

**State of Florida  
Division of Emergency Management**



**RFP-DEM-15-16-018**

**FLORIDA DIVISION OF EMERGENCY MANAGEMENT  
GET A PLAN SPORTS MARKETING CAMPAIGN**

**Request for Proposals**

**CONTACT FOR QUESTIONS:**

**Tara Walters**

**2555 Shumard Oak Blvd.**

**Tallahassee, Florida 32399-2100**

**[Tara.Walters@em.myflorida.com](mailto:Tara.Walters@em.myflorida.com)**

**Phone #: (850) 410-1391**

**Fax #: (850) 488-7842**

**1) BACKGROUND**

Section 252.35(8)(i), Florida Statutes, states that the Florida Division of Emergency Management (“FDEM”) shall:

Institute statewide public awareness programs. This shall include an intensive public educational campaign on emergency preparedness issues, including, but not limited to, the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster. The public educational campaign shall include relevant information on statewide disaster plans, evacuation routes, fuel suppliers, and shelters. All educational materials must be available in alternative formats and mediums to ensure that they are available to persons with disabilities.

FDEM administers its public awareness programs through its all-hazards, “*Get a Plan*” outreach efforts. Those efforts include public service announcements (Noncommercial Sustaining Announcements), the “*Kids Get a Plan*” program, and a sports marketing campaign that is the subject of this competitive solicitation.

**2) SOLICITATION**

FDEM is seeking proposals from qualified vendors for an effective, multi-media marketing campaign that promotes the FDEM “*Get a Plan*” message through sporting events and sports teams. Vendors should submit a response to provide services for a local, regional, or statewide campaign through college or professional sports teams. The “*Get A Plan*” sports marketing campaign will include traditional media such as radio and/or television spots, broadcast interviews, outreach opportunities for FDEM, pre-scheduled events, online assets, and social media.

The “*Get A Plan*” sports marketing campaign will not include Noncommercial Sustaining Announcements purchased through non-profit organizations such as the Florida Association of Broadcasters.

**3) PROPOSERS**

For the purpose of this document, the term “Proposer” means the prime Contractor acting on its own behalf and those individuals, partnerships, firms, or corporations comprising the Proposer’s team. The term “proposal” means the complete response of the Proposer to the RFP, including properly completed forms and supporting documentation. After the award, said Proposer will be referred to as the “Contractor”.

**4) RESPONSIBILITY**

In order to qualify as a responsible vendor as that term is defined by section 287.012(25), Florida Statutes, a proposer must demonstrate the capability in all respects to fully perform

the contract requirements and the integrity and reliability that will assure good faith performance.

**5) RESPONSIVENESS**

- a) **Vendor.** In order to qualify as a responsive vendor as that term is defined by section 287.012(27), Florida Statutes, a Proposer must submit a proposal that conforms in all material respects to this solicitation.
  
- b) **Proposal.** In order to qualify as a responsive proposal as that term is defined by section 287.012(26), Florida Statutes, a proposal must conform in all material respects to this solicitation.
  - 1. The Division shall not consider any proposal that contains a material deviation from the terms of this solicitation. However, the Division reserves the right to consider a proposal that contains a minor deviation or irregularity so long as that minor deviation or irregularity does not provide a competitive advantage over the other proposers.
  - 2. The Division shall not permit a vendor to amend a proposal after the due date for submissions – even if to correct a deviation or irregularity.
  - 3. Proposals shall not be considered if not received by the Division on or before the date and time specified as the due date for submission.
  - 4. All proposals must be typed or printed in ink.
  - 5. A proposal may fail to qualify as responsive by reasons that include, but are not limited to:
    - a. Failure to include a material form or addendum;
    - b. Failure to include material information;
    - c. Modification of the proposal specifications;
    - d. Submission of conditional proposals or incomplete proposals; and,
    - e. Submission of indefinite or ambiguous proposals.
  - 6. Other conditions which may cause rejections of proposals include but are not limited to:
    - a. Submission of more than one proposal from the same vendor;
    - b. Evidence of collusion among proposers;

- c. Obvious lack of experience or expertise to perform the required work;
- d. Failure to perform or meet financial obligations on previous contracts or grant agreements; and,
- e. Inclusion on the United States Comptroller General's List of Ineligible Contractors for Federally Financed or Assisted Projects.

**6) SELECTION CRITERIA**

The Division will analyze each proposal by utilizing the source selection criteria outlined in Section 40 of this RFP.

**7) AWARDS**

The Division intends to make multiple awards off of this procurement to the responsive and responsible Proposers whose proposals are determined to be the most advantageous to the Division. After awards, said Proposers will be referred to as the "Contractor". Awards will be offered to the Proposer with the overall highest average score, then to the Proposer with the next highest average score, and so on, until all funds have been offered or all eligible proposals have been funded. Partial funding may be offered to Proposers in order to expend all available money.

The Notice of Intent to Award will be announced and posted on the Vendor Bid System at: [http://vbs.dms.state.fl.us/vbs/main\\_menu](http://vbs.dms.state.fl.us/vbs/main_menu) after final evaluation and totaling of scores at the Selection Committee meeting specified in the Schedule of Events (See Introduction Section 2, Schedule of Events). If the Division is confronted with identical scoring from multiple vendors, the Division shall determine the order of award in accordance with Rule 60A-1.011 Florida Administrative Code.

**8) PERIOD OF PERFORMANCE**

The Division anticipates that the period of performance will begin on date of final execution of the Agreement by the Division and be effective through June 30, 2016.

**9) SCHEDULE OF EVENTS**

Provided below is a list of critical dates and actions. These dates are subject to change. Notice of changes (addenda) will be posted on the MFMP Vendor Bid System at [www.myflorida.com](http://www.myflorida.com) (click on "BUSINESS", then click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements") under this RFP number. It is the responsibility of all potential proposers to monitor this site for any changing information.

<b>ACTION / LOCATION</b>	<b>DATE</b>	<b>TIME</b>
<b>ADVERTISE RFP</b>		<b>07/28/2015</b>
<b>RFP and SCORING CRITERIA</b> To Committee Members via Email		<b>07/29/2015</b>
<b>DEADLINE FOR TECHNICAL QUESTIONS:</b> There is no deadline for administrative questions.	<b>07/31/2015</b>	<b>12:00 PM EST</b>
<b>POSTING OF TECHNICAL QUESTIONS &amp; ANSWERS:</b>	<b>08/03/2015</b>	<b>05:00 PM EST</b>
<b>PROPOSALS DUE (TECHNICAL PROPOSAL):</b> 2555 Shumard Oak Blvd. Tallahassee, Florida 32399-2100	<b>08/14/2015</b>	<b>10:00 AM EST</b>
<b>PUBLIC OPENING (TECHNICAL PROPOSAL):</b> 2555 Shumard Oak Blvd. Tallahassee, Florida 32399-2100	<b>08/14/2015</b>	<b>10:30 AM EST</b>
<b>SCORES DUE TO PROCUREMENT (SCORING TABULATION BY PROCUREMENT):</b> 2555 Shumard Oak Blvd. Tallahassee, Florida 32399-2100	<b>08/17/2015</b>	<b>12:00 PM EST</b>
<b>POSTING OF INTENDED AWARD:</b>	<b>08/19/2015</b>	<b>05:00 PM EST</b>

**10) CONTACT PROVISION**

As required by section 287.057(23), Florida Statutes, the Division highlights the following provision:

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.

**11) SPECIAL ACCOMMODATIONS**

Any person with a qualified disability requiring special accommodations at a pre-proposal conference, public meeting, oral presentation and/or opening shall contact the contact person at the phone number, e-mail address, or fax number provided on the title page at least five (5) working days prior to the event. If you are hearing or speech impaired,

please contact this office by using the Florida Relay Services which can be reached at: 1 (800) 955-8771 (TDD).

**12) MYFLORIDAMARKETPLACE**

Since July 1, 2003, the State has been using the State of Florida's web-based electronic procurement system known as MyFloridaMarketPlace ("MFMP"). Proposers must be registered and active in the state of Florida's MFMP system by the time and date of the technical proposal opening or they will be considered non-responsive. All prospective proposers that are not registered should go to <https://vendor.myfloridamarketplace.com/> to complete on-line registration, or call 1-866-352-3776 for assisted registration.

**13) FLORIDA DEPARTMENT OF FINANCIAL SERVICES (DFS) W-9 INITIATIVE**

The Florida Department of Financial Services (DFS) requires all vendors that do business with the state to submit an electronic Substitute Form W-9. Vendors must submit their W-9 forms electronically at: <https://flvendor.myfloridacfo.com> to receive payments from the state. Contact the DFS Customer Service Desk at (850) 413-5519 or [FLW9@myfloridacfo.com](mailto:FLW9@myfloridacfo.com) with any questions.

**14) QUESTIONS & ANSWERS**

Any technical questions arising from this Request for Proposal must be forwarded, in writing, to the procurement specialist identified below. Questions must be received no later than the time and date reflected on the Schedule of Events. The Division's written response to written inquiries submitted timely by proposers will be posted to MFMP at: [http://myflorida.com/apps/vbs/vbs\\_main\\_menu](http://myflorida.com/apps/vbs/vbs_main_menu) no later than the time and date reflected in Section 2, Schedule of Events. To access the Vendor Bid System (click on BUSINESS', then click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements"). It is the responsibility of all potential proposers to monitor this site for any changing information prior to submitting their proposal.

**WRITTEN TECHNICAL QUESTIONS** should be submitted to:

**Tara Walters**  
**2555 Shumard Oak Blvd.**  
**Tallahassee, Florida 32399-2100**  
**[Tara.Walters@em.myflorida.com](mailto:Tara.Walters@em.myflorida.com)**  
**Phone #: (850) 410-1391**  
**Fax #: (850) 488-7842**

Questions regarding administrative aspects of the solicitation process should be directed to the Procurement Specialist in writing at the above address or by **phone #: (850) 410-1391**.

**15) ORAL INSTRUCTIONS / CHANGES TO THE REQUEST FOR PROPOSAL (ADDENDA)**

No negotiations, decisions, or actions will be initiated or executed by a proposer as a result of any oral discussions with a State employee. Only those communications which are in writing from the Division will be considered as a duly authorized expression on behalf of the Division.

Notices of changes (addenda) will be posted on the Florida Vendor Bid System at: [http://vbs.dms.state.fl.us/vbs/main\\_menu](http://vbs.dms.state.fl.us/vbs/main_menu). It is the responsibility of all potential proposers to monitor this site for any changing information prior to submitting your proposal. All addenda will be acknowledged by signature and subsequent submission of addenda with proposal when so stated in the addenda.

**16) DIVERSITY ACHIEVEMENT**

The Division encourages the recruitment and utilization of minority, women, and veteran businesses. The Division, its vendors, suppliers, and consultants shall take all necessary and reasonable steps to ensure that minority, women, and veteran businesses have the opportunity to compete for and perform contract work for the Division in a non-discriminatory environment.

- a) As defined by section 288.703(1), Florida Statutes, a certified minority business enterprise is a business which received certification from the certifying organization or jurisdiction in accordance with sections 287.0943(1) and (2), Florida Statutes.
- b) As defined by section 295.187(3), Florida Statutes, a certified veteran business enterprise is an independently owned and operated business that:
  - 1. Employs 200 or fewer permanent full-time employees;
  - 2. Together with its affiliates has a net worth of \$5 million or less or, if a sole proprietorship, has a net worth of \$5 million or less including both personal and business investments;
  - 3. Is organized to engage in commercial transactions;
  - 4. Is domiciled in this state;
  - 5. Is at least 51 percent owned by one or more wartime veterans or service-disabled veterans; and
  - 6. The management and daily business operations of which are controlled by one or more wartime veterans or service-disabled veterans or, for a service-disabled veteran having a permanent and total disability, by the spouse or permanent caregiver of the veteran.

For information on Certification Procedures for Vendor Preference programs, contact Thaddeus "Thad" Fortune, Certification Administrator, Office of Supplier Diversity at (850) 487-0915 or e-mail: [Thad.Fortune@dms.myflorida.com](mailto:Thad.Fortune@dms.myflorida.com)

**17) SCOPE OF SERVICES**

Details of the work, information and items to be furnished by the Proposer are described in the Scope of Work, Exhibit "A", attached hereto and made a part hereof.

**18) QUALIFICATIONS**

The Division will determine whether the Proposer is qualified to perform the services being contracted based upon their proposal demonstrating satisfactory experience and capability in the work area. The Proposer shall identify necessary experienced personnel and facilities to support the activities associated with this Request for Proposal.

Those individuals who will be directly involved in the project should have demonstrated experience in the areas delineated in the Scope of Work (Exhibit A). Individuals whose qualifications are presented will be committed to the project for its duration unless otherwise exempted by the Division's Project Manager. Where State of Florida registration or certification is deemed appropriate, a copy of the registration or certificate should be included in the proposal package.

In accordance with sections 607.1501, 608.501, and 620.169, Florida Statutes, foreign corporations, foreign limited liability companies, and foreign limited partnerships must be authorized to do business in the State of Florida. "Foreign Corporation" means a corporation for profit incorporated under laws other than the laws of this state. Such authorization should be obtained by the proposal due date and time, but in any case, must be obtained prior to posting of the intended award of the contract. For authorization, contact:

Florida Department of State  
R. A. Gray Building  
500 S. Bronough  
Tallahassee, Florida 32399-0250  
Phone #: (850) 245-6051

If the business being provided requires that individuals be licensed by the Department of Business and Professional Regulation, such licenses should be obtained by the proposal due date and time, but in any case, must be obtained prior to posting of the intended award of the contract. For licensing, contact:

Florida Department of Business & Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-0797  
Phone #: (850) 487-1395



**19) LIABILITY INSURANCE**

The Contractor shall not commence any work until they have obtained the following types of insurance, and certificates of such insurance have been received by the Division. Nor shall the Contractor allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been so obtained. The Contractor shall submit the required Certificates of insurance to the **Florida Division of Emergency Management, Procurement Office, and ATTENTION: Tara Walters, 2555 Shumard Oak Blvd. /Tallahassee, Florida 32399-2100.**

The Contractor must carry and keep in force during the period of this agreement a general liability insurance policy or policies with a company authorized to do business in the state of Florida, affording public liability insurance with combined bodily injury limits of at least \$150,000.00 per person and \$300,000.00 each occurrence, and property damage insurance of at least \$150,000.00 each occurrence, for the services to be rendered in accordance with this contract.

All insurance policies shall be with insurers qualified and licensed to do business in the state of Florida. Such policies shall provide that the insurance is *not* cancellable except upon thirty (30) days prior written notice to the Division.

The Division shall be exempt from, and in no way liable for, any sums of money which may represent a deduction in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor or subcontractor providing such insurance.

**20) AGREEMENT DOCUMENT**

The Division's "Contract" document is attached hereto and made a part hereof. The terms and conditions contained therein will become an integral part of the contract resulting from this RFP. In submitting a proposal, the proposer agrees to be legally bound by these terms and conditions.

**21) REVIEW OF PROPOSER'S FACILITIES & QUALIFICATIONS**

After the proposal due date and prior to contract execution, the Division reserves the right to perform or have performed an on-site review of the Proposer's facilities and qualifications. This review will serve to verify data and representations submitted by the Proposer and may be used to determine whether the Proposer has an adequate, qualified and experienced staff and can provide overall management facilities. The review may also serve to verify whether the Proposer has financial capability adequate to meet the contract requirements.

Should the Division determine that the proposal has material misrepresentations or that the size or nature of the Proposer's facilities or the number of experience personnel (including technical staff) are not adequate to ensure satisfactory contract performance, the Division has the right to reject the proposal.

**22) PROTEST OF REQUEST FOR PROPOSAL SPECIFICATIONS**

Any person who is adversely affected by the contents of this Request for Proposal must follow the procedure outlined in Section 120.57(3), Florida Statutes and file protests with the Division: **Division of Emergency Management, Agency Clerk, 2555 Shumard Oak Blvd. Tallahassee, Florida 32399-2100.**

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.

**23) UNAUTHORIZED ALIENS**

The employment of unauthorized aliens by any Contractor is considered a violation of Section 274A (e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract. All contractors must e-verify the employment status of their employees and subcontractors to the extent permitted by federal law and regulation. The U.S. Department of Homeland Security website (e-verify) is available at: <http://www.dhs.gov>.

**24) RESERVATIONS**

The Division 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 proposals submitted. Therefore, the proposals should be submitted initially in the most favorable manner. It is understood that the proposal will become a part of the Division's official file, without obligation to the Division.

**25) ADDITIONAL TERMS & CONDITIONS**

No conditions may be applied to any aspect of the RFP by the proposer. Any conditions placed on any aspect of the RFP documents by the proposer may result in their proposal being rejected as a conditional proposal (see "RESPONSIVENESS OF PROPOSALS"). **DO NOT WRITE IN CHANGES ON ANY PART OF THIS RFP OR THE ATTACHMENTS.** The only recognized changes to the RFP prior to proposal opening will be written addenda issued by the Division.

**26) PROPOSAL FORMAT INSTRUCTIONS**

This section contains instructions that describe the required format for the proposal. All proposals submitted shall be marked as follows:

**TECHNICAL PROPOSAL NUMBER:  
RFP-DEM-15-16-018 Florida Division of Emergency Management  
Get A Plan Sports Marketing Campaign  
(One Sealed Package for Technical)**

## 27) TECHNICAL PROPOSAL

The Proposer must submit one (1) original, three (3) copies and one (1) compact disc ("CD") that contain the Technical Proposal, which must be divided into the sections described below. The original must be labeled "Original" and must contain an original signature in blue ink of the authorized official. Since the Division will expect all technical proposals to be in this format, failure of the Proposer to follow this outline may result in the rejection of the proposal. The technical proposal must be submitted and marked:

### **"TECHNICAL PROPOSAL" NUMBER RFP-DEM-15-16-018**

**Florida Division of Emergency Management Get A Plan Sports Marketing Campaign** and must include the following:

**Transmittal Letter** (Limit 1 Page). Each Proposer shall provide a transmittal letter signed by an authorized individual for the organization submitting the proposal to the Division in response to this RFP. The letter must include the point of Contact Information: name; title; address; telephone number; cell number (if applicable); and, email address.

- a) **Table of Contents.** Each proposal shall provide a table of contents which clearly indicates the page numbers for the required sections.
- b) **Executive Summary** (Limit 2 Pages; 2 points). The Proposer shall provide an Executive Summary to be written in non-technical language to summarize the Proposer's overall capabilities and approaches for accomplishing the services specified herein.
- c) **Current Financial Information.** The Proposer shall provide current financial information that, at a minimum, includes an income statement, balance sheet, and statement of cash flows (i.e.: independent certified audit or financial statements). This information will assist the Division in its efforts to determine vendor responsibility.
- d) **Management Plan** (Limit 5 Pages; 8 points)
  1. Professional Service Firm: FDEM is seeking proposals from qualified vendors for an effective, multi-media marketing campaign that promotes the FDEM "*Get a Plan*" message through sporting events and sports teams. Given the scope of this project, the Division may select multiple vendors to provide assets. To be considered, a firm must have been in business under its existing name and essentially the same business structure for not less than one year from the date of issuance of this RFP. The creative aspect of the campaign is handled by the Division.
  2. Experience: List any experience the vendor has had in coordinating outreach events, online assets, traditional media, and social media. This experience may be a prime contractor role or as a subcontractor. Identify the name of the organization for which services were provided and the

type of services provided. Experience in providing the assets as requested in the scope of work should also be included. This experience will be demonstrated by listing relevant projects the firm has managed.

3. Capacity: Describe the firm's capacity to provide timely and responsive project management and quality services vital to the Division's public education outreach campaign. This plan will include a list of the firm's senior staff and other staff members who may provide direct or indirect support to this project to include each person's educational background and work experience. The person who will be designated the lead for the Division's project should also be identified along with the company location that primarily will be used to support the Division's project. Include the firm's practice area/industry expertise and the mission and philosophy that distinguish the firm from its competitors.
4. Noteworthy Accomplishments and Awards: As a partial measure of the organization's quality of performance, it would be an advantage to the Division if the organization and/or individuals within the organization have been recognized for exemplary achievement.

e) **Technical Plan** (Limit 10 Pages; 80 points). The Proposer shall provide a technical plan, which explains the approach to the tasks outlined in Exhibit "A" Scope of Work.

1. Approach to RFP: The Proposer shall clearly describe the proposed approach to providing the Scope of Work as outlined in the RFP. Deliverable narrative should include proposed media venues, schedule of media outreach, proposed outreach events for FDEM staff participation, description of events for promotion of campaign messaging, and social media assets available in the event of an activation of the State Emergency Operations Center. Vendor should provide a list of media markets that radio and/or television could be aired. The document provided will not count toward the maximum number of pages in the submission.

**Note:** Vendors shall outline their approach to each deliverable as outlined in the Exhibit A, "Scope of Work." Points will be awarded based on information provided for Deliverables A through H as outlined. Vendors shall use Exhibit C, "Specific Deliverable Information", to capture their approach to the RFP.

2. Work Samples: The Proposer shall provide samples of work performed as a contractor or subcontractor that demonstrates similar projects and capabilities. List any current and recent projects that demonstrate the firm's experience in successfully providing assets in support of an outreach campaign. Firms may list as many projects as they wish but each project that is included should provide information to the Division

about the scope and quality of services offered by the Proposer. For each project include:

- a. The organization / business with which the firm contracted;
- b. The length of the contract;
- c. The Firm's current staff that were/are involved in the contract;
- d. A description of the assets that are/were provided by the firm including the methodology followed; the tasks, timeline, and deliverables executed; and the budget parameters; and,
- e. Include anecdotal information regarding the success of this initiative/project.

**28) PRICE PROPOSAL (PART II) (One (1) original and one (1) CD)**

The Proposer must submit one (1) original and one (1) CD of the Exhibit B, Price Proposal Form. The Price Proposal is to be submitted in a separate sealed package marked "PRICE PROPOSAL NUMBER RFP-DEM-15-16-018". The Price Proposal information shall only be submitted on the form provided in the Request for Proposal and shall be fully completed and executed.

**29) PRESENTING THE PROPOSAL**

The proposal shall be limited to a page size of eight and one-half by eleven inches (8 ½" x 11"). Foldout pages may be used, where appropriate, but should not exceed five (5) percent of the total number of pages (one page) comprising the proposal. Type size shall not be less than 10 point font. Proposals must be securely bound in a binder appropriate for the size of the application and must not be any more than twenty-one (21) pages plus appendices. The proposal should be indexed and all pages sequentially numbered. It is recognized that existing financial reports, documents, or brochures, such as those that delineate the Proposer's general capabilities and experience, may not comply with the prescribed format. It is not the intent to have these documents reformatted and they will be acceptable in their existing form in an Appendix. The one (1) CD should be labeled Technical Proposal with the RFP number, and the organization's name.

**30) DRUG-FREE WORK PLACE" PREFERENCE**

Whenever two or more proposals which are equal with respect to quality and service are received, the Division shall determine the order of award in accordance with Rule 60A-1.011 Florida Administrative Code, which includes a preference for solicitation responses that certify the business has implemented a drug-free workplace program in accordance with Section 287.087, F. S. The "Drug-Free Workplace Program Certification" must be completed and submitted with the proposal for this preference.

**31) COPYRIGHTED MATERIAL**

Copyrighted material will be accepted as part of a technical proposal only if accompanied by a waiver that will allow the Division to make paper and electronic copies necessary for the use of Division staff and agents. It is noted that copyrighted material is not exempt from the Public Records Law, Chapter 119, and Florida Statutes. Therefore, such material will be subject to viewing by the public, but copies of the material will not be provided to the public. The Division will own all outreach products developed under this proposal.

**32) CONFIDENTIAL, PROPRIETARY OR TRADE SECRET MATERIAL**

If Respondent considers any portion of the documents, data or records submitted in response to this solicitation to be confidential, proprietary, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, the Respondent shall mark the document as "Confidential" and simultaneously provide the Division with a separate redacted copy of its response and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation for such exemption. This redacted copy shall contain the Division's solicitation name, number, and the name of the Respondent on the cover, and shall be clearly titled "Redacted Copy." The Redacted Copy should only redact those portions of material that the Respondent claims are confidential, proprietary, trade secret or otherwise not subject to disclosure, under Chapter 119, Florida Statutes.

In the event of a request for public records to which documents marked as confidential are responsive, the Division will provide the Redacted Copy to the requestor. If a requester asserts a right to the Confidential Information, the Division will notify the Respondent that such an assertion has been made. It is the Respondent's responsibility to provide legal support for its position that the information in question is exempt from disclosure under chapter 119 or other applicable law. If the Division becomes subject to a demand for discovery or disclosure of the Confidential Information of the Respondent in a legal proceeding, then the Division shall give the Respondent prompt notice of the demand prior to releasing the information (unless otherwise prohibited by applicable law). The Respondent shall be responsible for defending its determination that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

By submitting a reply, the Respondent agrees that its failure to mark documents in accordance with the terms above constitutes a waiver of any and all claims of confidentiality and authorizes the Division to release all documents and information that is not marked in accordance with the terms above.

By submitting a reply, the Respondent agrees to protect, defend, and indemnify the Division for any and all claims arising from or relating to the Respondent's determination that the redacted portions of its reply are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

**33) FLORIDA ACCOUNTABILITY CONTRACT TRACKING SYSTEM (FACTS)**

In 2011, the Florida Legislature amended Section 215.985, F.S., relating to the Transparency Florida Act, requiring the Department of Financial Services (DFS) to provide public access to a state contract tracking system; identifying the information that must be made available on the system; and, requiring Florida state governmental entities to update data in the system. On March 1, 2012, DFS implemented a centralized web-based contract reporting system to increase transparency and accountability in government contracting in Florida. The system, known as Florida Accountability Contract Tracking System or FACTS, displays grant and contract procurement information, expenditure data, audit information, and contract document images. The link to the DFS FACTS public website is: <https://facts.fldfs.com>. Any contract resulting from this solicitation will be included in the FACTS system.

**34) COSTS INCURRED IN RESPONDING**

This Request for Proposal does not commit the Division or any other public agency to pay any costs incurred by an individual firm, partnership, or corporation in the submission of a proposal or to make necessary studies or designs for the preparation thereof, nor to procure or contract any articles or services.

**35) MAIL OR DELIVER PROPOSAL TO: (DO NOT FAX or E-MAIL)**

**Florida Division of Emergency Management  
RFP-DEM-15-16-018 *Get A Plan* Sports Marketing Campaign  
C/O Tara Walters  
2555 Shumard Oak Blvd., Tallahassee, Florida 32399-2100**

It is the Proposer's responsibility to assure that the proposal is delivered to the proper place on or before the Proposal Due date and time (See introduction Section 2 Schedule of Events). Proposals which for any reason are not so delivered shall not be considered.

By submitting a proposal, the Proposer represents that it understands and accepts the terms and conditions to be met and the character, quality and scope of services to be provided.

All proposals and associated forms shall be signed and dated in ink by a duly authorized representative of the Proposer.

Each Proposer shall fully acquaint itself with the conditions relating to the performance of the services under the conditions of this Request for Proposal. This may require an on-site observation.

**36) MODIFICATIONS, RESUBMITTAL & WITHDRAWAL**

Proposers may modify submitted proposals at any time prior to the proposal due date. Requests for modification of a submitted proposal shall be in writing and must be signed

by an authorized signatory of the Proposer. Upon receipt and acceptance of such a request, the entire proposal will be returned to the Proposer and not considered unless resubmitted by the due date and time. Proposers may also send a change in a sealed envelope to be opened at the same time as the proposal. The RFP number, due date and time should appear on the envelope of the modified proposal.

**37) PROPOSAL OPENING**

All proposal openings are open to the public. Proposals will be opened by the Division at the date, time and location in the Schedule of Events (See Introduction Section 2 Schedule of Events).

**38) PROPOSAL EVALUATION PROCESS**

An Evaluation Committee will be established to review and evaluate each proposal submitted in response to this Request for Proposal (RFP).

The Procurement Office will distribute to each member of the Evaluation Committee a copy of each technical proposal. The Evaluation Committee members will independently evaluate the proposals based on the evaluation categories established below, in order to assure that proposals are uniformly rated. Evaluation Committee members' scores for each proposal will be totaled and that total divided by the number of team members to obtain an average total score for each proposal. Proposers must attain an average score of seventy (70) points or higher on the Technical Proposal to be considered responsive. Should a Proposer receive fewer than seventy (70) points for their Technical Proposal score, the Technical Proposal will not receive any further consideration.

**39) Technical Proposal (Up to 90 Points)**

Technical evaluation is the process of reviewing the Proposer's Executive Summary, Management Plan and Technical Plan. The review of these categories will demonstrate the Proposer's understanding of the project, and highlight the qualifications, approach and capabilities in order to assure a quality product. The following point system is established for scoring the technical proposals (points indicate maximum score possible per category):

**Evaluation Categories and Point Value:**

- |                            |                         |
|----------------------------|-------------------------|
| 1. Executive Summary:      | <b><u>2 Points</u></b>  |
| 2. Management Plan:        | <b><u>8 Points</u></b>  |
| Professional Services Firm | 2 points                |
| Relative Past Experience   | 2 points                |
| Capacity                   | 2 points                |
| Accomplishments            | 2 points                |
| 3. Technical Plan:         | <b><u>80 Points</u></b> |



Approach	70 points
a) Traditional Media Assets	10 points
b) Outreach Events for FDEM staff	15 points
c) Live Audience Events	15 points
d) Online assets	10 points
e) Social Media Assets	5 points
f) Children	5 points
g) Non-English Speaking Audience	5 points
h) Vulnerable Population	5 points
Work Samples	10 points

MINIMUM OF **SIXTY (60)** TECHNICAL POINTS FOR AWARD CONSIDERATION

**40) Price Proposal (Up to 10 Points)**

Price evaluation is the process of examining a prospective price without evaluation of the separate cost elements and proposal profit of the potential provider. Price analysis is conducted through the comparison of price quotations submitted. The Contractors Price Proposal, Exhibit B, shall become part of the contract if awarded. The Technical Review team will not review price as part of their evaluation. Only the Procurement Specialist will review and evaluate Price Proposals.

The criteria for price evaluation shall be based upon the following formula:  
(Low Price/Proposer’s Price) x Price Points = Proposer’s Awarded Points

**Proposers receiving the highest total points Technical Proposal + Price Proposal shall be awarded resulting contracts.**

**41) POSTING OF INTENDED AWARD**

The Division’s decision will be posted on the MFMP Vendor Bid System at: [http://myflorida.com/apps/vbs/vbs\\_main\\_menu](http://myflorida.com/apps/vbs/vbs_main_menu) on date and time in the Schedule of Events, and will remain posted for a period of seventy-two (72) hours. Any person who is adversely affected by the contents of this Request for Proposal must follow the procedure outlined in Section 120.57(3), Florida Statutes and file protests with the Division: **Division of Emergency Management, Agency Clerk, 2555 Shumard Oak Blvd. Tallahassee, Florida 32399-2100.**

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.

**42) REQUEST TO WITHDRAW PROPOSAL**

Requests for withdrawal will be considered if received by the Division, in writing, within seventy-two (72) hours after the proposal opening time and date. Requests received in accordance with this provision will be granted by the Division upon proof of the impossibility to perform based upon obvious error on the part of the proposer.

**43) AWARD OF THE AGREEMENT**

Services will be authorized to begin when the Proposer receives a State-Funded Grant Agreement executed by both parties, indicating the encumbrance of funds and award of the agreement.

**44) FINANCIAL CONSEQUENCES / CONTRACT CONDITIONS**

The Contract will contain financial consequence language as required by the Florida Department of Financial Services, similar to the following examples:

The Division reserves the right to withhold payment of 5 percent from invoices for late performance, or to implement other appropriate remedies, such as contract termination or nonrenewal, when the Contractor has failed to perform or comply with provisions of this Contract. These consequences for non-performance shall not be considered penalties.

**45) TERMS AND CONDITIONS**

All responses are subject to the terms and conditions of this solicitation, which, in case of conflict, shall have the following order of precedence listed:

- a) Exhibit "A", Scope of Work
- b) Exhibit "B", Acknowledgement
- c) Exhibit "C" Specific Deliverable Information
- d) Exhibit "D" Evaluation Worksheet
- e) Instructions to Respondents (PUR 1001)
- f) General Conditions (PUR 1000)
- g) Exhibit "E", Drug-Free Workplace Program Certification
- h) Contract Document

**46) PUBLIC RECORDS.**

In accordance with section 119.0701(2), Florida Statutes, any contractor acting on behalf of a public agency must:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

Pursuant to section 287.058(1)(c), Florida Statutes, the Division may unilaterally cancel a contract if the vendor refuses to allow public access to all non-exempt documents, papers, letters, or other material made or received by the contractor in conjunction with the contract.

**47) ATTACHED FORMS PUR 1000, GENERAL CONTRACT CONDITIONS & PUR 1001, GENERAL INSTRUCTIONS TO RESPONDENTS**

These are standard forms from the Department of Management Services that the Division is required to include in all formal solicitations. *The following paragraphs do not apply to this Request for Proposal:*

- a) PUR 1001, Paragraph 3, Electronic Submission;
- b) PUR 1001, Paragraph 4, Terms and Conditions; and,
- c) PUR 1000, Paragraph 31, Dispute Resolution.

**48) RENEWAL**

The resulting contract may be renewed, if mutually agreed upon by both parties, for a period that may not exceed three (3) years or the term of the original contract, whichever period is longer and subject to the availability of funds. Renewal shall be executed pursuant to section 287.057 and 287.058(1)(g), Florida Statutes.

**Exhibit A**  
**SCOPE OF WORK**

**Florida Division of Emergency Management**  
***Get A Plan* Sports Marketing Campaign**

**1) PURPOSE**

FDEM seeks an effective, multi-media marketing campaign that promotes the FDEM “*Get a Plan*” message through sporting events and sports teams. Vendors shall provide services for a local, regional, or statewide campaign through college or professional sports teams. The “*Get A Plan*” sports marketing campaign will include traditional media such as radio and/or television spots, broadcast interviews, outreach opportunities for FDEM, pre-scheduled events, online assets, and social media.

The “*Get A Plan*” sports marketing campaign does not include Noncommercial Sustaining Announcements purchased through non-profit organizations such as the Florida Association of Broadcasters.

Florida Statute 252.35 (8)(i) states the Division shall institute statewide public awareness programs that includes an intensive public educational campaign on emergency preparedness issues, including, but not limited to, the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster. The public educational campaign shall include relevant information on statewide disaster plans, evacuation routes, fuel suppliers, and shelters.

**2) BACKGROUND**

FDEM’s comprehensive public outreach campaign focuses on mitigation against, preparedness for, response to and recovery from both manmade and natural disasters, also known as an all-hazards approach. The *Get A Plan* campaign is an on-going effort by the State of Florida to raise awareness and the involvement of millions of Floridians to create a culture of preparedness while focusing on an all-hazards message. The goal of the sports marketing campaign is to effectively target a large number of Floridians through strategic messaging. FDEM recognizes that sports teams are well-established brands that provide fans on a local, regional, and/or statewide level.

- Typically located within major metropolitan areas, major professional sports teams associated with the NFL, MLB, NBA, NHL, and MLS provide access to large population centers within the State of Florida.
- College sports teams provide a loyal fan base and an opportunity to reach out to a regional and/or statewide audience.
- Motorsports provide not only a statewide platform, but also an opportunity to communicate the FDEM message to tourists who visit the State.
- Minor league teams can provide FDEM the opportunity to reach out to smaller metropolitan areas that lack a major professional sports team.

Florida leads the nation in fostering a culture of preparedness for all types of disasters. In the past 20 years, FDEM public education efforts have set the state in a class of their own. In order to ensure that Florida, and FDEM, continues to lead the way in preparing the public, now is the time to implement additional resources to reach the next generation while continuing to protect our most vulnerable populations - children, the disabled and the elderly.

In recent years, the use of social media, including Facebook, Twitter, and Instagram, has been on the rise, particularly in the area of emergency management for preparedness, response, and recovery. FDEM is focused on improving communication with the public using these assets. The *Get A Plan* campaign will remind Florida's residents and visitors that now is the time to prepare for an emergency, where to find accurate and timely updates during a disaster, and where resources are available during the recovery.

The Division is committed to finding ways to increase the Division's social media presence on Facebook, Twitter, and Instagram by identifying partners that will enable FDEM to reach new groups of Floridians. With an orchestrated multi-media outreach campaign, FDEM will increase the percentage of Floridians prepared for a disaster, thereby reducing the loss of life and property from a disaster and the number of citizens seeking government assistance after a disaster.

### **3) SERVICE TASKS**

FDEM is soliciting responses from vendors to provide assets to promote the *Get A Plan* public education outreach campaign through college and professional sports teams. Proposals should describe assets vendor can provide as outlined in Section 4, "Scope of Work." FDEM is not soliciting proposals for creative advertising services. Proposals should focus on the delivery of assets to promote existing campaign messaging. FDEM will provide all creative content and materials for distribution. Proposals are not for creative, production, or ordering of outreach materials.

### **4) TASKS AND DELIVERABLES**

#### **a) TRADITIONAL MEDIA ASSETS TO PROMOTE *GET A PLAN* CAMPAIGN**

Vendors will promote the *Get A Plan* public education message through traditional media resources such as, but not limited to: radio; television; magazines; and/or, newspapers. Proposals should include examples of messaging to be aired on radio and/or television or for advertisements in newspapers and magazine. Proposals should include a frequency of airtime for radio and/or television and dates of publication for print assets.

September is National Preparedness Month. Proposals should include traditional media assets that the vendor can provide in support of FDEM's campaign in September. Proposals should include the availability of radio/television interviews for FDEM Director during September. Proposals should include vendor specific radio/television stations that can be secured to provide campaign message. A list of stations should be included in the proposal.

FDEM currently has contracts in place for the airtime of traditional Public Service Announcements (PSA) on radio, television, and billboard advertisements for a statewide campaign. Vendor proposals should not aim to replace these existing contracts.

**b) OUTREACH EVENTS FOR FDEM TO PARTICIPATE**

Proposals should include a list of event opportunities for FDEM staff to participate including the distribution of preparedness materials. Proposed outreach events should have a minimum of 3000 people in attendance. The list of events should include the type of event, theme (if appropriate), expected attendance, demographics of the audience (example: children, non-English speaking, people with disabilities), and location of event.

Proposed dates for the events should be provided on a monthly basis between September 2015 and June 2016.

**c) EVENTS TO PROMOTE *GET A PLAN TO LIVE* AUDIENCE**

Proposals should include events identified by the Vendor to reach the largest audience at existing events. The overall mission of the *Get A Plan* public education campaign is to reach the largest number of people through local, regional, or statewide events. Proposals should include a list of events to promote the *Get A Plan* campaign to an audience with a minimum of 10,000 people. Vendors should outline the assets provided during the event (example: in-stadium electronic messaging, sideline promotion, online promotion).

The list of events should include the type of event, theme (if appropriate), expected attendance, demographics of the audience (example: children, non-English speaking, people with disabilities), and location of event. Proposed dates for the events should be provided on a monthly basis between September 2015 and June 2016.

**d) PROMOTION THROUGH ONLINE ASSETS**

Proposals should include online assets available to promote the *Get A Plan* public education campaign message through banner advertisement or logo promotion on websites with verified traffic. Vendors should provide examples of online assets for similar campaigns. Proposals should include a schedule of assets between September 2015 and June 2016. At a minimum, vendors should provide two advertisements or banner ad per month during the contract.

**e) SOCIAL MEDIA - DISASTER MOBILIZATION**

Vendor will commit to deployment of official social media assets to amplify official information and/or instructions to the public during times of impending and/or occurring disasters. When FDEM moves to a Level Two Activation of the State Emergency Operation Center, vendor will begin distribution of messaging as identified by FDEM. FDEM will provide vendor with appropriate graphics, language for messaging and updates on each disaster.

Proposals should include a list of social media accounts that vendor has responsibility for messaging. Vendors should provide the number of followers on Facebook, Twitter, and Instagram accounts. Numbers should be current as of the date proposal is submitted to FDEM.

**f) ASSETS TARGETING CHILDREN**

The *Get A Plan* public education campaign targets opportunities to outreach to children through the Kids Get a Plan educational campaign. Proposals should include information on outreach events, in-school events, traditional media assets, and online assets that reach children. Assets identified in this deliverable can be an expansion of previously identified assets.

**g) ASSETS TARGETING NON-ENGLISH SPEAKING INDIVIDUALS**

The *Get A Plan* public education campaign targets opportunities to outreach to non-English speaking individuals. Proposals should include information on outreach events, traditional media assets, and online assets that provide information to non-English speaking individuals. Assets identified in this deliverable can be an expansion of previously identified assets.

**h) ASSETS TARGETING INDIVIDUALS WITH SPECIAL NEEDS**

The *Get A Plan* public education campaign targets opportunities to outreach to individuals with special needs. Proposals should include information on outreach events, traditional media assets, and online assets that target individuals with special needs. Assets identified in this deliverable can be an expansion of previously identified assets.



**Exhibit B  
Price Sheet  
RFP-DEM-15-16-018**

**FDEM Get A Plan Sports Marketing Campaign**

**Total Project Price: \$** \_\_\_\_\_

The resulting contract may be renewed, if mutually agreed upon by both parties, for a period that may not exceed three (3) years or the term of the original contract, whichever period is longer and subject to the availability of funds. Renewal shall be executed pursuant to section 287.057 and 287.058(1)(g), Florida Statutes.

Renewal Year 1 Pricing: \$ \_\_\_\_\_

Renewal Year 2 Pricing: \$ \_\_\_\_\_

Renewal Year 3 Pricing: \$ \_\_\_\_\_

**ACKNOWLEDGEMENT:** I certify that I have read and agree to abide by all terms and conditions of this solicitation and that I am authorized to sign for the proposer. I certify that the response submitted is made in conformance with all requirements of the solicitation.

Proposer: \_\_\_\_\_ FEID #: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed / Typed: \_\_\_\_\_ Title: \_\_\_\_\_

**NOTE:** In submitting a response, the proposer acknowledges they have read and agree to the solicitation terms and conditions and their submission is made in conformance with those terms and conditions.

**Exhibit C**  
**Specific Deliverable Information**

**INFORMATION FOR VENDOR TO COMPLETE FOR SPECIFIC DELIVERABLES**

**DELIVERABLE B**

Vendors submitting multiple events with the same background, but different dates, can complete the information below and list the multiple dates in the date of event section.

Event Type: \_\_\_\_\_ Theme (if appropriate): \_\_\_\_\_  
Date of Event: \_\_\_\_\_ Location of Event: \_\_\_\_\_  
Expected Attendance: 100 500 1000 3000 5000 10000 15000 20000 over 20000  
Demographics of Attendees: Children Special Needs Non-English Speaking  
Traditional  
Existing Event: YES / NO If yes how many years? \_\_\_\_\_

**DELIVERABLE C**

Vendors submitting multiple events with the same background, but different dates, can complete the information below and list the multiple dates in the date of event section.

Event Type: \_\_\_\_\_ Theme (if appropriate): \_\_\_\_\_  
Date of Event: \_\_\_\_\_ Location of Event: \_\_\_\_\_  
Expected Attendance: 100 500 1000 3000 5000 10000 15000 20000 over 20000  
Demographics of Attendees: Children Special Needs Non-English Speaking  
Traditional  
Existing Event: YES / NO If yes how many years? \_\_\_\_\_

**DELIVERABLE D**

Vendors should provide the website addresses available for promotion of the campaign message online.

Website Address: \_\_\_\_\_ Type of Asset: \_\_\_\_\_  
Website Address: \_\_\_\_\_ Type of Asset: \_\_\_\_\_  
Website Address: \_\_\_\_\_ Type of Asset: \_\_\_\_\_

**DELIVERABLE E**

Vendors should provide the social media accounts available for use during an activation of SEOC.

Facebook: \_\_\_\_\_ Number of Followers: \_\_\_\_\_  
Twitter: \_\_\_\_\_ Number of Followers: \_\_\_\_\_  
Instagram: \_\_\_\_\_ Number of Followers: \_\_\_\_\_

**Exhibit D  
Evaluation Worksheet**

Evaluator Name (Print): \_\_\_\_\_

Evaluator Signature: \_\_\_\_\_

Proposer Name: \_\_\_\_\_

Technical Proposals will be awarded up to **90 points** based upon the completeness, as well as the proposer's familiarity and experience with and ability to perform the proposed services in accordance with the scope of work.

**PART I**

<b><u>MAXIMUM POINTS</u></b>	<b><u>POINTS AWARDED</u></b>
----------------------------------	----------------------------------

**TECHNICAL RESPONSE:**

**A. Executive Summary (2 points)**

- Capabilities
- Approach

\_\_\_\_\_

**B. Management Plan (8 points)**

- Professional Services Firm (up to 2 points)
- Relative Past Experience (up to 2 points)
- Capacity (up to 2 points)
- Accomplishments (up to 2 points)

\_\_\_\_\_

**C. Technical Plan: (80 points)**

- Approach to RFP
  - Traditional Media Assets (up to 10 points)
  - Outreach Events for FDEM staff ( up to 15 points)
  - Live Audience Events (up to 15 points)
  - Online assets (up to 10 points)
  - Social Media Assets (up to 5 points)
  - Children (up to 5 points)
  - Non-English Speaking Audience (up to 5 points)
  - Vulnerable Population (up to 5 points)

\_\_\_\_\_

- Work Samples (up to 10 points)

**TOTAL TECHNICAL POINTS AWARDED**

=====

## EXHIBIT E

CERTIFICATION OF DRUG-FREE WORKPLACE
--------------------------------------

IDENTICAL TIE BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more proposals are received from respondents which are both certified minority businesses (as set forth above), and which are equal with respect to price, quality and service, the proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

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

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

\_\_\_\_\_  
VENDORS SIGNATURE

\_\_\_\_\_  
DATE

**State of Florida**  
**PUR 1000**  
**General Contract Conditions**

**Contents**

1. Definitions.
2. Purchase Orders.
3. Product Version.
4. Price Changes Applicable only to Term Contracts.
5. Additional Quantities.
6. Packaging.
7. Inspection at Contractor's Site.
8. Safety Standards.
9. Americans with Disabilities Act.
10. Literature.
11. Transportation and Delivery.
12. Installation.
13. Risk of Loss.
14. Transaction Fee.
15. Invoicing and Payment.
16. Taxes.
17. Governmental Restrictions.
18. Lobbying and Integrity.
19. Indemnification.
20. Limitation of Liability.
21. Suspension of Work.
22. Termination for Convenience.
23. Termination for Cause.
24. Force Majeure, Notice of Delay, and No Damages for Delay.
25. Changes.
26. Renewal.
27. Purchase Order Duration.
28. Advertising.
29. Assignment.
30. Antitrust Assignment
31. Dispute Resolution.
32. Employees, Subcontractors, and Agents.
33. Security and Confidentiality.
34. Contractor Employees, Subcontractors, and Other Agents.
35. Insurance Requirements.
36. Warranty of Authority.
37. Warranty of Ability to Perform.
38. Notices.
39. Leases and Installment Purchases.
40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).

41. Products Available from the Blind or Other Handicapped.
42. Modification of Terms.
43. Cooperative Purchasing.
44. Waiver.
45. Annual Appropriations.
46. Execution in Counterparts.
47. Severability.

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

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

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

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

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

**2. Purchase Orders.** In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor’s order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.

**3. Product Version.** Purchase orders shall be deemed to reference a manufacturer’s most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.

**4. Price Changes Applicable only to Term Contracts.** If this is a term contract for commodities or services, the following provisions apply.

(a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.

(b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.

(c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.

(d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.

(e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

**5. Additional Quantities.** For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.

**6. Packaging.** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to

accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

**7. Inspection at Contractor's Site.** The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

**8. Safety Standards.** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

**9. Americans with Disabilities Act.** Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

**10. Literature.** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

**11. Transportation and Delivery.** Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.

**12. Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by



Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

**13. Risk of Loss.** Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

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

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

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

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

**15. Invoicing and Payment.** Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may

require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

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

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

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

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

**18. Lobbying and Integrity.** Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the

General Records Schedules maintained by the Florida Department of State (available at: <http://dlis.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.respectofflorida.org>.

**42. Modification of Terms.** The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon

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

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

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

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

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

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

**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://fcn.state.fl.us/owa\\_vbs/owa/vbs\\_www.main\\_menu](http://fcn.state.fl.us/owa_vbs/owa/vbs_www.main_menu). If the notice of award is delayed, in lieu of posting the notice of intended award the Buyer shall post a notice of the delay and a revised date for posting the notice of intended award. Any person who is adversely affected by the decision shall file with the Buyer a notice of protest within 72 hours after the electronic posting. The Buyer shall not provide tabulations or notices of award by telephone.

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

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

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

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

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

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

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



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

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

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

**21. Limitation on Vendor Contact with Agency During Solicitation Period.**

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

**STATE OF FLORIDA**  
**DIVISION OF EMERGENCY MANAGEMENT**

Contract Number: \_\_\_\_\_

**CONTRACT**

THIS AGREEMENT is entered into by and between the State of Florida, Division of Emergency Management, (hereinafter, "Division"), and \_\_\_\_\_ (hereinafter, "Contractor"), an entity duly authorized to conduct business in the State of Florida. In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. PURPOSE OF THE AGREEMENT

- A. The purpose of this Agreement is to provide products and/or services as described in the Scope of Work attached hereto as Exhibit "A" and made part hereof.
- B. No work shall commence until both parties have signed the Agreement.

2. TERM

- A. The term shall begin upon execution of the Agreement by both parties and, unless terminated earlier in accordance with the provisions of section 8 of this Agreement, shall end on \_\_\_\_\_.
- B. If the parties relied upon a State Term Contract in order to enter into this Agreement, then: (1) any renewal or extension shall not exceed the expiration of the underlying State Term Contract by more than twelve (12) months; and, (2) no renewal or extension shall occur if the underlying State Term Contract expires prior to the effective date of any renewal or extension.
- C. In accordance with section 287.057(13), Florida Statutes, and subject to the limitations outlined above in subparagraph 2.B. of this Agreement, the Division and the Contractor may renew this Agreement, in whole or in part, for a period that may not exceed three (3) years or the term of this Agreement, whichever is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. Additionally, any renewal: must be in writing and signed by both parties; is contingent upon satisfactory performance evaluations; and, is subject to availability of funds.

OR

- C. Because the procurement solicitation did not specify prices for renewal years, this Agreement, pursuant to section 287.057(13), Florida Statutes, may not be renewed for any period of time. Pursuant to Section 287.057(12), Florida Statutes, the Division may extend this Agreement for a period not to exceed 6 months. Any

extension is subject to the same terms and conditions as set forth in this Agreement. The Division may only extend this Agreement once, unless events beyond the control of the contractor cause the contractor's failure to meet the criteria for contract completion.

OR

- C. Because this Agreement resulted from an emergency procurement under section 287.057(3)(a), Florida Statutes, this Agreement may not be renewed. See Section 287.057(13), Florida Statutes.

OR

- C. Because this Agreement resulted from single source procurement under section 287.057(3)(c), Florida Statutes, this Agreement may not be renewed. See Section 287.057(13), Florida Statutes.

3. PERFORMANCE

- A. Time is of the essence with regard to each and every obligation of the Contractor. Each such obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.
- B. The Contractor shall immediately notify the Division in writing if its ability to perform is compromised in any manner during the term of this Agreement.
- C. The Contractor agrees to perform all tasks and provide deliverables as set forth in the Scope of Work and all contractual documents attached to this Agreement. The Division shall be entitled at all times to be advised, at its request, as to the status of work being done by the Contractor and of the details thereof. Coordination shall be maintained by the Contractor with representatives of the Division, or of other agencies interested in the project on behalf of the Division.
- D. If the Division determines that the performance of the Contractor is unsatisfactory, the Division will notify the Contractor of the deficiency to be corrected, which correction shall be made within a time-frame specified by the Division. The Contractor shall, within the time specified in the contractual documents after notice from the Division, provide the Division with a corrective action plan describing how the Contractor will address all issues of contract non-performance, unacceptable performance, and failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Division, the Contractor will be assessed a non-performance retainage equivalent to 10% of the total invoice amount or as specified in the contractual documents. The retainage will be applied to the invoice for the then-current billing period. The retainage will be withheld until the Contractor resolves the deficiency. If the deficiency is subsequently resolved, the Contractor may bill the Division for the retained amount during the next billing period. If the Contractor is unable to resolve the deficiency, the funds retained may be forfeited at the end of the agreement period.

- E. The Division reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of the Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.
- F. Unless otherwise prohibited by law, the Division may require the Contractor to furnish, without additional cost to the Division, a performance bond or irrevocable letter of credit or other form of security for the satisfactory performance of work hereunder. The Division shall determine the type and amount of security.
- G. Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.
- H. 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, then the Contractor shall immediately notify the Division in writing, indicating the specific restriction. The Division reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Division.
- I. Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. 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; additionally, no extra charges shall be applied for boxing, crating, packing, or insurance. All containers and packaging shall become and remain the Division's property. All purchases are F.O.B. destination, transportation charges prepaid. A complete packing list must accompany each shipment. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. The Division assumes no liability for merchandise shipped to other than the specified destination. Items received in excess of quantities specified may, at the Division's option, be returned at the Contractor's expense. Substitutions are not permitted. The 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.
- J. Matters of inspection and acceptance are addressed in section 215.422, Florida Statutes. 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 Division 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 the Division rejects a product, the 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 Division shall have the right to dispose of it as its own property. The Contractor shall reimburse the Division for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

- K. Where installation is required, the Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated in this Agreement. The 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. The Contractor shall protect the site from damage and shall repair damages or injury caused during installation by the 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. The Contractor shall perform installation work so as to cause the least inconvenience and interference with the Division 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.

#### 4. COMPENSATION AND PAYMENT

- A. The total funding amount of this Agreement for the purchase of commodities or the performance of services as described in Exhibit "A" of this agreement is shown in Exhibit "B".
- B. As required by section 287.0582, Florida Statutes, if this Agreement binds the Division for the purchase of services or tangible personal property for a period in excess of one fiscal year, "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."
- C. Travel expenses are not reimbursable unless specifically authorized in writing, and shall be reimbursed only in accordance with section 112.061, Florida Statutes.
- D. The Contractor will be paid upon submission of properly certified invoice(s) to the Division after delivery and acceptance of commodities or services is confirmed in writing by the Division. Invoices shall contain detail sufficient for a proper pre-audit and post audit thereof and shall contain any Purchase Order and the Vendor's Federal Employer Identification Number or Social Security Number.
- E. No payment requirements shall start until a properly completed invoice is provided to the Division, inspected, and approved. Invoices that must be returned to the Contractor due to preparation errors will result in a delay in payment.

- F. 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.
- G. The Contractors providing goods and services to the Division should be aware of the following time frames:
- 1) Pursuant to section 215.422(1), Florida Statutes, an invoice submitted to the Division shall be recorded in the financial systems of the State, approved for payment by the Division, and filed with the Chief Financial Officer not later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services, except that in the case of a bona fide dispute the invoice recorded in the financial systems of the State shall contain a statement of the dispute and authorize payment only in the amount not disputed.
  - 2) Unless the procurement solicitation or this Agreement states otherwise, the Division has five (5) working days to inspect and approve commodities and services. Items may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at the Contractor's expense. Any resulting increase in cost will be charged against the Contractor.
  - 3) Pursuant to section 215.422(3)(b), Florida Statutes, the Division shall issue payment to the Contractor within forty (40) days after the invoice has been accepted. Failure to issue the warrant within forty (40) days may result in the Division paying interest at the rate established under subsection 55.03(1), Florida Statutes.
- H. Transaction Fee. The State of Florida, through the Department of Management Services (DMS), has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to subsection 287.057 (22), Florida Statutes, all payments shall be assessed a transaction fee of one percent (1%), which the Contractors shall pay to the State. On-line filing is available at <http://dms.myflorida.com/mfmp>. 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 self-report and pay the transaction fee pursuant to rule 60A-1.031 (2), Florida Administrative Code. 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 purpose 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 this Agreement. Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. A CONTRACTOR'S DELINQUENCY IN PAYING TRANSACTION

FEES MAY RESULT IN BEING EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

- I. The Contractor shall report and pay the transaction fee on a quarterly calendar basis using the Department of Management Service's Form PUR 3776, which is incorporated by reference. Any misrepresentation shall be punishable under law, including but not limited to: Chapter 817, Florida Statutes.
- J. The Contractor may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Division is responsible for all payments under the Agreement. The Division's failure to pay, or delay in payment, shall not constitute a breach of the Agreement and shall not relieve the Contractor of its obligations to the Division.
- K. A Vendor Ombudsman, whose duties include acting as an advocate for Vendors who may be experiencing problems in obtaining timely payment(s) from an Agency may be contacted at 850-413-5516 or by calling the State Comptroller's Hotline, 1-800-848-3792.
- L. The Division, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Division shall require a statement from the Chief Financial Officer of the Division that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executed only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years.
- M. All refunds or repayments due to the Division under this Agreement shall be made payable to the order of the "Division of Emergency Management" and mailed directly to the attention of: **Cashier, Division Finance, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399**. The Contractor shall also notify the Division Program Manager (identified in section 13. A.) that it has issued a refund to the Division.

5. INDEMNITY AND PAYMENT FOR CLAIMS

- A. INDEMNITY. The Contractor shall be fully liable for the actions of its agents, employees, partners, assignees, or subcontractors and shall fully indemnify, defend, and hold harmless the State and the Division, and their officers, agents, and employees, from suits, actions, damages, and costs, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by the Contractor, its agents, employees, partners, or subcontractors; provided, however, 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 the Division.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State 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 the Division's misuse or modification of the Contractor's products or the Division's operation or use of the Contractor's products in a manner not contemplated by the Agreement. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Division the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure for the Division the right to continue using the product, the Contractor shall remove the product, and refund to the Division the amounts paid in excess of a reasonable rental for past use. The Division 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 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 Division in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

Any Contractor which is a State agency or subdivision, as defined in section 768.28, Florida Statutes, agrees to be fully responsible for its negligent or tortuous acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any Contractor to which sovereign immunity applies.

Nothing herein shall be construed as consent by a State agency or subcontractor of the State of Florida to be sued by third parties in any matter arising out of any contract.

- B. **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 contained in this agreement.

Unless otherwise specifically enumerated in this Agreement or resulting 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.

- C. PAYMENT OF CLAIMS. The Contractor guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Contractor or any subcontractor, in connection with the Agreement.
- D. LIABILITY INSURANCE. The Contractor shall carry and keep in force during the term of this Agreement a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$150,000.00 per person and \$300,000.00 each occurrence, and property damage insurance of at least \$150,000.00 each occurrence, for the services to be rendered in accordance with this Agreement.

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 liability and obligations under the Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

- E. WORKERS COMPENSATION. The Contractor shall maintain Workers' Compensation insurance as required under the Florida Workers' Compensation Law.

6. COMPLIANCE WITH LAWS:

- A. The laws of the State of Florida shall govern this Agreement. The Division and the Contractor submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to this Agreement. Further, the Contractor hereby waives any and all privileges and rights relating to venue it may have under Chapter 47, Florida Statutes, and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. The Contractor hereby submits to venue in the county chosen by the Division, to wit: Leon County, Florida.
- B. The Contractor must be registered with the Florida Department of State, Division of Corporations. Online-filing is available at: <http://www.sunbiz.org>.
- C. The Contractor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction with this Agreement. In accordance with section 119.0701(2), Florida Statutes, the contractor must:

- 1) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
  - 2) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
  - 3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
  - 4) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.
- D. Pursuant to section 287.058(1)(c), Florida Statutes, the Division may unilaterally cancel a contract if the vendor refuses to allow public access to all non-exempt documents, papers, letters, or other material made or received by the contractor in conjunction with the contract.
- E. The Contractor agrees that it shall make no statements, press releases, or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Division's Contract Manager or the Division's designated contact person and securing prior written consent. The Contractor shall maintain confidentiality of all confidential data, files, and records related to the services and/or commodities provided pursuant to this Agreement and shall comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, Florida Statutes. The Contractor's confidentiality procedures shall be consistent with the most recent version of the Division's security policies, protocols, and procedures. The Contractor shall also comply with any applicable professional standards with respect to confidentiality of information.
- F. The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. For example, the Contractor shall comply with Section 247A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Pursuant to Section 287.058(1), Florida Statutes, the provisions of Section 287.058(1)(a)-(c), and (i), Florida Statutes, are hereby incorporated by reference, to the extent applicable.

- G. The Contractor should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.
- H. 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.
- I. If regulated by the Florida Department of Business and Professional Regulation, the Contractor and its employees shall be bound by the standard of conduct provided in applicable Florida Statutes and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Contractor further covenants and agrees that when a former State employee is employed by the Contractor, the Contractor will require strict adherence by a former State employee to section(s) 112.313 and 112.3185, Florida Statutes, as a condition of employment for said former State employee. These statutes will by reference be made a part of this Agreement as though set forth in full. The Contractor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter for the work performed under this Agreement.
- J. A person or affiliate who has been placed on the convicted Contractor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals or replies on leases of real property to a public entity, may not be awarded or perform work as a Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months following the date of being placed on the convicted Contractor list.
- K. An entity or affiliate who has been placed on the discriminatory Vendor list may not submit a bid, proposal or reply on a contract to provide any goods or service to a public entity, may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals or replies on leases of real property to a public entity, may not be awarded or perform work as a Vendor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

- L. The Division shall verify the Contractor and any subcontractor's against the Federal Excluded Parties List System to ensure the Contractor or subcontractor is not disbarred or excluded from receiving Federal contracts.
- M. The Contractor shall E-Verify the employment status of all employees and subcontractors to the extent permitted by federal law and regulation. The Division shall consider the employment by any Contractor of unauthorized aliens a violation of section 274A (e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. Furthermore, the Contractor agrees to utilize the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all new employees hired during the term of this Agreement for the services specified in this Agreement. The Contractor shall also include a requirement in subcontracts that the subcontractor shall utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement.
- N. Pursuant to section 216.347, Florida Statutes, the Contractor shall not expend any State funds for the purpose of lobbying the State Legislature, the Judiciary, or an Agency.
- O. In accordance with section 20.055(5), Florida Statutes, the Contractor shall cooperate fully with the Inspector General in any investigation, audit, inspection, review, or hearing conducted pursuant to the Inspector General's statutory authority. Additionally, upon request of the Inspector General or any 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 this Agreement. The Contractor shall retain such records for the longer of: (1) three years after the expiration of the Purchase Order; or, (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>). 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.
- P. 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.

## 7. COPYRIGHT, PATENT AND TRADEMARK

- A. All plans, specifications, computer files, and reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived from them shall be the exclusive property of the Division without restriction or limitation on their use and shall be made available, upon request, to the Division at any time during the performance of such services and/or upon completion or termination of this Agreement.
- B. The Contractor shall not copyright any material and products or patent any invention developed under this Agreement. Any and all patent rights and any and all copyright accruing under or in connection with the performance of this Agreement are hereby reserved to the State of Florida. If the Contractor brings to the performance of this Agreement a pre-existing patent or copyright, the Contractor shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.
- C. If any discovery or invention arises or is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with this Agreement, the Contractor shall refer the discovery or invention to the Division for a determination whether patent protection will be sought in the name of the State of Florida. Any and all patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Contractor shall notify the Division. Any and all copyrights accruing under or in connection with the performance under this Agreement are transferred by the Contractor to the State of Florida.
- D. Within thirty days (30) of execution of this Agreement, the Contractor shall disclose all intellectual properties relevant to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Contractor shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under subsection C, have the right to all patents and copyrights which occur during performance of the Agreement.

## 8. SUSPENSION OF WORK AND TERMINATION OF THE AGREEMENT

- A. **SUSPENSION.** The Division may in its sole discretion suspend any or all activities under this Agreement, at any time, when in the best interests of the State to do so. The Division 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 (90) days, or any longer period

agreed to by the Contractor, the Division shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or, (2) terminate the Agreement. Suspension of work shall not entitle the Contractor to any additional compensation.

- B. **TERMINATION FOR CONVENIENCE.** This Agreement may be terminated by the Division in whole or in part at any time in the best interest of the Division. The Contractor shall not furnish any product after it receives the notice of termination (whether for convenience or for cause), except as necessary to complete the continued portion of the Contract, if any. If this Agreement is terminated before performance is completed, then the Contractor shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the Division and shall be turned over promptly by the Contractor. The Contractor shall not be entitled to recover any cancellation charges or lost profits.
- C. **TERMINATION FOR CAUSE.** The Division may terminate the Agreement if the Contractor fails to: (1) deliver the product within the time specified in the Agreement or any extension; (2) maintain adequate progress, thus endangering performance of the Agreement; (3) honor any term of the Agreement; (4) timely cure a default; or, (5) 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 Agreement 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 Division. The rights and remedies of the Division in this clause are in addition to any other rights and remedies provided by law or under the Contract.

## 9. REMEDIES

- A. Any dispute concerning performance of this Agreement shall be decided by the Division'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 Division a petition for administrative hearing. The Division'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.

- B. In the event the Contractor fails to satisfactorily perform or has failed to adhere to the terms and conditions under this Agreement, the Division shall, upon fifteen (15) calendar days written notice to the Contractor and upon the Contractor's failure to cure within those fifteen (15) calendar days, exercise any one or more of the following remedies, either concurrently or consecutively:
- 1) Withhold or suspend payment of all or any part of a request for payment.
  - 2) Require that the Contractor refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
  - 3) Exercise any corrective or remedial actions, to include but not be limited to:
    - a) Requesting additional information from the Contractor to determine the reasons for or the extent of non-compliance or lack of performance;
    - b) Issuing a written warning to advise that more serious measures may be taken if the situation is not corrected;
    - c) Advising the Contractor to suspend, discontinue or refrain from incurring costs for any activities in question; or,
    - d) Requiring the Contractor to reimburse the Division for the amount of costs incurred for any items determined to be ineligible.
- C. Pursuing any of the above remedies will not keep the Division from pursuing any other rights or remedies which may be otherwise available under law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Contractor, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Contractor.
- D. 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 this Agreement.
- E. 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

Division 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 Division. 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 the Division, in which case the Division may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to the Division 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.

#### 10. EMPLOYEES, ASSIGNMENT, AND SUBCONTRACTS

- A. INDEPENDENT CONTRACTOR. The Contractor and its employees, agents, representatives, assignees, and subcontractors are not employees or agents of the Division and are not entitled to the benefits of State of Florida employees. The Division shall not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, assignees, or subcontractors. The Contractor agrees to include this provision in all of its subcontracts under this Agreement.
- B. ALL EMPLOYEES, SUBCONTRACTORS, AND AGENTS. All Contractor employees, assignees, subcontractors, or agents performing work under this Agreement shall be properly trained technicians who meet or exceed any specified training qualifications and shall have all current licenses and permits required for all of the particular work for which they are hired by the Contractor. Upon request, the Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, assignees, subcontractors, or agents performing work under this Agreement must comply with all security and administrative requirements of the Division and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, assignee, 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 the Division's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Agreement. The State may reject and bar from any facility for cause any of the Contractor's employees, assignees, subcontractors, or agents. The Division and the State shall take all actions necessary to ensure that Contractor's employees, assignees, 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, assignees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

- C. CONVICTED AND DISCRIMINATORY VENDORS. In accordance with sections 287.133 and 287.134, Florida Statutes, an entity or affiliate who is on the Convicted Vendor List or the Discriminatory Vendor List may not perform work as a contractor, supplier, sub-contractor, or consultant under this Agreement.
- D. WARRANTY 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 or discriminatory vendor lists, or on any similar list maintained by any other state or the federal government.
- E. ASSIGNMENT. The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under this Agreement without the prior written consent of the Division. In the event of any assignment, the Contractor remains secondarily liable for performance of this Agreement, unless the Division expressly waives such secondary liability. The Division may assign this Agreement with prior written notice to Contractor.
- F. SUBCONTRACTS. The Vendor shall not subcontract any work under this Purchase Order without the prior written consent of the Agency. The Vendor is fully responsible for satisfactory completion of all subcontracted work.

## 11. MODIFICATION OF CONTRACT

This Agreement contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Division and the Contractor. This Agreement may only be modified or amended upon mutual written agreement of the Division and the Contractor. No oral agreements or representations shall be valid or binding upon the Division or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Division. The Contractor may not unilaterally modify the terms of this Agreement 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 Division'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.

12. MONITORING

The Contractor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division or its agents, employees, or designee, including the Florida Chief Financial Officer, or Florida Auditor General. In the event the Division determines that a limited scope audit of the Contractor is appropriate, the Contractor agrees to comply with any additional instruction provided by the Division to the Contractor regarding such audit. The Contractor further agrees to comply and cooperate with any inspection reviews, investigation or audits deemed necessary by the Florida Chief Financial Officer or Florida Auditor General.

Records of costs incurred by the Contractor under terms of this Agreement shall be maintained by the Contractor and made available upon request to the Division at all times during the period of this Agreement. Copies of these documents and records shall be furnished to the Division upon request. Records of costs incurred shall include the Contractor's general accounting records and the project records, together with supporting documents and records of the Contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Division for a proper audit of project costs.

13. NOTICE AND CONTACT

All notices required under the Agreement shall be delivered to the following:

For DIVISION	For CONTRACTOR
2555 Shumard Oak Boulevard	
Tallahassee, Florida 32399	
Tele:	
Email:	Email:

For technical questions call:  
Program Manager:

For financial and administrative questions call:

14. MISCELLANEOUS

- A. The Division Program Manager is \_\_\_\_\_.
- B. All services shall be performed by the Contractor to the satisfaction of the Division who shall decide all questions, difficulties and disputes of any nature that may arise under this Agreement, the prosecution and fulfillment of the services under it and the character, quality, and value thereof; and the decision upon all claims, questions and

disputes shall be final and binding upon all parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses shall be subject to mutual agreement of the parties, and Amendments(s) shall be entered into by the parties in accordance with the changes.

- C. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Division at all times during the period of this Agreement and for five (5) years after completion of the work pursuant to this Agreement. Copies of these documents and records shall be furnished to the Division, its agents, employees or designee, including agents of other State agencies or the Federal government upon request. Records of costs incurred shall include the Contractor's general accounting records and the project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Division for a proper audit of project costs.
- D. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.
- E. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- F. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.
- G. Should a court determine any provision of this Agreement is invalid, the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the provision held to be invalid.
- H. If this Agreement is the result of a formal solicitation (Invitation to Bid, Request for Proposal or Invitation to Negotiate), the Department of Management Services Form(s) PUR1000 and PUR1001, included in the solicitation, are incorporated herein by reference and made part of the Agreement.

Otherwise, the Contractor is subject to the terms and conditions as outlined in Form PUR 1000, incorporated by reference and made part of this Agreement.

- I. The Division may require the Contractor and its employees, agents, representatives and subcontractors to provide fingerprints and be subject to such background screen as determined by the Agency and conducted by the Florida Department of Law Enforcement or the Federal Bureau of Investigation. The cost of the background screen(s) shall be borne by the Contractor. The Division may require the Contractor

to exclude the Contractor's employees, agents, representatives or subcontractors based on the background screening results.

- J. 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.
- K. 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-Division purchases are independent of the agreement between Division and the Contractor, and the Division shall not be a party to any transaction between the Contractor and any other purchaser.

As provided in Section 287.042(16)(a), Florida Statutes, other state agencies may purchase from the resulting contract, provided that the Department of Management Services has determined that the contract's use is cost-effective and in the best interest of the State. Upon such approval, the Contractor may, at its discretion, sell these commodities or services to additional agencies, upon the terms and conditions contained herein.

- L. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- M. The Division 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 this Agreement. The Division 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 Division may solicit separate bids to satisfy them.
- N. The following exhibits are incorporated and made a part of this Agreement. In case of discrepancy in any of the provisions of these exhibits with this Agreement, the provisions of this Agreement shall govern. In case of discrepancy among the exhibits, the exhibits are listed in governing order as follows:
  - Exhibit "A" –
  - Exhibit "B" –
  - Exhibit "C" –

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month and year set forth above.

**CONTRACTOR**

**DIVISION OF EMERGENCY MANAGEMENT**

By: \_\_\_\_\_  
(Authorized Signature) (Date)

By: \_\_\_\_\_  
(Authorized Signature) (Date)

\_\_\_\_\_  
(Print/Type Name)

\_\_\_\_\_  
(Print/Type Name)

Title: \_\_\_\_\_

Title: Director \_\_\_\_\_

Federal Tax ID# \_\_\_\_\_