chapter 112 of the Florida Statutes. Respondents shall disclose with their response the name of any officer, director, employee or other agent who is also an employee of the State. Respondents shall also disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the respondent or its affiliates.
7. **Convicted Vendors.** A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list:
 - submitting a bid on a contract to provide any goods or services to a public entity;
 - submitting a bid on a contract with a public entity for the construction or repair of a public building or public work;
 - submitting bids on leases of real property to a public entity;
 - being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and
 - transacting business with any public entity in excess of the Category Two threshold amount (\$25,000) provided in section 287.017 of the Florida Statutes.
8. **Discriminatory Vendors.** An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not:
 - submit a bid on a contract to provide any goods or services to a public entity;
 - submit a bid on a contract with a public entity for the construction or repair of a public building or public work;
 - submit bids on leases of real property to a public entity;
 - be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or
 - transact business with any public entity.
9. **Respondent's Representation and Authorization.** In submitting a response, each respondent understands, represents, and acknowledges the following (if the respondent cannot so certify to any of following, the respondent shall submit with its response a written explanation of why it cannot do so).
 - The respondent is not currently under suspension or debarment by the State or any other governmental authority.
 - To the best of the knowledge of the person signing the response, the respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
 - Respondent currently has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.
 - The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
 - The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential respondent; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.
 - The respondent has fully informed the Buyer in writing of all convictions of the firm, its affiliates (as defined in section 287.133(1)(a) of the Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.
 - Neither the respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:
 - Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
 - Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
10. **Manufacturer's Name and Approved Equivalents.** Unless otherwise specified, any manufacturers' names, trade names, brand names, information or catalog numbers listed in a specification are descriptive, not restrictive. With the Buyer's prior approval, the Contractor may provide any product that meets or exceeds the applicable specifications. The Contractor shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Buyer shall determine in its sole discretion whether a product is acceptable as an equivalent.
11. **Performance Qualifications.** The Buyer reserves the right to investigate or inspect at any time whether the product, qualifications, or facilities offered by Respondent meet the Contract requirements. Respondent shall at all times during the Contract term remain responsive and responsible. In determining Respondent's responsibility as a vendor, the agency shall consider all information or evidence which is gathered or comes to the attention of the agency which demonstrates the Respondent's capability to fully satisfy the requirements of the solicitation and the contract.

Respondent must be prepared, if requested by the Buyer, to present evidence of experience, ability, and financial standing, as well as a statement as to plant, machinery, and capacity of the respondent for the production, distribution, and servicing of the product bid. If the Buyer determines that the conditions of the solicitation documents are not complied with, or that the product proposed to be furnished does not meet the specified requirements, or that the qualifications, financial standing, or facilities are not satisfactory, or that performance is untimely, the Buyer may reject the response or terminate the Contract. Respondent may be disqualified from receiving awards if respondent, or anyone in respondent's employment, has previously failed to perform satisfactorily in connection with public bidding or contracts. This paragraph shall not mean or imply that

it is obligatory upon the Buyer to make an investigation either before or after award of the Contract, but should the Buyer elect to do so, respondent is not relieved from fulfilling all Contract requirements.

12. Public Opening. Responses shall be opened on the date and at the location indicated on the Timeline. Respondents may, but are not required to, attend. The Buyer may choose not to announce prices or release other materials pursuant to s. 119.071(1)(b), Florida Statutes. Any person requiring a special accommodation because of a disability should contact the Procurement Officer at least five (5) workdays prior to the solicitation opening. If you are hearing or speech impaired, please contact the Buyer by using the Florida Relay Service at (800) 955-8771 (TDD).

~~***13. Electronic Posting of Notice of Intended Award.** Based on the evaluation, on the date indicated on the Timeline the Buyer shall electronically post a notice of intended award at http://fcn.state.fl.us/owa_vbs/owa/vbs_www.main_menu. If the notice of award is delayed, in lieu of posting the notice of intended award the Buyer shall post a notice of the delay and a revised date for posting the notice of intended award. Any person who is adversely affected by the decision shall file with the Buyer a notice of protest within 72 hours after the electronic posting. The Buyer shall not provide tabulations or notices of award by telephone.~~

14. Firm Response. The Buyer may make an award within sixty (60) days after the date of the opening, during which period responses shall remain firm and shall not be withdrawn. If award is not made within sixty (60) days, the response shall remain firm until either the Buyer awards the Contract or the Buyer receives from the respondent written notice that the response is withdrawn. Any response that expresses a shorter duration may, in the Buyer's sole discretion, be accepted or rejected.

15. Clarifications/Revisions. Before award, the Buyer reserves the right to seek clarifications or request any information deemed necessary for proper evaluation of submissions from all respondents deemed eligible for Contract award. Failure to provide requested information may result in rejection of the response.

16. Minor Irregularities/Right to Reject. The Buyer reserves the right to accept or reject any and all bids, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if the Buyer determines that doing so will serve the State's best interests. The Buyer may reject any response not submitted in the manner specified by the solicitation documents.

17. Contract Formation. The Buyer shall issue a notice of award, if any, to successful respondent(s), however, no contract shall be formed between respondent and the Buyer until the Buyer signs the Contract. The Buyer shall not be liable for any costs incurred by a respondent in preparing or producing its response or for any work performed before the Contract is effective.

18. Contract Overlap. Respondents shall identify any products covered by this solicitation that they are currently authorized to furnish under any state term contract. By entering into the Contract, a Contractor authorizes the Buyer to eliminate duplication between agreements in the manner the Buyer deems to be in its best interest.

19. Public Records. Article 1, section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011, Florida Statutes, provides a broad definition of public record. As such, all responses to a competitive solicitation are public records unless exempt by law. Any respondent claiming that its response contains information that is exempt from the public records law shall clearly segregate and mark that information and provide the specific statutory citation for such exemption.

20. Protests. Any protest concerning this solicitation shall be made in accordance with sections 120.57(3) and 287.042(2) of the Florida Statutes and chapter 28-110 of the Florida Administrative Code. Questions to the Procurement Officer shall not constitute formal notice of a protest. It is the Buyer's intent to ensure that specifications are written to obtain the best value for the State and that specifications are written to ensure competitiveness, fairness, necessity and reasonableness in the solicitation process.

Section 120.57(3)(b), F.S. and Section 28-110.003, Fla. Admin. Code require that a notice of protest of the solicitation documents shall be made within seventy-two hours after the posting of the solicitation.

Section 120.57(3)(a), F.S. requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

Section 28-110.005, Fla. Admin. Code requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

21. Limitation on Vendor Contact with Agency During Solicitation Period. Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

*** AMENDED TO MEET FDACS REQUIREMET.
** DOES NOT APPLY TO THIS AGENCY. PLEASE REFER TO SUBMISSION INSTRUCTIONS IN THE BID DOCUMENT.**

(PUR 1001 - 60A-1.002(7), F.A.C.)

GENERAL CONTRACT CONDITIONS

1. Definitions. The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

(a) "Contract" means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.

(b) "Customer" means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The "Customer" may also be the "Buyer" as defined in the PUR 1001 if it meets the definition of both terms.

(c) "Product" means any deliverable under the Contract, which may include commodities, services, technology or software.

(d) "Purchase order" means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

2. Purchase Orders. In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference

- the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.
3. **Product Version.** Purchase orders shall be deemed to reference a manufacturer's most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.
 4. **Price Changes Applicable only to Term Contracts.** If this is a term contract for commodities or services, the following provisions apply.
 - (a) **Quantity Discounts.** Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.
 - (b) **Best Pricing Offer.** During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.
 - (c) **Sales Promotions.** In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.
 - (d) **Trade-In.** Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.
 - (e) **Equitable Adjustment.** The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.
 5. **Additional Quantities.** For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.
 6. **Packaging.** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.
 7. **Inspection at Contractor's Site.** The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.
 8. **Safety Standards.** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.
 9. **Americans with Disabilities Act.** Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.
 10. **Literature.** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.
 11. **Transportation and Delivery.** Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.
 12. **Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.
 13. **Risk of Loss.** Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

- 14. Transaction Fee.** The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.

- 15. Invoicing and Payment.** Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms - EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers.

- 16. Taxes.** The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.

- 17. Governmental Restrictions.** If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

- 18. Lobbying and Integrity.** Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer

or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State which is available at the following: <http://dliis.dos.state.fl.us/barm/genschedules/gensched.htm>. The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

- 19. Indemnification.** The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.

The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

- 20. Limitation of Liability.** For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or

purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.

Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

21. **Suspension of Work.** The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.
22. **Termination for Convenience.** The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.
23. **Termination for Cause.** The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.
24. **Force Majeure, Notice of Delay, and No Damages for Delay.** The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor

believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

25. **Changes.** The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.
26. **Renewal.** Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.
27. **Purchase Order Duration.** Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.

Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the single delivery/performance, and shall survive the termination of the Contract.

Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the state term or agency contract. For example, if a state term contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the state term contract, then the purchase order will either be amended in writing by the ordering

entity within ten (10) calendar days of receipt of the contractor's notice to reflect the state term contract delivery schedule, or it shall be considered withdrawn.

The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, the contract terms on pricing plans and renewals shall govern the maximum duration of purchase orders reflecting such pricing plans and renewals.

Timely purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.

Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.

28. Advertising. Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

29. Assignment. The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.

30. Antitrust Assignment. The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

31. Dispute Resolution. Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

32. Employees, Subcontractors, and Agents. All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are

providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

33. Security and Confidentiality. The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

34. Contractor Employees, Subcontractors, and Other Agents. The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

35. Insurance Requirements. During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

36. Warranty of Authority. Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

37. Warranty of Ability to Perform. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

38. Notices. All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

39. Leases and Installment Purchases. Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for

State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.

47. Severability. If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

(PUR 1000 - 60A-1.002(7), F.A.C.) 11/06

41. Products Available from the Blind or Other Handicapped. Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

42. Modification of Terms. The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

43. Cooperative Purchasing. Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser.

State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

44. Waiver. The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

45. Annual Appropriations. The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.

46. Execution in Counterparts. The Contract may be executed in

**FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER
SERVICES DIVISION OF FOOD, NUTRITION AND WELLNESS**

INVITATION TO NEGOTIATE

Learning Management System

Proposers shall read and must comply with all requirements contained in this Invitation to Negotiate (ITN). Failure to provide all of the forms and information requested shall result in rejection of the proposal as non-responsive.

A. STATEMENT OF NEED

OVERVIEW AND BACKGROUND

The Florida Department of Agriculture and Consumer Services, Division of Food, Nutrition and Wellness (Department, FDACS), issues this Invitation to Negotiate (ITN) to establish a contractual services agreement for the implementation of a learning management system (LMS) for online training to support Florida's Child Nutrition Programs and Household Supplemental Food Programs, such as National School Lunch Program, the Summer Food Service Program, The Emergency Food Assistance Program, the Women Infant and Children's (WIC) Farmers' Market Nutrition Program and more. The Department seeks a commercial off-the-shelf solution that is cloud hosted for the division's external customers to engage in online training.

The United States Department of Agriculture (USDA) requires that all food service staff working under the National School Lunch Program meet annual training requirements, outlined in the Professional Standards for School Nutrition Professionals rule as part of the Healthy, Hunger-Free Kids Act of 2010. The staff can range from food service directors, procurement officials and area managers of large school districts to cafeteria cooks and cashiers at small charter schools. The Department also administers several other supplemental food programs and is required to provide training to local program operators, such as those distributing USDA-donated foods at food banks.

The user population for the system have a wide range of technical/computer abilities, with many at the beginner-level. Over 90% of users will be from outside of the Department and, therefore, the Department seeks a system that is easy to administer for external accounts and user-friendly.

The Department currently uses LMS365 by ELEARNINGFORCE for internal and external online training. This system was intended for internal staff and relies on the Department's Azure Active Directory for access. The Department is seeking a system that allows external users to self-register for accounts and offers the ability for a custom log in page, along with a list of other desired features.

The current LMS has operated since January 2019, and 2,700 users have accessed the system (as of May 2020). The highest month of activity was April 2020, when 259 unique users took training in the system, resulting in over 1,700 course completions for the month. The Department is currently hosting 45 courses with multiple learning objects and SCORM packages per course and plans to increase the number of courses over time.

Upon procurement of a new LMS, the Department will transfer the courses and course objects that already exist in the current LMS to the new system. The user data will not need to be transferred, and users will register for new usernames in the new LMS. While the initial intent of this system is to house training for the Division of Food, Nutrition and Wellness, this project could expand to other divisions in the Department for use with external trainees.

B. PROJECT SCOPE AND DELIVERABLES

Project Scope

The contractor shall provide services related to the set-up, configuration and maintenance of the LMS. The contractor shall provide licenses and access to the cloud-based LMS for users as requested or approved by the Department. The contractor shall provide all hosting services for LMS-related files. The contractor shall provide administrator training and support services for administrators. Refer to Appendix II, Desired Features List, for additional requirements.

Minimum Project Deliverables

The contractor shall provide no less than the following deliverables:

- Virtual or onsite training for up to 10 administrator users.
- LMS administration manual or access to online manuals/help guides
- LMS user manual; online manuals are acceptable
- A cloud-hosted LMS that meets the needs of the Department, as defined in this document.
- At a minimum, telephone and internet-based support for the entirety of the contract. Support available at a minimum from 8am-5pm Monday-Friday, excluding holidays. Respondent must describe its escalation procedure for fixing critical problems and outages.
- Licenses for LMS access, estimated at up to 2,000 unique users annually; up to 300 active users monthly; up to 200 concurrently – with the ability to grow as popularity of the LMS grows or with the expansion to other areas of the Department
- Project management services for set-up configuration/customization, testing, implementation and project closure. These services should include, but are not limited to, scope management, time and cost management, risk management, communications, quality assurance and change management.
- Develop documentation in accordance with FDACS' PPMO Information Technology Life Cycle (ITLC) process.

C. Data Security Classification, Confidentiality, and Security

In accordance with FIPS Publication 199, the data collected and residing in the solution will be categorized as **moderate** based on the impact that a loss of confidentiality, integrity, or availability of such information or information system would have on the Department's operations, organizational assets, or individuals.

1. Confidentiality of Information

Contractor agrees that it will not use or disclose any confidential information, including social security numbers, that may be supplied under this Contract pursuant to law, for any purpose not in conformity with state and federal laws.

2. Safeguarding of Information

In the event of a breach of security concerning confidential personal information involved with the Contract, the Contractor shall comply with section 501.171, Florida Statutes. When notification to affected persons is required under this section of the applicable statute, Contractor shall provide that notification, but only after receipt of the Department's approval of the contents of the notice. Defined statutorily, and for purposes of this Contract, "breach of security" or "breach" means the unauthorized access of data in electronic form containing personal data. Good faith acquisition of personal information by an employee or agent of Contractor is not a breach, provided the information is not used for a purpose unrelated to Contractor's obligations under the Contract or is not subject to further unauthorized use.

The Contractor and its employees agree not to use or disclose any information concerning services provided under this Contract. The Contractor and its personnel will be required to complete a Florida Department of Agriculture and Consumer Services Non-Disclosure Agreement within three business days of contract execution.

3. Information Technology Security and Cloud Computing

The selected Contractor must comply with the provisions outlined in the following Florida statutes and rules:

- a. Florida Administrative Code Chapter 60GG-2 – Florida Cybersecurity Standards
- b. Florida Administrative Code Chapter 60GG-4 – Cloud Computing
- c. Florida Administrative Code Chapter 60GG-5 - Information Technology Architecture Standards
- d. Florida Statute 282.318 – Information Technology Security Act
- e. All data to include backups must be encrypted at rest.

D. GENERAL TERMS AND CONDITIONS

1. Contract Period

The anticipated contract period is from the date of contract execution through June 30, 2024.

2. Contract Manager

The contractor will coordinate and schedule all work with the Department's contract manager, Sarah Stevenson, Division of Food, Nutrition and Wellness, 600 South Calhoun Street, Tallahassee, Florida 32399.

E. SPECIAL INSTRUCTIONS TO RESPONDENTS

This Solicitation and all activities leading toward the anticipated execution of a Contract, is conducted pursuant to Chapters 287, Florida Statutes (F.S.) and Chapter 60A-1, Florida Administrative Code (F.A.C), as applicable. The Department considers it in the best interest of the State of Florida to acquire the commodities and services described herein through a competitive procurement process.

CALENDAR OF EVENTS

Listed below are the important actions and dates/times by which the actions must be taken or completed. If the Department finds it necessary to change any of these fixed dates/times, an addendum will be issued. All listed times are Eastern Time (ET) in Tallahassee, Florida, unless otherwise specified herein.

DATE	TIME	ACTIVITY	LOCATION
July 22, 2020	---	ITN Advertised	Vendor Bid System
August 5, 2020	5:00 PM	Submission Deadline for Vendor Written Questions. No questions shall be accepted after this date.	FDACS Purchasing Office Bids@FDACS.gov
August 7, 2020 (Anticipated)	---	FDACS Posts Electronic Written Answers to Vendor Questions	Vendor Bid System
August 28, 2020	3:00 PM	Replies Due	FDACS Purchasing Office 407 South Calhoun Street SB-8 Mayo Building Tallahassee, FL 32399
September 8, 2020	---	Notice of Agency Decision/ Short List Results	Vendor Bid System
September 14-18, 2020 (Anticipated)	---	Negotiations	Tallahassee, Florida or via virtual meeting
September 22, 2020 (Anticipated)	72 hrs	Notice of Agency Decision / Intent to Award	Vendor Bid System
September 28, 2020	---	Anticipated Contract Start Date	

FDACS shall utilize the State of Florida, Vendor Bid System (VBS) as the single resource for all Invitation to Negotiate, Public Notice information in accordance with 28-102.001, F.A.C.

These dates and times are subject to change. Any updates to this Calendar of Events will be published on the VBS.

QUESTIONS

All technical questions must be submitted in writing and received by **August 5, 2020**. Questions must be submitted to:

Carmelita Graham, Purchasing Specialist
Florida Department of Agriculture and Consumer Services - Purchasing Office

Phone: (850) 617-7181
Email: Bids@FDACS.gov

ADDENDUM

The Department reserves the right to amend this ITN. Addendums to answer vendor questions, provide clarifications, or amend any portion to this ITN will be posted on the VBS. It is the Vendor's responsibility to monitor the VBS for any solicitation notifications.

PUBLIC OPENING

THE PUBLIC OPENING FOR THIS SOLICITATION WILL BE AVAILABLE VIA TELECONFERENCE.

DIAL-IN TELECONFERENCE: 1 (888) 585 – 9008
CONFERENCE ROOM NUMBER: 407 – 639 – 217 THEN # AND FOLLOW PROMPTS

Residents in the State of Florida who are hearing, sight or speech impaired, please contact Florida Relay at 1 (800) 955- 8771 or via <https://www.ftri.org/relay> for assistance.

F. REPLY INSTRUCTIONS

Vendor should address/label their submission to:

**ITN FNS 20 21 14 FNW LEARNING MANAGEMENT SYSTEM
Florida Department of Agriculture and Consumer Services – Purchasing Office
407 South Calhoun Street – Mayo Building, Room SB-8
Tallahassee, Florida 32399-0800**

Replies shall be sealed upon submission and include all mandatory forms, attachments, qualifications / additional submittal requirements.

In addition to signing, thereby acknowledging the General Instructions to Respondents (PUR 1001) and the General Contract Conditions (PUR 1000) attached to the Reply, each Respondent must complete the attached Price Sheet (Appendix I) in its entirety. By affixing a manual signature to the Price Sheet, the Respondent states that he/she has read all the provisions of the ITN package and agrees to the terms, conditions and specifications contained therein. REPLIES BY EMAIL OR FAX WILL NOT BE ACCEPTED BY THE DEPARTMENT. REPLIES MUST BE SUBMITTED IN A SEALED ENVELOPE AS SPECIFIED HEREIN.

RESPONSE FORMAT

Submit one (1) original, and five (5) duplicate copies of the Written Technical Reply and all attachments when responding to this ITN. Respondents must also submit a complete copy of their submission and all forms on a CD, DVD-ROM or USB flash drive in a pdf file. Replies shall be delivered to the Department's purchasing office before the specified Reply opening date in a sealed package(s) labeled with the proposer's name and address and the ITN number. Sequentially number all pages and organize as indicated below. Emphasis of each Reply must be on completeness and clarity of content. In order to expedite the evaluation process, it is essential that proposers follow the format and instructions contained herein.

The ITN response package must include all requested forms and information. Each section should be segregated by index TAB(s) or folders labeled as such, which will include either

mandatory response forms or material for weighted criteria to be scored by the appointed evaluation team. **Failure to provide all of the requested information may result in disqualification of the vendor Reply, or a zero-point score for that section.** The Respondent's package should clearly identify each area, as listed below, with an index tab or other type of identification.

TAB A State of Florida PUR 1001 and PUR 1000 Form, Pages 1 through 8

(No Points will be awarded for Tab A)

1. Each Reply must provide an original signed response which identifies the Vendor primary point of contact as it relates to this ITN, the address, telephone number, email address, and signature of an official representative of the Respondent who is legally authorized to contract on behalf of the Vendor.
2. Each Reply must provide a completed response form (page 1). This form shall be complete with all information and signature of the authorized representative. By submission of this signed form, the Respondent hereby complies with all requirements and specifications within this ITN.

TAB B Statement of Qualifications (30 points maximum)

1. Overview - Provide an overview of company, including years in business, previous/current clients and areas of expertise. (10 points maximum)
2. Summary of Qualifications - Contractor shall provide a summary of qualifications that documents, demonstrates and represents their organization's ability to manage, implement and complete the project as described herein. Describe the company's experience delivering and supporting SaaS LMS solutions for federal and state government agencies. (10 points maximum)
3. Personnel - Provide a complete list of all personnel that describes their roles and responsibilities, including subcontractors that will be assigned to this contract and describe their backgrounds/experience. (10 points maximum)

TAB C Past Performance/References (25 points maximum)

References must be current or former clients of the proposing firm. The Department shall not accept subcontractor/proposed personnel or personal references of a member of the proposing firm as a substitute for references. Past performance with the Department shall constitute a reference and be used by the Department to determine the prospective contractor's ability to perform services similar to those described in this ITN in a satisfactory manner. Confidential clients shall not be included. It is the responsibility of the proposer to assure that the Department can timely verify all references given. References must be verifiable within five (5) business days of initial verification attempt by the Department, exclusive of weekends and holidays. The Department must verify three (3) references for the proposal to be considered responsive.

The following questions will be asked of each reference, with a possible maximum total score of 25. Ratings are as follows: Excellent - 5 points; Good - 3 Points; Fair - 2 Points and Poor – 0 Points.

1. Please confirm that your organization has used this firm to negotiate, purchase and/or implement an LMS.

Yes No

ANY RESPONSE OF “NO” TO QUESTION NUMBER 1 DISQUALIFIES THE PROPOSAL IN ITS ENTIRETY, AND NO FURTHER CONSIDERATION SHALL BE GIVEN.

2. Would you use the services of this firm again?

Yes (5 points) No (0 points)

3. Did the firm complete the contracted project on-time and within budget?

Excellent Good Fair Poor

4. How would you rate the performance of this firm?

Excellent Good Fair Poor

5. Were issues and problems addressed and/or resolved in a timely and satisfactory manner?

Excellent Good Fair Poor

6. How would you rate the firm's project and contract management abilities?

Excellent Good Fair Poor

TAB D Technical Proposal and Project Management Plan (70 points maximum)

1. Technical Proposal (40 points maximum) – Describe the features of the LMS as it relates to meeting the needs of the Department, including:
 - How the system meets the functionality for each desired feature identified in Appendix II. (20 points maximum)
 - Any additional work that the vendor would need to complete to meet the list of desired features in Appendix II. (10 points maximum)
 - The process and frequency for deploying system enhancements, including average system down time. (5 points maximum)
 - Approach to meeting State of Florida Information Technology Security and Cloud Computing requirements. (5 points maximum)

2. Implementation and Project Management (30 points maximum)– Provide an overview of the onboarding and implementation process. This should include:
 - Approach to meeting requirements of Section B. Project Scope and

- Deliverables (6 points maximum)
- Full project schedule (6 points maximum)
- Responsibility task matrix for proposer and Department (6 points maximum)
- Deliverable payment schedule (6 points maximum)
- Maintenance and support plan(s) during project implementation / ongoing support upon full system acceptance (6 points maximum)

TAB E Project Fees (25 points maximum)

Provide a detailed budget under which the respondent plans to operate this contract. Respondents must attach the detailed budget to the completed budget sheet (**APPENDIX I, PRICE SHEET**) in this tab. The budget for the project shall include all project deliverables, travel and any other incidental costs. Failure to provide the required detailed budget shall result in the rejection of the proposal as non-responsive.

The lowest proposal for annual fees, including estimated annual license fees, will be awarded 20 points. Each other proposer will be given a percentage of the 20 points based on the percentage difference of their price versus the lowest total proposal price.

The lowest proposal for one-time fees, such as a set-up fee, training or custom enhancements, will be awarded 5 points. Each other proposer will be given a percentage of the 5 points based on the percentage difference of their price versus the lowest total proposal price.

It is anticipated that the Department will have up to 300 active users monthly, with up to 2,000 unique active users annually, under any contract resulting from this proposal. This estimated amount is given only as a guideline for preparing your proposal and should not be construed as representing an actual amount to be purchased under this contract. The Vendor(s) shall supply, at proposed price, the actual amounts ordered regardless of whether the total of such amounts is more or less than anticipated. This proposal and the resulting contract will be subject to annual appropriated funding.

The GRAND TOTAL firm fixed price points will be calculated based on the following formula:

$$(M \times L) / A = P$$

M = Maximum Points Available for the Price Proposal

L = Lowest Response Price Proposal

A = Actual Vendor Price Proposal

P = Points Awarded

TAB F Florida Preference Certifications (No points will be awarded for TAB F)

CERTIFICATION OF DRUG-FREE WORKPLACE PROGRAM (ATTACHMENT B)

To be considered for the drug-free workplace program preference, Bidders must provide certification that it has implemented a drug-free workplace program in accordance with 287.087.F.S. Submission of **ATTACHMENT B** not required but is recommended.

CERTIFIED MINORITY BUSINESS ENTERPRISE

Pursuant to Section 287.57(11) F.S., if two equal Bids are received and one Bid is from a

certified minority Business Enterprise, the Department must contract with the Certified Minority Business Enterprise. **Failure to submit proof of certification will result in non-application of the preference.**

FLORIDA VETERAN BUSINESS ENTERPRISE OPPORTUNITY ACT PREFERENCE

Pursuant to Section 295.187(4), Florida Statutes, a state agency, when considering two or more bids, proposals, or replies for the procurement of commodities or contractual services, at least one of which is from a certified veteran business enterprise, which are equal with respect to all relevant considerations, including price, quality, and service, shall award such procurement or contract to the certified veteran business enterprise. Proof of certification pursuant to Section 295.187(5), Florida Statutes, shall accompany the bid. **Failure to submit proof of certification will result in non-application of the preference.**

TAB G Mandatory Certifications (No points will be awarded for Tab G)

CONFLICT OF INTEREST (ATTACHMENT C)

Any person submitting a Reply in response to this ITN shall be required to complete the Conflict of Interest Statement form (**ATTACHMENT C, CONFLICT OF INTEREST STATEMENT**) with all information and signature of an official of proposing firm who is legally authorized to contract for the firm. The signed original of this form must be attached to the original Reply package.

SCRUTINIZED COMPANIES AND PROHIBITED BUSINESS ACTIVITIES (ATTACHMENT D)

Pursuant to Section 287.135, Florida Statutes, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel.

When goods or services to be provided are \$1 million or more, Section 287.135, Florida Statutes, requires the Contractor to certify that it is not 1) on the Scrutinized Companies with Activities in Sudan List; 2) on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, or 3) engaging in business operations in Cuba or Syria.

In order for your Reply to be considered responsive, **ATTACHMENT D, CERTIFICATION REGARDING SCRUTINIZED COMPANIES**, must be completed and included in your Reply package. The list may be found at <https://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/GlobalGovernanceMandates.aspx>. The Department may immediately terminate any contract, as a result of this Reply, for cause if the contractor is found to have submitted a false certification.

G. PRESENTATIONS

FDACS shall evaluate responses and rank the responses to determine which proposers, if any, to invite for presentation/demonstrations. It is the Department's intent to invite up to three (3) of the top-scoring proposers to the presentation/demonstrations. Any presentations/demonstrations shall include clarifications to the respondent's proposal. All presentations shall be held in Tallahassee, Florida or via virtual meeting.

The purpose of this evaluation activity is to provide substantiating information and demonstrated performance to support the proposal content. No part of the presentations will serve to relieve the Vendor of any quality or operation performance as required under the resulting Contract. Vendors' presentations will be evaluated on the following:

PRESENTATION SCORING (25 points maximum)

The presentations on the FNW Learning Management System should include at a minimum:

Overview and Experience of Company – Give an overview of your company and describe relevant experience as it relates to this project. (5 points maximum)

Set-Up and Implementation – Describe process for setting up the system from contract award to public launch. Outline the responsibilities of the Department and the company in setting up the system. (5 points maximum)

Administrator Tools – Describe and/or show the tools and features available to administrators, focusing on the desired features outlined in the solicitation. (5 points maximum)

User Experience – Describe and/or show a user's experience in the LMS, focusing on the desired features outlined in the solicitation. (10 points maximum)

Please note that any webinar event will be hosted by the proposing Vendor. Vendors will be instructed to provide technical capabilities and/or requirements for the in-person or webinar presentation(s) upon receipt of an appointment request issued by FDACS.

Pursuant to section 286.0113 (2)(b)(1), oral presentations as part of this competitive solicitation are exempt from public meeting requirements. A complete recording of this presentation will be made available, as well as any materials presented or received, at the completion of the procurement process in accordance with Chapter 119, Florida Statutes.

H. REPLY EVALUATION AND AWARD

Each Vendor shall submit a Reply that conforms to all mandatory requirements as outlined in this ITN solicitation. Replies that do not conform to the requirements, or contain material deviations from the specifications, will be rejected as non-responsive and not further reviewed. An appointed evaluation committee will utilize a point system to score each responsive reply submitted. Once the evaluation committee has concluded scoring all responsive replies, a list of responses will be tabulated in ranked order. Available points for each of the evaluation criteria are specified herein.

As the best interest of the state shall require, FDACS reserves the right to reject any and all responses or waive any minor irregularity or technicality in responses received. Contractors are cautioned to make no assumptions unless their response has been evaluated as being responsive. Any further clarification, if necessary, will be by written addendum.

The Department is not liable for any costs incurred by a Respondent in preparing a Reply, site visits or attending any demonstration/presentations.

LESS THAN TWO RESPONSIVE REPLIES

In the event that FDACS receives less than two (2) Responsive Replies, the Department reserves the right to negotiate the best terms and conditions with the single Responsive Vendor pursuant to 287.057 (5) F.S.

EVALUATION CONSIDERATIONS

The evaluation committee members shall perform the evaluation in accordance with the evaluation criteria listed in EVALUATION PROCEDURE. The evaluation committee shall recommend a ranked list of Vendor Replies, based on total average score per vendor.

EVALUATION PROCEDURE

The evaluation committee shall utilize a point system to rank Replies based on their written technical and price point score. Available points for each of the written technical and price point score evaluation criteria are:

<u>Range of Points</u>	<u>Criteria</u>
1-30 (Tab B)	Statement of Qualifications
1-25 (Tab C)	Past Performance/References
1-70 (Tab D)	Technical Proposal and Project Management Plan
1-25 (Tab E)	Project Fees
1-25	Presentations of three (3) top-scoring proposers
<u>175</u>	<u>Maximum Points</u>

NEGOTIATION PROCESS

Negotiation, as described in this Section, is designed to determine which Vendor and Reply will provide the greatest overall benefits to the state.

1. Vendor(s) Selected for Negotiations

In an effort to comply with the legislative intent of Chapter 287, F.S., to increase competition and award contracts equitably and economically, the Department may use the Vendor’s overall score to rank and/or identify the natural break, if applicable.

The order in which negotiations with the Vendor(s) commence will be determined according to the highest overall awarded points as stipulated above. The Department reserves the right to negotiate with one, more, or none of the Vendor(s). Negotiations may continue until an agreement is reached

or all Replies are rejected.

2. Negotiation Sessions

The Negotiation Committee will consist of at least three (3) persons who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements, in which the commodities and contractual services are sought, in an effort to obtain the greatest overall benefit to the State. All Negotiation Sessions resulting from this ITN will be conducted via teleconference or in Tallahassee, Florida. The participating Vendor shall have a representative present during negotiation meetings who is authorized to make binding decisions on behalf of the Vendor. It is the Vendor's sole responsibility to coordinate all parties to its Reply and to ensure that all are appropriately represented during scheduled Negotiation meetings.

During negotiations, Vendor(s) may propose alternate capabilities or services that reflect the Vendor's optimal performance methodology while still complying with the other requirements of the ITN. FDACS may request changes to proposed solutions. Additionally, FDACS may consider revised pricing; Optional Technical Specifications offered in Vendors' Replies; new/additional optional commodities and services; and/or modifications to proposed technical specifications. Before award, FDACS reserves the right to seek clarifications, request Reply revisions, and request any information deemed necessary for the proper review of Replies. If FDACS is unable to reach an agreement with a Vendor on contractual issues or other issues, FDACS may eliminate the Vendor from further consideration.

3. Best and Final Offer (BAFO)

The Negotiation Committee may request a BAFO from one or more Vendor with which negotiations are conducted. Based upon the negotiation process, the BAFO may contain a revised scope, negotiated terms and conditions, price terms, etc. **CONTRACT AWARD.**

The Negotiation Committee will select which Respondent(s) to submit for Contract recommendation. The FDACS will make a final determination as to which Response(s) constitute the greatest overall value to the State, based upon the requirements set forth in this ITN.

AWARD OF IDENTICAL (TIE) BIDS

When evaluating Bidder responses to solicitations where there is identical pricing or scoring from two or more Bidders, the Department shall determine the order of award in accordance with Sections 287.057 (11), 287.082, 287.087, 287.092, and 295.187(4) F.S.

DISQUALIFICATION OF REPLY

More than one Reply from an individual, firm, partnership, corporation or association, under the same or different names, will not be considered. Reasonable grounds for believing that a Respondent is interested in more than one Reply for the same work will cause the rejection of all Replies in which such Respondents are believed to be interested.

If there is reason to believe that collusion exists among the Respondents, any or all Replies will be rejected. No participants in such collusion will be considered in future solicitations for the same work. Falsifications of any entry made on the Respondents' offer will be deemed a material irregularity and will be grounds for rejection.

REJECTION OF REPLIES

The Department reserves the right to reject any and all Replies, when such rejection is in the interest of the state of Florida, and to reject the Reply of a Respondent who the Department determines is not in a position to perform the contract.

LATE REPLIES

Replies received by the Department after the Reply opening time and date will be rejected as untimely and will not be opened. Replies from vendors listed on the Department's posted award notice are the only Replies received timely in accordance with the Department's ITN opening time and date.

Replies may be delivered by United States Postal Service (USPS) mail, courier (FedEx/UPS), or hand delivered to the Mayo Building; however, vendors are cautioned shipment via USPS may not be guaranteed to be received by the Department on the scheduled due date / time.

REPLIES MUST BE RECEIVED IN THE PURCHASING OFFICE BY the designated date and time listed. Postmarked or clocked in by FedEx, UPS or U.S. Postal Service is not acceptable for being received in the Purchasing Office.

I. SPECIAL CONDITIONS**STANDARD CONTRACT PROVISIONS**

A draft Contract is provided as **ATTACHMENT E**. By submission of a response, Vendors agree to the State of Florida contract conditions. In the case of conflict between the PUR1000 General Contract Conditions and the Florida Department of Agriculture and Consumer Services Contractual Service Agreement, the Florida Department of Agriculture and Consumer Services Contractual Service Agreement shall prevail.

This document does not need to be returned with your Reply. Respondents must not submit additions, objections, or modifications with their Reply submission. This ITN, the successful Vendor's Reply and Vendor's Best and Final Offer received (if applicable) will be incorporated into the Contract.

PUBLIC RECORDS

All documents received by the FDACS shall be considered public record pursuant to Chapter 119, Florida Statutes.

Any Reply content submitted to Department which is asserted to be exempted by law from disclosure as a public record shall be clearly marked "exempt," "confidential," or "trade secret" (as applicable), with the statutory basis for such claim of exemption specifically identified in writing on each and every such page. Failure to segregate and so clearly identify any such content shall constitute a waiver of any claimed exemption as applied to the portion of the Reply or other document in which the content is set forth.

An entire page or paragraph in which such information appears should not be marked "EXEMPT", "confidential" or "trade secret" unless the entire page or paragraph consists of such confidential information. Only the confidential portions(s) should be identified and marked. Vendors are to indicate where confidential information begins and ends. It will be the responsibility of the Vendor to defend the confidentiality of its trade secrets through the judicial process.

The FDACS takes its public records responsibilities under chapter 119, F.S., and Article I, Section 24 of the Florida Constitution, very seriously. If a Vendor considers any portion of the documents, data or

record submitted in response to this solicitation to be exempted by law from disclosure as a public record, the Vendor must also provide Department with a separate “**Redacted Copy**” of its Reply on a CD, DVD-ROM or USB flash drive, at the time of Reply submission.

This Redacted Copy should contain FDAC’s solicitation name, number, and the name of the Responding Vendor on the cover and should be clearly titled “**Redacted Copy**.” The Redacted Copy must be provided to the Department at the same time the Vendor submits its Reply and must only exclude or obliterate those exact portions which are exempted by law from public disclosure.

IF A VENDOR FAILS TO SUBMIT A REDACTED COPY WITH ITS REPLY AS DESCRIBED HEREIN, THE FDACS IS AUTHORIZED TO PRODUCE THE ENTIRE DOCUMENT(S), DATA OR RECORDS SUBMITTED BY THE VENDOR IN ANSWER TO A PUBLIC RECORDS REQUEST. THE STATE OF FLORIDA DOES NOT CONSIDER PRICE TO BE CONFIDENTIAL.

UNILATERAL CANCELLATION

The state shall have the right of unilateral cancellation for refusal by the contractor to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the contractor in conjunction with the contract.

CANCELLATION OF CONTRACT

Any contract resulting from this ITN may be canceled by the Department, in whole or in part, by providing thirty (30) days written notice to the contractor. Failure of the contractor to follow the specifications and requirements set forth herein may result in the cancellation and default proceeding.

COOPERATION WITH THE INSPECTOR GENERAL

Pursuant to section 20.055(5), Florida Statutes, the contractor and any subcontractors understand and will comply with their duty to cooperate with the inspector general in any investigation, audit, inspection, review or hearing.

PUBLIC ENTITY CRIMES

A person or affiliate, who has been placed on the convicted vendor list following a conviction for a public entity crime; may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two, for a period of 36 months from the date of being placed on the convicted vendor list.

EMPLOYMENT OF UNAUTHORIZED ALIENS

The employment of unauthorized aliens by any contractor is considered a violation of section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.

DISCRIMINATION

An entity or affiliate, who has been placed on the discriminatory vendor list, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public

entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not award or perform work as a contractor, supplier, subcontractor or consultant under contract with any public entity and may not transact any business with any public entity.

ANNUAL APPROPRIATIONS

The state of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.

INTERPRETATIONS/DISPUTES

Any person, who is adversely affected by the agency's decision or intended decision, shall file with the agency a Notice of Protest in writing within 72 hours after the posting of the notice of decision or intended decision. Protests must be filed with the Agency Clerk, Florida Department of Agriculture and Consumer Services, The Holland Building, 600 South Calhoun Street, Tallahassee, Florida 32399. With respect to a protest of the terms, conditions and specifications contained in a solicitation, including any provision governing the methods for ranking bids, proposals or replies, awarding contracts, reserving rights or further negotiation or modifying or amending any contract, the Notice of Protest shall be filed in writing within 72 hours after the posting of the solicitation. The formal written protest shall state with particularity the facts and law upon which the protest is filed.

CONTRACT AWARD PROCESS

At the conclusion of Negotiations, the FDACS will post a Notice of Agency Decision which will be available for review by interested parties on the Vendor Bid System located at http://www.myflorida.com/apps/vbs/vbs_search_r2.criteria_form. The Notice of Agency Decision will remain posted for a period of seventy-two (72) hours. Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. Failure to file the proper bond at the time of filing the formal protest will result in denial of the protest.

Reserved Rights

The FDACS reserves the right to:

- Amend this ITN.
- Waive minor irregularities in submitted Replies.
- Conduct a Reply Clarification Process to cure deficiencies not directly related to Technical Specifications of the ITN.
- Accept or Reject any or all Replies received in whole or for a specific Part.
- Re-Solicit for new Replies.
- Abandon the need for such commodities and services.
- Request additional information to assess a Respondent's capabilities.
- Negotiate with one or more Respondents, either sequentially or concurrently, or not negotiate at all.
- Request additional Best and Final Offers (BAFOs), if in the State's best interest.
- Negotiate with one, more, or none of the Vendor(s), regardless of the order in which the Vendor is ranked or negotiations commence.

*****IMPORTANT NOTICE*****

Pursuant to Section 287.057(23), Florida Statutes, respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

No negotiations, decisions or actions shall be initiated or executed by the Respondent as a result of any discussions with any purchaser or departmental employee. Only those communications, which are in writing from the Department's purchasing office, may be considered as a duly authorized expression on behalf of the purchaser. Also, only communications from the Respondents, which are in writing and signed, will be recognized by the purchaser as duly authorized expressions on behalf of the Respondent.

Any questions, correspondence or contact with the Department initiated by the Respondent after the Reply opening date and prior to posting of intended award must be directed to the purchasing office, attention purchasing director.

The Department will not accept any revisions or additions to any Reply after the opening/due date.

APPENDIX I
PRICE SHEET

ANNUAL FEES

List estimated annual costs for user access per contract year, as supported by the budget plan. The cost should consider the Department’s estimate of 300 active users monthly, with up to 2,000 unique active users annually. Implementation fees should be listed in the ONE-TIME FEE section.

Year 1 annual cost \$ _____

Year 2 annual cost \$ _____

Year 3 annual cost \$ _____

TOTAL 3-YEAR ANNUAL COST \$ _____

ONE-TIME FEE

Specify fee for configuration, testing, implementation, training, etc.as supported by the budget plan.

TOTAL ONE-TIME COST \$ _____

By affixing signature to this **PRICE SHEET**, contractor acknowledges reading and agrees to accept all terms, provisions and conditions in this Invitation to Negotiate.

CONTRACTOR NAME: _____

SIGNATURE (MANUAL): _____

SIGNATURE (PRINTED): _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

FEID/SSN: _____ PHONE NUMBER: _____

EMAIL: _____

Appendix II

Desired Features List

General Requirements

- System supports a minimum of 2,000 users per year; 300 per month; 200 concurrently
- Supports external users as primary user-base
- Availability of test and production environment

Technical Capabilities

- Azure AD integration for Department employees
- Supports Section 508 Compliance (ADA Compliance)
- Allows for design customization and white labeling
- SCORM/Tin-Can compliant
- Supported on multiple web browsers, including, but not limited to, Google Chrome, Firefox, and Microsoft Edge
- Ability to download and view media files, including pdf, Word, Excel, flash, mp4 and wmv, etc.
- Includes industry-leading security practices for direct login
- Supports ability to create external user profiles; capabilities should support both the ability for administrators and users to create the profile
- Supports full mobile accessibility without the need for a special app (e.g. smartphones, tablets) and features responsive site design
- Supports multiple languages, including Spanish
- Ability to send/receive messages within the LMS system to users (notification system)
- Ability to automate enrollment and deactivation in bulk
- Ability to customize role-based permissions, including view-only roles
- Ability to provide third party authentication and authorization scenarios to support external customer access
- Housing for unlimited courses and content storage
- Ability to segment LMS into multiple sites or portals with different course catalogs (ability for different divisions to have their own LMS landing site/catalog)

Reporting and Analytics Capabilities

- Ability to create custom reports and dashboards using metadata
- Shows multiple attempts and completions for courses by user
- Ability to export reports using standard formats, such as Excel, PDF, txt
- Ability to track enrollment trends
- Ability to run reports on quiz activity (i.e. see most common right/wrong answers, etc)

Search Capabilities

- Ability to search course catalog using simple filters (e.g., course subject, mandatory training, method of course delivery) and advanced filters (e.g., keywords, full-text, partial words or phrases, date ranges, region)

User Capabilities

- User can create their own account
- Ability to self-enroll in available courses
- Ability to reset password if forgot password
- Ability to send username through email if forgot username
- Ability to use personal email as username
- Ability to view profile and make updates to certain fields
- Ability to view course catalog and enroll in courses
- Custom data fields upon account creation (i.e. company name, agreement number, etc.)
- Ability for users to upload external training information to track their own training history
- Ability to enroll directly from course catalog
- Ability to download files from courses (Microsoft Word and pdf file types, at a minimum)
- Ability to retake courses as many times as desired (system should track all attempts and scores)

Additional Features

- Allows for all data to be exported
- Allows for certain data to be imported, such as user profile information
- Has the option for CEU credit hours for each course to the .25 (1/4) hour
- Quiz builder with multiple choice, true/false, open ended and fill-in-the-blank options
- Ability to create custom learning paths
- Ability to schedule/track in-person classroom training or virtual live instruction, such as GoToTraining
- Ability to issue certificates then re-issue certificates if user decides to re-take same course
- Ability to remind user of upcoming scheduled course (specified number of days prior)
- Ability to include hyperlinks and attach files to notifications (e.g., information to be studied before taking the course)
- Ability to market training to specific user groups based on organization structure
- Ability to host a private discussion boards with users

ATTACHMENT A



Florida Department of Agriculture and Consumer Services
Bureau of General Services

NICOLE "NIKKI" FRIED
COMMISSIONER

REFERENCES

As per the requirements of ITN special condition References, each bidder is required to submit the names, addresses, and telephone numbers for a minimum of three (3). References shall be listed below. In order for your Reply to be considered responsive this form must be completed and included in your response package.

1. CLIENT COMPANY NAME: _____

CLIENT PROJECT TITLE: _____

POINT OF CONTACT: _____

TELEPHONE NUMBER: () _____ EMAIL: _____

2. CLIENT COMPANY NAME: _____

CLIENT PROJECT TITLE: _____

POINT OF CONTACT: _____

TELEPHONE NUMBER: () _____ EMAIL: _____

3. CLIENT COMPANY NAME: _____

CLIENT PROJECT TITLE: _____

POINT OF CONTACT: _____

TELEPHONE NUMBER: () _____ EMAIL: _____

ATTACHMENT B



Florida Department of Agriculture and Consumer Services
Bureau of General Services
DRUG-FREE WORKPLACE PROGRAM - BIDDER CERTIFICATION

**NICOLE "NIKKI" FRIED
COMMISSIONER**

IDENTICAL TIE BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids, which are equal with respect to price, quality and service, are received by the state or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

- 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.

VENDOR'S SIGNATURE

ATTACHMENT C



Florida Department of Agriculture and Consumer Services
Bureau of General Services

CONFLICT OF INTEREST STATEMENT

NICOLE "NIKKI" FRIED
COMMISSIONER

I, _____, as an authorized representative of _____,
certify that no member of this firm, nor any person having interest in this firm, have been awarded a contract
by the Florida Department of Agriculture and Consumer Services on a non-competitive basis to:

- (1) Develop this Invitation to Negotiate (ITN);
- (2) Perform a feasibility study concerning the scope of work contained in this ITN; or
- (3) Develop a program similar to what is contained in this ITN.

Signature of Authorized Representative

Date

Print Name

ITN Number

ATTACHMENT D



Florida Department of Agriculture and Consumer Services
 Division of Administration

CERTIFICATION REGARDING SCRUTINIZED COMPANIES

NICOLE "NIKKI" FRIED
 COMMISSIONER

Certification Regarding Scrutinized Companies that Boycott Israel List and Engage in a Boycott of Israel	
I, _____ (Enter Name of Authorized Representative), as the authorized representative of _____ (Enter Legal Name of Contractor), (the "company") hereby certify that, the company has reviewed Section 287.135, Florida Statutes, and certify the company:	
<ol style="list-style-type: none"> 1. Is not listed on the Scrutinized Companies that Boycott Israel list or 2. Does not participate or engage in a boycott of Israel. 	
The List of Scrutinized Companies that Boycott Israel can be located on the State Board of Administration of Florida's website at https://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/GlobalGovernanceMandates.aspx	
I understand that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject the Company to civil penalties, attorney's fees and other penalties and consequences as provided by Section 287.135, Florida Statutes.	
Signature of Authorized Representative:	Date:

Certification Regarding Scrutinized Companies List And Business Operations in Cuba/Syria	
I, _____ (Enter Name of Authorized Representative), as the authorized representative of _____ (Enter Legal Name of Contractor), (the "company") hereby certify that, the company has reviewed Florida Laws Chapter 2018-52 (revising Section 287.135, Florida Statutes) and Section 287.135, Florida Statutes, and certify the company:	
<ol style="list-style-type: none"> 1. Is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and 2. Does not have business operations in Cuba or Syria. 	
The Scrutinized List of Prohibited Companies can be located on the State Board of Administration of Florida's website at https://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/GlobalGovernanceMandates.aspx	
I understand that Section 287.135, Florida Statutes, prohibits Florida state agencies from contracting for goods or services over \$1,000,000, with companies on either List or that are engaged in business operations in Cuba or Syria, and that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject the Company to civil penalties, attorney's fees, and other penalties and consequences as provided by Section 287.135, Florida Statutes.	
Signature of Authorized Representative:	Date:

ATTACHMENT E



Florida Department of Agriculture and Consumer Services
Division of Administration

CONTRACTUAL SERVICES AGREEMENT

**NICOLE "NIKKI" FRIED
COMMISSIONER**

This AGREEMENT, made and entered into on _____, by and between the FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, the DEPARTMENT, and _____, the CONTRACTOR.

ARTICLE 1: TERM

1.1 Contract Period: _____.

1.2 Extension and Renewal.

1.2.1 Extension of a contract for contractual services shall be in writing for a single period only not to exceed six (6) months and shall be subject to the same terms and conditions set forth in the initial contract. There shall be only one extension of a contract unless the failure to meet the criteria set forth in the contract for completion of the contract is due to events beyond the control of the CONTRACTOR.

1.2.2 Contracts for commodities or contractual services may be renewed on a yearly basis for no more than three (3) years, or for a period no longer than the term of the original contract, whichever period is longer. Renewal of a contract for commodities or contractual services shall be in writing and shall be subject to the same terms and conditions set forth in the initial contract. Renewals shall be contingent upon satisfactory performance evaluations by the DEPARTMENT and subject to the availability of funds. Renewal costs may not be charged by the CONTRACTOR. Exceptional purchase contracts (single source and emergency contracts) pursuant to Section 287.057(3)(a) and (c), Florida Statutes, may not be renewed.

ARTICLE 2: SERVICES

2.1 Scope of Work. The CONTRACTOR agrees to provide the following commodities and/or services:

2.2 The Department of Management Services' designated United Nations Standard Products and Services Code (UNSPSC) is: _____

2.3 Deliverables. The CONTRACTOR must provide the following quantifiable, measurable and verifiable units of deliverables which must be received and accepted in writing by the contract manager before payment. These deliverables are directly related to the Scope of Work specifying minimum levels of service to be performed and criteria for evaluating the successful completion of each deliverable.

2.4 Financial Consequences. Failure to meet the deliverables of this AGREEMENT shall result in a financial consequence. The CONTRACTOR shall perform all deliverables within the time frame established in this AGREEMENT. The DEPARTMENT shall reduce payment by:

2.5 Department Services. The DEPARTMENT agrees to provide the following services:

ARTICLE 3: COMPENSATION & EXPENSES

3.1 The DEPARTMENT will pay the CONTRACTOR as follows:

3.1.1 The DEPARTMENT may make partial payments to the CONTRACTOR upon partial delivery of services when a request for such partial payment is made by the CONTRACTOR and approved by the DEPARTMENT.

- 3.2 Travel Expenses. Justified and reasonable travel expenses which are directly and exclusively related to the services rendered under this AGREEMENT will be reimbursed in accordance with Section 112.061, Florida Statutes. Authorization for travel expenses must be specified in the paragraph for payments directly above.
- 3.3 Invoices. Bills for services shall be submitted to the DEPARTMENT in detail sufficient for a proper pre-audit and post-audit thereof.
- 3.3.1 Section 215.422, Florida Statutes, provides that agencies have five (5) working days to inspect and approve goods and services, unless bid specifications or the purchase order specifies otherwise. With the exception of payments to health care providers for hospital, medical or other health care services, if payment is not available within 40 days, measured from the latter of the date the invoice is received or the date the goods or services are received, inspected and approved, a separate interest penalty set by the Chief Financial Officer pursuant to Section 55.03, Florida Statutes, will be due and payable in addition to the invoice amount. To obtain the applicable interest rate, please contact the Agency's Fiscal Section at (850) 617-7200 or Purchasing Office at (850) 617-7181.
- 3.3.2 Invoices returned to a vendor due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.
- 3.4 Transaction Fee. CONTRACTOR shall be pre-qualified as meeting mandatory requirements and qualifications and shall remit fees pursuant to Section 287.057(22), F.S., and any rules implementing Section 287.057, F.S.
- 3.5 Dispute Resolution. If a dispute over fees invoiced under this AGREEMENT arises, the parties shall work to resolve the dispute informally at first. Should the parties be unable to resolve the dispute informally, the DEPARTMENT and CONTRACTOR shall participate in mandatory binding arbitration.
- 3.5.1 Pursuant to Section 215.422(5), Florida Statutes the Department of Financial Services has established a Vendor Ombudsman to act as an advocate for vendors. The Vendor Ombudsman may be reached at (850) 413-5516 or by calling the Department of Financial Services' Hotline, 1-877-693-5236.
- 3.6 Contingency. In accordance with Section 287.0582, Florida Statutes, the DEPARTMENT's performance and obligation to pay under this AGREEMENT is contingent upon an annual appropriation by the Legislature. Payments under this AGREEMENT are further subject to

the approval of the State Chief Financial Officer (Department of Financial Services).

ARTICLE 4: INTELLECTUAL PROPERTY

- 4.1 Anything by whatsoever designation it may be known, that is produced by, or developed in connection with this contract shall become the exclusive property of the DEPARTMENT and may be copyrighted, patented or otherwise restricted as provided by Florida or federal law. Neither the CONTRACTOR nor any individual employed under this contract shall have any proprietary interest in the product.
- 4.2 With respect to each deliverable that constitutes a work of authorship within the subject matter and scope of U.S. Copyright Law, 17 U.S.C. Sections 102-105, such work shall be a "work for hire" as defined in 17 U.S.C. Section 101 and all copyrights subsisting in such work for hire shall be owned exclusively by the DEPARTMENT.
- 4.3 In the event it is determined as a matter of law that any such work is not a "work for hire," CONTRACTOR shall immediately assign to the DEPARTMENT all copyrights subsisting therein for the consideration set forth in the contract and with no additional compensation.
- 4.4 The foregoing shall not apply to any preexisting software, or other work of authorship used by CONTRACTOR to create a deliverable, but which exists as work independent of the deliverable, unless the preexisting software or work was developed by CONTRACTOR pursuant to a previous contract with the DEPARTMENT or a purchase by the DEPARTMENT under a State Term Contract.
- 4.5 The CONTRACTOR shall fully indemnify, defend, and hold harmless the DEPARTMENT from any suits, actions, damages and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellection property right, provided, however, the foregoing obligation shall not apply to the DEPARTMENT's misuse or modification of CONTRACTOR's products or DEPARTMENT's operation or use of CONTRACTOR's product in a manner not contemplated by the AGREEMENT. If any product is the subject of an infringement suit, or in the CONTRACTOR's opinion is likely to become the subject of such a suit, the CONTRACTOR at its sole expense shall procure for the DEPARTMENT the right to continue using the product or to modify it to become non-infringing. If the CONTRACTOR is not reasonably able to modify or otherwise secure for the DEPARTMENT the right to continue using the product, the

CONTRACTOR shall remove the product and refund the DEPARTMENT the amounts paid in excess of a reasonable rental for past use. The DEPARTMENT shall not be liable for any royalties.

- 4.6 The CONTRACTOR's obligations under the preceding paragraph with respect to any legal action are contingent upon the DEPARTMENT giving CONTRACTOR (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at the CONTRACTOR's sole expense, and (3) assistance in defending the action at the CONTRACTOR's sole expense. The CONTRACTOR shall not be liable for any cost, expense, or compromise incurred or made by the DEPARTMENT in any legal action without the CONTRACTOR's prior written consent, which shall not be unreasonably withheld.

ARTICLE 5: ACKNOWLEDGMENTS, REPRESENTATIONS AND COVENANTS

- 5.1 CONTRACTOR expressly acknowledges and agrees that any articles that are the subject of, or required to carry out this AGREEMENT, in accordance with Section 287.042, Florida Statutes, shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the state agency insofar as dealings with such qualified nonprofit agency are concerned. Available products, pricing and delivery information may be obtained by contacting: RESPECT of Florida, 2475 Apalachee Parkway, Suite 205, Tallahassee, Florida 32301-4946, telephone number (850) 942-3555 and fax number (850) 942-7832.
- 5.2 CONTRACTOR expressly acknowledges and agrees that any articles which are the subject of, or required to carry out this AGREEMENT, in accordance with Section 287.095(3), Florida Statutes, shall be purchased from the corporation identified under Chapter 946, Florida Statutes, in the same manner and under the same procedures set forth in Section 946.515(2) and (4), Florida Statutes; and for the purposes of this contract the person, firm or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the DEPARTMENT insofar as dealings with such corporation are concerned. The "corporation identified" is Prison Rehabilitative Industries and Diversified Enterprises, Incorporated. Available products, pricing and delivery schedules may be obtained by contacting: PRIDE Enterprises, 223 Morrison Road, Brandon, Florida 33511-4835, telephone number (813) 324-8700.

- 5.3 CONTRACTOR expressly acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a CONTRACTOR, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- 5.4 CONTRACTOR expressly acknowledges and agrees that an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.
- 5.5 CONTRACTOR is informed that the employment of unauthorized aliens by any Contractor is considered a violation of Section 1324a of the Immigration and Nationality Act. If the CONTRACTOR knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this AGREEMENT.
- 5.6 CONTRACTOR hereby represents and warrants that it shall not discriminate on the basis of race, sex, religion, color, national origin age or disability and shall comply with all applicable state and federal laws and regulations related thereto, including without limitation, the Americans with Disabilities Act (42 USC 12101 et. Seq.); Section 504 of the Rehabilitation Act of 1973 (29 USC 795); and the Age Discrimination Act of 1975 (42 USC 6101-6107).
- 5.7 CONTRACTOR hereby represents and warrants that it shall comply with Section 20.055, Florida Statutes.
- 5.8 By executing this AGREEMENT, CONTRACTOR hereby represents and warrants that it has reviewed Sections 215.4725, 287.135, F.S. and is not listed on either the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. CONTRACTOR further certifies that it does not

have business operations in Cuba or Syria as proscribed by Section 287.135, F.S. Failure to certify or falsely certifying compliance with Sections 215.4725 and 287.135, F.S., may subject the CONTRACTOR to civil penalties, attorney's fees, and other penalties and consequences provided for in Statute.

ARTICLE 6: PUBLIC RECORDS

6.1 To the extent that CONTRACTOR meets the definition of "Contractor" under Section 119.0701, Florida Statutes, all documents, including papers, letters, or any other record or materials prepared pursuant to this AGREEMENT are subject to Florida's Public Records Law. CONTRACTOR must:

- 6.1.1 Keep and maintain public records required by the DEPARTMENT to perform the service.
- 6.1.2 Upon request from the DEPARTMENT's custodian of public records, provide the DEPARTMENT with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- 6.1.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract period and following completion or termination of the contract if the CONTRACTOR does not transfer the records to the DEPARTMENT.
- 6.1.4 Upon completion or termination of the contract, transfer, at no cost, to the DEPARTMENT all public records in possession of the CONTRACTOR or keep and maintain public records required by the DEPARTMENT to perform the service. If the CONTRACTOR transfers all public records to the DEPARTMENT upon completion or termination of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion or termination of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the DEPARTMENT, upon request from the DEPARTMENT's custodian of public records, in a format that is compatible with the information technology systems of the DEPARTMENT.

- 6.2 The DEPARTMENT shall have the right of unilateral cancellation for refusal by the CONTRACTOR to allow public access to all documents, papers, letters or other material made or received by the CONTRACTOR in conjunction with the contract, unless the records are exempt from s. 24(a) of Article I of the State Constitution and s. 119.07(1), Florida Statutes.
- 6.3 Nothing in this Article shall be considered a waiver of the provisions of Section 119.0701, Florida Statutes.

IF THE CONTRACTOR HAS ANY QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS:

**OFFICE OF GENERAL COUNSEL
 407 SOUTH CALHOUN STREET, SUITE 520
 TALLAHASSEE, FL 32399
 PHONE: (850) 245-1000
 EMAIL: PRCUSTODIAN@FDACS.GOV**

ARTICLE 7: TERMINATION

- 7.1 For Convenience. The DEPARTMENT may terminate this AGREEMENT in whole or in part for its convenience by giving at least fifteen (15) days written notice by electronic or registered mail to the CONTRACTOR, specifying the effective date of termination.
- 7.2 For Cause. The DEPARTMENT may terminate this AGREEMENT for cause; provided, however, no right of default shall accrue until thirty (30) days after the defaulting party is notified in writing of the reason(s) for termination and has failed to cure or give adequate assurances of performance within the thirty (30) day period after notice of termination.
 - 7.2.1 For cause termination shall be defined as default, breach or failure of the CONTRACTOR to fulfill any of its obligations hereunder.
 - 7.2.2 Opportunity to cure. Prior to the exercise of any remedy provided for herein, the DEPARTMENT shall provide thirty (30) calendar days written notice of default and shall provide the CONTRACTOR the opportunity to cure such failure or default within said thirty (30) day period. Upon the failure or inability to cure, the DEPARTMENT shall have all rights and remedies provided at law or in equity, including without limitation the following: (i) temporarily withhold cash payments pending correction of the deficiency by the

CONTRACTOR; (ii) disallow all or part of the cost of the services not in compliance; and/or (iii) wholly or partly suspend or terminate this contract.

7.3. Obligations of parties upon termination.

- 7.3.1. The DEPARTMENT shall pay and/or reimburse CONTRACTOR for services satisfactorily completed in accordance with the terms and conditions outlined herein, subject to any damages sustained by the DEPARTMENT. Upon the effective date of termination, the DEPARTMENT shall have no further obligation to make any payments, other than that which became due prior to the effective date of termination or during the notice period.
- 7.3.2. The CONTRACTOR shall:
- 7.3.2.1. Stop all work, make no further changes to completed work, and place no further orders related to this AGREEMENT, except that which may be needed to wind-down the contract or may be directed by the DEPARTMENT during the notice period.
 - 7.3.2.2. Furnish notice of termination to any and all immediate subcontractors, suppliers, licensors or partners that may be affected by this termination.
 - 7.3.2.3. Take actions necessary, or that the DEPARTMENT may direct, for the protection and preservation of the work produced under this AGREEMENT.
 - 7.3.2.4. Return and deliver to the DEPARTMENT its property and/or inventoried items in the possession of CONTRACTOR and/or its employees or subcontractors.
 - 7.3.2.5. Disclose, transfer and assign to the DEPARTMENT all the rights, titles, and interests in licenses, copyrighted or patented work, as well as anything whatsoever constituting intellectual property produced within the subject matter and scope of this AGREEMENT.
 - 7.3.2.6. Not be entitled to recover any cancellation charges or lost profits.

- 7.4. Force Majeure. If either party fails to fulfill its obligations hereunder, when such failure is due to an act of God, or other circumstances beyond its reasonable control, including but not limited to fire, flood, civil commotion, riot, war (declared and undeclared), revolution, or embargoes, then said failure shall be excused for the duration of such event and for such a time thereafter as is reasonable to enable the parties to resume performance under this AGREEMENT.
- 7.4.1. Upon occurrence of a Force Majeure Event, the nonperforming party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance and its anticipated duration.
- 7.5. Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the DEPARTMENT for damages sustained by the DEPARTMENT by virtue of any termination, default or breach of this AGREEMENT by the CONTRACTOR.

ARTICLE 8: GENERAL PROVISIONS

- 8.1 Independent Contractor. The CONTRACTOR, and any of its employees, agents, or assigns, are independent contractors and are not employees or agents of the DEPARTMENT.
- 8.1.1 The CONTRACTOR shall not pledge the DEPARTMENT'S credit or make the DEPARTMENT a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.
- 8.2 Indemnification. The CONTRACTOR shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the DEPARTMENT, and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by the CONTRACTOR, its agent, employees, partners, or subcontractors, provided, however that the CONTRACTOR shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the DEPARTMENT.
- 8.2.1 The CONTRACTOR'S obligations under this paragraph with respect to any legal action are contingent upon the DEPARTMENT giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at CONTRACTOR'S sole expense, and (3) assistance in defending the action at CONTRACTOR'S sole expense. The CONTRACTOR shall not be liable for any cost, expense, or compromise incurred or made

by the DEPARTMENT in any legal action without the CONTRACTOR's prior written consent, which shall not be unreasonably withheld.

- 8.3 Liability. The DEPARTMENT shall not assume any liability for the acts, omissions to act or negligence of the CONTRACTOR, its agents, servants, and employees, nor shall the CONTRACTOR disclaim its own negligence to the DEPARTMENT or any third party.
- 8.3.1 The CONTRACTOR shall maintain, during the period of this AGREEMENT, liability insurance for the services to be rendered in accordance with industry standards as appropriate.
- 8.4 Amendments. Any changes must be mutually agreed upon and incorporated in written amendments to this AGREEMENT.
- 8.5 Entire AGREEMENT. The instrument, including any attachments, embodies the entire AGREEMENT of the parties. This AGREEMENT supersedes all previous oral or written communications, representations or agreements on this subject.
- 8.6 Applicable Law. This AGREEMENT shall be governed by the laws of the State of Florida.
- 8.7 Severability. In the event that any one or more of the provisions of this AGREEMENT shall be determined to be void or unenforceable by a court of competent jurisdiction, or by law, such determination will not render this AGREEMENT invalid or unenforceable and the remaining provisions hereof shall remain in full force or effect. In the event that any clause or requirement of this AGREEMENT is contradictory to, or conflicts with the requirements of Florida law, including, but not limited to requirements regarding contracts with Florida's governmental agencies, the offending clause or requirement shall be without force and effect and the requirements of the Florida Statutes and rules promulgated thereunder on the same subject shall substitute for that clause or requirement and be binding on all parties to this contract.
- 8.8 Paragraph Headings. Paragraph headings contained in this AGREEMENT are for convenience or reference only. They shall not be deemed to modify, limit, define or describe in any respect the provisions of this AGREEMENT.
- 8.9 Compliance. CONTRACTOR shall, at its sole cost and expense, comply with all requirements of all Municipal, County, State and Federal rules and regulations, statutes and/or ordinances now in force, or which hereafter come into force, pertaining to the duties and obligations arising from this AGREEMENT.
- 8.10 Administration of AGREEMENT.

The contract manager for the DEPARTMENT is _____ and is located at _____

The contract manager for the CONTRACTOR is _____ and is located at _____

Signed by parties to this AGREEMENT:

FLORIDA DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES

CONTRACTOR

Signature

Signature

Director of Administration
Title

Title

Date

Date

