



FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION  
 2590 EXECUTIVE CENTER CIRCLE EAST, SUITE 100  
 TALLAHASSEE, FLORIDA 32301  
 (850)488-6551 TELEPHONE  
 (850)922-8060 FAX

INVITATION TO BID: FWC 17/18-02  
 TITLE: BUOY MANUFACTURING

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**INVITATION TO BID/BIDDER ACKNOWLEDGMENT FORM**

Purpose: The intent of this bid is to obtain competitive pricing for BUOY MANUFACTURING FOR WATER WAY MARKER PROJECTS, per the specifications contained herein. Only responsive and responsible Contractors will be considered for award of this Invitation to Bid (ITB).

Responsive: To be responsive a bid must constitute a definite, firm, unqualified and unconditional offer to meet all of the material terms of this ITB. Material terms are those that could affect the price, quantity, quality, or delivery. Also included as material terms are those which are clearly identified in this ITB and which, for reasons of policy, must be complied with at risk of bid rejection for non-responsiveness.

Non Responsive: Any submission that does not comply with this ITB in any way, does not contain all the properly signed forms, supplements or deviates from the Bid requirements or has an incomplete Price Sheet may be considered nonresponsive at the discretion of Procurement Manager.

Responsible Companies: The Commission shall only consider responsible companies. Responsible companies are those that have, in the sole judgment of the Commission, the financial ability, experience, resources, skills, capability, reliability and business integrity necessary to perform the requirements of the contract. The Commission may also consider references and quality to determine the responsibility of the bid. The Commission reserves the right to use any information, whether supplied through the Bidder's submission or otherwise obtained, in determining responsibility.

Rejection of Bids: The Commission reserves the right to reject any and all bids and to waive any minor irregularity in the submissions received in response to this ITB. The Commission reserves the right to consider all information, whether submitted or otherwise, to determine responsiveness and responsibility and to reject bids accordingly.

Name of Business: \_\_\_\_\_

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

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

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

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Federal Employer Identification Number (FEID): \_\_\_\_\_

Contractor's License Number: \_\_\_\_\_ (Use only if applicable)

**The undersigned attest to the following:**

*"We understand all of the terms, conditions and the specifications contained herein and agree to abide by all of the terms, conditions and the specifications in their entirety.*

Authorized Signature (Manual): \_\_\_\_\_

Authorized Signature Name (Typed) and Title: \_\_\_\_\_

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION



FWC 17/18-02

INVITATION TO BID CALENDAR OF EVENTS

SCHEDULE	DUE DATE	METHOD
Bid Advertised	<b>AUGUST 9, 2017</b>	Posted on the Vendor Bid System: <a href="http://vbs.dms.state.fl.us/vbs/main_menu">http://vbs.dms.state.fl.us/vbs/main_menu</a>
Deadline for Questions	Must be received <b>PRIOR to:</b> <b>AUGUST 15,</b> 2017 <b>@ 5:00 P.M.</b>	See Deadline for Questions Clause
Anticipated date for Responses to Written Questions	<b>AUGUST 21,</b> 2017	Posted on the Vendor Bid System: <a href="http://vbs.dms.state.fl.us/vbs/main_menu">http://vbs.dms.state.fl.us/vbs/main_menu</a>
<b>SEALED BIDS DUE</b>  (REMEMBER: Bid Number should be clearly marked on envelope)	Must be received <b>PRIOR to</b> <b>SEPTEMBER 11,</b> 2017 <b>@ 2:00 P.M.</b>	<b>Submit BEFORE the due date and time to the following address:</b>  Florida Fish & Wildlife Conservation Commission Attn: Purchasing 2590 Executive Center Circle East, Suite 100 Tallahassee, Florida 32301
<b>Public Bid Opening</b>	<b>SEPTEMBER</b> <b>11, 2017</b> <b>@2:00 P.M.</b>	
Anticipated Date of Intended Award	<b>SEPTEMBER</b> <b>15, 2017</b>	Posted on the Vendor Bid System: <a href="http://vbs.dms.state.fl.us/vbs/main_menu">http://vbs.dms.state.fl.us/vbs/main_menu</a>

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**FWC 17/18-02  
GENERAL CONDITIONS**

The Florida Fish and Wildlife Conservation Commission's (FWC or Commission) mission is to manage fish and wildlife resources for their long-term well-being and the benefit of people. The Commission administers six (6) major programs including habitat and species conservation, freshwater fisheries management, law enforcement, marine fisheries management, hunting and game management and fish and wildlife research.

A Bidder submitting a bid shall be registered in the MyFloridaMarketPlace (MFMP) system and where required, the Sunbiz system prior to the bid opening (see MYFLORIDAMARKETPLACE and ADDITIONAL LEGAL REQUIREMENT clause). Business entities which must be on file with Sunbiz include the following foreign and domestic entities: Corporations for and not for profit, Limited Liability Companies (LLC), Limited Partnerships (LP) including Limited Liability Limited Partnerships (LLLP), and organizations doing business under a fictitious name (DBA). A Bidder may not be considered for an award, if not registered in the MFMP and Sunbiz system. The Bidder's registration address and federal employer identification (FEID) number should match the Bidder's address and FEID number listed on the **Bidder Acknowledgment form (page 1)**.

Certified Minority-owned, Woman-owned and Service-Disabled Veteran Business Enterprises, as certified by the State of Florida Office of Supplier Diversity, are encouraged by the Commission to participate in the bidding process.

Bids from Bidders shall include all necessary equipment to complete the job. The bidder is required to supply all specified documentation when submitting a bid for this project.

**Please note:**

The terms "Contract," "Agreement" and "Purchase Order" are used interchangeably in the document. The terms "Commodities" and "Goods" are used interchangeably in the document.

**TERMS AND CONDITIONS**

PUR 1000 and PUR1001 are hereby incorporated by reference. PUR1000 and PUR1001 can be found at the Department of Management Services website at the following link:

[http://www.dms.myflorida.com/business\\_operations/state\\_purchasing/documents\\_forms\\_references\\_resources/purchasing\\_forms](http://www.dms.myflorida.com/business_operations/state_purchasing/documents_forms_references_resources/purchasing_forms)

The following terms and conditions take precedence over the PUR1001 and PUR1000 forms where applicable. The Commission objects to and shall not consider any additional terms or conditions submitted by a Bidder or Contractor, including any appearing in documents attached as part of a Bidder's response. In signing and submitting its bid, a Bidder 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 bid, shall be grounds for rejecting a bid.

The terms and conditions of **Attachment A, Purchase Order Terms and Conditions** are hereby incorporated into this solicitation. Any contract resulting from this solicitation will include the terms and conditions of this solicitation and the terms and conditions contained in **Attachment A**.

**ESTIMATED BUDGET**

The Commission has an estimated budget for this project is \$40,000.00

**TERM**

THE CONTRACT WILL BE EFFECTIVE FROM ISSUANCE OF PURCHASE ORDER TO JUNE 30, 2018.

Delivery shall be completed within 90 days of order request. Multiple orders may be placed against the Purchase Order.

If circumstances Force Majeure have occurred, or if anything occurs beyond the Contractor's control, the Contractor may request in writing an extension of Delivery Date. The Contract Manager and the Contract Administrator, upon review of the extension request, will determine and approve if the extension can be made.

#### **SCOPE CHANGES AFTER CONTRACT EXECUTION**

During the term of the Contract, the Commission 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 Commission may make an equitable adjustment in the Contract prices or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the successful bidder, which shall not be unreasonably withheld.

The Commission shall provide written notice to the successful bidder thirty (30) days in advance of any Commission required changes to the technical specifications and/or scope of service that affect the successful bidder's ability to provide the service as specified herein. Any changes that are other than purely administrative changes will require a formal contract amendment.

#### **CONDITIONS AND SPECIFICATIONS**

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

#### **DEADLINE FOR QUESTIONS**

Any questions from Bidders that require an official FWC answer concerning this project shall be submitted in writing to the Procurement Manager identified below. Questions must be received no later than the date and time specified in the **Calendar of Events (Page 2)**. Questions may be sent via e-mail, hard copy by mail, or facsimile. It is the responsibility of the bidder to confirm receipt of questions if needed.

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

#### **Questions shall be directed to:**

Florida Fish & Wildlife Conservation Commission  
Tallahassee Purchasing Office  
Attn: Cecelia McMillan, Procurement Manager  
2590 Executive Center Circle East, Suite 100  
Tallahassee, Florida 32301  
Phone: (850) 488-6551  
Cecelia.mcmillan@myfwc.com

#### **LIMITATION ON BIDDER CONTACT DURING SOLICITATION PERIOD**

Bidders 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, (Note the 72 hour posting period excludes Saturdays, Sundays, and state holidays) any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement manager or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

#### **BIDDER SPECIFICATION INQUIRIES**

If the specifications of this Invitation to Bid (ITB) could restrict potential Bidder competition, the Bidder has 72 hours within which to request to the Commission that the specification(s) be changed. The Contract Administrator must receive the written request within 72 hours after the posting date of the ITB.

Requested changes to the Commission's specifications shall include the Bidder's concerns regarding restricting competition, provide detailed justification, and provide recommended changes to the specification(s). A Bidder's failure to request changes by the prescribed date and time shall be considered to constitute the Bidder's acceptance of the Commission's specifications.

The Commission shall determine what change(s) to the ITB is acceptable to the Commission. If accepted, the Commission shall issue an addendum reflecting the change(s) to the ITB, which shall be posted to the Vendor Bid Advertisement System, internet site [http://vbs.dms.state.fl.us/vbs/main\\_menu](http://vbs.dms.state.fl.us/vbs/main_menu) .

It is up to the bidder to ensure that everything is included as required by the Commission's Purchasing Office. It is not the Commission's responsibility to mail or fax any forms to a potential Contractor. Bid packet information may also be requested from the Commission's Purchasing Section by calling (850) 488-6551 or by FAXING a request to (850) 922-8060. Please have bid number and Bidder information available when requesting any information.

### **BID OPENING LOCATION**

The public opening of this bid will be conducted at the date and time specified in the **Calendar of Events (Page 2)**, at the Florida Fish and Wildlife Conservation Commission, **Tallahassee Purchasing Office**, Suite 100, 2590 Executive Center Circle East, Tallahassee, Florida, 32301. **BIDS RECEIVED AFTER DATE AND TIME SPECIFIED WILL BE REJECTED.**

Any person with a qualified disability shall not be denied equal access and effective communication regarding any bid/proposal documents or the attendance at any related meeting or bid/proposal opening. If accommodations are needed because of a disability, please contact the Purchasing Section at (850) 488-6551 at least three (3) workdays prior to the opening.

### **MAILING INSTRUCTIONS**

All bids shall be submitted in a **SEALED ENVELOPE** addressed to the Florida Fish and Wildlife Conservation Commission, Suite 100, 2590 Executive Center Circle East, Tallahassee, Florida 32301. **THE ENVELOPE SHALL BE PLAINLY MARKED ON THE OUTSIDE WITH: BID NUMBER, DATE AND TIME OF THE BID OPENING. THE COMMISSION IS NOT RESPONSIBLE FOR THE OPENING OF ANY ENVELOPES THAT ARE NOT PROPERLY MARKED.**

**PLEASE NOTE: THE COMMISSION'S OFFICIAL BUSINESS HOURS OF OPERATION ARE 8:00AM – 5:00PM EXCLUSIVE OF SATURDAYS, SUNDAYS, AND STATE HOLIDAYS. SELECTING DELIVERY SERVICES, SUCH AS NEXT DAY FIRST DELIVERY MAY RESULT IN ATTEMPTED DELIVERY PRIOR TO OPENING, OR AFTER CLOSING, AND THE COMMISSION WILL NOT BE AVAILABLE TO ACCEPT THOSE DELIVERIES. THE COMMISSION IS NOT RESPONSIBLE FOR LATE SUBMISSIONS DUE TO COMPLICATIONS RELATED TO SELECTED DELIVERY SERVICES.**

### **BIDDER ACKNOWLEDGMENT**

In order for this bid to be valid, the bid must be completed in its entirety, signed by the Bidder and returned, as part of the bid or the bid will be rejected. By affixing your signature to **page 1** of the bid, the Bidder hereby states that the Bidder has read all bid specifications and conditions and agrees to all terms, conditions, provisions, specifications, and is currently licensed to do business within the State of Florida, if required by State or Federal Law, for the services or commodities the Bidder will provide the Commission under these bid specifications.

### **FWC CONTRACT MANAGER**

The FWC employee identified as the Contract Manager shall perform the following on behalf of the FWC:

- review, verify, and approve receipt of services/deliverables from the Contractor;
- submit requests for change orders/amendments/renewals, if applicable;

- review, verify, and approve invoices from the Contractor; and, if applicable, complete the Certificate of Contract Completion form; and
- maintain an official record of all correspondence between the Commission and the Contractor and forward the original correspondence to the Tallahassee Procurement Manager for the official file.

### **VERBAL INSTRUCTION PROCEDURE**

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

### **ADDENDUMS**

If the COMMISSION finds it necessary to supplement, modify or interpret any portion of the specifications or documents or answer any Bidder questions during the ITB period an addendum shall be posted on the Vendor Bid System internet site. Addendums shall be signed by an authorized Contractor representative, dated, and returned to the COMMISSION, in the vendor bid submittal, by the date and time specified in the Calendar of Events. **Each Bidder is responsible for monitoring the Vendor Bid System site for new or changing information relative to this procurement.** The Commission bears no responsibility for any delays, or resulting impacts, associated with a Bidder's failure to obtain the information made available through the Vendor Bid System. The Vendor Bid System can be reached at the following internet address: [http://vbs.dms.state.fl.us/vbs/main\\_menu](http://vbs.dms.state.fl.us/vbs/main_menu)

### **IDENTICAL TIE BIDS**

In accordance with Section 287.087, Florida Statutes, preference shall be given to businesses with drug-free workplace programs. If two (2) or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Contractors must complete the **Identical Tie Bid / Drug Free Workplace form (Attachment B)** provided and return it with their bid.

### **AWARDED BID/INSPECTION**

The Commission will award the bid to the responsive, responsible bidder which submits the lowest bid price if deemed necessary, an interview with the bidder by the Contract Manager may be required before the bid is awarded.

The Commission reserves the right to inspect the prospective Contractor's materials and background record prior to making an award of the Contract. If the Contract Manager determines the lowest bid does not have sufficient experience, equipment, etc. to meet the specifications of this ITB, the Commission reserves the right to reject the bidder and evaluate the next lowest bidder.

### **SUPPORTING/SUPPLEMENTAL INFORMATION**

The Commission requires that bidders submit all required technical, specification, and other supporting information with their bid, so that a detailed analysis and determination can be made, by the Contract Manager that the product/service offered meets this ITB's specifications and that other requirements of this ITB have been met. However, provided a bid meets the requirements for a definite, firm, unqualified, and unconditional offer, the Commission reserves the right to request supplemental information from the bidder, after the bids have been opened, to ensure that the products/services offered completely meet this ITB's requirements. The requirement for such supplemental information will be at the reasonable discretion of the Commission and may include the requirement that a bidder will provide a sample product(s) so that the Commission can make a first-hand examination and determination.

A bidder's failure to provide this supplemental information or the product sample(s), within the time set by the Commission, will cause the Commission to consider the Contractor non-responsive and reject the Contractor's bid.

## **REFERENCES**

Each prospective Bidder shall provide a minimum of three (3) references for similar projects completed. Current contact names and phone numbers shall be included with the bid package. See attached reference form for more detail.

## **DELIVERABLES**

The following services or service tasks are identified as deliverables for the purposes of this Contract:

- a.) Performance of all services set forth in the Scope of Work.
- b.) Submission of all invoicing, supporting documentation, Corrective Action Plans and reports.

**Contractor Performance.** The Contractor shall perform the activities described in the Scope of Work in a proper and satisfactory manner. Unless otherwise provided for in the Scope of Work, any and all equipment, products or materials necessary or appropriate to perform under this Contract shall be supplied by the Contractor. Contractor shall obtain all necessary local, state, and federal authorizations necessary to complete this project, and the Contractor shall be licensed as necessary to perform under this Contract as may be required by law, rule, or regulation; the Contractor shall provide evidence of such compliance to the Commission upon request. The Contractor shall procure all supplies and pay all charges, fees, taxes and incidentals that may be required for the completion of this Contract. By acceptance of this Contract, the Contractor warrants that it has the capability in all respects totally perform the requirements and the integrity and reliability that will assure good-faith performance as a responsible Contractor. Contractor shall immediately notify the Commission's Contract Manager in writing if its ability to perform under the Contract is compromised in any manner during the term of the Contract. The Commission shall take appropriate action, including potential termination of this Contract in the event Contractor's ability to perform under this Contract becomes compromised.

**Contractor – Quarterly Minority and Service-Disabled Veteran Business Enterprise Report.** Contractor shall provide a quarterly Minority and Service-Disabled Veteran Business Enterprise Report to the Commission's Contract Manager, summarizing the participation of certified and non-certified minority and service-disabled veteran subcontractors/material suppliers for the current quarter and project to date. The report shall include the names, addresses and dollar amount of each certified and non-certified Minority Business Enterprise and Service-Disabled Veteran Enterprise participant and a copy must be forwarded to the Commission's Contract Manager. The Department of Management Services, Office of Supplier Diversity at (850) 487-0915 will assist in furnishing names of qualified minorities. The Commission's Minority Coordinator at (850) 488-6551 will assist with questions and answers.

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

**Commission Rights to Assign or Transfer.** Contractor agrees that the State of Florida shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Contract to another governmental agency in the State of Florida, upon giving prior written notice to Contractor.

## **FINANCIAL CONSEQUENCES**

In accordance with Section 287.058(1)(h), F.S., the Scope of Work, contains clearly defined deliverables. If Contractor fails to produce each deliverable within the time frame specified by the Scope of Work, the budget amount allocated for that deliverable will be deducted from Contractor's payment. The Commission shall apply any additional financial consequences identified in the Scope of Work.

**Cumulative Remedies.** The rights and remedies of the Commission in this paragraph are in addition to any other rights and remedies provided by law or under the Contract.

### **WARRANTIES/DAMAGED ITEMS/DELIVERY**

The successful Bidder shall assume full responsibility for providing or ensuring warranty coverage and/or warranty service on any and all items including goods, materials, or equipment provided to the Commission. If the successful Bidder is not the Manufacturer, all Manufacturer warranties must be passed through to the Commission.

Delivery shall be made no later than the specified Delivery Date. The successful Bidder shall pay all costs associated with delivery and shall assume full responsibility for all item(s) damaged prior to the F.O.B. destination delivery and agree to hold harmless the Commission of all responsibility for prosecuting damage claims.

The successful Bidder shall assume full responsibility for replacement of all defective or damaged goods within thirty (30) days of notice by the Commission of such defect or damage.

### **GUARANTEE**

If products do not comply with the specifications contained herein, the Bidder shall replace the product(s) or the purchase price shall be refunded. The refund or the delivery of the replacement product(s) shall be made within thirty (30) days following the Contract Managers notification to the Bidder that the original product(s) was non-compliant. Costs of returning the original product(s) will be the sole responsibility of the Contractor.

### **INSURANCE REQUIREMENTS**

**Reasonably Associated Insurance.** During the term of the Contract, Contractor, at its sole expense, shall maintain insurance coverage of such types 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, and failure to maintain such coverage may void the Contract. The limits of coverage under each policy maintained by Contractor shall not be interpreted as limiting Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers licensed and authorized to write policies in Florida.

**Workers Compensation.** To the extent required by Chapter 440, F.S., the Contractor will either be self-insured for Worker's Compensation claims, or will secure and maintain during the life of this Contract, Workers' Compensation Insurance for all of its employees connected with the work of this project, with minimum employers' liability limits of **\$100,000.00** per accident, **\$100,000.00** per person, and **\$500,000.00** policy aggregate. Such policy shall cover all employees engaged in any contract work. If any work is subcontracted, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. Such self-insurance program or insurance coverage shall comply fully with the Florida Workers' Compensation law (Chapter 440, F.S.). In case any class of employees engaged in hazardous work under this Contract is not protected under Workers' Compensation statutes, the Contractor shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Commission, for the protection of its employees not otherwise protected. Employers who have employees who are engaged in work in Florida must use Florida rates, rules, and classifications for those employees.



**General Liability Insurance.** By execution of this Contract, unless Contractor is a state agency or subdivision as defined by Subsection 768.28(2), F.S. or unless otherwise provided for in the Scope of Work, Contractor shall provide reasonable and adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Contract. A self-insurance program established and operating under the laws of the State of Florida may provide such coverage.

**Insurance Required for Performance.** During the Contract term, Contractor shall maintain any other types and forms of insurance required for the performance of this Contract. Additional insurance requirement may also be found in the Scope of Work.

**Written Verification of Insurance.** Upon execution of this Contract, Contractor shall provide the Commission written verification of the existence and amount for each type of applicable insurance coverage. Within ten (10) days of the effective date of the Purchase Order Contractor shall furnish proof of applicable insurance coverage to the Commission's Contract Manager by standard Association for Cooperative Operations Research and Development (ACORD) form certificates of insurance. In the event that any applicable coverage is cancelled by the insurer for any reason, Contractor shall immediately notify the Commission's Contract Manager in writing of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within fifteen (15) business days after the cancellation of coverage. Copies are acceptable and can be faxed to (850) 922-8060.

**Commission Not Responsible for Insurance Deductible.** The Commission shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of Contractor providing such insurance.

#### **DAMAGES TO STATE PROPERTY**

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

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

#### **SUBCONTRACTS**

Contractor shall ensure, and provide assurances to the Commission upon request, that any subcontractor selected for work under this Contract has the necessary qualifications and abilities to perform in accordance with the terms and conditions of this Contract. Contractor must provide the Commission with the names of any subcontractor considered for work under this Contract; the Commission reserves the right to reject any subcontractor. Contractor agrees to be responsible for all work performed and all expenses incurred with the project. Any subcontract arrangements must be evidenced by a written document available to the Commission upon request. Contractor further agrees that the Commission shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract. Contractor, at its expense, will defend the Commission against such claims. The following provisions apply, in addition to any terms and conditions included in the Scope of Work.

**Contractor Payments to Subcontractor.** The Contractor agrees to make payments to the subcontractor within seven (7) working days after receipt of full or partial payments from the Commission in accordance with Section 287.0585, F.S., unless otherwise stated in the contract between Contractor and subcontractor. Contractor's failure to pay its subcontractors within seven (7) working days will result in a penalty charged against Contractor and paid to the subcontractor in the amount of one-half of one percent (.05%) of the amount due per day from the expiration of the period allowed herein for payment. Such penalty shall be

in addition to actual payments owed and shall not exceed fifteen percent (15%) of the outstanding balance due.

**Commission Right to Reject Subcontractor Employees.** The Commission shall retain the right to reject any of Contractor's or subcontractor's employees whose qualifications or performance, in the Commission's judgment, are insufficient.

**Subcontractor as Independent Contractor.** The Contractor agrees to take such actions as may be necessary to ensure that each subcontractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venture or partner of the State of Florida.

## **TERMINATION**

**Commission Unilateral Termination.** The Commission may unilaterally terminate this Contract for convenience by providing the Contractor with thirty (30) calendar days of written notice of its intent to terminate. Contractor shall not be entitled to recover any cancellation charges or lost profits.

**Termination – Fraud or Willful Misconduct.** This Contract shall terminate immediately in the event of fraud or willful misconduct on the part of the Contractor. In the event of such termination, the Commission shall provide Contractor with written notice of termination.

**Termination - Funds Unavailability.** In the event funds to finance this Contract become unavailable or if federal or state funds upon which this Contract is dependent are withdrawn or redirected, the Commission may terminate this Contract upon no less than twenty-four (24) hours' notice in writing to Contractor. Said notice shall be delivered by certified mail, return receipt requested or in person with proof of delivery. The Commission shall be the final authority as to the availability of funds and will not reallocate funds appropriated for this Contract to another program thus causing "lack of funds." In the event of termination of this Contract under this provision, Contractor will be compensated for any work satisfactorily completed prior to notification of termination.

**Termination – Other.** The Commission may terminate this Contract if the Contractor fails to: 1.) comply with all terms and conditions of this Contract; 2.) produce each deliverable within the time specified by the Contract or extension; 3.) maintain adequate progress, thus endangering the performance 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 for default. The rights and remedies of the Commission in this clause are in addition to any other rights and remedies provided by law or under the Contract. Contractor shall not be entitled to recover any cancellation charges or lost profits.

**Contractor Discontinuation of Activities upon Termination Notice.** Upon receipt of notice of termination, the Contractor shall, unless the notice directs otherwise, immediately discontinue all activities authorized hereunder. Upon termination of this Contract, the Contractor shall promptly render to the Commission all property belonging to the Commission. For the purposes of this section, property belonging to the Commission shall include, but shall not be limited to, all books and records kept on behalf of the Commission.

## **FAMILIARITY AND COMPLIANCE WITH LAWS**

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

## **ELIGIBILITY AND LICENSURE**

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

By acceptance of this contract, the Contractor warrants that it has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good-faith performance as a responsible Bidder, and that the Contractor shall comport with Chapter 287, F.S., Chapter 60A of Florida Administrative Code, and all other applicable rules and laws.

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

### **RELATIONSHIP OF THE PARTIES**

**Independent Contractor.** The Contractor shall perform as an independent contractor and not as an agent, representative, or employee of the Commission. The Contractor covenants that it presently has no interest and shall not acquire any interest that would conflict in any manner or degree with the performance of services required. Each party hereto covenants that there is no conflict of interest or any other prohibited relationship between the Contractor and the Commission.

**Contractor Training Qualifications.** Contractor agrees that 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.

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

**Commission Rights to Assign or Transfer.** Contractor agrees that the State of Florida shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Contract to another governmental agency in the State of Florida, upon giving prior written notice to Contractor.

**Commission Rights to Undertake or Award Supplemental Contracts.** Contractor agrees that the Commission may undertake or award supplemental contracts for work related to the Contract. Contractor and its subcontractors shall cooperate with such other contractors and the Commission in all such cases.

### **PROHIBITION OF UNAUTHORIZED ALIENS**

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

### **EMPLOYMENT ELIGIBILITY VERIFICATION**

**Requirement to Use E-Verify.** Executive Order 11-116, signed May 27, 2011, by the Governor of Florida, requires Commission contracts in excess of nominal value to expressly require the Contractor to: 1.) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Contractor during the Contract term; and, 2.) include in all subcontracts under this Contract, the requirement that subcontractors performing work or providing services pursuant to this Contract utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the subcontract.

**E-Verify Online.** E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States after the effective date of the required Memorandum of Understanding (MOU); the responsibilities and elections of federal contractors, however, may vary, as stated in Article II.D.1.c. of the MOU. There is no charge to employers to use E-Verify. The Department of Homeland Security's E-Verify system can be found online at [http://www.dhs.gov/files/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/files/programs/gc_1185221678150.shtm)

**Enrollment in E-Verify.** If Contractor does not have an E-Verify MOU in effect, the Contractor must enroll in the E-Verify system prior to hiring any new employee after the effective date of this Contract.

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

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

#### **NON-DISCRIMINATION**

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

**Discriminatory Vendor List.** In accordance with Section 287.134, F.S., 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 any public entity; and may not transact business with any public entity. Contractor has a continuing duty to disclose to the Commission whether they appear on the discriminatory vendor list.

#### **PUBLIC ENTITY CRIMES**

**Convicted Vendor List.** Pursuant to Subsection 287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not 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, F.S., for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

**Notice of Conviction of Public Entity Crime.** Any person must notify the Department of Management Services and the Commission within thirty (30) days after conviction of a public entity crime applicable to that person or an affiliate of that person as defined in Section 287.133, F.S.

#### **CONTRACT RELATED PROCUREMENT**

**PRIDE.** In accordance with Section 946.515(6), F.S., if a product or service required for the performance of this Contract is certified by or is available from Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) and has been approved in accordance with Subsection 946.515(2), F.S., the following statement applies:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this contract shall be purchased from [PRIDE] in the same manner and under the same procedures set forth in Subsections 946.515(2) and (4), F.S.; and for purposes of this contract the person, firm or other business entity carrying out the provisions of this contract shall be deemed to be substituted for this agency insofar as dealings with such corporation are concerned.

The above clause is not applicable to subcontractors unless otherwise required by law. Additional information about PRIDE and the products it offers is available at <http://www.pride-enterprises.org>.

**Respect of Florida.** In accordance with Subsection 413.036(3), F.S., if a product or service required for the performance of this Contract is on the procurement list established pursuant to Subsection [413.035\(2\)](#), F.S., the following statement applies:

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, F.S., in the same manner and under the same procedures set forth in Subsections 413.036(1) and (2), F.S.; and for purposes of this contract, the person, firm or other business entity carrying out the provisions of this contract shall be deemed to be substituted for 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>.

**Procurement of Recycled Products or Materials.** Contractor agrees to procure any recycled products or materials which are the subject of or are required to carry out this Contract in accordance with Section 403.7065, F.S.

#### **INDEMNIFICATION.**

If Contractor is a state agency or subdivision, as defined in Subsection 768.28(2), F.S., pursuant to Subsection 768.28(19), F.S., neither Party indemnifies nor insures the other Party for the other Party's negligence. If Contractor is not a state agency or subdivision as defined above, 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 the Commission, 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 Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or the Commission.

#### **FEDERAL DEBARMENT/SUSPENSION CERTIFICATION FORM**

**Contractor Federal Certification.** In accordance with federal Executive Order 12549, Debarment and Suspension, Contractor shall agree and certify that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and, that the Contractor shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction.

#### **COMMITMENT OF FUNDS**

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

## **AUTHORIZED COMPENSATION**

It is understood and agreed that all compensation under this ITB is specifically limited to the Contractor's bid price accepted by the Commission, and to the specific procedure for payment established in this ITB and the Purchase Order executed pursuant to it. The Commission is not liable for any costs, fees, expenses or any other compensation whatsoever incurred or charged by the Contractor, other than the bid price paid for the work specifically described in the Scope of Work, which work is actually accomplished and invoiced by the Contractor subsequent to the Commission's notice to proceed (or other notice to begin work). Thus the Commission is not liable for any costs incurred or charged by the Contractor in anticipation of responding to, or performing work described in, this ITB, including but not limited to equipment or personnel procured by the Contractor in anticipation of such work. The Commission is not responsible to the Contractor for any loss or damages resulting from circumstances unforeseen at the time of publication of this ITB including, but not limited to, those resulting from a "force majeure".

## **INVOICING**

The Contractor shall be paid upon submission of properly certified invoice(s) to the Commission after delivery and acceptance of commodities or services as expressed in writing by the Contract Manager. Invoices shall contain detail sufficient for a proper pre-audit and post-audit thereof and shall contain the purchase order/contract number and the Contractor's Federal Employer Identification Number or Social Security Number. **FAILURE TO SUPPLY INVOICE WHICH PROPERLY CORRESPONDS TO THE PURCHASE ORDER/Written AGREEMENT, MAY DELAY THE CONTRACTOR PAYMENT PROCESS.**

## **PAYMENT OF FUNDS**

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

## **Electronic Funds Transfer (EFT)**

The State of Florida can deposit Contractor payments directly into your bank account. Contractors can register for EFT at [http://www.myfloridacfo.com/aadir/direct\\_deposit\\_web/Vendors.htm](http://www.myfloridacfo.com/aadir/direct_deposit_web/Vendors.htm). *Note:* Your business name registered for EFT, must match the name listed in MFMP VIP registration to receive direct deposit payments. There can only be one (1) financial institution's account information on file for one (1) federal tax identification number (SSN or FEIN). Payments cannot be sent to two (2) or more financial institutions.

## **Automated Clearing House (ACH)**

To make transaction fee payments, Contractors can register for debit ACH at [http://dms.myflorida.com/business\\_operations/state\\_purchasing/myflorida\\_marketplace/mfmp\\_vendors/vendor\\_toolkit/forms\\_for\\_vendors](http://dms.myflorida.com/business_operations/state_purchasing/myflorida_marketplace/mfmp_vendors/vendor_toolkit/forms_for_vendors) and download the ACH form. Complete the ACH form and submit it electronically (per the instructions on the form) to the Department of Management Services to process. *Note:* Registering for ACH can take up to fourteen (14) days.

## **PROMPT PAYMENT CLAUSE**

Section 215.422, F.S. provides that agencies have five (5) working days to inspect and approve goods and services, unless bid specifications, Purchase Order, or this contract specifies otherwise. With the exception of payments to health care providers for hospital, medical, or other health care services, if payment is not available within forty (40) days, measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved a separate interest penalty as described in section 215.422, F.S., will be due and payable in addition to the amount authorized for payment. Interest penalties less than one (1) dollar will not be

paid unless the Provider requests payment. A Vendor Ombudsman has been established within the Department of Financial Services and may be contacted at (850) 413-5516, or by calling the Department of Financial Services Consumer Hotline at 1-800-342-2762.

### **MyFloridaMarketPlace (MFMP) REGISTRATION**

In accordance with Rule 60A-1.030 of the Florida Administrative Code (F.A.C.), each Contractor doing business with the State for the sale of commodities or contractual services as defined in Section 287.012, F.S., shall register in the MFMP system, unless exempted under Rule 60A-1.030(3), F.A.C. Information about the registration process is available, and registration may be completed, at the MFMP website (link under Business on the State portal at [www.myflorida.com](http://www.myflorida.com)). Interested persons lacking Internet access may request assistance from the MFMP Customer Service at (866-352-3776) or from State Purchasing, 4050 Esplanade Way, Suite 300, Tallahassee, Florida 32399.

**Transaction Fee.** Pursuant to Section 287.057(22), F.S., all payments, unless exempt under Rule 60A-1.030(3), F.A.C., shall be assessed a Transaction Fee of zero point zero seven percent (0.07%), which the Contractor shall pay to the State. For payments within the State accounting system (Florida Accounting Information Resource, 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.

**Transaction Fee Credits.** The Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any items(s) if such items(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 Contract. Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering re-procurement costs from the Contractor in addition to all outstanding fees. CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

### **ADDITIONAL LEGAL REQUIREMENT**

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

### **USE OF CONTRACT BY OTHER STATE AGENCIES AND ELIGIBLE USERS**

As provided in Chapter 60A-1.045, F.A.C., and Section 287.042(16) F.S., other State of Florida agencies may purchase from the resulting contract of this ITB, provided that the Department of Management Services has determined the contract's use is cost effective and in the best interest of the State, and with the Contractor's consent.

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

### **PUBLIC RECORDS OF NONGOVERNMENT CONTRACTORS**

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

## PUBLIC RECORDS

- A. This Contract may be unilaterally canceled by the Commission for refusal by the Contractor to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction with this Contract, unless exemption for such records is allowable under Florida law.
- B. If the Contractor meets the definition of “Contractor” in Section 119.0701(1)(a) F.S., the Contractor shall comply with the following:
- i. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF THE CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 850-488-6553, [RecordsCustodian@myfwc.com](mailto:RecordsCustodian@myfwc.com), and 620 South Meridian Street, Tallahassee FL 32399**
  - ii. Keep and maintain public records required by the Commission to perform the service.
  - iii. Upon request from the Commission’s custodian of public records, provide the Commission with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law.
  - iv. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the Commission.
  - v. Upon completion of the contract transfer, at no cost, to the Commission all public records in possession of the Contractor or keep and maintain public records required by the Commission to perform the service. If the Contractor transfers all public records to the Commission upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Commission, upon request from the Commission’s custodian of public records, in a format that is compatible with the information technology systems of the Commission.
  - vi. Requests for Records; NONCOMPLIANCE – A request to inspect or copy public records relating to Commission’s contract for services must be made directly to the Commission. If the Commission does not possess the requested records, the Commission shall immediately notify the Contractor of the request, and the Contractor must provide the records to the Commission or allow the records to be inspected or copied within a reasonable time. If a Contractor does not comply with the Commission’s request for records, the Commission shall enforce the contract provisions in accordance with the contract. A Contractor who fails to provide the public records to the Commission within a reasonable time may be subject to penalties under s. 119.10.
  - vii. Civil Action – If a civil action is filed against the Contractor to compel production of public records relating to the Commission’s contract for services, the court shall assess and award against the Contractor and the reasonable costs of enforcement including reasonable attorney fees, if:
    - a. The court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and
    - b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Contractor has not complied with the request, to the Commission and to the Contractor. A notice complies if it is sent to the Commission’s custodian of public records and to the Contractor at the Contractor’s address listed on its contract with the Commission’s or the Contractor’s registered agent. Such notices must be sent by



common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format. A Contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

### **COOPERATION WITH INSPECTOR GENERAL**

Pursuant to subsection 20.055(5), F.S., Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Agreement. 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.

### **RECORD KEEPING REQUIREMENTS**

**Contractor Responsibilities.** The Contractor shall maintain accurate books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract, in accordance with generally accepted accounting principles.

**State Access to Contractor Books, Documents, Papers, and Records.** The Contractor shall allow the Commission, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or authorized representatives of the state or federal government to have access to any of Contractor's books, documents, papers, and records, including electronic storage media, as they may relate to this Contract, for the purposes of conducting audits or examinations or making excerpts or transcriptions.

**Contractor Records Retention.** Unless otherwise specified in the Scope of Work, these records shall be maintained for five (5) fiscal years following the close of this Contract, or the period required for this particular type of project by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>), whichever is longer. Contractor shall cooperate with the Commission to facilitate the duplication and transfer of such records upon the Commission's request.

**Contractor Responsibility to Include Records Requirements – Subcontractors.** In the event any work is subcontracted under this Contract, Contractor shall include the aforementioned audit and record keeping requirements in all subcontract agreements.

**Compliance with Federal Funding Accountability and Transparency.** Any federal funds awarded under this Contract must comply with the Federal Funding Accountability and Transparency Act (FFATA) of 2006. The intent of the FFATA is to empower every American with the ability to hold the government accountable for each spending decision. The result is to reduce wasteful spending in the government. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website: [www.USASpending.gov](http://www.USASpending.gov). Grant recipients awarded a new Federal grant greater than or equal to **\$25,000.00** awarded on or after October 1, 2010 are subject to the FFATA. Contractor agrees to provide the information necessary, over the life of this Contract, for the Commission to comply with this requirement.

### **CONFIDENTIALITY/PUBLIC RECORDS LAW**

Bidders are cautioned that Florida law generously defines what constitutes a public record and grants broad rights of public access to those records; see, for example, section 119.07 of the Florida Statutes. If a Bidder believes that its response contains information that is confidential or exempt from disclosure under Florida Law, the Bidder shall clearly segregate and mark that information (for example, stamp each page "Confidential" and place it in an envelope marked "Confidential") and briefly describe in writing the grounds and specific legal citations for claiming exemption from the public records law. If after the notice of intended decision or thirty (30) days after bid opening, whichever is earlier, the Commission receives a public records request related to the solicitation, the Commission will provide copies of public records that are not exempt to the requester. The Commission will endeavor to provide notice to the Bidder of all public records requests received related to documents provided by the Bidder that were marked pursuant to this paragraph. In no event shall the Bidder hold the Commission or any of its employees or agents liable for disclosing, or otherwise failing to protect the confidentiality of, information submitted in response to this solicitation.

### **INTELLECTUAL PROPERTY RIGHTS**

**Contractor's Preexisting Intellectual Property (Proprietary) Rights.** Unless specifically addressed otherwise in the Scope of Work, intellectual property rights to the Contractor's preexisting property will remain with the Contractor. If Contractor is a state agency or subdivision, as defined in Subsection 768.28(2), F.S., pursuant to Subsection 768.28(19), F.S., neither Party indemnifies nor insures the other Party for or on account of any copyrighted, patented, or un-patented invention, process or article manufactured or supplied by Contractor. If Contractor is not a state agency or subdivision as defined above, Contractor shall indemnify and hold harmless the Commission and its employees from any liability, including costs, expenses, and attorney's fees, for or on account of any copyrighted, patented, or un-patented invention, process or article manufactured or supplied by Contractor.

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

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

### **PROHIBITION AGAINST LOBBYING**

The Contractor certifies that no Federal appropriated funds have been paid or will be paid, on or after December 22, 1989, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding, renewal, amending or modifying of any Federal contract, grant, or cooperative agreement. If any non-Federal funds are used for lobbying activities as described above in connection with this Contract, the Contractor shall submit Standard Form-LLL, "Disclosure Form to Report Lobbying", and shall file quarterly updates of any material changes. The Contractor shall require the language of this certification to be included in all subcontracts, and all subcontractors shall certify and disclose accordingly.

Pursuant to the Lobbying Disclosure Act of 1995, the Contractor agrees to refrain from entering into any subcontracts under this Agreement with any organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, unless such organization warrants that it does not, and will not, engage in lobbying activities prohibited by the Act as a special condition of the subcontract.

## **SEVERABILITY AND CHOICE OF VENUE**

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

## **JURY TRIAL WAIVER**

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

## **FLORIDA EMERGENCY SUPPLIER NETWORK**

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

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

[http://www.dms.myflorida.com/business\\_operations/state\\_purchasing/florida\\_emergency\\_network/florida\\_emergency\\_supplier\\_network\\_fesn](http://www.dms.myflorida.com/business_operations/state_purchasing/florida_emergency_network/florida_emergency_supplier_network_fesn)

## **POSTING OF BID TABS**

Bid Tabulations with Contractors identified as awarded bidders will be posted electronically as Agency Decisions on the Department of Management Services Vendor Bid System as a Public Notice. The Agency Decision may be viewed at the following site, and will remain posted for a period of 72 hours. Failure to file a protest within the time prescribed in Section 120.57(3)(b), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes: [http://vbs.dms.state.fl.us/vbs/main\\_menu](http://vbs.dms.state.fl.us/vbs/main_menu).

Awarded Bidders are instructed not to proceed until a Purchase Order, Formal Written Contract, Lease, Notice to Proceed, or some other form of written notice is given to the Contractor by the Commission. A company or person who proceeds prior to receiving a Purchase Order, Formal Written Contract, Lease, Notice to Proceed, or some other form of written notice from the Commission does so without a contract and at their own risk.

Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until thirty (30) days after opening the bids, proposals, or final replies, whichever is earlier.

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**FWC 17/18-02**  
**SCOPE OF WORK**

**Buoy Manufacturing Scope of Work**

The Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section (Commission) is seeking bids for the production of Uniform Waterway Marker Buoys. Buoys will be ordered on an as needed basis. See Technical Specifications.

All buoys must comply with the United States Coast Guard (U.S. Aids to Navigation System) requirements and meet or exceed the requirements of Title 33, Code of Federal Regulations. All materials utilized will withstand

the elements under outdoor conditions from fading or peeling for a period of at least three (3) years. Vendor will supply the Commission with layout renderings of the buoys prior to final production, and certification that materials meet or exceed the aforementioned specifications. With the exception of the standard stainless steel mooring eye, bid does not include hardware associated with installation such as clevis, cable or chain.

**SHIPPING AMOUNT OR TERMS:** Buoys will be ordered on an as needed basis and shipped to the destinations determined by the Commission. Items are to be shipped Freight on Board – Destination (FOB-Destination), inside delivery. Vendor shall be ultimately responsible to insure the freight company of their choosing provides all labor and equipment necessary to unload and deliver buoys to an inside location (if necessary, providing a fork lift service). Freight shall be Prepaid by the Vendor and Charged Back (PCB – Prepaid and Charged Back) as a separate item on the invoice(s). Vendor shall be required to include a copy of each shipping invoice from the freight company together with each invoice for reimbursement

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### **Buoy Manufacturing Technical Specifications**

#### **SPECIFICATIONS:**

All buoys must comply with the United States Coast Guard (U.S. Aids to Navigation System) requirements and meet or exceed the requirements of Title 33, Code of Federal Regulations. All materials utilized will withstand the elements under outdoor conditions from fading or peeling for a continued period of at least three (3) years. Vendor will supply the Commission with layout renderings of the buoys prior to final production, and certification that materials meet or exceed the aforementioned specifications. With the exception of the standard stainless steel mooring eye

(bottom-eye or side-eye), bid does not include hardware associated with installation such as clevis, cable or chain.

**Regulatory Buoys** - Lettering is to be black with an international orange border and geometric symbol. Black lettering, international orange border and geometric symbol are to be impregnated into exterior buoy material.

If requested, the words “Manatee Zone” or “Boating Safety Zone” (or similar wording) shall be 2” - 3” black block lettering, letters and/or numbers [example: “Permit, Rule/Ordinance Nos.,” shall be black block 1” and the wording “To Report Damaged Markers: (866) 405-BUOY” shall be in ½” black block letter/numbers appearing as directed in layout. “Permit No.” shall appear on the lower left and, if requested, “Rule/Ordinance” shall appear on the lower right within the high intensity bottom orange band.

Wording will be centered over the geometric symbol and within remaining white panel space and appear on two sides, however, letter height will vary based on amount of wording.

**9” Diameter Standard White Can Buoy (Internal Ballast)** - 61” in height, visibility of at least 36” equipped with stainless steel swivel eye (bottom-eye), 3” wide reflective high intensity orange band around top and bottom of buoy, reflective symbols, recess cap design molded from UV inhibitors, chemically resistant, ABS exterior (or equivalent), completely urethane foam filled, and self-righting without tackle, stainless steel anchoring eye cast in internal concrete ballast, stainless steel pickup eye built in top.

**14” Diameter (Large) White Float Collar Can Buoy (Internal Ballast)**- 28” collar, suitable for deep water applications with a visibility of at least 36” with stainless steel swivel eye (Bottom-eye), 3” wide reflective high intensity orange band around top and bottom of buoy, recessed cap design molded from UV inhibitors, chemically resistant, ABS exterior (or equivalent), completely urethane foam filled, and self-righting without tackle, stainless steel anchoring eye cast in internal concrete ballast, stainless steel pickup eye built in top.

**14” Diameter (Large) White Float Collar Fast Water Can Buoy (Internal Ballast)**- 28” collar, suitable for shallow water, fast water applications with a visibility of at least 36” with stainless steel swivel eye (Side-eye), 3” wide reflective high intensity orange band around top and bottom of buoy, recess cap design molded from UV inhibitors, chemically resistant, ABS exterior (or equivalent), completely urethane foam filled, and self-righting without tackle, stainless steel anchoring eye cast in internal concrete ballast, stainless steel pickup eye built in top.

**19” Diameter (Large) White Float Collar White Can Buoy (Internal Ballast)**- 38” Collar, with at least 36” visibility equipped with stainless steel swivel eye (Bottom or Side-eye), 3” wide reflective high intensity orange band around top and bottom of buoy, rounded float to discourage debris collection, recess cap design molded from UV inhibitors, chemically resistant, ABS exterior (or equivalent), completely urethane foam filled, and self-righting without tackle, stainless steel anchoring eye cast in internal concrete ballast, stainless steel pickup eye built in top.

**Red and Green Channel Marker Buoys (Private Aids to Navigation)** - All numbers on buoys shall be at least 3" in height, and placed on both sides of buoy. Commission will provide details on numbering at time of order.

**13" Diameter Green Can Buoy (Internal Ballast)** - 61" in height, suitable for deep water applications with a visibility of at least 36" with stainless steel swivel eye, seamless capless design molded from UV inhibitors, chemically resistant, ABS exterior (or equivalent), completely urethane foam filled, and self-righting without tackle, stainless steel anchoring eye cast in internal concrete ballast, stainless steel pickup eye built in top.

**13" Diameter Red Nun Buoy (Internal Ballast)** - 61" in height, suitable for deep water applications with a visibility of at least 36" with stainless steel swivel eye, seamless capless design molded from UV inhibitors, chemically resistant, ABS exterior (or equivalent), completely urethane foam filled, and self-righting without tackle, stainless steel anchoring eye cast in internal concrete ballast, stainless steel pickup eye built in top.

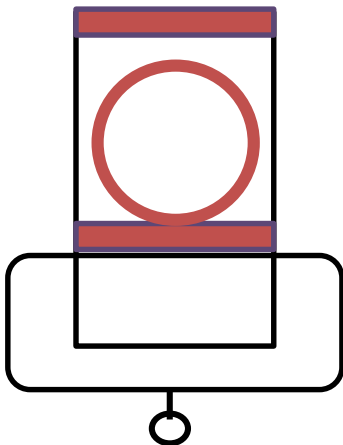
**14" Diameter (Large) Green Can Buoy (Internal Ballast)** - 61" in height, suitable for deep water applications with a visibility of at least 36" with stainless steel swivel eye, seamless capless design molded from UV inhibitors, chemically resistant, ABS exterior (or equivalent), completely urethane foam filled, and self-righting without tackle, stainless steel anchoring eye cast in internal concrete ballast, stainless steel pickup eye built in top.

**14" Diameter (Large) Red Nun Buoy (Internal Ballast)**- 61" in height, suitable for deep water applications with a visibility of at least 36" with stainless steel swivel eye, seamless capless design molded from UV inhibitors, chemically resistant, ABS exterior (or equivalent), completely urethane foam filled, and self-righting without tackle, stainless steel anchoring eye cast in internal concrete ballast, stainless steel pickup eye built in top.

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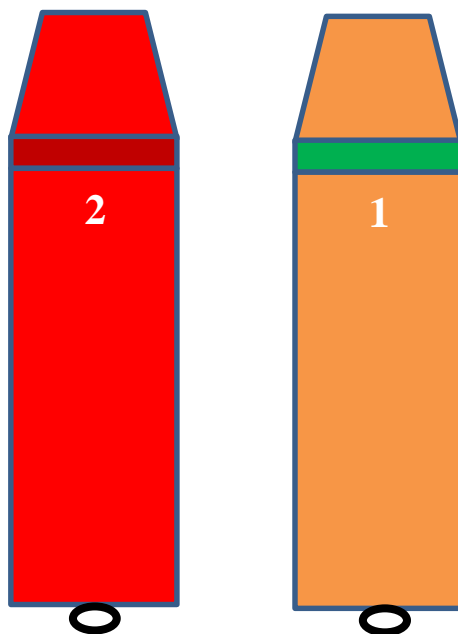
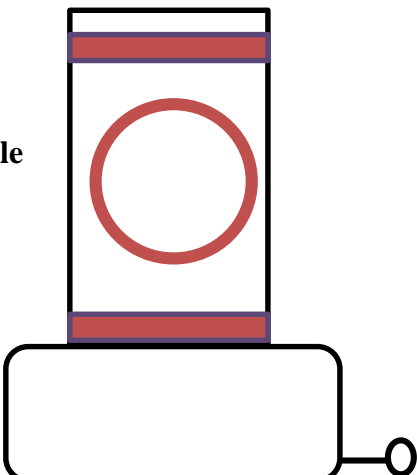
**FWC 17/18-02**  
**Buoy Manufacturing Drawings**

**Spar Buoy and Lettering Example**



**Collared buoy bottom-eye example**

**Collared buoy side-eye example**



**Channel marker buoy examples with lettering and bottom-eye**

**REFERENCES**



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

NAME OF COMPANY: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/Z1P: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_ E-MAIL ADDRESS: \_\_\_\_\_

JOB DATE: \_\_\_\_\_

DESCRIPTION (SCOPE OF WORK): \_\_\_\_\_

\*\*\*\*\*  
NAME OF COMPANY: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/Z1P: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_ E-MAIL ADDRESS: \_\_\_\_\_

JOB DATE: \_\_\_\_\_

DESCRIPTION (SCOPE OF WORK): \_\_\_\_\_

\*\*\*\*\*  
NAME OF COMPANY: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/Z1P: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_ E-MAIL ADDRESS: \_\_\_\_\_

JOB DATE: \_\_\_\_\_

DESCRIPTION (SCOPE OF WORK): \_\_\_\_\_

**FWC 17/18-02  
PRICE SHEET  
CONTRACTOR SHALL NOT ALTER THE PRICE SHEET IN ANY WAY.**

Price quoted shall not contain any Federal or State sales or use taxes. The bidder recognizes that the State of Florida, by virtue of its sovereignty, is not required to pay taxes on services, goods and/or equipment purchased incident to such service. Quoted price shall include all necessary items to complete the project.

**ALL ITEMS SHALL BE BID, OR THE BID WILL BE REJECTED. THE BID WILL BE AWARDED TO THE RESPONSIVE, RESPONSIBLE BIDDER THAT SUBMITS THE LOWEST TOTAL PRICE. PURSUANT TO SECTIONS 287.057(1)(a)1., AND 287.057(1)(a)2., FLORIDA STATUTES EACH CONTRACTOR SHALL SUPPLY A PRICE FOR EACH YEAR THAT A CONTRACT MAY BE RENEWED. (SEE RENEWAL CLAUSE).**

BUOYS		ESTIMATED QUANTITY FOR PURCHASE	PRICE PER BUOY
1	9" Diameter Standard 61" height (Spar) White Can Buoy (Internal Ballast) (Bottom-eye)	20	\$
	14" Diameter (Large) White Float Collar Can Buoy (Internal Ballast) (Bottom-eye)	20	\$
3	14" Diameter (Large) White Float Collar Fast Water Can Buoy (Internal Ballast) (Side-eye)	20	\$
4	19" Diameter (Large) White Float Collar White Can Buoy (Internal Ballast) (Bottom-eye)	20	\$
5	19" Diameter (Large) White Float Collar White Can Buoy (Internal Ballast) (Side-eye)	20	\$
6	13" Diameter Green Can Buoy (Internal Ballast) (Bottom-eye)	20	\$
7	13" Diameter Red Nun Buoy (Internal Ballast) (Bottom-eye)	20	\$
8	14" Diameter (Large) Green Can Buoy (Internal Ballast) (Bottom-eye)	20	\$
9	14" Diameter (Large) Red Nun Buoy (Internal Ballast) (Bottom-eye)	20	\$
TOTAL FOR 1 thru 9			\$

BY SIGNING BELOW I ATTEST THAT I HAVE READ THE ENTIRE BID AND AGREE TO FURNISH THE AT SERVICE OR EACH ITEM THE PRICE QUOTED ABOVE. I HERBY AFFIRM I HAVE NOT BEEN IN ANY AGREEMENT OR COLLUSION AMONG BIDDERS IN RESTRAINT OF FREEDOM OF COMPETITION.

Contractor\_\_\_\_\_ Title\_\_\_\_\_

Address\_\_\_\_\_ Fax\_\_\_\_\_

Signed\_\_\_\_\_ City/State/Zip\_\_\_\_\_

Print Name\_\_\_\_\_ Telephone\_\_\_\_\_

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**FWC 17/18-02  
ATTACHMENT A  
FWC Purchase Order Terms and Conditions  
INSTRUCTIONS AND CONDITIONS**

## **Section 1: Purchase Order**

### **A. Composition and Priority**

The Contractor agrees to provide commodities or contractual services to the Agency within the manner and at the location specified in the Purchase Order, and any attachments to the Purchase Order. These Purchase Order Terms and Conditions, whether generic or specific, shall take precedence over any inconsistent or conflicting provision in the State of Florida, General Contract Conditions, PUR 1000. Additionally, the terms of the Purchase Order supersede the terms of any and all prior agreements with respect to this purchase.

### **B. Initial Term**

Unless otherwise specified, the Purchase Order begins on the date of issuance. Contractual services or commodities to be provided by the Contractor shall be completed by the date specified on the Purchase Order end date.

## **Section 2. Performance**

### **A. Performance Standards**

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Statement of Work and attachments to the Purchase Order. The Agency shall be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof. Coordination shall be maintained by the Contractor with representatives of the Agency, or of other agencies involved in the project on behalf of the Agency.

### **B. Performance Deficiency**

If the Agency determines that the performance of the Contractor is unsatisfactory, the Agency may notify the Contractor of the deficiency to be corrected, which correction shall be made within a time-frame specified by the Agency. The Contractor shall provide the Agency with a corrective action plan describing how the Contractor will address all issues of contract non-performance, unacceptable performance, and failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Agency, the Contractor will be assessed a non-performance retainage equivalent to 10% of the total invoice amount or as specified in the contractual documents. The retainage will be applied to the invoice for the then-current billing period. The retainage will be withheld until the Contractor resolves the deficiency. If the deficiency is subsequently resolved, the Contractor may invoice the Agency for the retained amount during the next billing period. If the Contractor is unable to resolve the deficiency, the funds retained will be forfeited.

## **Section 3. Payment and Fees**

### **A. Payment Invoicing**

The Contractor will be paid upon submission of properly certified invoice(s) to the Agency after delivery and acceptance of commodities or contractual services is confirmed in writing by the Agency. Invoices shall contain detail sufficient for audit thereof and shall contain the Purchase Order and the Contractor's Federal Employer Identification Number or Social Security Number.

### **B. Payment Timeframe**

Section 215.422, Florida Statutes (F.S.), provides that agencies have five (5) working days to inspect and approve commodities or contractual services. Items may be tested for compliance

with specifications. Items delivered not conforming to specifications may be rejected and returned at the Contractor's expense. Interest penalties for late payment are also provided for in section 215.422, F.S. A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems obtaining timely payment(s) from an Agency, may be contacted at 850-413-5516, or Vendors may call the State Comptroller's Hotline at 1-800-848-3792. With the exception of payments to health care providers for hospital, medical, or other health care services, if payment is not available within 40 days, measured from the latter of the date the invoice is received or the commodities or services are received, inspected, and approved, a separate interest penalty set by the DFS pursuant to subsection 55.03(1), F.S. will be due and payable in addition to the invoice amount. Payments to health care providers for hospitals, medical or other health care services, shall be made not more than 35 days from the date of the eligibility for payment is determined, and the daily interest rate is .03333%. Invoice payment requirements do not start until a properly completed invoice is provided to the Commission. Invoices returned to a vendor due to preparation errors will result in a payment delay. The State of Florida is not required to pay direct Federal Excise and State taxes on services or commodities purchased.

### **C. MyFloridaMarketPlace Fees**

The following language is included pursuant to rule 60A-1.031, Florida Administrative Code: 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. Payments issued by Agencies or Eligible Users to Vendors for purchases of commodities or contractual services are subject to Transaction Fees, as prescribed by rule 60A-1.031, Florida Administrative Code, or as may otherwise be established by law. Vendors shall submit monthly reports required by the rule. All reports shall be subject to audit. Failure to pay Transaction Fees or submit reports shall constitute grounds for default and exclusion from business with the State of Florida.

### **D. Payment Audit**

Records of costs incurred under terms of the Purchase Order shall be maintained and made available to the Agency upon request at all times during the period of the Purchase Order, and for a period of three years thereafter. Records of costs incurred shall include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Agency for audit.

### **E. Annual Appropriation and Travel**

Pursuant to section 287.0582, F.S., if the 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.

## **Section 4. Liability**

### **A. Indemnity**

To the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the State of Florida, its officers, employees and agents harmless from all fines, claims, assessments, suits, judgments, or damages, consequential or otherwise, including court costs and attorney's fees, arising out of any acts, actions, breaches, neglect or omissions of the Contractor, its employees, agents, subcontractors, assignees or delegates related to the Purchase Order, as well as for any determination arising out of or related to the Purchase Order, that the Contractor or Contractor's employees, agents, subcontractors, assignees or delegates are not independent contractors in relation to the Agency. The Purchase Order does not constitute a waiver of sovereign immunity or consent by the Agency or the State of Florida or its subdivisions to suit by third parties.

#### **B. Payment for Claims**

The Contractor guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Contractor or any employee, agent, subcontractor, assignee or delegate in connection with the Purchase Order.

#### **C. Liability Insurance**

The Contractor shall maintain insurance sufficient to adequately protect the Agency from any and all liability and property damage/hazards which may result from the performance of the Purchase Order. All insurance shall be with insurers qualified and duly licensed to transact business in the State of Florida. If required by the Agency and prior to commencing any work the Contractor shall provide Certification(s) of Insurance evidencing that all appropriate coverage is in full force and showing the Agency to be an additional insured.

#### **D. Workers' Compensation**

The Contractor shall maintain Workers' Compensation insurance as required under the Florida Workers' Compensation Law. Unless otherwise prohibited by law, the Agency may require the Contractor to furnish, without additional cost to the Agency, a performance bond or irrevocable letter of credit or other form of security for the satisfactory performance of work hereunder. The Agency shall determine the type and amount of security.

### **Section 5. Compliance with Laws**

#### **A. Conduct of Business**

The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. For example, the Contractor shall comply with Section 247A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Pursuant to subsection 287.058(1), F.S., the provisions of subparagraphs 287.058(1)(a)(c), and (g), F.S., are hereby incorporated by reference, to the extent applicable.

#### **B. Lobbying**

In accordance with sections 11.062 and 216.347, F.S., the Purchase Order funds are not for the purpose of lobbying the Legislature, the judicial branch, or an Agency. Pursuant to subsection 287.058(6), F.S., the Purchase Order does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Purchase Order, after the Purchase Order's execution and during the Purchase Order's term.

#### **C. Gratuities**

The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, give, or agree to give anything of value to 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 anything of value for the benefit of, or at the direction or request of, any State officer or employee.

#### **D. Cooperation with Inspector General**

Pursuant to subsection 20.055(5), F.S., Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Purchase Order. The Contractor shall retain such records for three (3) years after the expiration of the Purchase Order, or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-recordsschedules/>), whichever is longer. 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.

#### **E. Public Records**

To the extent required by the Florida Public Records Act, Chapter 119, F.S., the Contractor shall maintain and allow access to public records made or received in conjunction with the Purchase Order. The Purchase Order may be terminated for cause by the Agency for the Contractor's refusal to allow access to public records.

#### **F. Communications and Confidentiality**

The Contractor agrees that it shall make no statements, press releases, or publicity releases concerning the Purchase Order or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with the Purchase Order, or any particulars thereof, during the period of the Purchase Order, without first notifying the Agency's Contract Manager or the Agency's designated contact person and securing prior written consent. The Contractor shall maintain confidentiality of all confidential data, files, and records related to the services and/or commodities provided pursuant to the Purchase Order and shall comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures shall be consistent with the most recent version of the Agency's security policies, protocols, and procedures. The Contractor shall also comply with any applicable professional standards with respect to confidentiality of information.

#### **G. Intellectual Property**

**Contractor's Preexisting Intellectual Property (Proprietary) Rights.** Unless specifically addressed otherwise in the Scope of Work, intellectual property rights to the Contractor's preexisting property will remain with the Contractor. If the Contractor is a state agency or subdivision, as defined in Subsection 768.28(2), F.S., pursuant to Subsection 768.28(19), F.S., neither Party indemnifies nor insures the other Party for or on account of any copyrighted, patented, or un-patented invention, process or article manufactured or

supplied by Contractor. If Contractor is not a state agency or subdivision as defined above, Contractor shall indemnify and hold harmless the Commission and its employees from any liability, including costs, expenses, and attorney's fees, for or on account of any copyrighted, patented, or un-patented invention, process or article manufactured or supplied by Contractor.

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

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

#### **H. Convicted and Discriminatory Vendor Lists**

In accordance with sections 287.133 and 287.134, F.S., an entity or affiliate who is on the Convicted Vendor List or the Discriminatory Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Purchase Order with any Agency.

### **Section 6. Termination**

#### **A. Termination for Convenience**

The Purchase Order may be terminated by the Agency in whole or in part at any time in the best interest of the Agency. If the Purchase Order is terminated before performance is completed, the Contractor shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the Purchase Order price as the amount of work satisfactorily performed. All work in progress shall become the property of the Agency and shall be turned over promptly by the Contractor.

#### **B. Termination for Cause**

If the Agency determines that the performance of the Contractor is not satisfactory, the Agency shall have the option of (a) immediately terminating the Purchase Order, or (b) notifying the Contractor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Purchase Order will be terminated at the end of such time, or (c) take other action deemed appropriate by the Agency.

### **Section 7. Subcontractors and Assignments**

#### **A. Subcontractors**

The Contractor shall not subcontract any work under the Purchase Order without the prior written consent of the Agency. The Contractor is fully responsible for satisfactory completion of all subcontracted work.

#### **B. Assignment**



The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Purchase Order without the prior written consent of the Agency. In the event of any assignment, the Contractor remains secondarily liable for performance of the Purchase Order, unless the Agency expressly waives such secondary liability. The Agency may assign the Purchase Order with prior written notice to the Contractor.

## **Section 8. RESPECT and PRIDE**

### **A. RESPECT**

In accordance with subsection 413.036(3), F.S., if a product or service required for the performance of the Purchase Order is on the procurement list established pursuant to subsection 413.035(2), F.S., the following statement applies:

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>.

### **B. PRIDE**

In accordance with subsection 946.515(6), F.S., if a product or service required for the performance of the Purchase Order is certified by or is available from Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) and has been approved in accordance with subsection 946.515(2), F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INSOFAR AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED. Additional information about PRIDE and the products it offers is available at <http://www.prideenterprises.org>.

## **Section 9. Miscellaneous**

### **A. Independent Contractor**

The Contractor and its employees, agents, representatives, and subcontractors are not employees or agents of the Agency and are not entitled to the benefits of State of Florida employees. The Agency shall not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in all of its subcontracts under the Purchase Order.

## **B. Governing Law and Venue**

The laws of the State of Florida shall govern the Purchase Order. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Purchase Order. Further, the Contractor hereby waives any and all privileges and rights relating to venue it may have under Chapter 47, F.S., and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those based on convenience. The Contractor hereby submits to venue in the county chosen by the Agency.

## **C. Waiver**

The delay or failure by the Agency to exercise or enforce any of its rights under the Purchase Order shall not constitute waiver of such rights.

As part of the consideration for this Contract, the Parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this Contract, or with the products or services provided under this Contract, including but not limited to any claim by the Contractor of *quantum majeure*”

## **D. Modification and Severability**

The Purchase Order may only be modified by a change order agreed to by the Agency and the Contractor. Should a court determine any provision of the Purchase Order is invalid, the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Purchase Order did not contain the provision held to be invalid.

## **E. Time is of the Essence**

Time is of the essence with regard to each and every obligation of the Contractor. Each such obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

## **F. Background Check**

The Agency may require the Contractor and its employees, agents, representatives and subcontractors to provide fingerprints and be subject to such background check as directed by the Agency. The cost of the background check(s) shall be borne by the Contractor. The Agency may require the Contractor to exclude the Contractor’s employees, agents, representatives or subcontractors based on the background check results.

## **G. E-Verify**

In accordance with Executive Order 11-116, the Contractor agrees to utilize the U.S. Agency of Homeland Security’s E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all new employees hired during the term of the Purchase Order for the services specified in the Purchase Order. The Contractor shall also include a requirement in subcontracts that the subcontractor shall utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Purchase Order term.

## **H. Commodities Logistics**

The following provisions shall apply to all Purchase Orders unless otherwise indicated in the contract documents:

- 1) All purchases are F.O.B. destination, transportation charges prepaid.
- 2) Each shipment must be shipped to the address indicated on the face of the 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 on behalf of the Contractor.

3) No extra charges shall be applied for boxing, crating, packing, or insurance.

4) The following delivery schedule shall apply: 8:00 AM – 4:00 PM, Monday through Friday, excluding legal holidays.

5) If delivery to the specified destination cannot be made on or before the specified date, notify the Agency immediately using the contact information provided in the MyFloridaMarketPlace system.

6) The Agency assumes no liability for merchandise shipped to other than the specified destination.

7) Items received in excess of quantities specified may, at Agency's option, be returned at the Contractor's expense. Substitutions are not permitted.

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**ATTACHMENT B**  
**IDENTICAL TIE BIDS / DRUG-FREE WORKPLACE**

In accordance with Section 287.087, Florida Statutes, preference shall be given to businesses with drug-free workplace programs. Whenever two (2) or more bids, which are equal with respect to price, quality, and service, are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection one (1).
- 4) In the statement specified in subsection one (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty of nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

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

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**VENDOR NAME**

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**AUTHORIZED SIGNATURE**

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