

State of Florida  
Department of Transportation  
District Two Procurement Office  
1109 South Marion Avenue  
Lake City, Florida 32025-5874

**INVITATION TO NEGOTIATE REGISTRATION**

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**PLEASE COMPLETE AND RETURN THIS FORM ASAP  
TO THE ABOVE ADDRESS OR FAX TO (386) 758-3791**

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ITN Number: ITN-DOT-14/15-2354-DS

Title: Appraisal Consultant Services for Right of Way Acquisitions

Sealed Reply Due Date & Time: Tuesday, October 7, 2014 @ 2:00 pm

Vendors should notify our office by returning this Registration Form as soon as possible after downloading. Complete the information below and fax this sheet only to the Florida Department of Transportation Procurement Office at (386) 758-3791, or mail to the address noted above.

**THE INVITATION TO NEGOTIATE DOCUMENT YOU RECEIVED IS SUBJECT TO CHANGE. Notice of changes (addenda), will be posted on the Florida Vendor Bid System at [www.myflorida.com](http://www.myflorida.com) , under this ITN number (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", then click on "Search Advertisements", click on the drop-down arrow beside the box under Advertisement Type, select Competitive Solicitation, click on the drop-down arrow beside the box under Agency, select DEPARTMENT OF TRANSPORTATION, then go to the bottom of the same page and click on Initiate Search). It is the responsibility of all potential vendors to monitor this site for any changing information prior to submitting your reply.**

Company Name: \_\_\_\_\_

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

City, State, Zip: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Fax Number: ( ) \_\_\_\_\_

Contact Person: \_\_\_\_\_

Internet E-Mail Address: \_\_\_\_\_

For further information on this process, you may e-mail or telephone: Darlene Sawyer, [darlene.sawyer@dot.state.fl.us](mailto:darlene.sawyer@dot.state.fl.us), (386) 961-7732

**QUALIFICATIONS QUESTIONNAIRE**

INVITATION TO NEGOTIATE #: **ITN-DOT-14/15-2354-DS**

TITLE: **Appraisal Consultant Services for Right of Way Acquisitions**

VENDOR: \_\_\_\_\_ FAX #: \_\_\_\_\_

SUBMITTED BY: \_\_\_\_\_ SIGNED: \_\_\_\_\_ Date: \_\_\_\_\_  
(Name Printed) (Signature)

The grades or points resulting from the review/evaluation of the responses to this questionnaire will not be included in decisions beyond determining the initial short-list of vendors to proceed in the ITN process.

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**SUBMIT THE ANSWERS TO THE FOLLOWING QUESTION IN A TYPED NUMBERED FORMAT ON SEPARATE PAGES.**

1. The name of the appraiser of record and location of your office.
2. The Appraiser's level of eminent domain experience? If multiple appraisers will be signing the contract; provide experience for all. (Number of years and briefly describe major eminent domain projects worked on including the date and client)
3. Discuss any parcels/projects where concurrency or impact fees have played a major role. How did you account or adjust for this?
4. What factors do you use to determine the need for sub-consultants? Describe a parcel that you would employ an engineer, land planner, surveyor and general contractor. When do you deem it necessary to use a fixture and equipment expert? A petroleum expert?
5. What qualifications/experience do you consider when choosing your sub-consultants?
6. Provide a list of potential Sub-consultants that may be used throughout the term of this contract.
7. If an update of an appraisal is required / requested and the original assignment included sub-consultant services (Engineer, Planner, General Contractor, etc.) do you require all sub-consultant services to be updated? Provide brief reasoning.
8. Provide the name of the case decision that describes the process Outdoor Advertising Signs are to be valued for the Florida Department of Transportation.
9. What would you consider a typical delivery schedule (time requested for completion) for a four parcel appraisal assignment (Commercial properties, strip takings with no severance damages)? (Provide number of days requested for delivery of appraisals from N.T.P.)
10. Describe / discuss trial experience of the appraiser(s) that would be signing this contract. Has the appraiser(s) testified in the last 3 years? If so, what was the outcome? (How did jury decide, split the difference or more in favor of owner appraisal or FDOT appraisal). Who was your client? (I.e. FDOT, attorney including name, etc.)
11. Provide a staffing chart (can be on separate pages) and staffing/management plan for work assignments. Specify what work personnel identified on the chart will do and address the actual manner that the appraisal reports will be prepared. What personnel will be involved in Supporting the Departments acquisition and litigation efforts and in what manner they will provide support on assigned projects.

- 12. Provide the procedures/outline of your office's Quality Control Program (can be on a separate pages).
- 13. Provide Qualifications/Resumes of key personnel performing appraisal work. (Separate pages for each)
- 14. Include proof of appraiser(s) of record being State Certified General Real Estate Appraiser.
- 15. Provide a work product sample (excerpt from a before & after appraisal) including a cost to cure analysis. The sample is to have been completed within the last 36 months and in your opinion displays your knowledge and skills and abilities of Condemnation Appraisal.

**Probable Appraisal Services Fee(s):**

Provide an appraisal fee for the following described parcels to the best of your ability based upon the limited information. Assumption is a one parcel assignment to be completed within 35 days from Notice to proceed.

Vacant parcel with a strip take from highway frontage; no severance damages to remainder.

- Commercial: \$
- Industrial: \$
- Residential: \$

Improved parcel: strip take; possible severance damages to remainder.

- Commercial: \$
- Industrial: \$
- Residential: \$

Improved parcel: definite severance damages to the remainder due to taking.

- Commercial: \$
- Industrial: \$
- Residential: \$

Provide the hourly rates charges by your firm for the listed services. If does not apply indicate N/A.

- Appraiser of Record: \$
- Associate Appraiser: \$
- Research Assistant: \$
- Clerical Assistant: \$

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WORK REFERENCES

List the names of three references for which your business has provided similar services.

<u>BUSINESS NAME</u>	<u>ADDRESS</u>	<u>CONTACT PERSON</u>	<u>PHONE NO.</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____

# EXHIBIT "A" SCOPE OF SERVICES

## DISTRICT WIDE APPRAISAL CONSULTANT SERVICES

### I. DESCRIPTION

Appraisal Consultant Services will be required in connection with acquisition of miscellaneous right of way on a number of projects within District 2 that are not designated at this time. This will be known as a District Wide Appraisal Contract. Services shall include selected appraisal reports for estimates of market value of all real estate interests pertinent to assigned projects, preparing appraisal reviews (if qualified) of project parcels as assigned, preparing cost estimates for projects as requested, and other miscellaneous appraisal related services that the District shall deem appropriate. The Consultant shall be responsible for all work necessary and incidental to the completion of said items for assigned project unless otherwise noted herein. Such work may include management and administration of Sub consultants for land planning, engineering, traffic engineering, architectural studies, cost-to-cure estimates, and/or other specialty services as may be required to complete the Scope of Services. The Consultant will be required to subcontract services beyond their area of professional expertise. **The Appraiser of Record must be a State Certified General Real Estate Appraiser of Florida with three years of Eminent Domain experience or equivalent and deemed acceptable to the District.**

### II. ASSIGNMENT OF WORK

The Department shall request Consultant services on an as-needed basis. The Services to be provided on each project will be initiated and completed as directed by the Project Manager. The Consultant shall be provided Project Right of Way maps and Contract Plans (if available) on specific projects. The Consultant will be required to provide a Scope of Work for each assigned parcel, fee and delivery schedule to complete said project. Once negotiations have been completed and a lump sum amount is agreed upon for a project / parcel, a Letter of Authorization (LOA) shall be issued by the District Appraisal Contract Administrator specifying the work to be done, a due date, and the agreed lump sum amount of compensation. A Letter of Authorization will be issued for each assigned project and will commence upon the date the Consultant signs the Letter of Authorization indicating acceptance.

### III. OBJECTIVES

The Consultant shall perform or engage sub consultants for all services necessary to provide estimates of market value and prepare written appraisal reports and required updates for all real estate interests within the specified project limits. Elements of work shall include written acquisition appraisal reports, required updates as requested for various projects, written review appraisal statements, cost estimate reports, and other services as referenced within this Scope of Services.

All services shall be performed and all appraisal reports, update reports, review appraisals and other assignments shall be prepared in conformance with a current issue of the Uniform Standards of Professional Appraisal Practices (USPAP) and current FDOT Supplemental Standards (Procedures Manual). The Consultant shall obtain a copy of the Right of Way Procedures Manual, sections 6.1: Appraisal and Appraisal Review and 6.2 Supplemental Standards of Appraisal. Right of Way Procedures Manual is available at the following internet address: <http://www.dot.state.fl.us/rightofway/ProceduresManual.shtml> The FDOT Supplemental Standards of Appraisal is by reference made a part of the Scope of Services.

The Consultant is required to use the Departments FTP Server for use of Electronic Appraisal Transmission. The Consultant will be instructed by the Project Manager (Reviewer) to submit approved appraisals to the FTP server. All appraisals are to be prepared in an acceptable format to transmit to the Department's FTP Server.

#### IV. DEFINITIONS

- A. Acceptance: when parcel appraisals, review appraisals (when qualified), or other services have been reviewed and determined to be in compliance with the USPAP and FDOT Supplemental Standards
- B. Appraisal: a written statement independently and impartially prepared by a qualified Appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information
- C. Appraiser of Record: Individual appraiser appointed as the Consultant to perform all appraisal work for assigned projects and whose qualifications and expertise will be evaluated in the selection process
- D. Assignment: one or more parcels assigned to one Consultant under one contract in connection with a designated road improvement identified by a Financial Project ID (FM) number
- E. Basic Services: work activities associated with delivery of a Written Acquisition Appraisal Report or Review Appraiser's Statement (RAS) for each parcel identified herein for assigned projects
- F. Department Valuation Manager: Department representative responsible for determining the required services necessary for each appraisal project, contracting for the services, and assuring compliance with all contract terms
- G. District Right of Way Manager-Appraisal (DDRWM-A): Department representative responsible for directing the appraisal and review functions during the contract period and assuring quality control of the appraisal and review functions
- H. Letter of Authorization (LOA): A letter prepared by the Department authorizing the appraiser to commence work on specified appraisal tasks. No work is to be performed by the appraiser before receipt & acceptance of the LOA by signature. The appraiser shall not be compensated for any work performed without the LOA.
- I. Letter Update: a supplement to the original appraisal providing analysis and conclusions of information received and subsequent to the original appraisal submission. A letter update may be requested if there have been no major changes in the property and/or significant value conclusions between the date of the last appraisal report and the present time
- J. Optional Services: those work activities associated with updates to the original appraisals, revised parcel appraisals, additional parcel appraisals and litigation support services
- K. Parcel: the portion of a subject property comprising a defined interest to be acquired, i.e., Fee Take, Temporary Construction Easement (TCE), Permanent Easement (PE), etc.
- L. Review Appraiser: the Department representative responsible for determining compliance with USPAP and FDOT Supplemental Standards and determining acceptance to the Department

- M. Subject Property: the parent ownership (Parent Tract) from which an interest or interests are to be acquired; may not be fully depicted on project Right of Way maps. Parent Tract is to be agreed upon by the Department and Appraiser prior to acceptance of assignment
- N. Update: a procedure by which the value estimate of an appraisal is reconsidered as of a current or specified date by analysis of market data which has occurred subsequent to the original date of value

## V. PROVISIONS FOR WORK

- A. Written Appraisal Report: shall be prepared in compliance with current USPAP and current FDOT Supplemental Standards.
- B. Updates: shall be prepared in compliance with the current USPAP and current FDOT Supplemental Standards.
- C. Letter Updates: shall be prepared in compliance with the current issue of USPAP, Advisory Opinion AO-3 and FDOT Supplemental Standards. Letter updates require an actual search of the appropriate market area for any data that may have occurred that would indicate a change in the appraisal problem or market value estimate.
- D. Written Review Appraiser Statement: review appraisal statements (RAS) shall be prepared in accordance with a current edition of USPAP and current FDOT Right of Way Procedures Manual, Section 6.1: Appraisal and Appraisal Review.
- E. Cost Estimates: Cost estimates shall be prepared in accordance with instructions provided by FDOT and in compliance with FDOT Right of Way Procedures Manual, Section 6.2, and with the District's Cost Estimate Guidelines.

## VI. BASIC SERVICES

- A. Written Appraisal Report:
  - 1. Appraisal Services: The Consultant shall perform or have performed all services necessary to make an estimate of market value for parcels identified by the Department in Exhibit "C" (Appraisal Consultant Services) and subsequent Letters of Authorization. The Consultant must deliver **1 original** copy of a written appraisal report for each parcel to the DDRWM-A or Project Manager / Review Appraiser by the contracted due date. Upon approval of the appraisal(s), the consultant will be instructed by the project manager/reviewer to electronically submit the approved appraisal to the FTP Server; provide three (3) additional paper copies of the approved appraisal and provide revised/corrected pages for the Review Appraiser's copy. The original report copy shall contain original photographs of the subject and comparables. Full color photocopies of photographs of the subject and comparable sales may be utilized in lieu of actual photos in the additional copies only. Digital photographs are acceptable. The preferred font type is Arial with a size not less than 11. A font size less than 11 must be agreed to by the District.

The following items shall also be addressed in each report, when appropriate, either by the appraiser of record or his sub consultants as Support Services.

- a. Zoning: Determine and verify zoning designations for each parcel with appropriate governmental entity. Determine and verify the zoning status of the parcel prior to the Department's acquisition, with respect to existing and pending variances, non-conforming uses (legal and illegal), and any previous or pending zoning or land use applications. Determine the impact of the Department's acquisition on the parcel's

- zoning status. Request for legal opinions must be submitted in writing to the DDRWM-A. (F.S.S. Reporting Req. 240)
- b. Comprehensive Land Use Requirements: Determine and verify the comprehensive land use plan status of each parcel with the local Planning Department, including the status before and after the Department's acquisition. (F.S.S. Reporting Req. 240)
  - c. Concurrency: Obtain concurrency ordinances from municipal and county governments and determine the concurrency status of each parcel before and after the Department's acquisition. (F.S.S. Reporting Req. 240)
  - d. Impact Fees: Determine and verify any change in impact fees by parcel after the Department's acquisition and provide a complete breakdown of all impact fees applicable to the parcel. (F.S.S. Reporting Req. 240)
  - e. Cost Estimates: **This section applies to cost estimates for overall property values (before) in Cost Approach to valuation and in Cost to Cure estimates.** Where cost estimates are appropriate for special use properties or specialty equipment, a cost estimate from a local contractor, supplier of the appropriate special use item, or machinery and equipment specialist shall be provided. Examples of special use properties or equipment include service stations, petroleum or agricultural storage tanks, restaurants, signs (including replacement costs, depreciated values, where applicable, and move costs), and the like. For properties such as service stations, an itemized list of all appropriate equipment and installation costs shall be included. Marshall Valuation Service or costs from a general contractor are not sufficient to quantify a cure. The Department expects actual estimates from persons or firms specializing in the sale and installation of specialty equipment. The person or firm that provides the cost estimate must be identified in the appraisal report and must be one qualified, capable and willing to complete the work at the estimated cost. If there is any question on the identification of "special use" properties or "specialty" equipment, it is the appraiser's responsibility to ask the Department Project Manager / Review Appraiser for guidance. This section applies to consultant appraisers and any sub consultant firms such as land planning or engineering firms. (F.S.S. Reporting Req. 320)
  - f. Cost to Cure Estimate: Develop the most feasible cure for the subject parcel by evaluating the factors described herein and other pertinent site and regulatory factors as may be appropriate. It is the appraisers' responsibility to determine if a cure is feasible and would be supported in the market. If it is the appraisers opinion a cure would be feasible then they are to develop a total estimate of the cost to cure based on the selected cure and considering building and site improvements, changes to access and drainage, regulatory costs and fees, architectural and engineering fees, and other cost factors as appropriate to the plan.
  - g. Allocation of Value to Improvements Acquired or Damaged: An allocation of the individualized value contributions for improvements acquired or damaged is required. Parcel assignments that are whole takings also require an allocation of the individualized value contributions for improvements.
  - h. Environmental Regulations: Investigate the current environmental regulations from the appropriate federal, state, municipal, county and regulatory agencies. Determine and verify the effect of environmental regulations on each parcel before and after the Department's acquisition. Determine special items related to the cost to cure estimate with regard to factors related to environmental regulation.

- i. Parcel Sketch: As needed, should supplement right-of-way maps furnished by the Department. Provide limited purpose sketches for each parcel to depict existing and proposed property and right of way lines, area of acquisition, easements, remainder(s), location of improvements, on-site utilities, parking configuration (existing and proposed), location of site access points before and after the acquisition, depiction of building overhangs, and on site traffic patterns.
- j. Site Inspection: Inspect the subject parcel site with the Department's review appraiser, acquisition agent, business damage expert, or any other department experts as required.
- k. Parking Lot Analysis: Evaluate the parking design of the subject parcel before the Department's acquisition with respect to the potential number of spaces, configuration and layout, adherence to zoning and applicable design standards, encroachments on existing right of way, and any lease, easements, or other cross parking or joint use arrangements applicable to the site. Evaluate parking after the Department's acquisition to determine compliance with applicable zoning and parking design standards, and any lease, easements, or other cross parking or joint use arrangements applicable to the site.
- l. Site Drainage Design: Evaluate adequacy of existing on-site drainage after the Department's acquisition and, if necessary, develop alternative drainage solutions, including the potential usage of the Department's drainage system if adequate drainage cannot be accommodated on site.
- m. Site Access (Egress and Ingress) Requirements: Identify location, width and adequacy of existing access points (driveways) before the acquisition. Provide information concerning the allowable width and location of driveways after the acquisition based on current access management requirements of the appropriate jurisdiction. The Appraiser is responsible for evaluating the effect of access changes on the value of a remainder property in a partial acquisition situation. Driveway location must be compatible with access management policies (Rules 14-96 and 14-97, F.A.C., and the District-Wide Access Management Implementation Plan).
- n. Building Floor Plans and Structure Design: If primary parcel structures are to be affected by the Department's right of way, provide drawings to scale of the improvements before and after the acquisition as provided in the final cure scenario.
- o. On-Site Traffic Studies: Provide a written analysis of the onsite traffic circulation pattern and parking utilization prior to the Department's acquisition. Formulate, analyze, and select an on-site traffic circulation pattern after the Department's acquisition.
- p. Environmental Wetlands Determination: On properties where the valuation of the subject or part taken are affected by the presence of jurisdictional lands, the Appraiser shall engage the services of a qualified Sub consultant to determine the location and quantity of wetlands on the property. The Department shall approve the use of such sub consultant and fees will be negotiated as needed.
- q. Signs: The ownership of any signs located within the acquisition should be ascertained by the appraiser and clearly identified in the appraisal report. If the consultant is unsure of FDOT appraisal procedures in the valuation of Outdoor Advertising (ODA), On Premise, or Monument signs he/she must contact the Deputy District Right of Way Manager-Appraisal to discuss any valuation problems or methodology and obtain proper procedural directions.



1. On-Premise Signs: On-Premise signs (advertising businesses on the subject parcel) are not to be valued in the original acquisition appraisal except for permanent monument type signs which cannot be moved and signs where the cost to relocate the sign exceeds its in-place value.

The appraiser shall provide a cost to cure for property owner signs (non-tenant), when those signs can feasibly be relocated on the remainder.

FDOT Relocation Section will handle tenant owned signs. However, the appraiser is to provide a cost to relocate the tenant owned sign on the remainder for signs within the take.

In either case: Owner signs, the appraiser shall analyze the effect that the sign relocation will have on the remainder. When the subject property includes an owner owned sign affected by the taking, the appraisal shall include the cost new of the sign less any applicable depreciation.

The appraiser shall acquire the services of a sign specialist, in the business of constructing and installing on-premise signs to provide an estimate of the sign (cost new).

2. Outdoor Advertising Signs (ODA): Outdoor Advertising Signs must be appraised in accordance with the current Outdoor Advertising Appraisal Guideline. The DDRWM-A shall be consulted for guidance in preparation of these appraisals. The body of the report must identify any leasehold interest due to the presence of the ODA sign. The final estimate of value must indicate the total value of the land and improvements that are to be totally or partially acquired.

However, the Certificate of Value must not reflect a separation of the leased fee and leasehold interests, nor an allocation for the tenant owned interest. (*Right of Way Procedures Manual, Chapter 6.2.21 (#4)*).

All of the property interests for the whole property and the acquisition must be separated in the body of the report and summarized at the beginning of the report.

- r. Americans with Disabilities Act: The appraiser should make any necessary assessment of the subject improvements to determine conformance with ADA standards in both the before and after situations and determine any necessary requirements that will be placed on the subject in order to effect a cure in the after situation.
  - s. Photographs: Subject property photos should show all improvements if applicable, the take area, improvements in the take area, including personal items. All improvements being acquired must be photographed, i.e., back-flow presenter, etc.
  - t. Contamination: The Department will provide a copy of any contamination report done for the project. The appraiser will consider the affect on market value of "stigma" associated with contamination on any property that may be contaminated or that has been cleaned up from prior contamination. The DDRWM-A should be consulted for additional instructions.
2. Support Services: The Appraiser of Record shall not perform services beyond his or her professional ability. Professional services may include (e.g., land planning, miscellaneous engineering, architectural, etc.) Other specialty services include (e.g., sign specialists, aerial photographers, fixture and equipment appraisers, general contractors, etc.). In these

instances, the Consultant shall provide the services of Sub consultants, approved by the Department, as necessary to support the appraisal.

- B. Delivery Dates for Services: The Consultant shall submit a complete written acquisition appraisal report to the Department no later than the delivery date set forth by the Department for the Basic Services or in any Letter of Authorization or Supplemental Agreement. The Department may extend an appraisal due date or any due date for correction of appraisal deficiencies. **Extensions shall be authorized and signed by the Deputy District Right of Way Manager-Appraisal or assigned delegate. Extensions requested by the Consultant shall be by written request explaining in detail why such extension is necessary. The Deputy District Right of Way Manager-Appraisal or delegate shall acknowledge acceptance or denial of the Consultant's request in writing.** Liquidated damages for late delivery of appraisal reports, review statements or corrections are quantified and described in Exhibit B, Method of Compensation.
- C. Date of Valuation: Unless otherwise agreed in writing by the Department, the date of valuation for basic services shall be the date of the Consultant's last inspection of the property and shall be no more than 20 days prior to receipt of the appraisal report by the Department. If the Consultant is requested to provide corrections / revisions or additional support on any reports and the corrections/support are not received within the required **7 days**, the date of value for this appraisal report must be within **20 days** of the receipt of the corrections/support. In any case, the date of value shall not exceed 90 days prior to acceptance by the Department.

The Consultant will be instructed in the Letter of Authorization, as applicable, to appraise each parcel as of a current date or to appraise as of a specified value date (date of deposit). If no value date is specified, then valuation as of a current date is assumed. Date of Deposit updates shall have an effective date of value as of the actual Date of Deposit. This date should be requested from the Department's Project Manager if not provided in the Letter of Authorization.

D. Appraisal Review:

1. Appraisal Review Services: The Appraiser of Record shall be responsible for the review of each assigned real estate appraisal or appraisal update prepared for the Department by contract consultant appraisers or FDOT staff appraisers, and those provided to the Department by appraisers for property owners.

The following items shall be performed or addressed in each review and as part of management of a review project:

- a. Personally field inspects each property that is the subject of an appraisal and each comparable sale utilized in determination of market value.
- b. Examine each appraisal report to determine compliance with the Department of Transportation's appraisal requirements and perform the review in accordance with the Right of Way Procedures Manual, Chapter 6, Section 1 and the Uniform Standards of Professional Appraisal Practice.
- c. Coordinate with the appraiser of each appraisal report to effectuate any required changes and/or revisions to the report so that the final product is in compliance with the Department's appraisal requirements and current procedures.
- d. Suggest compensation to be paid for the acquisition. Select the appraisal that best indicates the market value of the subject parcel for those parcels where multiple appraisals were prepared.

- e. Provide a completed Review Appraisers Statement (RAS), for each parcel, which includes a standard Certificate of Value. The current addition of USPAP, Standard Rule 3, is to be followed in performing all review functions. The appraiser may attach a Supplemental Certificate to provide for additional items that require certification but may not amend the certificate wording on the RAS. The appraiser will complete page 1 of the standard RAS and shall **suggest** compensation to be paid for the acquisition. The Review Appraiser shall be responsible for all clerical and other support required for completion of the assignment and costs for such shall be included in the unit prices for each review.
  - f. If requested, compile computer spreadsheets in a form agreeable to the DDRWM-A which contain all sales data and parcel information.
  - g. Submit a status update of each parcel in a format provided by or agreed to by the DDRWM-A.
  - h. Invoices shall be submitted with the completed RAS, suggested compensation, the appraiser's invoice, along with a review check list for that parcel.
  - i. Advise the DDRWM-A of receipt of any parcel in excess of \$1,000,000. Provide within **21 calendar days** a draft review of all appraisals over \$1,000,000. Requirement may be waived by DDRWM-A or designee
2. Delivery Dates for Review Services: The Consultant Review Appraiser shall submit complete, written review appraisal reports to the Department for each assignment no later than **35 days** from the date of receipt of the appraisal report from the consultant appraiser or from the Department, whichever is applicable. The time of performance for the Review Appraiser **shall not be suspended** in the event of a correction request. The Consultant Appraiser shall have **7 days** to correct said appraisal and the Review Appraiser shall complete the review within the allotted **35 days**. Appraiser Failure to submit a written review appraisal report within the time allowed shall result in the assessment of liquidated damages against the Review Appraiser pursuant to Exhibit "B", Section 4.0, Late Penalty, of the Contractual Services Agreement. The Department may extend an appraisal due date, review due date, or any other service date for a number of reasons. **Extensions requested by the Review Appraiser shall be submitted by written request addressed to the Deputy District Right of Way Manager - Appraisal (DDRWM-A) or delegate explaining in detail why such extension is necessary. The DDRWM-A or delegate shall acknowledge approval or denial of the Review Appraiser's extension request in writing.**

## VII. OPTIONAL SERVICES

The Department's Contracts Administrator shall process Letters of Authorizations for optional services including updates, revised parcels, additional parcels, sub consultant services, and litigation support services. The Letter of Authorization shall specify the scope of services and the fees to be paid.

- A. Updates: The Consultant may be required to update the value estimate of market value for parcels. All updates are to be delivered to the DDRWM-A or project manager/reviewer. For Order of Taking reports the Consultant is to initially deliver **1 original** copy of the appraisal for review. Upon approval of the OT report the Consultant will be instructed by the reviewer to provide **2 additional paper copies** and corrected pages if necessary and to electronically submit the OT report to the FTP Server. For Date of Deposit appraisals, the Consultant is to initially deliver **1 original** copy of the appraisal for review. Upon approval of the DOD report the Consultant will be instructed by the reviewer to provide **2 additional paper copies** and corrected pages if necessary and to electronically submit the DOD report to the FTP Server.

Maximum limits of fee allowance for updates include up to 50% of the original or revised report fee for Date of Deposit appraisals or complete updates and up to 25% of the original or revised report fee for Letter Updates for Order of Taking, unless the parcel requires a new appraisal premise. The fees for updates do not include Sub-consultant fees, only appraisal fees. **Sub-consultant fees will be updated on an as needed basis.**

When the Consultant finds legal changes or market data that will result in a significant appraisal premise or value estimate change, the appraiser must notify the Deputy District Right of Way Manager-Appraisal to determine the necessary report type to provide for update value estimates. If adjustments to the appraisal fee and delivery date are anticipated, these must be handled through the Department Project Manager / Review Appraiser and Contracts Administrator.

- B. Additional Parcels: The Department may require the appraisal of additional parcels other than those originally specified on a project. Work to be performed and due dates will be established in a Letter of Authorization issued to the Consultant.
- C. Revised Parcels: The Department may require revisions to parcels as a result of design changes or other changes in the project as necessary. Work to be performed and due dates will be established in a Letter of Authorization issued to the Consultant.
- D. Litigation Support Services: The Consultant or Sub consultant(s) may be required to perform litigation support services on those parcels set forth by the Department. Litigation services may include, but are not limited to, the following:
  1. Pre-trial or pre-hearing preparation.
  2. Participation in mediation proceedings.
  3. Preparation of court exhibits.
  4. Attendance at depositions, pre-trial hearings, or other court hearings.
  5. A personal appearance at Order of Taking hearings or trials by the appraiser.
    - a. The appraiser's testimony at Order of Taking, regarding his or her opinion of value, must be current as of the date of the Order of Taking hearing. The department requires the appraiser to visually inspect the parcels within 24 hours of the Order of Taking hearing.
  6. Any other services deemed necessary by the assigned attorney to successfully litigate and defend the Department's position in court (planning, engineering, architectural, etc.).

## VIII. GENERAL

- A. Meetings: The Consultant and sub-consultants agree to meet with the Department's Deputy District Right of Way Manager-Appraisal, Review Appraiser or Project Manager at the discretion of the Department's personnel as necessary to discuss the progress of the appraisal assignment. The meetings shall be held at an appropriate location and at the Consultant's expense.
- B. Sub-consultants: The Consultant may employ qualified sub-consultants, not otherwise named in the Agreement, that are necessary for the completion of services outlined herein. For each sub-consultant, the Consultant shall submit the name and address of the sub-consultant and secure prior approval from the Department Project Manager to employ the sub-consultant(s). The Consultant will be responsible for the management, scheduling, and administration of all sub-consultant(s), including invoice processing and payment to the sub-consultant(s).
- C. Appraisals for Property Owners: The Consultant and any sub-consultants agree not to engage in any property owner appraisal work on any projects that are in this contract without the written consent of the District Right of Way Manager.
- D. Changes in Appraisal Problems: **The Consultant shall contact the Project Manager when a parcel calls for an appraisal of more or less than originally contracted.** The appraisal requirements and fees will be adjusted accordingly or re-contracted.
- E. Quality Control Program:
1. Quality Control Plan (QCP): The Consultant shall develop an in-house QCP, which shall detail the procedures, evaluation criteria, and instruction to its organization to assure conformance with USPAP, FDOT Supplemental Standards and the contract. Significant changes to the work requirements may require the Consultant to revise its QCP. It shall be the responsibility of the Consultant to keep its QCP current with the work requirements. **The Consultant shall make available to the Deputy District Right of Way Manager-Appraisal a signed written copy of the QCP before submittal of the basic appraisal services.**
  2. Quality Control Review (QCR): The Consultant shall conduct in-house QCR's to make certain its own organization is in compliance with the requirements of the USPAP, FDOT Supplemental Standards, and provisions of the contract. The results of such review must be indicated on the documents prior to submittal to the Department. This quality control review is considered by the Department to be an integral part of providing appraisal services, free from a series of errors as required by USPAP.
  3. Quality Control Certification: The Appraiser of Record will be required to certify that each submittal has been prepared and checked in accordance with good appraisal practice and represents a quality product. A statement that such a review has been accomplished is to be submitted to the Department's Deputy District Right of Way Manager-Appraisal by the Consultant in the Consultant's Letter of Transmittal. This statement shall include the following, as a minimum: **"I certify that the appraisal services herein have been reviewed for compliance by \_\_\_\_\_ and conform with USPAP, FDOT Supplemental Standards, and all other contract requirements."**
- F. Computer Disk Scanning: Any computer disk to be submitted to the Department shall be scanned for viruses prior to submitting to FDOT. Failure to scan for viruses may result in a lower consultant work performance evaluation.

**IX. DEPARTMENT RESPONSIBILITIES:**

- A. The Department’s Project Manager for administering the technical terms and conditions of this Agreement will be Charles Fish or his delegate. Mr. Fish can be reached by telephone 386/961-7494 (Lake City). The Department reserves the right to change the Project Manager at any time.
- B. The Department, at its option, may delegate any or all Department functions and responsibilities to a General Consultant.
- C. The Department will make available to the Consultant a set of right-of-way maps, title searches, acquisition deeds and construction plans, as available, for the project.

**X. LENGTH OF SERVICES**

- A. The Consultant shall commence Basic Services upon receipt of the Letter of Authorization from the Contractual Services Contracts Administrator.
- B. Basic and Optional appraisal services shall be completed in accordance with the time periods specified by a Notice of Delivery provided to the Consultant by the Department’s Project Manager.
- C. During a **7-year** term, Optional Services (e.g., Updates, Revised and Additional Parcel Appraisal Services, and Litigation Support Services) as specified under Section VI herein may be authorized subject to the time periods specified in the Department’s Letters of Authorization. In general, the time frame established in each Letter of Authorization will commence upon the date the Consultant signs the Letter of Authorization indicating acceptance. If required a subsequent Notice of Delivery will be sent by the Department documenting the delivery date calculated from the date of Consultant’s acceptance.

**XI. APPRAISER OF RECORD**

- A. The performance of the services set forth herein requires the expertise of an individual appraiser and the exercise of his or her independent judgment. Therefore, it is understood and agreed by and between the Department and the Consultant that the Consultant shall appoint, \_\_\_\_\_ to personally perform all the appraisal services specified herein; however, nothing herein shall be construed to prevent the Consultant from utilizing the services of other persons to assist, \_\_\_\_\_ in performing said services to the extent that such services do not require the exercise of an appraiser's judgment, conclusion, or opinion.
- B. The Department and the Consultant recognize that continued and uninterrupted performance of the specified services is essential. Therefore, it is further agreed between the parties that in the event \_\_\_\_\_ leaves the Consultant's employ, the Consultant shall assign this agreement, without limitation to \_\_\_\_\_ or the company employing said individual.

Consultant’s Signature: \_\_\_\_\_

Appraiser's Signature: \_\_\_\_\_

## **EXHIBIT "B"**

### **METHOD OF COMPENSATION**

#### **DISTRICT WIDE APPRAISAL CONSULTANT SERVICES**

##### **1.0 PURPOSE**

This Exhibit describes and defines the limits of compensation to be made to the Consultant for services outlined in Exhibit "A," Scope of Services, and the method by which payments will be made.

##### **2.0 ASSIGNMENT OF WORK, BEGINNING AND LENGTH OF AGREEMENT**

The Department shall request Consultant services on an as-needed basis. The Services to be provided on this project will be initiated and completed as directed by the Project Manager. The Consultant shall be provided an objective for this project and be requested to prepare a Scope of Work and fee proposal for each parcel. Once negotiations have been completed and a lump sum amount is agreed upon for the project, a Letter of Authorization shall be issued by the District Appraisal Contract Administrator specifying the work to be done, a due date, and the agreed lump sum amount of compensation. A Letter of Authorization will be issued for all required services and will commence upon the date the Consultant signs the Letter of Authorization indicating acceptance.

No work shall commence by the Consultant on the project until he/she has provided a signature to a Letter of Authorization.

This contract does not have a budgetary ceiling. There is not a maximum amount any one Letter of Authorization can be issued for. Funds for each Letter of Authorization will be encumbered prior to the LOA being issued.

Additional appraisal services may be assigned after the contract is in force and throughout the **seven-year** term of the contract

##### **3.0 COMPENSATION**

###### **3.1 Basic Services**

A lump sum amount will be established as compensation to the Consultant for delivery of written appraisal reports, market studies, etc. acceptable to the Department.

1. Written Appraisal Reports, Land Planning, Engineering and Survey Services

Compensation for Basic Services is established as a lump sum amount and shall be based on a per parcel basis at a lump sum amount for Written Appraisal Reports, Land Planning, Engineering and Survey Services. Miscellaneous and out-of-pocket expenses for work performed by the Consultant are to be included in these fees.

2. Other Appraisal Services and Professional Support Services

The Consultant shall identify the need for the service to be provided and provide the Department with an objective. Once the objective has been agreed upon by the Department and the Consultant, the Consultant shall submit a fee to perform the work based on a lump sum amount, for Land Planning, Engineering, Survey, and Other Professional Support Services, etc. Once the Department has agreed to a fee, the Department shall issue a LOA

to the Consultant specifying the work to be done and the agreed Lump Sum Amount of Compensation.

### **3.2 Update and Optional Services**

The Department or Consultant shall identify the need for the services to be provided and provide an objective for each update requested. Once the Department and the Consultant and his/her sub consultants have agreed to a fee for the total parcel update or revision cost, the Department shall issue a LOA to the Consultant specifying the work to be done and the agreed Lump Sum Amount of Compensation.

### **3.3. Litigation Support Services**

Compensation may be made under this agreement to the Consultant and his sub consultants for Land Planning and Other Professional Support Services. The Consultant will be requested to enter into a separate contract with the Department for Litigation Services. Compensation will be negotiated at the time when such services are deemed necessary. The Consultant further agrees to notify Land Planning and Other Professional Support Services that said firms might be requested to enter into a contract with the Department at the Department's option.

## **4.0. METHOD OF PAYMENT**

The Consultant shall be compensated for fees approved by the Department and incurred in the performance of authorized services as follows:

### **4.1. BASIC AND OPTIONAL SERVICES**

#### **1. Written Appraisal Reports, Land Planning, Engineering and Survey Services**

Payment for these services shall be made to the Consultant on a Lump Sum monthly basis for work that has been satisfactorily performed and approved by the Department. The total parcel cost set forth in the negotiated Authorization is based on fees negotiated at the time the service is needed. Lump sum Appraisal (Parcel) fees will be paid on a monthly basis after the appraisal of the specific parcel(s) is approved.

#### **2. Other Appraisal Services and Professional Support Services Allowance**

Payment shall be made to the Consultant for services authorized by the Department and satisfactorily performed, as approved by the Department.

- A. As a Lump Sum Amount: Lump Sum payments shall be made to the Consultant upon satisfactory completion of all authorized work in a LOA unless the LOA provides for partial payments. Partial payment shall be made to the Consultant for a portion of the Lump Sum Amount equal to the percentage of work completed, as approved by the Department.

## **4.2 UPDATE SERVICES**

Payment for Update Services shall be made to the Consultant as follows:

1. Written Appraisal Update Report: Payment for the Appraisal Update shall be made to the Consultant at the agreed negotiated Total Parcel Update Cost, exclusive of Land Planning and Other Professional Support Services, as set forth in the LOA for work that has been satisfactorily performed, as approved by the Department.



2. Other Appraisal Related and Professional Support Services Updates: Payment for these services shall be in accordance with Section 4.0 (4.1) (2) of this Exhibit "B."

### 4.3. LIQUIDATED DAMAGES

#### 1. APPRAISAL REPORT

For late delivery of an appraisal report, land values/market grid per parcel, or updated report, liquidated damages shall be assessed at the rate of 1% of the **total parcel fee** per calendar day for the first **7 calendar days** and **2% per calendar day thereafter**. The assessed time of the penalty will be computed based on the amount of time between the due date and the date on which the Department receives the report.

#### 2. CORRECTIONS

Failure to provide requested appraisal corrections within a total of 7 days (unless otherwise specified on individual projects), shall result in liquidated damages which shall be assessed at the rate of 1% of the **total parcel fee**, per calendar day for the first 7 calendar days and 2% per calendar day thereafter. The assessed time of penalty will be computed based on the amount of time between the due date and the date on which the Department receives the revisions / corrections to the appraisal. Subsequent correction requests that are different from the original request, an additional 7 days will be allowed.

3. The Consultant not notified of required revisions or corrections until after a review period of 60 days (see Section 5, Paragraph D) does not relieve the Consultant from making any required necessary corrections. The liquidated damages provision of Section 4.3, Item 2 shall still apply if corrections are not completed.

### 5.0 Progress Payments:

- A. The Consultant will be eligible for progress payments under this agreement as appraisal services are approved by the project manager / reviewer or when individual tasks or mileposts defined in this agreement are completed or reached. The Consultant shall prepare and submit an original invoice by mail or electronic mail to the project manager / reviewer and Contracts Administrator. The invoice shall be in a format acceptable to the Department (Word or Excel) for services that have been approved. The Consultant shall include a copy of the FDOT Review Appraisers Approval letter authorizing the Consultant to bill for services performed. Payments shall be made to the Consultant upon approval of billings as submitted in accordance with Florida Statutes.
- B. The Consultant will be responsible for processing all invoices from, and making all payments to, it's Subconsultant(s) in accordance with Florida Statutes.
- C. Payment for services shall be contingent upon correction of any deficiencies in either the original or update services provided.
- D. The Project Manager shall review reports made and services performed under this Agreement and notify the Consultant of deficiencies within 60 days of the receipt thereof or, if no deficiencies exist, process the invoice for payment in accordance with Section 5, Item A. A report requiring corrections to comply with the Department's Appraisal Standards shall be approved for payment within 30 days from receipt of acceptable corrections. Original and corrected reports not requiring additional corrections shall be approved immediately upon completion of review.
- E. The Department reserves the right of withhold payment or payments in whole or in part, and to continue to withhold any such payments for work not completed, completed unsatisfactory, work that is behind schedule, or work that is otherwise performed in an inadequate or untimely fashion as

determined by the Department. Any and all such payments previously withheld shall be released and paid to the Consultant promptly when the work is subsequently, satisfactorily performed notwithstanding the intent of the Standard Consultant Agreement.

**6.0 Tangible Personal Property**

This agreement does not involve the purchase of Tangible Personal Property, as identified in Chapter 273, F.S.

Florida Statutes  
PROCUREMENT  
287.135

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**VENDOR CERTIFICATION REGARDING  
SCRUTINIZED COMPANIES LISTS**

375-030-60

06/11

Respondent Vendor Name: \_\_\_\_\_

Vendor FEIN: \_\_\_\_\_

Vendor's Authorized Representative Name and Title: \_\_\_\_\_

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

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

Phone Number: \_\_\_\_\_

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

Section 287.135, Florida Statutes, prohibits agencies from contracting with companies, for goods or services of \$1 million or more, that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Both lists are created pursuant to section 215.473, Florida Statutes.

As the person authorized to sign on behalf of Respondent, I hereby certify that the company identified above in the section entitled "Respondent Vendor Name" is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. I understand that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject company to civil penalties, attorney's fees, and/or costs.

Certified By: \_\_\_\_\_,

who is authorized to sign on behalf of the above referenced company.

Authorized Signature Print Name and Title: \_\_\_\_\_

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**DBE PARTICIPATION STATEMENT**

375-030-21  
PROCUREMENT  
10/01

**Note:** The Consultant is required to complete the following information and submit this form with the technical proposal.

Project Description: \_\_\_\_\_

Consultant Name: \_\_\_\_\_

This consultant ( ) is ( ) is not a Department of Transportation certified Disadvantaged Business Enterprise (DBE).

Expected percentage of contract fees to be subcontracted to DBE(s): \_\_\_\_\_ %

If the intention is to subcontract a portion of the contract fees to DBE(s), the proposed DBE sub-consultants are as follows:

DBE Sub-Consultant	Type of Work/Commodity

By: \_\_\_\_\_

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

Date: \_\_\_\_\_

# BID OPPORTUNITY LIST

Prime Contractor/Consultant:

Address/Telephone Number:

49 CFR Section 26.11 requires the Florida Department of Transportation to develop and maintain a "bid opportunity list". The list is intended to be a listing of all firms that are participating, or attempting to participate, on DOT-assisted contracts. The list must include all firms that bid on prime contracts or bid or quote subcontracts and material supplies on DOT-assisted projects, including both DBEs and non-DBEs. Prime contractors and consultants must provide information for No. 1 and should provide any information they have available on Numbers 2, 3, 4, and 5. Firms previously reported on a bid opportunity list need not be resubmitted.

1. Firm Name / Address / Phone :

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

3.  
 DBE  
 Non-DBE

4.  
 Sub-contractor  
 Sub-consultant

5. Annual Gross Receipts :  
 Less than \$1 Million  
 Between \$1 – 5 Million  
 Between \$5 - \$10 Million  
 Between \$10-\$15 Million  
 More than \$15 Million

2. Age of Firm: \_\_\_\_\_

\*\*\*\*\*

1. Firm Name / Address / Phone :

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

3.  
 DBE  
 Non-DBE

4.  
 Sub-contractor  
 Sub-consultant

5. Annual Gross Receipts :  
 Less than \$1 Million  
 Between \$1 – 5 Million  
 Between \$5 - \$10 Million  
 Between \$10-\$15 Million  
 More than \$15 Million

2. Age of Firm: \_\_\_\_\_

\*\*\*\*\*

1. Firm Name / Address / Phone :

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

3.  
 DBE  
 Non-DBE

4.  
 Sub-contractor  
 Sub-consultant

5. Annual Gross Receipts :  
 Less than \$1 Million  
 Between \$1 – 5 Million  
 Between \$5 - \$10 Million  
 Between \$10-\$15 Million  
 More than \$15 Million

2. Age of Firm: \_\_\_\_\_

\*\*\*\*\*

1. Firm Name / Address / Phone :

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

3.  
 DBE  
 Non-DBE

4.  
 Sub-contractor  
 Sub-consultant

5. Annual Gross Receipts :  
 Less than \$1 Million  
 Between \$1 – 5 Million  
 Between \$5 - \$10 Million  
 Between \$10-\$15 Million  
 More than \$15 Million

2. Age of Firm: \_\_\_\_\_

\*\*\*\*\*

**This Form should be included with the Bid Sheet.**

**State of Florida  
Department of Transportation**



**INVITATION TO NEGOTIATE**  
**APPRAISAL CONSULTANT SERVICES FOR**  
**RIGHT OF WAY ACQUISITIONS**

**ITN-DOT-14/15-2354-DS**

**CONTACT FOR QUESTIONS:**

**Darlene Sawyer, Procurement Agent**  
**darlene.sawyer@dot.state.fl.us**  
**(386) 758-3791**  
**Phone: (386) 961-7732**  
**1109 South Marion Avenue**  
**Lake City, Florida 32025-5874**

# INTRODUCTION SECTION

## 1) INVITATION

The State of Florida Department of Transportation (hereinafter referred to as the "Department") is soliciting written replies from vendors interested in participating in competitive negotiations to establish a term contract to provide Appraisal Consultant Services for Right of Way Acquisitions. It is anticipated that the term of the agreement will be from the date of contract execution through March, 2021.

## 2) TIMELINE

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

<b>ACTION / LOCATION</b>	<b>DATE</b>	<b>LOCAL TIME</b>
<b>DEADLINE FOR TECHNICAL QUESTIONS -</b> (There is no deadline for administrative questions)	<b>09-25-2014</b>	<b>05:00 PM</b>
<b>REPLIES DUE -</b> FDOT District Two Office Procurement Office MS 2015 Attention: Darlene Sawyer 1109 South Marion Avenue Lake City, Florida 32025-5874	<b>10-07-2014</b>	<b>02:00 PM</b>
<b>PUBLIC OPENING (Initial Replies) -</b> FDOT District Two Office Procurement Office MS 2015 Attention: Darlene Sawyer 1109 South Marion Avenue Lake City, Florida 32025-5874	<b>10-07-2014</b>	<b>02:00 PM</b>
<b>PUBLIC MEETING TO SHORTLIST-</b> FDOT District Two Office Procurement Office MS 2015 Attention: Darlene Sawyer 1109 South Marion Avenue Lake City, Florida 32025-5874	<b>10-14-2014</b>	<b>02:00 PM</b>
<b>POSTING OF SHORTLIST ON VBS-</b>	<b>10-14-2014</b>	<b>04:00 PM</b>
<b>QUESTION &amp; ANSWER SESSIONS FOR SHORTLISTED PROPOSERS</b> (not open to the public) FDOT District Two Office 1109 South Marion Avenue Lake City, Florida 32025-5874	<b>10-21-2014</b>	<b>Starts at 9:00 AM</b>
<b>PUBLIC MEETING TO RANK VENDORS/INTENDED AWARD - To Be Determined</b> FDOT District Two Office Procurement Office MS 2015 Attention: Darlene Sawyer 1109 South Marion Avenue Lake City, Florida 32025-5874		

**POSTING OF RANKING/INTENDED AWARD ON VBS -****To Be Determined****3) PUBLIC MEETING AGENDA****Agenda – Public Opening (Initial Replies)**

Agenda for Public Opening of initial replies to ITN-DOT-14/15-2354-DS:

Starting Time: see “Timeline” in ITN solicitation

- Opening remarks of approx. 2 minutes by Department Procurement Office personnel.
- Public input period – To allow a maximum of 15 minutes total for public input related to the ITN solicitation.
- At conclusion of public input or 15 minutes, whichever occurs first, the initial replies received timely will be opened, with respondent’s name read aloud and tabulated.
- Adjourn meeting.

**Agenda – Meeting to Short List**

Agenda for Meeting to Short List on ITN-DOT-14/15-2354-DS:

Starting Time: see Timeline in ITN solicitation

- Opening remarks of approx. 2 minutes by Department Procurement Office personnel.
- Public input period – To allow a maximum of 15 minutes total for public input related to the ITN solicitation.
- At conclusion of public input or 15 minutes, whichever occurs first, the evaluations of Initial Replies received will be summarized.
- Determine the number of highest ranked firms to include on Short List.
- Announce the names of the Short Listed firms and when the decision will be posted on the Vendor Bid System (VBS).
- Adjourn meeting.

**Agenda – Meeting QUESTION & ANSWER SESSIONS FOR SHORTLISTED PROPOSERS**

Agenda for Meeting to Short List on ITN-DOT-14/15-2354-DS:

Starting Time: see Timeline in ITN solicitation(not open to the public)**Agenda – Meeting to Summarize & Determine Ranked Vendors/Intended Award**

Agenda for Meeting to Summarize and Determine Intended Award for ITN-DOT-14/15-2354-DS:

Starting Time: see Timeline in ITN solicitation

- Opening remarks of approx. 2 minutes by Department Procurement Office personnel.
- Public input period – To allow a maximum of 15 minutes total for public input related to the ITN solicitation.
- At conclusion of public input or 15 minutes, whichever occurs first, recap and discussion among evaluation team(s) to determine “best value”.
- Announce Proposer determined to be “best value” as the Intended Award.
- Announce time and date the decision will be posted on the Vendor Bid System (VBS).
- Adjourn meeting.

**4) SPECIAL ACCOMMODATIONS**

Any person with a qualified disability requiring special accommodations at a pre-reply conference, public meeting, oral presentation and/or opening shall contact the contact person at the phone number, e-mail address or fax number provided on the title page at least five (5) working days prior to the event. If you are hearing or speech impaired, please contact this office by using the Florida Relay Services which can be reached at 1 (800) 955-8771 (TDD).



# SPECIAL CONDITIONS

## 1) MyFloridaMarketPlace

VENDORS MUST BE ACTIVELY REGISTERED IN THE STATE OF FLORIDA'S MYFLORIDAMARKETPLACE SYSTEM BY THE TIME AND DATE THE SEALED REPLIES ARE DUE OR THEY MAY BE CONSIDERED NON-RESPONSIVE (see Special Condition 16). All prospective vendors that are not registered, should go to <https://vendor.myfloridamarketplace.com/> to complete on-line registration, or call 1-866-352-3776 for assisted registration.

All payment(s) to the vendor resulting from this competitive solicitation **WILL** be subject to the 1% MFMP Transaction Fee in accordance with the attached Form PUR 1000 General Contract Condition #14.

## 2) Florida Department of Financial Services (DFS) W-9 INITIATIVE

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

## 3) QUESTIONS & ANSWERS

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

Any technical questions arising from this Invitation to Negotiate must be forwarded, in writing, to the procurement agent identified below. Questions must be received no later than the time and date reflected on the Timeline. The Department's written response to written inquiries submitted timely by vendors will be posted on the Florida Vendor Bid System at [www.myflorida.com](http://www.myflorida.com) (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements"), under this ITN number. It is the responsibility of all potential vendors to monitor this site for any changing information prior to submitting their reply.

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

**Darlene Sawyer, Procurement**  
[darlene.sawyer@dot.state.fl.us](mailto:darlene.sawyer@dot.state.fl.us)  
1109 South Marion Avenue  
Lake City, Florida 32025-5874  
Fax: (386) 758-3791

Questions regarding administrative aspects of the procurement process should be directed to the Procurement Agent in writing at the address above or by phone: **(386) 961-7732**

## 4) CHANGES TO THE INVITATION TO NEGOTIATE (ADDENDA)

Notices of changes (addenda) will be posted on the Florida Vendor Bid System at [www.myflorida.com](http://www.myflorida.com) (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements") under this ITN number. It is the responsibility of all potential vendors to monitor this site for any changing information prior to submitting your reply. All addenda will be acknowledged by signature and subsequent submission of addenda with reply when so stated in the addenda.

## 5) **BEST VALUE SELECTION & PUBLIC MEETINGS**

The Department intends to contract with the responsive and responsible Vendor whose proposal is determined by the Technical Review Team to provide the best value to the Department. "Best value", as defined in Section 287.012(4), F.S., means the highest overall value to the state based on objective factors that include, but are not limited to, price, quality, design, and workmanship.

Specific events in the competitive negotiation process will be conducted at a public meeting of the Technical Review Team. The specific events are noted in the Timeline (see Section 2 of Introduction Section). Minutes will be taken at all Public Meetings and will be retained in the procurement file.

## 6) **TECHNICAL REVIEW TEAM**

The Technical Review Team will be composed of at least three (3) persons who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program area for which the commodities and/or contractual services are sought. The team will be involved in the reviews/evaluations, oral presentations, negotiations, and recommendation for award. The team leader, usually the project manager, will ensure consistent scoring and documentation to facilitate and support a consensus decision for the intended award. The Technical Review Team will provide a short plain statement for the procurement file that explains the basis for vendor selection and how the vendor's deliverables and price will provide the best value to the state.

## 7) **SCOPE OF SERVICES**

Details of the desired commodity/services, information and items to be furnished by the Vendor are described in Exhibit "A", Scope of Services/Specifications, attached hereto and made a part hereof. Documentation of any revisions that may occur during the competitive negotiation process will be retained in the procurement file.

8) **PRE-REPLY CONFERENCE**: A PRE-REPLY CONFERENCE WILL NOT BE HELD.

## 9) **QUALIFICATIONS**

### 9.1 **Qualifications Questionnaire**

Interested vendors must complete and submit the "Qualifications Questionnaire" to show that they have the necessary qualifications, prior relevant experience, and capabilities to meet the requirements of the Department in providing **Appraisal Consultants Services for Right of Way Aquisitions**, as specified in the Scope of Services/Specifications. The replies to the "Qualifications Questionnaire" and the information provided by the vendors in their submittals will be reviewed and evaluated to determine the short-list of vendors that are best able to meet the requirements of the Department and proceed to Step 3 in the competitive negotiation process.

### 9.2 **Authorized To Do Business in the State of Florida**

In accordance with sections 607.1501, 608.501, and 620.9102, Florida Statutes, out-of-state corporations, out-of-state limited liability companies, and out-of-state limited partnerships must be authorized to do business in the State of Florida. Such authorization should be obtained by the reply due date and time, but in any case, must be obtained prior to posting of the intended award of the contract. For authorization, contact:

Florida Department of State  
Tallahassee, Florida 32399  
(850) 245-6051

### **9.3 Licensed to Conduct Business in the State of Florida**

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

Florida Department of Business and Professional Regulation  
Tallahassee, Florida 32399-0797  
(850) 487-1395

### **9.4 E-VERIFY**

Vendors/Contractors:

1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

## **10) DIVERSITY ACHIEVEMENT**

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The Department, in accordance with *Title VI of the Civil Rights Act of 1964, 42 USC 2000d- 2000d-4, Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21*, Nondiscrimination in federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that the Department will affirmatively ensure

that in any contract/agreement entered into pursuant to this advertisement, minority and disadvantaged business enterprises will be afforded the full opportunity to submit bids in response to this invitation and will not be discriminated on the basis of race, color, national origin, or sex in consideration for an award.

The Department encourages DBE firms to compete for Department contractual services projects, and also encourages non-DBE and other minority contractors to use DBE firms as sub-contractors. The Department, its contractors, suppliers, and consultants shall take all necessary and reasonable steps to ensure that disadvantaged businesses have an opportunity to compete for and perform contract work for the Department in a nondiscriminatory environment. The Department shall require its contractors, suppliers, and consultants to not discriminate on the basis of race, color, national origin, religion, gender, age, or disability in the award and performance of its contracts.

Federal law requires states to maintain a database of all firms that are participating or attempting to participate in DOT-assisted contracts. To assist the Department in this endeavor, vendors are requested to submit the **Bidder's Opportunity List** with their technical proposal. The list should include yourself as well as any prospective sub-contractor that you contacted or who has contacted you regarding the project.

Vendors are requested to indicate their intention regarding DBE participation on the **Anticipated DBE Participation Statement** and to submit that Statement with their technical proposal. After award of the contract resulting from this ITN, the awarded Vendor will need to complete the "Anticipated DBE Participation Statement" online through the Equal Opportunity Compliance (EOC) system within 3 business days after award of the contract. The link to access the EOC system is: <https://www3.dot.state.fl.us/EqualOpportunityCompliance>. This will assist the Department in tracking and reporting planned or estimated DBE utilization.

During the contract period, the Vendor will be required to report actual payments to DBE and MBE

subcontractors through the web-based EOC system. All DBE payments must be reported whether or not you initially planned to utilize the company. In order for our race neutral DBE Program to be successful, your cooperation is imperative. If you have any questions, please contact [EOOHelp@dot.state.fl.us](mailto:EOOHelp@dot.state.fl.us).

Additional information about the EOC system can be found on the Equal Opportunity Office (EOO) website at <http://www.dot.state.fl.us/equalopportunityoffice/eoc.shtm>. A help manual on how to use the system will be available within the EOC application. If you have any questions or technical issues, please contact the EOO help desk at [EOOHelp@dot.state.fl.us](mailto:EOOHelp@dot.state.fl.us).

To request certification or to locate DBEs, call the Department of Transportation's Equal Opportunity Office at (850) 414-4747, or access an application or listing of DBEs on the Internet at [www.dot.state.fl.us/equalopportunityoffice/](http://www.dot.state.fl.us/equalopportunityoffice/).

## **11) CONTRACT DOCUMENT**

### **STANDARD WRITTEN AGREEMENT**

The Department's "Standard Written Agreement" is attached hereto and made a part hereof. The terms and conditions contained therein will become an integral part of the contract resulting from this solicitation. In submitting a reply, the vendor agrees to be legally bound by these terms and conditions.

## **12) REVIEW OF VENDOR'S FACILITIES & QUALIFICATIONS**

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

Should the Department determine that the reply / proposed negotiations have material misrepresentations or that the size or nature of the Vendor's facilities or the number of experienced personnel (including technical staff) are not adequate to ensure satisfactory contract performance, the Department has the right to reject the reply / proposal.

## **13) PROTEST OF INVITATION TO NEGOTIATE SPECIFICATIONS**

Any person who is adversely affected by the contents of this Invitation to negotiate must file the following with the Department of Transportation, Clerk of Agency Proceedings, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0450:

1. A written notice of protest within seventy-two (72) hours after the posting of the solicitation, (the notice of protest may be Faxed to 850-414-5264), and
2. A formal written protest in compliance with Section 120.57(3), Florida Statutes, within ten (10) days of the date on which the written notice of protest is filed.

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.

## **14) UNAUTHORIZED ALIENS**

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

## 15) **SCRUTINIZED COMPANIES LISTS**

Section 287.135, Florida Statutes, requires that at the time a company submits a bid or proposal for a contract for goods or services of \$1 million or more, the company must certify that the company is not on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Both lists are created pursuant to section 215.473, Florida Statutes.

Bid responses of \$1 million or more must include the attached **Scrutinized Companies Lists Form** to certify the respondent is not on either of those lists.

## 16) **RESPONSIVENESS OF REPLIES**

### 16.1 **Responsiveness of Replies**

Replies will not be considered if not received by the Department on or before the date and time specified as the due date for submission.

### 16.2 **Other Conditions**

Other conditions which may cause rejection of replies include, but are not limited to, evidence of collusion among Vendors, obvious lack of experience or expertise to perform the required work, failure to perform or meet financial obligations on previous contracts, or in the event an individual, firm, partnership, or corporation is on the General Services Administration Excluded Parties List.

## 17) **COPYRIGHTED MATERIAL**

Copyrighted material will be accepted as part of the reply or a negotiation session only if accompanied by a waiver that will allow the Department to make paper and electronic copies necessary for the use of Department staff and agents. It is noted that copyrighted material is not exempt from the Public Records Law, Chapter 119, Florida Statutes. Therefore, such material will be subject to viewing by the public, but copies of the material will not be provided to the public.

## 18) **ATTACHMENT TO ITN SUBMITTALS - CONFIDENTIAL MATERIAL**

The Vendor must include any materials it asserts to be exempted from public disclosure under Chapter 119, Florida Statutes, in a separate bound document labeled "Attachment to Invitation to Negotiate, Number ITN-DOT-14/15-2354-DS - Confidential Material". The Vendor must identify the specific Statute that authorizes exemption from the Public Records Law. Any claim of confidentiality on materials the Vendor asserts to be exempt from public disclosure and placed elsewhere in the reply will be considered waived by the Vendor upon submission, effective after opening.

## 19) **COSTS INCURRED IN RESPONDING**

This Invitation to Negotiate does not commit the Department or any other public agency to pay any costs incurred by an individual firm, partnership, or corporation in the submission of a reply or subsequent negotiations or to make necessary studies or designs for the preparation thereof, nor to procure or contract for any articles or services.

**20) MAIL OR DELIVER REPLIES TO: (DO NOT FAX)**

**Florida Department of Transportation  
District Two Procurement Office  
Darlene Sawyer – MS2015  
1109 South Marion Avenue  
Lake City, Florida 32025-5874  
Phone # (386) 961-7732**

Submit one original and **three (3)** copies of your reply. Replies must be submitted in a sealed envelope/package that should be labeled with the ITN number and the opening date and time. It is the vendor's responsibility to assure that the reply is delivered to the proper place on or before the Reply Due date and time (See Introduction Section 2 Timeline). Replies which for any reason are not so delivered will not be considered.

**21) MODIFICATIONS, RESUBMITTAL AND WITHDRAWAL**

Vendors may modify submitted replies at any time prior to the reply due date. Requests for modification of a submitted reply shall be in writing and must be signed by an authorized signatory of the vendor. Upon receipt and acceptance of such a request, the entire reply will be returned to the vendor and not considered unless resubmitted by the due date and time. Vendors may also send a change in a sealed envelope to be opened at the same time as the reply. The ITN number, due date and time should appear on the envelope of the modified reply.

**22) OPENING OF SEALED REPLIES**

All reply openings are open to the public. Replies will be opened by the Department at the date, time and location in the Timeline (See Introduction Section 2 Timeline). The public may attend the opening but may not review any replies submitted until they become public records in accordance with Section 119.07, Florida Statutes.

**23) QUALIFICATIONS QUESTIONNAIRE/SHORT-LIST CRITERIA**

The initial replies will be evaluated qualitatively for each of the criteria addressed in the "Qualifications Questionnaire". The review/evaluation of the responses to this questionnaire will not be included in decisions beyond determining the initial short-list of vendors to proceed in the ITN process.

**24) ORAL PRESENTATIONS**

The vendors selected for the short-list will each be scheduled to meet with the Technical Review Team to provide an oral questions and answers of their firm's capabilities and approach to the Scope of Services beginning on the date in the Timeline (See Introduction Section 2 Timeline). Short-listed vendors will be notified of a time and date for oral technical presentation. Oral questions and answers sessions are not open to the public.

These oral question and answers will be used to present the vendor's approach and improve understanding about the Department's needs and expectations with questions and answers at the end of the vendor's oral question and answer. The Technical Review Team will participate in all presentations. After each oral question and answer, each individual on the Technical Review Team will complete a written summary evaluation of each vendor's technical approach, capabilities, and prior relevant experience.

## **25) PROPOSED NEGOTIATION PROCESS**

The Department intends to negotiate concurrently with competing vendors, as set out below. The participating vendors should be cognizant of the fact that the Department, upon completion of each step, reserves the right to finalize the negotiation process at any time in the proposed process that the Department determines such selection would be in the best interest of the State. Replies should be prepared to provide a straightforward, concise description of the vendor's ability to meet the requirements and to allow the Department to properly evaluate the vendor's reply.

Step 1) Interested vendors must submit the following to the "Procurement Agent" identified on the cover page by the date, time and location in the Timeline:

- Qualifications Questionnaire - with additional sheets as needed to address and respond to all questions completely (see Special Condition 9)
- Preliminary Price Proposal or Pricing Scheme

Step 1 - The vendors selected for the short-list will each be scheduled to meet with the Technical Review Team Questions and Answers of their firm's capabilities and approach to the Scope of Services. These oral Questions and Answers will be used to present the vendor's approach and improve understanding about the Department's needs and expectations. The Technical Review Team will participate in all Questions and Answers. After each oral Questions and Answers, each individual on the Technical Review Team will complete a written summary evaluation of each vendor's technical approach, capabilities, and prior relevant experience.

Step 2 - Each individual on the Technical Review Team will complete a written summary evaluation of each vendor's technical approach, capabilities, prior relevant experience, and price proposal.

Step 3 – There will be a public meeting of the Technical Review Team at the date, time and location in the Timeline to review the individual summary evaluations to either rank the vendors in order of preference and make a final selection, or make a determination to repeat Steps 1 through 3, if necessary. Recorded documentation of subsequent rounds will be retained in the procurement file.

Step 4 - The Technical Review Team will write a short plain statement for the procurement file that explains the basis for vendor selection and how the vendor's deliverables and price will provide the best value to the state.

Step 5 - The intended award will be posted in accordance with law (see Special Condition 26).

Step 6 - The Department will contract with the selected vendors.

## **26) POSTING OF SHORTLIST, RANKING AND / OR INTENDED AWARD**

26.1 The Shortlist, Ranking and / or Intended Award, as applicable, will be made to the responsive and responsible vendor(s) which are determined to be capable of providing the best value and best meet the needs of the Department. The Shortlist, Ranking, or Intended Award decision will be announced at the date, time and location in the Timeline.

26.2 The Department's decision will be posted on the Florida Vendor Bid System, at [www.myflorida.com](http://www.myflorida.com), (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", on date and time in the Timeline, and will remain posted for a period of seventy-two (72) hours. Any vendor who is adversely affected by the Department's recommended award or intended decision must file the following with the Department of Transportation, Clerk of Agency Proceedings, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0450:

1. A written notice of protest within seventy-two (72) hours after posting of the Intended Award, (the notice of protest may be Faxed to 850-414-5264), and
2. A formal written protest and protest bond in compliance with Section 120.57(3), Florida Statutes, within ten (10) days of the date on which the written notice of protest is filed. At the time of filing the formal written protest, a bond (a cashier's check or money order may be accepted) payable to the Department must also be submitted in an amount equal to one percent (1%) of the estimated contract amount based on the contract price submitted by the protestor.

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.

3. If the Department is unable to post as defined above, the Department will notify all vendors by electronic notification on the Florida Vendor Bid System (see special condition 26.2, above) or by mail, fax, and/or telephone. The Department will provide notification of any future posting in a timely manner.

## **27) AWARD OF THE CONTRACT**

Services will be authorized to begin when the Vendor receives the following document(s), as appropriate, indicating the encumbrance of funds and award of the contract:

- a) A Purchase Order issued by the Department, or a Standard Written Agreement executed by both parties, and a written Notice to Proceed, issued by the Project Manager.

## **28) RENEWAL**

Upon mutual agreement, the Department and the Contract Vendor may renew the Contract for a period that may not exceed 3 years or the term of the original contract, whichever is longer. The renewal must be in writing and signed by both parties, and is subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties. Any renewal shall specify the renewal price, as set forth in the solicitation response except that an agency may negotiate lower pricing. Renewal is contingent upon satisfactory performance evaluations and subject to the availability of funds.

## **29) ATTACHED FORMS**

Drug-Free Workplace Program Certification  
 DBE Participation Statement  
 Bid Opportunity List  
 Scrutinized Companies Lists (contracts of \$1 million or more)

## **30) ATTACHED TERMS AND CONDITIONS**

Exhibit "A" Scope of Services  
 Exhibit "B" Method of Compensation  
 Qualifications Questionnaire  
 Standard Written Agreement (Sample)  
 Appendix I (Terms for Federal Aid Contracts) and/or Appendix II (Information Technology Resources)  
 General Conditions (PUR 1000)  
 Instructions to Respondents (PUR 1001)



**31) TERMS AND CONDITIONS**

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

- Special Conditions
- Purchase Order Terms and Conditions
- Purchase Order Conditions and Instructions

**32) ATTACHED FORMS PUR 1000, GENERAL CONTRACT CONDITIONS AND PUR 1001, GENERAL INSTRUCTIONS TO RESPONDENTS**

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

- Paragraph 31, Dispute Resolution - PUR 1000
- Paragraph 3, Electronic Submission – PUR 1001
- Paragraph 4, Terms and Conditions – PUR1001
- Paragraph 5, Questions – PUR 1001

**33) LIABILITY INSURANCE**

The Vendor shall not commence any work until they have obtained the following types of insurance, and a certificate of such insurance has been received by the Department. Nor shall the Vendor allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been so obtained. The Vendor shall submit the required Certificates of Insurance to the **Florida Department of Transportation, Procurement Office, MS 2015, Darlene Sawyer, 1109 South Marion Avenue, Lake City, Florida 32025-5874** within ten (10) days after the ending date of the period for posting the intended award decision.

- ( ) No general liability insurance is required.
- ( X ) The Vendor must carry and keep in force during the period of this contract a general liability insurance policy or policies with a company authorized to do business in the state of Florida, affording public liability insurance with combined bodily injury limits of at least \$ **200,000 minimum** per person and \$ **300,000 minimum** each occurrence, and property damage insurance of at least \$ **200,000 minimum** each occurrence, for the services to be rendered in accordance with this contract.
- ( ) The Vendor must have and maintain during the period of this contract, a professional liability insurance policy or policies or an irrevocable letter of credit established pursuant to Chapter 675, Florida Statutes, and Section 337.106, Florida Statutes, with a company authorized to do business in the state of Florida, affording professional liability coverage for the professional services to be rendered in accordance with this contract in the amount of at least \$ \_\_\_\_\_. The Vendor shall maintain professional liability coverage for a minimum of three years after completion of the services rendered under this contract.

With respect to any general liability insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Vendor shall provide to the Department certificates showing the required coverage to be in effect with endorsements showing the Department to be an additional insured prior to commencing any work under this Contract. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the Department or as provided in accordance with Florida law.

The Department shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Vendor or subcontractor providing such insurance. Policies that include Self Insured Retention (SIR) will not be accepted.

**34) PERFORMANCE BOND**

(X) A Performance Bond is not required for this project.

**35) METHOD OF COMPENSATION**

Exhibit "B" Method of Compensation

**36) LIQUIDATED DAMAGES**

The Vendor acknowledges that failure to complete the services by the completion date designated on the contract document may cause the Department to incur damages that, at present are, and upon the occurrence of the failure to timely complete the services may be, difficult to determine. Moreover, the Parties wish to avoid lengthy and expensive litigation relating to failure to complete the services on time. Therefore, in the event the Vendor fails to complete the authorized services by the completion date designated on the contract document, the Department may exercise the remedy of liquidated damages against the Vendor shall be assessed at the rate of 1% of the total parcel fee per calendar day for the first 7 calendar days and 2% per calendar day thereafter. The Parties agree that if the Department allows the Vendor to continue and finish the services, or any part of it, after the expiration of the time allowed, that the Department's action shall in no way act as a waiver on the part of the Department of the liquidated damages due under this contract. The Vendor shall pay said sum to the Department not as a penalty, but as liquidated damages.

**37) ALTERNATES**

ALTERNATE BRANDS WILL NOT BE CONSIDERED FOR THIS ITN. PROPOSE AS SPECIFIED.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**STANDARD WRITTEN AGREEMENT**

375-040-19  
PROCUREMENT  
OGC - 08/14  
Page 1 of 9

Agreement No.: \_\_\_\_\_

Financial Project I.D.: \_\_\_\_\_

F.E.I.D. No: \_\_\_\_\_

Appropriation Bill Number(s)/Line Item Number(s) for 1st year of contract, pursuant to s. 216.313, F.S.: \_\_\_\_\_

*(required for contracts in excess of \$5 million)*

Procurement No.: \_\_\_\_\_

D.M.S. Catalog Class No.: \_\_\_\_\_

BY THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the "Department" and

of \_\_\_\_\_  
duly authorized to conduct business in the State of Florida, hereinafter called "Vendor," hereby agree as follows:

1. SERVICES AND PERFORMANCE

A. In connection with \_\_\_\_\_,

the Department does hereby retain the Vendor to furnish certain services, information, and items as described in Exhibit "A," attached hereto and made a part hereof.

B. Before making any additions or deletions to the work described in this Agreement, and before undertaking any changes or revisions to such work, the parties shall negotiate any necessary cost changes and shall enter into an Amendment covering such work and compensation. Reference herein to this Agreement shall include any amendment(s).

C. All tracings, plans, specifications, maps, computer files, and reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, shall be the exclusive property of the Department without restriction or limitation on their use and shall be made available, upon request, to the Department at any time during the performance of such services and/or upon completion or termination of this Agreement. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Vendor shall not copyright any material and products or patent any invention developed under this Agreement. The Department shall have the right to visit the site for inspection of the work and the products of the Vendor at any time.

D. All final plans, documents, reports, studies, and other data prepared by the Vendor shall bear the professional's seal/signature, in accordance with the applicable Florida Statutes, Administrative Rules promulgated by the Department of Business and Professional Regulation, and guidelines published by the Department, in effect at the time of execution of this Agreement. In the event that changes in the statutes or rules create a conflict with the requirements of published guidelines, requirements of the statutes and rules shall take precedence.

E. The Vendor agrees to provide project schedule progress reports in a format acceptable to the Department and at intervals established by the Department. The Department shall be entitled at all times to be advised, at its request, as to the status of work being done by the Vendor and of the details thereof. Coordination shall be maintained by the Vendor with representatives of the Department, or of other agencies interested in the project on behalf of the Department. Either party to this Agreement may request and be granted a conference.

F. All services shall be performed by the Vendor to the satisfaction of the Director who shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount of value thereof; and the decision upon all claims, questions, and disputes shall be final and binding upon the parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses shall be subject to mutual agreement of the parties, and amendment(s) shall be entered into by the parties in accordance herewith.

Reference herein to the Director shall mean the

## 2. TERM

- A. Initial Term. This Agreement shall begin on date of execution and shall remain in full force and effect through completion of all services required or \_\_\_\_\_, whichever occurs first. Subsequent to the execution of this Agreement by both parties, the services to be rendered by the Vendor shall commence and be completed in accordance with the option selected below. (Select box and indicate date(s) as appropriate):

- Services shall commence \_\_\_\_\_ and shall be completed by \_\_\_\_\_ or date of termination, whichever occurs first.
- Services shall commence upon written notice from the Department's Contract Manager and shall be completed by \_\_\_\_\_ or date of termination, whichever occurs first.
- Other: See Exhibit "A"

- B. RENEWALS (Select appropriate box):

- This Agreement may not be renewed.
- This Agreement may be renewed for a period that may not exceed three (3) years or the term of the original contract, whichever is longer. Renewals are contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds. Costs for renewal may not be charged. Any renewal or extension must be in writing and is subject to the same terms and conditions set forth in this Agreement and any written amendments signed by the parties.

- C. EXTENSIONS. In the event that circumstances arise which make performance by the Vendor impracticable or impossible within the time allowed or which prevent a new contract from being executed, the Department, in its discretion, may grant an extension of this Agreement. Extension of this Agreement must be in writing for a period not to exceed six (6) months and is subject to the same terms and conditions set forth in this Agreement and any written amendments signed by the parties; provided the Department may, in its discretion, grant a proportional increase in the total dollar amount based on the method and rate established herein. There may be only one extension of this Agreement unless the failure to meet the criteria set forth in this Agreement for completion of this Agreement is due to events beyond the control of the Vendor.

It shall be the responsibility of the Vendor to ensure at all times that sufficient time remains in the Project Schedule within which to complete services on the project. In the event there have been delays which would affect the project completion date, the Vendor shall submit a written request to the Department which identifies the reason(s) for the delay and the amount of time related to each reason. The Department shall review the request and make a determination as to granting all or part of the requested extension.

## 3. COMPENSATION AND PAYMENT

- A. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes. Deliverable(s) must be received and accepted in writing by the Contract Manager on the Department's invoice transmittal forms prior to payment. If the Department determines that the performance of the Vendor is unsatisfactory, the Department shall notify the Vendor of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Vendor shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Vendor will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Vendor shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the vendor resolves the deficiency. If the deficiency is subsequently resolved, the Vendor may bill the Department for the retained amount during the next billing period. If the Vendor is unable to resolve the deficiency, the funds retained may be forfeited at the end of the agreement period.

- B. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.
- C. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
- D. The bills for any travel expenses, when authorized by terms of this Agreement and by the Department's Project Manager, shall be submitted in accordance with Section 112.061, Florida Statutes, and the Department's Disbursement Handbook - For Employees and Managers.
- E. Vendors providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services, unless otherwise specified herein. The Department has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
- F. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the Vendor. Interest penalties of less than one (1) dollar shall not be enforced unless the Vendor requests payment. Invoices which have to be returned to a Vendor because of Vendor preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
- G. The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(22), Florida Statutes, all payments shall be assessed a transaction fee of one percent (1%), which the Vendor shall pay to the State. For payments within the State accounting system (FLAIR or its successor), the transaction fee shall, when possible, be automatically deducted from payments to the Vendor. If automatic deduction is not possible, the Vendor shall pay the transaction fee pursuant to Rule 60A-1.031 (2), Florida Administrative Code. By submission of these reports and corresponding payments, Vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee. The Vendor shall receive a credit for any transaction fee paid by the Vendor for the purchase of any item(s) if such item(s) are returned to the Vendor through no fault, act, or omission of the Vendor. Notwithstanding the foregoing, a transaction fee is non-refundable when an item is rejected or returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the Agreement. Failure to comply with these requirements shall constitute grounds for declaring the Vendor in default and recovering reprourement costs from the Vendor in addition to all outstanding fees. **VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.**
- H. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
- I. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the Vendor's general accounting records and the project records, together with supporting documents and records of the Vendor and all subcontractors performing work on the project, and all other records of the Vendor and subcontractors considered necessary by the Department for a proper audit of project costs.
- J. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

4. INDEMNITY AND PAYMENT FOR CLAIMS

- A. **INDEMNITY:** To the extent permitted by Florida Law, the Vendor shall indemnify and hold harmless the Department, its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Vendor and persons employed or utilized by the Vendor in the performance of this Agreement.

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

**PAYMENT FOR CLAIMS:** The Vendor guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Vendor or any subcontractor, in connection with the Agreement. The Department's final acceptance and payment does not release the Vendor's bond until all such claims are paid or released.

- B. **LIABILITY INSURANCE.** (Select and complete as appropriate).

No general liability insurance is required.

The Vendor shall carry and keep in force during the term of this Agreement, a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with a combined bodily injury limits of at least \$ \_\_\_\_\_ per person and \$ \_\_\_\_\_ each occurrence, and property damage insurance of at least \$ \_\_\_\_\_ each occurrence, for the services to be rendered in accordance with this Agreement.

The Vendor shall have and maintain during the term of this Agreement, a professional liability insurance policy or policies or an irrevocable letter of credit established pursuant to Chapter 675 and Section 337.106, Florida Statutes, with a company or companies authorized to do business in the State of Florida, affording liability coverage for the professional services to be rendered in accordance with this Agreement in the amount of \$ \_\_\_\_\_.

- C. **WORKERS' COMPENSATION.** The Vendor shall also carry and keep in force Workers' Compensation insurance as required for the State of Florida under the Workers' Compensation Law.

- D. **PERFORMANCE AND PAYMENT BOND.** (Select as appropriate):

No Bond is required.

Prior to commencement of any services pursuant to this Agreement and at all times during the term hereof, including renewals and extensions, the Vendor will supply to the Department and keep in force a bond provided by a surety authorized to do business in the State of Florida, payable to the Department and conditioned for the prompt, faithful, and efficient performance of this Agreement according to the terms and conditions hereof and within the time periods specified herein, and for the prompt payment of all persons furnishing labor, materials, equipment, and supplies therefor.

- E. **CERTIFICATION.** With respect to any general liability insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Vendor shall provide to the Department certificates showing the required coverage to be in effect with endorsements showing the Department to be an additional insured prior to commencing any work under this Contract. Policies that include Self Insured Retention (SIR) will not be accepted. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the Department or as provided in accordance with Florida law.



## 5. COMPLIANCE WITH LAWS

- A. The Vendor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Vendor in conjunction with this Agreement. Specifically, if the Vendor is acting on behalf of a public agency the Vendor shall:
- (1) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the Vendor.
  - (2) Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
  - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
  - (4) Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Vendor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.
- Failure by the Vendor to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department. The Vendor shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of the Vendor and shall promptly provide the Department a copy of the Vendor's response to each such request.
- B. The Vendor agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise discuss or permit to be disclosed or discussed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Department's Contract Manager and securing prior written consent. The Vendor also agrees that it shall not publish, copyright, or patent any of the data developed under this Agreement, it being understood that such data or information are works made for hire and the property of the Department.
- C. The Vendor shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
- D. If the Vendor is licensed by the Department of Business and Professional Regulation to perform the services herein contracted, then Section 337.162, Florida Statutes, applies as follows:
- (1) If the Department has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. The complaint shall be confidential.
  - (2) Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of the person's employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to Chapter 455, Florida Statutes, and the state licensing law applicable to that licensee. The complaint shall be confidential.
  - (3) Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt from Section 119.07(1), Florida Statutes, pursuant to Chapter 455, Florida Statutes, and applicable state law.
- E. The Vendor covenants and agrees that it and its employees and agents shall be bound by the standards of conduct provided in applicable law and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Vendor further covenants and agrees that when a former state employee is employed by the Vendor, the Vendor shall require that strict adherence by the former state employee to Sections 112.313 and 112.3185, Florida Statutes, is a condition of employment for said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. The Vendor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.

- F. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted vendor list.
- G. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity.
- H. The Department shall consider the employment by any vendor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this agreement.
- I. Pursuant to Section 216.347, Florida Statutes, the vendor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.

## 6. TERMINATION AND DEFAULT

- A. This Agreement may be canceled by the Department in whole or in part at any time the interest of the Department requires such termination. The Department reserves the right to terminate or cancel this Agreement in the event an assignment be made for the benefit of creditors.
- B. If the Department determines that the performance of the Vendor is not satisfactory, the Department shall have the option of (a) immediately terminating the Agreement, or (b) notifying the Vendor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by the Department.
- C. If the Department requires termination of the Agreement for reasons other than unsatisfactory performance of the Vendor, the Department shall notify the Vendor of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- D. If the Agreement is terminated before performance is completed, the Vendor shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the Department and shall be turned over promptly by the Vendor.
- E. For Agreements \$1,000,000 and greater, if the Department determines the Vendor submitted a false certification under Section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in the Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Department shall either terminate the Agreement after it has given the Vendor notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or maintain the Agreement if the conditions of Section 287.135 (4), Florida Statutes, are met.

## 7. ASSIGNMENT AND SUBCONTRACTS

- A. The Vendor shall maintain an adequate and competent staff so as to enable the Vendor to timely perform under this Agreement and may associate with it such subcontractors, for the purpose of its services hereunder, without additional cost to the Department, other than those costs within the limits and terms of this Agreement. The Vendor is fully responsible for satisfactory completion of all subcontracted work. The Vendor, however, shall not sublet, assign, or transfer any work under this Agreement to other than subcontractors specified in the proposal, bid, and/or Agreement without the written consent of the Department.



B. Select the appropriate box:

- The following provision is not applicable to this Agreement:
- The following provision is hereby incorporated in and made a part of this Agreement:

It is expressly understood and agreed that any articles that are the subject of, or required to carry out this Agreement 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 Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for the state agency (Department) insofar as dealings with such qualified nonprofit agency are concerned. RESPECT of Florida provides governmental agencies within the State of Florida with quality products and services produced by persons with disabilities. Available pricing, products, and delivery schedules may be obtained by contacting:

RESPECT  
2475 Apalachee Pkwy  
Tallahassee, Florida 32301-4946  
Phone: (850)487-1471

- The following provision is hereby incorporated in and made a part of this Agreement:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out this Agreement shall be purchased from the corporation identified under Chapter 946, Florida Statutes, in the same manner and under the procedures set forth in Sections 946.515(2) and (4), Florida Statutes; and for purposes of this Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for this agency (Department) insofar as dealings with such corporation are concerned. The "corporation identified" is Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). Available pricing, products, and delivery schedules may be obtained by contacting:

PRIDE Enterprises  
12425 - 28th Street, North  
St. Petersburg, FL 33716-1826  
(800)643-8459

- This Agreement involves the expenditure of federal funds and Section 946.515, Florida Statutes, as noted above, does not apply. However, Appendix I is applicable to all parties and is hereof made a part of this Agreement.

8. MISCELLANEOUS

- A. The Vendor and its employees, agents, representatives, or subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. Except to the extent expressly authorized herein, Vendor and its employees, agents, representatives, or subcontractors are not agents of the Department or the State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Department or the State. The Department shall not be bound by any unauthorized acts or conduct of the Vendor or its employees, agents, representatives, or subcontractors. Vendor agrees to include this provision in all its subcontracts under this Agreement.
- B. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- C. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. The State of Florida terms and conditions, whether general or specific, shall take precedence over and supersede any inconsistent or conflicting provision in any attached terms and conditions of the Vendor.

- D. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- E. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- F. In any legal action related to this Agreement, instituted by either party, the Vendor hereby waives any and all privileges and rights it may have under Chapter 47 and Section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in the county chosen by the Department and in the event that any such legal action is filed by the Vendor, the Vendor hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.
- G. If this Agreement involves the purchase or maintenance of information technology as defined in Section 282.0041, Florida Statutes, the selected provisions of the attached Appendix II are made a part of this Agreement.
- H. If this Agreement is the result of a formal solicitation (Invitation to Bid, Request for Proposal or Invitation to Negotiate), the Department of Management Services Forms PUR1000 and PUR1001, included in the solicitation, are incorporated herein by reference and made a part of this Agreement.
- I. Vendor/Contractor:
1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
  2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- J. Time is of the essence as to each and every obligation under this Agreement.
- K. The following attachments are incorporated and made a part of this agreement:
- L. Other Provisions:

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

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Name of Vendor

BY: \_\_\_\_\_  
Authorized Signature

BY: \_\_\_\_\_  
Authorized Signature

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

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

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

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

FOR DEPARTMENT USE ONLY

APPROVED: \_\_\_\_\_  
Procurement Office

LEGAL REVIEW: \_\_\_\_\_

SAMPLE

## TERMS FOR FEDERAL AID CONTRACTS (APPENDIX I): CONTRACT (Purchase Order) # \_\_\_\_\_

The following terms apply to all contracts in which it is indicated in Section 7.B of the Standard Written Agreement, the Master Agreement Terms and Conditions, the Contractual Services Agreement, or the Purchase Order Terms and Conditions, that the contract involves the expenditure of federal funds:

- A. It is understood and agreed that all rights of the Department relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this Agreement shall also be reserved and held by authorized representatives of the United States of America.
- B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of U.S.D.O.T., anything to the contrary in this Agreement notwithstanding.
- C. Compliance with Regulations: The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- D. Nondiscrimination: The Contractor, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- E. Solicitations for Subcontractors, including Procurements of Materials and Equipment: In all solicitations made by the Contractor, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment; each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- F. Information and Reports: The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation*, the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the *Florida Department of Transportation*, the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.
- G. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the *Florida Department of Transportation* shall impose such contract sanctions as it or the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* may determine to be appropriate, including, but not limited to:
  - 1. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
  - 2. cancellation, termination or suspension of the contract, in whole or in part.
- H. Incorporation of Provisions: The Contractor shall include the provisions of paragraphs C. through H. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the *Florida Department of Transportation*, the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event a

Contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the Contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation*, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

- I. Interest of Members of Congress: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising there from.
- J. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.
- K. Participation by Disadvantaged Business Enterprises: The Consultant shall agree to abide by the following statement from 49 CFR 26.13(b). This statement shall be included in all subsequent agreements between the Consultant and any sub-consultant or contractor.

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

- L. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this Agreement is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this Agreement.
- M. It is understood and agreed that if the Consultant at any time learns that the certification it provided the Department in compliance with 49 CFR, Section 26.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the Consultant shall provide immediate written notice to the Department. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the Consultant in all lower tier covered transactions and in all aforementioned federal regulation.
- N. The Department hereby certifies that neither the consultant nor the consultant's representative has been required by the Department, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to
  1. employ or retain, or agree to employ or retain, any firm or person, or
  2. pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

The Department further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

- O. The Consultant hereby certifies that it has not:
  1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above contractor) to solicit or secure this contract;
  2. agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or
  3. paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

The consultant further acknowledges that this agreement will be furnished to the State of Florida Department of Transportation and a federal agency in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

**P U R C H A S E O R D E R**  
**CONDITIONS AND INSTRUCTIONS**  
**Revised Effective July 1, 2010**

1. This purchase order was issued via MyFloridaMarketPlace and is thereby subject to a Transaction Fee of 1%, unless exempted by rule. Each line item, or portion thereof, is subject to the 1 % Transaction Fee unless a specific exemption code accompanies the line item or portion thereof. For reference, a table and description all exemption codes follows these terms and conditions.
2. Pursuant to section 287.058(1), F.S., the provisions of section 287.058(1)(a)-(i), F.S. are hereby incorporated by reference, to the extent applicable. Pursuant to section 287.0582, F.S., if this purchase order binds the State or an executive agency for the purchase of services or tangible personal property for a period in excess of one (1) fiscal year, the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature. Travel expenses are not reimbursable unless specifically authorized in writing, and shall be reimbursed only in accordance with section 112.061, F.S.
3. This purchase order may be unilaterally cancelled by the customer for vendor's refusal to allow public access to all documents, papers, letters or other material, whether made or received in conjunction with this agreement which are subject to the public records act, Chapter 119, F.S.
4. Items may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at vendor's expense. Any increase in cost may be charged against the vendor.
5. Items received in excess of quantities specified may, at purchaser's option, be returned at the vendor's expense. Substitutions are not permitted. Section 215.422, F.S., provides that agencies have 5 working days to inspect and approve goods and services, unless bid specifications or the purchase order specifies otherwise.
6. In accordance with Section 287.133(2)(a) and 287.134(2)(a), F.S., an entity or affiliate who has been on the convicted vendor list or the discriminatory vendor list, respectively, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not award or perform work as a contractor, supplier, sub-contractor, or consultant under contract with any public entity; and may not transact business with any public entity.
7. The vendor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, the vendor shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for termination or cancellation of this purchase order.
8. Pursuant to section 216.347, F.S., the vendor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency. In addition, 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, advance, deposits of money, services, employment, or contracts of any kind. Upon request of the Inspector General or any other authorized State official, the vendor shall provide any type of information the Inspector General deems relevant to the vendor's integrity or responsibility. Such information may include, but shall not be limited to, the vendor's business or financial records, documents, or files of any type or form that refer to or relate to the purchase order. The vendor shall retain such records for the longer of (1) three years after the expiration of the purchase

order or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dhis.dos.state.fl.us/barm/genschedules/gensched.htm>). The vendor 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 vendor's compliance with the terms of this or any other agreement between the vendor and the State which results in the suspension or debarment of the vendor. 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 vendor shall not be responsible for any costs of investigations that do not result in the vendor's suspension or debarment.

9. The purchaser assumes no liability for merchandise shipped to other than the specified destination.
10. The terms of this purchase order may not be modified. Any attempt to modify a purchase order for goods or services shall not be accepted as the basis for additional compensation.
11. Interest penalties for late payment are available subject to the provisions of section 215.422, F.S. 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 State Comptroller's Hotline, 1-800-848-3792.
12. The following provisions shall apply to all purchase orders UNLESS OTHERWISE INDICATED IN A SEPARATE APPLICABLE DOCUMENT agreed to by the purchaser and the vendor:
  - A. All purchases are F.O.B. Destination, transportation charges prepaid.
  - B. Each shipment must be shipped to the address indicated on the face of this purchase order and marked to the attention of the individual identified, if any. Each shipment must be labeled plainly with the purchase order number and must show the gross, tare, and net weight. A complete packing list must accompany each shipment. This paragraph shall also apply to any third party who ships items against this purchase order on behalf of the vendor.
  - C. No extra charges shall be applied for boxing, crating, packing, or insurance.
  - D. The following delivery schedule shall apply: 8:00 AM – 4:00 PM, Monday through Friday, excluding legal holidays.
  - E. If delivery to the specified destination cannot be made on or before the specified date, notify the purchaser immediately using the contact information provided in the MyFloridaMarketPlace system.
13. By accepting this electronic purchase order, the vendor agrees to be bound by these conditions and instructions.
14. Unless specifically addressed in the Purchase Order or attachment thereto, intellectual property rights to preexisting property will remain with the vendor. Unless specifically addressed in the Purchase Order or attachment thereto, intellectual property rights to all property created or otherwise developed by vendor for the purchasing agency will be owned by the State of Florida through the agency at the end of the purchase order. Proceeds to any state agency derived from its 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.

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

**Contents**

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

**6. Packaging.** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

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

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

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

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

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

**12. Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon

completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

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

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

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

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

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

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

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

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

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

**17. Governmental Restrictions.** If the Contractor believes that any governmental restrictions have been imposed that

require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

**18. Lobbying and Integrity.** Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dls.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

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

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

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

**20. Limitation of Liability.** For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the

Indemnity paragraph contain in this agreement.

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

**21. Suspension of Work.** The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.

**22. Termination for Convenience.** The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

**23. Termination for Cause.** The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

**24. Force Majeure, Notice of Delay, and No Damages for Delay.** The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or

inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

**25. Changes.** The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.

**26. Renewal.** Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

**27. Purchase Order Duration.** Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.

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

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

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

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

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

**28. Advertising.** Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to

mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

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

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

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

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

**32. Employees, Subcontractors, and Agents.** All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

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

**34. Contractor Employees, Subcontractors, and Other Agents.** The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other

agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

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

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

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

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

**39. Leases and Installment Purchases.** Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

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

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

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



documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

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

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

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

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

**46. Execution in Counterparts.** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

**State of Florida**  
**PUR 1001**  
**General Instructions to Respondents**

**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 requirements, or other required acknowledgments hereby include electronic signature by means of clicking the "Submit Response" button (or other similar symbol or process) attached to or logically associated with the response created by the respondent within MyFloridaMarketPlace. The respondent agrees that the action of electronically submitting its response constitutes:

- an electronic signature on the response, generally,
- an electronic signature on any form or section specifically calling for a signature, and
- an affirmative agreement to any statement contained in the solicitation that requires a definite confirmation or acknowledgement.

**4. Terms and Conditions.** All responses are subject to the terms of the following sections of this solicitation, which, in case of conflict, shall have the order of precedence listed:

- Technical Specifications,
- Special Conditions and Instructions,
- Instructions to Respondents (PUR 1001),

- General Conditions (PUR 1000), and
- Introductory Materials.

The Buyer objects to and shall not consider any additional terms or conditions submitted by a respondent, including any appearing in documents attached as part of a respondent's response. In submitting its response, a respondent agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a response, shall be grounds for rejecting a response.

**5. Questions.** Respondents shall address all questions regarding this solicitation to the Procurement Officer. Questions must be submitted via the Q&A Board within MyFloridaMarketPlace and must be RECEIVED NO LATER THAN the time and date reflected on the Timeline. Questions shall be answered in accordance with the Timeline. All questions submitted shall be published and answered in a manner that all respondents will be able to view. Respondents shall not contact any other employee of the Buyer or the State for information with respect to this solicitation. Each respondent is responsible for monitoring the MyFloridaMarketPlace site for new or changing information. The Buyer shall not be bound by any verbal information or by any written information that is not contained within the solicitation documents or formally noticed and issued by the Buyer's contracting personnel. Questions to the Procurement Officer or to any Buyer personnel shall not constitute formal protest of the specifications or of the solicitation, a process addressed in paragraph 19 of these Instructions.

**6. Conflict of Interest.** This solicitation is subject to chapter 112 of the Florida Statutes. Respondents shall disclose with their response the name of any officer, director, employee or other agent who is also an employee of the State. Respondents shall also disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the respondent or its affiliates.

**7. Convicted Vendors.** A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list:

- submitting a bid on a contract to provide any goods or services to a public entity;
- submitting a bid on a contract with a public entity for the construction or repair of a public building or public work;
- submitting bids on leases of real property to a public entity;
- being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and
- transacting business with any public entity in excess of the Category Two threshold amount (\$25,000) provided in section 287.017 of the Florida Statutes.

**8. Discriminatory Vendors.** An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not:

- submit a bid on a contract to provide any goods or services to a public entity;
- submit a bid on a contract with a public entity for the construction or repair of a public building or public work;
- submit bids on leases of real property to a public entity;
- be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or
- transact business with any public entity.

**9. Respondent's Representation and Authorization.** In submitting a response, each respondent understands, represents, and acknowledges the following (if the respondent cannot so certify to any of following, the respondent shall submit with its response a written explanation of why it cannot do so).

- The respondent is not currently under suspension or debarment by the State or any other governmental authority.
- To the best of the knowledge of the person signing the response, the respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have

not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

- Respondent currently has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.
- The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
- The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential respondent; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.
- The respondent has fully informed the Buyer in writing of all convictions of the firm, its affiliates (as defined in section 287.133(1)(a) of the Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.
- Neither the respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:
  - Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
  - Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
- The product offered by the respondent will conform to the specifications without exception.
- The respondent has read and understands the Contract terms and conditions, and the submission is made in conformance with those terms and conditions.
- If an award is made to the respondent, the respondent agrees that it intends to be legally bound to the Contract that is formed with the State.
- The respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.
- The respondent shall indemnify, defend, and hold harmless the Buyer and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.
- All information provided by, and representations made by, the respondent are material and important and will be relied upon by the Buyer in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Buyer of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

**10. Manufacturer's Name and Approved Equivalents.** Unless otherwise specified, any manufacturers' names, trade names, brand names, information or catalog numbers listed in a specification are descriptive, not restrictive. With the Buyer's prior approval, the Contractor may provide any product that meets or exceeds the applicable specifications. The Contractor shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Buyer shall determine in its sole discretion whether a product is acceptable as an equivalent.

**11. Performance Qualifications.** The Buyer reserves the right to investigate or inspect at any time whether the product, qualifications, or facilities offered by Respondent meet the Contract requirements. Respondent shall at all times during the Contract term remain responsive and responsible. In determining Respondent's responsibility as a vendor, the agency shall consider all information or evidence which is gathered or comes to the attention of the agency which demonstrates the Respondent's capability to fully satisfy the requirements of the solicitation and the contract.

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

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

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

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

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

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

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

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

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

**20. Protests.** Any protest concerning this solicitation shall be made in accordance with sections 120.57(3) and

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

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

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

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

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

**ITN CHECKLIST**  
**(DOES NOT NEED TO BE RETURNED WITH YOUR PROPOSAL)**

This Checklist is provided as a guideline, only, to assist Vendors in the preparation of their ITN response. Included are some important matters that the vendor should check. This checklist is just a guideline, and is not intended to include all matters required by the ITN. Vendors are responsible to read and comply with the ITN in its entirety.

Check off each the following:

- \_\_\_ 1. The Qualification Questionnaire has been completed, as specified, and enclosed in the ITN response.
- \_\_\_ 2. The Federal Employers Identification Number or Social Security Number has been entered in the space provided.
- \_\_\_ 3. The “Drug-Free Workplace Program Certification” form has been read, signed, and enclosed in the ITN response, if applicable.
- \_\_\_ 4. “Scrutinized Companies Lists” certification form has been read, signed, and enclosed in the bid response, if applicable (contracts of \$1 million or more).
- \_\_\_ 5. The “Bid Opportunity List” and the “DBE Participation Statement” forms have been read, completed, and enclosed in the ITN response, if applicable.
- \_\_\_ 6. The Scope of Services, Exhibit “A”, has been thoroughly reviewed for compliance to the ITN requirements.
- \_\_\_ 7. The Technical Proposal (one (1) original and the specified number of copies) has been completed, as specified, and enclosed in the ITN response.
- \_\_\_ 8. A letter from a surety company to document your ability to obtain the required Performance Bond, as per Section 10 of the Special Condition, is included in the Technical Proposal (if applicable).
- \_\_\_ 9. The [www.myflorida.com](http://www.myflorida.com) website has been checked and any Addendums posted have been completed, signed, and included in the ITN response.
- \_\_\_ 10. The ITN response must be received, at the location specified, prior to the Opening Date and Time designated in the ITN.
- \_\_\_ 11. On the Lower Left Hand Corner of the Envelope transmitting your ITN response, write in the following information:

ITN No.: \_\_\_\_\_

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

Opening Date & Time: \_\_\_\_\_