

**State of Florida
Department of State**

**INVITATION TO BID
FOR
Lawn Maintenance Services for Mission San Luis
ITB # 991-490-07-12-1
RELEASED ON: 6/28/12**

THIS COVER SHEET MUST BE SIGNED AND RETURNED WITH YOUR BID TO ACKNOWLEDGE AND AFFIRM AGREEMENT TO ALL OF THE STATEMENTS AND TERMS & CONDITIONS CONTAINED IN THIS SOLICITATION. THE AUTHORIZED COMPANY REPRESENTATIVE MANUALLY SIGNING THIS COVER SHEET WARRANTS THAT THEY ARE DULY AUTHORIZED TO COMMIT ON BEHALF OF THEIR COMPANY TO CONTRACTUAL OBLIGATIONS AND PRICING.

COMPANY NAME

FEID #

AUTHORIZED SIGNATURE (MANUAL)

DATED

AUTHORIZED SIGNATURE (PRINTED) TITLE

THE DEPARTMENT IS NOT LIABLE FOR ANY AMENDMENT(S), CHANGE(S) OR ADDENDUM(S) NOT RECEIVED BY VENDORS FOR FAILURE OF VENDOR TO REVIEW THE VENDOR BID SYSTEM (VBS).

ITB # 991-490-07-12-1

TABLE OF CONTENTS

<i>SECTION 1 - INTRODUCTION</i>	5
1.0 Background.....	5
1.1. Scope of Work	5
1.2. Applicable Law	9
1.3. Purchase/Contract Documentation.....	9
1.4. Solicitation Timeline.....	9
1.5. Procurement Officer Contact Information	10
1.6. Diversity – Certified Vendor Participation	10
1.7. Notice to Contractor.....	11
1.8. Special Accommodations.....	11
<i>SECTION 2 – DEFINITIONS</i>	12
<i>SECTION 3 – TECHNICAL SPECIFICATIONS</i>	14
3.0 Specifications	14
3.1. Delivery.....	14
3.2. Removal of Equipment	14
3.3. Warranty	14
3.4. Inspection and Acceptance	14
3.5. Task Completion Evidence.....	14
3.6. Financial Consequences.....	15
<i>SECTION 4 - PROCUREMENT RULES AND INFORMATION</i>	16
4.0 Pre-Bid Walk Through.....	16
4.1. Bid Submission	16
4.2. Bid Opening.....	17
4.3. General Instructions to Bidders (PUR 1001 (10/06))	17
4.4. Bid Preparation Costs	17
4.5. Bid Disposal.....	18
4.6. Bid Rejection	18
4.6.1. Right to Reject Bid.....	18
4.6.2. Mandatory Responsiveness Requirements	18
4.6.3. Material Deviations.....	18
4.7. Minor Irregularities.....	18
4.8. Special Instructions to Bidders	18
4.9. Addenda	19
4.10. Changes.....	19
4.11. Price Discussions	19
4.12. Verbal Instructions.....	19
4.13. No Prior Involvement and Conflicts of Interest.....	19
4.14. Corporate Registration.....	19
4.15. 2 nd Tier Certified Minority Participation Reporting	20
4.16. Licenses, Permits, Other Charges	20
4.17. Posting of Recommended Award	20

4.18. Bidder’s Response/Contract.....21

SECTION 5 – CONTRACT AWARD.....23

5.0 Price Determination23

5.1. Evaluation Process23

5.2. Incomplete “*REQUEST FOR PRICE INFORMATION*” Sheet(s).....23

5.3. Reference Checks.....23

5.4. Identical Tie Bids/Drug Free Workplace.....23

5.5. “Total Price for Award” Computation.....23

SECTION 6 - SPECIAL CONDITIONS.....24

6.0 Application of Special Conditions24

6.1. Order of Precedence.....24

6.2. General Contract Conditions (PUR 1000 (10/06))24

6.3. Contract Extensions24

6.4. Breach of Contract24

6.5. Damages upon Termination.....25

6.6. Invoices and Payments.....25

6.7. Department’s Contract Manager (DCM).....25

6.8. Contractor’s Contract Manager.....25

6.9. Contractor’s Expenses25

6.11. Records26

 6.11.1. Records Audit26

 6.11.2. Records Retention.....26

6.12. Accessible Electronic Information Technology.....26

6.13. Non-Discrimination27

6.14. Bidder’s Insurance Requirements27

6.15. Copyrights, Right to Data, Patents and Royalties.....27

6.16. Independent Vendor Status27

6.17. Performance Bond28

6.18. Interest Penalties28

6.19. Vendor Ombudsman28

6.20. Travel Expenses28

6.23. Cooperative Purchasing28

6.24. Intellectual Property.....28

6.25. Employment Eligibility Verification28

SECTION 7 - BID FORMAT AND CONTENTS.....30

7.0 Bid Submission Requirements30

7.1. Number of Bids/Bid Submission30

7.2. Mandatory Responsiveness Requirements30

7.3. Vendor Contract Administration Contact31

7.4. Identical Tie Bids.....31

7.5. Late Bids31

7.6. Bid Pricing31

ATTACHMENT 1 – REQUEST FOR PRICE INFORMATION.....32

ATTACHMENT 2 - VENDOR REPRESENTATIVE AND ALTERNATE.....33
ATTACHMENT 3 - IDENTICAL TIE BIDS.....34
ATTACHMENT 4 - REFERENCES35
PUR 1001 GENERAL INSTRUCTIONS TO RESPONDENTS (10/06).....37
PUR 1000 GENERAL CONTRACT CONDITIONS (10/06).....44

SECTION 1 - INTRODUCTION

1.0 Background

The Department of State, Division of Historical Resources, wishes to purchase lawn maintenance services for Mission San Luis, located at 2100 West Tennessee Street and 2020 Mission Road (Hwy. 90 West) in Tallahassee, Florida. The contract period will be for 12 months, beginning August 1, 2012, through July 31, 2013, with a maximum of three annual renewals possible, based on satisfactory performance of the Scope of Work.

MANDATORY PRE-PROPOSAL SITE VISIT

A mandatory pre-bid site visit is scheduled for July 9, 2012, 8:00 AM. Please call Laura Robbins Schell at (850) 487-1970 if you would like to attend, or require other accommodations.

Note: No smoking on the grounds or in buildings except for designated places.

1.1. Scope of Work

The Department of State, Division of Historical Resources is issuing this Invitation to Bid (ITB) to secure competitive bids from qualified suppliers who are able to provide landscape maintenance services at Mission San Luis, a property located at 2100 West Tennessee Street and 2020 Mission Road in Tallahassee, Florida. The contract period is 12 months, beginning on August 1, 2012, with three annual renewal options, at the Department's sole discretion.

The owner is the Florida Department of State, Division of Historical Resources. Questions regarding the Scope of Work should be directed to Ed Valla, Purchasing Director, Dept. of State, Div. of Administrative Services, 500 S. Bronough Street, Room 428, Tallahassee, FL 32399-0250, telephone number 850.245.6593. Please inquire by writing.

A mandatory pre-bid visit is scheduled for July 9th at 8 am. Everyone will meet at the main Mission San Luis (MSL) parking lot on West Tennessee Street. Please call Laura Robbins-Schell at 850.245.6447 if you need directions or have questions.

The bidder is required to examine the specifications and to be informed of any and all conditions and requirements that may, in any manner, affect the work to be performed.

Proof of Workers' Comp Insurance is required. The contractor will carry liability amounts and worker's compensation coverage required by law on his operators and employees, and will require the same of any sub-contractors. The contractor is responsible for obtaining any licenses and/or permits required by law for activities on MSL property. Licenses, permits, and insurance must be maintained for the entirety of the contract.

Description of Facility

ITB # 991-490-07-12-1

Mission San Luis (MSL) is a state-owned historical and archaeological site open to the public. The 50-acre portion of MSL on the north side of the property contains the Messer House, Garage Public Restroom Building, and the Education Building, all located at service address 2020 West Mission Road. This larger portion also contains six historic building reconstructions, several sheds, a storm-water retention pond, a paved parking lot, a concrete sidewalk system, a nature trail [1/3 mile], extensive lawn and turf areas, flowerbeds and shrubs. There are some areas of interpretive vegetable gardens and field crops that will be maintained by MSL.

The property was formerly divided by Mission Road; the portion of the road within the fences of this property has been closed to thru traffic and deeded to MSL. A portion of the road bed itself has been sodded with grass. Landscape maintenance for the road bed, road edges, road right-of-ways and road turn-around not maintained by the city, is included in this contract.

The Archaeological Lab/Collections Building and the Visitor Center are located at 2100 West Tennessee Street.

The southern 13-acre portion of MSL also contains lawns, flowerbeds, shrubs, two storm-water retention ponds, a paved entrance driveway, two parking lots, a paved outdoor patio area, and a courtyard. It includes the main entrance and right-of-way road easement on Tennessee Street.

Scope of Work

General Considerations

The contractor is expected to perform routine landscape maintenance tasks that would be standard for any commercial, recreational, or educational setting. The contractor will work independently and follow the schedule established on the Landscape Maintenance Checklists.

The contractor's bid should describe your ability to provide the complete scope of services required. It is required to have experience maintaining commercial sites of 10 or more acres. It should address your experience with Florida-specific lawn and turf care. Special consideration will be given for (verified by reference) experience with ELM (Environmental Landscaping Management). Three references must be included with the bid. References will be contacted.

Service Schedule

The site is always closed to the general public all day on Monday; however, other vendors and our staff are present. Work on the property should always be completed on Mondays. All daily work is to be done during normal access hours, which run from as early as 7 a.m. to 4:30 p.m.

Occasionally, rental events or other site functions may conflict with the scheduled work day. In these situations, the MSL's representative will contact the contractor at least one week prior to these special events to reschedule the contractor's work for that day. Rain days will be address as they arise.

Equipment and Supplies

All personnel, equipment, fuel supplies, and materials (including fertilizers, etc.) except

ITB # 991-490-07-12-1

where indicated, are to be supplied by the contractor. MSL can provide the contractor with an on-site, outdoor area for vegetative debris.

Security

Only motor vehicles insured by the contractor are allowed out of the bounds of the public parking lots at MSL. No personal vehicles are to be parked on site, except in designated paved parking areas. The contractor will be shown where to park.

No employees will be allowed on the property except during agreed upon hours of access. If work must be scheduled outside of normal access hours, MSL's representative must be notified in advance and permission obtained. The contractor/supervisor must check-in with MSL's representative or designated alternate before beginning work each day at the site.

Checklists

The Mission San Luis contract manager will supply the blank checklists that will be initialed by MSL's contract manager or alternate each week. Completion of the checklists is the responsibility of MSL's contract manager or alternate, but is required as part of the contract.

Payment of Services

On or before the last business day of each month, the contractor will present the MSL's representative with the original billing invoice for services performed during the current month. MSL's representative will verify the performance of the services as stated on the invoice. MSL's representative will forward the monthly checklist along with the original invoice to the appropriate personnel in the Division of Administrative Services. The contractor should receive payment within 40 days of acceptance of the invoice and services. If not, the contractor should notify MSL's representative as soon as possible.

Landscape Maintenance Considerations

Mowing, Edging, & Trimming

The Mission follows the ELM (Environmental Landscaping Management) methodology. The contractor will leave clippings on the lawn as long as no obvious clumps are visible after mowing. Otherwise, the contractor will distribute large clumps by mechanical blowing or by collecting and removing them.

The contractor will edge tree rings and all buildings, sidewalks, fences, driveways, parking lots, and other surfaced areas bordered by grass at least once per month and every other mowing during the warm weather growing season.

The contractor will clean all grass clippings, leaves, and other plant debris from porches, patios, steps, sidewalks, curbs, and roadways immediately after mowing and/or edging and deposit in designated debris site located on the property.

ITB # 991-490-07-12-1

Mulching, Weeding & Spraying

Flowerbeds, hedge rows, shrubs, and immature trees have mulch around them for weed control that should not be disturbed by mowing equipment. Replacement/renewal of mulch or pine straw in the bedding areas will be the responsibility of MSL. The contractor will edge the plant beds. Weeds that are growing in groundcover jasmine beds, flower beds, or the mulch under hedges or bushes should be eradicated as needed using a line trimmer or pruners, being careful not to damage beds, shrubs or bushes. Historical vegetable gardens, stump beds, and field crops will be maintained by MSL. These beds, gardens, and field crops will be delineated as separate from the areas to be serviced by the contractor by pin flags, trellis, roped off areas, or wooden fences. Pesticides for pests, **weeds** and exotics are allowable with consent from the contract manager. A pesticide license is required.

Other Considerations

Fence lines and trailheads

Grass and bushes near trailheads are also the responsibility of the contractor. These areas are included in the basic contract charges. The owner maintains/manages the upkeep of the wooded trailheads and the nature trail itself.

Thatch Removal/Scalping

If needed, the contractor should remove thatch (a spongy build-up of dead and living grass shoots, stems, and roots) when thatch thickness is excessive. The best time for thatch removal is March through August when the turf-grass is rapidly growing. Thatch removal is not included in the basic contract charges and price will be negotiated as needed.

Pruning

Flowering bushes, hedge rows, ornamental shrubs, and immature trees twice annually.

Removal of Equipment

All of the contractor's equipment and supplies will be removed after each workday (also by the close of business on the termination date of the contract).

Contractor is responsible for redress of the following:

- Any damage (including that done to hoses and irrigation systems) while performing the contract duties.
- Failure to comply with all laws pertaining to protected plant species.
- Damage to plant material due to improper horticultural practices.
- Injury to non-target organisms due to application of pesticides.

Delivery: Mowing Visits

January, February, December (2 visits)

ITB # 991-490-07-12-1

March, October, November (3 visits)

April May, June, July August, September, October (4 visits)

Pruning Visits: 2 semi-annually

The Department reserves the right to reject any and all bids. This contract is contingent on sufficient funding and will not begin until such funding is available. The Department also reserves the right to cancel the contract without thirty days notice for contractor non-performance, failure to immediately dismiss supervisors or employees caught in the act of damage or theft, or for legislative non-appropriation of funds.

Bidders are responsible for thoroughly reviewing the specifications.

1.2. Applicable Law

The Bidder receiving the award shall comply with all State of Florida and Federal laws and rules applicable to the Bidder providing commodities or services to the Department.

1.3. Purchase/Contract Documentation

This purchase shall be accomplished by issuance of a purchase order through MyFloridaMarketPlace.

1.4. Solicitation Timeline

Listed below are the important events and times/dates by which the actions must be taken or completed. If the Department finds it necessary to change any of these dates/times, it will be accomplished by addendum. All listed times are Tallahassee, Florida local time.

Event	Time	Date
ITB Release		6/28/12
Pre-Bid Walk Through (mandatory)	8:00 AM	7/9/12
Deadline for Written Inquiries	2:00 PM	7/12/12
Anticipated date written responses to written inquiries will be posted on the Vendor Bid System (VBS).		7/16/12
Bid Opening – Bids received after this date and time will not be considered	2:00 PM	7/20/12
Anticipated date of posting of recommend award(s) on Vendor Bid System (VBS).	2:00 PM	7/23/12
Anticipated date for issuance of purchase order or other documents.	2:00 PM	7/27/12

Notwithstanding Section 3 of the “State of Florida PUR 1001 (10/06) General Instructions to Bidders”, the Department of State does not accept Electronic Submission of Bids.

1.5. Procurement Officer Contact Information

Questions related to this procurement should be addressed to the Procurement Officer:

Ed Valla, Purchasing Specialist
500 S. Bronough Street – Room 428
Tallahassee, Florida 32399-0250
Phone: (850) 245-6593
FAX: (850) 245-6595
edwin.valla@dos.myflorida.com

- 1.5.1. The Procurement Officer designates Garry Leonard, phone: (850) 245-6592 as an alternate Procurement Officer when Ed Valla is unavailable.
- 1.5.2. No contact is authorized between a bidder and any Department staff related to this ITB, with the exception of the Procurement Officer or designated alternate Procurement Officer from the date this ITB is issued until a notice of recommended award, rejection of all bids or other notice is made. Any unauthorized contact may disqualify the bidder from further consideration.
- 1.5.3. Bidder questions will only be accepted if submitted in writing; reference PUR 1001 Section 5 for additional information.

1.6. Diversity – Certified Vendor Participation

The Florida Department of State is committed to supporting diverse business industry and population through ensuring participation by minority-, women-, and service-disabled veteran business enterprises in the economic life of the state. The State of Florida Mentor Protégé Program connects minority-, women-, and service-disabled veteran business enterprises with private corporations for business development mentoring. Firms doing business with the State of Florida are strongly encouraged to consider this initiative. For more information on the Mentor Protégé Program, contact the Office of Supplier Diversity at (850) 487-0915.

The Department is dedicated to fostering the continued development and economic growth of small, minority-, women-, and service-disabled veteran business enterprises. Participation by a diverse group of Vendors doing business with the Department is central to this effort. It is vital that small, minority-, women-, and service-disabled veteran business enterprises participate in the Department’s procurement process as both Contractors and sub-contractors in this solicitation. Small, minority-, women-, and service-disabled veteran business enterprises are strongly encouraged to contribute to this solicitation.

ITB # 991-490-07-12-1

The Contractor shall submit documentation addressing diversity and describing the efforts being made to encourage the participation of small, minority-, women-, and service-disabled veteran business enterprises

Certified Vendors are encouraged to participate. A copy of your certification should be included with the bid.

1.7. Notice to Contractor

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 this contract.

1.8. Special Accommodations

Any person with a qualified disability requiring special accommodations at the pre-solicitation conference and/or bid/proposal opening shall contact purchasing at the phone number above 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).

SECTION 2 – DEFINITIONS

The following terms used in this Invitation to Bid (“ITB”), unless the context otherwise clearly requires a different construction and interpretation, have the following meanings:

- 2.0 Bid:** means the material submitted by the bidder in answering the ITB. For the purposes of this ITB “Bid” is synonymous with the definition of “Response” provided in section 4.6 General Instructions to Bidders (PUR 1001 (11/04)).
- 2.1. Breach of Contract:** The condition of the relationship between the Department and the Contractor which exists when the Contractor fails to perform under the terms and conditions of the Contract which may result from this ITB.
- 2.2. Contract:** The agreement which results from this ITB between the winning Bidder and the Department.
- 2.3. Contractor:** The organization or individual providing services to the Department in accordance with the terms of the Contract which results from this ITB.
- 2.4. Department:** The State of Florida, Department of State (DOS) referred to in this ITB document as “the Department or DOS”.
- 2.5. Desirable Conditions:** The use of the words “should” or “may” in this ITB indicate desirable attributes or conditions, but are permissive in nature. Deviation from, or omission of, such a desirable feature, will not in itself cause rejection of a bid.
- 2.6. ITB:** An abbreviation formed from the initial letters of Invitation to Bid.
- 2.7. Mandatory Responsiveness Requirements:** Terms, conditions or requirements that must be met by the bidder to be responsive to this ITB. These responsiveness requirements are **mandatory**. Failure to meet these responsiveness requirements will cause rejection of a bid. Any bid rejected for failure to meet mandatory responsiveness requirements will not be further reviewed.
- 2.8. Material Deviations:** The Department has established certain requirements with respect to bids to be submitted by bidders. The use of *shall*, *must* or *will* (except to indicate simple futurity) in this ITB indicates a requirement or condition from which a material deviation may not be waived by the Department. A deviation is material if, in the Department’s sole discretion, the deficient response is not in substantial accord with this ITB’s requirements, provides an advantage to one bidder over other bidders, has a potentially significant effect on the quantity or quality of items bid, or on the cost to the Department, or otherwise adversely impact the Department’s interest. Material deviations cannot be waived.
- 2.9. Minor Irregularity:** A variation from the ITB terms and conditions which does not affect the price of the commodities or services, or give the bidder an advantage or benefit not enjoyed by the other bidders, and does not adversely impact the interests of the Department.
- 2.10. P-Card:** Refers to the State of Florida’s purchasing card program, using the Visa platform.

ITB # 991-490-07-12-1

- 2.11. Purchase Order:** The contract document issued by the Department to the Vendor to procure goods and services.
- 2.12. Bidder, Vendor, Offeror or Contractor:** A legally qualified corporation, partnership, sole proprietor, or other entity submitting a bid to the Department pursuant to this ITB. For the purposes of this ITB “Bidder” is synonymous with the definition of “Bidder” provided in section 4.6 General Instructions to Bidders (PUR 1001 (11/04)).
- 2.13. Winning or Successful Bidder:** The business or entity submitting the lowest responsive bid, meeting all requirements of the Department’s ITB.
- 2.14. Scope of Work/Work:** The product(s) or contractual service(s) that the Department wishes to purchase as defined in *Section 3 - Specifications* of this ITB. For the purposes of this ITB “Scope of Work” and “Work” are synonymous and may be used interchangeably.

SECTION 3 – TECHNICAL SPECIFICATIONS

3.0 Specifications See Scope of Work in section 1.1 above

Mowing Visits; January, February, December (2 visits)
 March, October, November (3 visits)
 April May, June, July August, September, October (4 visits)

Pruning Visits; 2 semi-annually as directed

3.1. Delivery

REQUIRED DELIVERY DATE: Service to start August 1, 2012

CONTRACT PERIOD: The initial contract will be awarded for a one year period from August 1, 2012 through July 31, 2013 and is eligible for renewal for three additional one year periods, at the same bid price, at the Department's sole option, subject to satisfactory performance.

3.2. Removal of Equipment Goods or services are not to be provided after the expiration date of a contract period. It is the vendor's responsibility to discontinue service and / or retrieve his/her equipment unless a written extension or renewal order is received in advance.

3.3. Warranty

On-Site Personnel Warranty

For on-site services performed by contractor, to the best of its knowledge, after investigation, neither contractor, nor its personnel has any existing obligations that would violate or infringe upon the rights of third parties, including property, contractual, employment, trademark, trade secrets, copyright, patent, propriety information and nondisclosure rights, that might affect contractor's ability to fulfill its obligations under this Agreement.

3.4. Inspection and Acceptance

Inspection and acceptance shall be at destination unless otherwise provided. For Contractor services, the date of acceptance is the date the Customer accepts the service as completed. 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. When a Customer rejects the product or service, it is Contractor responsibility to replace the rejected product or service in time to meet the scheduled completion date.

3.5. Task Completion Evidence

Contractor shall maintain documentation to evidence completion of all tasks related to the performance of the Work.

ITB # 991-490-07-12-1

3.6. Financial Consequences

The Department's contract manager shall review the Contractor's Work/services as completed. If the Contractor fails to perform specified tasks in accordance with the Scope of Work the Department's contract manager shall not authorize payment.

SECTION 4 - PROCUREMENT RULES AND INFORMATION

4.0 Pre-Bid Walk Through

A MANDATORY pre-bid walk through is scheduled for 8:00 A.M on July 9, 2012 at 2100 West Tennessee Street and 2020 Mission Road in Tallahassee, Florida. A bidder sign in sheet will be available at the time of the site visit. The sign in sheet will be used to document attendance. All bidders intending to offer a bid must sign the sign in sheet before departing the site.

During the mandatory Pre-Bid site visit, bidders are encouraged to note questions related to technical clarifications and are requested to formally submit these questions in writing in accordance with timing indicated in Section 1.4 Solicitation Timeline. Please reference Section 5. Questions of the “State of Florida PUR 1001 (10/06) General Instructions to Bidders” for additional information related to oral discussions with State employees.

Bids will only be accepted from those Bidders attending the pre-bid site visit.

4.1. Bid Submission

Each bid shall be prepared simply and economically, following the instructions contained herein.

MAILING INSTRUCTIONS

All bids shall be submitted in a sealed envelope addressed to:

Florida Department of State
Purchasing Office
500 S. Bronough Street, Room 428
Tallahassee, FL 32399-0250
Attn: Ed Valla

The face of the envelope shall clearly state:

Name of Bidder
Bid Number ITB # 991-490-07-12-1
Bid Opening Time and Date 2:00 PM, 7/20/12

THE STATE IS NOT RESPONSIBLE FOR THE OPENING OF ANY ENVELOPES WHICH ARE NOT PROPERLY MARKED.

ITB # 991-490-07-12-1

4.2. Bid Opening

- 4.2.1. A public bid opening will be conducted at the time and date specified in the “Solicitation Timeline” (Section 1.4) in the Purchasing Office located at R. A. Gray Building, 500 S. Bronough Street, Room 428, Tallahassee, Florida, 32399-0250. Bids received after this time and date will be rejected. Bids are to be submitted in a sealed envelope with the bid number and opening date and time identified on the outside.
- 4.2.2. It is recommended that all bids be hand delivered or sent via certified mail or overnight courier to ensure timely delivery. The R. A. Gray Building is a secured facility; please allow sufficient time to gain access into the building; and advise the courier to verify delivery of the bid to the Purchasing Office, Room 428.
- 4.2.3. Hand Delivered Bids - If you intend to hand deliver your bid at the time of the bid opening, allow sufficient time to gain access the building and go to Room 428 and have your bid date stamped prior to the bid due time. Purchasing personnel will deliver all bids to the Purchasing Conference located in Room 428 at the time scheduled for the bid opening.
- 4.2.4. After the public bid opening, the name(s) of all bidders submitting bids shall be made available to interested parties upon request to the Procurement Officer listed in Section 1 – Introduction.

4.3. General Instructions to Bidders (PUR 1001 (10/06))

The “State of Florida PUR 1001 (10/06) General Instructions to Bidders”, contains instructions explaining the solicitation process and the actions necessary to respond. The Department may attach additional materials specific to each particular solicitation, including but not limited to contact information, a solicitation timeline, a location for the public opening, evaluation criteria, required information regarding renewal of the contract, and any other necessary information. These additional instructions are commonly referred to as “Special Instructions to Respondents.” In the event of any conflict between Form PUR 1001 and additional Department instructions, the additional instructions shall take precedence over the Form PUR 1001 unless the conflicting term is required by any section of the Florida Statutes, in which case the term contained in PUR 1001 shall take precedence.

Notwithstanding Section 3 of the “State of Florida PUR 1001 (10/06) General Instructions to Bidders”, the Department of State does not accept Electronic Submission of Bids.

4.4. Bid Preparation Costs

The Department is not liable for any costs incurred by a bidder in responding to this ITB, including those for oral presentations, if applicable.

ITB # 991-490-07-12-1

4.5. Bid Disposal

All bids become the property of the State of Florida and will be a matter of public record subject to the provisions of Chapter 119, Florida Statutes. The State of Florida shall have the right to use all ideas, or adaptations of those ideas, contained in any bid received in response to this ITB. Selection or rejection of the bid shall not affect this right.

4.6. Bid Rejection

4.6.1. Right to Reject Bid

The Department reserves the right to reject any or all bids failing to meet mandatory responsiveness requirements, or containing material deviations and to reject the bid of any bidder not in a position to provide the required commodity and/or contractual service. Additionally, the Department reserves the right to re-solicit if in the best interest of the Department.

4.6.2. Mandatory Responsiveness Requirements

Mandatory responsiveness requirements are terms, conditions or requirements that must be met by the bidder to be responsive to this Request for Bids. Failure to meet these mandatory requirements will cause rejection of a bid.

4.6.3. Material Deviations

The Department has established certain requirements with respect to bids to be submitted by bidders. The use of *shall*, *must*, or *will* (except to indicate simple futurity) in this Request for Bid indicates a requirement or condition from which a material deviation may not be waived by the Department. A deviation is material if, in the Department's sole discretion, the deficient response is not in substantial accord with Invitation to Bid requirements, provides an advantage to one bidder over other bidders, has a potentially significant effect on the quantity or quality of items proposed, or on the cost to the Department or otherwise adversely impact the Department's interest. Material deviations cannot be waived and shall be the basis for rejection of a bid.

4.7. Minor Irregularities

A minor irregularity is a variation from ITB terms which does not affect the price of the bid or give the bidder an advantage or benefit not enjoyed by the other bidders or does not adversely impact the interests of the Department. **The Department reserves the right to waive any minor irregularities and correct computational errors in price extensions.**

4.8. Special Instructions to Bidders

To the extent that there are any varying conditions, this section supersedes "State of Florida PUR 1001 (11/04) General Instructions to Bidders".

ITB # 991-490-07-12-1

4.9. Addenda

Any addenda or answer(s) to written questions provided by the Purchasing Office to participating bidders shall be posted on the Vendor Bid System.

4.10. Changes

No substitutions, variations or changes to contract terms, conditions or specifications will be permitted or acknowledged unless approved, in writing, by the Department of State Purchasing Office. Rule 60A-1.002(11), Florida Administrative Code (F.A.C.), specifically prohibits modification of a bid after bids are opened. Therefore, any changes or variations to the original contract terms, conditions or specifications must have the written approval of the Purchasing Office prior to the bid opening date.

4.11. Price Discussions

After the ITB is released, any discussion by a bidder with any employee or authorized representative of the State involving price information, occurring prior to the bid opening or notice of recommended award, or notice of rejection of all bids, will result in rejection of said bidder's bid.

4.12. Verbal Instructions

No negotiations, decisions, or actions shall be initiated or executed by the bidder as a result of any discussions with any State employee. Only those communications that are in writing from the Department's purchasing office identified in (Section 1) of this ITB shall be considered a duly authorized expression on behalf of the Department. Only written, signed communications from bidders will be recognized by the Department as duly authorized expressions on behalf of the Contractor.

4.13. No Prior Involvement and Conflicts of Interest

The Contractor shall not compensate in any manner, directly or indirectly, any officer, agent or employee of the Department for any act or service that he/she may do, or perform for, or on behalf of, any officer, agent, or employee of the Contractor. No officer, agent, or employee of the Department shall have any interest, directly or indirectly, in any contract or purchase made, or authorized to be made, by anyone for, or on behalf of, the Department or the State of Florida.

The Contractor shall have no interest and shall not acquire any interest that shall conflict in any manner or degree with the performance of the services required under this Contract.

4.14. Corporate Registration

All entities defined under Chapters 607, 617 or 620, Florida Statutes, seeking to do business with the Department shall be on file and in good standing with the Florida Department of State.

ITB # 991-490-07-12-1

Under the provisions of Title 36, Section 606-623, Florida Statutes, in order to do business in the state of Florida, corporations (and other business designations) are required to be registered with the Department of State, Division of Corporations. To be eligible to receive a contract, corporate, or other applicable business registration must be accomplished within 6 business days of the initial posting indicating intent to award a contract to that vendor. Failure to be registered by this date will be cause for disqualification. Contact the Division of Corporations at (850) 245-6900.

4.15. 2nd Tier Certified Minority Participation Reporting

Bidders are strongly encouraged to use Certified Minority Business Enterprises (CMBE's) as sub-contractors (2nd Tier) in the performance of this contract.

When applicable, as the successful bidder makes payments to 2nd tier certified minority sub-contractor(s), the successful bidder shall provide the Department with a written report documenting 2nd tier certified minority participation.

The report shall be titled "2nd tier certified minority participation" and shall provide the following information:

- Identify the name of the participating 2nd tier certified minority contractor(s) and the name of the contact person at the 2nd tier vendor.
- Report the portion of the work being performed by the 2nd tier certified minority contractor(s).
- Indicate the dollar value of the portion of the work.

All reports shall be submitted to the Department no later than thirty (30) days after a payment is made.

4.16. Licenses, Permits, Other Charges

The successful bidder shall pay for any and all licenses, permits, other charges and taxes (except as otherwise provided in this Invitation to Bid) and shall comply with all laws, ordinances or other requirements applicable to the work specified during the term of this contract.

4.17. Posting of Recommended Award

- 4.17.1. The recommended award is anticipated to be posted on the Vendor Bid System for review by interested parties and at the Department of State's Purchasing Office located in Tallahassee, Florida, on or about the date shown in the "Solicitation Timeline"

ITB # 991-490-07-12-1

(Section 1.5) and will remain posted for a period of seventy-two (72) hours (three business days).

4.17.2. Any bidder who desires to protest the recommended award must file the appropriate documents with the Agency Clerk in the Department's Office of General Counsel, R.A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida 32399-0250.

4.17.3. The Department shall not be obligated to pay for information obtained from or through any bidder prior to entering into a contract with the successful bidder.

4.18. Bidder's Response/Contract

4.18.1. A Bidder's response to this Invitation to bid shall be considered as the bidder's formal offer. The sole agreement of the parties shall consist of a purchase order, incorporating the terms and provisions of this Invitation to Bid, the bidder's response thereto, and any addenda properly issued. If there is a conflict in language, the Department's ITB will govern.

4.18.2. The proposed contract/purchase order document that will be utilized for the resulting agreement will include an adequate description of the service, the contract period, the method of payment and contain at a minimum, where applicable, include, but not be limited to, a provision:

(a) that bills for fees or other compensation for services or expenses be submitted in detail sufficient for a proper preaudit and postaudit thereof.

(b) that bills for any travel expenses be submitted in accordance with s. 112.061. A state agency may establish rates lower than the maximum provided in s. 112.061.

(c) allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from s. 24(a) of Art. I of the State Constitution and s. 119.07(1).

(d) specifying a scope of work that clearly establishes all tasks the contractor is required to perform.

(e) dividing the contract into quantifiable, measurable, and verifiable units of deliverables, that must be received and accepted in writing by the contract manager before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and criteria for evaluating the successful completion of each deliverable.

(f) specifying the criteria and the final date by which such criteria must be met for completion of the contract.

ITB # 991-490-07-12-1

(g) specifying that the contract may be renewed for a period that may not exceed 3 years or the term of the original contract, whichever period is longer, specifying the renewal price for the contractual service as set forth in the bid, proposal, or reply, specifying that costs for the renewal may not be charged, and specifying that renewals shall be contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. Exceptional purchase contracts pursuant to s. 287.057(3)(a) and (c) may not be renewed.

(h) specifying the financial consequences that the agency must apply if the contractor fails to perform in accordance with the contract.

(i) addressing the property rights of any intellectual property related to the contract and the specific rights of the state regarding the intellectual property if the contractor fails to provide the services or is no longer providing services.

SECTION 5 – CONTRACT AWARD

5.0 Price Determination

It is the intent of the Department to award the Contract to the lowest total price responsive and responsible bidder in accordance with the “Evaluation Criteria” set forth in “*ATTACHMENT 1 – REQUEST FOR PRICE INFORMATION*” sheet.

5.1. Evaluation Process

In the event that the lowest price bidder in accordance with the “Evaluation Criteria” is found non-responsive, the Department will proceed to the next lowest priced responsive and responsible bidder and continue the award process. This process will continue until the Department is able to award a contract or until all eligible bidders have been eliminated.

5.2. Incomplete “*REQUEST FOR PRICE INFORMATION*” Sheet(s)

Any “*REQUEST FOR PRICE INFORMATION*” sheet(s) that is/are incomplete or in which there are significant inconsistencies or inaccuracies may be rejected by the Department. No deviations, qualifications, or counter offers will be accepted. The Department reserves the right to reject any and all bids. All calculations will be reviewed and verified. The Department may correct mathematical errors; however, in the event of any miscalculation, unit prices shall prevail.

5.3. Reference Checks

If any of the bidder’s references indicate poor contract performance, the Department may, at its discretion, reject the bidder’s bid even if it determines that a responsive bid in full compliance with the bid specifications and conditions was submitted.

5.4. Identical Tie Bids/Drug Free Workplace

In the event that the Department receives identical bids from two or more responsive bidders with drug-free workplace programs, the determination of the award shall be decided by the toss of a coin.

5.5. “Total Price for Award” Computation

“Total Price for Award” will be the **Grand Total/Year** entry in Attachment 1 to this ITB. Pricing for each of the three optional renewal years will be the same.

SECTION 6 - SPECIAL CONDITIONS

6.0 Application of Special Conditions

It is understood and agreed that section “***SECTION 6 - SPECIAL CONDITIONS***” are in addition to the General Contract Conditions (PUR 1000) attached to this solicitation and that both sections apply to any contract awarded.

6.1. Order of Precedence

All bids are subject to the terms and conditions of the following sections of this Invitation to Bid, which, unless otherwise specified, shall have the order of precedence listed:

Technical Specifications
Special Conditions
Instructions to Bidders (PUR 1001)
General Conditions (PUR 1000), and
Introductory Materials.

6.2. General Contract Conditions (PUR 1000 (10/06))

The “State of Florida PUR 1000 (10/06) General Contract Conditions”, contains terms and conditions that apply to this solicitation and is located at the end of the solicitation after the attachments. If there is any conflict in language indicated in the attached “State of Florida PUR 1000 (10/06) General Contract Conditions”, and the Department’s ITB, the Department’s ITB will govern.

6.3. Contract Extensions

There shall be only one contract extension, if necessary, provided the failure to meet the criteria set forth in the contract for completion of the contract is due to events beyond the control of the contractor (s. 287.057(13)). Extension of a contract for contractual services shall be in writing for a period not to exceed six (6) months and shall be subject to the same terms and conditions set forth in the initial contract. Extension shall be executed prior to the expiration of current contract and is effective on the last date signed.

6.4. Breach of Contract

In the case of breach of contract on the part of the vendor, the Department reserves the right to cancel the contract and charge the vendor for the reprourement of satisfactory service or product on the open market, or other remedies available to the Department pursuant to the provisions of the Uniform Commercial Code, Chapter 672, F.S., relating to the breach of express or implied warranties, including, but not limited to, warranties of fitness for a particular purpose or use.

ITB # 991-490-07-12-1

6.5. Damages upon Termination

The Department's exercise of the right to terminate shall not release the contractor from its obligation to pay damages incurred by the State due to any breach by contractor, including re-procurement costs, prior or subsequent to the notice of termination.

6.6. Invoices and Payments

6.6.1. The Contractor agrees to submit invoices for compensation for delivery of products in detail sufficient for a proper pre-audit and post-audit thereof. Invoices will be paid upon receipt, inspection and acceptance of product(s).

6.6.2. Contractor's acceptance of final payment shall constitute a full waiver of any and all claims by Contractor against the Department arising out of this Agreement or otherwise relating to the goods or services, except those previously made in writing and identified by Contractor as unsettled at the time of the final payment.

6.7. Department's Contract Manager (DCM)

The Department's Contract Manager (DCM) information shall be provided upon contract execution. The DCM will receive for the Department all invoices called for in this contract and will represent the Department in the technical phases of work. However, in no event shall any understanding, agreement, contract modification, or other matter in deviation from the terms, conditions, and specifications of this contract between the vendor and a person other than the DCM be effective or binding upon the Department unless approved in writing by the DCM. The Department shall notify the vendor in the event there is any change of Department's Contract Manager.

6.8. Contractor's Contract Manager

Contractor shall provide contract supervision (when applicable) and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the contract documents. Contractor shall be responsible to see that the finished Work complies accurately with the contract documents. All communications given to the Contractor's contract supervisor shall be as binding as if given to the Contractor. The Department shall have the right to direct Contractor to remove and replace its supervisor, with or without cause. The successful Contractor shall provide the name, telephone number, and email address of the Contractor's contract manager assigned to the project prior to commencement of the Work.

6.9. Contractor's Expenses

The successful Bidder shall pay for all licenses, permits, and inspection fees or similar charges required for this Contract, and shall comply with all laws, ordinances, regulations, and any other requirements applicable to the work to be performed under this Contract.

ITB # 991-490-07-12-1

6.10. Governing Law and Venue

This Contract is executed and entered into in the State of Florida, and shall be construed, performed and enforced in all respects in accordance with the laws, rules and regulations of the State of Florida. Any action hereon or in connection herewith shall be brought in Leon County, Florida.

6.11. Records

6.11.1. Records Audit

- 6.11.1.1. The successful Contractor agrees to maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the Department under this Contract. Further, the successful Contractor agrees to allow the Department or the Office of the Auditor General access to all documentation and records related to this contract to conduct a financial or compliance audit at any time during the term of the contract and for five (5) years after contract termination.
- 6.11.1.2. The successful bidder agrees to include all record-keeping requirements in all sub-contracts and assignments related to this Contract.

6.11.2. Records Retention

All documents must be retained by the Contractor at the Contractor's primary place of business for a period of five (5) years following Contract expiration, or, if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings. The Contractor shall cooperate with the Department to facilitate the duplication and transfer of any said records or documents during the required retention period. The Contractor shall advise the Department of the location of all records pertaining to this Contract and shall notify the Department by certified mail within ten (10) days if/when the records are moved to a new location. Violations will be noted and forwarded to the Department's Inspector General for review.

6.12. Accessible Electronic Information Technology

When applicable, Bidders submitting responses to this solicitation must provide electronic and information technology resources in complete compliance with the accessibility standards provided in Rule 60-8.002, F.A.C. These standards establish a minimum level of accessibility.

6.13. Non-Discrimination

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

6.14. Bidder's Insurance Requirements

The Contractor agrees to provide adequate insurance coverage on a comprehensive basis and to hold such insurance at all times during the existence of this Contract. The Contractor accepts full responsibility for identifying and determining the type(s) and extent of insurance necessary to provide reasonable financial protection for the Contractor and the Department under this Contract. Upon issuance of the Purchase Order, the Contractor may be required to furnish the Department written verification of such insurance coverage. Such coverage may be provided by a self-insurance program established and operating under the laws of the State of Florida. The Department reserves the right to require additional insurance where appropriate.

- 6.14.1. 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, which, as a minimum, shall be: workers' compensation and employer's liability insurance in accordance with Chapter 440 of the Florida Statutes, with minimum employers' liability limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policy shall cover all employees engaged in any Contract work.
- 6.14.2. Employers who have employees who are engaged in work in Florida must use Florida rates, rules, and classifications for those employees.

6.15. Copyrights, Right to Data, Patents and Royalties

Where activities supported by this Contract produce original writing, sound recordings, pictorial reproductions, drawings or other graphic representation and works of any similar nature, the Department has the right to use, duplicate and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to have others acting on behalf of the Department to do so. If the materials so developed are subject to copyright, trademark, or patent, legal title and every right, interest, claim or demand of any kind in and to any patent, trademark or copyright, or application for the same, will vest in the State of Florida, Department of State for the exclusive use and benefit of the state. Pursuant to Section 286.021, Florida Statutes, no person, firm or corporation, including parties to this Contract, shall be entitled to use the copyright, patent, or trademark without the prior written consent of the Department of State.

6.16. Independent Vendor Status

The Contractor shall be considered an independent Contractor in the performance of its duties and responsibilities under this Contract. The Department shall neither have nor exercise any control or direction over the methods by which the Contractor shall perform its work and

functions other than as provided herein. Nothing in this Contract is intended to, nor shall be deemed to constitute, a partnership or a joint venture between the parties.

6.17. Performance Bond; A performance bond is not required

6.18. Interest Penalties

Payment shall be made in accordance with Section 215.422, Florida Statutes, which states the contractor's rights and the State agency's responsibilities concerning penalties and time limits for payment of invoices.

6.19. Vendor Ombudsman

A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency, may be contacted at (850) 413-5516, or by calling the Department of Financial Services Consumer Hotline at 1-800-342-2762.

6.20. Travel Expenses

No travel expenses shall be allowed under the resulting contract; unless specifically set forth herein.

6.21. Cooperative Purchasing

As provided in Section 287.042(16)(a), F.S., 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.

6.22. Intellectual Property

Unless otherwise agreed in writing, (i) intellectual property rights to preexisting property will remain with Contractor, (ii), intellectual property rights to all property created or otherwise developed by Contractor specifically for Customer will be owned by the Customer and the State of Florida. Proceeds derived from the sale, licensing, marketing or other authorization related to any such agency-controlled intellectual property right shall be handled in the manner specified by applicable state statute.

6.23. Employment Eligibility Verification

The successful Bidder shall use the E-Verify system to verify the employment eligibility of all persons (including subcontractors) assigned by the contractor to perform work pursuant to this contract. Only individuals who may legally work in the United States – either U.S. citizens, or foreign citizens who have the necessary authorization may perform work on this contract.

E-Verify is an Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States. E-Verify is fast, free and easy to use – and it's the best way employers can ensure a legal workforce.

Bidders may access the E-Verify system and the following web address:

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=75bce2e261405110VgnVCM1000004718190aRCRD&vgnnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD>

SECTION 7 - BID FORMAT AND CONTENTS

7.0 Bid Submission Requirements

By submitting a bid or bids under this ITB, each Bidder warrants its agreement to the prices submitted. Any qualifications, counter-offers, deviations, or challenges shall render the bid non-responsive.

7.1. Number of Bids/Bid Submission

This section contains instructions that describe the required format for the submitted bid. The bidder shall submit one (1) signed original bid, which shall include all required documents clearly marked ITB # 991-490-07-12-1 on the exterior of the envelope.

7.1.1. There is no intent to limit the content of the response. Additional information deemed appropriate by the bidder may be included. However, cluttering the bid with irrelevant material makes the review more difficult. The following paragraphs contain instructions that describe the required format for bid responses.

7.2. Mandatory Responsiveness Requirements

7.2.1. The following terms, conditions, or requirements must be met by the bidder to be responsive to this ITB. **These responsiveness requirements are mandatory.** Failure to meet these responsiveness requirements may cause rejection of a bid. Each bidder shall submit the following completed information in a sealed envelope. The bid number and title should be clearly indicated on the face of the envelope and also reflect the bid opening date and time. (If a courier service is used, the bid document must be in a sealed marked envelope inside the shipping envelope).

7.2.2. It is **mandatory** that the bidder supply one (1) original signed bid. Bid must be submitted in a sealed envelope and clearly marked ITB # 991-490-07-12-1 on the exterior of the envelope.

7.2.3. It is **mandatory** that the bidder list their bid prices on the "Request for Price Information" sheet(s) furnished. The "Request for Price Information" sheet must be completed and signed by a representative who is authorized to contractually bind the bidder.

7.2.4. All NO BIDS shall be indicated on vendor's letterhead inclusive of the reason for the NO BID.

7.2.5. Bidders are to provide NET BID PRICES. All cash discounts allowed for prompt payment of bills should be incorporated into net bid prices.

7.2.6. Completion of the Drug Free Workplace/Identical Tie Bid Form, "**ATTACHMENT 3 – IDENTICAL TIE BIDS**", is recommended but not mandatory.

ITB # 991-490-07-12-1

7.2.7. It is **mandatory** that the Bidder provide the names, addresses, telephone numbers, e-mail addresses, and other information requested on the reference sheet (*ATTACHMENT 4*) provided for three (3) references for which the Bidder has provided the same or similar products or services as those specified in this bid within the last three (3) years. The Department reserves the right to obtain and utilize references not provided by the Bidder.

Note: Fancy binding of bids, colored displays in bids, and promotional material are not desired.

7.3. Vendor Contract Administration Contact

The Bidder must provide to the Department, the name, title, phone number, fax number, and both the physical and e-mail address of the person assigned to coordinate the performance of this contract with the Department. This same information must be provided for an alternate contact person who shall serve as a back up in the absence of the primary contact. The Bidder shall notify the Department should there be any change of representative(s). Please complete and include the enclosed "*ATTACHMENT 2 – VENDOR REPRESENTATIVE AND ALTERNATE*" with your bid response.

7.4. Identical Tie Bids

In the event of identical bids from this ITB, preference shall be given to businesses with drug-free workplace programs (Rule 60A-1.011, F.A.C.). "*ATTACHMENT 3 – IDENTICAL TIE BIDS*" describes such programs and how bidders may obtain this advantage. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. If your company currently has a drug-free workplace program that meets these criteria, please sign the form (*ATTACHMENT 3 – IDENTICAL TIE BIDS*) and submit it with your bid response.

7.5. Late Bids

Bids received after the date and time set for submission shall not be considered.

ATTACHMENT 1 – REQUEST FOR PRICE INFORMATION

Florida Department of State ITB #: 991-490-07-12-1

Company Name: _____

Company Contact Name: _____ Contact Phone # _____

Address: _____

City: _____ State: _____ Zip: _____

MyFloridaMarketPlace Company Registration Number (FEID) _____

Bidder(s) must complete and return this “Request for Price Information” sheet with the bid.

Evaluation Criteria

The contract award will be made to the vender offering the lowest price for the services specified. Invoices will be billed monthly at the annual Grand Total/Year divided by 12.

Mowing Visits

January, February, December (2 visits)

March, October, November (3 visits)

April May, June, July August, September, October (4 visits)

Pruning Visits

2 semi-annually on request

Bidder must submit bids for all items or the bid will be disqualified.

Note: Bidders must fill in the following:

Grand Total/Year \$ _____

Bidder's Signature

Bidder's Printed Name

ITB # 991-490-07-12-1

ATTACHMENT 2 - VENDOR REPRESENTATIVE AND ALTERNATE

Representative Name: _____
Title: _____
Address: _____
Address: _____
Address: _____
Telephone #: _____ Fax #: _____
E-mail Address: _____

Alternate Representative Name: _____
Title: _____
Address: _____
Address: _____
Address: _____
Telephone #: _____ Fax #: _____
E-mail Address: _____

ORDERING INFORMATION

ALL PURCHASE ORDERS SHOULD BE DIRECTED TO:

VENDOR _____
ADDRESS: _____

TELEPHONE NUMBER: _____
FAX NUMBER: _____
E-MAIL ADDRESS: _____

DELIVERY WILL BE MADE WITHIN _____ DAYS AFTER RECEIPT OF ORDER.
(This date may be earlier than date required in Section 3.2, but not later.)

FAXED ORDERS WILL _____ WILL NOT _____ BE ACCEPTED.

ATTACHMENT 3 - IDENTICAL TIE BIDS

Preference shall be given to businesses with drug-free workplace programs. Pursuant to Section 287.087, Florida Statutes, whenever two or more bids which are equal with respect to price, quality, and service are received by the state or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors has a drug free workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 894, Florida Statutes, or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on any employee who is so convicted or require the satisfactory participation in a drug abuse assistance or rehabilitation program as such is available in the employee's community.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of applicable laws, rules and regulations.

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

VENDOR'S SIGNATURE

ITB # 991-490-07-12-1

ATTACHMENT 4 - REFERENCES

Reference: # 1

Company Name _____
Contact Person _____
Company Address _____
City, State, & Zip _____
Phone Number _____
E-mail Address _____
Product _____
Phone Number _____
E-mail Address _____
Term of contract performed for this reference - From: _____ To: _____
Product(s) or service(s) provide for this contract: _____

Reference: # 2

Company Name _____
Contact Person _____
Company Address _____
City, State, & Zip _____
Phone Number _____
E-mail Address _____
Product _____
Phone Number _____
E-mail Address _____
Term of contract performed for this reference - From: _____ To: _____
Product(s) or service(s) provide for this contract: _____

Reference: # 3

Company Name _____
Contact Person _____
Company Address _____
City, State, & Zip _____
Phone Number _____
E-mail Address _____
Product _____
Phone Number _____
E-mail Address _____
Term of contract performed for this reference - From: _____ To: _____
Product(s) or service(s) provide for this contract: _____

SUBMITTAL CHECKLIST

Items to be returned with bid shall include, but are not limited to, the following items.

		Submitted	Initials
1	BIDDER MUST RETURN SIGNED COVER SHEET – (PAGE 1 OF THE ITB) (mandatory)		
2	BIDDER MUST PROVIDE ONE (1) ORIGINAL SIGNED BID. (mandatory)		
3	“ATTACHMENT 1 – REQUEST FOR PRICE INFORMATION” sheet. (mandatory)		
4	“ATTACHMENT 2 – VENDOR REPRESENTATIVE AND ALTERNATE” sheet. (mandatory)		
5	“ATTACHMENT 3 – IDENTICAL TIE BIDS” form (if applicable)		
6	“ATTACHMENT 4 – REFERENCES” (mandatory)		
7	Proof of Workers’ Comp Insurance		
8	Copy of BIDDER’S Certified Minority Certificate (if applicable)		
9	<i>SUBMITTAL CHECKLIST</i> (Optional)		

State of Florida

PUR 1001 GENERAL INSTRUCTIONS TO RESPONDENTS (10/06)

Contents

1. Definitions
2. General Instructions
3. Electronic Submission of Responses
4. Terms and Conditions
5. Questions
6. Conflict of Interest
7. Convicted Vendors
8. Discriminatory Vendors
9. Respondent's Representation and Authorization
10. Manufacturer's Name and Approved Equivalents
11. Performance Qualifications
12. Public Opening
13. Electronic Posting of Notice of Intended Award
14. Firm Response
15. Clarifications/Revisions
16. Minor Irregularities/Right to Reject
17. Contract Formation
18. Contract Overlap
19. Public Records
20. Protests
21. Limitation on Vendor Contact with Agency During Solicitation Period

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

ITB # 991-490-07-12-1

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. 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.

ITB # 991-490-07-12-1

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

PUR 1000 GENERAL CONTRACT CONDITIONS (10/06)

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).

ITB # 991-490-07-12-1

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://dhis.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

ITB # 991-490-07-12-1

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

ITB # 991-490-07-12-1

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.