



# Florida Department of Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

RICK SCOTT  
GOVERNOR

CARLOS LOPEZ-CANTERA  
LT. GOVERNOR

HERSCHEL T. VINYARD JR.  
SECRETARY

May 8, 2014

Prospective Contractor

Subject: DEP Solicitation Number 2014054C  
Invitation to Bid (ITB) for Bathhouse Cleaning at Delnor-Wiggins Pass State Park

This is an ITB for bathhouse cleaning services within Delnor-Wiggins Pass State Park which is located in Naples, Florida. The ITB package consists of this transmittal letter and the following attachments:

- Attachment A - DEP Solicitation Acknowledgement Form
- Attachment B - General Instructions for the Preparation and Submission of Bids for Bathhouse Cleaning at Delnor-Wiggins Pass State Park
- Attachment C - Scope of Services
- Attachment D - Bidder Response Form
- Attachment E - Certification of Drug Free Workplace
- Attachment F - Past Performance Evaluation Form
- Attachment G - Bid Response Checklist
- Attachment H - Respondent Summary Form
- Attachment I - Proposed Contract Terms and Conditions

Your response should comply fully with these instructions which describe what is to be included in the response. Prospective contractors submitting a response to this solicitation shall identify the solicitation number, date and time of opening on the sealed envelope or package transmitting their response. This information is used only to put the DEP's mailroom on notice that the package received is a response to a DEP solicitation and therefore should not be opened but delivered directly to the DEP Procurement Section.

This solicitation does not obligate DEP to pay any costs incurred in the preparation and submission of a response or to procure or contract for said services or supplies. The Secretary of the DEP or his written designee are the only individuals who can commit the DEP to the expenditure of funds in connection with any contract resulting from this solicitation.

Prospective Contractor  
May 8, 2014  
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The designated DEP Procurement Section representative for this solicitation is the undersigned. All communications related hereto should cite the subject solicitation number and be directed to my attention at the address provided in Attachment B, Section B.6.

Sincerely,

*Ruth Heggen*

Ruth Heggen  
Procurement Administrator

RAH/rh

Attachments

Attachment A  
DEP SOLICITATION ACKNOWLEDGEMENT FORM



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
**INVITATION TO BID**  
CONTRACTUAL SERVICES

Page <u>1</u> of <u>57</u> Pages	SUBMIT PROPOSAL TO: Department of Environmental Protection Procurement Section, Douglas Building, Room 438 3900 Commonwealth Boulevard, MS#93 Tallahassee, Florida 32399-3000 Telephone Number: 850-245-2361
AGENCY RELEASE DATE: <u>MAY 8, 2014</u>	

SOLICITATION TITLE: <b>BATHHOUSE CLEANING AT DELNOR-WIGGINS PASS STATE PARK</b>	SOLICITATION NO: <b>2014054C</b>
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BIDS WILL BE OPENED: @ **3:00 p.m. on TUESDAY, JUNE 3, 2014**  
 and may not be withdrawn within 180 days after such date and time.

VENDOR NAME:	_____
VENDOR MAILING ADDRESS:	
CITY – STATE – ZIP:	*AUTHORIZED SIGNATURE (MANUAL)
PHONE NUMBER:	_____
FREE NUMBER:	
FAX NUMBER:	
EMAIL ADDRESS:	
FEID NO.:	*AUTHORIZED SIGNATURE (TYPED), TITLE
*This individual must have the authority to bind the respondent.	

TYPE OF BUSINESS ENTITY (Corporation, LLC, partnership, etc.): \_\_\_\_\_

I certify that the material terms and the proposed prices contained in this response to this Request for Proposals (this Solicitation) have been kept confidential by the Respondent (and all people and entities affiliated with this Respondent who have or may have had knowledge of the same) and that, to the best of my knowledge, they have not been disclosed to any third party including, but not limited to, any other respondent to this Solicitation. Further, I certify that the prices proposed herein were arrived at and submitted without prior understanding, agreement, or in cooperation with any other entity submitting a response to this Solicitation, or to induce an entity to forbear from filing a response, and that this response is in all respects made without collusion or in an effort to perpetrate a fraud on the agency.

I certify that I am authorized to sign this response to this Solicitation for the Respondent and that the Respondent is in compliance with all requirements of this Solicitation; including, but not limited to, the certification requirements contained in this Solicitation as well as those contained above. In submitting this response, the Respondent offers and agrees that if the response is accepted, the Respondent will convey, sell, assign or transfer to the State of Florida all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the State of Florida. At the State's discretion, such assignment shall be made and become effective at the time the purchasing agency tenders final payment to the Respondent.

Respondent agrees to abide by all conditions of this Response and, if selected, to perform in accordance with all terms of the Solicitation and any contract arising there from.

RESPONDENT CONTACTS: Please provide the name, title, address, telephone number and e-mail address of the official contact and an alternate, if available. These individuals shall be available to be contacted by telephone or attend meetings as may be appropriate regarding the solicitation schedule.

PRIMARY CONTACT:		SECONDARY CONTACT:	
NAME, TITLE:		NAME, TITLE:	
ADDRESS:		ADDRESS:	
PHONE NUMBER:		PHONE NUMBER:	
FAX NUMBER:		FAX NUMBER:	
EMAIL ADDRESS:		EMAIL ADDRESS:	

## PUR 1001 – GENERAL INSTRUCTIONS TO RESPONDENTS

1. **Definitions.** The definitions found in s. 60A-1.001, F.A.C. shall apply to this solicitation, and when not defined in said rule shall have the meanings provided in Ch. 287, F.S. The foregoing notwithstanding, the definitions for terms and phrases below shall apply unless specifically indicated otherwise:
  - a) "Associated Business Entity" shall mean a Business Entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the respondent; including, but not limited to, the following: i) a business entity 20 percent or more of whose outstanding voting securities, membership interests or partnership interests are directly or indirectly owned, controlled, or held with power to vote, by the respondent, ii) a business entity which directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of whose outstanding voting securities, membership interests or partnership interests are directly or indirectly owned, controlled, or held with power to vote, by the respondent.
  - b) "Business Entity" includes firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, companies, fiduciaries, corporations, and all other groups or combinations.
  - c) "Buyer" means the entity that has released the solicitation. The term may also mean the "Customer" as defined in the General Contract Conditions (PUR 1000) published by the Florida Department of Management Services (DMS), if the entity meets the definition of both terms.
  - d) "Control" means the ability, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise, including through common officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of an entity.
  - e) "Procurement Officer" means the Buyer's contracting personnel, as identified in the solicitation.
  - f) "Respondent" means the entity that submits materials to the Buyer in accordance with the instructions provided in the solicitation, as well as the entity that is ultimately selected by the Buyer to provide the commodities, construction or services contemplated by the contract.
  - g) "Response" means the materials submitted by the Respondent in accordance with the instructions provided in the solicitation.

2. **General Instructions.** Potential respondents to the solicitation are encouraged to carefully review all the materials contained herein and prepare responses accordingly.

3. **Electronic Submission of Responses.** Respondents are required to submit responses electronically. For this purpose, all references herein to signatures, signing requirements, or other required acknowledgments hereby include electronic signature by means of clicking the "Submit Response" button (or other similar symbol or process) attached to or logically associated with the response created by the respondent within MyFloridaMarketPlace. The respondent agrees that the action of electronically submitting its response constitutes:
  - an electronic signature on the response, generally,
  - an electronic signature on any form or section specifically calling for a signature, and
  - an affirmative agreement to any statement contained in the solicitation that requires a definite confirmation or acknowledgement.

NOTE: This section is superseded by Section B.6 in Attachment B. Electronic submission of proposals is not required and will not be accepted.

4. **Terms and Conditions.** All responses are subject to the terms of the following sections of this solicitation, which, in case of conflict, shall have the order of precedence listed:
  - Technical Specifications,
  - Special Conditions,
  - Instructions to Respondents (PUR 1001),
  - General Conditions (PUR 1000), and
  - Introductory Materials.

The Buyer objects to and shall not consider any additional terms or conditions submitted by a respondent, including any appearing in documents attached as part of a respondent's response. In submitting its response, a respondent agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a response, shall be grounds for rejecting a response. NOTE: This section is superseded by Section B.27 in Attachment B.

5. **Questions.** Respondents shall address all questions regarding this solicitation to the Procurement Officer. Questions must be submitted via the Q&A Board within MyFloridaMarketPlace and must be RECEIVED NO LATER THAN the time and date reflected on the Timeline. Questions shall be answered in accordance with the Timeline. All questions submitted shall be published and answered in a manner that all respondents will be able to view. Respondents shall not contact any other employee of the Buyer or the State for information with respect to this solicitation. Each respondent is responsible for monitoring the MyFloridaMarketPlace site for new or changing information. The Buyer shall not be bound by any verbal information or by any written information that is not contained within the solicitation documents or formally noticed and issued by the Buyer's contracting personnel. Questions to the Procurement Officer or to any Buyer personnel shall not constitute formal protest of the specifications or of the solicitation, a process addressed in paragraph 19 of these Instructions. NOTE: This section is superseded by Section B.8 in Attachment B.
6. **Conflict of Interest.** This solicitation is subject to chapter 112 of the Florida Statutes. Respondents shall disclose with their response the name of any officer, director, employee or other agent who is also an employee of the State. Respondents shall also disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the respondent or its affiliates.
7. **Convicted Vendors.** A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list:

- submitting a bid on a contract to provide any goods or services to a public entity;
  - submitting a bid on a contract with a public entity for the construction or repair of a public building or public work;
  - submitting bids on leases of real property to a public entity;
  - being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and
  - transacting business with any public entity in excess of the Category Two threshold amount (\$35,000) provided in section 287.017 of the Florida Statutes.
8. **Discriminatory Vendors.** An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not:
- submit a bid on a contract to provide any goods or services to a public entity;
  - submit a bid on a contract with a public entity for the construction or repair of a public building or public work;
  - submit bids on leases of real property to a public entity;
- be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; or
  - transact business with any public entity.
9. **Respondent's Representation and Authorization.** In submitting a response, each respondent understands, confirms and certifies that it has read each of the following statements, that the response to each statement is true and correct to the best of its knowledge and belief, and that it understands and acknowledges that the Buyer will rely on the accuracy of each statement in the award of any contract under the solicitation. If Respondent cannot so certify, it shall submit with its response a written explanation of the facts and circumstances which prevent it from doing so:
- a) Neither Respondent nor any Associated Business Entity thereof (or their respective employees) is currently under suspension or debarment by the State, any agency of the State, the United States or any agency thereof, or of any other governmental authority.
  - b) Neither the Respondent nor any Associated Business Entity thereof (or their respective employees) is currently under investigation by any governmental authority or has, in the last ten (10) years, been convicted or found liable for any act prohibited by law in any jurisdiction that involves conspiracy or collusion with respect to the submission of a bid on any public contract.
  - c) Neither the Respondent nor any Associated Business Entity thereof (or their respective employees) is delinquent or alleged to be delinquent in any [material] [financial][contractual] obligation to the [State, or any agency of the State][the Buyer], including any pending litigation with or any claim by the [State or any agency of the State][Buyer] for penalties, damages, reimbursable costs, liquidated damages, violation of permit or breach of contract.
  - d) Respondent's submission of materials in response to the solicitation is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
  - e) The prices and amounts submitted by Respondent have been determined independently and without consultation, communication or agreement with any other respondent or potential respondent, and none of the prices or amounts – actual or approximate – have been disclosed to any respondent or potential respondent and will not be so disclosed before the solicitation opening.
  - f) The Respondent has fully informed the Buyer, in writing, of all convictions of Respondent, its Associated Business Entities, affiliates (as the term affiliates is defined in § 287.133(1)(a), F.S.), successors, assigns, and their respective employees (both current and former or while in the employ of another company) for violation of any state or federal antitrust or other law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public entity contract.
  - g) Neither the Respondent or any Associated Business Entity, nor any person associated with the same in the capacity of officer, director, member, partner, employee, investigator, project director, manager, auditor or other position involved in the administration of federal or state funds:
    - i. Has, within the preceding three (3) years been convicted of or had a civil judgment rendered against it or is presently indicted for or otherwise criminally or civilly charged with commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
    - ii. Has, within a three (3) year period preceding this certification, had one or more federal, state or local government contracts terminated for cause or default.
  - h) The product offered by the Respondent will conform to the specifications without exception.
  - i) The Respondent has read and understands the contract terms and conditions, and this submission is made in conformance with those terms and conditions.
  - j) If an award is made to the Respondent, it agrees that it will be legally bound to the contract that is formed with the State.
  - k) The Respondent has reviewed its records and made a diligent inquiry of its employees and agents responsible for preparing, approving or submitting this Response and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this response.
  - l) The Respondent agrees to indemnify and hold Buyer harmless against any cost, damage or expense which Buyer may incur or which may be caused by any error, omission or misstatement in Respondent's bid preparation.
  - m) Neither the Respondent nor any Associated Business Entity is currently a party to any litigation (judicial or administratively) with the Buyer.
10. **Performance Qualifications.** The Buyer reserves the right to investigate or inspect at any time whether the product, qualifications, or facilities offered by respondent meet the Contract requirements. Respondent shall at all times during the Contract term remain responsive and responsible. Respondent must be prepared, if requested by the Buyer, to present evidence of experience, ability, and financial standing, as well as a statement as to plant, machinery, and capacity of the respondent for the production, distribution, and servicing of the product bid. If the Buyer determines that the conditions of the solicitation documents are not complied with, or that the product proposed to be furnished does not meet the specified requirements, or that the qualifications, financial standing, or facilities are not satisfactory, or that performance is untimely, the Buyer may reject the response or terminate the Contract. Respondent may be disqualified from receiving awards if respondent, or anyone in respondent's employment, has previously failed to perform satisfactorily in connection with public bidding or contracts. This paragraph shall not mean or imply that it is obligatory upon the Buyer to make an investigation either before or after award of the Contract, but should the Buyer elect to do so, respondent is not relieved from fulfilling all Contract requirements.

11. **Public Opening.** Responses shall be opened on the date and at the location indicated on the Timeline. Respondents may, but are not required to, attend. The Buyer may choose not to announce prices or release other materials pursuant to s. 119.07(3)(m), Florida Statutes. Any person requiring a special accommodation because of a disability should contact the Procurement Officer at least five (5) workdays prior to the solicitation opening. If you are hearing or speech impaired, please contact the Buyer by using the Florida Relay Service at (800) 955-8771 (TDD).
12. ~~Electronic Posting of Notice of Intended Award.~~ Based on the evaluation, on the date indicated on the Timeline the Buyer shall electronically post a notice of intended award at [http://fcn.state.fl.us/owa\\_vbs/owa/vbs\\_main\\_menu](http://fcn.state.fl.us/owa_vbs/owa/vbs_main_menu). If the notice of award is delayed, in lieu of posting the notice of intended award the Buyer shall post a notice of the delay and a revised date for posting the notice of intended award. Any person who is adversely affected by the decision shall file with the Buyer a notice of protest within 72 hours after the electronic posting. The Buyer shall not provide tabulations or notices of award by telephone. NOTE: This section is superseded by Section B.10 in Attachment B.
13. ~~Firm Response.~~ The Buyer may make an award within sixty (60) days after the date of the opening, during which period responses shall remain firm and shall not be withdrawn. If award is not made within sixty (60) days, the response shall remain firm until either the Buyer awards the Contract or the Buyer receives from the respondent written notice that the response is withdrawn. Any response that expresses a shorter duration may, in the Buyer's sole discretion, be accepted or rejected. NOTE: This section is superseded by Section B.17 in Attachment B.
14. **Clarifications/Revisions.** Before award, the Buyer reserves the right to seek clarifications or request any information deemed necessary for proper evaluation of submissions from all respondents deemed eligible for Contract award. Failure to provide requested information may result in rejection of the response.
15. **Minor Irregularities/Right to Reject.** The Buyer reserves the right to accept or reject any and all bids, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if the Buyer determines that doing so will serve the State's best interests. The Buyer may reject any response not submitted in the manner specified by the solicitation documents.
16. **Contract Formation.** The Buyer shall issue a notice of award, if any, to successful respondent(s), however, no contract shall be formed between respondent and the Buyer until the Buyer signs the Contract. The Buyer shall not be liable for any costs incurred by a respondent in preparing or producing its response or for any work performed before the Contract is effective.
17. **Contract Overlap.** Respondents shall identify any products covered by this solicitation that they are currently authorized to furnish under any state term contract. By entering into the Contract, a Contractor authorizes the Buyer to eliminate duplication between agreements in the manner the Buyer deems to be in its best interest.
18. ~~Public Records.~~ Florida law generously defines what constitutes a public record; see, for example, section 119.07 of the Florida Statutes. If a respondent believes that its response contains information that should not be a public record, the respondent shall clearly segregate and mark that information (for example, placing the material in a separate electronic file, and including the word "Confidential" in the filename) and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation for such exemption. NOTE: This section is superseded by Section B.11 in Attachment B.
19. **Protests.** Any protest concerning this solicitation shall be made in accordance with sections 120.57(3) and 287.042(2) of the Florida Statutes and chapter 28-110 of the Florida Administrative Code. Questions to the Procurement Officer shall not constitute formal notice of a protest. It is the Buyer's intent to ensure that specifications are written to obtain the best value for the State and that specifications are written to ensure competitiveness, fairness, necessity and reasonableness in the solicitation process.

A notice of protest of the solicitation documents shall be made within seventy-two (72) hours after the posting of the solicitation pursuant to Section 120.57(3)(b), F.S. and Section 28-110.003, Fla. Administrative Code.

Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes.

Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. Section 28-110.005, Florida Administrative Code.

20. **Misrepresentations:** All information submitted and representations made by the Respondent are material and important and will be relied upon by the Buyer in awarding the contract. Any misstatement or omission (a "Misrepresentation") shall be treated as a fraudulent concealment of the true facts relating to submission of the solicitation. A misrepresentation shall be a basis for Buyer to disqualify the Respondent from participating in this solicitation, and any re-solicitation pertaining to this subject matter (regardless of whether the re-solicitation resulted from Respondent's misrepresentation) and shall be punishable under law, including, but not limited to, Chapter 817, F.S.
21. **Headings.** The headings contained herein are for convenience only, do not constitute a part of this solicitation and shall not be deemed to limit or affect any of the provisions hereof.

(PUR 1001 – 60A-1.002(7), F.A.C.)

INDEX OF SUPERSEDED SECTIONS

PUR 1001 –GENERAL INSTRUCTIONS TO RESPONDENTS

1. Item 3 is superseded by Attachment B, Section B.6.
2. Item 4 is superseded by Attachment B, Section B.27.
3. Item 5 is superseded by Attachment B, Section B.8.
4. Item 12 is superseded by Attachment B, Section B.10.
5. Item 13 is superseded by Attachment B, Section B.17.
6. Item 18 is superseded by Attachment B, Section B.11.

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ATTACHMENT B  
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## ATTACHMENT B

### GENERAL INSTRUCTIONS FOR THE PREPARATION AND SUBMISSION OF BIDS FOR BATHHOUSE CLEANING AT DELNOR-WIGGINS PASS

- B.1 Solicitation Number: 2014054C
- B.2 Solicitation Type: Invitation to Bid (ITB)
- B.3 Date of ITB Issuance: May 8, 2014
- B.4 Program Area: Bureau of Parks District 4  
Division of Recreation and Parks  
Florida Department of Environmental Protection (DEP)
- B.5 Solicitation Timeline:

A mandatory pre-bid site inspection is scheduled for Friday, May 16, 2014 @ 10:00 A.M. ET. (See section B.7 below). Failure by a prospective contractor to attend the mandatory on-site inspection shall preclude the prospective contractor's bid from being considered.

By Monday, May 19, 2014 @ 5:00 p.m. ET, all questions from prospective contractors must be submitted in accordance with the directions in section B.8.

By Thursday, May 22, 2014 @ 5:00 p.m. ET, the DEP anticipates posting questions received and the DEP's answer on the Vendor Bid System (see instructions on how to get to the Vendor Bid System below).

By Tuesday, June 3, 2014 at 3:00 p.m. Eastern Time (ET), prospective contractors shall submit one (1) original of their response to this solicitation (see Sections B.25 for bid preparation instructions).

On or after 9:00 a.m. ET, on Tuesday, June 10, 2014, the recommended award will be posted on the Florida Department of Management Services (DMS) Vendor Bid System.

To access the posted results, go to <http://www.myflorida.com>. Once at this site, the steps listed below should be followed to access the Vendor Bid System.

- Click on BUSINESS
- Click on "Doing Business with the State"
- Under the "Everything for Vendors and Customers" heading, click on "Vendor Bid System"
- Click on "Search Advertisements"
- Under the "Agency" search field, select the "Department of Environmental Protection" and click on "Initiate Search"
- Click on the solicitation number "2014054C-AD"

These dates are to be used by the prospective contractor for planning purposes and are subject to change. The DEP reserves the right to revise the solicitation timeline provided above.

Please notify the DEP Procurement Section (see above) at least ten (10) days prior to the due date for responses if an accommodation because of a disability is required in order to participate in this procurement opportunity.

B.6 Response Submittal (This section supersedes Attachment A, PUR1001, Instruction #3, Electronic Submission of Bids.):

See the instructions for bid preparation in Section B.25. Electronic submission of bids is not required and will not be accepted for this solicitation. Bids may be sent by U.S. Mail, Courier, or Hand-Delivered. BIDS TRANSMITTED BY FACSIMILE WILL NOT BE CONSIDERED.

Bids must be received by:

Ruth Heggen  
Procurement Section, Room 438  
Florida Department of Environmental Protection  
3900 Commonwealth Boulevard, MS#93  
Tallahassee, Florida 32399-3000  
Telephone Number: (850) 245-2361

**NO LATER THAN 3:00 P.M.** ET, on Tuesday, June 3, 2014.

**All responses must be submitted in a sealed package and shall be clearly marked on the outside with the solicitation number, date, and time of solicitation opening.** The DEP is not responsible for the premature opening or a delay in the delivery of any solicitation package which is not properly marked. It is the respondent's responsibility to assure its response is submitted at the place and time indicated in this solicitation. Any response which is not properly marked and delivered to the specified address, which results in its inadvertent premature opening or delayed receipt by the Procurement Section, may result in its rejection.

**CAUTION:** A response received at the designated office after the exact time specified for receipt will not be opened, evaluated or considered for contract award.

B.7 Mandatory Site Visit:

There will be a mandatory pre-bid on-site inspection for all prospective bidders. The on-site inspection will be held on Friday, May 16, 2014 @ 10:00 A.M. ET, at Delnor-Wiggins Pass State Park, 11100 Gulfshore Drive, Naples, Florida, in the presence of Robert Steiger, Park Manager or his designee. Bidders shall be required to complete a pre-bid site inspection form at the time of the on-site inspection confirming their inspection of the site. The purpose of the pre-bid site inspection is for prospective Bidders to become familiar with any local conditions in which in any manner affects the work to be done or affects the equipment, material, labor and services required. Directions to the site visit for the can be obtained by contacting Robert Steiger at (239) 597-6196. Failure to attend the mandatory on-site inspection and complete the on-site inspection form shall be cause for a Respondent's bid to be deemed non-responsive and rejected.

The Project Manager or their designee, will **NOT** answer any questions pertaining to this solicitation. Any questions from vendors concerning this ITB shall be submitted in writing in accordance with Section B.8, below.

B.8 Questions (This section supersedes Attachment A, PUR1001, Instruction #5, Questions.):

Any questions from prospective contractors concerning this ITB shall be submitted in writing, identifying the submitter, to Ruth Heggen at the address specified in Section B.6 above; by email to Ruth.Heggen@dep.state.fl.us; or by facsimile to 850-245-2411; by 5:00 P.M. ET on Monday, May 19, 2014. E-mail inquiries are preferred; however a hard copy or facsimile is acceptable. All questions and/or changes to the solicitation will be posted on the DMS Vendor Bid System (VBS). It is the prospective vendor's responsibility to periodically check the VBS. DEP bears no responsibility for any delays, or resulting impacts, associated with a prospective vendor's failure to obtain the information made available through the DMS Vendor Bid System.

No information, other than that received in writing from and signed by the Procurement Officer, may be relied upon by a respondent.

Information on Federal Procurement Regulations, State Statutes or Rules, referred to in this solicitation, may be obtained by contacting the DEP Procurement Section referred to in Item B.6 above.

For the purposes of this solicitation, the terms respondent, offeror, consultant and contractor are used interchangeably and mean a person(s) or firm(s) submitting a response to this solicitation. The terms DEP, Department, customer, and buyer are used interchangeably and mean the Florida Department of Environmental Protection.

B.9 Restriction on Communication with DEP Staff:

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

B.10 Notification (This section supersedes Attachment A, PUR1001, Instruction #12, Electronic Posting of Notice of Intended Award.):

Tabulation of Results, with the recommended contract award will be posted for review by interested parties at the location specified in Section B.5 above on or after 9:00 A.M., ET on Tuesday, June 10, 2014.

The Tabulation of Results will remain posted for a period of seventy-two (72) hours, which does not include weekends or State observed holidays. Any Respondent who desires to protest the recommended contract award must file a notice of protest and formal protest with the Procurement Section, Department of Environmental Protection, Douglas Building, Room 438, MS#93, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, within the time prescribed in Section 120.57(3), Florida Statutes, and Chapter 28-110, Florida Administrative Code.

B.11 Solicitation Response Contents (This section supersedes Attachment A, PUR1001, Instruction #18, Public Records.):

Regardless of whether Respondent is selected for award or successfully obtains any contract for work under this Solicitation:

- A. Upon receipt by the Department, all material submitted by Respondent in response to the Solicitation shall be and become property of the Department and shall be a public record, as that term is defined in Chapter 119 Florida Statutes. Material submitted in response to the Solicitation shall be subject to disclosure and production by the Department as a public record, upon request of any person entitled thereto, thirty (30) days following the opening of the response or when the notice of intended award is posted, whichever occurs first.
- B. Submittal of materials by Respondent (including, without limitation, financial, technical, proprietary, and pricing information) shall constitute its waiver of any right or claim of trade secret, copyright, confidentiality or privilege therein and of any right or claim of exemption from disclosure or reproduction of the materials by the Department as a public record.
- C. Respondent agrees and does by submittal of materials in response to this Solicitation, transfer, convey and assign to the Department, without charge, a perpetual, non-exclusive, unlimited license to use, reproduce, publish or disclose any and all information contained therein; including, but not limited to, the right of the Department to incorporate the materials in any solicitation, negotiation, contract, agreement, purchase order, task order or other document, regardless of whether Respondent is a party thereto.

B.12 Description of Work Being Procured:

The Department of Environmental Protection (DEP) is requesting bids from qualified vendors for bathhouse cleaning services within Delnor-Wiggins Pass State Park, which is located in Naples, Florida. All work shall be performed in accordance with the requirements set forth in the Scope of Services provided as Attachment C of this solicitation. This will include providing equipment, labor and materials for the cleaning services, with the exception of those items specified in Attachment C.

B.13 Number of Awards:

The DEP anticipates the issuance of one (1) contract for services under this solicitation. The DEP, at its sole discretion, shall make this determination.

B.14 Contract Term:

The contract is expected to begin on or about July 1, 2014 and remain in effect for a period of five (5) years, inclusive. In accordance with Section 285.058(2), Florida Statutes, the Contractor shall not be eligible for reimbursement for services rendered prior to the execution date of this Contract. The DEP reserves the right to renew any contract resulting from this solicitation. Renewal shall be subject to the terms and conditions set forth in the existing contract and shall be limited to no more than an additional term not to exceed three (3) years or the original term of the Contract, whichever period is longer. Renewal of this Contract shall be in writing and subject to the same terms and conditions of this Contract. All renewals are contingent upon satisfactory performance by the Contractor and the availability of funds.

B.15 Type of Contract Contemplated (This section supersedes Attachment A, PUR1000, Condition #2, Purchase Orders.):

A fee schedule contract is proposed (price per month of service), however, the DEP reserves the right to award another contract type if such will be most advantageous to the DEP and the State of Florida, price and other factors considered.

A copy of the proposed contract containing all requirements is included as Attachment I. The requirements contained in the proposed contract should be closely reviewed by the offeror since modifications proposed by the offer or may not be considered.

**B.16 Offer Acceptance Period:**

The DEP expects to execute the contract(s) as soon as possible after the announcement of the award. The DEP has the discretion to terminate negotiations if agreement is not reached within thirty (30) days of announcement of an award.

**B.17 Firm Response (This section supersedes Attachment A, PUR1001, Instruction #13, Firm Response.):**

The DEP may make an award within one hundred eighty (180) days after the date of the response opening, during which period the response submitted shall remain firm and shall not be withdrawn. If an award is not made within one hundred eighty (180) days after the response opening date, the response shall remain firm until either the DEP posts an Agency Decision or the DEP receives a written notice from the Respondent that the response is withdrawn, whichever occurs first. Any response that expresses a shorter duration shall be rejected.

**B.18 Disclosure:**

Information will be disclosed to respondents in accordance with State statutes and rules applicable to this solicitation after evaluations are complete.

**B.19 Laws and Permits:**

The selected contractor must comply with all local, state, and federal laws, rules, regulations and codes whenever work is being performed under the contract. All permits and licenses required for the selected contractor's company operations under the contract must be obtained by the selected contractor and maintained for the duration of the contract. DEP will not pay for the cost of licenses or permits required by the selected contractor for company operations.

**B.20 Insurance (This section supersedes Attachment A, PUR1000, Condition #34, Insurance Requirements.):**

The contractor selected under this ITB shall maintain during the life of the contract, Workers' Compensation Insurance for all of its employees connected with the Contract and, in case any work is subcontracted, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. Such insurance shall comply fully with the Florida Workers' Compensation Law. In case any class of employee engaged in hazardous work under the contract is not protected under the Workers' Compensation statute, the contractor shall provide adequate insurance, satisfactory to the DEP, for the protection of its employees not otherwise protected.

The contractor shall maintain during the life of the contract, comprehensive general liability coverage with limits of not less than \$100,000 per occurrence and \$300,000 general aggregate for bodily injury and property damage; and comprehensive automobile liability coverage with limits of not less than \$300,000 combined single limit for bodily injury and property damage.

The selected contractor's current certificate of insurance shall contain a provision that the insurance will not be canceled or modified for any reason except after thirty (30) days written notice to the DEP Procurement Administrator, with the exception of ten (10) days notice for non-payment of premium by the insured.

The selected contractor shall be required to submit insurance certificates evidencing all of the above insurance coverage prior to the execution of a contract with the DEP. The insurance certificate must name the DEP as an additional insured and reference the DEP Contract Number. Copies of new insurance certificates must be provided to the Contract Manager with each insurance renewal.

B.21 Subcontracting:

The prospective contractor shall not subcontract, assign, or transfer the obligation to provide or perform any of the services sought under this solicitation, *with the exception of those subcontractors identified in the prospective contractor's response*, without the prior written consent of the DEP.

The selected contractor will be responsible for the fulfillment of all work elements included in all subcontracts and shall be solely responsible for payment of all monies due under any subcontract. The DEP shall not be responsible for any expenses or liabilities incurred under any subcontract.

The Respondent shall take all actions necessary to ensure that their employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

In accordance with the terms of Attachment A, DEP Solicitation Acknowledgment Form, a Respondent may not respond to this Solicitation as both prime contractor and as a subcontractor. Respondents shall be disqualified if and to the extent it responds to this Solicitation as a proposed prime contractor and has agreed to serve as a subcontractor to any other respondent to this Solicitation. A respondent may not disclose to any other respondent or subcontractor what prices or terms respondent has included in its response as a prime contractor.

All responses to this Solicitation to provide services as prime contractors which are received from affiliated entities (those with any common ownership, management or control), shall be rejected if discovered prior to selection and any award or contract thereon shall be terminated if discovered subsequent thereto.

The DEP supports diversity in its Procurement Program and requests that all subcontracting opportunities afforded by this solicitation embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida. Prospective contractors can contact the Office of Supplier Diversity at 850-487-0915 for information on minority vendors who may be considered for subcontracting opportunities.

B.22 Conflict of Interest:

The respondent covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services required to be performed under the contract.

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B.23 Vendor Registration:

Prior to entering into a contract with the DEP, the selected contractor must be registered with the Florida Department of Management Services (DMS) MyFloridaMarketPlace Vendor Registration System. Information about the registration process is available, and registration may be completed, at the MyFloridaMarketPlace website (link available at [www.myflorida.com](http://www.myflorida.com)). Prospective contractors who do not have internet access may request assistance from the MyFloridaMarketPlace Customer Service at (866) 352-3776 or from the State Purchasing Office, 4050 Esplanade Drive, Suite 300, Tallahassee, Florida 32399.

The following DMS Class/Group codes are provided to assist you in your registration efforts: 991-450 Janitorial Services.

B.24 Florida Department of State Registration Requirements:

All entities defined under Chapter 865, 607, 608, 617, 620 or 621, Florida Statutes, seeking to do business with the Florida Department of Environmental Protection shall, prior to execution of a contract, be appropriately registered, and authorized to transact business in Florida, with the Florida Department of State.

If and to the extent any selected respondent is dissolved, terminated, reorganized or reformed, following this Solicitation, the respondent shall notify the DEP within thirty (30) days of such event, but in any event prior to the assignment or issuance of any purchase order, task assignment or contract following the change in the respondent's status. Failure to so notify the DEP shall result in the suspension of tasked work or termination of the contract.

B.25 General Instructions for Preparation of the Bid:

The instructions for this ITB have been designed to help insure that all bids are consistent, as well as to minimize costs and response time. The response shall consist of the following parts:

A. DEP Solicitation Acknowledgement Form:

The DEP Solicitation Acknowledgement Form (original copy provided in solicitation package as Attachment A) shall be completed as instructed and submitted to the DEP. If a respondent fails to submit a completed Acknowledgement Form with their response, the DEP reserves the right to contact the vendor by telephone for submission of this document via fax with follow up via mail. This right shall be exercised when the response has met all other requirements of the solicitation.

In the event that respondents submit a response as a joint venture, each member of the joint venture shall complete and sign a separate Acknowledgement Form.

B. Qualifications

The Bidder must prove to the satisfaction of the DEP that their company has actively and normally been engaged in business in the janitorial services field for at least one (1) year of continuous operation. This shall be demonstrated through references which have been in place for at least one (1) continuous year. The Bidder shall also show that they have available under their direct supervision, the necessary organization, experience, equipment and staff to properly fulfill all the conditions, requirements, and specifications required under this solicitation.

The Bidder shall submit the following with their bid:

1. In the spaces provided in Attachment D, the Bidder shall provide the required information to include the Bidders name, address, telephone number and continuous years in operation.
2. Provide a minimum of three (3) separate and verifiable clients, other than the DEP, for which work similar to that specified in this solicitation has been performed. The references shall be for work that is similar in nature and scope to that required for that required in Attachment C of this Solicitation (Scope of Services). The same client may not be listed for more than one (1) reference (for example, if the bidder has completed one project for the Florida Department of Transportation – District One and one project for the Florida Department of Transportation – District Two, only one (1) of the projects may be listed because the client, the Florida Department of Transportation, is the same). These references should be available to be contacted during normal working hours. The DEP will email the reference questionnaire to two (2) of the references provided. If no read receipt is generated within three (3) business days, the DEP will email the selected reference again. In the event that no read receipt is generated within three (3) business days of the second time attempt or if the contact person does not respond within three (3) business days following DEP's receipt of a read receipt, the respondent shall receive a score of zero (0) for that reference evaluation. The DEP will not attempt to correct incorrectly supplied information. References shall be listed on the Client References Form, Pages 2-4 of Attachment D, attached hereto. Do not list work performed for the DEP in your response to this part.
3. A list of all names under which the Bidder and its Associated Business Entities have operated during the past eight (8) years (including those of predecessors through merger) and list any contracts which the Bidder or any of its Associated Business Entities have been a party to with the DEP within the last eight (8) years, where either the Bidder or its Associated Entity was the prime contractor. The DEP will review its records to identify 1) any contracts, if applicable, that the Bidder or any Associated Entity was a party to with the DEP during the previous eight (8) years. The DEP will contact, at its discretion, one of the DEP Contract Managers in order to complete the evaluation questionnaire provided in Attachment F.

Failure to provide any of the information requested in this section shall result in the bid being deemed non-responsive and therefore, rejected.

C. Price:

The Bidder must provide a price for monthly services on page 1 of Attachment D, Bidder Response Form. The price quoted shall include the Bidder's furnishing the necessary personnel and labor, materials, equipment, supplies, transportation costs, services, licenses and insurance, MyFloridaMarketPlace transaction fee and otherwise doing all things necessary for or incidental to the performance of work as defined in this solicitation. No other charges may be added to the bid price.

The rate provided shall be current and effective through the initial twelve (12) month term of the contract. The selected contractor may request an increase in the rate each year after the initial period of the Contract, including the possible renewal period(s).

Requests for increases must be submitted at least sixty (60) calendar days prior to the anniversary date of the Contract in order for the request to be considered. Rate increases must be requested in writing to the Department and must be supported by a detailed justification which warrants the requested increase percentage (up to a maximum of 5% in any one year). The Department shall review the request, and supporting documentation, to determine whether an increase is warranted and, if so, what percentage of



adjustment (increases not to exceed 5% in any one year) will be authorized by formal amendment to the Contract.

At any time either party may request a decrease in the rate. Each party shall review the other party's written request. If an agreement cannot be reached regarding a decrease in the rates, the Contract may be terminated pursuant to the termination for convenience clause in the contract.

Failure to provide a price for monthly service on Attachment D, "Bidder Response Form", shall result in the bid being deemed non-responsive and therefore, rejected.

D. Documentation Supporting Primary Subcontract Arrangements:

All respondents shall supply written proof of subcontract arrangements with subcontractors for this Solicitation. Documentation shall be supplied for each subcontractor which the respondent intends to utilize. The written documentation shall be a one (1) page letter supplied by the subcontractor on its letterhead stationery, clearly identifying the DEP Solicitation Number (2014054C), the project title (Bathhouse Cleaning at Delnor-Wiggins Pass State Park), and the prime contractor with whom the firm intends to subcontract. Failure to submit a letter of commitment from an intended subcontractor identified in the response shall result in the disallowance of the qualifications and experience of that subcontractor from consideration in the evaluation process.

The DEP supports diversity in its Procurement Program and requests that all subcontracting opportunities afforded by this solicitation embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida.

E. Respondent Summary Form:

On the form provided as Attachment H, the respondent shall list the name of the respondent(s), the name of each intended primary subcontractor and indicate one Office of Supplier Diversity business category of each firm listed.

F. State Project Plan:

The respondent shall submit a written plan addressing the State's five (5) objectives listed below, to the extent applicable to the items/services covered by this solicitation objectives not addressed in the selected contractor's response must be addressed prior to Contract execution. The State reserves the right to negotiate mutually acceptable changes with the respondent selected for award, prior to execution of the contract.

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

The state is dedicated to fostering the continued development and economic growth of small, minority-, women-, and veteran business enterprises. Participation by a diverse group of Vendors doing business with the state is central to this effort. To this end, it is vital that small, minority-, women-, and veteran business enterprises participate in the state's procurement

process as both Contractors and sub- contractors in this solicitation. Small, minority-, women-, and veteran business enterprises are strongly encouraged to contribute to this solicitation.

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

Information on Certified Minority Business Enterprises (CMBE) and Certified Veteran Business Enterprises (VBE) is available from the Office of Supplier Diversity at:

[http://dms.myflorida.com/other\\_programs/office\\_of\\_supplier\\_diversity\\_osd/](http://dms.myflorida.com/other_programs/office_of_supplier_diversity_osd/).

Quarterly Reports of revenue paid to certified W/MBE and certified VBE contractors (agents or subcontractors) as a result of any award shall be provided to the Agency Purchasing Office by the Prime Contractor on an Agency by Agency (or other eligible user) level.

2. **Environmental Considerations:** The State supports and encourages initiatives to protect and preserve our environment. The respondent shall provide a plan for reducing and/or handling of any hazardous waste generated by the respondent company. Reference Rule 62-730.160, Florida Administrative Code. It is a requirement of the Florida Department of Environmental Protection that a generator of hazardous waste materials that exceeds a certain threshold must have a valid and current Hazardous Waste Generator Identification Number. This identification number shall be submitted as part of the respondent's explanation of its company's hazardous waste plan and shall explain in detail its handling and disposal of waste.
3. **Certification of Drug-Free Workplace Program:** The State supports and encourages initiatives to keep the workplace of Florida's suppliers and contractors drug free. Section 287.087 of the Florida Statutes provides that, where identical tie proposals are received, preference shall be given to a proposal received from a respondent that certifies it has implemented a drug-free workforce program. If applicable, the respondent shall sign and submit the "Certification of Drug-Free Workplace Program" Form, attached hereto and made a part hereof as Attachment E, to certify that the respondent has a drug-free workplace program.
4. **Products Available from the Blind or Other Handicapped (RESPECT):** The State supports and encourages the gainful employment of citizens with disabilities. 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>.

The respondent shall describe how it will support the use of RESPECT in offering the services/items being procured under this solicitation. Respondents proposing the use of RESPECT as a subcontractor shall be required to provide written proof of a subcontractor agreement for this solicitation with RESPECT with their response. The written documentation shall be a one (1) page letter supplied by the subcontractor on its letterhead stationery, clearly identifying the DEP Solicitation Number, the project title, and the prime contractor with whom the firm intends to subcontract.

5. **Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE):** The State supports and encourages the use of Florida Correctional work programs. 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, Florida Statutes, in the same manner and under the same procedures set forth in section 946.515(2) and (4), 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 this agency insofar as dealings with such corporation are concerned. Additional information about PRIDE and the products it offers is available at <http://www.pride-enterprises.org>.

The respondent shall describe how it will support the use of PRIDE in offering the services/items being procured under this solicitation. Respondents proposing the use of PRIDE as a subcontractor shall be required to provide written proof of a subcontractor agreement for this solicitation with PRIDE with their response. The written documentation shall be a one (1) page letter supplied by the subcontractor on its letterhead stationery, clearly identifying the DEP Solicitation Number, the project title, and the prime contractor with whom the firm intends to subcontract.

**B.26 Basis of Award:**

- A. **Price.** The lowest price will be determined by the lowest total price quoted on Attachment D for the services requested in this solicitation. The bidder submitting the lowest price responsive bid shall be awarded the contract, provided that the following criteria are met:
  - i. **Qualifications.** If the bidder fails to meet the qualification requirements, as outlined in Section B.25. B, the DEP shall disqualify the bidder from further consideration, and the next lowest bid shall be considered in accordance with the provisions of this section.
  - ii. **Client References/DEP References.** The DEP shall contact two (2) client references for Bidder or any Associated Business Entity's. The references will be contacted as set out in Section B.25, B.2. DEP will also contact one (1) of the DEP Contract Managers for Bidder or any Associated Business Entity's past performance for DEP, if any, to evaluate the history of performance under contracts with DEP. The scores for all individual references (DEP and Non-DEP) will be totaled and averaged. Failure to receive an above satisfactory or excellent performance evaluation (a score of 2.75 or above) for this average, or any single reference with a score below 1.50 shall result in the bid being rejected and, in that event, the next lowest bid shall be considered in accordance with the provisions of this section.
- B. **Tie.** In the case of a tie between two or more prospective contractors, the Department shall apply the following selection criteria derived from Section 60A-1.011, F.A.C. and 295.187(4), F.S.:
  1. When evaluating vendor responses to solicitations and requests for quotes, if the agency is confronted with identical pricing or scoring of responses from multiple vendors, the agency shall determine the order of award using the following serial criteria, in the order of application and preference listed below (from highest to lowest priority). Evaluation shall stop when and at the point application of the subsections criteria results in a preference.
    - (a) A response is from a Florida-domiciled entity, as determined by the Florida Department of State shall prevail over a response from a non-Florida domiciled entity.

- (b) If the response relates to manufactured commodities, a response which provides for the manufacturing of such commodities within the state shall prevail over one providing for foreign manufacture.
  - (c) If the response relates to manufactured commodities, a response by a foreign manufacturer which employs at least 200 people within the state shall prevail over that of a foreign manufacturer with less than 200 employees working within the state.
  - (d) A response which certifies that respondent has implemented a drug-free workplace in accordance with Section 287.087, F.S. shall prevail over a response that does not.
2. Vendor Preferences to be applied in the event those preferences listed in section (1) above do not result in selection.
- (a) If two equal responses to a solicitation or a request for quote are received and one response is from a certified minority business enterprise, the agency shall enter into a contract with the certified minority business enterprise. Section 287.057(11), F.S. and
  - (b) When considering two or more bids, proposals, or replies for the procurement of commodities or contractual services, at least one of which is from a certified veteran business enterprise, which are equal with respect to all relevant considerations, including price, quality, and service, shall award such procurement or contract to the certified veteran business enterprise. Section 295.187(4)(a), F.S.
  - (c) Notwithstanding the provisions of (a) above, if a veteran business enterprise entitled to the vendor preference under this section and one or more businesses entitled to this preference or another vendor preference provided by law submit bids, proposals, or replies for procurement of commodities or contractual services which are equal with respect to all relevant considerations, including price, quality, and service, the state agency shall award the procurement or contract to the business having the smallest net worth. Section 295.187(4)(b), F.S.
3. Vendor Preferences to be applied in the event those preferences listed in sections (1) and (2) above fail to result in selection.
- (a) The agency shall award the contract to the respondent whose response is deemed by the agency to be in the best interests of the State, considering factors such as, but not limited to, prior performance on state or other governmental contracts.
  - (b) In the event that the application of subsections (3)(a) does not result in selection between identically evaluated responses, the agency shall determine the award by a means of random selection (e.g., a coin toss or drawing of numbers).
- C. In determining vendor responsibility, the agency may consider any information or evidence which comes to its attention and which reflects upon a vendor's capability to fully perform the contract requirements and/or the vendor's demonstration of the level of integrity and reliability which the agency determines to be required to assure performance of the contract.
- D. In determining vendor responsibility, the agency may consider any information or evidence which comes to its attention and which reflects upon a vendor's capability to fully perform the contract requirements and/or

the vendor's demonstration of the level of integrity and reliability which the agency determines to be required to assure performance of the contract.

- E. The DEP reserves the right to accept or reject any or all bids received. Non-responsive bids include, but are not limited to, those that: (1) are irregular or not in conformance with the solicitation requirements and instructions; (2) fail to utilize or complete prescribed forms; (3) are conditional, incomplete or ambiguous, or (4) have improper or undated signatures. **A NONRESPONSIVE BID WILL NOT BE CONSIDERED.**
- F. The DEP may waive minor informalities or irregularities in the bids received where such are merely a matter of form and not substance, and the corrections of which **ARE NOT PREJUDICIAL** to other bidders.

**B.27 Terms and Conditions (This section supersedes Attachment A, PUR1001, Instruction #4, Terms and Conditions.):**

All responses must comply with the terms of this Solicitation. In case of a conflict in terms between any of the components, the order of precedence for resolving such conflict shall be as follows (1 being the highest):

1. General Instructions for Preparation and Submission of Bids for Bathhouse Cleaning at Delnor-Wiggins Pass State Park (Attachment B);
2. Scope of Services (Attachment C),
3. General Instructions to Respondents (PUR1001, as amended) (of Attachment A), and
4. Proposed Contract Terms and Conditions (Attachment I).

The DEP objects to and shall not consider any additional terms or conditions submitted by a respondent, including any appearing in documents attached as part of a respondent's response. In submitting its response, a respondent agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect.

**Note: Any requirement of this Solicitation which indicates the consequence of any noncompliance shall be strictly enforced.**

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ATTACHMENT C

SCOPE OF SERVICES

Delnor-Wiggins Pass State Park has six (6) bathhouses open to the public from 8:00 am until sunset daily. Three (3) bathhouses have electricity and three (3) do not.

Five (5) bathhouses are described as follows:

Men's Side

Two (2) urinals, three (3) sinks, three (3) commodes.

Women's Side

Three (3) sinks, four (4) commodes.

One (1) bathhouse is described as follows:

Men's Side

Two (2) sinks one (1) commode and two (2) urinals.

Women's Side

Two (2) commodes and three (3) sinks. This bathroom is attached to roofed pavilion with wooden deck.



The facilities will be cleaned on daily basis, seven days a week, starting no later than 7:00 a.m. and being completed by 12:00 p.m.

This Contractor shall provide all necessary materials and labor to clean and stock the areas described herein. The Department will be responsible for providing disinfectant cleaner, hand soap, cleanser, bowl cleaner, toilet paper and paper towels as needed. The Department will also be responsible for removing trash bags from all restrooms daily.

This Contractor will be responsible for performing the following specific duties. These duties shall include, but not be limited to the following:

1. Sweep floors and decking.
2. Mop Floors with disinfectant.
3. Wipe walls to eliminated cobwebs, bug debris, dust and dirt. Dust windowsills, louvers and other surfaces. Notify Park Management of graffiti that cannot be removed. Use of a mild abrasive cleanser may be necessary to remove difficult stains. All surfaces to be rinsed to remove cleaning agent sediments. Spot cleaning of the surfaces should be completed on a daily basis.
4. Spray disinfectant on porcelain and clean. The effective cleaning of sinks, fixtures, toilet bowls, seats, flush valves and urinals are the most important jobs in the restroom. Special attention is to be given to these fixtures to clean them inside and out. See Florida Park Service Routine Restroom Cleaning Procedures, attached hereto and made a part hereof as Exhibit I.

5. Stock the restroom with paper towels, toilet paper and hand soap. (Supplies provided by the Department.)
6. Polish stainless steel and mirrors.
7. Sweep shower pads and surrounding boardwalk.
8. Restrooms to be sprayed down monthly with a park management approved bleach solution to insure mildew does not present itself.
9. The Contractor will check off the daily cleaning procedures for bathhouses when completed. See Page 4 (Exhibit II) of this Attachment for the checklist. If facility damage has occurred, is found upon arrival or potential repairs are identified by the contractor, the contractor will notify park staff immediately. A member of the park staff will inspect the checklist and facilities daily to ensure compliance.

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## EXHIBIT I

### FLORIDA PARK SERVICE ROUTINE RESTROOM CLEANING PROCEDURES

#### Restrooms

The care of restrooms and their related fixtures is a high priority. Clean, sanitary facilities lends to the physical and mental comfort of all people using them. Maintaining clean, sanitary facilities is a continuous task and all areas including fixtures will be carefully cleaned at least once each day and more often if use patterns dictate.

#### a) Restroom Cleaning Tools and Equipment

The items required for restroom cleaning are relatively few and simple. The basic items listed should, in most cases, be all that are required to accomplish a satisfactory job. When possible, needed items should be stored in each restroom storage room for immediate availability.

- (1) Wet mop and pail.
- (2) Toilet brush.
- (3) Cleaning cloths and sponge.
- (4) Hose.

#### b) Routine Restroom Cleaning Procedure

A routine daily procedure in the cleaning operation will increase efficiency and tend to decrease the possibility of oversight of areas to be cleaned. The following procedure will normally accomplish the entire cleaning job with a minimum of time and effort:

- (1) Pick up waste paper and empty waste containers.
- (2) Dust window sills, walls, rafters, louvers and other surfaces, remove cobwebs/insect nests from interior and exterior walls.
- (3) Sweep and mop floor with a disinfectant cleaner and remove all stuck substances with a putty knife.
- (4) Wash walls, doors and compartments with a cloth or sponge, saturated with a general purpose detergent solution, making a special effort to remove all graffiti. The use of a mild abrasive powdered cleanser may be necessary to remove difficult stains. All surfaces should be rinsed to remove cleaning agent sediments. Spot cleaning of these surfaces should be done on a daily basis and the entire room washed in this manner at least monthly.
- (5) Wash windows and mirrors using clear water and cloth. Dry with clean cloth.
- (6) The cleaning of toilet bowls and urinals is the most important job in the restroom. Special attention is to be given these fixtures.
  - A) For toilets, use a toilet brush, johnny mop, cloth or sponge, and an approved bowl cleaner/disinfectant, thoroughly clean the interior making sure to clean the surfaces under the lip of the bowl and at the waterline. The occasional use of a mild abrasive powdered cleanser on a johnny mop, cloth or sponge may be necessary to remove stubborn stains. Rinse and flush the unit. The exterior surfaces and seats should then be washed with a general purpose detergent solution, rinsed and dried with a clean cloth.
  - B) Waterless urinal cleaning requires spraying down all surfaces of the urinal with a Waterless Urinal Cleaner and wiping them clean. The occasional use of bleach or a mild abrasive cleaner may be necessary to remove stubborn stains.
- (7) Toilets will have encrustation form in fixture traps, under flush rings, and behind lips on the top, sides and bottom. Weekly inspection of these areas with a small hand held mirror will ensure they are being cleaned thoroughly. Encrustations are a major source of offensive odor in restrooms. To avoid this problem, the cleaning frequency with a bowl cleaner will be established so these fixtures are odor free at all times.
- (8) Carefully wash exposed surfaces of the lavatories or wash basins using a general purpose detergent/disinfectant and a cloth or sponge. Rinse and dry with a clean cloth. The occasional use of a powdered cleanser may be necessary to remove stains.



- (9) All faucets, flush valves and other polished metal surfaces should be washed and dried. Wiping these surfaces with a treated cloth once a week will inhibit the formation of corrosion.
- (10) All floor drains should be flushed with a bucket of water or hose at weekly intervals. Floor drain covers should be removed regularly and cleaned.
- (11) All paper dispensing units should be checked and filled daily.
- (12) Check and fill soap dispensers daily.
- (13) The entire floor area should be mopped with a detergent solution daily. An occasional scrubbing with a deck brush may be required to remove stubborn dirt.
- (14) Light fixtures should be cleaned on a regular basis and burned out bulbs replaced at once.
- (15) Window screens should be cleaned regularly.

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**EXHIBIT II**

**DELNOR-WIGGINS PASS STATE PARK**

**JANITORIAL SERVICES CHECKLIST**

AREA # _____ MONTH/YEAR _____	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	
<b>MAINTENANCE</b>																																
Sweep floors and deck																																
Mop floors as necessary																																
Wipe away cobwebs,bug debris & dust																																
Clean waterless urinals with proper chemicals																																
Spay disenfectant on all porcelain-clean																																
Fill dispensers																																
Polish stainless and mirrors																																
Sweep showerpads & surrounding brdwalk																																
<b>WIGGINS EARLY FIELD</b>																																
Remove litter and coal from picnic areas																																
Clean Baby Changing Stations																																
Every Friday, clean trail labels																																
check for hazards and maintenance needs																																
<b>Afternoon bath house check-initial</b>																																
<b>WIGGINS LATE FIELD</b>																																
Empty sani-bags and trash																																
Flush as necessary & lock																																
<b>AS NEEDED</b>																																
Restock and organize																																
G.I. Inside																																
G.I. Outside																																
<b>COMMENTS</b>																																

ATTACHMENT D

BIDDER RESPONSE FORM

BIDDER QUALIFICATIONS

Bidder or Associated Business  
Entity's Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

Phone Number:

\_\_\_\_\_

# Years of Continuous Operation:

\_\_\_\_\_ to \_\_\_\_\_

Month/Year

Month/Year

PRICE

The prices quoted shall include the Contractor's furnishing the necessary personnel and labor, materials, equipment, supplies, transportation costs, services, licenses and insurance, MyFloridaMarketPlace transaction fee and otherwise doing all things necessary for or incidental to the performance of work as defined in this solicitation. No other charges shall be added to the bid price.

Monthly Price (to complete all cleaning as specified in Attachment C) = \$ \_\_\_\_\_

The rate provided shall be current and effective through the initial twelve (12) month term of the contract. The selected contractor may request an increase in the rate each year after the initial period of the Contract, including the possible renewal period(s).

Requests for increases must be submitted at least sixty (60) calendar days prior to the anniversary date of the Contract in order for the request to be considered. Rate increases must be requested in writing to the Department and must be supported by a detailed justification which warrants the requested increase percentage (up to a maximum of 5% in any one year). The Department shall review the request, and supporting documentation, to determine whether an increase is warranted and, if so, what percentage of adjustment (increases not to exceed 5% in any one year) will be authorized by formal amendment to the Contract.

At any time either party may request a decrease in the rate. Each party shall review the other party's written request. If an agreement cannot be reached regarding a decrease in the rates, the Contract may be terminated pursuant to the termination for convenience clause in the contract.

Failure to provide a price for monthly service shall result in the bid being deemed non-responsive and therefore, rejected.

DEP PAST PERFORMANCE

The Bidder shall provide a list of all names under which the Bidder and its Associated Business Entities have operated during the past eight (8) years (including those of predecessors through merger) and list any contracts which the Bidder or any of its Associated Business Entities have been a party to with the DEP within the last eight (8) years, where either the Bidder or its Associated Entity was the prime contractor. The DEP will review its records to identify any contracts, if applicable, that the Bidder or any Associated Entity was a party to with the DEP during the previous eight (8) years.

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CLIENT REFERENCES

The bidder must list a minimum of three (3) separate and verifiable clients of the bidder, other than the DEP, for which work similar to that specified in this solicitation has been performed. Information on these clients shall be listed below. Any information not submitted on this attachment may not be considered. The same client may not be listed for more than one (1) reference (for example, if the Bidder has completed one project for the Florida Department of Transportation – District One and one project for the Florida Department of Transportation – District Two, only one (1) of the projects may be listed because the client, the Florida Department of Transportation, is the same). The DEP shall choose two (2) clients at its discretion to contact as set out in Attachment B. Section B.25, B.2. **NOTE: PROJECT TERM DATES MUST VERIFY THAT THE PROJECT HAS BEEN ONGOING FOR AT LEAST ONE (1) YEAR.**

Client #1

Name (Required): \_\_\_\_\_

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

Contact Person (Required): \_\_\_\_\_ Phone Number: \ \_\_\_\_\_

Contact Person Email Address (Required): \_\_\_\_\_

Project Term: \_\_\_\_\_ to \_\_\_\_\_  
**DATES MUST DEMONSTRATE AT LEAST ONE (1) CONTINUOUS YEAR**

Approximate Contract Value: \$ \_\_\_\_\_

Brief description of the project: \_\_\_\_\_

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Client #2

Name (Required): \_\_\_\_\_

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

Contact Person (Required): \_\_\_\_\_ Phone Number: \ \_\_\_\_\_

Contact Person Email Address (Required): \_\_\_\_\_

Project Term: \_\_\_\_\_ to \_\_\_\_\_  
DATES MUST DEMONSTRATE AT LEAST ONE (1) CONTINUOUS YEAR

Approximate Contract Value: \$ \_\_\_\_\_

Brief description of the project: \_\_\_\_\_

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

Client #3

Name (Required): \_\_\_\_\_

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

Contact Person (Required): \_\_\_\_\_ Phone Number: \ \_\_\_\_\_

Contact Person Email Address (Required): \_\_\_\_\_

Project Term: \_\_\_\_\_ to \_\_\_\_\_  
DATES MUST DEMONSTRATE AT LEAST ONE (1) CONTINUOUS YEAR

Approximate Contract Value: \$ \_\_\_\_\_

Brief description of the project \_\_\_\_\_

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

Client #4

Name (Required): \_\_\_\_\_

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

Contact Person (Required): \_\_\_\_\_ Phone Number: \ \_\_\_\_\_

Contact Person Email Address (Required): \_\_\_\_\_

Project Term: \_\_\_\_\_ to \_\_\_\_\_

**DATES MUST DEMONSTRATE AT LEAST ONE (1) CONTINUOUS YEAR**

Approximate Contract Value: \$ \_\_\_\_\_

Brief description of the project \_\_\_\_\_

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

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ATTACHMENT E

CERTIFICATION OF DRUG-FREE WORKPLACE

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more responses 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 responses 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 the employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 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.

---

(Signature)

---

(Type Name)

---

(Firm Name)

---

(Address)

**ATTACHMENT F  
EVALUATION OF PAST PERFORMANCE**

Bidder or Associated Business  
Entity's Name:

\_\_\_\_\_  
("contractor")

Bidder's Reference Name

Person Interviewed

Interviewed By

Date of Interview

The following questions will be asked of the client reference chosen at the discretion of the DEP:

1. Briefly describe the work the contractor performed for your company.

2. How well did the contractor adhere to the agreed upon schedule?

Excellent = 4 points; Above Satisfactory = 3 points; Satisfactory = 2 points; Fair = 1 point; Poor = 0 points.

\_\_\_\_\_

3. How would you rate the contractor's quality of work?

Excellent = 4 points; Above Satisfactory = 3 points; Satisfactory = 2 points; Fair = 1 point; Poor = 0 points.

\_\_\_\_\_

4. How would you rate the contractor's use of adequate personnel in quantity, experience and profession?

Excellent = 4 points; Above Satisfactory = 3 points; Satisfactory = 2 points; Fair = 1 point; Poor = 0 points.

\_\_\_\_\_

5. How would you rate the contractor's use of appropriate equipment and methods?

Excellent = 4 points; Above Satisfactory = 3 points; Satisfactory = 2 points; Fair = 1 point; Poor = 0 points.

\_\_\_\_\_

Score

\_\_\_\_\_

Divided by

4

= Average Score

\_\_\_\_\_

Reference's Signature \_\_\_\_\_

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



## ATTACHMENT G

### ITB RESPONSE CHECKLIST

To ensure that your response package can be accepted, please be sure the following items are fully completed and enclosed:

1. \_\_\_\_\_ The DEP Solicitation Acknowledgement Form (Attachment A in the solicitation package) must be completed and signed. If a respondent fails to submit a completed DEP Solicitation Acknowledgement Form with their response the DEP reserves the right to contact the vendor by telephone for submission of this document via fax with follow up via mail. This right shall be exercised when the response has met all other requirements of the solicitation. Did you complete the following:
  - a. Vendor Name;
  - b. Vendor Mailing Address;
  - c. City, State and Zip Code;
  - d. Phone Number and Fax Number with Area Code;
  - e. Email Address;
  - f. F.E.I.D. Number;
  - g. Type of Business Entity (Corporation, LLC, Partnership, etc.);
  - h. Sign Form (by individual authorized to bind company);
  - i. Type Name of Signatory and Title; and,
  - j. Primary and Secondary Contact Information?

In the event that respondents submit a response as a joint venture, each member of the joint venture must complete and sign a separate Acknowledgement Form.
2. \_\_\_\_\_ Bid Price – Attachment D, Bidder Response Form. Fill in the blank spaces indicating the price for monthly service on Page 1 of the “Bidder Response Form”. Failure to provide a price for monthly service shall result in the bid being deemed non-responsive and therefore rejected.
3. \_\_\_\_\_ Client References- Attachment D, Bidder Response Form (See Attachment B, Section B.25, B.2.). Provide a minimum of three (3) references. Each must demonstrate that the project has been ongoing for at least one (1) continuous year.
4. \_\_\_\_\_ DEP Past Performance- Attachment D, Bidder Response Form (See Attachment B, Section B.25, B.3.)
5. \_\_\_\_\_ State Project Plan, which addresses the following:
  - a. Diversity
  - b. Environmental Considerations;
  - c. Certification of Drug-Free Workplace (complete a signed Attachment E, if applicable);
  - d. Use of RESPECT; and,
  - e. Use of PRIDE.
6. \_\_\_\_\_ Respondent Summary Form - Attachment H. List the name of the respondent(s), the name of each intended primary subcontractor and indicate one Office of Supplier Diversity business category for each firm listed.

This checklist (Attachment G) is provided merely for the convenience of the respondent and may not be relied upon in lieu of the instructions or requirements of this solicitation.

**ATTACHMENT H**

**RESPONDENT/SUBCONTRACTOR SUMMARY FORM**

<b>Section A</b>	<b>TEAM IDENTIFICATION (To Be Completed By The Respondent.)</b>
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As Respondent to DEP Solicitation No. 2014042C, I/we intend to utilize the following team in connection with this project: In the spaces provided below, list the name of the respondent, the name of each intended subcontractor, and indicate the business category of each one listed.]

**NOTE:** For each intended subcontractor listed below, a subcontractor Letter of Commitment must be submitted, as specified in the solicitation, stating the subcontractor's intent to perform work or provide services for the Respondent in order for the subcontractor to be considered by the Department of Environmental Protection for this solicitation. Failure to provide a Letter of Commitment from an intended subcontractor shall result in that intended subcontractor's qualifications not being considered.

	INDICATE THE ONE OFFICE OF SUPPLIER DIVERSITY CATEGORY THAT BEST DESCRIBES EACH ORGANIZATION LISTED																						
	STATE NON-MINORITY BUSINESS CLASSIFICATION				CERTIFIED MBE				NON-CERTIFIED MBE				NON-PROFIT ORG.										
	NON-MINORITY (A)	SMALL BUSINESS (STATE) (B)	SMALL BUSINESS (FEDERAL) (C)	GOVERNMENTAL AGENCY (D)	NON-PROFIT ORGANIZATION (F)	P.R.I.D.E. (G)	VETERAN BUSINESS ENTERPRISE (L)	AFRICAN AMERICAN (H)	HISPANIC (I)	ASIAN/HAWAIIAN (J)	NATIVE AMERICAN (K)	AMERICAN WOMAN (M)	VETERAN BUSINESS ENTERPRISE (W)	AFRICAN AMERICAN (N)	HISPANIC (O)	ASIAN/HAWAIIAN (P)	NATIVE AMERICAN (Q)	AMERICAN WOMAN (R)	VETERAN BUSINESS ENTERPRISE (Y)	BOARD IS 51% OR MORE MINORITY (S)	51% OR MORE MINORITY OFFICERS (T)	51% OR MORE MINORITY COMMUNITY SERVED (U)	OTHER NON-PROFIT (V)
LIST NAMES OF RESPONDENT(S) & ALL INTENDED SUBCONTRACTORS																							



**Section B**

**ACKNOWLEDGEMENT (To Be Completed By The Respondent(s).)**

**I/WE HEREBY CERTIFY that, as Respondent to DEP Solicitation No. 2014054C, that the information provided herein is true and correct.**

\_\_\_\_\_  
**Name of Respondent #1**

\_\_\_\_\_  
**Name of Respondent #2**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Print Name/Title**

\_\_\_\_\_  
**Print Name/Title**

**\*\*\*IMPORTANT\*\*\* BOTH SECTIONS OF THIS FORM MUST BE COMPLETED AND SECTION B MUST BE DATED AND BEAR THE RESPONDENT'S SIGNATURE FOR THIS FORM TO BE DEEMED RESPONSIVE.**

**Please review to ensure all sections are complete and the form is acknowledged correctly.**

ATTACHMENT I  
PROPOSED CONTRACT

The following provisions may be incorporated into the final contract. A copy of the current sample contract is provided beginning on page 10 of this Attachment.

PUR 1000 – GENERAL CONTRACT CONDITIONS

1. **Definitions.** The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:
  - (a) "Contract" means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.
  - (b) "Customer" means the State agency or other entity that will order products directly from the Contractor under the Contract.
  - (c) "Product" means any deliverable under the Contract, which may include commodities, services, technology or software.
  - (d) "Purchase order" means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, or other authorized means).
  
2. ~~**Purchase Orders.** A Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (i) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(14) and (15) of the Florida Statutes. This section is superseded by Section B.15 in Attachment B.~~
  
3. **Product Version.** Purchase orders shall be deemed to reference a manufacturer's most recently released model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.
  
4. **Price Changes Applicable only to Term Contracts.** If this is a term contract for commodities or services, the following provisions apply.
  - (a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.
  - (b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.
  - (c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.
  - (d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.

- (e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.
5. **Additional Quantities.** For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.
  6. **Packaging.** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.
  7. **Manufacturer's Name and Approved Equivalents.** Unless otherwise specified, any manufacturers' names, trade names, brand names, information or catalog numbers listed in a specification are descriptive, not restrictive. With the Customer's prior approval, the Contractor may provide any product that meets or exceeds the applicable specifications. The Contractor shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Customer shall determine in its sole discretion whether a product is acceptable as an equivalent.
  8. **Inspection at Contractor's Site.** The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.
  9. **Safety Standards.** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.
  10. **Americans with Disabilities Act.** Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.
  11. **Literature.** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.
  12. **Transportation and Delivery.** Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.
  13. **Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and

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

14. **Risk of Loss.** Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.
15. **Transaction Fee.** ~~The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.~~

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

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

~~Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES SHALL BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE. NOTE: This section is superseded by paragraph 35 in the sample contract.~~

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

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

~~Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers. This section is superseded by paragraph 6 in the sample contract.~~

17. **Taxes.** ~~The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer on a purchase order or other special contract condition. This section is superseded by paragraph 29 in the sample contract.~~

18. **Governmental Restrictions.** ~~If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the~~

~~complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer. This section is superseded by paragraph 34 in the sample contract.~~

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

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

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

~~The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld. This section is superseded by paragraph 12 in the sample contract.~~

21. **Limitation of Liability.** ~~For all claims against the Contractor under any individual purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement. Liability will not be limited in any contract(s) resulting from this solicitation.~~
22. Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the purchase order requires the Contractor to



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

23. ~~Suspension of Work. The Customer may in its sole discretion suspend any or all activities under the Contract, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract. Suspension of work shall not entitle the Contractor to any additional compensation. This section is superseded by paragraph 15 in the sample contract.~~
24. ~~Termination for Convenience. The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits. This section is superseded by paragraph 16 in the sample contract.~~
25. ~~Termination for Cause. The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract. This section is superseded by paragraph 16 in the sample contract.~~
26. ~~Force Majeure, Notice of Delay, and No Damages for Delay. The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the~~

~~related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part. This section is superseded by paragraph 24 in the sample contract.~~

27. **Scope Changes.** The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.
28. **Renewal.** ~~Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds. This section is superseded by paragraph 3 in the sample contract.~~
29. **Advertising.** Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.
30. **Assignment.** ~~The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer; provided, the Contractor assigns to the State any and all claims it has with respect to the Contract under the antitrust laws of the United States and the State. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so. This section is superseded by paragraph 13 in the sample contract.~~
31. **Dispute Resolution.** ~~Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within ten (10) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.~~

~~Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial. This section is superseded by paragraph 17 in the sample contract.~~

32. **Employees, Subcontractors, and Agents.** All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.
33. **Security and Confidentiality.** The Contractor shall comply fully with all security procedures of the State and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work,

including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

34. **Contractor Employees, Subcontractors, and Other Agents.** The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.
35. ~~Insurance Requirements.~~ During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. ~~Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida. This section is superseded by paragraph 11 in the sample contract.~~
36. **Warranty of Authority.** Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.
37. **Warranty of Ability to Perform.** The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.
38. ~~Notices.~~ All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. ~~Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.—This section is superseded by paragraph 8 in the sample contract.~~
39. **Leases and Installment Purchases.** Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.
40. ~~Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).~~ Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>. This section is superseded by paragraph 20 in the sample contract.
41. ~~Products Available from the Blind or Other Handicapped.~~ Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are

concerned." ~~Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.~~ This section is superseded by paragraph 21 in the sample contract.

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

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

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

44. ~~**Waiver.** The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.~~ This section is superseded by paragraph 28 in the sample contract.

45. ~~**Annual Appropriations.** The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.~~ This section is superseded by paragraph 5 in the sample contract.

46. ~~**Execution in Counterparts.** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.~~ This section is superseded by paragraph 38 in the sample contract.

47. ~~**Severability.** If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.~~ This section is superseded by paragraph 25 in the sample contract.

48. **Special Conditions.** Pursuant to 60A-1.002(7), F.A.C., a Customer may attach additional contractual and technical terms and conditions. These "special conditions" shall take precedence over this form PUR 1000 unless the conflicting term in this form is statutorily required, in which case the term contained in the form shall take precedence.

(PUR 1000 – 60A-1.002(7), F.A.C.)

**INDEX OF SUPERSEDED SECTIONS**  
**PUR 1000 – GENERAL CONTRACT CONDITIONS**

1. Item 2 is superseded by Section B.15 in Attachment B.
2. Item 15 is superseded by paragraph 35 of the sample contract.
3. Item 16 is superseded by paragraph 6 of the sample contract.
4. Item 17 is superseded by paragraph 29 of the sample contract.
5. Item 18 is superseded by paragraph 34 of the sample contract.
6. Item 20 is superseded by paragraph 12 of the sample contract.
7. Item 23 is superseded by paragraph 15 of the sample contract.
8. Item 24 is superseded by paragraph 16 of the sample contract.
9. Item 25 is superseded by paragraph 16 of the sample contract.
10. Item 26 is superseded by paragraph 24 of the sample contract.
11. Item 28 is superseded by paragraph 3 of the sample contract.
12. Item 30 is superseded by paragraph 13 of the sample contract.
13. Item 31 is superseded by paragraph 17 of the sample contract.
14. Item 35 is superseded by paragraph 11 of the sample contract.
15. Item 38 is superseded by paragraph 8 of the sample contract.
16. Item 40 is superseded by paragraph 20 of the sample contract.
17. Item 41 is superseded by paragraph 21 of the sample contract.
18. Item 44 is superseded by paragraph 28 of the sample contract.
19. Item 45 is superseded by paragraph 5 of the sample contract.
20. Item 46 is superseded by paragraph 38 of the sample contract.
21. Item 47 is superseded by paragraph 25 of the sample contract.

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The proposed contract language contained below should be reviewed by all prospective contractors. In responding to DEP Solicitation No. 2014042C a prospective contractor has agreed to accept the terms and conditions of the contract contained in this attachment. The DEP reserves the right to make modifications to this contract if it is deemed to be in the best interest of the DEP or the State of Florida.

DEP Contract No. \_\_\_\_\_

### SAMPLE CONTRACT

THIS CONTRACT is entered into between the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (hereinafter referred to as the "Department") and \_\_\_\_\_ (Name of Entity) whose address is (Specify Address) (hereinafter referred to as the "Contractor"), a (Specify Type of Organization) , to provide Bathhouse Cleaning at Delnor-Wiggins Pass State Park.

In consideration of the mutual benefits to be derived herefrom, the Department and Contractor do hereby agree as follows:

1. **Services.** The Department does hereby retain the Contractor for bathhouse cleaning at Delnor-Wiggins Pass State Park, as defined herein and the Contractor does hereby agree to perform such services as outlined in DEP Solicitation No. 2014054C and Contractor's response thereto, incorporated herein by reference, and in accordance with Exhibit \*, Scope of Services (see Attachment B, Section B.12 and Attachment C), attached hereto and made a part hereof. Any terms and conditions of this Contract which vary from those contained in the Solicitation or Contractor's response thereto shall have precedence. The Contractor does hereby agree to conduct these services for the Department upon the terms and conditions set forth in this Contract and all exhibits and Attachments named herein which are attached hereto and incorporated by reference. The Contractor has been determined to be a vendor to the Department under this Contract.
2. **Standard of Care for Performance.**
  - A. The Contractor shall perform as an independent contractor and not as an agent, representative, or employee of the Department.
  - B. The Contractor shall perform the services in a proper and satisfactory manner as determined by the Department. Any and all such equipment, products or materials necessary to perform these services, or requirements as further stated herein, shall be supplied by the Contractor.
  - C. The Contractor shall provide competent, suitably qualified personnel. The Contractor must provide notification to the Department Contract Manager of any changes in the Personnel identified in their response to the solicitation and/or upon execution of this Contract. Such notification shall include a detailed reason(s) for the need to change personnel and the Contractor's documentation that proposed replacement personnel have equal or greater qualifications and experience.
3. **Term of Contract.** This Contract shall begin upon execution by both parties and shall remain in effect for a period of five (5) years, inclusive. In accordance with Section 287.058(2), Florida Statutes, the Contractor shall not be eligible for reimbursement for services rendered prior to this Contract. This Contract may be renewed for a period that may not exceed three (3) years or the original term of the Contract, whichever period is longer. Renewal of this Contract shall be in writing and subject to the same terms and conditions of this Contract. Renewal is contingent upon satisfactory performance by the Contractor and the availability of funds.
4. **Compensation.**
  - A. As consideration for the services rendered by the Contractor under the terms of this Contract, the Department shall pay the Contractor on a fee schedule basis, in the amount of \$\_\_\_ per month.

- B. Based on the price set out above, the maximum amount of compensation for the first year of services under this Contract shall not exceed \$\_\_\_\_\_. The Department reserves the right to increase the maximum compensation amount to provide for each additional year of the Contract and the possible renewal period(s).
- C. The rate provided shall be current and effective through the initial twelve (12) month term of the contract. The selected contractor may request an increase in the rate each year after the initial period of the Contract, including the possible renewal period(s).

Requests for increases must be submitted at least sixty (60) calendar days prior to the anniversary date of the Contract in order for the request to be considered. Rate increases must be requested in writing to the Department and must be supported by a detailed justification which warrants the requested increase percentage (up to a maximum of 5% in any one year). The Department shall review the request, and supporting documentation, to determine whether an increase is warranted and, if so, what percentage of adjustment (increases not to exceed 5% in any one year) will be authorized by formal amendment to the Contract.

At any time either party may request a decrease in the rate. Each party shall review the other party's written request. If an agreement cannot be reached regarding a decrease in the rates, the Contract may be terminated pursuant to the termination for convenience clause in the contract.

- 5. **Annual Appropriation.** The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.
- 6. **Payment Method.**  
The Contractor shall submit invoices to the Department on a monthly basis. Each invoice shall be submitted in detail sufficient for a proper pre-audit and post-audit review thereof. All travel and incidental expenses are included in the fee schedule amount of this Contract.
- 7. **Prompt Payment.**
  - A. Pursuant to Section 215.422, Florida Statutes, the Department's Contract Manager shall have five (5) working days, unless otherwise specified herein, to inspect and approve the services for payment; the Department must submit a request for payment to the Florida Department of Financial Services within twenty (20) days; and the Department of Financial Services is given ten (10) days to issue a warrant. Days are calculated from the latter date the invoice is received or services received, inspected, and approved. Invoice payment requirements do not start until a proper and correct invoice has been received. Invoices which have to be returned to a contractor for correction(s) will result in a delay in the payment. A Vendor Ombudsman has been established within the Florida Department of Financial Services who may be contacted if a contractor is experiencing problems in obtaining timely payment(s) from a State of Florida agency. The Vendor Ombudsman may be contacted at 850-413-5516.
  - B. In accordance with Section 215.422, Florida Statutes, the Department shall pay the Contractor interest at a rate as established by Section 55.03(1), Florida Statutes, on the unpaid balance, if a warrant in payment of an invoice is not issued within forty (40) days after receipt of a correct invoice and receipt, inspection, and approval of the goods and services. Interest payments of less than \$1 will not be enforced unless a contractor requests payment. The interest rate for each calendar year for which the term of this Contract is in effect can be obtained by calling the Department of Financial Services, Vendor Ombudsman at the telephone number provided above, or the Department's Procurements Section at 850-245-2361.
- 8. **Notice.** Any notices or other written communication, except invoices, between the parties shall be considered delivered when posted by Certified Mail, return receipt requested, or delivered in person to the Contract Managers at the following addresses:

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Department

Contractor Name  
Attn: \_\_\_\_\_  
Contractor Address

Department of Environmental Protection  
Delnor-Wiggins Pass State Park  
Attn: \_\_\_\_\_  
11135 Gulfshore Drive  
Naples, Florida 34108

9. **Identification of Contract Managers.** The Department's Contract Manager is \_\_\_\_\_, Phone 850/245-\_\_\_\_. The Contractor's Contract Manager is \_\_\_\_\_, Phone \_\_\_\_\_. All matters shall be directed to the Contract Managers for appropriate action or disposition.
10. **Financial Consequences for Unsatisfactory Performance.** No payment will be made for deliverables deemed unsatisfactory by the Department. In the event that a deliverable is deemed unsatisfactory by the Department, Contractor shall re-perform the services needed for submittal of a satisfactory deliverable, at no additional cost to the Department, within thirty (30) days of being notified of the unsatisfactory deliverable. If a satisfactory deliverable is not submitted within the specified timeframe, the Department may, in its sole discretion, either: 1) terminate the Contract for failure to perform, or 2) the Department Contract Manager may, by letter specifying the failure of performance under the Contract, request that a proposed Corrective Action Plan (CAP) be submitted by Contractor to the Department. All CAPs must be able to be implemented and performed in no more than sixty (60) days.
- A. A CAP shall be submitted within ten (10) calendar days of the date of the letter request from the Department. The CAP shall be sent to the Department Contract Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Contractor in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Contractor shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above shall result in the Department's termination of the Contract for cause as authorized in the Contract.
- B. Upon Department's notice of acceptance of a proposed CAP, Contractor shall have ten (10) calendar days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department does not relieve the Contractor of any of its obligations under the Contract. In the event the CAP fails to correct or eliminate performance deficiencies by Contractor, the Department shall retain the right to require additional or further remedial steps, or to terminate the Contract for failure to perform. No actions approved by Department or steps taken by Contractor shall estop the Department from subsequently asserting any deficiencies in performance. Contractor shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department Contract Manager.
- C. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Contract as specified by the Department may result in termination of the Contract.

The remedies set forth above are not exclusive and the Department reserves the right to exercise other remedies in addition to or in lieu of those set forth above, as permitted by the Contract.

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



- B. The contractor shall secure and maintain comprehensive general liability coverage with limits of not less than \$100,000 per occurrence and \$300,000 annual aggregate for bodily injury and property damage; automobile liability coverage with limits of not less than \$300,00 combined single limit for bodily injury and property damage. The Contractor's current certificate of insurance shall contain a provision that the insurance will not be cancelled for any reason except after thirty (30) days written notice to the Department's Procurement Administrator.
12. **Indemnification.** The Contractor shall save and hold harmless and indemnify the State of Florida and the Department against any and all liability, claims, judgments or costs of whatsoever kind and nature for injury to, or death of any person or persons and for the loss or damage to any property resulting from the use, service, operation or performance of work under the terms of this Contract, resulting from any negligent act, or failure to act, by the Contractor, its subcontractor, or any of the employees, agents or representatives of the Contractor or subcontractor to the full extent allowed by law.
13. **Nonassignability and Subcontracting.**
- A. The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any task assignment or purchase order issued pursuant to the Contract, without the prior written consent of the Department; provided however, the Contractor hereby assigns to the State any and all claims it has with respect to the Contract under the antitrust laws of the United States and the State. In the event of any assignment, the Contractor remains liable for performance of the Contract, unless the Department expressly waives such liability. The Department may assign the Contract but shall give prior written notice of its intent to do so to the Contractor.
- B. The Contractor shall not subcontract, assign, or transfer any work under this Contract, with the exception of \_\_\_\_\_; without the prior written consent of the Department's Contract Manager. The Department reserves the right to reject any subcontractor based upon prior experience. The Contractor agrees to be responsible for the fulfillment of all work elements included in any subcontract consented to by the Department and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the Contractor that the Department shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and that the Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract. Any subcontracts made under this Contract must include the same conditions specified in this Contract, with the exception of insurance requirements (paragraph no. 17). The level of insurance to be carried by subcontractors performing work under this Contract shall be at the discretion of the Contractor.
14. **Third Party Beneficiaries.** This Contract is neither intended nor shall it be construed to grant any rights, privileges or interest in any third party without the mutual written agreement of the parties hereto.
15. **Suspension.**
- A. The Department may order the Contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as the Department may determine to be appropriate for any of the following reasons:
1. The Contractor fails to timely and properly correct deficiencies or faulty work;
  2. The Contractor's insurer notifies the Department that any of its insurance has lapsed or will lapse, and the Contractor fails to provide replacement insurance acceptable to the Department before the cancellation date;
  3. The Contractor or subcontractor materially violates safety laws;
  4. The Department determines that there is a threat to the public health, safety or welfare that necessitates such suspension; or

5. For the convenience of the Department.
  - B. If the performance of all or any part of the work is suspended, delayed or interrupted for an unreasonable period of time by an act of the Department in administration of the Contract, or by the Department's failure to act within a reasonable time, the Department shall make an adjustment for any increase in the cost of performance of work (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and modify the Contract. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent:
    1. That performance would have been suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or
    2. For which an equitable adjustment is provided or excluded under any other provision of this Contract.
  - C. The Contractor shall not be compensated for work performed subsequent to a notice of suspension by the Department.
16. **Termination.**
  - A. The Department may terminate this Contract at any time in the event of the failure of the Contractor to fulfill any of its obligations under this Contract. Prior to termination, the Department shall provide ten (10) calendar days written notice of its intent to terminate and shall provide the Contractor an opportunity to consult with the Department regarding the reason(s) for termination.
  - B. The Department may terminate this Contract without cause and for its convenience by giving thirty (30) calendar days written notice to the Contractor.
17. **Dispute Resolution.** Any dispute concerning performance of the Contract shall be decided by the Department's designated Contract Manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within ten (10) days from the date of receipt, the Contractor files with the Department a petition for administrative hearing. The Department's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.
18. **Public Records.**
  - A. The Contractor shall keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services under this Contract.
  - B. The Contractor shall provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
  - C. The Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
  - D. The Contractor shall meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Contractor upon termination of the Contract. The Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public disclosure requirements. All records that are stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.
  - E. This Contract may be unilaterally canceled by the Department for refusal by the Contractor to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction

with this Contract, unless the records are exempt from Section 24(a) of Article I of the State Constitution and Section 119.07(1), Florida Statutes.

19. **Change Orders.** The Department may at any time, by written order designated to be a change order, make any change in the work within the general scope of this Contract (e.g., specifications, time, method or manner of performance, requirements, etc.). Changes to Task Assignment Notification forms issued by the Department shall be evidenced by use of the Authorization for Change in Scope of Work Form (Exhibit V) to be followed by the Contractual Services Change Order & Invoice form. All change orders are subject to the mutual agreement of both parties as evidenced in writing. Any change order, excluding the Contractual Services Change Order and Invoice form, which causes an increase or decrease in the Contractor's cost or time shall require an appropriate adjustment and modification (formal amendment) to this Contract.
20. **P.R.I.D.E.** It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this Contract shall be purchased from the corporation identified under Chapter 946, F.S., if available, in the same manner and under the same procedures set forth in Section 946.515(2), (4), F.S.; and for purposes of this Contract the person, firm or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for this agency insofar as dealings with such corporation are concerned.

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

P.R.I.D.E.  
12425 28th Street, North  
St. Petersburg, Florida 33716-1826  
Toll Free: 1-800-643-8459  
Website: <http://www.pride-enterprises.org>

21. **RESPECT of Florida.** It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this Contract shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this Contract the person, firm, or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for the state agency insofar as dealing with such qualified nonprofit agency are concerned.

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

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

22. **Non-solicitation.** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Contract.
23. **Conflict of Interest.** The Contractor covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.
24. **Force Majeure.** The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's

control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Department. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to the Department, in which case the Department may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to the Department with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

25. **Forum Selection and Choice of Law.** This Contract has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract. Any action hereon or in connection herewith shall be brought in Leon County, Florida.
26. **Document Retention and Audit.** The Contractor shall maintain books, records and documents directly pertinent to performance under this Contract in accordance with generally accepted accounting principles consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Contract and for five (5) years following Contract completion. In the event any work is subcontracted, the Contractor shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.
27. **Ownership of Documents.** All plans, specifications, maps, computer files, databases and/or reports prepared or obtained under this Contract, as well as data collected together with summaries and charts derived therefrom, shall be considered works made for hire and shall be and become the property of the Department upon completion or termination of this Contract, without restriction or limitation on their use, and shall be made available upon request to the Department at any time during the performance of such services and/or upon completion or termination of this Contract. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Contractor shall not copyright any material and products or patent any invention developed under this Contract.
28. **Non-Waiver of Rights.** No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by either party under this Contract, shall impair any such right, power or remedy of either party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.
29. **Tax Exemption.** The Contractor recognizes that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Contract. The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer on a purchase order or other special contract condition.

30. **Disqualification.**
- A. The employment of unauthorized aliens by any contractor/vendor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor/vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Contract. The Contractor shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Contract.
  - B. Pursuant to State of Florida Executive Orders Nos.: 11-02 and 11-116, Contractor is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the Contractor during the contract term. Also, the Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the state contract utilize the E-Verify system to verify employment of all new employees hired by the subcontractor during the contract term.
31. **Public Entity Crimes.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two, for a period of 36 months from the date of being placed on the convicted vendor list.
32. **Nondiscrimination.**
- A. No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Contract.
  - B. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor or consultant under contract with any public entity, and may not transact business with any public entity. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity at 850-487-0915.
  - C. The Contractor must comply with the Americans with Disabilities Act ("ADA").
33. **Compliance with Applicable Law.** The Contractor shall comply with all applicable federal, state and local rules and regulations in providing services to the Department under this Contract. The Contractor acknowledges that this requirement includes, but is not limited to, compliance with all applicable federal, state and local health and safety rules and regulations. The Contractor further agrees to include this provision in all subcontracts issued as a result of this Contract.
34. **Governmental Restrictions.** If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.
35. **MyFloridaMarketPlace Transaction Fee.**
- A. The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide e-procurement system. Pursuant to Section 287.057(22)(c), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1%), which the Contractor shall pay the State.

- B. For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the vendor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, the Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.
  - C. The Contractor shall receive a credit for any Transaction Fee paid by the vendor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected, returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the Contract.
  - D. Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.
36. **Modifications Required by Law.** The Department reserves the right to revise this Contract to include additional language required by federal agency(ies) or other sources awarding funding to the Department in support of this Contract; or to include changes necessitated by DEP rule changes.
37. **Attorneys Fees.** In the event of any legal action to enforce the terms of this Contract, each party shall bear its own attorneys fees and costs.
38. **Order of Precedence.** In the event of a conflict in terms between any of the components of this Contract, the order of precedence for resolving such conflict shall be as follows (1 being the highest):
- 1. Body of the Contract;
  - 2. Scope of services;
  - 3. All other attachments to the Contract;
  - 4. DEP Solicitation No. 2014054C, inclusive of all attachments, addenda and questions and answers to the solicitation; and,
  - 5. Contractor's response to the solicitation.
39. **Interpretation of Contract.**
- A. Where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; unless otherwise indicated references to Rules are to the adopted rules in the Florida Administrative Code; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; unless otherwise indicated references to sections, appendices or schedules are to this Contract; words such as "herein," "hereof" and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate.
  - B. Unless otherwise specified, lists contained in the Contract shall not be deemed all-inclusive. Contractor acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Response, to review the terms and conditions of the Contract and to bring to the attention of the Department any conflicts or ambiguities contained therein. Contractor further acknowledges and agrees that it has independently reviewed the Contract with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the terms. Accordingly, if an ambiguity in (or dispute regarding the interpretation of) the Contract shall arise, the Contract shall not be interpreted or construed against the Department, and, instead, other rules of interpretation and construction shall be used.

40. **Headings.** The headings contained herein are for convenience only, do not constitute a part of this Contract and shall not be deemed to limit or affect any of the provisions hereof.
41. **Execution in Counterparts.** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
42. **Remedies.** All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the Department, whether provided by law, equity, statute, in any other agreement between the parties or otherwise. Department shall be entitled to injunctive and other equitable relief, including, but not limited to, specific performance, to prevent a breach, continued breach or threatened breach of this Agreement. No remedy or election hereunder shall be deemed exclusive. A failure to exercise or a delay in exercising, on the part of the Department, any right, remedy, power or privilege hereunder shall not operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.
43. **Integration.** This Contract represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Contract, unless otherwise provided herein.

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

CONTRACTOR

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_  
(Contractor's Signature)

By: \_\_\_\_\_  
Secretary or designee for the Florida Department of Environmental Protection

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

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

FEID No. \_\_\_\_\_

\_\_\_\_\_  
DEP Contracts Administrator

\_\_\_\_\_  
DEP Contract Manager

Approved as to form and legality:

\_\_\_\_\_  
DEP Attorney

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

Specify Type	Letter/ Number	Description (include number of pages)
Exhibit	*	Scope of Services (See Attachment C of DEP Solicitation No. 2014054C)
Exhibit	I	Subcontractor Utilization Report Form for Commodities/Services



**EXHIBIT I  
SUBCONTRACTOR UTILIZATION REPORT FORM FOR COMMODITIES/SERVICES**

**DIRECTIONS:**

Contractors working for the Florida Department of Environmental Protection (DEP) must complete and submit this attachment with each invoice submitted for payment. Questions regarding use of this form should be directed to the Procurement Section (MS93), Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, Phone 850/245-2361.

DEP Contract No.: _____  Invoice Number: _____  Task Assignment No. (if applicable): _____  Invoice Service Period: _____		INDICATE THE ONE CATEGORY THAT BEST DESCRIBES EACH ORGANIZATION LISTED																		
		BUSINESS CLASSIFICATION				CERTIFIED MBE				NON-CERTIFIED MBE				NON-PROFIT ORG.						
		NON-MINORITY	SMALL BUSINESS (STATE)	SMALL BUSINESS (FEDERAL)	GOVERNMENTAL AGENCY	NON-PROFIT ORGANIZATION	P.R.I.D.E.	AFRICAN AMERICAN	HISPANIC	ASIAN/HAWAIIAN	NATIVE AMERICAN	AMERICAN WOMAN	AFRICAN AMERICAN	HISPANIC	ASIAN/HAWAIIAN	NATIVE AMERICAN	AMERICAN WOMAN	BOARD IS 51% OR MORE MINORITY	51% OR MORE MINORITY	51% OR MORE MINORITY
LIST NAMES AND ADDRESSES OF SUBCONTRACTORS UTILIZED THIS INVOICE PERIOD	LIST AMOUNT PAID TO EACH SUBCONTRACTOR THIS INVOICE PERIOD																			

DEP Contract No.: \_\_\_\_\_

Invoice Number: \_\_\_\_\_

Task Assignment No. (if applicable): \_\_\_\_\_

Invoice Service Period: \_\_\_\_\_

INDICATE THE ONE CATEGORY THAT BEST DESCRIBES EACH ORGANIZATION LISTED																				
BUSINESS CLASSIFICATION				CERTIFIED MBE				NON-CERTIFIED MBE				NON-PROFIT ORG.								
NON-MINORITY	SMALL BUSINESS (STATE)	SMALL BUSINESS (FEDERAL)	GOVERNMENTAL AGENCY	NON-PROFIT ORGANIZATION	P.R.I.D.E.	AFRICAN AMERICAN	HISPANIC	ASIAN/HAWAIIAN	NATIVE AMERICAN	AMERICAN WOMAN	AFRICAN AMERICAN	HISPANIC	ASIAN/HAWAIIAN	NATIVE AMERICAN	AMERICAN WOMAN	BOARD IS 51% OR MORE MINORITY	51% OR MORE MINORITY OFFICERS	51% OR MORE MINORITY COMMUNITY	OTHER NON-PROFIT	

LIST NAMES AND ADDRESSES OF SUBCONTRACTORS UTILIZED THIS INVOICE PERIOD	LIST AMOUNT PAID TO EACH SUBCONTRACTOR THIS INVOICE PERIOD

SUBCONTRACTOR UTILIZATION REPORT FORM CERTIFICATION:

I certify that the information provided in the preceding page(s) is accurate as of the last day of the payment period identified on this form.

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
(Business Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)