



FLORIDA FISH & WILDLIFE CONSERVATION COMMISSION

REQUEST FOR PROPOSAL

FWC 12/13-49

DEVELOPMENT AND ASSESSMENT OF SITE-SPECIFIC LIGHT MANAGEMENT PLANS AND FIXTURE RETROFITS FOR PANHANDLE CONSERVATION LANDS

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**FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
REQUEST FOR PROPOSAL
FWC 12/13-49**

**Development and Assessment of Site-specific Light Management Plans and
Fixture Retrofits for Panhandle Conservation Lands**

RESPONDENT ACKNOWLEDGMENT FORM

Vendor Name: _____

Vendor Mailing Address: _____

City, State, Zip: _____

Telephone Number: _____

Fax Number: _____

Email Address: _____

Federal Employer Identification Number (FEID): _____

I certify that this RFP response is submitted without prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same professional services, and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this RFP and certify that I am authorized to sign this acknowledgement for the respondent.

PRINTED NAME

AUTHORIZED SIGNATURE

TITLE

DATE

SUBMIT RFP RESPONSE TO:

**FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
PURCHASING OFFICE, ROOM 364
620 SOUTH MERIDIAN STREET
TALLAHASSEE, FLORIDA 32399-1600
PHONE: (850) 488-3427**

**FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
REQUEST FOR PROPOSAL (RFP)
FWC 12/13-49**

The Fish and Wildlife Conservation Commission’s (FWC or Commission) mission in Florida is to manage fish and wildlife resources for their long-term well-being and the benefit of people. The Commission administers six major programs including habitat and species conservation, freshwater fisheries management, law enforcement, marine fisheries management, hunting and game management and fish and wildlife research.

RFP CALENDAR OF EVENTS

| SCHEDULE | DUE DATE | METHOD |
|---|---|--|
| RFP Advertised | December 20, 2012 | Vendor Bid System: http://vbs.dms.state.fl.us/vbs/main_menu |
| Deadline for Questions | Must be received PRIOR to: January 9, 2013 @ 5:00 p.m. | See Deadline for Questions Clause |
| Posting and Q&A/Addendum | January 11, 2013 | Questions received and the FWC’s answers will be posted on the Vendor Bid System |
| SEALED RESPONSES DUE AND OPENED (make sure RFP Number is clearly marked on envelope) | Must be received PRIOR to: January 18, 2013 @ 2:00 p.m. | Submit to: Florida Fish & Wildlife Conservation Commission Attn: Purchasing 620 S. Meridian St., Room 364 Tallahassee, Florida 32399-1600 |
| Response Evaluation (could be subject to change) | January 21-25, 2013 | See “ Evaluation Criteria” clause |
| Anticipated RFP award date (could be subject to change) | January 29, 2013 | Vendor Bid System: http://vbs.dms.state.fl.us/vbs/main_menu |
| Anticipated Contract start date (could be subject to change) | February 15, 2013 | Formal written 3-party contract/agreement |

PROJECT OVERVIEW AND OBJECTIVES

As a result of the Deepwater Horizon oil spill and associated clean-up activities, the coastal habitats and natural resources of the coastal Florida Panhandle were repeatedly disturbed and severely damaged, including beach nesting habitats for loggerhead sea turtles. Site assessments will be conducted from the sandy Gulf of Mexico shoreline to identify exterior lights impacting nesting habitat quality within and adjacent to state, local, and federal conservation lands. Nighttime surveys and photographs of the landward horizon and individual lights will be used to develop a site-specific plan for reducing lighting impacts through replacement of existing exterior lights with fully shielded, long wavelength fixtures. Light management plans shall address public safety within, and adjacent to, each park or public facility while reducing light trespass onto and visibility from the adjacent nesting beach. The plan will identify appropriate fixtures, which will be installed either by the land manager or under a separate contract. The actions associated with this project will lead to increased protection of sea turtle nesting areas from disturbance by exterior lighting, thereby enhancing nesting, reproductive success and population sizes of threatened loggerhead sea turtles, as part of a coordinated wildlife recovery and management program over the next four (4) years (2013-2016).

DESCRIPTION OF SERVICES

Task 1 – Pre-retrofit Survey:

Contractor shall conduct nighttime and daytime inspections of the following conservation lands and adjacent properties and others, as identified during the project as needed to develop site-specific assessments of existing exterior lighting visible from the nesting beach. General guidance on conducting lighting inspections is included in Appendix I.

| Name | County |
|---|---------------|
| Bald Point State Park, John S. Phillips Preserve, Jeff Lewis Wilderness Preserve (boat access only), Dr. Julian G. Bruce St. George Island State Park, Lighthouse Park, Cape St. George State Reserve, St. Vincent National Wildlife Refuge | Franklin |
| Salinas Park, Troy Deal Public Beach, Cape Palms Park, Dunes Drive Public Beach, St. Joseph Peninsula State Park, Veteran's Memorial Park | Gulf |
| Tyndell Air Force Base, St. Andrews State Park, MB Miller Pier, Camp Helen State Park, | Bay |
| Inlet Beach, Deer Lake State Park, Grayton Beach State Park, Topsail Hill Preserve State Park, | Walton |
| James Lee Park, Henderson Beach State Park, John Beasley Park, Newman C. Brackin Wayside Park | Okaloosa |
| Navarre Beach Park | Santa Rosa |
| Gulf Islands National Seashore, Perdido Key State Park | Escambia |

Task 2 – Lighting Inspection and Retrofit Recommendation Summary:

- For each area surveyed, a pre-retrofit inspection summary and retrofit recommendations shall be prepared and submitted no later than two weeks after completion of the pre-retrofit survey and in accordance with the pre-approved schedule. The Summary shall include in tabular format a list of the type and number of light fixtures on the conservation land and on adjacent properties if light from those fixtures is directly or indirectly visible from the nesting beach within the conservation land. Fixture type (e.g., pole, exterior porch light; up-light; sign lighting); type of lamp (high pressure sodium; low pressure sodium; fluorescent; halogen; metal halide; compact fluorescent; incandescent); location of light, both on a structure or in the landscape (balcony; porch; garage; patio; deck; roadway; parking lot or garage; walkway; façade) and relative to the beach (north, south, east or west side of structure if applicable); address of lights if known and GPS coordinates if not; presence of visible upland glow; the length and height (NAVD) of any dune that provides a silhouette, and any light barriers visible (e.g., dunes, vegetation) shall be included.
 - An aerial base map shall be included depicting the location of each exterior light within the unit and along the unit boundaries, including on private property, cross-referenced to the table and the daytime and nighttime photographs.
 - Photographic documentation of the horizon and any lights visible at night shall be obtained for each conservation land. Pre- and post-project photographs shall be taken at the same point, as determined by sub-meter accuracy GPS and using the same camera settings.

- For each light documented to be directly or indirectly visible from the nesting beach, the Contractor shall provide a list of appropriate options that are long wavelength, well shielded, mounted as low as practicable for the intended purpose, and as low a wattage as practicable for the intended purpose. Lights should utilize Wildlife Lighting (<http://www.myfwc.com/conservation/you- conserve/lighting/>) if possible but other options may be included. Lighting recommendations should consider the IESN standards recommended for a particular application.

Task 3 – Post-retrofit Survey:

Contractor shall conduct nighttime and daytime inspections upon notification from FWC Contract Manager that the retrofit activity has been completed. The post-retrofit inspections and their subsequent reports shall update all information reported for the pre-retrofit inspection in Task 2, including nighttime photographs from the nesting beach and day and nighttime photographs of each retrofit exterior fixture geo-referenced to the base map.

- An aerial base map shall be included depicting the location of each exterior light within the unit and along the unit boundaries, including on private property, cross-referenced to the table of retrofit fixtures and the daytime and nighttime photographs.
- Photographic documentation of the horizon and any visible light at night shall be obtained for each conservation land. Pre- and post-project photographs shall be taken at the same point, as determined by sub-meter accuracy GPS and using the same camera settings.

Additional Requirements:

- Contractor shall provide all equipment and materials (e.g., cameras, computers, light meter, GPS, etc.), personnel, and vehicles (e.g., trucks, ATVs, boats, etc.) needed to successfully perform and complete the project. The cost for all equipment must be included in the cost to provide services as outlined herein.
- For sites on state parks, contractor must have a good rapport with the Florida Park Service and must enter into a Use Agreement with the Department of Environmental Protection that authorizes access and all activities associated with this project. For sites on military lands, contractor must have a good rapport with the Department of Defense (DOD), and the contractor's employees working on DOD lands must pass a background check, obtain a Contractor ID Access Card, and coordinate all activities through the DOD's Natural Resources branch to avoid impacts to military missions. Contractor is responsible for obtaining any other necessary permissions or entering into agreements for other properties.
- Access to beach areas where shorebird nesting has been documented by the land manager or other contractors or where there are flightless young shall be by foot only. Posted shorebird nesting areas shall be avoided.
- The Contractor shall not access a beach at night if a hatchout of an existing marine turtle nest is scheduled to occur as predicted by the land manager or other contractor.

SITE DETAILS AND ACCESS

The sites are located in the coastal Florida Panhandle from Escambia east to Franklin County, range in size from 1 to 461 acres, and collectively encompass approximately 2,248 acres of marine turtle nesting habitat. An additional 3,160 acres of federal land will also be considered for light management.

The FWC Contract Manager will be the project's primary point of contact for the contractor. However, the contractor will also work closely with FWC staff and other land managers to coordinate access to sites and provide other logistical assistance as needed. Pedestrian access is preferred. All points of ingress and egress to and from sites and travel routes on the beach will be determined by the respective land managers. The contractor must confine their travel on the beach to these routes and must avoid driving vehicles over dunes or dune vegetation. Moreover, the contractor must operate any vehicles under 10 mph

on the beach and must comply with the “Best Management Practices for Operating Vehicles on the Beach” document found at http://flshorebirdalliance.org/pdf/FWC_beach-driving_BMPs.pdf (see attached). Failure to do so will result in immediate termination of the contractor’s services.

PAYMENT AND REPORTING REQUIREMENTS

Contractor shall submit invoices on a quarterly basis for services completed during that quarter as documented by an Activity Log that lists the conservation land and geographical locations surveyed (as indicated by GPS coordinates); specifies pre or post-survey; lists all recommendations provided if applicable; and includes the date(s) of surveys and that recommendations were provided. A reporting template will be provided. Invoices must be submitted no later than two (2) weeks after the end of each quarter. In addition, a comprehensive annual progress report must be submitted to the FWC Contract Manager no later than fifteen (15) days after the end of each yearly (12-month) interval throughout the duration of the project.

Individual final reports shall be submitted within two months of each post-project survey for each conservation land and adjacent properties. The final reports shall summarize the pre- and post-project lighting surveys including times and dates of surveys; the standardized ambient nighttime conditions (moon phase, cloud cover, and humidity) for each inspection; the distance along the profile and the shoreline where photographs were taken; describe the changes in lighting that were implemented (fixture replacement; installation of light barriers); and include a discussion of all changes in lights visible from the nesting beach and the horizon if light barriers were installed for each project site.

All project-related information, including reports, pictures, work site details, etc., are the property of FWC, and must be included with the submission of the progress reports. Moreover, the contractor may not submit, distribute, or post any information associated with this project to the public or other agencies without prior review and approval from the FWC Contract Manager.

TERMS AND CONDITIONS

The following terms conditions take precedence over the PUR1001 and PUR1000 forms where applicable. The Commission 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 signing and 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.

CONTRACT TERM

The contract shall begin upon execution by both parties and will be in effect for four (4) years.

If circumstances constituting Force Majeure have occurred, or if anything occurs beyond the Vendor’s control, the Vendor may request in writing an extension of a Task Assignment Completion Date and/or the Contract Term. The Contract Manager and the Contract Administrator, upon review of the extension request, will determine and approve if the extension can be made.

CONDITIONS AND SPECIFICATIONS

The respondent is required to examine carefully the conditions and specifications of this RFP and to be thoroughly informed regarding any and all requirements of the conditions and specifications.

DEADLINE FOR QUESTIONS

Any questions from vendors that require an official FWC answer concerning this project shall be submitted in writing to the Procurement Manager identified below. Questions must be received no later than the date and

time specified in the Calendar of Events (Page 1). Questions may be sent via e-mail, hard copy by mail, or facsimile. It is the responsibility of the respondent to confirm receipt of questions if needed.

If questions are received, an addendum will be issued and shall be posted on the Vendor Bid System internet site at the following address: http://vbs.dms.state.fl.us/vbs/main_menu

Questions shall be directed to:

Florida Fish & Wildlife Conservation Commission
Tallahassee Purchasing Office
Attn: Jerilyn Bailey, Procurement Manager
620 South Meridian Street, Room 364
Tallahassee, Florida 32399-1600
850-617-9601
jerilyn.bailey@myfwc.com

LIMITATION ON VENDOR CONTACT 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 manager or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

PROPOSAL OPENING LOCATION

The public opening of this RFP will be conducted as specified in the Calendar of Events, at the Florida Fish and Wildlife Conservation Commission, **Tallahassee Purchasing Office**, Room 364, 620 South Meridian Street, Tallahassee, Florida, 32399-1600. **PROPOSALS RECEIVED AFTER DATE AND TIME SPECIFIED WILL BE REJECTED.**

Any person with a qualified disability shall not be denied equal access and effective communication regarding any proposal documents or the attendance at any related meeting or proposal opening. If accommodations are needed because of a disability, please contact the Purchasing Section at (850) 488-3427 at least three workdays prior to the opening.

MAILING INSTRUCTIONS

The Vendor shall submit an original and five (5) electronic copies on separate disks (CD) of their proposal to the address listed in the Calendar of Events (Page 3). All proposals must be submitted by proposal due date and time as stated in the Calendar of Events, in a sealed envelope or box marked **“DEVELOPMENT AND ASSESSMENT OF SITE-SPECIFIC LIGHT MANAGEMENT PLANS AND FIXTURE RETROFITS FOR PANHANDLE CONSERVATION LANDS, RFP NUMBER FWC 12/13-49”**. The sealed envelope or box shall include the opening date and time, and the Vendor’s return address.

NOTE: The COMMISSION shall not be responsible for the U.S. Mail or other couriers regarding mail being delivered by the specified date and time so that a proposal may be considered. Proposals received after the opening date and time shall be returned to the vendor. The COMMISSION does not accept faxed or electronically mailed proposals, and if a faxed or electronic mailed proposal is received, it will be automatically rejected as non-responsive.

MANDATORY RESPONSIVENESS REQUIREMENTS/PROPOSAL SUBMISSION

The instructions for this RFP have been designed to help insure that all responses are reviewed and evaluated in a consistent manner, as well as to minimize costs and response time. **ANY AND ALL**

INFORMATION SUBMITTED IN VARIANCE WITH THESE INSTRUCTIONS WILL NOT BE REVIEWED OR EVALUATED.

Proposal submission shall have Tabs A through E and shall be organized as follows:

TAB A. Respondent Acknowledgment Form (Page 2 - Mandatory Form)

In order for a potential respondent's response to be valid, the respondent shall complete and submit the Respondent Acknowledgment form enclosed herein. By affixing your signature to the Respondent Acknowledgment form, the respondent hereby states that the respondent has read all RFP specifications and conditions and agrees to all terms, conditions, provisions, specifications, and is currently licensed to do business within the State of Florida, if required by State or Federal Law, for the services or commodities the respondent will provide the Commission under these RFP specifications. The Respondent Acknowledgment form shall be completed in its entirety, and returned, as part of the RFP response or the response shall be rejected.

TAB B. Project Plan (Created by Vendor - Mandatory Submission)

The respondent shall submit the following:

1. Demonstration of Understanding

This section shall include a clear and detailed insight into the Respondent's understanding of the project. This section shall also provide information on the Respondent's knowledge of industry standards.

2. Approach

This section shall provide clear and detailed information on the Respondent's technical approach to providing the services as specified in this RFP on a per task basis. This section shall also include the Respondent's proposed timeline for each task. In addition, contractor shall submit an inspection plan, methodology for nighttime inspections of lights visible from the nesting beach and for identifying specific lights to retrofit, report templates, and schedule of activities. This methodology must detail pre and post-retrofit assessments of the night sky and silhouettes from each conservation land listed including nighttime photographs of lights visible from the nesting beach and the horizon across the length of the conservation land beach and daytime documentation of exterior fixtures observed from the beach or contributing to indirect lighting on the conservation land and adjacent properties. The plan shall clearly outline the methodology for obtaining nighttime documentation of light from the nesting beach, including digitizing nighttime photographs to quantify visible light (e.g., luminance, sky glow) and silhouette.

- The methodology shall specify all camera settings, standardized ambient nighttime condition descriptions (moon phase, cloud cover, and water vapor (humidity)). The methodology shall specify the process to be used at each conservation land to determine a set location along the profile and along the shoreline for photographs to be taken from the same location before and after replacement of exterior light fixtures occur. Detailed procedures for measuring the horizon, including all dune silhouettes and other light-blocking structures, shall be included.

- The methodology should describe how life safety code requirements will be assessed and incorporated into the retrofit recommendations.
- The location of all existing exterior lights shall be delineated on an aerial photograph indicating the GPS location. Photographs shall be taken of each existing exterior light source geo-referenced to a base map of the conservation unit.
- Pre-retrofit surveys shall be conducted at night with daytime documentation of fixtures/lights to be retrofit.
- Post-retrofit surveys shall be conducted at night within one month of completion of retrofit activities at a particular conservation area or as otherwise agreed.
- The schedule shall include timelines for site inspections, reporting, and deliverable submittals. The pre-retrofit schedule shall ensure that surveys are completed in Franklin and Gulf Counties by the end of April 2013, with subsequent pre-retrofit surveys to be completed from east to west across the Panhandle as rapidly as possible, but no later than October 2013.

3. Qualifications, Experience and Ability

This section shall provide the Respondent's demonstrated technical knowledge, qualifications, expertise and ability to provide the services as specified in this RFP. The Respondent shall outline its prior experience as it relates to this project. Consideration shall be given to both the qualifications and prior experience by the Respondent. Contractor must have knowledge of the impact of lights, including brightness and wavelength, on nesting and hatchling marine turtles; knowledge of life safety code requirements for exterior lighting; knowledge of the different types of exterior lights and associated spectral and luminance properties relative to wildlife; documentation of experience conducting nighttime surveys to identify lights that could impact marine turtles; and documentation of experience in assisting land managers, property owners, or local governments in retrofitting existing lights with appropriate fixtures to minimize impacts to marine turtles.

TAB C. Cost Proposal (Created by Vendor - Mandatory Submission)

The Respondent shall provide a cost proposal, which narrates the estimated cost for services to be completed at each site which consists of:

Task 1 - A cost per acre of conservation land for pre -retrofit surveys.

Task 2 - A cost per acre of conservation land for reports that include retrofit recommendations.

Task 3 - A cost per acre of conservation land for post-retrofit surveys and final reports that document changes to the night sky.

TAB D. References Form (Page 21 - Mandatory Form)

The respondent shall complete and submit the References form enclosed herein, to provide a minimum of three (3) references for similar projects completed. Current contact names, phone numbers and email addresses shall be given. This information shall be provided on the Reference Form, enclosed herein, and submitted with proposal. The References form shall be completed in its entirety, and returned, as part of the RFP response or the response shall be rejected.

TAB E. Addendum Forms (Mandatory Submission - if applicable)

VENDORS' INQUIRIES

If the RFP specifications could restrict potential Vendor competition, the Vendor may request in writing, to the Commission, that the specifications be changed prior to submission of the RFP. The Commission shall determine what changes to the RFP are acceptable to the Commission. If accepted, the Commission shall issue an addendum reflecting the changes to this RFP, which shall be posted to the Vendor Bid System, internet site: http://vbs.dms.state.fl.us/vbs/main_menu. Said specifications shall be considered as the Commission's minimum mandatory requirements. Also, the Commission shall recognize only communications from Vendors, which are signed, by the Vendor and in writing as duly authorized expressions on behalf of the Vendor.

FWC CONTRACT MANAGER

The FWC employee identified below is designated as Contract Manager and shall perform the following on behalf of the FWC:

- review, verify, and approve receipt of services/deliverables from the vendor;
- submit requests for change orders/amendments/renewals, if applicable;
- review, verify, and approve invoices from the vendor; and, if applicable, the Certificates of Partial Payment requests, and the Certificate of Contract Completion form
- maintain an official record of all correspondence between the Commission and the vendor and forward the original correspondence to the Tallahassee Procurement Manager for the official file.

The FWC Contract Manager is:

Florida Fish & Wildlife Conservation Commission
Elsa Haubold, Contract Manager
620 S. Meridian Street
Tallahassee, FL 32399-1600
(850) 488-3831
elsa.haubold@myfwc.com

SELECTION AND EVALUATION OF PROPOSALS

A committee composed of at least three (3) representatives of the Commission who have experience and knowledge of the required services and/or commodities required, shall independently evaluate and score each of the proposals. The evaluation shall include the overall response to the RFP and the requirements defined in the RFP evaluation criteria.

Each evaluation committee member's score for each Proposal will be added and averaged to determine the final score for each Proposal. The proposal with the highest score shall be awarded the contract.

In cases where Vendors submit proposals that are determined by the Commission's evaluation committee to contain equal or very nearly equal terms, stated herein, the evaluation committee shall have no obligation except to select the proposal which they consider to be in the best interest of the State.

EVALUATION CRITERIA

A. General

1. The Commission reserves the right to accept or reject any or all proposals received and reserves the right to make an award without further discussion of the responses submitted. Therefore, responses should be submitted initially in the most favorable manner.

2. A non-responsive proposal shall include, but not be limited to, those that: a) are irregular or are not in conformance with the requirements and instructions contained herein; b) fail to utilize or complete prescribed forms; or c) have improper or undated signatures. **A NON-RESPONSIVE PROPOSAL WILL NOT BE CONSIDERED.**

3. The Commission may waive minor informalities or irregularities in the proposals received where such are merely a matter of form and not substance, and the corrections of which **ARE NOT PREJUDICIAL** to other respondents.

B. Scoring - Up to 100 points shall be awarded based on the categories outlined below.

| SCORE SHEET | Maximum Raw Score Possible | | Weight Factor | | Maximum Points Possible |
|--|----------------------------|---|---------------|---|-------------------------|
| Respondent Acknowledgement Form | 0 | X | 1 | = | 0 |
| Project Plan | | | | | |
| Demonstration of Understanding | 5 | X | 1 | = | 5 |
| Approach | 10 | X | 1 | = | 10 |
| Qualifications | 15 | X | 2 | = | 30 |
| Ability | 15 | X | 1 | = | 15 |
| Cost | | | | | |
| Task 1 - Pre-retrofit Survey | 10 | X | 1 | = | 10 |
| Task 2 - Lighting Inspection and Retrofit Recommendation Summary | 10 | X | 1 | = | 10 |
| Task 3 - Post-retrofit Survey | 10 | X | 1 | = | 10 |
| Past Performance References | | | | | |
| Client #1 | 5 | X | 1 | = | 5 |
| Client #2 | 5 | X | 1 | = | 5 |
| Total Numerical Rating | | | | | 100 |

Note: A formula may be used by FWC when scoring the cost proposal. The following cost formula may be used to determine the number of points added to the scores of the offers under review.

$$\text{Cost Factor} = a/n \times (b) = c$$

Where:

a- Lowest proposed cost

n- Proposed cost for Respondent under review

b- Number of maximum points awarded for lowest proposal

c- Score awarded to next lowest cost

ECONOMY OF PRESENTATION

Each proposal shall be prepared simply and economically, providing a straightforward, concise delineation of Vendor’s capabilities to satisfy the requirements of this RFP. Elaborate binding, colored displays, and promotional materials are not required; however, examples of services provided may be included as attachments to the proposal. Emphasis in each proposal must be on completeness and clarity of content. In order to expedite the evaluation of proposals, it is essential that Vendors follow the format and instructions contained herein. All costs associated with preparing a response to this RFP is the sole responsibility of the respondent.

POSTING OF PROPOSAL TABULATION

Proposal Tabulation, with recommended award, will be posted for review by interested parties on the Vendor Bid System's internet site (http://vbs.dms.state.fl.us/vbs/main_menu) on or about the date indicated in the calendar of events, and will remain posted for a period of seventy-two (72) hours, which does not include weekends or state observed holidays. Any Contractor who desires to protest the recommended award must file a notice of protest with the Purchasing Section, Florida Fish & Wildlife Conservation Commission, 620 S. Meridian Street, Room 364, Tallahassee, Florida 32399-1600, within the time prescribed in Section 120.57(3), Florida Statutes.

Failure to file a protest within time prescribed in Section 120.57 (3), Florida Statutes, will constitute a waiver of proceedings under Chapter 120, F. S. Either failure to file a notice of protest or failure to file a petition will constitute such waiver.

CONTRACT

This RFP, the successful respondent's response, and the formal 3-party written agreement/contract (see draft attached), shall form the contract between the parties. In the event there is any disagreement between the documents, the parties shall refer first to the 3-party written agreement/contract then the Request for Proposal then to the Vendor's response. The Commission reserves the right to revise the 3-party written agreement/contract as necessary to meet the requirements of this RFP.

VERBAL INSTRUCTION PROCEDURE

Vendors may not consider any verbal instructions as binding upon the Commission. No negotiations, discussions, or actions shall be initiated or executed by the Vendor as a result of any discussion with any Commission employee. Only those communications from the Commission that are in writing, may be considered as a duly authorized expression on behalf of the Commission.

ADDENDUMS

If the COMMISSION finds it necessary to supplement, modify or interpret any portion of the specifications or documents during the ITB period an addendum shall be posted on the Vendor Bid System internet site: http://vbs.dms.state.fl.us/vbs/main_menu. An Addendum Acknowledgment Form will be included with each addendum and shall be signed by an authorized vendor representative, dated, and returned to the COMMISSION prior to the opening date and time specified in the Calendar of Events. Each vendor is responsible for monitoring the Vendor Bid System site for new or changing information relative to this procurement.

NOTICE TO PROCEED

The vendor may begin work once it has received an official written Notice to Proceed from the Contract Manager.

CERTIFICATE OF CONTRACT COMPLETION

The Contract Manager shall conduct a final inspection of the work to determine if completion has occurred. Upon satisfactory completion of the work, the Contractor shall send the Contract Manager a notarized Certificate of Contract Completion (Attachment A) and the contract shall be deemed completed upon the issuance date of such Certificate.

DELIVERABLES

- a.) Performance of all services and terms and conditions in the formal written agreement/contract;
- b.) Activity Logs documenting services performed; and
- c.) Annual Report.

PERFORMANCE AND MONITORING

The Contractor shall perform the activities described herein in a proper and satisfactory manner and all equipment, products or materials necessary or appropriate to perform under the Contract shall be supplied by the Contractor. Contractor shall obtain all necessary local, state, and federal authorizations necessary to complete this project, and the Contractor shall be licensed as necessary to perform under this

Contract as may be required by law, rule, or regulation; the Contractor shall provide evidence of such compliance to the Commission upon request. The Contractor shall procure all supplies and pay all charges, fees, taxes and incidentals that may be required for the completion of the Contract. By acceptance of the Contract, the Contractor warrants that it has the capability in all respects to fully perform the requirements and the integrity and reliability that will assure good-faith performance as a responsible Contractor. Contractor shall immediately notify the Commission in writing if its ability to perform is compromised in any manner during the term of the Contract.

The Commission's Contract Manager and/or his designee will monitor the Contractor's service delivery to determine if the Contractor has achieved the required level of performance. The Commission reserves the right for any Commission staff to make scheduled or unscheduled, announced or unannounced monitoring visits. If the Commission determines that the Contractor failed to meet any of the Terms and Conditions of this Contract, the Contractor will be sent a formal written contract notice.

FINANCIAL CONSEQUENCES

In accordance with 287.058(1)(h), F.S., this RFP and the Contract contains defined deliverables. If the Contractor fails to produce each deliverable within the time frame specified or if the Contractor materially fails to comply with the terms and conditions of this RFP or the Contract, including any Federal or State statutes, rules or regulations applicable to this RFP or the Contract, the Commission shall take one or more of the following actions, as appropriate for the circumstances:

- a. Withhold \$100.00 per day for each day the services specified in the deliverable(s) are not performed by the specified due date(s).
- b. Request refund of previously disbursed payment(s).
- c. Wholly or partly suspend or terminate the contract/ agreement.
- d. Withhold future awards for the FWC projects from Contractor.
- e. Take other remedies that may be legally available.

The Financial Consequence may be waived by the Commission's Contract Manager for delays outside of the Contractor's control, and where such request for waiver was received more than two (2) weeks prior to the specified due date of those delays.

LIQUIDATED DAMAGES

If the Contractor fails to complete the work or the conditions of the formal written contract/agreement and/or Amendments by the completion date, the Commission shall have the right to deduct from any amount due and payable to the Contractor, as liquidated damages, in an amount of \$100.00 per calendar day. All liquidated damages assessed after the agreed to work completion date will include every day of the week (weekdays and weekends). Exceptions to this may be made if a delay is attributable to circumstances that are clearly beyond the control of the Contractor. The burden of proof of unavoidable delay shall rest with the Contractor and shall be supplied in a written form and submitted to the Contract Manager.

PERMITTING

Permitting for this project, if needed, is the responsibility of the vendor. A copy of all permits will be posted at the work site location at all times during the project. The vendor is responsible for complying with all permit conditions and the vendor shall pay any penalties arising from the vendor's permit violations.

LICENSURE

The Contractor shall be licensed as necessary to perform under this Contract as may be required by law, rule, or regulation, and shall provide evidence of such compliance to the Commission upon request.

INSURANCE REQUIREMENTS

1. Workers' Compensation

To the extent required by law, the Contractor will either be self-insured for Worker's Compensation claims, or will secure and maintain during the life of this Contract, Workers' Compensation Insurance for all of its employees connected with the work of this project. If any work is subcontracted, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. Such self-insurance program or insurance coverage shall comply fully with the Florida Workers' Compensation law. In case any class of employees engaged in hazardous work under this Contract is not protected under Workers' Compensation statutes, the Contractor shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Commission, for the protection of his employees not otherwise protected.

Employers who have employees who are engaged in work in Florida must use Florida rates, rules, and classifications for those employees. In the construction industry, only corporate officers of a corporation or any group of affiliated corporations may elect to be exempt from workers' compensation coverage requirements. Such exemptions are limited to a maximum of three per corporation and each exemption holder must own at least 10% of the corporation. Independent contractors, sole proprietors and partners in the construction industry cannot elect to be exempt and must maintain workers' compensation insurance.

2. Vendor's Public Liability and Property Damage Insurance

The vendor shall secure and maintain, during the life of this contract, comprehensive general liability insurance as shall protect him/her from claims based on personal injury, including accidental death, as well as claims for property damage which may arise from operations under this contract whether such operations be by vendor or by vendor's agents or employees in the amount that such insurance shall be the minimum limit as follows:

1. Bodily Injury Liability - \$300,000 each incident
2. Property Damage Liability (other than automobile) - \$100,000 each incident

The vendor hereby agrees to indemnify and hold the Commission and DEP harmless from any and all claims or demands for any personal injury or property damage resulting or occurring in connection with any activities conducted under this contract and shall investigate all claims of every nature at its expense. In addition, the vendor agrees to be responsible for any injury or property damage resulting from any activities conducted under this agreement.

The Commission and DEP shall be exempt from, and in no way be liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the vendor and/or sub-contractor providing such insurance.

The Contractor shall provide and maintain the insurance as set forth in this contract and shall not cause this coverage to lapse for any reason during the life of the contract.

DAMAGES TO STATE PROPERTY

Any damages to state property (i.e. structures, roads, culverts, fences, trees, or other natural resources etc.) caused by the Vendor while working on this project shall be the responsibility of the vendor to remedy, as determined by the Commission. The vendor shall be responsible for the conduct of all vendor personnel at all times while on the job site.

Should any historical or cultural artifacts be uncovered the vendor shall immediately halt work and notify the Contract Manager. Please note: The State Archeologist has the power to halt work if he or she has reason to believe artifacts are being disturbed.

SUBCONTRACTS

The Contractor is fully responsible for all work performed under the Contract resulting from this RFP. The Contractor may, upon receiving prior written consent from the Contract Manager, enter into written subcontract(s) for performance of certain functions under the Contract. No subcontract, which the Contractor enters into with respect to performance of any of its functions under the Contract, shall in any way relieve the Contractor of any responsibility for the performance of its duties. All payments to subcontractors shall be made by the Contractor.

TERMINATION FOR DEFAULT

This contract shall terminate immediately upon the Commission giving written notice to the Contractor in the event of fraud, willful misconduct, failure to perform work in an appropriate and timely manner, or breach of this contract. If this contract is terminated because of failure on part of the Contractor to fulfill his/her undertakings under this contract, the Commission may order the contractor to cease all work and assume the work and services and perform them to completion under the contract specifications or otherwise. Upon such order and completion of work by the Commission, the Contractor shall be liable to the Commission for any excess cost occasioned to the Commission thereby.

In such an event, the Contractor may be found in default and removed from the Department of Management Services' approved Vendor list as per 60A-1.006 of the Florida Administrative Code; it is also possible the company may be removed from the State of Florida's approved Vendor list.

TERMINATION FOR CONVENIENCE

The Commission may terminate this Contract at any time with or without cause by a written notice by certified mail, return receipt requested, from the Commission to the Contractor. Upon receipt of such notice, the Contractor shall, unless the notice directs otherwise, immediately discontinue all work and services. If the contract is terminated for the convenience of the Commission, payment to the Contractor will be made promptly at the contract price for that portion of work actually performed and accepted.

Upon termination of this Contract, the Contractor shall promptly render to the Commission all property belonging to the Commission. For the purposes of this section, property belonging to the Commission shall include, but shall not be limited to, all books and records kept on behalf of the Commission.

FAMILIARITY WITH LAWS

The Vendor is required to be familiar with all Federal, State and Local laws, ordinances, rules and regulations that in any manner affect the work. The vendor shall comply with all laws and rules applicable to the vendor(s) that shall provide the required commodities or services to the Commission. Ignorance on the part of the Vendor will in no way relieve him from responsibility.

ELIGIBILITY

The Vendor shall be licensed as necessary to perform under this contract as may be required by law, rule, or regulation; and shall provide evidence of such compliance to the Commission upon request.

By acceptance of this contract, the Contractor warrants that it has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good-faith performance as a responsible vendor, and that the Contractor shall comport with Chapter 287, F.S., and all other applicable rules and laws.

Unless otherwise provided herein, the Commission will not reimburse the Contractor for any non-expendable equipment or personal property for use by the Contractor to perform services under this Contract.

RELATIONSHIP OF THE PARTIES

The parties agree that there is no conflict of interest or any other prohibited relationship between the Vendor/Contractor and the Commission.

PROHIBITION OF UNAUTHORIZED ALIENS

In accordance with Executive Order 96-236, the Commission shall consider the employment by the Contractor of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Contract if the Contractor knowingly employs unauthorized aliens.

EMPLOYMENT ELIGIBILITY VERIFICATION

The Contractor shall enroll in and use the U.S. Department of Homeland Security's E-Verify Employment Eligibility Verification System (<http://www.uscis.gov/portal/site/uscis>) to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract.

The Contractor shall include in any subcontracts for the performance of work or provision of services pursuant to this Contract the requirement that the subcontractor use the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

The Contractor further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the Commission or other authorized state entity consistent with the terms of the Contractor's enrollment in the program. This includes maintaining a copy of proof of the Contractor's and subcontractors' enrollment in the E-Verify Program (which can be accessed from the "Edit Company Profile" link on the left navigation menu of the E-Verify employer's homepage).

Compliance with the terms of the Employment Eligibility Verification provision is made an express condition of this Contract and the Commission may treat a failure to comply as a material breach of the Contract.

NON-DISCRIMINATION

No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Contract.

DISCRIMINATION

An entity or affiliate who has been placed on the discriminatory vendor list may not submit a response on a contract to provide goods or services to a public entity, may not submit a response on a contract with a public entity for the construction or repair of a public building or public work, may not submit responses on leases or real property to a public entity, may not award or perform work as a Vendor/Contractor, supplier, Subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

PUBLIC ENTITY CRIMES

In accordance with Section 287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not perform work as a grantee, Vendor/Contractor, supplier, subcontractor, consultant or by any other manner 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, F.S., for Category Two, for a period of 36 months from the date of being placed on the convicted vendor list.

PRIDE

It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this Contract may be purchased from the corporation identified under Chapter 946, F.S., if available, in

the same manner and under the same procedures set forth in Section 946.515(2), F.S. The "Corporation identified" is PRISON REHABILITATIVE INDUSTRIES AND DIVERSIFIED ENTERPRISES, INC. (P.R.I.D.E.) which may be contacted at:

P.R.I.D.E.
12425 28th Street North
St. Petersburg, Florida 33716
Phone (727) 572-1987

COMMITMENT OF FUNDS

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

CERTIFICATE OF PARTIAL PAYMENT

The Vendor will be required to complete a Certificate of Partial Payment form to receive partial payments if such provision is included in the contract or purchaser order. This form must be submitted to the Contract Manager with each invoice requesting partial payment. The Contract Manager shall supply copies of these forms to the Vendor upon request. A minimum of ten percent (10%) of the total project cost shall be held back for final payment. Final payment will only be made once the Commission Contract Manager has agreed to project completeness.

CERTIFICATE OF CONTRACT COMPLETION

The Contract Manager shall conduct a final inspection of the work to determine if completion has occurred. Upon satisfactory completion of the work, the Contractor shall send the Contract Manager a notarized Certificate of Contract Completion (Attachment A) and the contract shall be deemed completed upon the issuance date of such Certificate.

PAYMENT OF FUNDS

The Commission shall pay the Vendor for satisfactory service upon submission of invoices, accompanied by required reports or deliverables, and after acceptance of services and deliverables in writing by the Commission's Contract Manager. Each invoice shall include the Commission Contract Number and the Vendor's Federal Employer Identification (FEID) Number. An original and two (2) copies of the invoice shall be submitted. The Commission shall not provide advance payment. All bills for amounts due under this Contract shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Invoices shall be submitted to the Accounting Office.

PROMPT PAYMENT CLAUSE

Section 215.422, F.S. provides that agencies have 5 working days to inspect and approve goods and services, unless RFP specifications or the P.O. 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 goods or services are received, inspected and approved, a separate interest penalty set by the Comptroller pursuant to Section 55.03, F.S., 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 850/488-3323 or Purchasing Office at 850/488-3427. Payments to health care providers for hospitals, medical or other health care services, shall be made not more than 35 days from the date of eligibility for payment is determined, and the daily interest rate is .03333%. 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 agency. A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payments from a State agency, may be contacted at (850) 410-9724 or by calling the State Comptroller's Hotline, 1-800-848-3792.

VENDOR REGISTRATION

Each vendor desiring to do business with the State through the on-line procurement system is pre-qualified to do so, and shall register, unless exempted, in the MyFloridaMarketPlace system. Respondent agrees to self-register for MyFloridaMarketPlace. For more information and to register please go to <https://vendor.myfloridamarketplace.com> and navigate to the Online Vendor Registration section under Vendors.

The address the company has registered under has to be the address listed on the response, and has to be the address entered on the Respondent Acknowledgment form in order for the response to be valid. Information about the registration process is available, and registration may be completed, at the MyFloridaMarketPlace website above. Interested persons lacking Internet access may request assistance from the MyFloridaMarketPlace Customer Service at 866-FLA-EPRO, (866-352-3776) or from State Purchasing, 4050 Esplanade Drive, Suite 300, Tallahassee, Florida 32399.

VENDOR TRANSACTION FEES

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to section 287.057(23), Florida Statutes (2002), all payments, unless exempt under Rule 60A-1.030(3), F.A.C., shall be assessed a Transaction Fee of one percent (1.0%), which the vendor shall pay to the State.

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

The vendor shall receive a credit for any Transaction Fee paid by the vendor for the purchase of any items(s) if such items(s) are returned to the vendor through no fault, act, or omission of the vendor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the vendor'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 vendor in default and recovering re-procurement costs from the vendor in addition to all outstanding fees. VENDORS DELINQUENT IN PAYING TRANSACTION FEES SHALL BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

USE OF CONTRACT BY OTHER STATE AGENCIES AND ELIGIBLE USERS

As provided in Chapter 60A-1.047, F.A.C., and Section 287.042(16)(a) F.S., other State of Florida agencies may purchase from the resulting contract of this RFP, provided that the Department of Management Services has determined the contract's use is cost effective and in the best interest of the State, and with the Vendor's consent.

Other State of Florida governmental entities and eligible users may also request of the Vendor to be able to use this contract. If the Vendor agrees to other entities to utilize this RFP contract, such agencies shall coordinate their use of this contract with the Florida Fish and Wildlife Conservation Commission in order to reduce scheduling conflicts.

PUBLIC RECORDS OF NONGOVERNMENT CONTRACTORS

All records in conjunction with this contract shall be public records and shall be treated in the same manner as other public records are under Chapter 119, Florida Statutes.

PUBLIC RECORDS

The Commission reserves the right to unilaterally cancel this contract for refusal by the Contractor to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 F.S., and made or received by the Contractor in conjunction with this contract.

RECORD KEEPING REQUIREMENTS

The Contractor shall maintain accurate books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract, in accordance with generally accepted accounting principles. The Contractor shall allow the Commission, the State, or other authorized representatives, access to periodically inspect, review or audit such documents as books, vouchers, records, reports, canceled checks and any and all similar material. Such audit may include examination and review of the source and application of all funds whether from the state, local or federal government, private sources or otherwise. These records shall be maintained for five (5) years following the close of this contract. In the event any work is subcontracted, the Contractor shall require each subcontractor to similarly maintain and allow access to such records for audit purposes.

INTELLECTUAL PROPERTY RIGHTS

Unless specifically addressed the intellectual property rights to preexisting property will remain with the Contractor. Contractor shall indemnify and hold harmless the Commission and its employees from any liability including costs and expenses, including attorney's fees, for or on account of any copyrighted, patented, or un-patented invention, process or article manufactured or supplied by Contractor.

Proceeds derived from the sale, licensing, marketing or other authorization related to any intellectual property right created or otherwise developed by the Contractor for the Commission shall be handled in the manner specified by applicable state statute.

Where activities supported by the contract produce original writing, sound recordings, pictorial reproductions, drawings or other graphic representation and works of any similar nature, the Commission and the State of Florida have the unlimited, royalty-free, nonexclusive, irrevocable right to use, duplicate and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to have others acting on behalf of the Commission to do so. If this contract is supported by Federal funds, the federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

RIGHTS IN PROPERTY, COPYRIGHTS, AND INVENTIONS

The Commission reserves the right to determine the disposition of its title and rights to any inventions and/or processes that may result from any experimental or developmental research performed under this Contract. If Federal funding is involved in support of this Contract, the Federal Government may reserve ultimate jurisdiction over title and right privileges.

Regardless of title or ownership of the products and materials developed under this Contract, the Commission and the State of Florida shall reserve a royalty-free, nonexclusive, irrevocable right to reproduce, publish, or otherwise use said work for non-competing governmental purposes. If Federal funding is involved in support of this Contract, the Federal Government shall also reserve a royalty-free, nonexclusive, irrevocable right to reproduce, publish, or otherwise use said work for governmental purposes.

Should the Contractor cease providing services hereunder to FWC, as a result of termination, expiration or in any other manner, FWC shall retain an unlimited license in all video, world wide web (WWW) sites, and printed materials created as a result of this Project whatsoever for further research, educational purposes, for publication, to provide access required by Florida's public records law or any other purpose related to FWC's duties under law.

SEVERABILITY AND CHOICE OF VENUE

This Contract has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract. Any action in connection herewith, in law or equity, shall be brought in Leon County, Florida.

JURY TRIAL WAIVER

As consideration of this Contract, the parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this Contract.

ADDITIONAL LEGAL REQUIREMENT

All corporations seeking to do business with the State shall, at the time of submitting a response, be on file with the Department of State in accordance with provisions of Chapter 607, Florida Statutes; similarly, partnerships seeking to do business with the State shall, at the time of submitting such response, have complied with the applicable provisions of Chapter 620, Florida Statutes. For further information on required filing and forms, please go to the following sites: <http://www.sunbiz.org/index.html> or <http://www.dos.state.fl.us/>.

FLORIDA EMERGENCY SUPPLIER NETWORK

Suppliers of products and services needed by government during hurricanes and other emergencies are invited to join a Florida Emergency Supplier Network. Suppliers will identify emergency products and services available, emergency contact information, plans to maintain their operations and supply chain in emergency circumstances, and pricing arrangements.

This information will be organized and furnished to buyers at State and County Emergency Operations Centers, and suppliers will be recognized with a certificate identifying their business as a member of the Florida Emergency Supplier Network. Please go to the following website to obtain a FESN application and contract:

http://www.dms.myflorida.com/business_operations/state_purchasing/florida_emergency_network/florida_emergency_supplier_network_fesn

RELATIONSHIP OF THE PARTIES

The Contractor covenants that it presently has no interest and shall not acquire any interest that would conflict in any manner or degree with the performance of services required.

The parties agree that there is no conflict of interest or any other prohibited relationship between the Contractor and the Commission.

FWC 12/13-49
REFERENCES FORM

A minimum of three (3) references from persons or firms for whom the respondent has performed similar jobs as per the specifications in this RFP must be supplied with the response. The firms and/or contact persons should be available between the hours of 8:00 AM and 5:00 PM, Eastern Time, Monday through Friday. If any reference is not available as stated above, this may be cause for rejection of the vendor's response. Provide a description (scope of work) of each job.

NAME OF COMPANY: _____

CONTACT PERSON: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE NUMBER: (____) _____ E-MAIL ADDRESS: _____

JOB DATE(S): _____

DESCRIPTION (SCOPE OF WORK): _____

NAME OF COMPANY: _____

CONTACT PERSON: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE NUMBER: (____) _____ E-MAIL ADDRESS: _____

JOB DATE(S): _____

DESCRIPTION (SCOPE OF WORK): _____

NAME OF COMPANY: _____

CONTACT PERSON: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE NUMBER: (____) _____ E-MAIL ADDRESS: _____

JOB DATE(S): _____

DESCRIPTION (SCOPE OF WORK): _____

VENDOR NAME

AUTHORIZED SIGNATURE

Assessments: Discerning Problems Caused by Artificial Lighting

Lighting Inspections

WHAT ARE LIGHTING INSPECTIONS?

During a lighting inspection, a complete census is made of the number, types, locations, and custodians of artificial light sources that emit light visible from the beach. The goal of lighting inspections is to locate lighting problems and to identify the property owner, manager, caretaker, or tenant who can modify the lighting or turn it off.

WHICH LIGHTS CAUSE PROBLEMS?

Although the attributes that can make a light source harmful to sea turtles are complex, a simple rule has proven to be useful in identifying problem lighting under a variety of conditions:

An artificial light source is likely to cause problems for sea turtles if light from the source can be seen by an observer standing anywhere on the nesting beach.

If light can be seen by an observer on the beach, then the light is reaching the beach and can affect sea turtles. If any glowing portion of a luminaire (including the lamp, globe, or reflector) is directly visible from the beach, then this source is likely to be a problem for sea turtles. But light may also reach the beach indirectly by reflecting off buildings or trees that are visible from the beach. Bright or numerous sources, especially those directed upward, will illuminate sea mist and low clouds, creating a distinct glow visible from the beach. This “urban skyglow” is common over brightly lighted areas. Although some indirect lighting may be perceived as nonpoint-source light pollution, contributing light sources can be readily identified and include sources that are poorly directed or are directed upward. Indirect lighting can originate far from the beach.

Although most of the light that sea turtles can detect can also be seen by humans, observers should realize that some sources, particularly those emitting near-ultraviolet and violet light (e.g., bug-zapper lights, white electric-discharge lighting) will appear brighter to sea turtles than to humans. A human is also considerably taller than a hatchling; however, an observer on the dry beach who crouches to the level of a hatchling may miss some lighting that will affect turtles. Because of the way that some lights are par-

tially hidden by the dune, a standing observer is more likely to see light that is visible to hatchlings and nesting turtles in the swash zone.

HOW SHOULD LIGHTING INSPECTIONS BE CONDUCTED?

Lighting inspections to identify problem light sources may be conducted either under the purview of a lighting ordinance (see Appendix H and the section below on sea turtle lighting ordinances) or independently. In either case, goals and methods should be similar.

GATHER BACKGROUND INFORMATION

Before walking the beach in search of lighting, it is important to identify the boundaries of the area to be inspected. For inspections that are part of lighting-ordinance enforcement efforts, the jurisdictional boundaries of the sponsoring local government should be determined. It will help to have a list that includes the name, owner, and address of each property within inspection area so that custodians of problem lighting can be identified. Plat maps or aerial photographs will help surveyors orient themselves on heavily developed beaches.

PRELIMINARY DAYTIME INSPECTIONS

An advantage to conducting lighting inspections during the day is that surveyors will be better able to judge their exact location than they would be able to at night. Preliminary daytime inspections are especially important on beaches that have restricted access at night. Property owners are also more likely to be available during the day than at night to discuss strategies for dealing with problem lighting at their sites.

A disadvantage to daytime inspections is that fixtures that are not directly visible from the beach will be difficult to identify as problems. Moreover, some light sources that can be seen from the beach in daylight may be kept off at night and thus present no problems. For these reasons, daytime inspections are not a substitute for nighttime inspections.

Descriptions of light sources identified during daytime inspections should be detailed enough so that anyone can locate the lighting. In addition to a general description of each luminaire (e.g., HPS floodlight directed seaward at top northeast corner of

the building at 123 Ocean Street), photographs or sketches of the lighting may be necessary. Descriptions should also include an assessment of how the specific lighting problem can be resolved (*e.g.*, needs turning off; should be redirected 90° to the east). These detailed descriptions will show property owners exactly which luminaires need what remedy.

NIGHTTIME INSPECTIONS

Surveyors orienting themselves on the beach at night will benefit from notes made during daytime surveys. During nighttime lighting inspections, a surveyor walks the length of the nesting beach looking for light from artificial sources. There are two general categories of artificial lighting that observers are likely to detect:

1. **Direct lighting.** A luminaire is considered to be direct lighting if some glowing element of the luminaire (*e.g.*, the globe, lamp [bulb], reflector) is visible to an observer on the beach. A source not visible from one location may be visible from another farther down the beach. When direct lighting is observed, notes should be made of the number, lamp type (discernable by color; Appendix A), style of fixture (Appendix E), mounting (pole, porch, *etc.*), and location (street address, apartment number, or pole identification number) of the luminaire(s). If exact locations of problem sources were not determined during preliminary daytime surveys, this should be done during daylight soon after the nighttime survey. Photographing light sources (using long exposure times) is often helpful.
2. **Indirect lighting.** A luminaire is considered to be indirect lighting if it is not visible from the beach but illuminates an object (*e.g.*, building, wall, tree) that is visible from the beach. Any object on the dune that appears to glow is probably being lighted by an indirect source. When possible, notes should be made of the number, lamp type, fixture style, and mounting of an indirect-lighting source. Minimally, notes should be taken that would allow a surveyor to find the lighting during a follow-up daytime inspection (for instance, which building wall is illuminated and from what angle?).

WHEN SHOULD LIGHTING INSPECTIONS BE CONDUCTED?

Because problem lighting will be most visible on the darkest nights, lighting inspections are ideally conducted when there is no moon visible. Except for a few nights near the time of the full moon, each night

of the month has periods when there is no moon visible. Early-evening lighting inspections (probably the time of night most convenient for inspectors) are best conducted during the period of 2–14 days following the full moon. Although most lighting problems will be visible on moonlit nights, some problems, especially those involving indirect lighting, will be difficult to detect on bright nights.

A set of daytime and nighttime lighting inspections before the nesting season and a minimum of three additional nighttime inspections during the nesting-hatching season are recommended. The first set of day and night inspections should take place just before nesting begins. The hope is that managers, tenants, and owners made aware of lighting problems will alter or replace lights before they can affect sea turtles. A follow-up nighttime lighting inspection should be made approximately two weeks after the first inspection so that remaining problems can be identified. During the nesting-hatching season, lighting problems that seemed to have been remedied may reappear because owners have been forgetful or because ownership has changed. For this reason, two midseason lighting inspections are recommended. The first of these should take place approximately two months after the beginning of the nesting season, which is about when hatchlings begin to emerge from nests. To verify that lighting problems have been resolved, another follow-up inspection should be conducted approximately one week after the first midseason inspection.

WHO SHOULD CONDUCT LIGHTING INSPECTIONS?

Although no specific authority is required to conduct lighting inspections, property managers, tenants, and owners are more likely to be receptive if the individual making recommendations represents a recognized conservation group, research consultant, or government agency. When local ordinances regulate beach lighting, local government code-enforcement agents should conduct lighting inspections and contact the public about resolving problems.

WHAT SHOULD BE DONE WITH INFORMATION FROM LIGHTING INSPECTIONS?

Although lighting surveys serve as a way for conservationists to assess the extent of lighting problems on a particular nesting beach, the principal goal of those conducting lighting inspections should be to ensure that lighting problems are resolved. To resolve lighting problems, property managers, tenants, and owners should be given the information they need to make proper alterations to light

sources. This information should include details on the location and description of problem lights, as well as on how the lighting problem can be solved. One should also be prepared to discuss the details of how lighting affects sea turtles. Understanding the nature of the problem will motivate people more than simply being told what to do.

Monitoring Sea Turtle Behavior

In part, the behavior of nesting sea turtles and their hatchlings on the beach can be monitored by studying the tracks they leave in the sand. This evidence can reveal how much and where nesting occurs and how well oriented hatchlings are as they attempt to find the sea from their nest. Monitoring this behavior is one way to assess problems caused by artificial lighting, but it is no substitute for a lighting inspection program as described above. Many lighting problems may affect sea turtles and cause mortality without their leaving conspicuous track evidence on the beach.

SEA TURTLE NESTING

On many beaches, sea turtle biologists make early-morning surveys of tracks made the previous night in order to gather information on nesting. With training, one can determine the species of sea turtles nesting, the success of their nesting attempts, and where these attempts have occurred. These nesting surveys are one of the most common assessments made of sea turtle populations.

Because many factors affect nest-site choice in sea turtles, monitoring nesting is not a very sensitive way to assess lighting problems. However, changes that are observed in the distribution or species composition of nesting can indicate serious lighting problems and should be followed with a program of lighting inspections if one is not already in place.

HATCHLING ORIENTATION

Although hatchlings are more sensitive to artificial lighting than are nesting turtles, the evidence they leave behind on the beach is less conspicuous. Evidence of disrupted sea-finding in hatchlings (hatchling disorientation) can vastly underrepresent the extent of a lighting problem; however, this evidence can be useful in locating specific problems between lighting inspections. There are two ways one can use hatchling-orientation evidence to help assess lighting problems:

HATCHLING-ORIENTATION SURVEYS

Of the two methods, hatchling-orientation surveys, which involve measuring the orientation of hatchling tracks at a sample of sites where hatchlings have emerged, provide the most accurate assessment. Because the jumble of hatchling tracks at most emergence sites is often too confused to allow individual tracks to be measured, simple measures of angular range (the width that the tracks disperse) and modal direction (the direction that most hatchlings seem to have gone) are substituted. If the sampling of hatchling emergence sites does not favor a specific stretch of beach or a particular time of the lunar cycle, data from these samples can be an accurate index of how well hatchlings are oriented (Witherington *et al.*, 1996).

HATCHLING-DISORIENTATION REPORTS

Although many cases of hatchling disorientation go unnoticed, some are observed and reported. The evidence of such events includes numerous circling tracks, tracks that are directed away from the ocean, or the carcasses of hatchlings that have succumbed to dehydration and exhaustion. Because reporters often discover this evidence while conducting other activities, such as nesting surveys, the events reported often include only the most conspicuous cases. Although these reports have a distinct coverage bias, they can still yield valuable information.

Hatchling-disorientation reports can help researchers immediately identify light-pollution problems. Although not every hatchling that is misled by lighting may be observed and reported, each report constitutes a documented event. When reports are received by management agencies or conservation groups, action can be taken to correct the light-pollution problem at the specific site recorded in the report. To facilitate the gathering of this information, standardized report forms should be distributed to workers on the beach who may discover evidence of hatchling disorientation. The following is a list of information that should be included on a standardized hatchling-disorientation report form:

1. Date and time (night or morning) that evidence was discovered.
2. Observer's name, address, telephone number, and affiliation (if any). The reporter may need to be contacted so that information about the event can be verified and the site can be located.
3. Location of the event and the possible light sources

responsible. Written directions to the locations should be detailed enough to guide a person unfamiliar with the site. The reporter should judge which lighting may have caused the sea-finding disruption, a decision that may involve knowledge about lighting that was on during the previous night and the direction(s) of the tracks on the beach. If possible, the type of lighting responsible

should be identified (*e.g.*, a high-pressure-sodium street light).

4. The number of hatchlings of each species involved in the event. Unless carcasses or live hatchlings are found, the species and numbers involved will be an estimate.
5. Additional notes about the event.

Best management practices for operating vehicles *on the beach*



Operating vehicles, including ATVs, on the beach can destroy wildlife habitat and be harmful or fatal to wildlife. This is one reason that, in many areas, beach-driving is strictly prohibited year-round to all but authorized personnel. The eggs and flightless young of beach-nesting birds can be virtually invisible, especially from a vehicle. Sea turtles coming ashore to nest may be scared away by vehicles and hatchlings are vulnerable to being run over. Both adult and hatchling sea turtles can be disoriented by any form of artificial light, including headlights. Ruts made by vehicles can trap and disorient turtle hatchlings and baby birds. May through October is considered sea turtle nesting season. However, some species of sea turtles have been known to nest as early as February, and hatchlings can emerge from their nests as late as the mid-winter months. Beach-nesting birds may be active from mid-February through the end of August. Therefore it is best to avoid beach-driving whenever feasible and critical that everyone authorized to operate a vehicle on the beach during these periods of the year take the following precautions:

- Enter the beach only at designated access points and proceed directly to the hard-packed sand near or below the high tide line. Avoid driving on the upper beach whenever possible, and never drive over any dunes or over beach vegetation. If beach conditions require driving above the high tide line, avoid those areas with known sea turtle nests or shorebird breeding areas.
- Avoid the wrack line or areas of dense seaweed, which may contain sea turtle hatchlings or baby birds.
- Minimize ruts on the dry sandy beach by lowering tire pressure and using 4WD, particularly in front of sea turtle or bird nests.
- Drive slowly. Movement should be slow enough to observe any bird eggs, chicks, or sea turtle hatchlings in the vehicle's line of travel. Please be aware that recently hatched chicks often feed along the water's edge. They may freeze in place rather than run away when ATVs or other vehicles approach.
- Whenever possible, avoid driving on the beach at night.
- Do not park vehicles adjacent to nests or posted areas, and, if you must drive on the beach at night, turn headlights off when parking.
- If you observe a sea turtle crawling out of the surf, stop the vehicle and turn off all lights. No additional movement should occur until the turtle moves across the beach and begins digging her nest or moves into deeper water.



DRAFT CONTRACT

THIS CONTRACT is entered into by the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (hereinafter referred to as "DEP"), the FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION (hereinafter referred to as "FWC"), and _____ (hereinafter referred to as the "Contractor"), a _____ corporation, to _____.

WHEREAS, the FWC posted an Agency Decision (FWC _____) to award a competitively procured contract to the _____ Company for the _____; and,

WHEREAS, the Fixed Capital Outlay Budget Authority for Early Restoration Projects was appropriated in the DEP FY 2011-2012 budget; and,

WHEREAS, FWC does not have Fixed Capital Budget Authority to spend the Early Restoration funds.

NOW, THEREFORE, in consideration of the mutual benefits to be derived herefrom, the DEP, the FWC, and Contractor do hereby agree as follows:

1. Duties of the DEP, the FWC, and the Contractor shall be as follows:
 - A. The Contractor is hereby retained to _____ in accordance with Attachment A, Scope of Services, attached hereto and made a part hereof (*see solicitation*). Any terms and conditions of this Contract which vary from those contained in the solicitation or Contractor's response thereto shall have precedence. The Contractor does hereby agree to perform such services upon the terms and conditions set forth in this Contract and all attachments and exhibits named herein which are attached hereto and incorporated by reference. The Contractor has been determined to be a vendor to the FWC under this Contract.
 - B. The FWC shall be responsible for the oversight, review and approval of all services performed under this Contract. Upon the performance of satisfactory services by the Contractor, as approved by the FWC and DEP, the Contractor shall submit invoices to DEP through FWC. The FWC shall submit satisfactory invoices to DEP to compensate the Contractor for approved services.
 - C. The DEP shall be responsible for processing satisfactory invoices, as approved by the FWC and DEP, for payment.
2. The Contractor shall perform the services in a proper and satisfactory manner as determined by the FWC. Any and all equipment, products or materials necessary to perform this Contract shall be supplied by the Contractor, unless otherwise specified herein.
3. The Contractor shall perform as an independent contractor and not as an agent, representative, or employee of the FWC or the DEP.
4. A. As consideration for the services rendered by the Contractor under the terms of this Contract, the Contractor shall be compensated on a fee schedule basis in accordance with the rates in _____ up to a maximum of \$_____.

- B. The Contractor shall submit invoices in accordance with the schedule in Attachment A for up to the amounts specified therein. All bills for amounts due under this Contract shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. All invoices must be made out to the DEP. A final invoice must be submitted by thirty (30) days after the completion date of the Contract to assure the availability of funding for final payment.
- C. FWC costs will be reimbursed up to the maximum amount of \$_____, for Monitoring/Project Management as outlined in Attachment B (*will be added to final contract*). Invoices shall be submitted in accordance with the schedule in Attachment B for up to the amounts specified therein. Invoices must be supported by an itemized listing of expenditures and approved indirect rate. Reimbursement will be based on proof of prior payment, including paid invoices, payroll and time sheets and approved State of Florida travel documents. FWC's indirect costs will be reimbursed up to FWC's Federal Indirect Cost Rate as approved by the U.S. Department of Interior. Pursuant to Comptroller Memorandum No. 4 (1996-97), dated December 5, 1996, the DEP may accept documentation in the form of FLAIR reports or other reports containing sufficient detail in support of invoices for cost reimbursement contracts in lieu of the documentation required by the Contract Payment Requirements, attached hereto and made a part hereof as Attachment C. However, the DEP reserves the right to withhold payment on charges in question and require submission of documentation at the level described in the Contract Payment Requirements in order to determine allowability of the cost to this Contract. Authorized travel expenses and per diem must be documented by a State of Florida Travel Voucher with appropriate receipts. Reimbursement will be made in accordance with Section 112.061, Florida Statutes.
- D. The Contractor shall submit quarterly progress reports which indicate the work performed during the reporting period, work scheduled for the next reporting period, problems encountered and resolutions of the problems, and any schedule updates. Quarterly reports shall be submitted to the Department's Contract Manager no later than ten (10) days following the completion of the reporting period. It is hereby understood and agreed by the parties that the term "quarterly" shall reflect the calendar quarters ending March 31, June 30, September 30 and December 31. The Contractor shall also submit all deliverables specified in Attachment A in accordance with the schedule therein.
5. This Contract shall begin upon execution by all parties and remain in effect through _____, inclusive. In accordance with Section 287.058(2), Florida Statutes, the Contractor shall not be eligible for reimbursement for services rendered prior to the execution date of this Contract. This Contract may not be renewed.
6. The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.
7. Pursuant to Section 215.422, Florida Statutes, the DEP's Contract Manager shall have five (5) working days, unless otherwise specified herein, to inspect and approve the services for payment; the DEP must submit a request for payment to the Florida Department of Financial Services within twenty (20) days; and the Department of Financial Services is given ten (10) days to issue a warrant. Days are calculated from the latter date the invoice is received or services received, inspected, and approved. Invoice payment requirements do not start until a proper and correct invoice has been received. Invoices which have to be returned to a contractor for correction(s) will result in a delay in the payment. A Vendor Ombudsman has been established within the Florida Department of Financial Services who may be contacted if a contractor is experiencing problems in obtaining timely payment(s) from a State of Florida agency. The Vendor Ombudsman may be contacted at 850-413-5516.

8. In accordance with Section 215.422, Florida Statutes, the DEP shall pay the Contractor, interest at a rate as established by Section 55.03(1), Florida Statutes on the unpaid balance, if a warrant in payment of an invoice is not issued within forty (40) days after receipt of a correct invoice and receipt, inspection, and approval of the goods and services. Interest payments of less than \$1 will not be enforced unless a contractor requests payment. The interest rate established pursuant to Section 55.03(1), Florida Statutes may be obtained by calling the Department of Financial Services, Vendor Ombudsman at the telephone number provided above or the DEP's Procurement Section at 850-245-2361.
9. The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide e-procurement system. Pursuant to Section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1%), which the Contractor shall pay the State.

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

The 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, 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 vendor in default and recovering reprocurement costs from the vendor in addition to all outstanding fees. VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

10. The Contractor shall save and hold harmless and indemnify the State of Florida, the FWC, and the DEP against any and all liability, claims, judgments or costs of whatsoever kind and nature for injury to, or death of any person or persons and for the loss or damage to any property resulting from the use, service, operation or performance of work under the terms of this Contract, resulting from any negligent act, or failure to act, by the Contractor, his subcontractor, or any of the employees, agents or representatives of the Contractor or subcontractor to the extent allowed by law.
11.
 - A. The FWC or the DEP may terminate this Contract at any time in the event of the failure of the Contractor to fulfill any of its obligations under this Contract. Prior to termination, the terminating party shall provide ten (10) calendar days written notice to the Contractor of its intent to terminate and shall provide the Contractor an opportunity to consult with the terminating party regarding the reason(s) for termination.
 - B. Either the DEP or FWC may terminate this Contract at any time in the event of the failure of the other party to fulfill any of its obligations under this Contract. Prior to termination, the terminating party shall provide ten (10) calendar days written notice to the other party of its intent to terminate and shall provide them an opportunity to consult with the terminating party regarding the reason(s) for termination.

- C. The DEP or the FWC may terminate this Contract without cause and for its convenience by giving thirty (30) calendar days written notice to the Contractor.
 - D. Notice shall be sufficient if delivered personally or by certified mail to the Contract Managers at the addresses set forth below.
12. A. The DEP's Contract Manager for this Contract is identified below.

| | |
|--|--|
| | |
| Florida Department of Environmental Protection | |
| 3900 Commonwealth Boulevard, Mail Station 235 | |
| Tallahassee, FL 32399-3900 | |
| Telephone No.: | |

- B. The role of the DEP Contract/Program Manager will include, but not be limited to the following:
- i. reviewing and commenting on drafts for FWC's advertisement/solicitations;
 - ii. participating in the vendor selection process;
 - iii. assisting FWC in contract/scope of work development;
 - iv. reviewing FWC invoices and invoices submitted by the Contractor through FWC and signing-off on satisfactory invoices, both Contractor and FWC, prior to payment processing;
 - v. receiving briefings on project status from the FWC Contract Manager on a weekly basis or upon a schedule mutually agreed upon between the DEP Contract Manager and the FWC Contract Manager ;
 - vi. receiving immediate notification when the FWC Contract Manager identifies issues which may impact the project or have the potential for being controversial and requiring involvement by DEP Senior Management;
 - vii. assisting the FWC Contract Manager in resolving issues and reporting to the public;
 - viii. keeping DEP management informed regarding project status;
 - ix. accompanying the FWC Contract Manager or other FWC staff, as needed, on scheduled visits to the project site(s) to observe that work being performed is meeting the project schedule and is done in general accordance with the conditions of the Contract;
 - x. receiving invoices for payment from the FWC Contract Manager; and,
 - xi. approving invoices and submitting the invoice, required supporting material and notice of approval to the DEP Early Restoration Payment Manager for processing.
13. A. The FWC's Contract Manager for this Contract is identified below.

| | |
|---|--|
| | |
| Florida Fish and Wildlife Conservation Commission | |
| 620 South Meridian | |
| Tallahassee, FL 32312 | |
| | |
| Telephone No. | |

- B. The role of the FWC Contract Manager, will include, but may not be limited to the following:

- i. organizing a project start-up meeting with the DEP Contract Manager and the Contractor upon execution of this Contract to discuss project requirements and review processes and roles;
- ii. directing all work performed by the Contractor according to the terms and conditions of the Contract and the project specifications;
- iii. providing weekly briefings to the DEP Contract Manager, or upon a schedule mutually agreed upon between the DEP Contract Manager and the FWC Contract Manager;
- iv. notifying the DEP Contract Manager of issues which may impact the project or issues with the potential for being controversial and requiring involvement by DEP Senior Management;
- v. reviewing progress reports and invoices from the Contractor for compliance with the terms and conditions of the Contract and certifying receipt of satisfactory goods and services;
- vi. forwarding satisfactory invoices for completed Contractor services, with an approval letter requesting payment, to the DEP Contract Manager for payment;
- vii. forwarding approved FWC charges to the DEP Contract Manager for payment;
- viii. providing the DEP Contract Manager with the information necessary to comply with all reporting as required by the applicable signed Project Stipulation; and,
- viii. providing all information and documentation necessary to meet the Department of Financial Services contract payment requirements.

14. A. The DEP Early Restoration Payment Manager for this Contract is identified below:

| | |
|--|--|
| | |
| Florida Department of Environmental Protection | |
| 3900 Commonwealth Boulevard, Mail Station 235 | |
| Tallahassee, FL 32399-3900 | |
| Telephone No. | |

B. The role of the DEP Early Restoration Payment Manager includes:

- i. receiving approved invoices from the DEP Contract Manager;
- ii. coordinating with the DEP Finance and Accounting (F&A) on any questions regarding the audit of the invoice for compliance with the terms and conditions of the Contract;
- iii. confirming that the invoice package contains: confirmation certification of the receipt of the goods and services, approval for payment by the FWC Contract Manager, the FWC Finance and Budget Point of Contact, and the DEP Contract Manager; and,
- iv. sending the request for payment to F&A.

15. This Contract may be unilaterally canceled by the FWC or the DEP 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 this Contract, unless the records are exempt from Section 24(a) of Article I of the State Constitution and Section 119.07(1), Florida Statutes.

16. The Contractor shall maintain books, records and documents directly pertinent to performance under this Contract in accordance with generally accepted accounting principles consistently applied. The FWC, the DEP, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Contract and for five (5) years following Contract completion. In the event any work is subcontracted, the Contractor shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.

17. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Contract.
18. The Contractor covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.
19. This Contract has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract. Any action hereon or in connection herewith shall be brought in Leon County, Florida. As consideration of this Contract, the parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this Contract.
20. No delay or failure to exercise any right, power or remedy accruing to any party upon breach or default by any party under this Contract, shall impair any such right, power or remedy of any party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.
21. The Contractor recognizes that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Contract.
22. This Contract is neither intended nor shall it be construed to grant any rights, privileges or interest in any third party without the mutual written agreement of the parties hereto.
23.
 - A. No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Contract.
 - B. 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. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and intends to post the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity at 850/487-0915.
24. This Contract is an exclusive contract for services and may not be assigned in whole or in part without the written approval of the FWC and the DEP.
25.
 - A. The Contractor shall not subcontract, assign, or transfer any work under this Contract without the prior written consent of the FWC Contract Manager and the DEP Contract Manager. The Contractor agrees to be responsible for the fulfillment of all work elements included in any subcontract consented to by the FWC and DEP and agrees to be responsible for the payment of

all monies due under any subcontract. It is understood and agreed by the Contractor that neither the FWC nor the DEP shall be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and that the Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

- B. The FWC and the DEP support diversity in their procurement programs and request that all subcontracting opportunities afforded by this Contract embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida. A list of Minority Owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at 850-487-0915.

26. It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this Contract shall be purchased from the corporation identified under Chapter 946, F.S., if available, in the same manner and under the same procedures set forth in Section 946.515(2), (4), F.S.; 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 this agency insofar as dealings with such corporation are concerned.

The "Corporation identified" is PRISON REHABILITATIVE INDUSTRIES AND DIVERSIFIED ENTERPRISES, INC. (P.R.I.D.E.) which may be contacted at:

P.R.I.D.E.
12425 28th Street, North
St. Petersburg, Florida 33716-1826
Toll Free: 1-800-643-8459
Website: www.pridefl.com

27. 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 dealing with such qualified nonprofit agency are concerned.

The "nonprofit agency" identified is RESPECT of Florida which may be contacted at:

RESPECT of Florida.
2475 Apalachee Parkway, Suite 205
Tallahassee, Florida 32301-4946
(850) 487-1471
Website: www.respectofflorida.org

28. To the extent required by law, the Contractor will be self-insured against, or will secure and maintain during the life of this Contract, Workers' Compensation Insurance for all of his employees connected with the work of this project and, in case any work is subcontracted, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. Such self-insurance program or insurance coverage shall comply fully with the Florida Workers' Compensation law. In case any class of employees engaged in hazardous work under this Contract is not protected under Workers' Compensation statutes, the Contractor shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the DEP and FWC, for the protection of his employees not otherwise protected.

29. The Contractor shall secure and maintain comprehensive general liability coverage with limits of not less than \$_____ per occurrence and \$_____ annual aggregate for bodily injury and property damage; and comprehensive automobile liability coverage with limits of not less than \$_____ combined single limit for bodily injury and property damage. The Contractor's current certificate of insurance shall contain a provision that the insurance will not be canceled for any reason except after thirty (30) days written notice (with the exception of non-payment of premium which requires a ten (10) day notice) to the Department's Procurement Administrator. The certificate shall also name the FWC and DEP as additional insureds.
30. The purchase of non-expendable personal property or equipment costing \$1,000 or more is not authorized under the terms of this Contract.
31. The FWC or DEP may at any time, by written order designated to be a change order, make any change in the work within the general scope of this Contract (e.g., specifications, time, method or manner of performance, requirements, etc.). All change orders are subject to the mutual agreement of all parties as evidenced in writing. Any change order which causes an increase or decrease in the Contractor's cost or time shall require formal amendment to this Contract.
32.
 - A. The employment of unauthorized aliens by any contractor/vendor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor/vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Contract. The Contractor shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Contract.
 - B. Pursuant to State of Florida Executive Orders Nos.: 11-02 and 11-116, Contractor is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the Contractor during the contract term. Also, the Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the state contract utilize the E-Verify system to verify employment of all new employees hired by the subcontractor during the contract term.
33. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not perform work as a grantee, 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, F.S., for Category Two, for a period of 36 months from the date of being placed on the convicted vendor list.
34. The Contractor shall comply with all applicable federal, state and local rules and regulations in providing services to the FWC and the DEP under this Contract. The Contractor acknowledges that this requirement includes compliance with all applicable federal, state and local health and safety rules and regulations. The Contractor further agrees to include this provision in all subcontracts issued as a result of this Contract.
35. This Contract represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Contract, unless otherwise provided herein.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed, the day and year last written below.

_____ COMPANY

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
Title: _____

By: _____
designee

Date: _____

Date: _____

DEP Contract Manager

DEP Contracts Administrator

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

By: _____
Director, _____

Approved as to form and legality:

Approved as to form and legality
FWC Attorney

Approved as to form and legality
DEP Attorney

List of attachments/exhibits included as part of this Contract:

| <u>Specify Type</u> | <u>Letter/ Number</u> | <u>Description (include number of pages)</u> |
|---------------------|-----------------------|--|
| Attachment | A | Contractor Scope of Services (__ Pages) |
| Attachment | B | FWC Scope of Services (__ pages) |
| Attachment | C | Contract Payment Requirements (1 page) |

FWC 12/13-49

DRAFT

**FLORIDA FISH & WILDLIFE CONSERVATION COMMISSION
CERTIFICATES OF CONTRACT COMPLETION**

Project: _____
Contractor: _____
Cont # or DO #: _____
FEID #: _____
(Or Social Security #)
Contract Date: _____ Total Amount \$ _____

CONTRACTOR'S AFFIDAVIT

I solemnly swear (or affirm): That the work under the above-named contract and all amendments thereto have been satisfactorily completed; that all amounts payable for materials, labor and other charges against project have been paid; that no liens have been attached against the project; that no suits are pending by reason of work on the project under the contract; that all Workers' Compensation claims are covered by Workers' Compensation Insurance as required by law; and that all public liability claims are covered by insurance. I further certify that all just and lawful bills against the undersigned and his subcontractors for labor, material and equipment employed in the performance of this Contract have been paid in full accordance with their terms and conditions.

CONTRACTOR

Name:
Title:
Date:

NOTARY

STATE OF:
COUNTY OF:

Personally appeared before me this _____ day of _____, 20 _____
_____, known (or made known) to me to be

the _____
(Owner) (Partner) (Corporate Officer-give title)

of _____, Contractor (s), who subscribed and
swore to the above instrument in my presence.

Personally known _____ Or Produced
Identification _____
Type of Identification Produced

Notary Public (Seal)
Type Name:
My Commission Expires:

CERTIFIED COMMISSION'S CERTIFICATION

I certify: That, to the best of my knowledge and belief, the work on the above named project has been satisfactorily completed under terms and conditions of the contract.

Contract Manager: _____ Division/Office: _____
Signature: _____ Title: _____
Date: _____

Contents

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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 reprocurement 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 (available at: <http://dils.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.

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>.

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

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.

PUR1000 (10/06)
60A-1.002, F.A.C.

State of Florida
PUR 1001
General Instructions to Respondents

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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.
- The product offered by the respondent will conform to the specifications without exception.
- The respondent has read and understands the Contract terms and conditions, and the submission is made in conformance with those terms and conditions.
- If an award is made to the respondent, the respondent agrees that it intends to be legally bound to the Contract that is formed with the State.
- The respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.
- The respondent shall indemnify, defend, and hold harmless the Buyer and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.
- All information provided by, and representations made by, the respondent are material and important and will be relied upon by the Buyer in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Buyer of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

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://fc.state.fl.us/owa_vbs/owa/vbs_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.

PUR 1001 (10/06)
60A-1.002(7), F.A.C